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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

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JOE BRAUN, JEFF HAILPERN,  
YOLANDA GARCIA, and EFREN  
GARCIA *individually and on  
behalf of all others similarly  
situated*

Plaintiffs,

vs.

SAFECO INSURANCE COMPANY OF  
AMERICA, LIBERTY MUTUAL  
INSURANCE COMPANY and DOES 1  
through 50, inclusive

Defendants.

**CONFORMED COPY  
ORIGINAL FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES**

APR 05 2011

John A. Clarke, Executive Officer/Clerk  
BY *[Signature]* Deputy  
Gina Grider

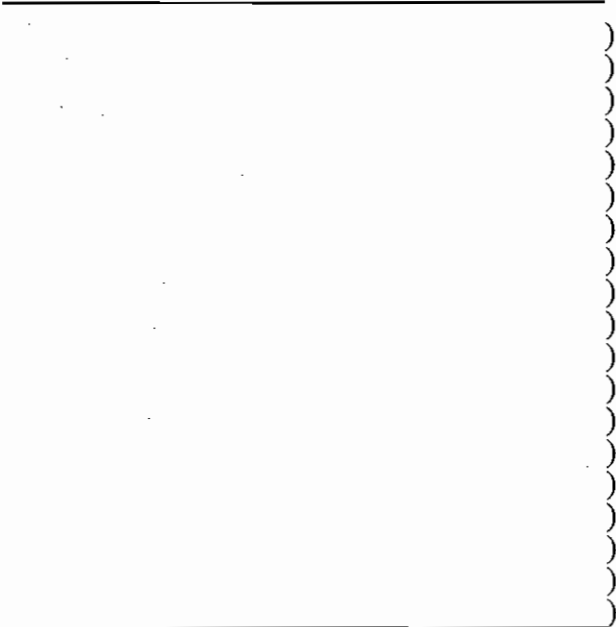
Case No: **BC 458779**

**COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF**

**CLASS ACTION** (California Code of  
Civil Procedure §382)

1. **FAILURE TO PAY  
OVERTIME COMPENSATION  
(CAL. LABOR CODE § 1194)**
2. **FAILURE TO PROVIDE MEAL  
AND REST PERIODS (CAL.  
LABOR CODE § 226.7)**
3. **WAITING TIME PENALTIES  
(CAL. LABOR. CODE § 203)**
4. **FAILURE TO PROVIDE  
ACCURATE ITEMIZED  
STATEMENTS (CAL.  
LABOR CODE § 226)**
5. **UNFAIR BUSINESS  
PRACTICES (CAL.  
BUSINESS AND PROFESSIONS**

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**CODE §§ 17200 ET SEQ.)**

**6. PRIVATE ATTORNEY  
GENERAL ACT (CAL. LABOR  
CODE §§ 2698 ET SEQ.)**

**DEMAND FOR JURY TRIAL**

JOE BRAUN, JEFF HAILPERN, YOLANDA GARCIA, and EFREN GARCIA  
(individually and collectively referred to as "PLAINTIFFS"), as individuals, and on behalf of  
themselves and all others similarly situated, complain and allege, on information and belief, the  
following against DEFENDANTS SAFECO INSURANCE COMPANY OF AMERICA,  
LIBERTY MUTUAL INSURANCE COMPANY and DOES 1-50 (individually and collectively  
referred to as "DEFENDANTS"):

**JURISDICTION AND VENUE**

1. The Court has personal jurisdiction over DEFENDANTS because they are residents of and/or doing business in the State of California.
  
2. Venue is proper in this Court in accordance with Section 395(a) of the California Code of Civil Procedure because DEFENDANTS, or some of them, reside in Los Angeles County. Moreover, DEFENDANTS operate locations within this County and have employed and do employ certain PLAINTIFFS in Los Angeles County. Also, the harms alleged occurred in Los Angeles County and other California Counties.

1  
2 **PARTIES**

3 3. DEFENDANTS SAFECO INSURANCE COMPANY OF AMERICA  
4 (hereinafter "SAFECO"), LIBERTY MUTUAL INSURANCE COMPANY (hereinafter  
5 "LIBERTY MUTUAL") and DOES 1 through 50, at all relevant times, were corporations,  
6 limited liability companies associations and/or other business entities conducting business in the  
7 State of California, including Los Angeles County. PLAINTIFFS are informed and believe and  
8 thereon allege that in or about September 2008, Defendant Liberty Mutual Insurance Company  
9 acquired Defendant Safeco Insurance Company of America.  
10

11 4. PLAINTIFFS JOE BRAUN, JEFF HAILPERN, YOLANDA GARCIA, and  
12 EFREN GARCIA, at all relevant times, were non-exempt employees of DEFENDANTS and  
13 were citizens of the State of California. PLAINTIFFS and all other similarly situated employees  
14 were regularly and systematically denied overtime pay, denied meal and rest breaks and were  
15 subjected to other violations of the California Labor Code, Wage Orders of the California  
16 Industrial Welfare Commission and similar provisions of California law.  
17

18 5. PLAINTIFF JOE BRAUN was employed by DEFENDANT SAFECO in Los  
19 Angeles County from approximately 1982 until March, 2010, whereupon he resigned his  
20 employment. From March 2007 through March 2010, BRAUN worked as a Quality Assurance  
21 Re-inspector, also known as a Physical Damage Field Examiner. At all relevant times, Plaintiff  
22 was a resident of Los Angeles County.  
23

24 6. PLAINTIFF JEFF HAILPERN has been employed by DEFENDANT SAFECO  
25 from approximately March 1998 until the present. From March 2007 through the present,  
26 HAILPERN worked as a Quality Assurance Re-inspector, also known as a Physical Damage  
27 Field Examiner. At all relevant times, Plaintiff was a resident of Los Angeles County.  
28

1 7. PLAINTIFF YOLANDA GARCIA was employed by DEFENDANT SAFECO as  
2 a Senior Inside Claims Representative from approximately January 2007 through the present. At  
3 all relevant times, Plaintiff was a resident of Riverside County.

4  
5 8. PLAINTIFF EFREN GARCIA has been employed by DEFENDANT SAFECO as  
6 a bodily injury automobile inspector from approximately January 2007 through the present. At  
7 all relevant times, Plaintiff was a resident of Riverside County.

8  
9 9. The true names and capacities of defendants named herein as DOES 1 through 50,  
10 inclusive, whether individual, corporate, associate, or otherwise, are unknown to PLAINTIFFS,  
11 who therefore sue such defendants by such fictitious names. PLAINTIFFS allege that each of the  
12 DEFENDANTS designated herein as a DOE is legally responsible in some manner for the  
13 unlawful acts referred to herein. PLAINTIFFS will amend this Complaint to show the true  
14 names and capacities when they have been determined.

15  
16 10. At all times mentioned herein, DEFENDANTS, and each of them, were the  
17 agents, representatives, employees, successors, assigns, parents, subsidiaries and/or affiliates,  
18 each of the other, and at all times pertinent hereto were acting within the course and scope of  
19 their authority as such agents, representatives, employees, successors, assigns, parents,  
20 subsidiaries and/or affiliates.

21  
22 **FACTS COMMON TO ALL CAUSES OF ACTION**

23 11. Throughout their employment with DEFENDANTS, PLAINTIFFS were non-  
24 exempt employees who, under California law, are and were entitled to overtime compensation  
25 and meal and rest breaks. Nonetheless, DEFENDANTS systematically failed to pay overtime  
26 compensation and failed to provide rest and meal breaks to PLAINTIFFS and members of  
27 PLAINTIFF CLASS.

1        12.        Since March 2007 (and prior thereto), PLAINTIFFS were employed in California by  
2 Defendant Safeco Insurance Company of America (“Safeco”) to process low level automobile  
3 insurance claims. Plaintiffs Braun and Hailpern physically inspected the automobile damage and  
4 reported their findings. Plaintiff Yolanda Garcia only processed claims involving property  
5 damage while Plaintiff Efren Garcia processed claims that would also include minor bodily  
6 injuries as well as property damage. PLAINTIFFS would typically process at least 80 claims per  
7 month and the majority of those claims involved less than \$3,000 in damages. The maximum  
8 amount of settlement authority on an individual claim was \$15,000. PLAINTIFFS were closely  
9 supervised and their job duties were highly regulated by Safeco. PLAINTIFFS were expected to  
10 process a large amount of low level claims and had very limited discretion in the manner in  
11 which they performed their duties.

12  
13        13.        From March 2007 (and prior thereto) until approximately January 2009, Plaintiffs  
14 and their co-workers were classified by Safeco as non-exempt employees and were entitled to  
15 overtime pay for all work in excess of 8 hours per day and 40 hours per week. However, despite  
16 the fact that they were classified as non-exempt, Plaintiffs Braun and Hailpern and other  
17 similarly situated automobile property damage claims processors known as Quality Assurance  
18 Reinspectors were informed by their supervisor, in or around 2001, that they would not be paid  
19 for any overtime work and that no overtime would be approved, despite the fact that their job  
20 duties regularly required that they work overtime. In fact, even though the workforce was  
21 reduced and, therefore, the amount of overtime hours for the remaining employees increased,  
22 PLAINTIFFS were still not permitted to enter their overtime hours into the electronic time  
23 management system. As a result, Plaintiffs Braun and Hailpern and other Quality Assurance  
24 Reinspectors were regularly required to work “off the clock” in order to complete their job  
25 duties. Moreover, upon information and belief, and thereon alleged, other automobile claims  
26 processors worked many “off the clock” hours. Upon information and belief, and thereon  
27 alleged, this policy of not allowing plaintiffs to record their overtime hours was enforced through  
28

1 intimidation, including the threat of job termination, and lasted until Defendants implemented a  
2 policy change in or about June 2010.

3  
4 14. Effective January 1, 2009, after Safeco was acquired by Defendant Liberty Mutual,  
5 Plaintiffs Braun, Hailpern, Yolanda Garcia, Efren Garcia, and other similarly situated claims  
6 representatives and physical damage inspectors were re-classified by Defendants from “non-  
7 exempt” to “exempt” even though their job duties remained the same and the amount of work  
8 that they had to do remained the same or increased. As a result of this re-classification,  
9 Plaintiffs and other similarly situated employees were denied overtime wages, even though they  
10 regularly worked more than 8 hours per day and/or more than 40 hours per week, and also  
11 regularly were not able to take meal or rest breaks due to their pressing work load.

12  
13 15. In or about September 2009, Plaintiffs Braun and Hailpern, and other physical  
14 damage inspectors were re-classified as being “non-exempt” and therefore entitled to overtime.  
15 Furthermore, in October 2010, Yolanda Garcia, along with all other Safeco automobile property  
16 damage claims representatives were re-classified as being “non-exempt” and therefore entitled to  
17 overtime. However, Plaintiff Efren Garcia, and other claims representatives whose duties also  
18 included processing for minor bodily injury claims, remain classified as “exempt” and continue  
19 to be denied overtime pay by Defendants, even though their primary job duties required them to  
20 perform non-administrative duties.

21  
22 16. PLAINTIFFS allege that they and other similarly situated claims processors and  
23 physical damage inspectors are and were not subject to the Administrative Exemption for several  
24 reasons, including but not limited to the following:

25 a) they were/are not engaged in work directly related to management policies or general  
26 business operations; and/or

27 b) they did/do not customarily and regularly exercise discretion and independent  
28

1 judgment; and/or

2 c) they did/do not regularly and directly assist others employed in a bona fide executive  
3 or administrative capacity; and/or

4 d) they did/do not work along specialized or technical lines requiring special training,  
5 experience, or knowledge.

6 Accordingly, PLAINTIFFS and other similarly situated lower level claims processors are not  
7 and were not exempt under the Administrative Exemption. (IWC Wage Order 4-2001 section  
8 1(A)(2)).

9  
10 **CLASS ACTION ALLEGATIONS**

11 17. PLAINTIFFS bring this action on behalf of themselves and all others similarly  
12 situated as a class action pursuant to California Code of Civil Procedure Section 382. The class  
13 that PLAINTIFFS seeks to represent (herein referred to as " PLAINTIFF CLASS") is composed  
14 of DEFENDANTS' employees and former employees who suffered injuries or damages and/or  
15 were otherwise denied wages and monies to which they were entitled within the applicable  
16 statutes of limitation and is defined as follows:

17 All persons who worked for Safeco Insurance Company, whose  
18 primary job duties were to process automobile insurance claims or inspect  
19 automobile damage, and whose settlement authority was in  
20 an amount no greater than \$15,000, who were denied over time  
21 payments and/or meal and rest breaks to which they were entitled  
22 pursuant to the California Labor Code, the California Industrial Welfare  
23 Commission's ("IWC") Wage Orders and all other applicable California  
24 employment laws and regulations.

25 The Class includes the following three (3) sub classes:  
26  
27  
28

1 **Safeco automobile property damage claims adjusters misclassification sub class:** This sub  
2 class, which includes Plaintiff Yolanda Garcia, is defined as:

3 All persons who worked for Safeco Insurance Company, whose  
4 primary job duties were to process automobile insurance property  
5 claims, and who had settlement authority in an amount no greater  
6 than \$15,000, who were mis-classified as being exempt from  
7 California's wage and hour laws from approximately January 2009  
8 through approximately October 2010.

9  
10 **Safeco automobile property damage field inspectors "off the clock" sub class:** This sub  
11 class, which includes Plaintiffs Braun and Hailpern is defined as:

12 All persons who worked for Safeco Insurance Company, whose  
13 primary job duty was to inspect automobile damage, who were  
14 required to work off the clock and therefore denied overtime from  
15 approximately March 2007 through June 2010, and who were mis-  
16 classified as being exempt from California's wage and hour laws  
17 from approximately January 2009 through September 2009.

18  
19 **Safeco automobile bodily injury claims adjusters misclassification sub class:**  
20 This sub class, which includes Plaintiff Effren Garcia is defined as:

21 All persons who worked for Safeco Insurance Company, whose  
22 primary job duties were to process automobile insurance property  
23 damage and bodily injury claims, with a settlement authority no  
24 greater than \$15,000, who were mis-classified as being exempt  
25 from California's wage and hour laws from approximately January  
26 2009 through the present.



1           18.     The members of the class are so numerous that joinder of all members would be  
2 unfeasible and not practicable. The membership of the entire class is unknown to PLAINTIFFS  
3 at this time; however, it is estimated that the entire class is greater than 100 individuals, but the  
4 identity of such membership is readily ascertainable via inspection of the personnel records and  
5 other documents maintained by DEFENDANTS.

6  
7           19.     There are common questions of law and fact as to the class and sub-classes which  
8 predominate over questions affecting only individual members including, without, limitation:

9           A.     Whether DEFENDANTS denied the PLAINTIFF CLASS overtime pay to  
10 which they were entitled pursuant to the California Labor Code, the California Industrial Welfare  
11 Commission's ("IWC") Wage Orders, and all other applicable Employment Laws and  
12 Regulations;

13           B.     Whether DEFENDANTS denied the PLAINTIFF CLASS meal and/or rest  
14 breaks pursuant to the California Labor Code, the California Industrial Welfare Commission's  
15 ("IWC") Wage Orders, and all other applicable Employment Laws and Regulations;

16           C.     Whether DEFENDANTS owe members of the PLAINTIFF CLASS  
17 waiting time penalties pursuant to Cal. Labor Code § 203;

18           D.     Whether DEFENDANTS failed to provide the PLAINTIFF CLASS with  
19 accurate itemized statements as required by Cal. Labor Code § 226;

20           E.     Whether the failure of DEFENDANTS to provide accurate itemized  
21 statements was knowing and intentional thereby entitling the PLAINTIFF CLASS to penalties;

22           F.     Whether DEFENDANTS engaged in unfair business practices;

23           G.     The effect upon and the extent of damages suffered by PLAINTIFF  
24 CLASS and the appropriate amount of compensation.

25  
26           20.     The claims of PLAINTIFFS pled as class action claims are typical of the claims  
27 of all members of the class as they arise out of the same course of conduct and are predicated on  
28

1 the same violation(s) of the law. PLAINTIFFS, as representative parties, will fairly and  
2 adequately protect the interests of the members of the proposed class by vigorously pursuing this  
3 suit through their attorneys who are skilled and experienced in handling matters of this type.  
4

5 21. The nature of this action and the nature of the laws available to the PLAINTIFF  
6 CLASS and sub classes make use of the class action format a particularly efficient and  
7 appropriate procedure to afford relief to the PLAINTIFF CLASS. Further, this case involves a  
8 corporate employer and a large number of individual employees possessing claims with common  
9 issues of law and fact. If each employee were required to file an individual lawsuit, the corporate  
10 defendants would necessarily gain an unconscionable advantage since it would be able to exploit  
11 and overwhelm the limited resources of each individual plaintiff with its vastly superior financial  
12 and legal resources. Requiring each class member to pursue an individual remedy would also  
13 discourage the assertion of lawful claims by employees who would be disinclined to pursue an  
14 action against their present and/or former employer for an appreciable and justifiable fear of  
15 retaliation and permanent damage to their careers at present and/or subsequent employment.  
16 Proof of a common business practice or factual pattern, of which the named plaintiffs  
17 experienced, is representative of the class mentioned herein and will establish the right of each of  
18 the members of the class to recovery on the claims alleged herein.  
19

20 22. The prosecution of separate actions by the individual class members, even if  
21 possible, would create: (a) a substantial risk of inconvenient or varying verdicts or adjudications  
22 with respect to the individual class members against the defendants herein; and/or (b) legal  
23 determinations with respect to individual class members which would, as a practical matter, be  
24 dispositive of the other class members not parties to the adjudications or which would  
25 substantially impair or impede the ability of class members to protect their interests. Further, the  
26 claims of the individual members of the class are not sufficiently large to warrant vigorous  
27 individual prosecution considering all of the concomitant costs and expenses attending thereto.  
28

1 PLAINTIFFS are also unaware of any difficulties that are likely to be encountered in the  
2 management of this action that would preclude its maintenance as a class action.

3  
4  
5 **FIRST CAUSE OF ACTION**

6 **FAILURE TO PAY OVERTIME COMPENSATION**

7 **(CALIFORNIA LABOR CODE SECTION 1194)**

8 By PLAINTIFFS in their individual capacities and in their capacities as representatives of all  
9 similarly situated members of the PLAINTIFF CLASS against all DEFENDANTS.

10 23. PLAINTIFFS reallege and incorporate, by reference, as though fully set forth  
11 herein, the allegations contained in paragraphs 1 to 22.

12  
13 24. DEFENDANTS routinely required PLAINTIFFS and members of the PLAINTIFF  
14 CLASS, including the sub classes, to work more than eight (8) hours per day, twelve (12) hours  
15 per day, and/or forty (40) hours per week.

16  
17 25. DEFENDANTS failed to fully compensate PLAINTIFFS and members of the  
18 PLAINTIFF CLASS for all overtime wages they earned. In particular, starting on January 1,  
19 2009, DEFENDANTS knowingly mis-classified Safeco's low-level claims processors as being  
20 exempt from overtime, even though such employees, who were deemed non-exempt by Safeco  
21 prior to this date, and whose duties never changed after January 1, 2009, primarily performed  
22 non-exempt duties, which meant that such employees were denied overtime payments to which  
23 they were entitled. Moreover, from March 2007 through June 2010, Safeco Quality Assurance  
24 Reinspectors, and other automobile claims adjusters, were regularly required to work "off the  
25 clock" in order to be able to fulfill their duties. As result of DEFENDANTS' knowing and  
26 intentional violations of their own policies and procedures, PLAINTIFFS and members of the  
27 PLAINTIFF CLASS were not properly compensated for having worked overtime.

1           26.     PLAINTIFFS are informed and believe, and thereon allege, that the failure of  
2 DEFENDANTS to fully compensate PLAINTIFFS and the PLAINTIFF CLASS for overtime  
3 work was willful, purposeful, and unlawful and done in accordance with the policies and  
4 practices of DEFENDANTS' operations.

5  
6           27.     As a proximate cause of the aforementioned violations, PLAINTIFFS and the  
7 PLAINTIFF CLASS have been damaged in an amount according to proof at time of trial, but in  
8 an amount in excess of the jurisdiction of this Court. PLAINTIFFS and the PLAINTIFF CLASS  
9 are entitled to recover the unpaid balance of wages owed, penalties, including penalties available  
10 pursuant to California Labor Code Section 558, plus interest, reasonable attorney fees and costs  
11 of suit according to the mandate of California Labor Code Section 1194, et. seq.

12  
13                                   **SECOND CAUSE OF ACTION**

14                   **FAILURE TO PAY MEAL AND REST PERIOD COMPENSATION**

15                                   **(CALIFORNIA LABOR CODE SECTION 226.7 AND 512)**

16     By PLAINTIFFS in their individual capacities and in their capacities as representatives of all  
17     similarly situated members of the PLAINTIFF CLASS against all DEFENDANTS.

18           28.     PLAINTIFFS reallege and incorporate, by reference, as though fully set forth  
19 herein, the allegations contained in paragraphs 1 to 27.

20  
21           29.     DEFENDANTS failed to provide PLAINTIFFS and members of the PLAINTIFF  
22 CLASS with uninterrupted, work-free 30-minute meal periods for shifts in excess of five (5)  
23 hours worked and to compensate them for these missed meal periods as required by law.

24  
25           30.     DEFENDANTS failed to give PLAINTIFFS breaks for shifts in excess of four (4)  
26 hours as required by law and failed to compensate them for missed rest breaks. DEFENDANTS  
27 also failed to give members of the PLAINTIFF CLASS breaks for shifts in excess of four (4)  
28

1 hours as required by law and failed to compensate them for missed rest breaks.

2  
3 31. PLAINTIFFS are informed and believe, and thereon allege, that the failure of  
4 DEFENDANTS to provide meal and rest breaks and to compensate PLAINTIFFS and the  
5 PLAINTIFF CLASS for these missed meal and rest breaks was willful, purposeful, and unlawful  
6 and done in accordance with the policies and practices of DEFENDANTS' operations. As a  
7 result of DEFENDANTS' knowing and intentional violations of their own policies and  
8 procedures, PLAINTIFFS and members of the PLAINTIFF CLASS were denied rest and meal  
9 breaks and were not properly compensated for having missed these breaks.

10  
11 32. As a proximate cause of the aforementioned violations, PLAINTIFFS and  
12 members of the PLAINTIFF CLASS have been damaged in an amount according to proof at time  
13 of trial, but in an amount in excess of the jurisdiction of this Court. PLAINTIFFS and the  
14 PLAINTIFF CLASS are entitled to recover the unpaid balance of wages owed, penalties,  
15 including penalties available pursuant to California Labor Code Sections 226, 226.7, 558, plus  
16 interest, reasonable attorney fees and costs of suit according to the mandate of California Labor  
17 Code, Section 1194, et. seq.

18  
19  
20 **THIRD CAUSE OF ACTION**

21 **(WAITING TIME PENALTIES PURSUANT TO CALIFORNIA LABOR CODE § 203)**

22 By PLAINTIFF JOE BRAUN in his individual capacity and in his capacity as representative of  
23 all similarly situated members of the PLAINTIFF CLASS against all DEFENDANTS.

24  
25 33. PLAINTIFFS reallege and incorporate, by reference, as though fully set forth  
26 herein, the allegations contained in paragraphs 1 to 32.

1           34. Pursuant to California Labor Code § 201, if an employer discharges an employee,  
2 the wages earned and unpaid at the time of the discharge are due and payable immediately.  
3 Pursuant to California Labor Code § 202, if an employee quits his or her employment, the wages  
4 earned and unpaid at the time of the discharge are due and payable within seventy-two (72) hours  
5 of the resignation.

6  
7           35. PLAINTIFFS are informed and believe that members of the PLAINTIFF CLASS,  
8 including BRAUN, have resigned or were terminated from their employment with  
9 DEFENDANTS and have not received the overtime compensation and other wages they  
10 rightfully earned.

11  
12           36. DEFENDANTS, and each of them, willfully refused and continue to refuse to pay  
13 members of the PLAINTIFF CLASS all wages earned, including overtime and compensation for  
14 meal and rest breaks, in a timely manner, as required by California Labor Code § 203.  
15 PLAINTIFFS, on behalf of those members of the PLAINTIFF CLASS, therefore request  
16 restitution and penalties as provided by California Labor Code § 203.

17  
18  
19                                   **FOURTH CAUSE OF ACTION**

20                                   **FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS**

21                                   **(CAL. LABOR CODE § 226)**

22           By PLAINTIFFS in their individual capacities and in their capacities as representatives of all  
23 similarly situated members of the PLAINTIFF CLASS against all DEFENDANTS.

24           37. PLAINTIFFS reallege and incorporate, by reference, as though fully set forth  
25 herein, the allegations contained in paragraphs 1 to 36.

26  
27           38. DEFENDANTS failed to provide PLAINTIFFS and members of the PLAINTIFF  
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1 CLASS with accurate itemized statements as required by Cal. Labor Code § 226. In particular,  
2 PLAINTIFFS are informed and believe and thereon allege that DEFENDANTS knowingly and  
3 intentionally did not state on PLAINTIFFS' and members of the PLAINTIFF CLASS' payroll  
4 records the correct amount of overtime they had earned for having worked in excess of eight (8)  
5 hours per day, (12) hours per day and/or 40 hours per week.

6  
7 39. PLAINTIFFS are informed and believe and thereon allege that DEFENDANTS  
8 knowingly and intentionally failed to provide PLAINTIFFS and members of the PLAINTIFF  
9 CLASS with accurate payroll records. As a result, PLAINTIFFS and members of the  
10 PLAINTIFF CLASS are entitled to recover the greater of all actual damages or fifty dollars (\$50)  
11 for the initial pay period in which a violation occurs and one hundred dollars (\$100) per  
12 employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of  
13 four thousand dollars (\$4,000), and are entitled to an award of costs and reasonable attorney fees.

14  
15 **FIFTH CAUSE OF ACTION**

16 **UNFAIR COMPETITION AND BUSINESS PRACTICES**

17 **(CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 17200, ET SEQ.)**

18 By PLAINTIFFS in their individual capacity and in their capacity as a representative of all  
19 similarly situated members of the PLAINTIFF CLASS, including applicable sub classes,  
20 against all DEFENDANTS.

21 40. PLAINTIFFS reallege and incorporate, by reference, as though fully set forth  
22 herein, the allegations contained in paragraphs 1 to 39.

23  
24 41. DEFENDANTS' violations of California employment laws and regulations, as  
25 alleged herein, include, without limitation: (1) DEFENDANTS' failure and refusal to pay all  
26 overtime wages earned by PLAINTIFFS and members of the PLAINTIFF CLASS pursuant to  
27 DEFENDANTS' illegal pay practices described above; (2) DEFENDANTS' failure to provide  
28

1 meal and rest breaks to PLAINTIFFS and members of the PLAINTIFF CLASS and to  
2 compensate them for missed meal and rest breaks; (3) DEFENDANTS' willful and deliberate  
3 failure to provide waiting time penalties; (4) DEFENDANTS' willful and deliberate failure to  
4 provide accurate itemized statements. The aforementioned violations constitute unfair business  
5 practices in violation of the Unfair Competition Law, California Business & Professions Code  
6 Section 17200, et seq.

7  
8 42. Wage and hour laws express fundamental public policies. Providing employees  
9 with meal and rest breaks and paying overtime are fundamental public policies of this State and  
10 of the United States. Labor Code section 90.5 (a) articulates the public policies of this State to  
11 enforce vigorously minimum labor standards, to ensure that employees are not required or  
12 permitted to work under substandard and unlawful conditions, and to protect law-abiding  
13 employers and their employees from competitors who lower their costs by failing to comply with  
14 minimum labor standards.

15  
16 43. DEFENDANTS have violated statutes and public policies. Through the conduct  
17 alleged in this Complaint, DEFENDANTS, and each of them, have acted contrary to these public  
18 policies, have violated specific provisions of the Labor Code, and have engaged in other unlawful  
19 and unfair business practices in violation of Business & Professions Code section 17200, et seq.,  
20 depriving PLAINTIFFS, and all persons similarly situated, and all interested persons of rights,  
21 benefits, and privileges guaranteed to all employees under law.

22  
23 44. As a result of DEFENDANTS' unfair business practices, DEFENDANTS have  
24 reaped unfair benefits s at the expense of PLAINTIFFS and members of the applicable  
25 PLAINTIFF CLASS.

26  
27 45. DEFENDANTS' unfair business practices entitle PLAINTIFFS and the  
28



1 PLAINTIFF CLASS to seek preliminary and permanent injunctive relief, including but not  
2 limited to, orders that the DEFENDANTS account for PLAINTIFFS and the PLAINTIFF  
3 CLASS the compensation unlawfully withheld from them, from March 2007, that  
4 DEFENDANTS provide restitution to PLAINTIFFS and members of the PLAINTIFF CLASS  
5 based on DEFENDANTS' failure to provide overtime, waiting time penalties, and meals and rest  
6 breaks, together with interest thereon, as well as costs, and reasonable attorney fees pursuant to  
7 statute including Code of Civil Procedure section 1021.5.

8  
9 **SIXTH CAUSE OF ACTION**

10 **PRIVATE ATTORNEY GENERAL ACT**

11 **(VIOLATION OF LABOR CODE §§ 2698 et seq.)**

12 By PLAINTIFFS in their individual capacity and in their capacity as a representative of all  
13 similarly situated members PLAINTIFFS CLASS against all DEFENDANTS

14  
15 46. PLAINTIFFS reallege and incorporate, by reference, as though fully set forth  
16 herein, the allegations contained in paragraphs 1 to 45.

17  
18 47. On or about February 24, 2011, PLAINTIFFS, individually and on behalf of  
19 themselves and other similarly situated current and former employees of DEFENDANTS,  
20 through their counsel, provided written notice to the Labor and Workforce Development Agency  
21 ("LWDA") of the specific violations of the California Labor Code DEFENDANTS have violated  
22 and continue to violate, including Labor Code Sections §§ 201-203, 204, 216, 221, 225.5, 226,  
23 226.3, 226.7, 450, 512, 558, 1194, and 2802.

24  
25 48. Pursuant to Labor Code section 2699.3 (a)(2)(A), more than 33 days have lapsed  
26 from the postmark date of the notice provided to the LWDA by PLAINTIFFS without any notice  
27 being received in response from the LWDA.



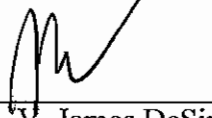
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- 7. For interest accrued to date;
- 8. For costs of the suit incurred herein;
- 9. For attorney fees and costs pursuant to California Labor Code Sections 226 and 1194; and California Code of Civil Procedure Section 1021.5.
- 10. For such other and further relief that the Court may deem just and proper.

DATED: March 30, 2011

Respectfully submitted,

SCHONBRUN DESIMONE SEPLow  
HARRIS HOFFMAN & HARRISON LLP  
LAW OFFICES OF MICHAEL S. RAPKIN

By   
V. James DeSimone  
Michel D. Seplow  
Attorneys for Plaintiffs

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**DEMAND FOR JURY TRIAL**

PLAINTIFFS and members of the PLAINTIFF CLASS, including the sub classes, hereby demand a trial by jury on all issues so triable.

DATED: March 30, 2011

Respectfully submitted,

SCHONBRUN DESIMONE SELOW  
HARRIS HOFFMAN & HARRISON LLP  
LAW OFFICES OF MICHAEL S. RAPKIN

By   
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