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As the representative of a class of similarly-situated persons

UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA

IAN FREEMAN, individually and as the
representative of a class of similarly-
situated persons;

Plaintiffs,

vs.

ZILLOW, INC., a Washington
corporation; and DOES 1 through 50,
inclusive;

Defendants.

CASE NO.: 8:14-CV-01843

CLASS ACTION COMPLAINT FOR DAMAGES

1. FAILURE TO PAY WAGES [CAL. LABOR CODE §§ 1194 AND 1198 ET SEQ.]
2. FAILURE TO PAY OVERTIME WAGES [CAL. LABOR CODE §§ 510 AND 1198 ET SEQ.]
3. FAILURE TO PROVIDE MEAL AND REST BREAKS [CAL. LABOR CODE § 226.7]
4. WAITING TIME PENALTIES [CAL. LABOR CODE § 203]
5. FAILURE TO MAINTAIN AND PROVIDE ACCURATE WAGE STATEMENTS [CAL. LABOR CODE §§ 226 AND 1174 ET SEQ.]
6. UNFAIR BUSINESS PRACTICES [BUS. & PROF. CODE § 17200 ET SEQ.]

DEMAND FOR JURY TRIAL

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1 Plaintiff Ian Freeman, individually and as the representative of a class of
2 similarly-situated persons (hereinafter referred to as “Plaintiffs”), alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiffs’ class action arises out of Defendant Zillow, Inc.’s (“Zillow”)
5 illegal design to circumvent Federal and State laws with the sole purpose of
6 maximizing profits through a systematic scheme of exploiting and intimidating its
7 employees to miss meal breaks, rest breaks, and work overtime without compensation

8 2. Specifically, Zillow implemented an automated method of “recording” its
9 employees’ work hours through an automated timekeeping system programed to auto-
10 populate its employees’ hours worked to begin at 8:00 a.m. and end at 4:00 p.m.,
11 regardless of employees overtime hours worked and missed meal and rest breaks.

12 3. Through various memos, meetings, and methods of intimidation, Zillow
13 demanded from Plaintiffs and Class Members to begin work prior to the
14 automatically-recorded 8:00 a.m. start time and continue working well beyond the
15 previously recorded 4:00 p.m. punch-out time. In fact, Zillow openly instructed its
16 employees that the automated time-keeping system would only be altered in the event
17 an employee missed work or took a sick day.

18 4. Zillow also unlawfully demanded that Plaintiffs and Class Members
19 work through their legally mandated “off the clock” meal and rest breaks while
20 denying them compensation by automatically detracting this time from their
21 previously auto-populated timesheets.

22 5. In the four years prior to this class action, Zillow’s illegal and systematic
23 design of disregarding Plaintiffs and Class Members actual hours worked has led to
24 over \$5,000,000 of undocumented and uncompensated hours worked.

25 6. Plaintiffs bring this wage and hour class action for overtime hours
26 worked, missed meal and rest breaks, and seeking equitable and injunctive relief,
27 economic and statutory damages, prejudgment interest, costs and attorneys’ fees, and
28 other appropriate relief against Zillow and DOES 1 through 50, as alleged herein, for

1 violations of the California *Labor Code*, the *Fair Labor Standards Act*, and other
2 unfair and unlawful conduct in violation of the California *Business & Professionals*
3 *Code* § 17200, *et seq.*

4 **JURISDICTION AND VENUE**

5 7. This Court has original jurisdiction over this action under the *Class*
6 *Action Fairness Act*, 28, U.S.C. § 1332(d), because this is a class action in which: (1)
7 there are more than a hundred (100) members in the proposed class; (2) various
8 members of the proposed class are citizens of states different from where Defendants
9 are citizens; and (3) the amount in controversy, exclusive of interest and costs,
10 exceeds \$5,000,000.00 in the aggregate.

11 8. This Court also has federal question jurisdiction over this action pursuant
12 to 28, U.S.C. § 1331 and section 16(b) of the *Fair Labor Standards Act* (“*FLSA*”), 29,
13 U.S.C. § 216(b).

14 9. In addition, this Court has supplemental jurisdiction over Plaintiffs’ state
15 wage and hour claims under 28, U.S.C. § 1367 because those claims derive from a
16 common nucleus of operative facts.

17 10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a
18 substantial part of the events giving rise to Plaintiff’s claims occurred in the Central
19 District of California as Defendant: (a) is authorized to conduct business in this
20 District and has intentionally availed itself to the laws within this District; (b)
21 currently does substantial business in this District; and (c) is subject to personal
22 jurisdiction in this District.

23 **PARTIES**

24 11. At all times relevant to this action, Plaintiff Ian Freeman was a resident
25 of Orange County, California, and a citizen of California. Mr. Freeman was a non-
26 exempt hourly employee employed by Zillow in the County of Orange, California. At
27 all relevant times to this action, Mr. Freeman was employed by Zillow in the position
28

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1 of Inside Sales Consultant from September 17, 2012 through, at least, September 4,
2 2014.

3 12. Defendant Zillow (NASDAQ: Z), at all relevant times, was a Washington
4 corporation registered to do business in the State of California. Zillow is an online
5 home and real estate marketplace for homebuyers, sellers, renters, real estate agents,
6 mortgage professionals, landlords, and property managers. Zillow claims its database
7 contains more than 110 million U.S. homes. Zillow also operates the largest real
8 estate and rental advertising networks in the country.

9 13. Plaintiffs are informed and believe that, during the last four years, Zillow
10 employed no fewer than 120 non-exempt full-time hourly employees in the State of
11 California in the position of Inside Sales Consultant, who were not paid in accordance
12 with Federal and California State laws and regulations.

13 14. Plaintiffs are informed and believe, and thereon allege, that Zillow is and
14 was advised by skilled lawyers and other professionals, employees, and advisors with
15 knowledge of the requirements of the *FLSA* and California's wage and hour laws.

16 15. At all times relevant to this action, Zillow and DOES 1 through 50,
17 inclusive, were employers within the meaning of California Industrial Wage
18 Commission Wage Orders in that they directly or indirectly employed and exercised
19 control over wages earned, hours worked, and working conditions of Class Members,
20 including Plaintiffs.

21 16. At all times relevant to this action, Class Members, including Plaintiffs,
22 were employees of Zillow in Orange County, California, and employed in the position
23 of Inside Sales Consultant. As such, Class Members, including Plaintiffs, were the
24 type of persons contemplated to be protected by the *FLSA* and California *Labor Code*,
25 and said laws and regulations were intended to apply to Zillow specifically to prevent
26 the type of injury and damage alleged herein.

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1 17. As alleged herein, Zillow is responsible for the implementation of
2 numerous policies and procedures in direction violation of Federal and California
3 State laws, rules, orders, and regulations.

4 18. The true names and capacities, whether individual, corporate, associate,
5 or otherwise, of Defendants sued herein as DOES 1 through 50, inclusive, are
6 currently unknown to Plaintiffs, who therefore sue Defendants by such fictitious
7 names. Plaintiffs are informed and believe, and based thereon allege, that each of the
8 Defendants designated herein as DOES is legally responsible in some manner for the
9 events and happenings referred to herein and caused injury and damage proximately
10 thereby to Plaintiffs as hereinafter alleged. Plaintiffs will seek leave of court to amend
11 this Complaint to reflect the true names and capacities of the Defendants designated
12 hereinafter as DOES when the same have been fully ascertained.

13 19. Plaintiffs are informed and believe, and based thereon allege, that at all
14 times mentioned herein, each of the Defendants was the agent, servant, employee, co-
15 venturer, and co-conspirator of each of the remaining Defendants, and was at all times
16 herein mentioned acting within the course, scope, purpose, consent, knowledge,
17 ratification, and authorization of and for such agency, employment, joint venture and
18 conspiracy.

19 20. Plaintiffs are further informed and believe, and thereon allege, that at all
20 times herein material each Defendant was completely dominated and controlled by its
21 Co-Defendants, and each was the alter ego of the other. Whenever and wherever
22 reference is made in this Complaint to any conduct by Defendant or Defendants, such
23 allegations and references shall also be deemed to mean the conduct of each of the
24 Defendants, acting individually, jointly, and severally. Whenever and wherever
25 reference is made to individuals who are not named as Defendants in this Complaint,
26 but were employees and/or agents of Defendants, such individuals at all relevant times
27 acted on behalf of Defendants named in this Complaint within the scope of their
28 respective employments.

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1 21. Plaintiffs bring this action on behalf of themselves and on behalf of other
2 current and former employees of Zillow and, pursuant to *Business and Professions*
3 *Code* section 17000 et seq., on behalf of other members of the general public.

4 **CLASS ACTION ALLEGATIONS**

5 22. Plaintiffs are informed and believe, and thereon allege, that Zillow
6 designed and implemented an illegal system of automated timekeeping methods while
7 simultaneously requiring Class Members and Plaintiffs to work beyond the previously
8 recorded time and effectively causing Class Members and Plaintiffs to be
9 uncompensated for all overtime hours worked and missed meal and rest breaks.

10 23. Plaintiffs are informed and believe, and thereon allege, that Zillow
11 required and demanded that Class Members, including Plaintiffs, work beyond the
12 automatically recorded eight hour work day and/or forty hour workweek without
13 compensation, and demanded that Class Members and Plaintiff work through their
14 required meal and rest breaks without compensation. Therefore, the amount of wages
15 owed to Plaintiffs and class members is readily and objectively ascertainable.

16 24. Plaintiffs bring this action individually, as well as on behalf of each and
17 all other persons similarly situated and, thus, seek class certification under *CCP* § 382.
18 Plaintiffs may properly maintain this action as a class action pursuant to *CCP* § 382
19 and other applicable law, because there is a well-defined community of interest in the
20 litigation and the proposed class is ascertainable.

21 25. All claims alleged herein arise under Federal and California law for
22 which Plaintiffs seek relief.

23 26. The proposed class that Plaintiff seeks to represent for the class action
24 causes of action is composed of:

25
26 Current and former non-exempt hourly employees who are or were employed
27 by Zillow in California as an Inside Sales Consultant who worked a shift
28 beginning approximately between 8:00 a.m. and 4:00 p.m. at any time

1 beginning four years preceding the filing of the Complaint in this action
2 through final judgment in this action.

3
4 27. Plaintiffs also seeks to represent a proposed sub-class (the “Former
5 Employee Sub-Class”) for certain class action causes of action that is composed of:

6
7 Former non-exempt hourly employees who were employed by Zillow in
8 California as an Inside Sales Consultant who worked a shift beginning
9 approximately between 8:00 a.m. and 4:00 p.m. at any time beginning four
10 years preceding the filing of the Complaint in this action through final judgment
11 in this action.

12 **OVERTIME ALLEGATIONS**

13 28. Plaintiffs are informed and believe, and thereon allege, that Zillow
14 knows, should know, knew, or should have known that Class Members, including
15 Plaintiffs, were non-exempt full-time hourly employees entitled to receive overtime
16 compensation for all hours worked above eight hours in any given work day and for
17 all hours worked above a forty hour work week, and that any failure to do so requires
18 Zillow to pay Class Members one and a half times (1 ½) their wages for all hours
19 worked above the normal work day and/or work week.

20 29. Plaintiffs are informed and believe, and thereon allege, that Zillow had an
21 unlawful system by which Zillow would auto-populate Plaintiffs and Class Members
22 timecards with a standard eight hour workday and forty hour work week, regardless of
23 the correct overtime hours actually worked by Plaintiffs and Class Members.

24 30. Plaintiffs are informed and believe, and thereon allege, that Zillow
25 required and demanded that Plaintiffs and Class members work beyond the auto-
26 populated and automatically recorded eight hour work days and forty hour work
27 weeks. Zillow had a policy preventing Plaintiffs and Class Members from inputting
28 their true and correct overtime hours in an attempt to prevent Plaintiffs and Class

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1 Members from being compensated for any overtime hours worked. However, Zillow
2 required Plaintiffs and Class Members to detract hours from their auto-populated
3 timecards in the event that Plaintiffs or Class Members were to ever take a sick day or
4 miss any amount of work.

5 31. Plaintiffs are informed and believe, and thereon allege, that Zillow had
6 the expectation through a method of demands and intimidating requests that Plaintiffs
7 and Class Members begin work before the auto-populated work hours.

8 32. Zillow knew or should have known of Federal and State laws prohibiting
9 their conduct which were aware that Plaintiff and Class Members worked periods of
10 eight hours or more, per work day, without receiving overtime compensation.
11 Specifically, Zillow intended to circumvent California Industrial Welfare Commission
12 Order 5-2001 provides that:

13 “One and one-half (1 ½) times the employee’s regular rate of pay for all hours
14 worked in excess of eight (8) hours up to and including 12 hours in any
15 workday, and for the first eight (8) hours worked on the seventh (7th)
16 consecutive day of work in a workweek.”

17 33. Zillow’s practice of requiring employees to work eight hours and more
18 without overtime compensation is in violation of the Industrial Welfare Commission’s
19 wage order, the California Labor Code, and relevant laws, rules, orders, requirements
20 and regulations.

21 34. Zillow permitted and caused its non-exempt employees to work eight or
22 more hours without overtime compensation provided by Federal and California law
23 for more than four years. Plaintiffs and class members are entitled to back wages to
24 compensate them retroactively for all overtime of which they were deprived during
25 the class period, plus all applicable penalties.

26 **MEAL AND REST BREAK ALLEGATIONS**

27 35. Plaintiffs are informed and believe, and thereon allege that Defendants
28 know, should know, knew or should have known that Class Members, including

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1 Plaintiffs, were entitled to receive duty-free meal periods within the first five (5) hours
2 of any shift of six (6) or more hours worked, and that any failure to do so requires
3 Defendants to pay Class Members one (1) hour of wages per day for untimely, missed,
4 or on-duty meal periods.

5 36. Plaintiffs are informed and believe, and thereon allege, that Defendants
6 know, should know, knew or should have known that Class Members, including
7 Plaintiffs, were entitled to ten (10) minute rest breaks for each shift of four (4) hours,
8 and that any failure to do so requires Defendants to pay Class Members, including
9 Plaintiffs, one (1) hour of wages per day for missed or on-duty rest breaks.

10 37. Plaintiffs are informed and believe, and thereon allege, that during the
11 Class Period Defendants had a consistent policy or practice of failing to provide a
12 duty-free meal period to Class Members, including Plaintiffs, within the first five (5)
13 hours of any shift of six (6) or more hours worked.

14 38. Plaintiffs are informed and believe, and thereon allege, that during the
15 Class Period Defendants had a consistent policy or practice of failing to provide to
16 Class Members, including Plaintiffs, a ten (10) minute break for each shift of four (4)
17 hours worked.

18 39. Plaintiffs are informed and believe, and thereon allege, that during the
19 Class Period Defendants had a consistent policy or practice of requiring Class
20 Members, including Plaintiffs, to clock out for meal periods and rest breaks even
21 when the Class Members, including Plaintiffs, were required to continue working
22 through those meal periods and rest breaks, or were required to stay on the premises
23 during their meal periods.

24 40. Plaintiffs are informed and believe, and thereon allege, that during the
25 Class Period Defendants had a consistent policy or practice of failing to compensate
26 Class Members, including Plaintiffs, for duty-free meal periods that were not provided
27 within the first five (5) hours of any shift of six (6) or more hours worked.
28

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1 41. Plaintiffs are informed and believe, and thereon allege, that during the
2 Class Period Defendants had a consistent policy or practice of failing to compensate
3 Class Members, including Plaintiffs, for missed rest breaks that were not provided
4 within each four (4) hours of a shift.

5 42. Plaintiffs are informed and believe, and thereon allege, that during the
6 Class Period Defendants had a consistent policy or practice of failing to compensate
7 Class Members, including Plaintiffs, for on-duty meal periods.

8 43. Plaintiffs are informed and believe, and thereon allege, that during the
9 Class Period Defendants had a consistent policy or practice of failing to provide Class
10 Members, including Plaintiffs, with accurate wage statements reflecting the true
11 number of hours worked due to Defendants' failure to provide lawful, timely and
12 duty-free meal and rest periods.

13 44. While employed as non-exempt employees, Plaintiffs and class members
14 routinely worked periods of four hours or more, twice per work day, without receiving
15 a rest break. The California Industrial Welfare Commission Order 5-2001 provides
16 that:

17 "Every employer shall authorize and permit employees to take rest periods,
18 which insofar as practicable shall be in the middle of each work period. The
19 authorized rest period time shall be based on the total hours worked daily at the
20 rate of ten (10) minutes net rest time per four (4) hours or major fraction
21 thereof."

22 45. Zillow's practice of requiring employees to work four hours or more
23 without a rest period is in violation of the Industrial Welfare Commission's wage
24 order, the California Labor Code, and relevant laws, rules, orders, requirements and
25 regulations.

26 46. Zillow permitted and caused its employees to toil without the rest periods
27 provided by California labor law for more than four years. Plaintiffs and class
28 members are entitled to back wages to compensate them retroactively for all break

1 periods of which they were deprived during the class period, plus all penalties, in
2 addition to one hour's compensation as prescribed by I.W.C. Wage Order 5-2001.

3 **PROPER CLASS ACTION**

4 47. This action is brought, and may properly be maintained, as a class action
5 under *CCP* § 382 because there is a well-defined community of interest in the
6 litigation and the proposed class are easily ascertainable. This action satisfies the
7 predominance, typicality, numerosity, superiority, and adequacy requirements of these
8 provisions.

9 (a) **Numerosity**: The plaintiff class is so numerous that the individual joinder of
10 all members is impractical under the circumstances of this case. While the exact
11 number of class members is unknown to Plaintiffs at this time, Plaintiffs are
12 informed and believe, and based thereon allege, Defendants have employed
13 more than 500 persons in hourly positions during the Class Period.

14 (b) **Commonality**: Common questions of law and fact exist as to all members
15 of the plaintiff class and predominate over any questions that affect only
16 individual members of the class. The common questions of law and fact
17 include, but are not limited to:

18 (i) Whether Defendants have had a policy and practice of failing to
19 authorize and permit Class Members to leave the premises during a 10-
20 minute rest break for every four (4) hours worked in a shift, and whether
21 such policy and practice is and was unlawful;

22 (ii) Whether Defendants have had a policy and practice of failing to
23 authorize and permit Class Members to leave the premises during a meal
24 break for every shift lasting longer than five (5) hours, and whether such
25 policy and practice was unlawful;

26 (iii) Whether Defendants have had a policy of requiring that their hourly
27 employees clock out for a meal break, even though they are not permitted
28 to leave the premises;

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1 (iv) Whether Defendants’ policy and practice of requiring that their
2 hourly employees remain on the premises during their meal breaks
3 entitles putative class members to overtime compensation for shifts
4 lasting longer than eight (8) hours;

5 (v) Whether Defendants’ policy and practice of not providing duty-free
6 meal periods resulted in incorrect wage statements being provided to
7 putative class members;

8 (vi) Whether Defendants’ policies and practices as alleged herein violated
9 *B&P Code § 17200, et seq.*;

10 (vii) Whether Defendants violated *Labor Code § 2698, et seq.* by
11 engaging in the policies and practices alleged herein; and

12 (viii) Whether penalties should be assessed for the alleged *Labor Code*
13 violations.

14 (c) **Typicality**: Plaintiffs’ claims are typical of the claims of the Class
15 Members. Plaintiffs and the members of the class sustained damages arising out
16 of Defendants’ common policies and practices as alleged herein.

17 (d) **Adequacy**: Plaintiffs will fairly and adequately protect the interests of the
18 members of the class. Plaintiffs have no interest that is adverse to the interests
19 of the other Class Members.

20 (e) **Superiority**: A class action is superior to other available means for the fair
21 and efficient adjudication of this controversy. Because individual joinder of all
22 members of the class is impractical, class action treatment will permit a large
23 number of similarly situated persons to prosecute their common claims in a
24 single forum simultaneously, efficiently, and without unnecessary duplication
25 of effort and expense that numerous individual actions would engender. The
26 expenses and burdens of individual litigation would make it difficult or
27 impossible for individual members of the class to redress the wrongs done to
28 them, while important public interests will be served by addressing the matter

1 as a class action. The cost to and burden on the court system of adjudication of
2 individualized litigation would be substantial, and substantially more than the
3 costs and burdens of a class action. Class litigation would also prevent the
4 potential for inconsistent or contradictory judgments.

5 (f) **Public Policy Considerations:** When employers violate state wage and hour
6 laws as is the case here, current employees are often afraid to assert their rights
7 out of fear of direct or indirect retaliation. Former employees are fearful of
8 bringing actions because they perceive that their former employers can frustrate
9 their efforts to find future employment through negative references and other
10 means. Class actions provide the class members who are not named in the
11 complaint with a type of anonymity that allows for vindication of their rights.
12 The members of the class are so numerous that the joinder of all members
13 would be impractical and the disposition of their claims in a class action rather
14 than in individual actions will benefit the parties and the court. There is a well-
15 defined community of interest in the questions of law or fact affecting the
16 Plaintiff Class in that the legal questions of violation of the contractual
17 agreements with its employees, the Wage Order, the *Labor Code*, and the
18 California Unfair Practices Act, are common to the Class Members. The
19 factual questions relating to the amount of wages of which Defendants have
20 deprived Class Members and applicable penalties are also common to the Class
21 Members.

22 48. A representative action pursuant to the Unfair Practices Act on behalf of
23 the general public is appropriate and necessary because the trade practices of
24 Defendants as alleged herein violated California law. Plaintiffs also request pursuant
25 to the Unfair Practices Act that this Court exercise its ancillary jurisdiction over the
26 sums unlawfully retained by Defendants as a result of the conduct alleged herein and
27 order disgorgement of unpaid residuals to all affected Class Members.
28

FIRST CAUSE OF ACTION

UNPAID WAGES

California Labor Code § 1194, 1194.2 and the Wage Order

(By Plaintiffs Individually and On Behalf of All Class Members

Against All Defendants)

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4
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6 49. Plaintiffs reallege and incorporate herein by reference each and every
7 allegation contained in the preceding paragraphs of this Complaint as though fully set
8 forth herein.

9 50. This action is brought pursuant to *Labor Code* § 1194 which provides for
10 an employee to recover in a civil action the unpaid balance of the full amount of
11 compensation due, including interest thereon, attorneys' fees and costs,
12 notwithstanding any agreement to work for a lesser wage and the Wage Order.

13 51. This action is also brought pursuant to Section 7 of the Wage Order
14 which requires employers to pay employees one-and-one-half (1-1/2) times their
15 normal hourly rate for hours worked in excess of eight (8) per day and in excess of
16 forty (40) per week. (Wage Order 7-2001.)

17 52. Defendants required its Class Members, including Plaintiffs, to clock out
18 during their meal breaks, although they were often required to continue working or
19 required to stay on the premises. As a result, Class Members, including Plaintiffs, are
20 entitled to receive compensation for the hours that they were clocked out but not
21 permitted to be relieved of their duties or leave the premises.

22 53. Defendants' failure to pay Class Members, including Plaintiffs, for all
23 hours worked violated and continues to violate *Labor Code* § 1194 and Section 7 of
24 the Wage Order. Consequently, Class Members were not paid in compliance with
25 California law.

26 54. As a direct and proximate result of Defendants' conduct as hereinabove
27 alleged, Class Members, including Plaintiffs, have sustained and will continue to
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1 sustain damages in the amount of unpaid wages, together with interest thereon,
2 attorneys' fees and costs of suit.

3 **SECOND CAUSE OF ACTION**

4 **UNPAID OVERTIME COMPENSATION**

5 **Violation of the Wage Order and *Labor Code* § 510**

6 ***(By Plaintiffs Individually and On Behalf of All Class Members***

7 ***Against All Defendants)***

8 55. Plaintiffs reallege and incorporate herein by reference each and every
9 allegation contained in the preceding paragraphs of this Complaint as though fully set
10 forth herein.

11 56. This action is brought pursuant to the Wage Order and *Labor Code* §
12 510.

13 57. Under the Wage Order and *Labor Code* § 510, Defendants are required to
14 compensate Class Members, including Plaintiffs, for all overtime hours worked,
15 which is calculated at one and one-half (1-½) times the regular rate of pay for hours
16 worked in excess of eight (8) hours per day and/or forty (40) hours per week, and two
17 (2) times the regular rate of pay for hours worked in excess of twelve (12) hours per
18 day.

19 58. As set forth above, when Class Members, including Plaintiffs, were
20 required to clock out for a meal break during which time they were not permitted to
21 leave the premises or were required to continue working, that period during which
22 they were clocked out may have caused the duration of their workday to be more than
23 eight (8) hours. They were not paid overtime compensation for this extra time.

24 59. The failure of Defendants to pay Class Members, including Plaintiffs, for
25 all hours worked directly violates Section 3 of the Wage Order. Consequently, Class
26 Members, including Plaintiffs, were not paid in compliance with California law. As a
27 direct and proximate result of Defendants' conduct as herein alleged, Class Members,
28 including Plaintiffs, have sustained and will continue to sustain damages for unpaid

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1 overtime compensation, together with interest thereon, attorneys' fees, and costs of
2 suit.

3 60. Defendants' conduct described herein violates the overtime provisions of
4 the Wage Order. Accordingly, pursuant to § 1194 of the *Labor Code*, Class Members,
5 including Plaintiffs, are entitled to recover the unpaid balance of wages owed,
6 penalties (plus interest) and reasonable attorneys' fees and costs of suit, in an amount
7 to be determined at trial

8 **THIRD CAUSE OF ACTION**

9 **FAILURE TO PROVIDE MEAL / REST BREAKS**

10 **Violation of *Labor Code* § 226.7**

11 ***(By Plaintiffs Individually and On Behalf of All Class Members***

12 ***Against All Defendants)***

13 61. Plaintiffs reallege and incorporate herein by reference each and every
14 allegation contained in the preceding paragraphs of this Complaint as though fully set
15 forth herein.

16 62. Class Members, including Plaintiffs, were regularly required to remain in
17 the building during their meal and rest breaks, or were required to continue working
18 through these breaks, as a matter of uniform company policy, in violation of *Labor*
19 *Code* § 226.7 and the Wage Order.

20 63. Accordingly, Class Members, including Plaintiffs, are entitled to one (1)
21 hour of compensation at their regular hourly rate for each meal period not provided
22 and one (1) hour of compensation for each day that the requisite rest periods were not
23 permitted in penalty wages pursuant to *Labor Code* § 226.7, in an amount to be
24 proven at the time of trial.

1 **FOURTH CAUSE OF ACTION**

2 **WAITING TIME PENALTIES**

3 **Violation of *Labor Code* § 203**

4 ***(By Plaintiffs Individually and On Behalf of All Former Employee Sub-Class***
5 ***Members Against All Defendants)***

6 64. Plaintiffs reallege and incorporate herein by reference each and every
7 allegation contained in the preceding paragraphs of this Complaint as though fully set
8 forth herein.

9 65. The Former Employee Sub-Class of employees whose employment with
10 Defendants was terminated at any time after November 26, 2004 were, at all times
11 during their employment with Defendants, entitled to wages for all hours worked but
12 unpaid, including overtime compensation, and wages for the failure to provide meal
13 and rest breaks.

14 66. *Labor Code* § 201(a) provides that: “If an employer discharges an
15 employee, the wages earned and unpaid at the time of discharge are due and payable
16 immediately.” *Labor Code* § 202(a) provides: “If an employee not having a written
17 contract for a definite period quits his or her employment, his or her wages shall
18 become due and payable not later than 72 hours thereafter, unless the employee has
19 given 72 hours previous notice of his or her intention to quit, in which case the
20 employee is entitled to his or her wages at the time of quitting.”

21 67. More than thirty (30) days have passed since IAN FREEMAN and the
22 other members of the Former Employee Sub-Class quit or were discharged from their
23 positions with Defendants.

24 68. Defendants willfully failed to pay all wages due to Former Employee
25 Sub-Class Members, who have terminated their employment with Defendants, by the
26 applicable deadlines set forth in the *Labor Code*.

27 69. As a consequence of Defendants’ willful failure to pay the Former
28 Employee Sub-Class Members all wages due at the time of termination, the Former

1 Employee Sub-Class Members are entitled to thirty (30) days wages as penalty
2 damages pursuant to *Labor Code* § 203.

3 **FIFTH CAUSE OF ACTION**

4 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

5 **Violation of California Labor Code §§ 226(a) and 226(e))**

6 ***(By Plaintiffs Individually and On Behalf of All Class Members***

7 ***Against All Defendants)***

8 70. Plaintiffs reallege and incorporate herein by reference each and every
9 allegation contained in the preceding paragraphs of this Complaint as though fully set
10 forth herein.

11 71. At all times relevant hereto, *Labor Code* § 226(a) provides, and provided,
12 that every employer shall furnish each of his or her employees an accurate itemized
13 wage statement in writing showing nine pieces of information, including: (1) gross
14 wages earned, (2) total hours worked by the employee, (3) the number of piece-rate
15 units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
16 (4) all deductions, provided that all deductions made on written orders of the
17 employee may be aggregated and shown as one item, (5) net wages earned, (6) the
18 inclusive dates of the period for which the employee is paid, (7) the name of the
19 employee and the last four digits of his or her social security number or an employee
20 identification number other than a social security number, (8) the name and address of
21 the legal entity that is the employer, and (9) all applicable hourly rates in effect during
22 the pay period and the corresponding number of hours worked at each hourly rate by
23 the employee.

24 72. Defendants have intentionally and willfully failed to provide Class
25 Members, including Plaintiffs, with complete and accurate wage statements. The
26 deficiencies include, among other things, the failure to list the true “total hours
27 worked” by Class Members due to Defendants’ policy and practice of requiring Class
28

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1 Members, including Plaintiffs, to clock out for meal periods although they were
2 required to stay on the premises or continue working while off the clock.

3 73. As a result of Defendants' violation of *Labor Code* § 226(a), Class
4 Members, including Plaintiffs, have suffered injury and damage to their statutorily-
5 protected rights.

6 74. Specifically, Class Members, including Plaintiffs, have been injured by
7 Defendants' intentional violation of *Labor Code* § 226(a) because they were denied
8 both their legal right to receive, and their protected interest in receiving, accurate,
9 itemized wage statements.

10 75. Class Members, including Plaintiffs, are entitled to recover from
11 Defendants the greater of their actual damages of Fifty Dollars (\$50.00) per employee
12 for the initial pay period in which a violation occurs and One Hundred Dollars
13 (\$100.00) per employee for each violation in a subsequent pay period, not exceeding
14 Four Thousand Dollars (\$4,000.00) per employee caused by Defendants' failure to
15 comply with *Labor Code* § 226(a).

16 **SIXTH CAUSE OF ACTION**

17 **UNFAIR BUSINESS PRACTICES**

18 **Violation of *B& P Code* § 17200, *et seq.***

19 ***(By Plaintiffs Individually and On Behalf of All Class Members***

20 ***Against All Defendants)***

21 76. Plaintiffs reallege and incorporate herein by reference each and every
22 allegation contained in the preceding paragraphs of this Complaint as though fully set
23 forth herein.

24 77. Defendants' violations of California labor laws and wage orders, set forth
25 herein above, constitute business practices because the violations were and are done
26 repeatedly over a significant period of time and in a systematic manner.

27 78. A violation of *B&P Code* § 17200, *et seq.* may be predicated on the
28 violation of any state or federal law. All of the acts described herein as violations of,

1 among other things, the *California Labor Code*, are unlawful and in violation of
2 public policy; and in addition are immoral, unethical, oppressive, fraudulent and
3 unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business
4 practices in violation of *B&P Code* § 17200, *et seq.*

5 **Failing to Pay Overtime**

6 79. Defendants' failure to pay overtime compensation in accordance with the
7 *Labor Code* and the Wage Order, as alleged above, constitutes unlawful and/or unfair
8 activity prohibited by *B&P Code* § 17200, *et seq.*

9 **Failing to Provide Meal and Rest Periods**

10 80. Defendants' failure to provide legally-required meal periods in violation
11 of the *Labor Code* and the Wage Order, as alleged above, constitutes unlawful and/or
12 unfair activity prohibited by *B&P Code* § 17200, *et seq.*

13 **Failing to Provide Accurate Itemized Wage Statements**

14 81. Defendants' failure to provide accurate itemized wage statements in
15 accordance with *Labor Code*, as alleged above, constitutes unlawful and/or unfair
16 activity prohibited by *B&P Code* § 17200, *et seq.*

17 **Failing to Timely Pay Wages Upon Termination**

18 82. Defendants' failure to timely pay wages upon termination in accordance
19 with *Labor Code*, as alleged above, constitutes unlawful and/or unfair activity
20 prohibited by *B&P Code* § 17200, *et seq.*

21 83. Defendants' actions in violation of California labor laws and wage orders
22 constitute unfair competition and disadvantages over Defendants' competitors, and
23 unfair, deceptive and unlawful business practices under *B&P Code* § 17200, *et seq.*
24 Said actions of Defendants have deprived and continue to deprive Class and Sub-Class
25 Members, including Plaintiffs, and other members of the general public, of the
26 minimum working standards and conditions due to them under the California
27 employment laws and the Wage Order as specifically described herein.

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1 84. Plaintiffs, on behalf of themselves and Class Members, and other
2 similarly situated members of the general public, seek full restitution and
3 disgorgement of monies, as necessary and according to proof, to restore any and all
4 monies withheld, acquired, and/or converted by Defendants by means of the unfair
5 practices complained of herein. Plaintiffs seek on their own behalf and on behalf of
6 Class Members, and on behalf of the general public, the appointment of a receiver, as
7 necessary. The acts complained of herein occurred, at least in part, within the four (4)
8 years preceding the filing of the original complaint in this action.

9 85. Plaintiffs reallege and incorporate herein by reference each and every
10 allegation contained in the preceding paragraphs of this Complaint as though fully set
11 forth herein.

12 86. Plaintiffs, as aggrieved employees, hereby seek recovery of civil
13 penalties as prescribed by the *Labor Code* Private Attorneys General Act of 2004 on
14 behalf of themselves and other Class members against whom one or more of the
15 violations of the *Labor Code* were committed.

16 **PRAAYER FOR RELIEF**

17 **WHEREFORE**, Plaintiffs, on their own behalf, and on behalf of the members
18 of the Class Members and Sub-Class Members, as well as the general public, prays for
19 judgment as follows:

20 **CLASS CERTIFICATION:**

- 21 1. For an order certifying the proposed Classes and Sub-Class;
22 2. That Plaintiffs be appointed as the representatives of the Classes and Sub-
23 Class; and
24 3. That counsel for Plaintiffs be appointed as Class Counsel.

25 **AS TO THE FIRST CAUSE OF ACTION:**

- 26 1. That the Court declare, adjudge, and decree that Defendants violated *Labor*
27 *Code* § 1194 and the Wage Order by willfully failing to pay all wages due to
28 Plaintiffs and Class Members;

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- 1 2. For general unpaid wages, as well as liquidated damages pursuant *Labor Code* §
- 2 1194.2, and for such general and special damages as may be appropriate;
- 3 3. For pre-judgment interest on any unpaid overtime compensation commencing
- 4 from the date such amounts were due; and
- 5 4. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
- 6 *Labor Code* § 1194(a).

7 **AS TO THE SECOND CAUSE OF ACTION:**

- 8 1. That the Court declare, adjudge, and decree that Defendants violated *Labor*
- 9 *Code* § 1194 and the Wage Order by wilfully failing to pay all overtime wages
- 10 due to Plaintiffs and Class Members;
- 11 2. For general unpaid overtime wages at overtime wage rates, liquidated damages
- 12 pursuant *Labor Code* § 1194.2, and for such general and special damages as
- 13 may be appropriate;
- 14 3. For pre-judgment interest on any unpaid overtime compensation commencing
- 15 from the date such amounts were due; and
- 16 4. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
- 17 *Labor Code* § 1194(a).

18 **AS TO THE THIRD CAUSE OF ACTION:**

- 19 1. That the Court declare, adjudge, and decree that Defendants violated *Labor*
- 20 *Code* §§ 226.7 and 512 and the Wage Order by willfully failing to provide all
- 21 meal and rest periods (including second meal periods) to Plaintiffs and Class
- 22 Members;
- 23 2. That the Court make an award to the Plaintiffs and Class Members of one (1)
- 24 hour of pay at each employee's regular rate of compensation for each workday
- 25 that a meal period was not provided;
- 26 3. That the Court make an award to the Plaintiffs and Class Members of one (1)
- 27 hour of pay at each employee's regular rate of compensation for each workday
- 28 that a rest period was not provided;

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- 1 4. For premiums pursuant to *Labor Code* § 226.7(b); and
- 2 5. For pre-judgment interest on any unpaid wages from the date such amounts were
- 3 due.

4 **AS TO THE FOURTH CAUSE OF ACTION:**

- 5 1. That the Court declare, adjudge, and decree that Defendants violated *Labor Code*
- 6 §§ 201, 202, and 203 by willfully failing to pay all compensation owed at the
- 7 time of termination of the employment of Plaintiffs and the Former Employee
- 8 Sub-Class Members;
- 9 2. For statutory wage penalties pursuant to *Labor Code* § 203 for Plaintiffs and all
- 10 Former Employee Sub-Class Members; and
- 11 3. For pre-judgment interest on any unpaid wages from the date such amounts were
- 12 due.

13 **AS TO THE FIFTH CAUSE OF ACTION:**

- 14 1. That the Court declare, adjudge, and decree that Defendants violated the record
- 15 keeping provisions of *Labor Code* § 226(a) as to Plaintiffs and Class Members,
- 16 and willfully failed to provide accurate itemized wage statements thereto;
- 17 2. For statutory penalties pursuant to *Labor Code* § 226(e); and
- 18 3. For civil penalties pursuant to *Labor Code* §§ 226(a) and 226.3.

19 **AS TO THE SIXTH CAUSE OF ACTION**

- 20 1. That the Court declare, adjudge, and decree that Defendants violated *B&P Code*
- 21 § 17200, *et seq.* by failing to provide Plaintiffs and Class Members all
- 22 compensation due to them, failing to provide meal periods, failing to provide
- 23 rest periods, failing to provide accurate itemized wage statements, and failing to
- 24 pay Plaintiffs' and Former Employee Sub-Class Members' wages timely as
- 25 required by *Labor Code* §§ 201, 202 and 203;
- 26 2. For restitution of unpaid wages to Plaintiffs and all Class Members and
- 27 prejudgment interest from the day such amounts were due and payable;
- 28

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- 1 3. For the appointment of a receiver to receive, manage and distribute any and all
- 2 funds disgorged from Defendants and determined to have been wrongfully
- 3 acquired by Defendants as a result of violations of *B&P Code* § 17200, *et seq.*;
- 4 and
- 5 4. For reasonable attorneys’ fees and costs of suit incurred herein pursuant to *CCP*
- 6 § 1021.5.

AS TO THE SEVENTH CAUSE OF ACTION:

- 8 1. That the Court declare, adjudge, and decree that Defendants’ payroll practices as
- 9 to Plaintiffs and the Class Members violated one or more sections of the *Labor*
- 10 *Code*;
- 11 2. For civil penalties pursuant to *Labor Code* § 2699; and
- 12 3. Attorneys’ fees and costs of suit pursuant to *Labor Code* § 2699(g)(1).

AS TO ALL CAUSES OF ACTION:

- 14 1. For all actual, consequential, and incidental losses and damages, according to
- 15 proof;
- 16 2. For costs and suit herein incurred; and
- 17 3. For such other and further relief as the Court may deem just and proper.

19 DATED: November 19, 2014

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SAMINI SCHEINBERG, PC

23 By: /s/ MARK J. GERAGOS
24 MARK J. GERAGOS
25 BEN J. MEISELAS
26 GREG KIRAKOSIAN
27 TYLER M. ROSS
28 BOBBY SAMINI
NICOLE PRADO
MATTHEW M. HOESLY
Attorneys for Plaintiff IAN FREEMAN,
individually and as the representative of
a class of similarly-situated persons

DEMAND FOR JURY TRIAL

Plaintiff Ian Freeman, individually and as the representative of a class of similarly-situated persons, hereby demands a jury trial.

DATED: November 19, 2014

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SAMINI SCHEINBERG, PC

By: /s/ MARK J. GERAGOS
MARK J. GERAGOS
BEN J. MEISELAS
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