

1 [Counsel Information  
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11 **UNITED STATES DISTRICT COURT**  
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

13 ROBERT BANKWITZ, an individual;  
14 WILLIAM JACOBO, an individual; and  
15 JOSHUA HERNANDEZ, an individual; on  
16 behalf of themselves and other persons similarly  
17 situated,

16 Plaintiffs,

17 v.

18 ECOLAB INC., a Delaware corporation; and  
19 DOES 1 through 100, inclusive,

20 Defendants.

Case No. 3:17-cv-02924-EMC

CLASS ACTION

**SECOND AMENDED COMPLAINT FOR:**

- 1) **VIOLATION OF THE FEDERAL FAIR LABOR STANDARDS ACT [FLSA];**
- 2) **FAILURE TO PAY OVERTIME AND DOUBLETIME PREMIUM WAGES PURSUANT TO CALIFORNIA LAW;**
- 3) **PAY STUB VIOLATIONS;**
- 4) **UNFAIR COMPETITION;**
- 5) **FAILURE TO TIMELY PAY FINAL WAGES;**
- 6) **FAILURE TO PAY MINIMUM WAGES;**
- 7) **FAILURE TO PROVIDE LEGALLY COMPLIANT REST PERIODS; and**
- 8) **CIVIL PENALTIES UNDER THE LABOR CODE PRIVATE ATTORNEY’S GENERAL ACT [PAGA]**

**DEMAND FOR JURY TRIAL**

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25  
26 **Counsel for Plaintiffs and the Putative Class**  
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1 **TO ALL INTERESTED PARTIES HEREIN AND TO THEIR ATTORNEYS OF**  
2 **RECORD:**

3 COME NOW, Plaintiffs ROBERT BANKWITZ, WILLIAM JACOBO, and JOSHUA  
4 HERNANDEZ (“Plaintiffs”) and the putative class, and submit the following Second Amended  
5 Complaint against ECOLAB INC. and DOES 1 through 100, inclusive (collectively “Ecolab” or  
6 “Defendants”), and each of them as follows.

7 **INTRODUCTION**

8 1. This is a class, collective, and representative action brought by Plaintiffs, on behalf of  
9 themselves and all others similarly situated. Plaintiffs and those similarly situated are or were  
10 employed by Defendants as Hospitality Territory Managers, Territory Managers, Territory Sales  
11 Managers and/or Territory Sales Representatives, and were denied proper compensation as required by  
12 state and federal wage-and-hour laws.

13 2. The Class is made up of each and every person who has worked for Defendants in  
14 California as a Hospitality Territory Managers, Territory Managers, Territory Sales Managers and/or  
15 Territory Sales Representatives within 4 years of the filing of this action and the trial of this action (the  
16 “Class Period”), except for such time period as may be covered by the release in the matter of *Martino*  
17 *v. Ecolab, Inc.*, United States District Court for the Northern District of California case number 3:14-  
18 cv-04358-VC.

19 3. During the Class Period, Defendants failed to pay overtime compensation to Plaintiffs  
20 and each member of the putative classes as required by federal and state law.

21 4. Ecolab, unfortunately, has a history of misclassifying its California nonexempt workers  
22 as exempt. *See, e.g. Ross v. Ecolab Inc.*, No. 13-CV-5097-PJH, 2015 WL 5681323 (N.D. Cal. Sept.  
23 28, 2015) (exemption found inapplicable at summary judgment to similar Ecolab position of Route  
24 Manager or Route Sales Manager); *Ladore v. Ecolab CV 11-9386 GAF(FMOx)*; *Martino v. Ecolab*  
25 *5:14-cv-04358-PSG*. Here, Defendants have continued to fail to pay overtime and doubletime  
26 premiums to its Hospitality Territory Managers, Territory Managers, Territory Sales Managers and/or  
27 Territory Sales Representatives in California. As a result, all current Territory Managers, Territory  
28 Sales Managers and/or Territory Sales Representatives, even those who participated in the *Martino*

1 settlement, have continued to work overtime and doubletime hours without any additional  
2 compensation therefor. The within Plaintiffs seek relief for all such individuals.

3 5. Plaintiff Bankwitz seeks injunctive relief to cause Defendants to begin paying overtime  
4 and doubletime premiums to all Hospitality Territory Managers, Territory Managers, Territory Sales  
5 Managers and/or Territory Sales Representatives in California.

6 6. In conclusion, the Plaintiffs seek relief for the Class under the Fair Labor Standards Act  
7 and California wage-and-hour law to remedy Defendants' continued failure to pay all wages due, pay  
8 appropriate overtime compensation, pay waiting-time penalties, and to provide accurate wage  
9 statements.

10 **VENUE AND JURISDICTION**

11 7. This Court has personal and subject matter jurisdiction over all causes of action  
12 asserted herein. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 as Plaintiffs  
13 assert causes of action arising under federal law. In addition, this Court has original jurisdiction for all  
14 state law claims asserted under California law pursuant to the Class Action Fairness Act, 28 U.S.C. §  
15 1332(d)(2), in that the estimated damages involved in the claims alleged will exceed \$5,000,000, the  
16 number of members of all proposed plaintiff classes in the aggregate exceeds 100, and the parties to  
17 this action are residents of different states.

18 8. This Court has supplemental jurisdiction over the state law claims asserted herein  
19 pursuant to 28 U.S.C. § 1367.

20 9. Jurisdiction over Plaintiffs' federal claim is based upon 29 U.S.C. § 216(b), which  
21 authorizes employees to bring civil actions in courts of appropriate jurisdiction to recover damages for  
22 an employer's failure to pay overtime wages as required by the FLSA, and 29 U.S.C. §§ 1331, 1337.

23 10. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b). At all times material  
24 herein, Defendant Ecolab Inc. has been actively conducting business in the State of California and  
25 within the geographic area encompassing the Northern District of the State of California, where it  
26 employs dozens of putative class members. Further, venue is proper in this district as this case is  
27 related to the matter of *Martino et al v. Ecolab Inc.*, N.D. Cal. Case No. 3:14-cv-04358-VC,  
28 previously litigated in this District.

1           11. Jurisdiction over Plaintiffs’ state law class action claims under the California Labor  
2 Code and the claim under section 17200 of the California Business and Professions Code are based  
3 upon this Court’s supplemental jurisdiction under 28 U.S.C. § 1367(a), because the state law claims  
4 and the underlying allegations are so related to Plaintiffs’ federal claims that they form a part of the  
5 same case or controversy between Plaintiffs and Defendants.

6   **THE PARTIES**

7           12. At all times herein mentioned, Plaintiff Robert Bankwitz was an employee of  
8 Defendants, working in the state of California as a Territory Manager, from in or about 2013 through  
9 the present.

10          13. At all times herein mentioned, Plaintiff William Jacobo was an employee of  
11 Defendants, working in the state of California as a Hospitality Territory Manager, from in or about  
12 2015 through the present.

13          14. At all times herein mentioned, Plaintiff Joshua Hernandez was an employee of  
14 Defendants, working in the state of California as a Territory Manager, from in or about 2008 through  
15 March of 2017.

16          15. Unless otherwise stated, at all times herein mentioned Plaintiff Bankwitz was an  
17 individual residing in the County of Los Angeles, State of California.

18          16. Unless otherwise stated, at all times herein mentioned Plaintiff Jacobo was an  
19 individual residing in the County of Los Angeles, State of California.

20          17. Unless otherwise stated, at all times herein mentioned Plaintiff Hernandez was an  
21 individual residing in the County of Los Angeles, State of California.

22          18. At all times herein mentioned, Plaintiffs are informed and believe and, based on such  
23 information and belief, thereon allege that Ecolab Inc., is a Delaware corporation that does business  
24 (and employs dozens of putative class members) in the Northern District of California. Ecolab Inc.’s  
25 principal place of business/headquarters is in St. Paul, Minnesota.

26          19. The true names and capacities, whether individual, corporate, associate, representative  
27 or otherwise, of the defendants identified herein as Does 1 through 100, inclusive, are unknown to  
28 Plaintiffs, who therefore sue these defendants by said fictitious names. Plaintiffs will amend this

1 Complaint to allege the true names and capacities of Does 1 through 100 when they have been  
2 ascertained. Does 1 through 100 are in some manner legally responsible for the wrongs and injuries  
3 alleged herein.

4 20. Each of the Defendants acted as the agent or employee of the others and each acted  
5 within the scope of that agency or employment.

6 **CLASS ACTION ALLEGATIONS**

7 21. This action is brought pursuant to the Ninth Circuit holding in *Morris v. Ernst &*  
8 *Young, LLP*, 2016 WL 4433080 (9th Cir. Aug. 22, 2016) holding that a class action waiver violates the  
9 NLRA and “cannot be enforced.” The Ninth Circuit in rendering its opinion, noted that “The Board  
10 has concluded that an employer violates the NLRA “when it requires employees covered by the Act,  
11 as a condition of their employment, to sign an agreement that precludes them from filing joint, class,  
12 or collective claims addressing their wages, hours, or other working conditions against the employer in  
13 any forum, arbitral or judicial.” *Id.* at \*2. Accordingly, in this case to the extent any putative class  
14 member may have signed an agreement waiving his or her right to file a class action relating to wages,  
15 it is unenforceable.

16 22. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of  
17 Civil Procedure on behalf of the following defined class:

18 Each and every person who has worked for Defendants in California as a  
19 Hospitality Territory Managers, Territory Managers, Territory Sales Managers  
20 and/or Territory Sales Representatives at any time between four years prior to  
21 the filing of this complaint and the trial of this action (the “Class Period”),  
22 except for such time period as may be covered by the release in the matter of  
*Martino v. Ecolab, Inc.*, United States District Court for the Northern District  
of California case number 3:14-cv-04358-VC.

23 23. Numerosity: The Class represents over 100 persons and is so numerous that the joinder  
24 of each member of the Class is impracticable.

25 24. Typicality: Plaintiffs’ claims are typical of the members of the Class. Plaintiffs are  
26 informed and believe that, like other Hospitality Territory Managers, Territory Managers, Territory  
27 Sales Managers and/or Territory Sales Representatives they routinely worked more than forty hours  
28 per week, and more than eight (or even twelve) hours per day, during the Class Period. Plaintiffs had

1 the same duties and responsibilities as other Class members. Plaintiffs and the Class were subject to  
2 Defendants' policy and practice of improperly treating and classifying Hospitality Territory Managers,  
3 Territory Managers, Territory Sales Managers and/or Territory Sales Representatives as "exempt"  
4 from federal and state overtime laws, failing to pay appropriate overtime compensation, failing to pay  
5 waiting time penalties, failing to provide accurate itemized wage statements, and failing to maintain  
6 accurate records of hours worked.

7       25. Superiority: A class action is superior to other available methods for the fair and  
8 efficient adjudication of the controversy, particularly in the context of wage-and-hour litigation where  
9 individual plaintiffs lack the financial resources to vigorously prosecute separate lawsuits in federal  
10 court against large corporate defendants such as Ecolab. The members of the Class that Plaintiffs  
11 represent have no plain, speedy or adequate remedy at law against Defendants, other than by  
12 maintenance of this class action, because Plaintiffs are informed and believe, and on such information  
13 and belief allege, that the damage to each member of the Class is relatively small and that it would be  
14 economically infeasible to seek recovery against Defendants other than by a class action.

15       26. Adequacy: Plaintiffs will fairly and adequately represent the interests of the Class,  
16 because Plaintiffs are members of the Class, and Plaintiffs' claims are typical of those in the Class.

17       27. Commonality: Common questions of law and fact exist as to all members of the Class  
18 and predominate over any questions solely affecting individual members of the Class. Indeed, the  
19 same class of Hospitality Territory Managers, Territory Managers, Territory Sales Managers and/or  
20 Territory Sales Representatives was certified in the aforementioned *Martino* matter, but the  
21 certification was as of in or about February 2016. Hospitality Territory Managers, Territory  
22 Managers, Territory Sales Managers and/or Territory Sales Representatives who, like the  
23 representative Plaintiffs, began working for Ecolab in California beyond the date of the certification of  
24 the class in the *Martino* matter were not members of that class, and yet their claims are identical to  
25 those of the certified class. The common questions of law and fact that predominate in this matter (as  
26 they did in *Martino*) include:

- 27           a. Whether Defendants improperly treated Plaintiffs and the members of the  
28           Class as exempt from overtime;

- 1           b. Whether Defendants unlawfully failed to pay appropriate overtime  
2           compensation to the Plaintiffs and the members of the Class in violation of  
3           the FLSA, California Labor Code §§ 510 and 1194, and the California  
4           Industrial Wage Order.
- 5           c. Whether Plaintiff Bankwitz and the members of the Class who are no  
6           longer employed by Defendants are entitled to waiting time penalties  
7           pursuant to California Labor Code § 203;
- 8           d. Whether Defendants provided adequate itemized wage statements to the  
9           Plaintiffs and the members of the Class pursuant to California Labor Code  
10          § 226;
- 11          e. Whether Defendants’ conduct violated the California Unfair Practices Act  
12          set forth in the Business and Professions Code § 17200 *et seq.* by violating  
13          the state and federal laws as set forth herein;
- 14          f. Whether Defendants paid the minimum wage for all hours worked;
- 15          g. Whether Defendants provided legally compliant rest periods as required  
16          by California law;
- 17          h. The proper measure of damages sustained by the Plaintiffs and the Class;  
18          and
- 19          i. Whether Defendants’ actions were “willful” and/or “knowing and  
20          intentional.”

21          28. This case is maintainable as a class action under Fed. R. Civ. P. 23(b)(1) because  
22 prosecution of actions by or against individual members of the Class would result in inconsistent or  
23 varying adjudications and create the risk of incompatible standards of conduct for Defendants.  
24 Further, adjudication of each individual member’s claim as a separate action would be dispositive of  
25 the interest of other individuals not party to this action, impeding their ability to protect their interests.  
26 (*See* Order Granting Class Certification, *Martino et al v. Ecolab Inc.*, N.D. Cal. Case No. 3:14-cv-  
27 04358-PSG [39].

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1 29. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(2) because  
2 Defendants have acted or refused to act on grounds that apply generally to the class, so that final  
3 injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.  
4 Specifically, Plaintiffs and the putative class are entitled to overtime pay under California law, and yet  
5 Defendants continue to fail to pay minimum wages and overtime premiums to Plaintiffs and the  
6 putative class here. (*See, Id.*)

7 30. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(3) because questions  
8 of law and fact common to the Class predominate over any questions only affecting individual  
9 members of the Class, and because a class action is superior to other available methods for the fair and  
10 efficient adjudication of this litigation. Defendants' common and uniform policies and practices denied  
11 the members of the Class the overtime and double-time pay to which they are entitled. The damages  
12 suffered by the individual Class members are small compared to the expense and burden of individual  
13 prosecution of this litigation. In addition, class certification is superior because it will obviate the need  
14 for unduly duplicative litigation that might result in inconsistent judgments about Defendants'  
15 practices. (*See, Id.*)

16 31. Plaintiffs intend to send notice to all members of the Class to the extent required by  
17 Rule 23. The names and addresses of the members of the Class are available from Defendants.

18 **FIRST CAUSE OF ACTION**

19 ***Violation of the Federal Fair Labor Standards Act ["FLSA"]***

20 **(Action Brought By Plaintiffs On Behalf Of Themselves**

21 **And The FLSA Collective Against All Defendants)**

22 32. Plaintiffs refer to paragraphs 1 through 31 and incorporate the same by reference as  
23 though fully set forth herein

24 33. The FLSA requires "employers to compensate employees for hours in excess of 40 per  
25 week at a rate of 1 ½ times the employees' regular wages." (29 U.S.C. § 207(a))

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**COLLECTIVE ACTION ALLEGATIONS**

1  
2 34. Plaintiffs brings this action on behalf of themselves and other similarly situated  
3 employees as authorized under the FLSA, 29 U.S.C. § 216(b). The employees similarly situated are as  
4 follows:

5 FLSA Collective: Each and every person who has worked for Defendants  
6 in California as a Hospitality Territory Managers, Territory Managers,  
7 Territory Sales Managers and/or Territory Sales Representatives at any  
8 time between three years prior to the filing of this complaint and the trial  
9 of this action (the “Class Period”), except for such time period as may be  
covered by the release in the matter of *Martino v. Ecolab, Inc.*, United  
States District Court for the Northern District of California case number  
3:14-cv-04358-VC.

10 35. Upon information and belief, Defendants knew that Plaintiffs and the FLSA Collective  
11 performed work that required correct overtime pay. Defendants operated under a scheme to deprive  
12 these employees of overtime compensation by failing to properly compensate them for all overtime  
13 hours worked. Specifically, Defendants compensated Plaintiffs and the FLSA Collective using a  
14 compensation structure that did not remit payment for overtime.

15 36. Defendants are liable under the FLSA for failing to properly compensate Plaintiffs and  
16 the FLSA Collective, and as such, notice should be sent to the Collective. There are numerous  
17 similarly situated current and former workers who have been denied overtime pay by Defendants in  
18 violation of the FLSA who would benefit from the issuance of Court-supervised notice of this lawsuit  
19 and the opportunity to join. Those similarly situated workers are known to Defendants and should be  
20 readily identifiable through Defendants’ records.

21 37. On information and belief, the FLSA Collective represents over 100 individuals.

22 38. The FLSA regulates, among other things, the payment of overtime pay by employers  
23 whose employees are engaged in commerce, or engaged in the production of goods for commerce, or  
24 employed in an enterprise engaged in commerce or in the production of goods for commerce. 29  
25 U.S.C. § 207(a)(1).

26 39. Plaintiffs are informed and believe, and thereon alleges, that at all relevant times,  
27 Defendants were “employers” engaged in interstate commerce and/or in the production of goods for  
28

1 commerce, within the meaning of the FLSA, 29 U.S.C. § 203. At all relevant times, Plaintiffs and each  
2 are members of the FLSA Collective who worked for Defendants.

3 40. Plaintiffs have consented, and hereby do consent, in writing to be a part of this action,  
4 pursuant to 29 U.S.C. § 216(b). As this case proceeds, it is likely that other individuals will sign  
5 consent forms and join as plaintiffs.

6 41. Section 7(a)(1) of the FLSA, 29 U.S.C. 207(a)(1), requires employers to pay non-  
7 exempt employees who work longer than forty (40) hours in a workweek one and one-half times the  
8 employee's regular rate of pay for the hours worked in the workweek in excess of forty (40) in a  
9 workweek. Defendants violated the FLSA by refusing to pay the FLSA Collective overtime as  
10 required by law.

11 42. Throughout the statute of limitations period covered by these claims, Plaintiffs and  
12 members of the FLSA class regularly worked in excess of forty (40) hours per workweek and continue  
13 to do so.

14 43. At all relevant times, Defendants have operated under and continue to operate under a  
15 compensation structure that provided for the non-payment of overtime hours worked. As a result,  
16 Defendants do/did not pay Plaintiffs for work in excess of forty (40) hours per workweek in violation  
17 of 29 U.S.C. §§ 201 et seq.

18 44. Defendants' violations of the FLSA as alleged herein have been done in a willful and  
19 bad faith manner such that the FLSA Collective are entitled to damages equal to the amount of  
20 overtime premium pay within the three years preceding the filing of this action, plus periods of  
21 equitable tolling. As a result of the aforesaid willful violations of the FLSA, overtime compensation  
22 has been unlawfully withheld by Defendants from Plaintiffs and similarly situated persons for which  
23 Defendants are liable under 29 U.S.C. § 216(b), together with an additional equal amount as liquidated  
24 damages, as well as interest, reasonable attorneys' fees and costs.

25 45. Plaintiffs, on behalf of themselves and the FLSA Collective, seek damages in the  
26 amount of all unpaid overtime compensation owed to them and the FLSA Collective, liquidated  
27 damages as provided by the FLSA, 29 U.S.C. § 216(b), interest, and such other legal and equitable  
28 relief as the Court deems just and proper.

1 46. The employment and work records for the Plaintiffs and the FLSA Collective, such that  
2 they do exist, are in the exclusive possession, custody, and control of Defendants, and Plaintiffs are  
3 unable to state at this time the exact amount owing to them and the FLSA Collective. Defendants are  
4 under a duty imposed by 29 U.S.C. § 211(c) and the regulations of the U.S. Department of Labor to  
5 maintain and preserve Plaintiffs' payroll and other employment records from which the amounts of the  
6 defendants' liability can be ascertained.

7 47. Plaintiffs, on behalf of themselves and the FLSA Collective, seeks recovery of  
8 attorneys' fees and costs to be paid by Defendants, as provided by the FLSA, 29 U.S.C. § 216(b).

9 **SECOND CAUSE OF ACTION**

10 ***Failure To Pay Overtime And Double-time Premium Wages Pursuant to California Law***

11 **(Action Brought By Plaintiffs On Behalf Of Themselves**

12 **And The Class Against All Defendants)**

13 48. Plaintiffs incorporate by reference and re-allege each and every one of the allegations  
14 contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

15 49. California law requires payment of overtime premium pay for all hours worked by non-  
16 exempt employees in excess of eight in one day or 40 hours in one week and for the first eight hours  
17 on the seventh-straight day of work in one workweek. Lab. Code § 510. It further requires payment  
18 of double-time premium pay for all hours worked by non-exempt employees in excess of twelve hours  
19 in one day or in excess of eight hours on the seventh-straight day of work in a single workweek. *Id.*

20 50. Plaintiffs and the Class regularly worked hours for which they were not paid overtime  
21 or double-time premium wages, including for hours they worked in excess of eight in a day, 40 in a  
22 week, and on the seventh straight day of work in a workweek. By way of example, Plaintiffs regularly  
23 worked in excess of eight hours each day due to the nature of the business and the fact that they  
24 regularly had to attend to emergency service calls for their customers. Additionally, on a rotating  
25 basis, Plaintiffs performed "weekend duty" work, which required them to be on call and respond to  
26 customer calls and emergency service calls during the weekend. The weekend duty time was not  
27 compensated by Defendants. Plaintiffs and the Class also regularly had to perform "installs" after  
28 hours, which resulted in workdays in excess of 12 hours and no additional overtime premium pay.

1 They also had to perform preliminary and after-hours work at their homes, which added to their daily  
2 and weekly tally of uncompensated overtime hours worked.

3 51. Plaintiffs and the Class seek such overtime and double-time premium wages owed to  
4 them for the three-year period measured backward from the date of the filing of the initial Complaint  
5 in this matter. (In the Unfair Business Practices cause of action stated herein, Plaintiffs and the Class  
6 seek restitution of unpaid overtime and double-time wages due for the four-year period measured  
7 backward from the date of the filing of the initial Complaint in this matter.)

8 52. The exact amount of overtime and double-time premium wages owed will not be fully  
9 ascertained until discovery is completed. Until Defendants produce the necessary documents for an  
10 accounting, Plaintiffs are unable to determine the exact amount of overtime and double-time premium  
11 wages owed. Additionally, Defendants did not keep accurate records of the hours Plaintiffs and the  
12 other Class members worked.

13 53. Labor Code section 218.6 states, “[I]n any action brought for the nonpayment of wages,  
14 the court shall award interest on all due and unpaid wages at the rate of interest specified in  
15 subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the date that the wages  
16 were due and payable as provided in Part 1 (commencing with Section 200) of Division 2.” Interest is  
17 also available under Labor Code section 1194. Plaintiffs seek such interest on all overtime and  
18 double-time premium wages owed to themselves and the Class for the three-year period measured  
19 backward from the date of the filing of the initial Complaint in this matter.

20 54. Pursuant to Labor Code section 1194, Plaintiffs request the Court to award Plaintiffs’  
21 reasonable attorney’s fees and costs incurred in this action.

22 **THIRD CAUSE OF ACTION**

23 ***Pay Stub Violations***

24 **(Action Brought By Plaintiffs On Behalf Of Themselves**

25 **And The Class Against All Defendants)**

26 55. Plaintiffs incorporate by reference and re-allege each and every one of the allegations  
27 contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

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1           56. California Labor Code section 226 provides:

2           Every employer shall, semimonthly or at the time of each payment of  
3           wages, furnish each of his or her employees, either as a detachable part of  
4           the check, draft, or voucher paying the employee's wages, or separately  
5           when wages are paid by personal check or cash, an itemized statement in  
6           writing showing (1) gross wages earned, (2) total hours worked by the  
7           employee, except for any employee whose compensation is solely based  
8           on a salary and who is exempt from payment of overtime under  
9           subdivision (a) of Section 515 or any applicable order of the Industrial  
10          Welfare Commission, (3) the number of piece-rate units earned and any  
11          applicable piece rate if the employee is paid on a piece-rate basis, (4) all  
12          deductions, provided, that all deductions made on written orders of the  
13          employee may be aggregated and shown as one item, (5) net wages  
14          earned, (6) the inclusive dates of the period for which the employee is  
15          paid, (7) the name of the employee and his or her social security number,  
16          (8) the name and address of the legal entity that is the employer, and (9)  
17          all applicable hourly rates in effect during the pay period and the  
18          corresponding number of hours worked at each hourly rate by the  
19          employee.

20           57. In this case, Defendants have failed to provide such wage deduction statements to  
21          Plaintiffs and the Class in that their wage deduction statements do not include, without limitation, their  
22          accurate gross wages earned, all overtime/double-time hours worked, net wages earned, itemized  
23          compensation for rest periods, or all applicable hourly rates in effect during the pay period, and the  
24          corresponding number of hours worked at each hourly rate by the employee. Plaintiffs' wage  
25          deduction statements show, rather, that Plaintiffs worked 86.67 hours per week, regardless of how  
26          many actual hours they worked. Defendants have intentionally failed to put the information required  
27          by section 226(a) on the paycheck stubs.

28           58. Pursuant to Labor Code section 226(e), damages are appropriate. At this time,  
29          Plaintiffs believe and allege that they and the Class are owed the maximum allowable penalty under  
30          section 226(e) because Defendants intentionally failed to provide adequate paycheck stubs. However,  
31          the exact amount of damages under Labor Code section 226(e) will not be fully ascertained until  
32          discovery is completed. Until Defendants produce the necessary documents for an accounting,  
33          Plaintiffs are unable to determine the exact amount of damages under Labor Code section 226(e).

1 59. Pursuant to Labor Code section 226(e), Plaintiffs request the court to award Plaintiffs'  
2 reasonable attorney's fees and costs incurred by Plaintiffs in this action.

3 **FOURTH CAUSE OF ACTION**

4 *Unfair Competition*

5 **(Action Brought By Plaintiffs On Behalf Of Themselves**  
6 **And The Class Against All Defendants)**

7 60. Plaintiffs incorporate by reference and re-allege each and every one of the allegations  
8 contained in the preceding and foregoing paragraphs of this Complaint as though fully set forth herein.

9 61. This cause of action is being brought pursuant to California Business and Professions  
10 Code section 17200 et seq. and California case law including *Cortez v. Purolator Air Filtration*  
11 *Products Co.*, 23 Cal.App.4th 163 (2000).

12 62. It is alleged that Defendants have willfully failed to pay Plaintiffs and the Class the  
13 state-mandated overtime and double-time premium wages, minimum wages, and rest periods. The  
14 failure to pay such wages and expenses under state and federal law constitutes unfair business  
15 practices under California Business and Professions Code section 17200.

16 63. As a result of the conduct of Defendants, Defendants profited from breaking the law.  
17 Plaintiff and the Class seek disgorgement of Defendants' unlawfully obtained benefits (plus interest  
18 thereon) for the four-year period measured backward from the date of filing of the initial Complaint in  
19 this matter.

20 64. California Business and Professions Code section 17203, under the authority of which a  
21 restitutionary order may be made, provides:

22 Any person who engages, has engaged, or proposes to engage in unfair  
23 competition may be enjoined in any court of competent jurisdiction. The  
24 court may make such orders or judgments, including the appointment of a  
25 receiver, as may be necessary to prevent the use of employment by any  
26 person of any practice which constitutes unfair competition, as defined in  
27 this chapter, or as may be necessary to restore to any person in interest any  
28 money or property, real or personal, which may have been acquired by  
means of such unfair competition.

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65. As a result of the alleged aforesaid actions, Plaintiff and the Class have suffered injury in fact and have lost money as a result of such unfair competition.

66. Business and Professions Code section 17204 authorizes injunctive relief to be sought by “any person acting for the interests of itself, its members, or the general public.” *See Herr v. Nestle U.S.A., Inc.*, 109 Cal. App. 4th 779, 789 (2003). Plaintiff Bankwitz, who has suffered (and continues to suffer) injury in fact, seeks injunctive relief on his own behalf and on behalf of those members of the Class who, like him, remain employed by Defendants and continue to work overtime and double-time hours without any pay therefor. Plaintiff Bankwitz, who is currently employed by Defendants, and such members of the Class are under a real and/or immediate threat of repeated injury due to Defendants’ failure to pay them overtime wages under California law. Defendants continue to suffer and permit Plaintiff Bankwitz and the Class to work overtime hours, as those terms are defined under Labor Code section 510 and the relevant IWC Wage Order, and yet do not compensate them with overtime premiums as required by California law. Plaintiff Bankwitz, therefore, seeks injunctive relief to enjoin Defendants’ ongoing unfair trade practices, including without limitation Defendants’ continued failure to pay overtime and double-time premium wages as required by the California Labor Code and the relevant IWC Wage Order.

**FIFTH CAUSE OF ACTION**

*Failure To Timely Pay Wages At Termination*

**(Action Brought By Plaintiff Hernandez On Behalf Of Himself**

**And The Class Against All Defendants)**

67. Plaintiff Hernandez incorporates by reference and re-alleges each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

68. Labor Code section 201 provides, in relevant part, “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Lab. Code § 201(a). Labor Code section 202 provides, in relevant part, “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice



1 of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of  
2 quitting.” Lab. Code § 202(a). Defendants did not pay immediately all wages earned and unpaid to  
3 Plaintiff Hernandez and the Class upon their discharge or resignation. Defendants have refused and  
4 continue to refuse to pay said wages.

5 69. Pursuant to Labor Code section 203, Defendants have willfully failed to pay without  
6 abatement or reduction, in accordance with Labor Code sections 201 and 202 all of the overtime,  
7 vacation, and double-time wages of the Plaintiff Hernandez and the Class, as herein alleged. (As for  
8 Plaintiff Hernandez, his employment with Defendants ended in or about March 2017.) Plaintiff  
9 Hernandez seeks wages and waiting-time penalties pursuant to Labor Code section 203 on behalf of  
10 himself and the Class. These penalties consist of up to 30 days of pay for Plaintiff Hernandez and the  
11 Class at their regular rates of pay.

12 70. Plaintiff Hernandez and the Class have been available and ready to receive wages owed  
13 to them.

14 71. Plaintiff Hernandez and the Class have never refused to receive any payment, nor have  
15 they been absent from their regular places of residence.

16 72. Defendants’ failure to pay wages due and owing Plaintiff Hernandez and the Class, as  
17 indicated in prior paragraphs, was willful; Defendants have knowingly refused to pay any portion of  
18 the amount due and owing Plaintiff Hernandez and the Class.

19 **SIXTH CAUSE OF ACTION**

20 ***Failure To Pay Minimum Wages***

21 **(Action Brought By Plaintiffs On Behalf Of Themselves**

22 **And The Class Against All Defendants)**

23 73. Plaintiffs incorporate by reference and re-alleges each and every one of the allegations  
24 contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

25 74. Section 1197 of the Labor Code establishes California’s minimum wage. Until July 1,  
26 2014, the minimum wage in California was \$8.00 per hour, and it increased to \$9.00 on that date; it  
27 increased to \$10 per hour on January 1, 2016. Lab. Code § 1182.12.

28 ///

1           75. Labor Code section 1194 creates a cause of action for employees to recover unpaid  
2 wages from an employer who fails to pay them at the legal minimum wage or overtime rate.

3           76. Labor Code section 1194.2 allows an employee to recover liquidated damages for a  
4 violation of Labor Code section 1194 as it pertains to unpaid minimum wages. “In any action under  
5 Section ... 1194 ... to recover wages because of the payment of a wage less than the minimum wage  
6 fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated  
7 damages in an amount equal to the wages unlawfully unpaid and interest thereon.” Lab. Code §  
8 1194.2, subd. (a).

9           77. Plaintiffs seek unpaid minimum wages and liquidated damages on behalf of themselves  
10 and the putative class pursuant to Labor Code sections 1194, 1194.2, and 1197. Plaintiff’s minimum  
11 wage claim stem from the fact that Defendants paid Plaintiffs and the putative class on a commission-  
12 only basis. This payment structure violates California’s minimum wage laws. An employer must  
13 compensate its nonexempt employees at a rate of no less than the minimum wage for every hour  
14 worked in a pay period. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005). An employer  
15 cannot attribute commission wages paid in one pay period to other pay periods in order to satisfy  
16 California’s compensation requirements. *Peabody v. Time Warner Cable, Inc.*, 59 Cal. 4th 662, 669  
17 (2014) (“[P]ermitting wages paid in one pay period to be attributed to a different pay period would be  
18 inconsistent with the Labor Code.”).

19           78. Defendants violated California’s minimum wage laws by not paying Plaintiffs and the  
20 putative class members for each of their ten-minute rest periods, which are required by California law.  
21 Employees are entitled to “a paid 10-minute rest period per four hours of work.” *Bluford v. Safeway*  
22 *Stores, Inc.*, 216 Cal. App. 4th 864, 871 (2013). Under the rule of *Armenta v. Osmose, Inc.*, 135 Cal.  
23 App. 4th at 323, rest periods must be separately compensated in a commissioned or piece-rate system.  
24 *Bluford*, 216 Cal. App. 4th at 872. “[A] piece-rate compensation formula that does not compensate  
25 separately for rest periods does not comply with California minimum wage law.” *Id.*; *Balasanyan v.*  
26 *Nordstrom, Inc.*, 294 F.R.D. 550, 567 (S.D. Cal. 2013) (applying *Bluford* to commission-only pay  
27 structure). No exemptions to minimum wage requirements apply to Plaintiffs. Hence, Defendants  
28 were obligated to pay Plaintiffs and the putative class ten minutes of pay at a rate of no less than the

1 minimum wage for each rest period Defendants provided. Defendants’ failure to do so results in  
2 minimum wage liability, and Plaintiffs seek such amounts for unpaid minimum wages and liquidated  
3 damages for all unpaid rest periods.

4 79. Plaintiffs seek all minimum wages owed to themselves and the putative class under the  
5 aforementioned theories. Plaintiffs also seek liquidated damages pursuant to Labor Code section  
6 1194.2.

7 80. Plaintiffs seek all attorney’s fees and costs incurred and interest on all minimum wages  
8 owed. *See* Lab. Code §§ 218.6 and 1194, subd. (a).

9 81. Labor Code section 218.6 states, “[I]n any action brought for the nonpayment of wages,  
10 the court shall award interest on all due and unpaid wages at the rate of interest specified in  
11 subdivision (b) of Section 3289 of the Civil Code, which shall accrue from the date that the wages  
12 were due and payable as provided in Part 1 (commencing with Section 200) of Division 2.”

13 82. Pursuant to Labor Code section 1194, Plaintiff requests the Court to award Plaintiff’s  
14 reasonable attorney’s fees and costs incurred in this action. Plaintiff also requests all unpaid wages,  
15 liquidated damages, waiting-time penalties and interest. The exact amount of actual wages, and  
16 statutory interest thereon, and penalties owed will not be fully ascertained until discovery is  
17 completed. Until Defendants produce the necessary documents for an accounting, Plaintiff is unable  
18 to determine the exact amount of wages owed.

19 **SEVENTH CAUSE OF ACTION**

20 ***Failure to Provide Legally Compliant Rest Periods***

21 **(Action Brought By Plaintiffs On Behalf Of Themselves**

22 **And The Putative Class Against All Defendants)**

23 62. Plaintiffs incorporate by reference and re-alleges each and every one of the allegations  
24 contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

25 63. Employees are entitled to “a paid 10-minute rest period per four hours of work.”  
26 *Bluford*, 216 Cal. App. 4th at 871 (emphasis added); 8 Cal. Code Regs. § 11070, subd. 12(A).

27 64. “If an employer fails to provide an employee a ... rest ... period in accordance with a  
28 state law..., the employer shall pay the employee one additional hour of pay at the employee’s regular

1 rate of compensation for each workday that the ... rest ... period is not provided.” Lab. Code §  
2 226.7(c).

3 65. By not paying Plaintiffs and the putative class for their rest periods, Defendants did not  
4 provide rest periods in accordance with California law. (*Vaquero v. Stoneledge Furniture LLC* (2017)  
5 9 Cal.App.5<sup>th</sup> 98, 115, as modified (Mar. 20, 2017), review filed (Apr.10.2017).) Plaintiffs therefore  
6 seeks one additional hour of pay at each employee’s regular rate of compensation for each workday  
7 that such paid rest period was not so provided, pursuant to section 226.7.

8 66. Plaintiff seeks interest pursuant to law on all amounts owed for rest period premiums  
9 under section 226.7.

10 **EIGHTH CAUSE OF ACTION**

11 ***For Civil Penalties Under The Labor Code Private Attorneys General Act***

12 **(Action Brought By Plaintiffs, As Private Attorneys General,**

13 **Against ECOLAB, INC. And DOES 1 Through 100)**

14 67. Plaintiffs re-allege and incorporate by reference the allegations set forth at paragraphs 1  
15 through 66, as though fully set forth herein.

16 68. This First Amended Complaint is authorized as a matter of right under *Fed. R. Civ. P.*  
17 Rule 15, and as a matter of substantive right under *California Labor Code* section 2699.3(a)(2)(C),  
18 which provides: “[n]otwithstanding any other provision of law, a plaintiff may as a matter of right  
19 amend an existing complaint to add a cause of action arising under this part at any time within 60 days  
20 of the time periods specified in this part.”

21 69. Plaintiffs bring this cause of action against Defendants and Does 1 through 100  
22 (hereinafter referred to collectively as “Defendants”) in their capacity as private attorney generals (*i.e.*  
23 as proxies or agents of the State of California) to recover civil penalties under the Private Attorneys  
24 General Act of 2004, which is codified in *Labor Code* section 2699 et seq. (herein “PAGA”), for  
25 Defendants’ violations of the Labor Code enumerated herein.

26 70. Plaintiffs are informed, believe, and thereon allege that at all times pertinent hereto  
27 each was an “aggrieved employee” of Defendants, as that phrase is statutorily defined pursuant to  
28 Labor Code section 2699(c); in particular, Plaintiffs were persons employed by the alleged violators

1 (i.e., Defendants), and against whom one or more of the alleged violations was committed.

2 71. Plaintiffs have complied with all procedural requirements of the PAGA. In particular,  
3 on May 18, 2017, Plaintiffs gave written notice by certified mail, and via web portal, to the California  
4 Labor and Workforce Development Agency and Defendants of the specific provisions of the Labor  
5 Code alleged to have been violated by Defendants, including the facts and theories to support the  
6 alleged violations (the “Notice”).

7 72. A true and correct copy of Plaintiffs’ Notice to the California Labor and Workforce  
8 Development Agency and Defendants is attached hereto as Exhibit “A”.

9 73. Plaintiffs are informed, believe, and thereon allege that each is statutorily authorized to  
10 commence a civil action against Defendants pursuant to the PAGA, including Labor Code sections  
11 201, 202, 203, 204, 219, 510, 558, 1194, 1198, 2699.3 and 2699.5, as the California Labor and  
12 Workforce Development has failed to notify them that it intends to investigate the alleged violation  
13 within sixty five (65) calendar days of the postmark date of their receipt of the Notice and at least sixty  
14 five (65) calendar days have elapsed from the postmark date of the Notice with the California Labor  
15 and Workforce Development having not provided notification of any intention to investigate the  
16 alleged violations.

17 74. Labor Code section 201 requires immediate payment of all wages owed at the  
18 termination of employment. It is alleged that within the last year of the filing of the Complaint, Class  
19 Members have been terminated and have not received all wages owed at their termination. Plaintiff  
20 seeks civil penalties on behalf of themselves and all others similarly situated under Labor Code section  
21 2699, subd. (f) or any other statute that provides for civil penalties for such violations of law.

22 75. Labor Code section 202 requires payment of all wages owed within 72 hours of the  
23 resignation of an employee, unless the employee gives more than 72-hours’ notice, in which case  
24 wages are owed at the employee’s resignation. It is alleged that within the last year of the filing of the  
25 Complaint, Class Members have resigned and have not received all pay owed in a timely fashion after  
26 their resignation. Plaintiffs seek civil penalties on behalf of themselves and all others similarly  
27 situated under Labor Code section 2699, subd. (f) or any other statute that provides for civil penalties  
28 for such violations of law.

1           76. Labor Code section 510 requires employers to pay nonexempt workers overtime  
2 premium wages when they work more than eight hours in one day or over forty hours in one week,  
3 and for the first eight hours worked on the seventh straight day of work in a single workweek. This  
4 statute also requires employers to pay nonexempt workers double-time premium wages when they  
5 work more than 12 hours in one workday and for all hours worked in excess of eight on the seventh  
6 straight day of work in one workweek.

7           77. In this matter, it is alleged that Ecolab and Does 1 through 50 intentionally denied the  
8 Putative Class wages that should have been paid and violated California Labor Code section 510 and  
9 applicable IWC wage orders. Specifically, California law requires that the payment of a non-  
10 discretionary bonus must be included in the calculation of the overtime hourly rate. This did not occur.  
11 Defendants have, as a result, violated the aforementioned Labor Code sections by not paying all  
12 overtime and/or double-time wages to Plaintiffs and their fellow hourly employees in California from  
13 March 15, 2013 to the present.

14           78. IWC Wage Order 5-2001 section 3(A) mirrors the overtime and double-time  
15 requirements of Labor Code section 510. Defendants violated Wage Order 5-2001 by not paying  
16 overtime or double-time wages to the Putative Class at the correct hourly rates.

17           79. Labor Code section 201 requires immediate payment of all wages owed at the  
18 termination of employment. It is believed that within the last year, Defendants' hourly employees in  
19 California have been terminated and have not received their overtime or double-time wages owed at  
20 their termination.

21           80. Labor Code section 202 requires payment of all wages owed within 72 hours of the  
22 resignation of an employee, unless the employee gives more than 72 hours' notice, in which case  
23 wages are owed at the employee's resignation. It is alleged that Defendants' hourly employees in  
24 California have resigned and have not received their overtime or double-time wages owed in a timely  
25 fashion as required by Labor Code section 202.

26           81. Labor Code section 204 sets timetables for when wages are due each pay period. In  
27 effect, most wages earned during a pay period must be paid at the conclusion of that pay period, or the  
28 conclusion of the next pay period (in the case of wages earned for labor in excess of the normal work

1 period). Here, overtime wages were owed each pay period in which individuals worked overtime  
2 hours, and yet Defendants did not timely pay them the earned overtime.

3 82. Labor Code section 219 provides that an employer may not circumvent by way of  
4 private agreement the requirements of the wage-and-hour laws of the Labor Code. To the extent that  
5 Defendants have promulgated wage-and-hour and payroll card policies that do not comply with  
6 California law, or that Defendants will argue that Plaintiff and Putative Class members agreed to work  
7 overtime and/or double-time hours for no additional compensation, Defendants will have violated  
8 Labor Code section 219.

9 83. Labor Code section 226, subdivision (a) requires employers to put specific, accurate  
10 information on their employees' paycheck stubs. This information includes the actual number of hours  
11 worked and the applicable rates of pay. Defendants failed to include necessary information on  
12 Plaintiff's paycheck stubs, and it is alleged that the violation of Labor Code section 226, subdivision  
13 (a) extends to all other Putative Class members.

14 84. Labor Code section 1194(a) provides that notwithstanding any agreement to work for a  
15 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime  
16 compensation applicable to the employee is entitled to receive in a civil action the unpaid balance of  
17 the full amount of this minimum wage or overtime compensation, including interest thereon,  
18 reasonable attorney's fees, and costs of suit. To the extent that Defendants will argue that the  
19 employees agreed to work overtime and/or double-time hours for no additional compensation, and  
20 failed to pay minimum wages to Plaintiff, Defendants will have violated Labor Code section 1194(a).

21 85. Labor Code section 203 provides: "(a) If an employer willfully fails to pay, without  
22 abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any  
23 wages of an employee who is discharged or who quits, the wages of the employee shall continue as a  
24 penalty from the due date thereof at the same rate until paid or until an action therefor is commenced;  
25 but the wages shall not continue for more than 30 days..." As it is alleged that Defendants have  
26 violated Labor Code sections 201 and 202, Plaintiffs will, on behalf of themselves and all other  
27 similarly-situated individuals, seek the civil penalties available under Labor Code section 203.

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1           86. Labor Code section 210 establishes a civil penalty for violations of Labor Code section  
2 204. Every person who fails to pay the wages of each employee as provided in section 204 shall be  
3 subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each  
4 failure to pay each employee; and (2) For each subsequent violation, or any willful or intentional  
5 violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the  
6 amount unlawfully withheld. As it is alleged that Defendants violated Labor Code section 204,  
7 Plaintiff will, on behalf of the Putative Class, seek the civil penalties available under Labor Code  
8 section 210.

9           87. Labor Code section 226.3 provides that any employer who violates subdivision (a) of  
10 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per  
11 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each  
12 violation in a subsequent citation, for which the employer fails to provide the employee a wage  
13 deduction statement or fails to keep the records required in subdivision (a) of Section 226.

14           88. It is alleged that Defendants violated Labor Code section 226, subdivision (a), Plaintiffs  
15 will seek, on behalf of themselves and the Putative Class, the civil penalties available under Labor  
16 Code section 226.3.

17           89. Labor Code section 558 provides for a civil penalty against employers who violate  
18 Labor Code section 510. The civil penalty is as follows: (1) For any initial violation, fifty dollars (\$50)  
19 for each underpaid employee for each pay period for which the employee was underpaid in addition to  
20 an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred  
21 dollars (\$100) for each underpaid employee for each pay period for which the employee was  
22 underpaid in addition to an amount sufficient to recover underpaid wages. See also, *Thurman v.*  
23 *Bayshore Transit Mgmt., Inc.*, 203 Cal. App. 4th 1112 (2012).

24           90. It is alleged that Defendants violated Labor Code section 510, Plaintiffs will seek, on  
25 behalf of themselves and all other similarly-situated individuals, the civil penalties, including all  
26 underpaid wages, available under Labor Code section 558.

27           91. Labor Code section 1194.2(a) provides for liquidated damages for payment of a wage  
28 less than the minimum wage fixed by an order of the commission or by statute. Section 1194.2(a)



1 entitles the employee to recover liquidated damages in an amount equal to the wages unlawfully  
2 unpaid and interest thereon. Plaintiffs allege that Defendants violated section 1194.2(a) by failing to  
3 pay minimum wages to the Putative Class.

4 92. Labor Code section 1194.3 provides for the recovery of attorney's fees and costs  
5 incurred to enforce a court judgment pursuant to unpaid wages pursuant to Labor Code section 1194.  
6 Plaintiff alleges that Defendants violated section 1194 by failing to pay minimum wage and overtime,  
7 and that Plaintiffs are therefore entitled to recover attorney's fees.

8 93. Labor Code section 1197.1 provides for recovery for employees who are paid a wage  
9 less than the minimum fixed by an applicable state or local law, or by an order of the commission. For  
10 an initial violation that is intentionally committed, the penalty is one hundred dollars (\$100) for each  
11 underpaid employee for each pay period for which the employee is underpaid. This amount shall be in  
12 addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section  
13 1194.2, and any applicable penalties imposed pursuant to section 203. For each subsequent violation  
14 for the same specific offense, the penalty is two hundred fifty dollars (\$250) for each underpaid  
15 employee for each pay period for which the employee is underpaid regardless of whether the initial  
16 violation is intentionally committed. This amount shall be in addition to an amount sufficient to  
17 recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties  
18 imposed pursuant to Section 203. Wages, liquidated damages, and any applicable penalties imposed  
19 pursuant to Section 203 and recovered pursuant to this section shall be paid to the affected employee.

20 94. Labor Code section 2699 provides for a civil penalty for the violation of Labor Code  
21 sections that lack a civil penalty provision of their own. The civil penalty is as follows: "If, at the time  
22 of the alleged violation, the person employs one or more employees, the civil penalty is one hundred  
23 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred  
24 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation." Plaintiffs  
25 allege that Defendants have violated the following civil-penalty-less Labor Code sections: 201, 202,  
26 203, 212, 219, 221 and 224.

27 95. IWC Wage Order 5-2001 (and the other Wage Orders) provide for a civil penalty to be  
28 assessed against an employer who violates its provision. Section 20 thereof states, in relevant part: (A)

1 In addition to any other civil penalties provided by law, any employer or any other person acting on  
2 behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be  
3 subject to the civil penalty of: (1) Initial Violation — \$50.00 for each underpaid employee for each  
4 pay period during which the employee was underpaid in addition to the amount which is sufficient to  
5 recover unpaid wages. (2) Subsequent Violations — \$100.00 for each underpaid employee for each  
6 pay period during which the employee was underpaid in addition to an amount which is sufficient to  
7 recover unpaid wages.

8 96. Plaintiffs will seek, on behalf of themselves and all other similarly-situated individuals,  
9 this additional civil penalty against Defendants for their violation of the applicable IWC Wage Order,  
10 section 3(A), as well as any additional violation of said Wage Order. Labor Code section 203  
11 establishes a statutory penalty for willful violations of Labor Code sections 201 or 202. There has  
12 been a willful violation of Labor Code sections 201 and 202 because, in part, Defendants cannot hide  
13 behind their ignorance of the California’s wage and hour law. Plaintiff seeks civil penalties on behalf  
14 of themselves and all others similarly situated under Labor Code section 256 for Defendants’ violation  
15 of sections 201, 202, and 203.

16 97. Plaintiffs also seek any civil penalties allowable under the Labor Code that arise out of  
17 the same set of operative facts as the claims made in this complaint and/or in the Notice.

18 98. Plaintiffs additionally seek any and all available injunctive relief and an award of  
19 reasonable attorney's fees and costs pursuant to Labor Code section 2699(g)(1).

20 99. Plaintiffs and the Class are informed, believe, and thereon allege that at all times  
21 pertinent hereto, Labor Code section 2699(g)(1) provided in pertinent part, “...Nothing in this part  
22 shall operate to limit an employee's right to pursue or recover other remedies available under state or  
23 federal law, either separately or concurrently with an action taken under this part....”

24 100. Plaintiff’s request public injunctive relief to end and prevent the Defendants’ continued  
25 violation of California law.

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, on behalf of themselves and all members of the Class, pray for relief as follows:

**On the First Cause of Action**

1. For designation of this action as a collective action on behalf of the Plaintiffs and the class they seek to represent pursuant to the Fair Labor Standards Act claims and a prompt issuance of notice pursuant to 29 U.S.C. §216(b), to all similarly situated members of the FLSA opt-in class apprising them of the pendency of this action, permitting them to assert timely FLSA claims in this action by filing individual consent to sue forms pursuant to 29 U.S.C. §216(b) and equitable tolling of the statute of limitations from the date of filing this Complaint until the expiration of the deadline for filing consent to sue forms pursuant to 29 U.S.C. §216(b); A declaratory judgment that the practices complained of herein are unlawful under the FLSA 29 U.S.C. §201 et seq.;
2. For wages owed according to proof;
3. For liquidated damages as provided by the FLSA;
4. For prejudgment interest at the statutory rate;
5. For reasonable attorneys' fees;
6. For costs of suit; and
7. For any other and further relief that the Court considers just and proper.

**On the Second Cause of Action**

1. For overtime and double-time premium wages owed under California law according to proof;
2. For prejudgment interest pursuant to Labor Code sections 218.6 and 1194 and Civil Code sections 3288 and 3291 on all amounts claimed;
3. For attorney's fees and costs pursuant to Labor Code sections 218.5, 226, and 1194

**On the Third Cause of Action**

1. For statutory penalties, pursuant to law;
2. For reasonable attorneys' fees pursuant to statute;

1 3. For costs of suit; and

2 4. For any other and further relief that the Court considers just and proper.

3 **On the Fourth Cause of Action**

4 1. For an equitable order, ordering Defendants to pay all former and current employees all  
5 wages, interest, and penalties they are owed;

6 2. For an appointment of a receiver to perform an accounting of all monies owed to these  
7 employees;

8 3. For any and all injunctive relief this Court deems necessary pursuant to California  
9 Business and Professions Code section 17203; including an injunction ordering Defendants to begin  
10 paying overtime premiums to their Hospitality Territory Managers, Territory Managers, Territory  
11 Sales Managers and/or Territory Sales Representatives in California;

12 4. For any and all public injunctive relief as this Court deems necessary, including any  
13 injunctive orders to Defendants to comply with California law and/or advise the relevant population or  
14 general public of Defendant's misconduct. (*See, e.g., McGill v. Citibank*, 2 Cal. 5th 945 (2017));

15 5. For a declaratory judgment declaring that Defendants have willfully and wrongfully  
16 violated their statutory and legal obligations and deprived Plaintiffs and all others who are similarly  
17 situated of their rights, privileges, protections, compensation, benefits, and entitlements under the law,  
18 as alleged herein;

19 6. For prejudgment interest pursuant to California Civil Code section 3288 and section  
20 3291 on all amounts claimed;

21 7. For leave to add additional plaintiffs by motion, the filing of written consent forms, or  
22 any other method approved by the Court.

23 **On the Fifth Cause of Action**

24 1. For waiting-time penalties under Labor Code section 203;

25 2. For costs of suit;

26 3. For any other and further relief the Court considers just and proper;

27 4. For a declaratory judgment declaring that Defendants have willfully and wrongfully  
28 violated their statutory and legal obligations and deprived Plaintiffs and all others who are similarly

1 situated of their rights, privileges, protections, compensation, benefits, and entitlements under the law,  
2 as alleged herein;

3 5. For costs of suit; and

4 6. For such other and further relief, in law or equity, as this Court may deem appropriate  
5 and just.

6 **On the Sixth Cause of Action**

7 1. For wages owed according to proof;

8 2. For prejudgment interest pursuant to Labor Code section 218.6 and Civil Code sections  
9 3288 and 3291 on all amounts claimed;

10 3. For liquidated damages in an amount equal to the unpaid minimum wages owed under  
11 Labor Code section 1194.2;

12 4. For attorney's fees and costs pursuant to Labor Code section 1194;

13 5. For costs of suit; and

14 6. For any other and further relief that the Court considers just and proper.

15 **On the Seventh Cause of Action**

16 1. For one additional hour of pay at each employee's regular rate of compensation for each  
17 workday that such paid rest period was not so provided, pursuant to Labor Code section  
18 226.7.

19 2. For interest pursuant to law on all amounts owed for rest period premiums under section  
20 226.7.

21 **On the Eighth Cause of Action for Civil Penalties Under PAGA**

22 1. For all civil penalties, available under the Labor Code;

23 2. For reasonable attorney's fees and costs pursuant to California law, including, but not  
24 limited to California Labor Code section 2699(g)(1);

25 3. For any and all public injunctive relief deemed necessary by the Court and authorized by  
26 law, to end Defendants' continued violations of California law; and

27 4. For such other and further relief that the Court deems just and proper.

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1 Respectfully submitted,

2  
3 Dated: September 13, 2017

PALAY HEFELFINGER, APC

4 By 

5 DANIEL J. PALAY  
6 Attorneys for Plaintiffs and  
7 the Putative Class  
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11

12 **DEMAND FOR JURY TRIAL**

13 Plaintiffs hereby demand a trial by jury in this matter.  
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15

16 Dated: September 13, 2017

PALAY HEFELFINGER, APC

17 By 

18 DANIEL J. PALAY  
19 Attorneys for Plaintiffs and  
20 the Putative Class  
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