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

NOV 09 2011

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**SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

ANTHONY GRANA, RITA CHEW and  
EDWARD MARTIN, on behalf of  
themselves and those similarly situated,

Plaintiff,

v.

PICO Enterprises, Inc., doing business as  
Phyle Inventory Control Specialists and  
PICS, a Nevada corporation and DOES 1  
through 100, Inclusive,

Defendant.

Case No. BC472891

**CLASS ACTION**

**AMENDED COMPLAINT FOR DAMAGES,  
RESTITUTION AND INJUNCTIVE RELIEF**

1. Failure to Pay all Hourly Wages (Labor Code §200, Wage Order 7-2001)
2. Failure to Pay all Overtime Wages (Labor Code §1194, Wage Order 7-2001)
3. Failure to Pay all Overtime Wages (Labor Code §1194, Wage Order 7-2001)
4. Failure to Pay all Overtime Wages (Labor Code §1194, Wage Order 7-2001)
5. Failure to Provide Meal Periods or Compensation in Lieu Thereof (Labor Code § 226.7 and Wage Order 7-2001 §11)
6. Failure to Timely Pay Wages to Terminated Employees (Labor Code §§201- 203)
7. Failure to Provide Accurate Itemized Wage Statements (Labor Code §§226, 1174)
8. Violation of Unfair Competition Law (Business & Professions Code §17200, et seq.)
9. Statutory Penalties (Labor Code §§558, 2699, subd. (f))

**DEMAND FOR JURY TRIAL**

1 Plaintiffs ANTHONY GRANA, RITA CHEW and EDWARD MARTIN (“Named  
2 Plaintiffs”) allege, on behalf of themselves and a putative class of those similarly situated, as  
3 follows:

#### 4 INTRODUCTION

5 1. Named Plaintiffs bring this case as a class action against PICO Enterprises, Inc.,  
6 doing business as Phyle Inventory Control Specialists and PICS, a Nevada corporation  
7 (“Defendant” or “PICS”) and DOES 1-100 for failing to pay all wages and overtime due under  
8 California law and provide meal periods or appropriate compensation in lieu thereof to its  
9 Auditors. PICS failed to properly itemize wage statements for all wages due at termination, and  
10 failed to timely pay all wages due during employment and at termination.

#### 11 JURISDICTION AND VENUE

12 2. Venue as to each Defendant is proper in this judicial district, pursuant to Code of  
13 Civil Procedure, section 395. Defendant PICS is a Nevada corporation that transacts business in  
14 Los Angeles County, California. Defendants employ auditors and inventory control specialist  
15 employees and conduct business in Los Angeles County, and each Defendant is within the  
16 jurisdiction of this Court for service of process purposes. The California Superior Court also has  
17 jurisdiction in this matter because the individual members of the classes herein are under the  
18 seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for Federal Court and the  
19 aggregate claim is under the five million dollar (\$5,000,000.00) threshold of the Class Action  
20 Fairness Act of 2005. The unlawful acts alleged herein have a direct effect on Plaintiffs and  
21 those similarly situated within the State of California and within Los Angeles County.  
22 Defendants employ numerous Class Members in Los Angeles County. There is no federal  
23 question at issue as the issues herein are based solely on California statutes and law, including  
24 the Labor Code, IWC Wage Orders, Code of Civil Procedure, Civil Code, and Business and  
25 Professions Code.

26 3. Business and Professions Code, section 17204 provides that any person acting on  
27 his or her own behalf may bring an action in a court of competent jurisdiction. Thus, the above  
28 entitled court maintains appropriate jurisdiction to hear this matter.

SUMMARY OF CLAIMS

1  
2 4. Named Plaintiffs are former Auditors who were not fully and properly  
3 compensated by PICS for all straight and overtime hours worked as required by the applicable  
4 state wage and hour laws of California. PICS fails to properly compensate Auditors for all  
5 mandatory, on-duty, non-commute travel time, resulting in failure to pay all wages and overtime.  
6 PICS also fails to pay the appropriate overtime rate of pay for hours worked on the seventh  
7 consecutive day of the workweek and for shifts exceeding eight hours that overlap two calendar  
8 days.

9 5. Named Plaintiffs were not provided with appropriate meal periods or appropriate  
10 compensation in lieu thereof, provided with accurate itemized wage statements and not timely  
11 paid all wages due during their employment and at termination.

12 6. The primary job duty of Named Plaintiffs and the Class was to count products and  
13 conduct inventory in retail stores, following specific company guidelines, instructions and  
14 information.

15 7. PICS unlawfully failed to pay all hourly and overtime wages owed the Named  
16 Plaintiffs and the Class members who worked without proper compensation for all hourly and  
17 overtime work under California law and failed to properly provide meal periods or appropriate  
18 compensation in lieu thereof. The Named Plaintiffs and the Class members worked overtime  
19 hours, as defined by applicable laws, and are and have been entitled to minimum wage, hourly  
20 pay and premium compensation at one and one-half times the regular hourly rate ("overtime  
21 compensation") for those hours, and at twice the regular hourly rate for some overtime hours.

22 8. PICS has willfully refused to pay Named Plaintiffs and the Class members the  
23 required hourly and overtime compensation for all hours worked, the hour of pay in lieu of  
24 statutorily required meal periods, and has failed to keep proper time records as required by law.

25 9. Defendant's practices violate California state laws as pled herein. Named  
26 Plaintiffs seek payment for wages for all hours and overtime employees were required, suffered,  
27 or permitted by PICS to work and for missed meal periods, and/or other damages and penalties  
28 as permitted by applicable law, interest, and attorneys' fees and costs.

**THE PARTIES**

1  
2           10.     Plaintiff Anthony Grana is a resident of La Verne, California, and he was  
3 employed by PICS from approximately February 2009 until March 2011. Plaintiff Rita Chew is  
4 a resident of Monrovia, California, and she was employed by PICS from approximately April  
5 2008 until April 2010. Plaintiff Edward Martin is a resident of El Monte, and has been employed  
6 by PICS since approximately March or April 2009. Messrs. Grana and Martin and Ms. Chew  
7 traveled to various retail outlets to perform auditing and inventory control related tasks during  
8 the Class Period. Named Plaintiffs were subject to PICS' policy of failing to pay for all travel  
9 time. Messrs. Grana and Martin and Ms. Chew worked hours in excess of forty hours per week,  
10 eight hours in a day, and seven consecutive days without receiving all hourly and overtime  
11 compensation due them as required by state law, nor were they paid for all travel time during  
12 which they subject to the control of their employer, nor did they receive statutory meal periods or  
13 appropriate compensation in lieu thereof during the Class Period. Named Plaintiffs were also not  
14 timely paid all wages due during their employment and at termination, nor were they provided  
15 with properly itemized wage statements.

16           11.     Defendant PICS, INC. is a Nevada corporation employing Auditors to provide  
17 inventory control services throughout the State of California, with its corporate headquarters  
18 located in Holly, Michigan. The practices described herein were used by PICS throughout the  
19 State of California.

20           12.     The true names and capacities, whether individual, corporate, associate, or  
21 otherwise, of Defendants sued herein as DOES 1 through 100, inclusive, are currently unknown  
22 to Plaintiffs, who therefore sue Defendants by such fictitious names under Code of Civil  
23 Procedure section 474. Plaintiffs are informed and believe, and based thereon allege, that each  
24 of the Defendants designated herein as a DOE is legally responsible in some manner for the  
25 unlawful acts referred to herein. Plaintiffs will seek leave of court to amend this Complaint to  
26 reflect the true names and capacities of the Defendants designated hereinafter as DOES when  
27 such identities become known.

28           13.     Plaintiffs are informed and believe, and based thereon allege, that each Defendant

1 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a  
2 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each  
3 Defendant are legally attributable to the other Defendants.

#### 4 GENERAL ALLEGATIONS

5 14. During all or a portion of the Class Period, Named Plaintiffs and each member of  
6 the Class were employed by Defendants and each of them, in the State of California.

7 15. California Labor Code section 204 provides that wages earned are due and  
8 payable twice a month. California Labor Code section and 1194 provides that notwithstanding  
9 any agreement to work for a lesser wage, an employee receiving less than the legal overtime  
10 compensation is entitled to recover in a civil action the unpaid balance of their overtime  
11 compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

12 16. Plaintiff and each Plaintiff Class member were non-exempt employees covered  
13 under one or more Industrial Welfare Commission (IWC) Wage Orders, including 7-2001  
14 ("Wage Orders"), and Labor Code sections 510 and 1194, and/or other applicable wage orders,  
15 regulations and statutes, and each Plaintiff Class member was not subject to an exemption for  
16 executive, administrative, professional employees, or any other exemption, which imposed an  
17 obligation on the part of the Defendants to pay Plaintiffs and the Class members lawful overtime  
18 compensation, as well as to provide statutory meal periods.

19 17. During the Class Period, Defendants were obligated to pay Named Plaintiffs and  
20 the Class for all straight-time hours worked, overtime compensation for shifts over eight (8)  
21 hours of work in one day, shifts exceeding eight hours which overlap two calendar days, working  
22 more than forty (40) hours in one week, or on the seventh consecutive day of work during a  
23 workweek.

24 18. Named Plaintiffs and each Plaintiff Class member worked in excess of the  
25 maximum regular rate hours set by the IWC in the above Wage Orders, regulations or statutes,  
26 and therefore entitled Plaintiffs and Plaintiff Class members to appropriate overtime  
27 compensation at time and a half (1 ½) rate of their regular pay, and when applicable, double time  
28 rates as set forth by the above Wage Orders, regulations and/or statutes.



1 overlapped two calendar days. (Overlap Overtime Claim Subclass);

2 c. All members of the Plaintiff class who were subject to a company practice of  
3 failing to pay appropriate overtime for shifts worked on the seventh consecutive workday  
4 in a workweek. (7<sup>th</sup> Day Overtime Claim Subclass);

5 d. All members of the Plaintiff class who were subject to a company practice of  
6 failing to pay meal period premium pay where time records show no meal period was  
7 taken. (Meal Period Claim Subclass);

8 e. All members of the Plaintiff class who, within three years of the filing of the  
9 Complaint, were subject to a company practice of failing to timely pay wages at  
10 termination. (Waiting Time Claim Subclass);

11 f. All members of the Plaintiff class who, within one year of the filing of the  
12 Complaint, were subject to a company practice of failing to accurately itemize wage  
13 statements. (Wage Statement Claim Subclass);

14 g. All Class members bringing wage claims under the California Unfair Competition  
15 Law. (UCL Claim Subclass);

16 h. All Class members bringing claims who, as a result of being subject to  
17 Defendants' policies and practices violating various Labor Code provisions, are entitled  
18 to penalties under the California Private Attorneys General Act. (PAGA Claim Subclass)

19 26. Plaintiffs reserve the right under California Rule of Court 3.765(b) and other  
20 applicable law to amend or modify the class definition with respect to issues or in any other  
21 ways. Plaintiffs are the Named Representatives and are members of the Plaintiff Class.  
22 Plaintiffs seek class-wide recovery based on the allegations set forth in this complaint.

23 27. This action has been brought and may be maintained as a class action pursuant to  
24 Code of Civil Procedure, section 382 because there is a well-defined community of interest in the  
25 litigation and the proposed Class is easily ascertainable through the records Defendants are  
26 required to keep.

27 28. **Numerosity**. The members of the Class are so numerous that individual joinder  
28 of all of them as Plaintiffs is impracticable. While the exact number of the Class members is  
unknown to Plaintiffs at this time, Plaintiffs are informed and believe and thereon allege that  
there are more than 100 Class members.

29. **Commonality**. Common questions of law and fact exist as to all Class members  
and predominate over any questions that affect only individual members of the Class. These

1 common questions include, but are not limited to:

2 30. Did Defendants violate Labor Code section 204 by failing to pay all wages earned  
3 for mandatory, on-duty travel time?

4 31. Did Defendants violate Labor Code sections 510 or 1194 by improperly failing to  
5 pay all overtime time wages for mandatory on-duty travel time?

6 32. Did Defendants violate Labor Code sections 510 or 1194 by improperly failing to  
7 pay the applicable overtime rate of pay when an employee begins the shift on one calendar day  
8 and ends the same day when the shift exceeds eight (8) hours?

9 33. Did Defendants violate Labor Code sections 510 or 1194 by improperly failing to  
10 pay the applicable overtime rate of pay when an employee begins the shift on one calendar day  
11 and continues working into the next calendar day when the shift exceeds eight (8) hours?

12 34. Did Defendants violate Labor Code sections 510 or 1194 by improperly failing to  
13 pay the applicable overtime rate of pay when an employee works seven consecutive days in a  
14 workweek?

15 35. Did Defendants violate Labor Code sections 226.7, 512 and Wage Order 7-  
16 2001(11) by not providing the Class Members meal periods and not paying them an additional  
17 hour's of pay in lieu thereof?

18 36. Did Defendants violate Labor Code section 226 by knowingly and intentionally  
19 failing to provide accurate itemized wage statements?

20 37. Did Defendants violate Labor Code sections 201 and/or 202 by not paying Class  
21 Members who are no longer employed by Defendants all earned wages, including straight time  
22 wages, overtime wages, and wages due under Labor Code section 226.7 and 512, upon their  
23 termination of employment? If so, were such violations "willful" within the meaning of Labor  
24 Code section 203?

25 38. Did Defendants violate the Unfair Competition Law, Business & Professions  
26 Code, section 17200, et seq., by engaging in the conduct alleged in this complaint?

27 39. Whether Defendants violated California Labor Code sections 558 and 2699?

28 40. What are the effects and the extent of any injuries sustained by the Plaintiff Class



1 and Plaintiff Subclass members and appropriate type and/or measure of damages?

2 41. What is the amount of restitution owed by the Defendants attributable to their  
3 violation of the Unfair Competition Law by failure to pay overtime compensation to the class  
4 members, and other wage violations?

5 42. What is the appropriateness and nature of relief to each Plaintiff Class and  
6 Subclass member?

7 43. What is the extent of liability of each Defendant, including DOE defendants, to  
8 each Plaintiff Class and Subclass member?

9 44. Is injunctive relief appropriate to ensure Defendants' compliance with the  
10 requirements of the Labor Code with respect to members of the Class who are still currently  
11 employed by Defendants?

12 45. **Typicality.** Plaintiffs' claims are typical of the claims of the other members of  
13 the Class. Plaintiffs and other members of the Class were subject to the same policy and practice  
14 of improperly failing to pay all straight time and overtime hours for mandatory on-duty travel  
15 time. Defendants failed to pay Plaintiffs and members of the Plaintiff Class overtime  
16 compensation for hours worked over eight (8) hours per day when the shift begins on one  
17 calendar day and continues into the next calendar day. Defendants also failed to pay Plaintiffs  
18 and members of the Plaintiff Class appropriate overtime for the seventh day of work in a  
19 workweek. Defendants failed to provide Plaintiff and members of the Plaintiff Class with  
20 statutory meal periods or appropriate compensation in lieu thereof. Defendants failed to provide  
21 accurate, itemized wage statements to Plaintiffs and members of the Plaintiff Class. Finally,  
22 Defendants failed to pay all wages owed to Plaintiffs and Plaintiff Class members upon  
23 termination of employment.

24 46. **Adequacy.** Plaintiffs will adequately and fairly protect the interests of the  
25 members of the Class. Plaintiffs have no interest adverse to the interests of absent Class  
26 members. Plaintiffs are represented by attorneys who have substantial class action experience in  
27 wage-and-hour and class action law.

28 47. **Superiority.** A class action is superior to other available means for fair and

1 efficient adjudication of the claims of the Class and would be beneficial for the parties and the  
2 Court. Class action treatment will allow a large number of similarly situated persons to  
3 prosecute their common claims in a single forum, simultaneously, efficiently, and without the  
4 unnecessary duplication of effort and expense that numerous individual actions would require.  
5 The damages suffered by each Class member are relatively small in the sense pertinent to class  
6 action analysis, and the expense and burden of individual litigation would make it extremely  
7 difficult or impossible for the individual Class members to seek and obtain individual relief. A  
8 class action will serve an important public interest by permitting such individuals to effectively  
9 pursue recovery of the sums owed to them. Further, class litigation prevents the potential for  
10 inconsistent or contradictory judgments raised by individual litigation.

11 48. The Class is so numerous that joinder of all members is impracticable. Plaintiffs  
12 are informed and believe, and on that basis allege, that during the Class Period Defendant PICS  
13 has employed at least one hundred persons who satisfy the definition of the California Class.

14 **FIRST CAUSE OF ACTION**

15 **(Labor Code §204)**

16 **(Brought by Named Plaintiffs on Behalf of Themselves and Travel Time Claim Subclass)**

17 49. Named Plaintiffs re-allege and incorporate by reference the foregoing paragraphs.

18 50. By failure to pay straight time wages, as alleged above, Defendants willfully  
19 violated the provisions of Labor Code section 204.

20 51. California law requires an employer, such as Defendants, to pay compensation to  
21 all non-exempt employees for all hours worked.

22 52. Named Plaintiffs and Travel Time Claim Subclass members were non-exempt  
23 employees entitled to be paid compensation for all hours worked.

24 53. Throughout the Class Period, Named Plaintiffs and Travel Time Claim Subclass  
25 members worked hours without compensation at the appropriate hourly rate.

26 54. As a direct and proximate result of Defendants' unlawful conduct, as set forth  
27 herein, Named Plaintiffs and the Travel Time Claim Subclass members have sustained damages,  
28 including loss of compensation for straight time worked on behalf of Defendants in an amount to  
be established at trial, prejudgment interest, and costs and attorneys' fees, pursuant to statute and

1 other applicable law.

2 **SECOND CAUSE OF ACTION**

3 **(Labor Code §§510, 1194, IWC Wage Order 7-2001(3)(A)(1)(a), Cal. Code Regs., Title 8 §**  
4 **11070(3))**

4 **(Brought by Named Plaintiffs on Behalf of Themselves and Travel Time Claim Subclass)**

5 55. Named Plaintiffs re-allege and incorporate by reference the foregoing paragraphs.

6 56. By failure to pay overtime wages, as alleged above, Defendants willfully violated  
7 the provisions of Labor Code sections 510 and 1194, IWC Wage Order 7-2001 and California  
8 Code of regulations, Title 8, section 11070(3).

9 57. California law requires an employer, such as Defendants, to pay overtime  
10 compensation to all non-exempt employees for all hours worked over forty per week, or over  
11 eight per day.

12 58. The Named Plaintiffs and Travel Time Claim Subclass members were non-  
13 exempt employees entitled to be paid compensation for all hours and overtime worked.

14 59. Throughout the Class Period, Named Plaintiffs and Travel Time Claim Subclass  
15 members worked in excess of eight hours in a workday and/or forty hours in a workweek and  
16 may have worked in excess of twelve hours in a workday, all without compensation at the  
17 appropriate overtime rate.

18 60. As a direct and proximate result of Defendants' unlawful conduct, as set forth  
19 herein, Named Plaintiffs and Travel Time Claim Subclass members have sustained damages,  
20 including loss of compensation for overtime worked on behalf of Defendants in an amount to be  
21 established at trial, prejudgment interest, and costs and attorneys' fees, pursuant to statute and  
22 other applicable law.

23 **THIRDCAUSE OF ACTION**

24 **(Labor Code §§510, 1194, IWC Wage Order 7-2001(3)(A)(1)(a), Cal. Code Regs., Title 8 §**  
25 **11070(3))**

25 **(Brought by Named Plaintiffs on Behalf of Themselves and Overlap Overtime Claim**  
26 **Subclass)**

26 61. Named Plaintiffs re-allege and incorporate by reference the foregoing paragraphs.

27 62. California Labor Code section 510 states that "[e]ight hours of labor constitutes a  
28 day's work. Any work in excess of eight hours in one workday and any work in excess of 40

1 hours in any one workweek and the first eight hours worked on the seventh day of work in any  
2 one workweek shall be compensated at the rate of no less than one and one-half times the regular  
3 rate of pay for an employee.”

4 63. The Named Plaintiffs and Overlap Overtime Claim Subclass members were non-  
5 exempt employees entitled to be paid at a rate of one and one-half times the regular rate of pay  
6 for hours worked for shifts exceeding eight hours of consecutive work when the shift overlaps  
7 two days by beginning on one calendar day and ending on the next calendar day.

8 64. Throughout the Class Period, Named Plaintiffs and Class Overlap Overtime  
9 Claim Subclass members worked hours before midnight on one calendar day and hours worked  
10 after midnight on the following day and were not paid the proper overtime rate for all hours  
11 worked beyond eight consecutive hours.

12 65. As a direct and proximate result of Defendant’s unlawful conduct, as set forth  
13 herein, Named Plaintiffs and Overlap Overtime Claim Subclass members have sustained  
14 damages, including loss of earnings for hours worked on behalf of Defendant in an amount to be  
15 established at trial, prejudgment interest, and costs and attorneys’ fees, pursuant to statute and  
16 other applicable law.

17 **FOURTH CAUSE OF ACTION**

18 **(Labor Code §§510, 1194, IWC Wage Order 7-2001(3)(A)(1)(a), Cal. Code Regs., Title 8 §**  
19 **11070(3))**

20 **(Brought by Named Plaintiffs on Behalf of Themselves and the 7<sup>th</sup> Day Overtime Claim**  
21 **Subclass)**

22 66. Named Plaintiffs re-allege and incorporate by reference the foregoing paragraphs.

23 67. Named Plaintiffs and the 7<sup>th</sup> Day Overtime Claim Subclass members were non-  
24 exempt employees entitled to be paid at a rate of one and one-half times the regular rate of pay  
25 for the first eight hours worked on the seventh day of work in any one workweek.

26 68. Throughout the Class Period, Named Plaintiffs and the 7<sup>th</sup> Day Overtime Subclass  
27 members worked hours on the seventh consecutive day of a workweek and were not paid the  
28 proper overtime rate for those hours.

69. As a direct and proximate result of Defendant’s unlawful conduct, as set forth  
herein, Named Plaintiffs and the 7<sup>th</sup> Day Overtime Claim Subclass members have sustained

1 damages, including loss of earnings for hours worked on behalf of Defendant in an amount to be  
2 established at trial, prejudgment interest, and costs and attorneys' fees, pursuant to statute and  
3 other applicable law.

**FIFTH CAUSE OF ACTION**

4 **(Failure to Provide Meal Periods or Pay in Lieu Thereof, Cal. Labor Code §§226.7 and 512,**  
5 **Wage Order 7-2011(11), Cal. Code Regs., Title 8 § 11070(11))**  
6 **(Brought by Named Plaintiffs on Behalf of Themselves and the Meal Period Claim**  
7 **Subclass)**

7 70. Named Plaintiffs re-allege and incorporate by reference the foregoing paragraphs.

8 71. At all relevant times, Plaintiffs and all other members of the Class were  
9 employees of Defendants covered by Labor Code sections 512 and 226.7 and Wage Order 7-  
10 2001 of the Industrial Welfare Commission.

11 72. Labor Code section 512(a) provides as follows:

12 An employer may not employ an employee for a work period of more than five  
13 hours per day without providing the employee with a meal period of not less than  
14 30 minutes, except that if the total work period per day of the employee is no  
15 more than six hours, the meal period may be waived by mutual consent of both  
16 the employer and employee. An employer may not employ an employee for a  
17 work period of more than 10 hours per day without providing the employee with a  
18 second meal period of not less than 30 minutes, except that if the total hours  
19 worked in no more than 12 hours, the second meal period may be waived by  
20 mutual consent of the employer and the employee only if the first meal period was  
21 not waived.

18 73. Labor Code section 226.7 provides as follows:

19 (a) No employer shall require any employee to work during any meal or rest  
20 period mandated by an applicable order of the Industrial Welfare  
21 Commission.

22 (b) If an employer fails to provide an employee a meal period or rest period in  
23 accordance with an applicable order of the Industrial Welfare Commission,  
24 the employer shall pay the employee one additional hour of pay at the  
25 employee's regular rate of compensation for each work day that the meal  
26 period or rest period is not provided.

24 74. Wage Order 7-2001, section 11(A) provides, in pertinent part: "No employer shall  
25 employ any person for a work period of more than five (5) hours without a meal period of not  
26 less than 30 minutes . . ."

27 75. Defendant failed to provide the Meal Period Claim Subclass with meal periods as  
28 provided in Labor Code sections 226.7 and 512, and failed to pay them the additional pay at the

1 employee's regular rate of compensation for each work day in lieu of providing off-duty meal  
2 period(s).

3 76. As a result of Defendant's failure to comply with their obligations under Labor  
4 Code sections 512 and 226.7 and Wage Order 7-2001, Plaintiffs and the other members of the  
5 Meal Period Claim Subclass have suffered damages in an amount, subject to proof, to the extent  
6 they were not paid additional pay owed for Defendants' failure to provide meal periods as  
7 required by the law. Pursuant to Labor Code section 218, Plaintiffs and other members of the  
8 Class are entitled to recover the full amount of their unpaid additional pay for Defendants'  
9 failure to provide meal periods as required by law. Pursuant to Labor Code section 218.6,  
10 Plaintiffs and other members of the Class are entitled to recover prejudgment interest on the  
11 amount of the additional pay owed.

12 **SIXTH CAUSE OF ACTION**  
13 **(Waiting Time Provisions, Cal. Labor Code §203)**  
14 **(Brought by Named Plaintiffs Grana and Chew on Behalf of Themselves and Waiting Time**  
15 **Claim Subclass)**

16 77. Named Plaintiffs re-allege and incorporate by reference the foregoing paragraphs.

17 78. California Labor Code section 203 provides that if an employer willfully fails to  
18 timely pay wages, the employer must continue to pay the subject employee's wages until the  
19 back wages are paid in full or an action is commenced, up to a maximum of thirty days of wages.

20 79. All Waiting Time Claim Subclass members who ceased employment with  
21 Defendants are entitled to unpaid compensation, but to date have not received such  
22 compensation.

23 80. More than thirty days have passed since Named Plaintiffs Grana and Chew and  
24 members of the Waiting Time Claim Subclass left Defendants' employ.

25 81. As a consequence of Defendants' willful conduct in not paying compensation for  
26 all hours worked, the California Class Members whose employment ended during the class  
27 period are entitled to thirty days' wages under Labor Code section 203, together with interest  
28 thereon and attorneys' fees and costs.



1 alleged above, constitute unlawful activity prohibited by Business and Professions Code sections  
2 17200, et seq. The actions of Defendants described above constitute false, unfair, fraudulent and  
3 deceptive business practices, within the meaning of Business and Professions Code sections  
4 17200, et seq.

5 87. Named Plaintiffs are entitled to an injunction, restitution, and other equitable  
6 relief against such unlawful practices in order to prevent future damage, for which there is no  
7 adequate remedy at law, and to avoid a multiplicity of lawsuits.

8 88. As a result of these unlawful acts, Defendants have reaped and continue to reap  
9 unfair benefits and illegal profits at the expense of Named Plaintiffs and the Class and  
10 Subclasses they seek to represent. Defendants should be enjoined from this activity and make  
11 restitution for these ill-gotten gains to restore to Named Plaintiffs and the members of the  
12 California Class the wrongfully under-reimbursed amounts, underpaid wages and overtime  
13 pursuant to Business and Professions Code section 17203 and specific performance of payment  
14 of penalties ordered under Business and Professions Code section 17202. Plaintiffs are informed  
15 and believe, and thereon allege, that Defendants are unjustly enriched through the acts described  
16 above. Named Plaintiffs are informed and believe, and thereon allege, that they and the Class  
17 are prejudiced by Defendants' unfair practices.

18 89. The illegal conduct alleged herein is continuing, and there is no indication that  
19 Defendants will not continue such activity into the future. Named Plaintiffs allege that if  
20 Defendants are not enjoined from the conduct set forth in this Complaint, they will continue to  
21 fail to pay all hourly and overtime wages, appropriate overtime rates of pay for shifts that begin  
22 on one day and end on the next and for work on the seventh consecutive day of the workweek,  
23 provide inaccurate wage statements, fail to pay all wages due at termination, and fail to pay and  
24 avoid paying appropriate taxes, insurance, and unemployment withholdings.

25 90. Named Plaintiffs will request that the Court issue a preliminary and permanent  
26 injunction prohibiting Defendants from continuing to fail to fully pay all appropriate hourly and  
27 overtime rates of pay, appropriate overtime rates of pay for shifts that begin on one day and end  
28 on the next and for the seventh consecutive workday in a workweek, and all wages due at



1 termination, and requiring Defendants to provide accurate hourly wage statements.

2 **NINTH CAUSE OF ACTION**  
3 **Statutory Penalties**  
4 **(Labor Code §2699, et seq.)**  
5 **(Brought by Named Plaintiffs on Behalf of Themselves and PAGA Claim Subclass)**

6 91. Named Plaintiffs hereby re-allege and incorporate the foregoing paragraphs.

7 92. The failure to pay all wages and overtime owed for mandatory, on-duty travel  
8 time, failure to pay overtime for hours worked during shifts exceeding eight (8) hours when the  
9 shift begins on one calendar day and ends on the next calendar day, failure to pay overtime for  
10 hours worked on the seventh consecutive workday in a workweek, failure to provide statutory  
11 meal periods, failure to pay all wages owed to terminated or resigned employees, and the  
12 knowing and intentional failure to provide accurate and itemized wage statements subjects  
13 Defendant to civil penalties pursuant to California Labor Code sections 558 and 2699  
14 subdivision (f).

15 93. As a result of the violations alleged herein, Named Plaintiffs, as aggrieved  
16 employees on behalf of themselves and other current and former hourly, non-exempt employees  
17 of Defendants, seek all civil penalties available pursuant to Labor Code sections 558 and 2699, et  
18 seq. Therefore, pursuant to Labor Code sections 558 and 2699, et seq., Plaintiffs, as aggrieved  
19 employees on behalf of themselves and other hourly, non-exempt employees are entitled to  
20 collect all civil penalties owed, attorneys' fees, expenses, and costs of suit.

21 94. Labor Code section 2699.5 identifies, inter alia, Labor Code sections 201-203,  
22 226, 226.7, 510, 512, 1174 and 1194 as statutes to which Sections 2699.3's procedural  
23 requirements must be met before a penalty may be assessed under Section 2699 subdivision (f).  
24 Plaintiffs have complied with the procedural requirements specified in Labor code section  
25 2699.3 by providing written notice by certified mail to the Labor and Workforce Development  
26 Agency (LWDA). (See, Exhibit A attached hereto.) The LWDA has indicated that it does not  
27 intend to investigate the allegations. (See, Exhibit B attached hereto.) As a consequence, Named  
28 Plaintiffs have exhausted administrative remedies, and on behalf of themselves and all other  
aggrieved current and former employees of Defendants. Named Plaintiffs, therefore, pursue this

1 cause of action as permitted by Labor Code sections 2699, et seq.

2 95. Enforcement of statutory provisions enacted to protect workers and to ensure  
3 proper and prompt payment of wages due to employees is a fundamental public interest in  
4 California. Consequently, Named Plaintiffs' success in this action will result in the enforcement  
5 of important rights as affecting the public interest and will confer a significant benefit upon the  
6 general public. Private enforcement of the rights enumerated herein is necessary, as no public  
7 agency has pursued enforcement. Named Plaintiffs are incurring a financial burden in pursuing  
8 this action and it would be against the interests of justice to require the payment of attorneys' fees  
9 and costs from any recovery that might be obtained herein, pursuant to, inter alia, Labor Code  
10 sections 218.5, 226, 1194 and 2699, Wage Order 7-2001, and Code of Civil Procedure section  
11 1021.5.

12 96. In addition, if Plaintiffs succeed in enforcing these rights affecting the public  
13 interest, then attorneys' fees may be awarded to Plaintiffs and against Defendants under Code of  
14 Civil Procedure section 1021.5 and other applicable law in part because:

15 a. A successful outcome in this action will result in the enforcement  
16 of important rights affecting the public interest by requiring Defendants to comply with the wage  
17 and hour laws and California's unfair business practice law;

18 b. This action will result in a significant benefit to Named Plaintiffs,  
19 the Class, and the general public by bringing to a halt unlawful and/or unfair activity and by  
20 causing the return of ill-gotten gains obtained by Defendants;

21 c. Unless this action is prosecuted, members of the Class and general  
22 public will not recover those monies, and many of Defendants' employees would not be aware  
23 that the acts and practices they were subjected to by Defendants were wrongful;

24 d. Unless this action is prosecuted, Defendants will continue to  
25 mislead their employees about the true nature of their rights and remedies under the wage and  
26 hour laws; and

27 e. An award of attorneys' fees and costs is necessary for the  
28 prosecution of this action and will result in a benefit to Named Plaintiffs, the Class, and to

1 consumers in general by preventing Defendants from continuing to circumvent the wage and  
2 hour statutes and frustrate the long-standing recognition by the California legislature and the  
3 courts that such statutes, as pled herein, are not merely a matter of private concern between  
4 employer and employee to be eviscerated by considerations of waiver, contributory negligence,  
5 good or bad faith, and private agreements. Rather, the wage and hour statutes have been  
6 described as a matter of public concern, were designed to provide minimum substantive  
7 guarantees to individual workers, and are essential to public welfare.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Named Plaintiffs, on behalf of themselves and all members of the Class  
10 and they seek to represent, pray for relief as follows:

- 11 A. Certification of this action as a class action on behalf of the proposed class;
- 12 B. Designation of Named Plaintiffs as Class Representatives for the Class and  
13 Subclasses they seek to represent;
- 14 C. A declaratory judgment that the practices complained of herein are unlawful  
15 under appropriate state law;
- 16 D. Appropriate equitable relief to remedy Defendants' violations of state law,  
17 including but not necessarily limited to an order enjoining Defendants from continuing their  
18 unlawful practices;
- 19 E. Appropriate statutory penalties;
- 20 F. An award of compensatory and punitive damages to the extent available,  
21 liquidated damages pursuant to Labor Code section 1194.2, and restitution to be paid by  
22 Defendants according to proof;
- 23 G. Pre-Judgment and Post-Judgment interest, as provided by law;
- 24
- 25 H. Such other equitable relief as the Court may deem just and proper; and
- 26 I. Attorneys' fees and costs of suit, including expert fees and fees pursuant to  
27 California Labor Code sections 218.5, 1194, California Code of Civil Procedure sections 1021.5,  
28 and other applicable state laws.

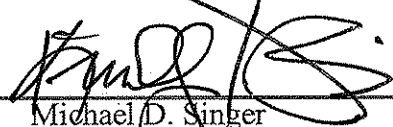
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J. For an order that Defendants make restitution to Named Plaintiffs and the California Class due to their unlawful business practices, including unlawfully-collected compensation pursuant to California Business and Professions Code sections 17203 and 17204; and

K. Such other legal equitable relief as this Court deems necessary, just, and proper.

Dated: November 8, 2011

Respectfully submitted,  
**COHELAN KHOURY & SINGER**  
**UNITED EMPLOYEES LAW GROUP, PC**


By:   
Michael D. Singer  
Kimberly D. Neilson  
*Attorneys for Plaintiffs and the proposed Plaintiff Classes*

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a jury trial on all causes of action and claims with respect to which they have a right to jury trial.

Dated: November 8, 2011

Respectfully submitted,  
**COHELAN KHOURY & SINGER**  
**UNITED EMPLOYEES LAW GROUP, PC**

By:   
Michael D. Singer  
Kimberly Neilson  
*Attorneys for Plaintiffs and the proposed Plaintiff Classes*