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9 in the State of California

10 **SUPERIOR COURT OF CALIFORNIA**

11 **FOR THE COUNTY OF KERN**

12 TODD POWELL, individually, and as a
13 Private Attorney General Act
14 Representative of similarly aggrieved
15 individuals in the State of California

16 Plaintiff,

17 vs.

18 BADGER DAYLIGHTING CORP., an
19 Indiana Corporation; and DOES 1 through
20 20, inclusive.

21 Defendants.

Case Number: BCV-15-101202

22 **SECOND AMENDED CLASS ACTION**
23 **COMPLAINT FOR:**

- 24 1. Failure to Pay Overtime Wages;
- 25 2. Failure to Provide Meal Periods;
- 26 3. Failure to Provide Rest Periods;
- 27 4. Failure to Furnish Accurate Wage
28 Statements;
5. Failure to Pay All Wages Earned;
6. Failure to Maintain Required Records;
7. Failure to Pay Earned Wages Upon
Termination;
8. Failure to Indemnify for Necessary
Business Expenses;
9. Unfair Competition in Violation of
Business & Professions Code Section
17200; and
10. Penalties Pursuant to Labor Code
Section 2699

[JURY TRIAL DEMANDED]

COMES NOW Plaintiff, TODD POWELL ("Plaintiff"), individually, and on behalf of all similarly situated individuals hereby respectfully alleges, avers, and complains, as follows:

INTRODUCTION

1. This is a class action brought on behalf of Plaintiff individually, and all other individuals similarly situated who worked for BADGER DAYLIGHTING CORP. and Does 1-20 ("Badger"), as non-exempt Operators or Swampers in the State of California.

2. Plaintiff and all other similarly aggrieved individuals are or were employed by Defendant as non-exempt employees in California between June 9, 2013 and the present (the "Class Period") and were denied the benefits and protections required under the California Labor Code and other statutes and regulations applicable to employees in the State of California.

3. Plaintiff and Class Members allege that Badger (1) failed to pay Plaintiff and Class Members all overtime wages for all of the overtime hours that they were suffered and permitted to work; (2) failed to provide Plaintiff and Class Members compliant meal periods and failed to pay one hour of pay at the employees' regular rate of compensation for each workday that the meal period was not provided in a compliant manner; (3) failed to authorize and permit Plaintiff and Class Members to take compliant rest periods, and failed to pay one hour of pay at the employees' regular rate of compensation for each workday that a compliant rest period was not authorized or permitted; (4) failed to furnish accurate wage statements; (5) failed to pay all wages earned each pay period on the regular payday for the pay period; (6) failed to maintain required records; (7) failed to pay all earned wages to employees after their employment ended in violation of Labor Code §§ 201 and 202; (8) failed to indemnify employees for necessary business expenses; (9) violated California Business & Professions Code §§ 17200, *et seq.*; and (10) are liable for penalties pursuant to Labor Code §§ 2699, *et. seq.*

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8. Defendant Badger Daylighting is a Nevada corporation doing business in the state of California at all times relevant to this Complaint. On information and belief, Defendant owns and operates a hydrovac excavation services company.

9. Plaintiff is presently unaware of the names or capacities of the defendants named in this Complaint as Does 1-20 inclusive, and therefore sue said defendants by said fictitious names. Plaintiff will seek leave of this Court to amend this Complaint to allege the true names and capacities of said defendants when they have been ascertained. Plaintiff is informed and believes, and thereon alleges, that each of said fictitiously named Defendants are responsible in some manner for the acts, omissions and damages alleged in this Complaint.

10. Plaintiff is informed and believes, and thereon alleges, that at all times relevant to this Complaint, all Defendants, including the fictitiously named Defendants, were the agents, servants, alter egos, affiliates, employers, principals, joint ventures, partners, and/or employees of each other and engaged in the conduct alleged herein within the course, scope and authority of their respective capacities.

FACTUAL ALLEGATIONS

11. Plaintiff was employed as a non-exempt employee as a lead operator at Badger's location at 330 Industrial Way, Taft, California 93268.

12. Throughout Plaintiff's employment with Badger, Plaintiff has not been exempt from the Employment Laws and Regulations, in that he routinely spends a majority of his working hours performing duties delegated to non-exempt employees including, but not limited to, working as a lead operator, and other similarly non-exempt tasks.

13. Throughout Plaintiff's entire employment with Badger, Plaintiff spent few to none of his working hours performing work that was primarily intellectual, managerial or creative, or work that required the regular and customary exercise of discretion and independent judgment with respect to matters of significance on more than an occasional basis.

1 14. During Plaintiff's employment with Badger, Plaintiff was either required to
2 work through meal and rest breaks, which he was entitled to under California law, or
3 was often times interrupted during his meal and rest breaks. Additionally, when
4 working over a six-hour shift, Plaintiff often could not take his meal break within the first
5 five hours of work. Badger's regular practice was to change their employees' timecards to
6 reflect that they were providing their employees with meal and rest breaks, even when
7 this was not the case. Furthermore, Badger's regular practice was to instruct their
8 employees to "roll over" hours they worked in excess of employee's regular 16-hour
9 workday. On information and belief, Plaintiff and other similarly aggrieved employees
10 were not paid for their missed meal and/or rest breaks or given any type of premium
11 payment.

12 15. During Plaintiff's employment with Badger, Plaintiff was regularly required
13 to work over 8 hours in one day, and/or over 40 hours in one week. On information and
14 belief, Plaintiff and other similarly aggrieved employees were not paid for all overtime
15 worked.

16 16. During the course of their employment, Plaintiff and similarly aggrieved
17 employees used their personal vehicles for business purposes. Plaintiff and these
18 similarly aggrieved employees were never reimbursed for mileage or travel expenses.

19 17. As a result of these violations, Badger failed to pay all wages due, failed to
20 provide complete and accurate wage statements, failed to maintain required records, and
21 failed to provide all wages due upon termination.

22 18. Plaintiff also seeks reasonable attorney's fees and costs pursuant to
23 California Labor Code section 2699(g)(1) and 218.5, and any other applicable sections.

24 19. Plaintiff also seeks restitution and disgorgement of all sums wrongfully
25 obtained by Badger through unfair business practices in violation of California Business
26 & Professions Code section 17200, et seq., to prevent Defendants from benefiting from
27 their unlawful, fraudulent and unfair acts. Such sums recovered under the Unfair
28 Competition Act and Unfair Businesses Act are equitable in nature and are not to be

1 considered damages. Plaintiff is also entitled to costs, attorneys' fees, interest and
2 penalties as provided for by the Labor Code, the Business & Professions Code and Code
3 of Civil Procedure §1021.5.

4 20. As a result of these policies and practices, Plaintiff has brought this class
5 action for (1) failure to pay overtime wages; (2) failure to provide meal periods; (3)
6 failure to provide rest periods; (4) failure to furnish accurate wage statements; (5) failure
7 to pay all wages earned; (6) failure to maintain required records; (7) failure to pay
8 earned wages upon termination; (8) failure to indemnify employees' for necessary
9 business expenses; (9) engaging in unfair business practices in an effort to increase
10 profits and gain an unfair business advantage at the expense of Class Members and the
11 public; and (10) penalties pursuant to Labor Code § 2699.

12 CLASS ACTION ALLEGATIONS

13 21. Plaintiff brings this action on behalf of himself and all other similarly
14 situated persons as a class action pursuant to Code of Civil Procedure Section 382.
15 Plaintiff seeks to represent a Class composed of and defined as follows:

16 All former and current Operators and Swampers employed by
17 Badger anywhere in the State of California during the Class
Period, including the following subclasses:

- 18 i. Former Employees/NorCal: Class Members formerly employed by
Badger in Northern California (including Badger's locations in
19 Sacramento, San Jose, Martinez, and Fresno);
- 20 ii. Former Employees/SoCal: Class Members formerly employed by
Badger in Southern California (including Badger's locations in
21 Bakersfield, Los Angeles, Riverside, and San Diego);
- 22 iii. Current Employees: NorCal: Class Members currently employed by
Badger in Northern California; and'
- 23 iv. Current Employees: SoCal: Class Members currently employed by
Badger in Southern California.

24 22. Plaintiff reserves the right under Rule 1855(b), California Rules of Court, to
25 amend or modify the class description with greater specificity or further division into
subclasses or limitations to particular issues.

26 23. This action has been brought and may be maintained as a class action
27 pursuant to Code of Civil Procedure Section 382 because there is a well-defined
28 community of interest among many persons who comprise a readily ascertainable class.

1 24. **Numerosity and Ascertainability** (C.C.P. §382): The potential number of
2 Class Members as defined is so numerous that joinder of all members would be
3 unfeasible and impractical. The disposition of their claims through this class action will
4 benefit both the parties and the Court. The number of Class Members is approximately
5 171. The identify of each Class Member can readily be ascertained from Badger's
6 employment records.

7 25. **Superiority** (C.C.P. §382): The nature of this action and the nature of laws
8 available to Plaintiff make the use of the class action format particularly efficient and
9 appropriate. By establishing a technique whereby the claims of many individuals can be
10 resolved at the same time, the class suit both eliminates the possibility of repetitious
11 litigation and provides small claimants with a method of obtaining redress for claims
12 which would otherwise be too small to warrant individual litigation. Class action
13 treatment will allow a large number of similarly situated persons to prosecute their
14 common claims in a single forum, simultaneously, efficiently, and without the
15 unnecessary duplication of effort and expense that numerous individual actions would
16 require. The actual monetary recovery due to most of the individual Class Members is
17 likely to be relatively small, and the burden and expense of individual litigation would
18 make it prohibitive for individual Class Members to seek relief. A class action will serve
19 an important public interest by permitting such individuals to effectively pursue
20 recovery of the sums owed to them. Further, class litigation prevents the potential for
21 inconsistent or contradictory judgment if individual Class Members were to litigate
22 separately.

23 26. **Well-defined Community of Interest:** Plaintiff also meets the established
24 standards for class certification (*see, e.g. Lockheed Martin Corp. v. Superior Court* (2003) 29
25 Cal.4th 1096), as follows:

26 27. **Typicality:** The claims of Plaintiff are typical of the claims of all members
27 of the Class he seeks to represent because all members of the Class sustained injuries
28 and damages arising out of Badger's policy, practice, and common course of conduct in

1 violation of law and the injuries and damages of all members of the Class were caused
2 by Badger's wrongful conduct in said violation of law, as alleged herein.

3 28. **Adequacy:** Plaintiff Todd Powell:

- 4 a. Is an adequate representative of the Class he seeks to represent;
5 b. Will fairly protect the interests of the members of the Class;
6 c. Has no interests antagonistic to the members of the Class; and
7 d. Will vigorously pursue this suit via attorneys who are competent,
8 skilled and experienced in litigating matters of this type.

9 29. **Predominant Common Questions of Fact or Law:** There are common
10 questions of fact and/or law as to the members of the Class which predominate over
11 questions affecting only individual members of the Class, including, without limitation:

- 12 a. Whether Badger violated Labor Code Sections 1194 and 510 by not
13 paying overtime wages to Class members for all hours worked in
14 excess of eight in one day or in excess of forty hours in a week;
15 b. Whether Badger violated Labor Code Section 512 by not providing
16 Class Members with compliant meal periods and by not authorizing
17 and permitting compliant rest periods;
18 c. Whether Badger violated Labor Code Section 226.7 by not paying
19 Class Members premium penalties for non-compliant meal and rest
20 periods;
21 d. Whether Badger violated Labor Code Section 204 by not paying
22 Class Members for all wages earned during each pay period;
23 e. Whether Badger violated Labor Code Section 226(a) by not
24 providing Class Members with accurate wage statements;
25 f. Whether Badger violated Labor Cods Sections 226 and/or 1174 by
26 failing to maintain required records;

- 1 g. Whether Badger violated Labor Code Sections 201 and/or 202 by not
2 paying Class Members wages due upon termination in a timely
3 manner;
4 h. Whether Class Members who are no longer employed by Badger are
5 entitled to waiting time penalties under Labor Code Section 203;
6 i. Whether Badger violated Labor Code Section 2802 by failing to
7 indemnify Class Members for necessary business expenses;
8 j. Whether Badger's conduct constituted unfair competition or an
9 unlawful business practice under Business & Professions Code
10 Section 17200, *et. seq.*
11 k. Whether Badger is liable to Class Members for civil penalties under
12 Labor Code Section 2699;
13 l. Whether injunctive relief is appropriate to ensure Badger's
14 compliance with the Labor Code with respect to Class Members
15 currently employed by Badger;
16 m. Whether Class Members are entitled to attorneys' fees;
17 n. Whether Class Members are entitled to prejudgment interest;
18 o. Whether Class Members are entitled to restitution;
19 p. Whether each Class Member might be required to ultimately justify
20 an individual claim does not preclude maintenance of a class action.
21 *See Collins v. Rohca* (1972) 7 Cal.2d 232.

22 **FIRST CAUSE OF ACTION**

23 **For Failure to Pay Overtime Wages**

24 **(Against All Defendants)**

25 30. Plaintiff incorporates by reference and realleges as if fully stated herein the
26 material allegations set out above in the preceding paragraphs.

27 31. At all relevant times, Plaintiff and other Class Members were employees
28 covered by Labor Code sections 510, 1194, and the applicable Industrial Wage Order.

32. Pursuant to Labor Code sections 510, 1194, and the applicable Industrial Wage Order, Plaintiff and Class Members were entitled to overtime wages payable at the rate of at least one and one-half times their regular rate of pay for all overtime hours worked and payable at the rate of at least twice the regular rate of pay for all double-time hours worked.

33. Badger failed to pay Plaintiff and Class member their earned wages for all overtime hours worked in accordance with Labor Code sections 510, 1194, and the applicable Industrial Wage Order. Plaintiff is informed and believes and thereon alleges that at all relevant times within the applicable Class Period, Badger failed to pay Plaintiff and Class Members for all overtime worked.

34. As a result of Badger's unlawful conduct, Plaintiff and Class Members have suffered damages in an amount, subject to proof, to the extent they were not paid for all overtime hours worked.

35. Pursuant to Labor Code section 1194, Plaintiff and Class Members are entitled to recover the full amount of their unpaid overtime wages, prejudgment interest, reasonable attorneys' fees and costs of suit.

SECOND CAUSE OF ACTION

For Failure to Provide Compliant Meal Periods

(Against All Defendants)

36. Plaintiff incorporates by reference and realleges as if fully stated herein the material allegations set out above in the preceding paragraphs.

37. At all relevant times, Plaintiff and Class Members were employees covered by Labor Code sections 226.7 and 512, and the applicable Industrial Wage Order.

38. Labor Code sections 226.7 and 512 and the applicable Industrial Wage Order provide that no employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than thirty (30) minutes.

39. Labor Code section 226.7 and the applicable Industrial Wage Order provide that if an employer failed to provide an employee a meal period in accordance

1 with this section, the employer shall pay the employee one (1) hour of pay at the
2 employee's regular rate of compensation for each five (5) hours of work that the meal
3 period was not provided.

4 40. During the Class Period, Badger routinely failed to provide Plaintiff and
5 Class Members with compliant meal periods (meaning a full, uninterrupted thirty
6 minutes, provided before the end of the employee's fifth hour of work), and have failed
7 to compensate Plaintiff and Class Members with an additional hour of pay at the
8 employees' regular rate of pay for these non-compliant meal periods, as required by
9 California Labor Code section 22.67 and other applicable sections of the Employment
10 Laws and Regulations.

11 41. Neither Plaintiff nor the Class Members are exempt from the meal periods
12 requirements of Labor Code sections 226.7 and 512, and the applicable Industrial Wage
13 Order.

14 42. As a result of Badger's unlawful conduct, Plaintiff and Class Members
15 have suffered damages in an amount, subject to proof, to the extent they were not
16 provided with compliant meal periods and were not compensated with an hour of pay
17 at their regular rate of pay for the non-compliant meal periods.

18 **THIRD CAUSE OF ACTION**

19 **For Failure to Authorize and Permit Compliant Rest Periods**

20 **(Against All Defendants)**

21 43. Plaintiff incorporates by reference and realleges as if fully stated herein the
22 material allegations set out above in the preceding paragraphs.

23 44. At all relevant times, Plaintiff and Class Members were employees covered
24 by Labor Code sections 226.7 and 512, and the applicable Industrial Wage Order.

25 45. Labor Code sections 226.7 and 512 and the applicable Industrial Wage
26 Order provide that employers shall authorize and permit employees to take rest periods
27 at the rate of ten (10) minutes net rest time per four (4) hours of work.
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46. Labor Code section 226.7 and the applicable Industrial Wage Order further provide that if an employer fails to provide an employee rest periods in accordance with this law, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the compliant rest period was not authorized and permitted.

47. During the Class Period, Badger routinely failed to authorize and permit Plaintiff and Class Members to take compliant rest periods during their work shifts, and failed to compensate Plaintiff and Class Members for those non-compliant rest periods, as required by California Labor Code section 226.7 and other applicable sections of the Employment Laws and Regulations.

48. Neither Plaintiff nor any of the Class Members are exempt from the rest period requirements of Labor Code sections 226.7 and 512 and the applicable Industrial Wage Order.

49. As a result of Badger's unlawful conduct, Plaintiff and Class Members have suffered damages in an amount, subject to proof, to the extent they were not authorized and permitted to take compliant rest periods and were not compensated with an hour of pay at their regular rate of pay for the non-compliant rest periods.

FOURTH CAUSE OF ACTION

For Failure to Furnish Accurate Wage Statements

(Against All Defendants)

50. Plaintiff incorporates by reference and realleges as if fully stated herein the material allegations set out above in the preceding paragraphs.

51. At all relevant times, Plaintiff and Class Members were employees of Defendants covered by Labor Code Section 226.

52. California Labor Code § 226(a) provides that:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in

1 writing showing (1) gross wages earned, (2) total hours worked by the
2 employee, except for any employee whose compensation is solely based on
3 a salary and who is exempt from payment of overtime under subdivision (a)
4 of Section 515 or any applicable order of the Industrial Welfare Commission,
5 (3) the number of piece-rate units earned and any applicable piece rate if the
6 employee is paid on a piece-rate basis, (4) all deductions, provided that all
7 deductions made on written orders of the employee may be aggregated and
8 shown as one item, (5) net wages earned, (6) the inclusive dates of the
9 period for which the employee is paid, (7) the name of the employee and his
10 or her social security number, except that by January 1, 2008, only the last
11 four digits of his or her social security number or an employee identification
12 number other than a social security number may be shown on the itemized
13 statement, (8) the name and address of the legal entity that is the employer,
14 and (9) all applicable hourly rates in effect during the pay period and the
15 corresponding number of hours worked at each hourly rate by the employee

16 53. Further, the relevant wage orders of the Industrial Welfare Commission
17 applicable to Plaintiff's and Class Members' employment with Badger state in pertinent
18 part:

19 A) Every employer shall keep accurate information with respect to each
20 employee including the following:

21 (3) Time records showing when the employee begins and ends each
22 work period. Meal periods, split shift intervals and total daily hours
23 worked shall also be recorded. Meal periods during which operations
24 cease and authorized rest periods need not be recorded.

25 (4) Total wages paid each payroll period, including value of board,
26 lodging, or other compensation actually furnished to the employee.

27 (5) Total hours worked in the payroll period and applicable rates of
28 pay. This information shall be made readily available to the employee
upon reasonable request.

54. At all material times set forth herein, Badger either recklessly or
intentionally failed to make, keep and preserve true, accurate, and complete records of,
among other things, the actual number of hours worked each workday and each
workweek by Plaintiff and Class Members, the beginning and ending time of each work
period, meal period and split shift interval, the total daily hours worked, and the total
hours worked per pay period and applicable rates of pay.

1 55. As a result of Badger's conduct, Plaintiff and Class Members are each
2 entitled to recover from Badger the greater of their actual monetary damages caused by
3 Badger's failure to comply with California Labor Code § 226(a), or an aggregate penalty
4 not exceeding four-thousand dollars (\$4,000.00) per employee and an award of costs and
5 reasonable attorneys' fees pursuant to California Labor Code § 226(e).

6 **FIFTH CAUSE OF ACTION**

7 **Failure To Pay All Wages Earned On Regular Pay Period**

8 **(Against All Defendants)**

9 56. Plaintiff incorporates by reference and realleges as if fully stated herein the
10 material allegations set out above in the preceding paragraphs.

11 57. At all relevant times, Plaintiff and Class Members were employees covered
12 by Labor Code Section 204.

13 58. Pursuant to Labor Code Section 204, Plaintiff and Class Members were
14 entitled to receive all wages earned for the pay period corresponding to the payday.

15 59. Badger failed to pay Plaintiff and Class Members all wages earned each pay
16 period on the regular payday for the pay period, including but not limited to overtime
17 wages.

18 60. As a result of Badger's unlawful conduct, Plaintiff and Class Members have
19 suffered damages in an amount according to proof at trial.

20 61. Pursuant to Labor Code Sections 1194, Plaintiff is entitled to recover the full
21 amount of his unpaid wages, prejudgment interest, reasonable attorneys' fees and costs of
22 suit.

23 **SIXTH CAUSE OF ACTION**

24 **Failure To Maintain Required Records [Cal. Labor Code §§ 226, 1174]**

25 **(Against All Defendants)**

26 62. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
27 material allegations set out above in the preceding paragraphs.

1 63. During the Class Period, as part of Badger's illegal payroll policies and
2 practices intended to deprive Plaintiff and other Class Members of all wages earned and
3 due, Badger knowingly and intentionally failed to maintain records as required under
4 California Labor Code section 226, 1174, and the applicable Industrial Wage Order,
5 including but not limited to the following records: total daily hours worked by each
6 employee; applicable rates of pay; all deductions; meal periods; time records showing
7 when each employee begins and ends each work period; and accurate itemized
8 statements.

9 64. As a proximate result of Badger's unlawful actions and omissions, Plaintiff
10 and other Class Members have been damaged in an amount according to proof at trial,
11 and are entitled to all wages earned and due, plus interest thereon. Additionally, Plaintiff
12 and other Class Members are entitled to all available statutory penalties, including but not
13 limited to civil penalties pursuant to California Labor Code sections 226(e), 226.3, and
14 1174.5, and an award of attorneys' fees, and expenses and costs of suit, including but not
15 limited to those provided in California Labor Code section 226(e) as well as other
16 available remedies.

17 SEVENTH CAUSE OF ACTION

18 **Failure To Pay Earned Wages Upon Termination Or Discharge [Labor Code §201,202]**

19 **(Against All Defendants)**

20 65. Plaintiff incorporates by reference and realleges as if fully stated herein the
21 material allegations set out above in the preceding paragraphs.

22 66. At all relevant times, Plaintiff and Class Members who quit, were
23 discharged or terminated (collectively referred to as "terminated" or "termination")
24 from employment are covered by Labor Code section 201 or 202.

25 67. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members
26 were entitled to receive, upon termination, all wages earned and unpaid at the time of
27 termination. If an employee is discharged, all wages earned and unpaid are due and
28 payable immediately upon discharge. If an employee quits his or her employment, his or

1 her wages shall become due and payable not later than 72 hours thereafter, unless the
2 employee has given 72 hours previous notice of his or her intention to quit, in which case
3 the employee is entitled to his or her wages at the time of quitting.

4 68. Badger failed to pay Plaintiff and other Terminated Class Members all
5 wages earned and unpaid at the time of Termination timely in accordance with Labor
6 Code Section 201 or 202. Their earned and unpaid wages at the time of Termination
7 include, but are not limited to, unpaid overtime wages, and additional pay for missed
8 meal periods.

9 69. Badger's failure to pay Plaintiff and other Terminated Class Members all
10 wages earned prior to Termination in accordance with Labor Code Sections 201 or 202
11 was willful. Badger had the ability to pay all wages earned by employees prior to
12 Termination in accordance with Labor Code Sections 201 or 202, but intentionally
13 followed a practice or adopted a policy that violated Labor Code Sections 201 or 202.

14 70. Pursuant to Labor Code Section 201 or 202, Plaintiff and other Terminated
15 Class Members are entitled to all wages earned prior to Termination that Badger failed to
16 pay them.

17 71. California Labor Code section 203 provides that if an employer willfully
18 fails to pay, without abatement or reduction, in accordance with Labor Code sections 201
19 and 202, any wages of the employee shall continue as a penalty from the due date thereof
20 at the same rate until paid or until an action therefore is commenced; but the wages shall
21 not continue for more than 30 days.

22 72. Therefore, Plaintiff and other Terminated Class Members are entitled to
23 recover from Badger the statutory penalty for each day they were not paid at their regular
24 rate of pay – not to exceed 30 days – pursuant to California Labor Code section 203.

25 73. Pursuant to Labor Code Sections 218 and 218.5, Plaintiff and other
26 Terminated Class Members are entitled to recover their unpaid wages, waiting time
27 penalties under Labor Code Section 203, reasonable attorneys' fees and costs of suit.
28

1 Pursuant to Labor Code Section 218.6 or Civil Code Section 3287(a), Plaintiff and other
2 Terminated Class Members are entitled to recover prejudgment interest.

3 **EIGHTH CAUSE OF ACTION**

4 **Failure to Indemnify Employees for Necessary Expenditures [Labor Code § 2802]**

5 **(Against All Defendants)**

6 74. Plaintiff incorporates by reference and realleges as if fully stated herein the
7 material allegations set out above in the preceding paragraphs.

8 75. California Labor Code section 2802(a) requires an employer to indemnify
9 an employee for all necessary expenditures or losses incurred by the employee in direct
10 consequence of the discharge of his or her duties, or of his or her obedience to the
11 directions of the employer.

12 76. During the Class Period, Badger failed to indemnify Plaintiff and Class
13 Members for all business expenses and/or losses incurred in direct consequence of the
14 discharge of their duties while working under the direction of Badger, in violation of
15 California Labor Code section 2802.

16 77. As a proximate result of Badger's unlawful actions and omissions, Plaintiff
17 and other Class Members have been damaged in an amount according to proof at trial,
18 and seek reimbursement of all necessary expenditures, plus interest thereon, pursuant to
19 California Labor Code section 2802(b). Additionally, Plaintiff and other Class Members
20 are entitled to all available statutory penalties and an award of costs, expenses, and
21 reasonable attorneys' fees, including those provided in California Labor Code section
22 2802(c), as well as other available remedies.

23 **NINTH CAUSE OF ACTION**

24 **Unfair Competition [Bus. & Prof. Code §§17200 *et seq.*]**

25 **(Against All Defendants)**

26 78. Plaintiff incorporates by reference and realleges as if fully stated herein the
27 material allegations set out above in the preceding paragraphs.

1 79. Badger is a “person” as that term is defined under Business & Professions
2 Code section 17021. Business & Professions Code section 17200 defines unfair
3 competition as any unlawful, unfair, or fraudulent business act or practice.

4 80. Badger’s violation of the Employment Laws and Regulations as alleged in
5 this Complaint, including Badger’s (a) failure to pay Class Members overtime wages; (b)
6 failure to provide Class Members with compliant meal or rest breaks or to pay premium
7 wages for non-compliant meal and rest periods; and (c) failing to pay all earned wages
8 upon termination, all constitute unfair business practices in violation of Business &
9 Professions Code section 17200, et seq.

10 81. As a result of Badger’s unfair business practices, Badger has reaped unfair
11 benefits and illegal profits at the expense of Class Members, and to the detriment of
12 members of the public. Badger should be made to disgorge their ill-gotten gains and to
13 restore them to Class Members. Pursuant to Business & Professions Code section 17203,
14 Plaintiff and other Class Members are entitled to restitution of the wages and other
15 monies withheld, deducted and/or retained by Badger during a period that commences
16 four years prior to the filing of this action.

17 82. Pursuant to Business & Professions Code section 17203, Badger’s unfair
18 business practices entitle Plaintiff to seek preliminary and permanent injunctive relief
19 including, but not limited to, orders that Badger account for, disgorge and restore to Class
20 Members all compensation unlawfully withheld from them.

21 83. Plaintiff and other Class Members are entitled to recover reasonable
22 attorneys’ fees in connection with their unfair competition claims pursuant to Code of
23 Civil Procedure section 1021.5, the substantial benefit doctrine and/or the common fund
24 doctrine.

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1 a) CLASS CERTIFICATION

- 2 i. An order that the action be certified as a class action;
- 3 ii. An order that Plaintiff be certified as the representative of the Class;
- 4 iii. An order that counsel for Plaintiff be confirmed as Class counsel;

5 b) ON THE FIRST CAUSE OF ACTION

- 6 i. Damages for unpaid overtime wages according to proof;
- 7 ii. Prejudgment interest;
- 8 iii. Reasonable attorneys' fees;
- 9 iv. Costs of suit; and
- 10 v. Such other relief as the Court deems just and proper.

11 c) ON THE SECOND CAUSE OF ACTION

- 12 i. Damages for unpaid additional pay owed for missed meal periods in an
- 13 amount according to proof;
- 14 ii. Prejudgment interest;
- 15 iii. Costs of suit;
- 16 iv. Such other relief as the Court deems just and proper;

17 d) ON THE THIRD CAUSE OF ACTION

- 18 i. Damages for unpaid additional pay owed for missed rest periods in an
- 19 amount according to proof;
- 20 ii. Prejudgment interest;
- 21 iii. Costs of suit;
- 22 iv. Reasonable attorneys' fees;
- 23 v. Such other relief as the Court deems just and proper;

24 e) ON THE FOURTH CAUSE OF ACTION

- 25 i. Damages or penalties for not providing accurate wage statements in an
- 26 amount according to proof;
- 27 ii. An order requiring Defendants to comply with Labor Code section
- 28 226(a);

- iii. Reasonable attorneys' fees;
- iv. Costs of suit; and
- v. Such other relief as the Court deems just and proper.

f) ON THE FIFTH CAUSE OF ACTION

- i. Damages for unpaid wages earned but not paid each pay period in an amount according to proof;
- ii. Prejudgment interest;
- iii. Reasonable attorneys' fees;
- iv. Costs of suit; and
- v. Such other relief as the Court deems just and proper.

g) ON THE SIXTH CAUSE OF ACTION

- i. Damages or penalties for not maintaining required records in an amount according to proof;
- ii. Reasonable attorneys' fees;
- iii. Costs of suit; and
- iv. Such other relief as the Court deems just and proper.

h) ON THE SEVENTH CAUSE OF ACTION

- i. Damages for unpaid wages earned prior to termination of employment in an amount according to proof;
- ii. Waiting time penalties for failure to pay all earned wages timely upon termination of employment in an amount according to proof;
- iii. Prejudgment interest;
- iv. Reasonable attorneys' fees;
- v. Costs of suit;
- vi. Such other relief as the Court deems just and proper;

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1 i) ON THE EIGHTH CAUSE OF ACTION

- 2 i. Damages for unreimbursed expenses incurred in the performance of
3 their duties according to proof;
4 ii. Prejudgment interest;
5 iii. Reasonable attorneys' fees;
6 iv. Costs of suit;
7 v. Such other relief as the Court deems just and proper.

8 j) ON THE NINTH CAUSE OF ACTION


- 9 i. Restitution of all unpaid wages and other monies owed and belonging to
10 Class Members that Defendants unlawfully withheld from them and
11 retained for themselves in an amount according to proof;
12 ii. Prejudgment interest;
13 iii. Costs of suit;
14 iv. Reasonable attorneys' fees;
15 v. Such other relief as the Court deems just and proper;

16 k) ON THE TENTH CAUSE OF ACTION

- 17 i. Penalties pursuant to Labor Code sections 2698 and 2699;
18 ii. Costs of suit;
19 iii. Reasonable attorneys' fees;
20 iv. Such other relief as the Court deems just and proper;

21
22 Dated: December 13, 2017

MAKAREM & ASSOCIATES, APLC

23
24 By: 
25 GENE WILLIAMS
26 Attorney for Plaintiff
27
28

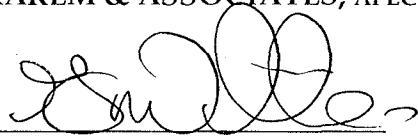
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DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands trial by jury of all causes of action.

Dated: December 18 2017

MAKAREM & ASSOCIATES, APLC

By: 

GENE WILLIAMS
Attorney for Plaintiff

1 PROOF OF SERVICE
2 (Code of Civil Procedure §1013A(d))

3 I am employed in the County of Los Angeles, State of California. I am over the age
4 of 18 years and not a party to the within action. My business address is 11601 Wilshire
5 Blvd., Suite 2440, Los Angeles, CA 90025. On January 10, 2018, I caused the foregoing
documents described as:

6 Second Amended Class Action Complaint

7 Said documents were served on the interested parties in this action by placing true copies
8 thereof, enclosed in a sealed envelope, addressed as follows:

9 Yesenia Gallegos, Esq.

10 Sadaf Bathaee, Esq.

11 **Fox Rothschild, LLP**

12 10250 Constellation Blvd., Suite 900

13 Los Angeles, CA 90067

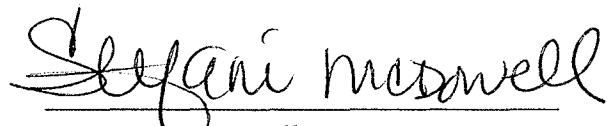
14 XX BY MAIL: I deposited such envelope in the mail at Los Angeles, California. The
15 envelope was mailed with postage thereon fully prepaid. I am readily familiar with this
16 business' practice for collection and processing of mail and that on the same day, and in the
ordinary course of business, said mail is deposited in the United States Mail with postage
thereon fully prepaid at Los Angeles, California. I am aware that on motion of a party served,
service is presumed invalid if postal cancellation date or postage meter date is more than one
day after date of deposit for mailing in the affidavit/proof of service.

17 BY EMAIL: I caused a true copy of the foregoing document to be served by e-mail at the
18 e-mail addresses set forth above. Each email was complete and no reports of error were
received.

19 PERSONAL SERVICE: I delivered said envelope by hand to the offices of the
20 addressee(s).

21 VIA OVERNIGHT DELIVERY: I placed such envelope for regularly scheduled pickup at
22 our offices on the date of this declaration by our usual overnight delivery service.

23 I declare under penalty of perjury under the laws of the State of California and
24 the United States of American that the foregoing is true and correct. Executed on
25 January 10, 2018, at Los Angeles, California.

26 

27 Stefani McDowell