

1 Michael D. Singer (SBN 115301)

2 msinger@ckslaw.com

3 Jeff Geraci (SBN 151519)

4 jgeraci@ckslaw.com

5 **COHELAN KHOURY & SINGER**

6 605 C Street, Suite 200

7 San Diego, California 92101

8 Telephone: (619) 595-3001/Facsimile: (619) 595-3000

9 Olivia Sanders (SBN 208266)

10 sanderslaw@sbcglobal.net

11 **LAW OFFICES OF OLIVIA SANDERS**

12 400 Corporate Pointe, Suite 560

13 Culver City, California 90230

14 Telephone: (310) 641-9001/Facsimile: (310) 641-9007

15 Catherine Starr (SBN 183382)

16 starresq@yahoo.com

17 5770 East Appaloosa Avenue

18 Clovis, CA 93619

19 Telephone: (310) 972-9291

20 Attorneys for Plaintiffs JEANNETTE COOKS, ALWENA FRAZIER,
21 AUDREY L. BROWN, and the Proposed Class

22 [Additional Counsel listed on following page]

23 **UNITED STATES DISTRICT COURT**

24 **EASTERN DISTRICT OF CALIFORNIA**

25 JEANNETTE COOKS, an individual;
26 ALWENA FRAZIER, an individual; and
27 AUDREY L. BROWN, an individual for
28 themselves and on behalf of all others
similarly situated

Plaintiffs,

v.

TNG GP, a Delaware General Partnership;
THE NEWS GROUP, INC., a Delaware
Corporation; THE NEWS GROUP, L.P., a
Delaware partnership; SELECT MEDIA
SERVICES, L.L.C., a Delaware Limited
Liability Company, and, DOES 1 through 10,
inclusive,

Defendants

CASE NO. 2:16-CV-01160-KJM-AC

**FIRST AMENDED CLASS ACTION
COMPLAINT**

1. **Failure to Pay Hourly Wages**
2. **Failure to Pay Overtime Wages**
3. **Failure to Reimburse for Business Expenses**
4. **Failure to Provide Accurate Itemized Wage Statements**
5. **Failure to Timely Pay All Wages Due at Separation of Employment**
6. **Failure to Provide Compliant Meal Periods or Compensation in Lieu of**
7. **Failure to Provide Compliant Rest Periods or Compensation in Lieu of**
8. **Violation of Unfair Competition Law**

DEMAND FOR JURY TRIAL

1 Daniel F. Gaines (SBN 251488)

2 daniel@gaineslawfirm.com

Alex P. Katofsky (SBN 202754)

3 alex@gaineslawfirm.com

Miriam L. Schimmel (SBN 185089)

4 miriam@gaineslawfirm.com

GAINES & GAINES, APLC

5 27200 Agoura Road, Suite 101

6 Calabasas, CA 91301

Telephone: (818) 703-8985/Facsimile: (816) 703-8984

7
8 Attorneys for Plaintiffs JEANNETTE COOKS, ALWENA FRAZIER,
AUDREY L. BROWN, and the Proposed Class

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Plaintiffs JEANNETTE COOKS, ALWENA FRAZIER, and AUDREY L. BROWN
2 (“Plaintiffs”), on behalf of themselves and all others persons similarly situated, allege as follows:

3 **INTRODUCTION**

4 1. Plaintiffs are non-exempt merchandisers servicing major retail stores, and bring this
5 class action against their employers, Defendants TNG GP, a Delaware General Partnership; THE
6 NEWS GROUP, INC., a Delaware Corporation; THE NEWS GROUP, L.P., a Delaware partnership;
7 SELECT MEDIA SERVICES, L.L.C., a Delaware Limited Liability Company (collectively,
8 “Defendants” or “TNG”), for failure to pay for all hours worked resulting in failure to pay all hourly
9 and overtime wages owed, failure to provide accurate itemized wage statements, failure to timely pay
10 all wages to separated employees, failure to reimburse for all business-related expenses, and failure to
11 provide compliant meal and rest periods or compensation in lieu of missed breaks.

12 **JURISDICTION AND VENUE**

13 2. Defendants conduct business in Solano and Sacramento Counties, California and each
14 Defendant is within the jurisdiction of this Court for service of process purposes. The unlawful acts
15 alleged have a direct effect on Plaintiffs and those similarly situated within the State of California and
16 Solano and Sacramento Counties. Defendants employ numerous Class Members in Solano and
17 Sacramento Counties.

18 3. Defendants removed this action to this Court on May 27, 2016 pursuant to 28 U.S.C.
19 sections 1332, 1441, and 1446 from the Superior Court of the State of California, County of Solano.
20 Plaintiffs dispute the existence of jurisdiction under the Class Action Fairness Act of 2005 (“CAFA”).

21 4. Venue is proper in the United States District Court, Eastern District to the extent that
22 this Court has jurisdiction under the CAFA.

23 5. Business and Professions Code, section 17203 provides that any person who engages in
24 unfair competition may be enjoined in any court of competent jurisdiction. Business and Professions
25 Code, section 17204 provides that any person, acting on his own behalf, may bring an action in a
26 court of competent jurisdiction.

27 **PARTIES**

28 6. Plaintiff JEANNETTE COOKS is a resident of the State of California employed by

1 Defendants in Solano County as a non-exempt merchandiser.

2 7. Plaintiff ALWENA FRAZIER is a resident of the State of California employed by
3 Defendants in Solano County as a non-exempt merchandiser.

4 8. Plaintiff AUDREY L. BROWN is a resident of the State of California employed by
5 Defendant in Sacramento County as a non-exempt merchandiser.

6 9. Defendant TNG GP is a Delaware General Partnership engaged in business in Solano
7 and Sacramento Counties. Defendant operates under the names TNG and/or Select Media Services
8 throughout California, and appears to be the successor in interest to Defendant THE NEWS GROUP,
9 INC. During the Class Period, Defendant employed Plaintiffs and others as non-exempt
10 merchandisers within California and Solano and Sacramento Counties.

11 10. Defendant THE NEWS GROUP, INC. is a Delaware Corporation engaged in business in
12 Solano and Sacramento Counties. Defendant operates under the names TNG and/or Select Media
13 Services throughout California. During the Class Period, Defendant employed Plaintiffs and others as
14 non-exempt merchandisers within California and Solano and Sacramento Counties.

15 11. Defendant THE NEWS GROUP, L.P. is a Delaware partnership engaged in business in
16 Solano and Sacramento Counties. Defendant operates under the names TNG and/or Select Media
17 Services throughout California. During the Class Period, Defendant employed Plaintiffs and others as
18 non-exempt merchandisers within California and Solano and Sacramento Counties.

19 12. Defendant SELECT MEDIA SERVICES, L.L.C. is a Delaware Limited Liability
20 Company engaged in business in Solano and Sacramento Counties. Defendant operates under the
21 names of TNG and/or Select Media Services throughout California. During the Class Period,
22 Defendant employed Plaintiffs and others as non-exempt merchandisers within California and Solano
23 and Sacramento Counties.

24 13. Plaintiffs are unaware of the true names, capacities, relationships, and extent of
25 participation in the conduct alleged, of the Defendants sued as DOES 1 through 10, but are informed
26 and believe, and allege, these Defendants are legally responsible for the wrongful conduct alleged,
27 and sue these Defendants by fictitious names. Plaintiffs will amend this complaint when their true
28 names and capacities are ascertained. (Named and DOE Defendants are referred to collectively as

1 “Defendant” or “TNG.”)

2 14. Plaintiffs are informed and believe, and allege, each Defendant, directly or indirectly, or
3 through agents, employed Plaintiffs and other members of the class, and exercised control over their
4 wages, hours, and working conditions. Plaintiffs are informed and believe, for purposes of this action,
5 each Defendant acted as the agent of the other Defendants, carried out a joint scheme, plan or policy,
6 and the acts of each Defendant are legally attributable to the other Defendants.

7 **GENERAL ALLEGATIONS**

8 15. During all, or a portion, of the Class Period, Plaintiffs and each member of the Plaintiff
9 Class were employed by Defendants in the State of California.

10 16. At all relevant times, Defendants did, and do, provide merchandising services to major
11 retailers in California, such as Best Buy, CVS, Target, and Wal-Mart, using employees like Plaintiffs
12 to deliver and display magazines and other products.

13 17. Plaintiffs and each Class Member were non-exempt employees covered under one or
14 more Industrial Welfare Commission (“IWC”) Wage Orders, including 7-2001 (“Wage Orders”), and
15 Labor Code sections, and/or other applicable wage orders, regulations and statutes, which imposed an
16 obligation on Defendants to 1) pay Plaintiffs and Class Members for all hours worked, including
17 overtime compensation for all hours worked over eight (8) hours in one day or forty (40) hours in one
18 week; 2) provide accurate, itemized wage statements; 3) pay all wages owed to terminated Class
19 Members; and 4) provide compliant meal and/or rest periods or pay lawful compensation for each
20 meal or rest period not provided.

21 18. Defendants communicate with merchandisers by email and cell phone to provide
22 assignments. This is done while merchandisers are not clocked in and they are not paid for this time.
23 TNG requires merchandisers, while they are not clocked in, to complete “surveys” about stores they
24 have serviced, and email them to TNG. Merchandisers are required to use cell phones to take
25 photographs of the areas they are responsible for inside a store. Merchandisers are not reimbursed for
26 required use of their computers or cell phones.

27 19. Defendants require merchandisers to clock out from work when leaving one store, drive
28 to another store, and clock back in at the next store. TNG does not pay merchandisers for drive time

1 between stores.

2 20. Defendants' policies result in underpayment of wages by not compensating
3 merchandisers for all time spent receiving and communicating about assignments, driving between
4 assigned stores, and completing surveys. Defendants' policies also do not reimburse reasonable and
5 necessary business expenses because they require merchandisers to: drive between assigned stores
6 without reimbursement; and use their own cell phones and/or computers to receive and communicate
7 about assignments; complete surveys about assignments; and take photographs of areas of stores they
8 service. As a result of the underpayment of wages, merchandisers are not paid all wages due upon
9 termination or resignation, and are not provided accurate, itemized wage statements.

10 **CLASS ACTION ALLEGATIONS**

11 21. Plaintiffs bring this action on behalf of themselves and all other similarly-situated
12 persons as a class action pursuant to Federal Rules of Civil Procedure, Rule 23. Plaintiffs seek to
13 represent a Class composed of and defined as follows:

14 All current and former non-exempt employees who worked for Defendants in
15 the State of California as merchandisers at any time beginning four years prior
16 to the filing of this Complaint.

17 22. Plaintiffs bring this action on behalf of themselves and all other similarly-situated
18 persons in Subclasses of the Plaintiff Class, defined as:

19 A. **Off-The-Clock Subclass:** All members of the proposed Class who were required
20 to perform work off-the-clock, including but not limited to, communicating with Defendants by email
21 and phone to receive and respond to assignments, completing surveys, and driving between
22 assignments, while clocked out;

23 B. **Expense Reimbursement Subclass:** All members of the proposed Class who
24 used their personal electronic devices, such as cell phones and computers, and their personal vehicles
25 in the performance of their job duties, but were not reimbursed for that use;

26 C. **Meal Period Subclass:** All members of the proposed Class who were not
27 provided unpaid, uninterrupted, and duty-free 30-minute meal periods or one hour of pay at the
28 employee's regular rate of pay in lieu thereof;

D. **Rest Period Subclass:** All members of the proposed Class who not provided

1 paid, uninterrupted, and duty-free 10-minute rest periods or one hour of pay at the employee's regular
2 rate of pay in lieu thereof;

3 E. **Wage Statement Subclass:** All members of the proposed Class who, within one
4 year of the filing of the Complaint, were subject to a practice of failing to include all hours worked
5 and wages earned;

6 F. **Waiting Time Subclass:** All members of the proposed Class who, within three
7 years of the filing of the Complaint, were not timely paid all wages due at the time of their separation
8 from employment;

9 G. **UCL Subclass:** All members of the proposed Class who suffered damages as a
10 result of being subject to Defendants' pay practices relating to failure to pay all hourly and overtime
11 wages, reimburse all business related expenses, and timely pay all wages at separation.

12 23. Plaintiffs reserve the right under the Federal Rules of Civil Procedure to amend or
13 modify the Class description with greater specificity or further division into subclasses or limitation
14 to particular issues.

15 24. This action has been brought and may be properly maintained as a class action under the
16 provisions of Federal Rules of Civil Procedure, Rule 23 because there is a well-defined community of
17 interest in the litigation and the proposed Class is easily ascertainable.

18 25. **Numerosity.** The members of the Class are so numerous that individual joinder of all of
19 them as Plaintiffs is impracticable. While the exact number of the Class Members is unknown to
20 Plaintiffs at this time, Plaintiffs are informed and believe, and based thereon allege, that there are
21 more than 100 Class Members, who, at all relevant times, were employed in the State of California.

22 26. **Commonality.** There are questions of law and fact common to the Class that
23 predominate over any questions affecting only individual Class Members, including:

- 24 a. Whether Defendants violate Labor Code section 1194 and Wage Order 7-
25 2001(4) by failing to pay hourly and overtime wages owed for all hours worked;
- 26 b. Whether Defendants violate Labor Code sections 201 and/or 202 by not timely
27 paying Class Members all earned wages at separation, including all unpaid
28 hourly and overtime wages, due under Labor Code section 1194 and IWC Wage

1 Order 7-2001. If so, whether such violations are “willful” within the meaning of
2 Labor Code section 203;

3 c. Whether Defendants violate Labor Code section 2802 by failing to reimburse for
4 all business expenses;

5 d. Whether Defendants breach the employment contract by failing to reimburse for
6 all business related expenses;

7 e. Whether Plaintiffs and Class Members are entitled to meal and rest periods under
8 the applicable IWC Wage Order(s), regulations, and statutes;

9 f. Whether Defendants violated the California Labor Code and applicable Wage
10 Order by failing to provide Plaintiffs and Class Members lawful thirty (30)-
11 minute uninterrupted meal periods within the first five (5) hours of work in any
12 workday lasting more than six (6) hours, and by failing to compensate Plaintiffs
13 and Class Members one hour of premium pay at their regular hourly pay rates for
14 each workday a lawful meal period was not provided;

15 g. Whether Defendants are liable for damages, interest, restitution, statutory
16 penalties, attorneys’ fees, and/or costs for failing to compensate Plaintiffs and
17 Class Members one hour of premium pay at their regular hourly pay rates for
18 each workday a lawful meal period was not provided;

19 h. Whether Defendants violated the California Labor Code and applicable Wage
20 Order by failing to provide Plaintiffs and Class Members lawful ten (10)-minute
21 uninterrupted rest breaks for every four (4) hour period of work in any workday,
22 or major fraction thereof, and by failing to compensate Plaintiffs and Class
23 Members one hour of premium pay at their regular hourly pay rates for each
24 workday a lawful rest period was not provided;

25 i. Whether Defendants are liable for damages, interest, restitution, statutory
26 penalties, attorneys’ fees, and/or costs for failing to compensate Plaintiffs and
27 Class Members one hour of premium pay at their regular hourly pay rates for
28 each workday a lawful rest period was not provided;

- 1 j. Whether Defendants violated the California Labor Code and applicable Wage
2 Order by failing to provide Plaintiffs and Class Members accurate itemized wage
3 statements
- 4 k. Whether Defendants violate the Unfair Competition Law, Business &
5 Professions Code, sections 17200, *et seq.*, by engaging in the conduct alleged in
6 this complaint;
- 7 l. The effects and the extent of any injuries sustained by the Plaintiff Class and
8 Plaintiff Subclass Members and appropriate type and/or measure of damages;
- 9 m. The amount of restitution owed by Defendants attributable to violation of the
10 Unfair Competition Law by failure to pay all hourly and overtime wages, and
11 failure to reimburse for all business expenses and other wage violations;
- 12 n. Whether Defendants violate California Labor Code sections 558 and/or 1197;
- 13 o. Nature and extent of relief to each Plaintiff Class and Subclass Member; and
- 14 p. The extent of liability of each Defendant, including DOE Defendants, to each
15 Plaintiff Class and Subclass Member.

16 27. Typicality. Plaintiffs held the same position, performed the same duties, and had the
17 same responsibilities as the other Class Members. Plaintiffs' claims are typical of the claims of the
18 other members of the Class. Plaintiffs and other members of the Class were subject to the same policy
19 and practice of routinely working unpaid hours, as well as using their personal electronic devices in
20 the course of their employment without reimbursement, and not receiving accurate itemized wage
21 statements.

22 28. Adequacy. Plaintiffs will adequately and fairly protect the interests of the members of
23 the Class. Plaintiffs have no interest adverse to the interests of absent Class Members. Plaintiffs are
24 represented by attorneys with substantial wage-and-hour and class action law experience.

25 29. Superiority. A class action is superior to other available means for fair and efficient
26 adjudication of the claims of the Class and would be beneficial for the parties and the Court. Class
27 action treatment will allow a large number of similarly-situated persons to prosecute their common
28 claims in a single forum, simultaneously, efficiently, and without the unnecessary duplication of

1 effort and expense numerous individual actions would require. The damages suffered by each Class
2 Member are relatively small in the sense pertinent to class action analysis, and the expense and
3 burden of individual litigation would make it extremely difficult or impossible for individual Class
4 Members to seek and obtain individual relief. A class action will serve an important public interest by
5 permitting such individuals to effectively pursue recovery of sums owed them. Class litigation also
6 prevents the potential for inconsistent or contradictory judgments raised by individual litigation.

7 **FIRST CAUSE OF ACTION**

8 **Failure to Pay Hourly Wages**

9 **(Plaintiffs and the Off-the-Clock Subclass against each Defendant)**

10 30. The preceding paragraphs are incorporated.

11 31. By failing to pay employees for all time communicating with Defendants by email and
12 phone to receive and respond to assignments, completing surveys, and driving between assignments,
13 Defendants willfully breached the agreement to pay regular wages, violating the provisions of Labor
14 Code section 204 and Wage Order 7-2001.

15 32. As a result of Defendants' unlawful acts, Plaintiffs and the Class they seek to represent
16 have been deprived of regular wages and/or other compensation in amounts to be determined at trial,
17 and are entitled to recovery of such amounts, plus interest, attorneys' fees, and costs.

18 **SECOND CAUSE OF ACTION**

19 **Failure to Pay Overtime Wages**

20 **(Plaintiffs and the Off-the-Clock Subclass against each Defendant)**

21 33. The preceding paragraphs are incorporated.

22 34. By failing to compensate merchandisers for all time communicating with Defendants by
23 email and phone to receive and respond to assignments, completing surveys, and driving between
24 assignments at the overtime rate of pay for shifts that exceed eight (8) hours in a day and/or forty (40)
25 in a week and the double-time rate of pay for shifts that exceed twelve (12) hours in a day,
26 Defendants failed to pay overtime wages, and willfully violated the provisions of Labor Code
27 sections 510 and 1194, and IWC Wage Order 7-2001.

28 35. As a result of Defendants' unlawful acts, Plaintiffs and Class Members sustained
damages, including loss of compensation for overtime worked in amounts to be determined at trial,
plus interest, and attorneys' fees and costs.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THIRD CAUSE OF ACTION
Failure to Reimburse for Business Expenses
(Plaintiffs and the Expense Reimbursement Subclass against each Defendant)

36. The preceding paragraphs are incorporated.

37. Plaintiffs and the members of the Class they seek to represent incurred expenses in the performance of their job duties, including the use of personal cell phones, computers, and vehicles. Plaintiffs were not reimbursed for incurring these necessary and reasonable business expenses.

38. Defendants had a policy of regularly and consistently refusing to fully reimburse Plaintiffs and other similarly-situated Class Members for such expenses, in violation of California Labor Code section 2802.

39. As a result of Defendants' unlawful acts, Plaintiffs and Class Members sustained damages, including loss of expense reimbursements, in amounts to be determined at trial, plus interest, and attorneys' fees and costs.

FOURTH CAUSE OF ACTION
Failure to Provide Accurate Itemized Wage Statements
(Plaintiffs and the Wage Statement Subclass against each Defendant)

40. The preceding paragraphs are incorporated.

41. Labor Code section 226, subdivision (a) requires Defendants to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked and wages earned by Plaintiffs and members of the Plaintiff Class. Defendants knowingly and intentionally failed to comply with Labor Code section 226, subdivision (a) on each and every wage statement been provided to Plaintiffs and members of the Plaintiff Class.

42. Such violations caused injury to Plaintiffs and the Wage Statement Subclass by, among other things, impeding them from knowing the amount of hours they had worked and the wages to which they are and were lawfully entitled, and under-reporting wages due and owing.

43. Plaintiffs and Wage Statement Subclass Members are entitled to seek injunctive relief requiring Defendants to comply with Labor Code section 226(a), and further seek the amount provided under Labor Code section 226(e), including the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, to a maximum of \$4,000 per employee.

FIFTH CAUSE OF ACTION

**Failure to Timely Pay All Wages Due At Separation of Employment
(Waiting Time Subclass against each Defendant)**

1
2
3 44. The preceding paragraphs are incorporated.

4 45. Labor Code section 203 requires an employer who willfully fails to timely pay an
5 employee's wages at separation, to continue to pay the employee's wages until the back wages are
6 paid in full or an action is commenced, up to a maximum of thirty days of wages.

7 46. All Waiting Time Claim Subclass Members who ceased employment with Defendants
8 are entitled to unpaid compensation related to hourly and overtime wages, but to date have not
9 received such compensation.

10 47. All Waiting Time Claim Subclass Members also were not timely paid wages at
11 separation because Defendants failed to pay all wages owed at separation.

12 48. More than thirty days have passed since members of the Waiting Time Subclass left
13 Defendants' employment.

14 49. As a result of Defendants' willful failure to pay wages owed, members of the Waiting
15 Time Subclass are entitled to up to thirty days' wages as a penalty under Labor Code section 203, in
16 amounts to be determined at trial, plus interest, and attorneys' fees and costs.

SIXTH CAUSE OF ACTION

**Failure to Provide Compliant Meal Periods
(Plaintiffs and the Meal Period Subclass against each Defendant)**

17
18
19 50. The preceding paragraphs are incorporated.

20 51. Plaintiffs and Meal Period Subclass Members were not always provided lawful meal
21 periods when they worked in excess of six hours in a work day as required by various applicable
22 versions of the Wage Orders including Section 11(A) of the applicable Wage Order and Labor Code
23 sections 226.7 and 512. Plaintiffs and Meal Period Subclass Members were given too much work to
24 complete in a day and still take meal periods. Plaintiffs and Meal Period Subclass Members typically
25 had a window of time within which to complete their services at the retailers. If Plaintiffs and Meal
26 Period Subclass Members stopped to take meal periods, they would potentially miss a required
27 window of time to complete their work and be subjected to adverse consequences. The taking of meal
28 periods was actively discouraged. While Plaintiffs and Plaintiff Class Members used their cell phones

1 to “clock” in and out of work locations and other activities, there was no ability to clock in or out for
2 meal periods.

3 52. Plaintiffs and Meal Period Subclass Members are owed compensation, restitution, or
4 other relief for each day a lawful meal period was not provided, in the form of an additional hour’s
5 pay for each day a lawful meal period was not provided during the Class Period, pursuant to Labor
6 Code section 226.7 and the Wage Orders, including Section 11(B) of the applicable Wage Order.

7 53. As a result of Defendants’ unlawful acts, Plaintiffs and the Meal Period Subclass they
8 seek to represent have been deprived of compliant meal periods or compensation in lieu thereof in
9 amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest,
10 attorneys’ fees, and costs.

11 **SEVENTH CAUSE OF ACTION**
12 **Failure to Provide Compliant Rest Periods**
13 **(Plaintiffs and the Rest Period Subclass against each Defendant)**

14 54. The preceding paragraphs are incorporated.

15 55. Plaintiffs and Rest Period Subclass Members were not always provided lawful rest
16 periods for every 4 hours of work, or major fraction thereof, as required by various applicable
17 versions of the Wage Orders including Section 12(A) of the applicable Wage Order and Labor Code
18 section 226.7. Plaintiffs and Rest Period Subclass Members were given too much work to complete in
19 a day and still take rest periods. The taking of rest periods was actively discouraged or forbidden. Had
20 Plaintiffs and Rest Period Subclass Members taken rest periods, they could have been subjected to
21 disciplinary action.

22 56. Plaintiffs and Rest Period Subclass Members are owed compensation, restitution, or
23 other relief for each day a lawful rest period was not provided, in the form of an additional hour’s pay
24 for each day a lawful rest period was not provided during the Class Period, pursuant to Labor Code
25 section 226.7 and the Wage Orders, including Section 12(B) of the applicable Wage Order.

26 57. As a result of Defendants’ unlawful acts, Plaintiffs and the Rest Period Subclass they
27 seek to represent have been deprived of compliant rest periods or compensation in lieu thereof in
28 amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest,
attorneys’ fees, and costs.

EIGHTH CAUSE OF ACTION
Violation of the Unfair Competition Law
(Plaintiffs and the UCL Subclass against each Defendant)

1
2
3 58. The preceding paragraphs are incorporated.

4 59. Defendants' failure to pay hourly and overtime wages, reimburse for all business
5 expenses under Labor Code section 2802, and timely pay all wages at termination constitutes
6 unlawful activities, acts and practices prohibited by Business and Professions Code sections 17200, *et*
7 *seq.* Defendants' acts above constitute false, unfair, fraudulent, and deceptive business practices,
8 within the meaning of Business and Professions Code sections 17200, *et seq.* Defendants have
9 violated multiple provisions of California law and applicable regulations and Orders of the IWC that
10 have the same force and effect of law. This includes, without limitation California Labor Code
11 Sections 201-203, 1194, and 2802, which serve as statutory predicates for which restitution is owed
12 by Defendants, as well as Wage Order 7-2001, and applicable regulations of the California Code of
13 Regulations.

14 60. Plaintiffs are entitled to restitution and other equitable relief against such unlawful
15 practices in order to prevent future damage, for which there is no adequate remedy at law, and to
16 avoid a multiplicity of lawsuits.

17 61. As a result of these unlawful acts, Defendants have reaped and continue to reap unfair
18 benefits and illegal profits at the expense of Plaintiffs, the proposed Class, and the proposed
19 Subclasses they seek to represent. Defendants should make restitution for these ill-gotten gains to
20 restore to Plaintiffs and members of the UCL Subclass, wrongfully unpaid wages and expense
21 reimbursements pursuant to Business and Professions Code section 17203 and for penalties under
22 Business and Professions Code section 17202.

23 62. Plaintiffs are informed and believe, and allege, Defendants are unjustly enriched through
24 the acts described above, and that they and the proposed Class have and continue to suffer irreparable
25 prejudice by Defendants' unfair practices. By engaging in such activities, Defendants are illegally
26 operating at an advantage to other law abiding employers in California and underpaying payroll and
27 other applicable taxes collected by State and local governmental entities.

28 63. The illegal conduct alleged is continuing and there is no indication Defendants will not

1 continue such activity. Plaintiffs allege Defendants will continue to fail to pay for all hours worked,
2 fail to reimburse for expenses, and fail to pay all wages due at separation, and fail to pay and avoid
3 paying appropriate taxes, insurance, and unemployment withholdings.

4 **PRAYER**

5 Plaintiffs, on behalf of themselves and all members of the proposed Plaintiff Class and
6 Subclasses they seek to represent, pray for relief and judgment against Defendants as follows:

- 7 A. Certification of this action as a class action;
- 8 B. Appointment of Plaintiffs as Class Representatives;
- 9 C. Appointment of Plaintiffs' attorneys as Class Counsel;
- 10 D. All unpaid hourly wages;
- 11 E. All unpaid overtime wages;
- 12 F. All meal period premiums for non-compliant meal periods;
- 13 G. All rest period premiums for non-complaint rest periods;
- 14 H. All reimbursement of business expenses incurred;
- 15 I. All waiting time penalties under Labor Code sections 201-203;
- 16 J. All liquidated damages in the amount equal to wages unlawfully unpaid and interest
17 under Labor Code section 1194.2;
- 18 K. Penalties, restitution, and liquidated damages under Labor Code section 1197.1;
- 19 L. Penalties pursuant to Labor Code section 558;
- 20 M. All appropriate state statutory penalties;
- 21 N. Pre-Judgment and Post-Judgment interest, as provided by law;
- 22 O. Attorneys' fees and costs of suit, including expert fees and fees pursuant to, among other
23 authority, California Labor Code sections 218.5, 226, 1021.5, 1194, 2802, and all other applicable
24 state laws;
- 25 P. For an order that Defendants make restitution to Plaintiffs and the Class due to their
26 unlawful business practices, including unlawfully withheld compensation and reimbursement of
27 business expenses pursuant to Business and Professions Code sections 17203 and 17204; and

28 ///

1 Q. Such other relief as this Court deems necessary, just, equitable and proper.

2 COHELAN KHOURY & SINGER
3 LAW OFFICES OF OLIVIA SANDERS
4 CATHERINE STARR, ESQ.
5 GAINES & GAINES, APLC

6 Dated: August 8, 2018

By: s/Jeff Geraci

Michael D. Singer

Jeff Geraci

7 Counsel for Plaintiffs JEANNETTE COOKS,
8 ALWENA FRAZIER, AUDREY L. BROWN,
9 and the Proposed Class

10 **DEMAND FOR JURY TRIAL**

11 Plaintiffs hereby demand a jury trial with respect to all issues triable of right by jury.

12 COHELAN KHOURY & SINGER
13 LAW OFFICES OF OLIVIA SANDERS
14 CATHERINE STARR, ESQ.
15 GAINES & GAINES, APLC

16 Dated: August 8, 2018

By: s/Jeff Geraci

Michael D. Singer

Jeff Geraci

17 Counsel for Plaintiffs JEANNETTE COOKS,
18 ALWENA FRAZIER, AUDREY L. BROWN,
19 and the Proposed Class

PROOF OF SERVICE

Cooks, et al. v. TNG, GP, et al.

U.S.D.C. Case No. 2:16- CV-01160-KJM (AC)

I, Mathew Atlas, declare as follows:

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to this action. My business address is 605 “C” Street, Suite 200, San Diego, CA 92101.

I further declare that I am readily familiar with the business’ practice for collection and processing of correspondence for mailing with United States Postal Service; and that the correspondence shall be deposited with United States Postal Service this same day in the ordinary course of business.

On August 8, 2018, I instituted service of the forgoing document(s) described as:

FIRST AMENDED CLASS ACTION COMPLAINT

on the following parties:

<p><u>Counsel for Defendants</u> Anthony DeCristoforo, Esq. OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C. Esquire Plaza, 1215 K Street, 17th Floor Sacramento, CA 95814 Telephone: (916) 840-3150 anthony.decristoforo@ogletree.com</p>	<p><u>Counsel for Plaintiffs</u> Olivia Sanders, Esq. LAW OFFICES OF OLIVIA SANDERS 400 Corporate Pointe, Suite 560 Culver City, California 90230 Telephone: (310) 641-9001 sanderslaw@sbcglobal.net</p>
<p>Jerome L. Rubin, Esq. WILLIAMS KASTNER & GIBBS PLLC Two Union Square 601 Union Street, Suite 4100 Seattle, WA 98101-2380 Telephone: (206) 628-6600 jrubin@williamskastner.com</p>	<p><u>Counsel for Plaintiffs</u> Daniel F. Gaines, Esq. Alex P. Katofsky, Esq. Miriam L. Schimmel, Esq. GAINES & GAINES, APLC 27200 Agoura Road, Suite 101 Calabasas, CA 91301 Telephone: (818) 703-8985</p>

in the following manner (as indicated below):

 X **ECF:** Submitting an electronic version of the document(s) via portable document format (PDF) to the court at <https://ecf.caed.uscourts.gov>.

 X **MAIL:** I placed each for deposit in the United States Postal Service this same day, at my business address shown above, following ordinary business practices.

1 Service will be deemed effective as provided for by Rule 135 of the District Court of
2 California, Eastern District.

3 I declare that I am employed in the office of a member of the bar of this court at whose
4 direction this service is made.

5 Executed August 8, 2018, at San Diego, California.

6 
7 _____
Matthew Atlas

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28