

**SUMMONS
(CITACION JUDICIAL)**

SUM-100

NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

GATEWAY INSULATION, INC., a California corporation;
and DOES 1 through 10 inclusive

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**CONFORMED COPY
OF ORIGINAL FILED**
Los Angeles Superior Court

APR 02 2009

John A. Clarke, Executive Officer/Clerk
By [Signature], Deputy
BONOTHY SWAIN

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

OMAR ORDONEZ, FILIBERTO PONCE, HERIBERTO CELIS, and
RAMON AYALA, as individuals, and on behalf of all
others similarly situated

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):
Los Angeles Superior Court

CASE NUMBER:
(Número del Caso):

BC 411021

111 North Hill Street
Los Angeles, California 90012
Central District

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Donn S. Taketa, SBN 132654 (818) 889-2299 (818) 889-4497

SULLIVAN TAKETA LLP
31351 Via Colinas, Suite 205
Westlake Village, CA 91362

DATE: APR 02 2009
(Fecha)

John A. Clarke
Clerk, by _____
(Secretario)

D.M. Swain, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

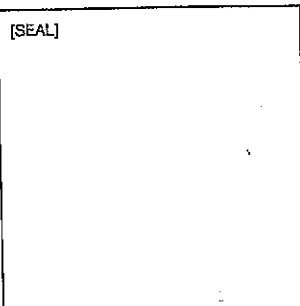
NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify):

- under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)

- other (specify):
4. by personal delivery on (date):



1 MARK F. SULLIVAN, State Bar No. 111011
DONN S. TAKETA, State Bar No. 132654
2 JOEL R. VILLASENOR, State Bar No. 224395
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6 Attorneys for Plaintiffs

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

APR 02 2009

John A. Clarke, Executive Officer/Clerk
By Dorothy Swain, Deputy
DOROTHY SWAIN

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF LOS ANGELES

10 OMAR ORDÓÑEZ, FILIBERTO PONCE,
11 HERIBERTO CELIS, and RAMÓN
12 AYALA, as individuals and on behalf of all
others similarly situated,

Case No.

BC411021

Class Action

13 Plaintiffs,

COMPLAINT FOR:

14 vs.

15
16 GATEWAY INSULATION, INC., a
17 California corporation; and DOES 1 through
18 10 inclusive,

19 Defendants.

- (1) Failure to Pay for All Hours Worked;
- (2) Failure to Pay Minimum Wage for All Hours Worked;
- (3) Failure to Pay for All Overtime;
- (4) Unlawful Wage Deductions;
- (5) Failure to Pay Statutory Waiting Time Penalties;
- (6) Conditioning Wage Payments on Unlawful Release;
- (7) Failure to Maintain and Provide Accurate Payroll Records and Wage Statements; and
- (8) Unfair Business Practices and Unfair Competition.

[Request for Jury Trial]

1 Plaintiffs OMAR ORDÓÑEZ, FILIBERTO PONCE, HERIBERTO CELIS, and
2 RAMÓN AYALA, on behalf of themselves and all others similarly situated (collectively
3 referred to as “Plaintiffs”), allege as follows:
4

5 I. INTRODUCTION

6 1. This is a class action under California Code of Civil Procedure § 382, and California
7 Rules of Court § 3.764, brought on behalf of installation workers employed by Defendants to
8 install building products, including insulation, while in California. The Plaintiffs as installers
9 have been denied pay for all hours worked, including being denied pay for all time spent
10 traveling to and from company-assigned work sites, time spent setting up, preparing,
11 measuring, unloading and loading at the job sites, maintenance, and administrative time. In
12 addition, Plaintiffs and their similarly situated installer coworkers (“putative Class Members”)
13 were paid based on inaccurate time records. Plaintiffs and the putative Class Members were
14 routinely denied pay for all hours worked, denied overtime pay, provided inaccurate wage
15 statements, and subjected to unlawful deductions from their wages for work-related tools and
16 equipment.

17 2. Pursuant to the California wage and hour laws, Plaintiffs and the putative Class
18 Members in this action seek: restitution of unpaid wages for all hours worked, recovery of
19 wages unlawfully deducted from paychecks, interest and penalties on unpaid wages, liquidated
20 damages, statutory penalties, civil penalties, injunctive relief, reasonable attorneys’ fees and
21 costs, and such further relief as the Court deems proper.

22 3. Plaintiffs bring their claims under, *inter alia*: California Labor Code § 200 *et seq.*,
23 (including specifically, §§ 201, 202, 203, 218.5, 218.6, 221, 223, 226, 226.3, 226.7, 450, 510,
24 512, 558, 1174.5, 1194, 1194.2, 1194.5, 1197, 1197.1, 2802); Industrial Welfare Commission
25 (IWC) wage orders; California Code of Civil Procedure § 1021.5; California Business and
26 Professions Code § 17200 *et seq.*; and related common law principles.

27 4. The unlawful acts alleged in this Complaint have occurred, are occurring and/or will
28 occur, at least in part, within the time period beginning four years prior to the filing of this

1 Complaint, up to and through the entry of judgment in this matter (hereinafter, the “Class
2 Period”).

3 4 **II. VENUE AND JURISDICTION**

5 5. Venue as to each Defendant is proper in this judicial district pursuant to California
6 Code of Civil Procedure § 395(a). Each Defendant transacts business, maintains an office,
7 and/or has an agent in Los Angeles County, and each Defendant is otherwise within this
8 Court’s jurisdiction for purposes of service of process. The unlawful acts alleged herein have a
9 direct effect on Plaintiffs and those similarly situated within the State of California and Los
10 Angeles County. Defendants have employed at least some of the Plaintiffs in Los Angeles
11 County, California.

12 6. The Court has jurisdiction over this class action pursuant to Article 6, § 10 of the
13 California Constitution, and California Code of Civil Procedure § 410.10.

14 15 **III. FACTUAL ALLEGATIONS**

16 **Plaintiffs**

17 7. Plaintiff OMAR ORDÓÑEZ (“Ordóñez”) is an individual who is over the age of 18
18 and a resident of the State of California. During at least a portion of the Class Period,
19 intermittently from 2002 to the present, Ordóñez worked for Defendant Gateway Insulation,
20 Inc. (“Gateway”) in California as an installer of insulation based out of Gateway’s yards in
21 Santa Clarita (Valencia) and Corona, California.

22 8. Plaintiff FILIBERTO PONCE (“Ponce”) is an individual who is over the age of 18
23 and a resident of the State of California. During at least a portion of the Class Period, from
24 approximately 2004 to the present, Ponce worked for Gateway in California as an installer of
25 insulation based out of Gateway’s yard in Corona, California.

26 9. Plaintiff HERIBERTO CELIS (“Celis”) is an individual who is over the age of 18
27 and a resident of the State of California, County of Los Angeles. During at least a portion of
28

1 the Class Period, from approximately 2002 to the present, Celis worked for Gateway in
2 California as an installer of insulation based out of Gateway’s yard in Corona, California.

3 10. Plaintiff RAMÓN AYALA (“Ayala”) is an individual who is over the age of 18 and
4 a resident of the State of California. During at least a portion of the Class Period, from
5 approximately 2004 to the present, Ayala worked for Gateway in California as an installer of
6 insulation based out of Gateway’s yard in Corona, California.

7
8 **Defendants**

9 11. Defendant GATEWAY INSULATION, INC., (“Gateway”) is a California
10 corporation headquartered in San Dimas, County of Los Angeles, and conducting business
11 within said County and elsewhere in the State of California. For instance, Defendant Gateway
12 during the Class Period employed a workforce of installers in the City of Santa Clarita
13 (Valencia), County of Los Angeles, State of California, and performed work in said County.

14 12. The true names and capacities, whether individual, corporate, associate, or otherwise,
15 of Defendants sued herein as DOES 1 through 10, inclusive, are currently unknown to
16 Plaintiffs, who therefore sue Defendants by such fictitious names under California Code of
17 Civil Procedure § 474. Plaintiffs are informed and believe, and based thereon allege, that each
18 of the Defendants designated herein as a DOE is legally responsible in some manner for the
19 unlawful acts referred to herein. Plaintiffs will seek leave of court to amend this Complaint to
20 reflect the true names and capacities of the Defendants designated hereinafter as DOES when
21 such identities become known.

22 13. Plaintiffs are informed and believe, and based thereon allege, that each Defendant
23 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a
24 joint scheme, business plan, control, or policy in all respects pertinent hereto, and the acts of
25 each Defendant are legally attributable to the other Defendants. Plaintiffs are informed and
26 believe, and on that basis allege, that all Defendants were the employers of Plaintiffs, and that
27 all Defendants have joint operational control over Plaintiffs.

1 **Defendants' Conduct**

2 14. Defendants have several policies and practices that all operate towards the same end
3 — maximizing Defendants' profits at the expense of the Plaintiffs' and putative Class
4 Members' rights under California wage and hour law.

5 15. For example, Defendants have a policy or practice of requiring Plaintiffs and putative
6 Class Members to perform non-installation tasks, including but not limited to the following:
7 attending mandatory safety and administrative meetings at Defendants' business premises;
8 verifying that the material loaded on the trucks are the correct materials needed for the day's
9 installation jobs; maintaining the trucks, including checking the trucks' fluid levels; performing
10 mandatory administrative paperwork; traveling from Defendants' business premises to the
11 various job sites; unloading trucks at the job site; checking in with the supervisor at each job
12 site to confirm the work to be performed; traveling from one job site to another; loading
13 leftover materials on the trucks after the installation work; cleaning up the installation site;
14 traveling back from the final job site of the day to Defendants' business premises; cleaning the
15 trucks; or performing repairs on any materials previously installed. One unlawful policy
16 involves the refusal to pay for all hours spent performing tasks not directly related to installing
17 building products, including the failure to pay minimum wage for the hours worked that are not
18 compensated. Plaintiffs and the putative Class Members regularly spent at least two hours, and
19 often several hours, each day performing these non-installation tasks.

20 16. Defendants' failure to pay Plaintiffs and putative Class Members for all hours
21 worked violates the applicable minimum wage for time spent performing non-installation tasks.

22 17. As another example, Defendants' payroll practices violate California wage and hour
23 law by failing to properly pay for all overtime and failing to properly maintain accurate time
24 and payroll records. As installers of building products, Plaintiffs and putative Class Members
25 are not employed in positions exempt from the overtime provisions of IWC Wage Order 16 and
26 the California Labor Code. Plaintiffs are informed and believe that Defendants know that
27 Plaintiffs and putative Class Members work long hours, regularly performing work in excess of
28 eight hours on any day. Yet Defendants have a policy or practice of requiring Plaintiffs and

1 putative Class Members to submit signed timesheets showing that each putative Class Member
2 has worked no more than eight hours in each day, regardless of the number of hours actually
3 worked that day. Defendants provide Plaintiffs and putative Class Members with pay stubs
4 which, as Defendants know, inaccurately show that Plaintiffs and putative Class Members work
5 for no more than eight hours per day. In addition, after Plaintiffs and putative Class Members
6 are required to report to work but are sent home, Plaintiffs and putative Class Members do not
7 receive all the required reporting time pay.

8 18. Another unlawful policy or practice involves making Plaintiffs and putative Class
9 Members pay for their own tools and equipment. Defendants have a policy or practice of
10 making mandatory deductions from Plaintiffs' and putative Class Members' wages to cover the
11 cost of tools and equipment which Defendants require Plaintiffs and putative Class Members to
12 use to perform their jobs. Examples of such tools and equipment include utility knives,
13 staplers, and staples.

14 15 **IV. CLASS ACTION ALLEGATIONS**

16 19. Plaintiffs bring this action on their own behalf, and on behalf of the following class
17 of individuals ("Class"):

18
19 **All non-exempt installers employed by Defendants in California to install building**
20 **products, including insulation, within the period beginning four years prior to the**
21 **filing of this Complaint, and ending at the time this action settles or proceeds to final**
22 **judgment.**

23 20. This action may properly be maintained as a class action under California Code of
24 Civil Procedure § 382, because there is a well-defined community of interest in the litigation
25 and the proposed class is easily ascertainable:

26 **Numerosity**

27 21. The potential members of the Class as defined are so numerous that joinder of all the
28 members of the Class is impracticable. While the precise number of putative Class Members

1 has not been determined at this time, Plaintiffs are informed and believe that Defendants have
2 employed over 75 putative Class Members in California during the four years prior to the filing
3 of the Complaint. Joinder of all members of the proposed Class is not practicable.

4 **Commonality**

5 22. There are questions of law and fact common to the Plaintiffs and the Class that
6 predominate over any questions affecting only individual members of the Class. For example,
7 the common questions of law and fact include, without limitation:

8 ***Common Questions of Law and Fact — First & Second Causes of Action***

9 23. Whether Defendants have a policy or practice of requiring Plaintiffs and putative
10 Class Members to perform non-installation tasks, such as attending safety and administrative
11 meetings, traveling to and from construction sites, setting up the construction materials, loading
12 and unloading company trucks, and maintaining the company vehicles.

13 24. Whether Defendants have a policy or practice of not paying Plaintiffs and putative
14 Class Members for all of the hours worked while performing non-installation tasks, which
15 include but are not limited to all the time spent in safety and administrative meetings, travel
16 time, set-up time, loading and unloading time, maintenance time, and administrative time.

17 25. Whether Defendants have a policy or practice of paying Plaintiffs and putative Class
18 Members in such a manner that Plaintiffs and putative Class Members receive compensation at
19 a rate that falls below the applicable minimum wage for time spent performing these non-
20 installation tasks.

21 ***Common Questions of Law and Fact — First & Third Causes of Action***

22 26. Whether Defendants have a policy or practice of requiring Plaintiffs and putative
23 Class Members to report that they have worked eight hours or less each day, regardless of the
24 actual number of hours worked.

25 27. Whether Plaintiffs and putative Class Members are exempt from the overtime
26 provisions of Wage Order 16 and the Labor Code.

1 ***Common Questions of Law and Fact — Fourth Cause of Action***

2 28. Whether Defendants have a policy or practice of making mandatory deductions from
3 Plaintiffs’ and putative Class Members’ wages to cover the cost of work-related tools and
4 equipment that Defendants require Plaintiffs and putative Class Members to use to perform
5 their jobs.

6 29. Whether Defendants lack a policy to ensure that such deductions are not improperly
7 deducted from Plaintiffs’ and putative Class Members’ wages.

8 ***Common Questions of Law and Fact — Fifth Cause of Action***

9 30. Whether Defendants have a policy or practice of failing to pay all wages due, in
10 accordance with California Labor Code §§ 200-203, at the time that Plaintiffs and putative
11 Class Members resign or are terminated from employment with Defendants.

12 31. Whether Defendants’ failure to pay all wages owing, to the putative Class Members
13 who were terminated or resigned, was willful as defined under the California Labor Code.

14 ***Common Questions of Law and Fact — Sixth Cause of Action***

15 32. Whether Defendants have a policy or practice of requiring Plaintiffs and putative
16 Class Members to submit signed timesheets showing that each putative Class Member has
17 worked no more than eight hours in each day, regardless of the number of hours actually
18 worked that day.

19 ***Common Questions of Law and Fact — Seventh Cause of Action***

20 33. Whether Defendants have a policy or practice of requiring Plaintiffs and putative
21 Class Members to submit signed timesheets showing that each putative Class Member has
22 worked no more than eight hours in each day, regardless of the number of hours actually
23 worked that day.

24 34. Whether Defendants have a policy and practice of failing to maintain complete and
25 accurate payroll records for each putative Class Member showing total hours worked and the
26 corresponding number of hours worked at the hourly rate.

27
28

1 35. Whether Defendants provide the Plaintiffs and putative Class Members with pay
2 stubs which inaccurately show that each putative Class Member works no more than eight
3 hours per day.

4 36. Whether Defendants fail to provide accurate payroll records or itemized wage
5 statements.

6 ***Common Questions of Law and Fact — Eighth Cause of Action***

7 37. Whether Defendants' conduct, as set forth in this Complaint, violates California
8 wage and hour law, including, but not limited to, IWC Wage Order 16, §§ 3,4,7 and 8, and
9 Labor Code §§201, 202, 203, 218.5, 218.6, 221, 223, 226, 226.3, 226.7, 450, 510, 512, 558,
10 1174.5, 1194, 1194.2, 1194.5, 1197, 1197.1, and 2802, and hence constitutes unfair competition
11 prohibited by Business and Professions Code §17200, *et seq.*

12 **Typicality**

13 38. Plaintiffs' claims are typical of the claims of the Class. Plaintiffs and all members of
14 the Class sustained injuries and damages arising out of and caused by Defendants' common
15 course of conduct in violation of law as alleged herein.

16 **Adequacy**

17 39. Plaintiffs are members of the Class and will fairly and adequately represent and
18 protect the interests of the Class. Class Counsel representing the Plaintiffs are competent and
19 experienced in litigating wage and hour complaints and other employment class actions.

20 **Superiority of Class Action**

21 40. A class action is superior to other available means for the fair and efficient
22 adjudication of this controversy. Individual joinder of all putative Class Members is not
23 practicable, and questions of law and fact common to the Class predominate over any questions
24 affecting only individual members of the Class. Each putative Class Member has been
25 damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices as
26 alleged herein. Class action treatment will allow those similarly situated persons to litigate
27 their claims in the manner that is most efficient and economical for the parties and the judicial
28 system.

1 **V. CAUSES OF ACTION**

2 **First Cause of Action**

3 ***Failure to Pay for All Hours Worked***

4 ***— Against All Defendants***

5 ***(Wage Order 16; Labor Code §§ 201-204, 206, 218.5, 218.6, 223, 510, 1194, 1197)***

6 41. Plaintiffs reallege and incorporate paragraphs 1 through 40 as though fully set forth
7 herein.

8 42. Defendants have failed to pay Plaintiffs and putative Class Members all the wages
9 they earned for all hours worked for Defendants, in violation of California law, including IWC
10 Wage Order 16, and California Labor Code §§ 204, 206, 218.5, 218.6, 223, 510, 1194, and
11 1197.

12 **Second Cause of Action**

13 ***Failure to Pay Minimum Wage for All Hours Worked***

14 ***— Against All Defendants***

15 ***(Wage Order 16 § 4; Labor Code §§ 223, 558, 1194, 1197, 1197.1)***

16 43. Plaintiffs reallege and incorporate paragraphs 1 through 40 as though fully set forth
17 herein.

18 44. It is unlawful for an employer to pay its employees less than the minimum wage set
19 forth in the applicable IWC Wage Order for all hours worked. See IWC Wage Order 16 § 4;
20 Cal. Lab. Code §§ 223, 1197. IWC Wage Order 16 defines “hours worked” as “the time during
21 which an employee is subject to the control of an employer, and includes all the time the
22 employee is suffered or permitted to work, whether or not required to do so.” IWC Wage
23 Order 16 § 2(J).

24 45. Defendants have a policy or practice of requiring Plaintiffs and the putative Class
25 Members to perform several tasks that do not involve the installation of building products
26 (“non-installation tasks”). For example, while working for Defendants, Plaintiffs and the
27 putative Class Members were required to perform such non-installation tasks as: attending
28

1 mandatory safety and administrative meetings on Defendants’ business premises; verifying that
2 the trucks are loaded with the correct materials needed for the day’s installation jobs;
3 maintaining equipment, including checking the trucks’ fluid levels; performing mandatory
4 administrative paperwork; traveling to and from Defendants’ business premises to the various
5 job sites; unloading trucks at the job site; checking in with the supervisor at each job site to
6 confirm the work to be performed; loading leftover materials on the trucks after the installation
7 work; cleaning up the installation site; cleaning the trucks; or performing repairs on any
8 materials previously installed.

9 46. Plaintiffs and the putative Class Members regularly spent at least two hours, and
10 often several hours, each day performing these non-installation tasks.

11 47. Defendants also have a policy or practice of not paying Plaintiffs and the putative
12 Class Members the applicable minimum wage for all the time spent performing non-installation
13 tasks, in violation of California law (including IWC Wage Order 16 and Cal. Labor Code §§
14 223, 1194, and 1197). See, e.g., *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314; and
15 *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575.

16
17 **Third Cause of Action**

18 ***Failure to Pay All Overtime***

19 ***— Against All Defendants***

20 ***(Wage Order 16 § 3; Labor Code §§ 510, 558, 1194, 1197)***

21 48. Plaintiffs reallege and incorporate paragraphs 1 through 40 as though fully set forth
22 herein.

23 49. Employees who are not employed in administrative, executive, or professional
24 capacities (Cal. Lab. Code § 515(a); Wage Order 16 § 1(A)), and who perform any work in
25 excess of eight hours on any day, in excess of forty hours in any workweek, or in the first eight
26 hours on the seventh day of work in any one workweek, are entitled to overtime compensation
27 for this work. See Cal. Lab. Code § 510(a); IWC Wage Order 16 § 3.
28

1 California Labor Code § 450(a), an employer is prohibited from coercing any employee to
2 purchase any thing of value from the employer or from any other person.

3 53. Defendants have a policy or practice of making mandatory deductions from
4 Plaintiffs' and the putative Class Members' wages to cover the cost of work-related tools and
5 equipment. Examples of such tools and equipment include utility knives, staplers, and staples.
6 Defendants have no policy of ensuring that such deductions are not made from the wages of
7 Plaintiffs and putative Class Members who are paid less than twice the minimum wage. This
8 policy or practice of making such mandatory deductions violates California wage and hour law,
9 including IWC Wage Order 16, and Cal. Lab. Code §§ 221, 223-224, 450 and 2802.

10 **Fifth Cause of Action**

11 ***Failure to Pay All Waiting Time Penalties***

12 ***— Against All Defendants***

13 ***(Labor Code §§ 201-203)***

14 54. Plaintiffs reallege and incorporate paragraphs 1 through 40 as though fully set forth
15 herein.

16 55. Defendants have a policy or practice of failing to pay all wages due, as set forth more
17 fully in Causes of Action One through Four. As a result, Plaintiffs and putative Class Members
18 who have their employment with Defendants end by termination or resignation are owed wages
19 at the time of their termination or resignation. Defendants have a policy or practice of failing to
20 pay all wages due upon termination or resignation, which violates California law, including
21 Cal. Lab. Code §§ 201-203.
22

23 **Sixth Cause of Action**

24 ***Unlawful Conditioning of Wage Payments on Execution of a Release***

25 ***— Against All Defendants***

26 ***(Labor Code § 206.5)***

27 56. Plaintiffs reallege and incorporate paragraphs 1 through 40 as though fully set forth
28 herein.

1 57. California Labor Code § 206.5 provides that an employer may not require the
2 execution of any release of any claim or right on account of wages due unless payment of such
3 wages has been made.

4 58. Defendants have a policy or practice of requiring Plaintiffs and putative Class
5 Members to submit signed timesheets showing that each putative Class Member has worked no
6 more than eight hours in each day, regardless of the number of hours actually worked that day.
7 Defendants know that the timesheets do not accurately reflect the true number of hours worked.
8 This policy or practice violates California law, including Cal. Lab. Code § 206.5.

9
10 **Seventh Cause of Action**

11 ***Failure to Maintain Accurate Payroll Records***

12 ***and to Provide Accurate Wage Statements***

13 ***— Against All Defendants***

14 ***(Labor Code §§ 226, 226.3, 1174, 1174.5)***

15 59. Plaintiffs reallege and incorporate paragraphs 1 through 40 as though fully set forth
16 herein.

17 60. California Labor Code § 226 requires every employer, semimonthly or at the time of
18 each payment of wages, to furnish each of its employees, either as a detachable part of the
19 check, draft, or voucher paying the employee's wages, or separately when wages are paid by
20 personal check or cash, an accurate itemized statement in writing showing, among other things,
21 (1) gross wages earned, (2) total hours worked by the employee, (3) all deductions, (4) net
22 wages earned and (5) all applicable hourly rates in effect during each respective pay period and
23 the corresponding number of hours worked at each hourly rate by each respective individual.

24 61. California Labor Code § 1174 also requires every employer to keep payroll records
25 showing the hours worked daily by and the wages paid to, and the number of piece-rate units
26 earned by and any applicable piece rate paid to, its employees.

27 62. Defendants have a policy or practice of requiring Plaintiffs and the putative Class
28 Members to submit signed timesheets showing that each putative Class Member has worked no

1 more than eight hours in each day, regardless of the number of hours actually worked that day.
2 Defendants have a policy or practice of failing to maintain complete and accurate payroll
3 records for each putative Class Member showing total hours worked and the corresponding
4 number of hours worked at the hourly rate. Defendants know that the timesheets submitted do
5 not accurately reflect the true number of hours worked. Defendants provide the Plaintiffs and
6 putative Class Members with pay stubs which inaccurately show that each Class Member
7 works no more than eight hours per day. Defendants' provision of such inaccurate pay stubs is
8 knowing and intentional.

9 63. As a result of these violations, Plaintiffs and the putative Class Members have
10 suffered injury in the form of being denied the appropriate amount of wages and penalties due
11 each pay period, and in the form of the difficulty and expense encountered in attempting to
12 reconstruct time and pay records for purposes of asserting their minimum wage, overtime, and
13 other claims in this action. See *Wang v. Chinese Daily News, Inc.* (C.D. Cal. 2006) 435
14 F.Supp.2d 1042, 1050 (employer liable for violations of § 226 because its “wage statements
15 always indicate 86.66 for hours worked, regardless of the actual hours worked”); and *Perez v.*
16 *Safety-Kleen Systems, Inc.* (N.D. Cal. Jun. 27, 2007) Nos. C 05-5338, C 07-0886, 2007 WL
17 1848037, *9 (employer similarly liable because statements “always list 80.00 hours per two
18 week period regardless of hours actually worked.”).

19 64. Plaintiffs and the putative Class Members seek damages, penalties under Labor
20 Code § 226(e), injunctive relief in accordance with Labor Code § 226(g), and an award of costs
21 and reasonable attorneys' fees.

22
23 **Eighth Cause Of Action**

24 ***Unfair Business Practices and Unfair Competition***

25 ***— Against All Defendants***

26 ***(Business & Professions Code, §§ 17200-17208)***

27 65. Plaintiffs reallege and incorporate paragraphs 1 through 64 as though fully set forth
28 herein.

- (d) Statutory “waiting time” penalties for each putative Class Member who resigned or was terminated [*Lab. Code §§ 201- 203*];
- (e) Civil penalties;
- (f) Attorneys’ fees and costs; and
- (g) Injunctive relief prohibiting such further violations of the California wage laws.

73. On the ***Second Cause of Action*** (failure to pay minimum wage):

- (a) A declaratory judgment that Defendants have failed to pay the required minimum wage for all hours worked by Plaintiffs and the putative Class Members;
- (b) A declaratory judgment that Defendants’ failure to pay the required minimum wage for all hours worked by Plaintiffs and the putative Class Members was willful and intentional in violation of California wage and hour law, including IWC Wage Order 16 § 4, and California Labor Code §§ 223, 558, and 1194;
- (c) Recovery of all unpaid minimum wages [*Lab. Code § 1194(a)*], plus interest at an annual rate of 10% [*Lab. Code §§ 218.6, 1194(a)*];
- (d) Liquidated damages, in an amount equal to (1) the unpaid minimum wages plus (2) interest thereon at an annual rate of 10% [*Lab. Code § 1194.2*];
- (e) Statutory “waiting time” penalties for each putative Class Member who resigned or was terminated [*Lab. Code §§ 201- 203*];
- (f) Civil penalties [*Lab. Code §§ 558, 1197.1(h)*];
- (g) Attorneys’ fees and costs [*Lab. Code §§ 218.5, 1194(a)*];
- (h) Injunctive relief prohibiting such further violations of the California wage laws [*See, e.g., Lab. Code § 1194.5*].

74. On the ***Third Cause of Action*** (failure to pay overtime):

- (a) A declaratory judgment that Defendants have failed to pay all overtime owing to Plaintiffs and the putative Class Members;

- 1 (b) A declaratory judgment that Defendants' failure to pay all overtime owing to
2 Plaintiffs and the putative Class Members was willful and intentional as defined
3 under the California Labor Code, and violates California law, including IWC
4 Wage Order 16 § 3, and California Labor Code §§ 510, 558, 1194, and 1197;
- 5 (c) Recovery of all unpaid overtime compensation [*Lab. Code § 1194(a)*], plus
6 interest [*Lab. Code § 218.6*];
- 7 (d) Civil penalties [*Lab. Code §§ 558*];
- 8 (e) Attorneys' fees and costs [*Lab. Code §§ 218.5, 1194(a)*]; and
- 9 (f) Injunctive relief prohibiting such further violations of the California wage laws.

10
11 75. On the ***Fourth Cause of Action*** (unlawful deductions from wages):

- 12 (a) A declaratory judgment that Defendants took unlawful deductions from the
13 wages owing to the Plaintiffs and the putative Class Members;
- 14 (b) A declaratory judgment that Defendants' taking of unlawful deductions from
15 the wages owing to the Plaintiffs and the putative Class Members was willful
16 and intentional as defined under the California Labor Code, and violates
17 California law, including IWC Wage Order 16 §§ 7-8, and California Labor
18 Code §§ 221-224, 450 and 2802, by deducting the cost of work-related tools
19 and equipment from Plaintiffs' and putative Class Members' wages, by
20 coercing Plaintiffs and putative Class Members to purchase tools or equipment
21 from Defendants, and by failing to reimburse for such necessary expenditures;
- 22 (c) Recovery of all amounts unlawfully withheld from wages;
- 23 (d) Interest on the amounts unlawfully withheld [*Lab. Code § 218.6*];
- 24 (e) Civil penalties [*Lab. Code § 225.5*];
- 25 (f) Attorneys' fees and costs [*Lab. Code § 218.5*];
- 26 (g) Injunctive relief prohibiting such further violations of the California wage laws
27 [*See, e.g., Lab. Code § 1194.5*].
- 28

1 76. On the ***Fifth Cause of Action*** (failure to pay waiting time penalties):

- 2 (a) A declaratory judgment that Defendants have willfully and intentionally
3 violated California law (including Lab. Code §§ 201-203) by failing to pay
4 wages due to each putative Class Member who resigned or was terminated;
5 (b) Recovery of statutory “waiting time” penalties for each putative Class Member
6 who resigned or was terminated during the Class Period; and
7 (c) Attorneys’ fees and costs [*Lab. Code § 218.5*].

8
9 77. On the ***Sixth Cause of Action*** (conditioning wages on execution of a release):

- 10 (a) A declaratory judgment that Defendants have willfully and intentionally
11 violated California law (including Lab. Code § 206.5) by requiring Plaintiffs
12 and putative Class Members to submit signed timesheets showing that each
13 putative Class Member has worked no more than eight hours in each day, while
14 knowing that Plaintiffs and putative Class Members have in fact worked more
15 than eight hours that day;
16 (b) Civil penalties [*Lab. Code § 2699(f)*];
17 (c) Attorneys’ fees and costs [*Lab. Code § 2699(g)*]; and
18 (d) Injunctive relief prohibiting such further violations of the California wage laws.

19 78. On the ***Seventh Cause of Action*** (failure to provide accurate wage statements and
20 failure to keep accurate time records):

- 21 (a) A declaratory judgment that Defendants failed to provide and maintain accurate
22 payroll records and itemized wage statements;
23 (b) A declaratory judgment that Defendants’ failure to provide and maintain
24 accurate payroll records and itemized wage statements violated California law,
25 including California Lab. Code §§ 226, 226.3 and 1174;
26 (c) An award of the greater of (1) all actual damages or (2) \$4,000 per putative
27 Class Member [*Lab. Code § 226(e)*];
28 (d) Civil penalties [*Lab. Code § 226.3*];

1 (e) Attorneys' fees and costs [*Lab. Code* § 226(e),(g)];

2 (f) Injunctive relief prohibiting such further violations of the California wage laws.

3 79. On the *Eighth Cause of Action* (unfair business practices):

4 (a) A declaratory judgment that Defendants' violations of the California wage and
5 hour laws as described in the Complaint constitute an unfair business practice
6 and unfair competition in violation of California Business & Professions Code §
7 17200, *et seq.*;

8 (b) Restitution of all unlawfully withheld wages [*Bus. & Prof. Code* § 17203];

9 (c) An injunction prohibiting Defendants from engaging in such unlawful practices
10 in the future [*Bus. & Prof. Code* § 17203];

11 (d) Other appropriate equitable relief;

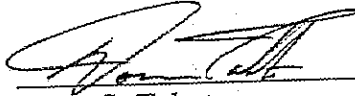
12
13 80. And, as to all causes of action, for injunctive relief to require Defendants to pay the
14 putative Class Members and future installation workers all wages owing under the California
15 Labor Code, and for such other and further relief as the Court deems just and proper.

16
17 **VII. REQUEST FOR JURY TRIAL**

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

20
21 DATED: April 2, 2009

22 Respectfully submitted
SULLIVAN TAKETA LLP

23
24 
25 By: Donn S. Taketa
26 Joel R. Villaseñor
27 Attorneys for Plaintiffs
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