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and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

ANTONIO GONZALEZ, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

KAISER FOUNDATION HOSPITALS, a  
California corporation; KAISER  
PERMANENTE, a business entity, exact form  
unknown; KAISER FOUNDATION  
HEALTH PLAN, INC., a California  
corporation; and DOES 1 through 100,  
inclusive,

Defendants.

CASE NO.:

**BC492725**

[CLASS ACTION]

COMPLAINT FOR

1. FAILURE TO PAY WAGES (LABOR  
CODE §§ 204)
  2. FAILURE TO FURNISH ACCURATE  
WAGE & HOUR STATEMENTS (LABOR  
CODE § 226)
  3. PRIVATE ATTORNEY GENERAL  
ACT (LABOR CODE § 2699)
  4. UNFAIR BUSINESS PRACTICES  
(BUSINESS & PROFESSIONS CODE §  
17200, *ET SEQ.*)
  5. BREACH OF ORAL CONTRACT
  6. COMMON LAW CONVERSION
- DEMAND FOR JURY TRIAL

1 Plaintiff ANTONIO GONZALEZ ("Plaintiff" or "GONZALEZ"), brings this action on his  
2 own behalf and on behalf of his fellow employees. Plaintiff's claims are for unpaid wages for "off-  
3 the-clock" work, inaccurate paycheck statements, unfair business practices, breach of oral contract,  
4 and common law conversion. This is a proposed class action pursuant to Code of Civil Procedure §  
5 382 and Business & Professions Code §§ 17203 and 17204, on behalf of the Class, as defined below,  
6 against Defendants, KAISER FOUNDATION HOSPITALS, a California corporation; KAISER  
7 PERMANENTE, a business entity, exact form unknown; KAISER FOUNDATION HEALTH  
8 PLAN, INC., a California corporation; and DOES 1 through 100, inclusive, (collectively,  
9 "Defendants" or "KAISER"). Plaintiff GONZALEZ also brings the same claims on behalf of his  
10 fellow employees pursuant to the Private Attorney General Act ("PAGA"), pursuant to Labor Code §  
11 2698, *et seq.* Plaintiff therefore alleges as follows:

#### 12 13 **JURISDICTION AND VENUE**

14 1. This Court has jurisdiction over all causes of action herein pursuant to the California  
15 Constitution, Article VI, § 10, Code of Civil Procedure § 410.10 and Business and Professions Code  
16 § 17203.

17 2. The Los Angeles Superior Court has jurisdiction of this action because Defendants  
18 Kaiser Foundation Hospitals and Kaiser Foundation Health Plan, Inc. are incorporated in the State of  
19 California. Pursuant to the Class Action Fairness Act, removal is improper as "two-thirds or more of  
20 the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are  
21 citizens of the State in which the action was originally filed." 28 U.S.C. § 1332(d)(4). Thus, there is  
22 no federal jurisdiction over this matter. This case also raises no federal questions.

23 3. Venue is proper in this Court under Code of Civil Procedure §§ 395 and 395.5  
24 because Defendants operate in this County, Plaintiff GONZALEZ resides in and/or worked in this  
25 county and the injuries that are the subject of this lawsuit arose in this county.

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1 **PARTIES**

2 4. Plaintiff ANTONIO GONZALEZ was employed by Defendants in Defendants'  
3 hospice/home health palliative care department for more than five years, since January 2007.  
4 Plaintiff resided in the County of Los Angeles and performed duties in Los Angeles County during  
5 the four years preceding the filing of this action. In this capacity Plaintiff provided nursing services  
6 for patients of Defendants.

7 5. Upon information and belief, and at all times material to this complaint, Defendants  
8 KAISER are and were entities doing business in California. Plaintiff is informed and believes, and  
9 thereupon alleges, that at all times material herein Defendants KAISER were Plaintiff's employers.  
10 Upon information and belief, KAISER and its affiliated entities provide health care services  
11 throughout California.

12 6. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as  
13 DOES 1 - 100, inclusive, and therefore sues these Defendants by such fictitious names and  
14 capacities. Plaintiff is informed and believes, and on that basis alleges, that each Defendant sued  
15 under such fictitious names is in some manner responsible for the occurrences herein alleged.

16 7. Plaintiff is informed and believes and thereupon alleges that, at all times material  
17 herein, each of the Defendants was functioning as the agent, servant, partner, employee and/ or  
18 working in concert with his, her or its co-defendants and was acting within the course and scope of  
19 such agency, partnership, employment and/or concerted activity. To the extent that certain acts and  
20 omissions were perpetrated by certain Defendants, the remaining Defendants condoned, authorized  
21 and ratified said acts and omissions of the co-defendants, and in doing the actions mentioned below  
22 was acting within the course and scope of his, her or its authority as such agent, servant, partner, and  
23 employee with the permission, consent and ratification of the co-defendants.

24 8. Plaintiff is informed and believes and thereupon alleges that, at all times material  
25 herein, each Defendant was completely dominated and controlled by his, her or its co-defendant, and  
26 each was the alter ego of the other.

27 9. Whenever and wherever reference is made in this complaint to any act or failure to act  
28 by a Defendant or Defendants, such allegations and reference shall also be deemed to mean the acts

1 and failures to act of each Defendant acting individually, jointly, and severally. Whenever and  
2 wherever reference is made to individuals who are not named as a Plaintiff or a Defendant in this  
3 complaint but who were employees/agents of KAISER, such individuals at all relevant times acted  
4 on behalf of KAISER within the course and scope of their employment.

5 10. Plaintiff is informed and believes and thereupon alleges that, at all times material  
6 herein, Defendants, and/or their agents/employees knew or reasonably should have known that unless  
7 they intervened to protect Plaintiff, and to adequately supervise, prohibit, control, regulate,  
8 discipline, and/or otherwise penalize the conduct of partners, members, employees of KAISER, set  
9 forth above, the remaining Defendants and employees perceived the conduct and omissions as being  
10 ratified and condoned.

#### 11 12 FACTS

13 11. Plaintiff GONZALEZ is an individual who was a resident of the County of Los  
14 Angeles during the four years preceding the filing of this action.

15 12. Plaintiff is informed and believes, and thereon alleges, that the Defendant KAISER  
16 FOUNDATION HOSPITALS (hereinafter, "KFH"), is a California corporation, which transacts  
17 business in the State of California. The Defendant KFH on information and belief is engaged in the  
18 medical care business, and provides medical care to patients through its employees including  
19 Plaintiff. The Defendant KAISER PERMANENTE (hereinafter, "KP") is on information and belief  
20 a business entity, exact form unknown, which transacts business in the State of California and is  
21 engaged in the medical care business, and provides medical care to patients through its employees  
22 including Plaintiffs. The Defendant KAISER FOUNDATION HEALTH PLAN, INC. (hereinafter,  
23 "KFHPI") is on information and belief a California corporation, which transacts business in the State  
24 of California and is engaged in the medical care business, and provides medical care to patients  
25 through its employees including Plaintiffs. Plaintiff is informed that the Defendants KFH and KP  
26 and KFHPI were at times the alter egos of each other, so that as to maintain the fiction of a separate  
27 corporate existence would work an injustice on Plaintiff, among others. Plaintiff was at all times

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1 relevant employed by the Defendants KFH and/or KP and/or KFHPI, and/or each of the them, and  
2 DOES 1 through 100, inclusive.

3 13. The acts which form the basis of this case all took place at Defendants' facilities  
4 located throughout California and locations where Plaintiff was performing work on behalf of  
5 Defendants (hereinafter, "the Premises").

6 14. Defendants failed to pay Plaintiff for all time worked, including all time during which  
7 Plaintiff was subject to Defendants' control, including but not limited to all time that Plaintiff was  
8 suffered or permitted to work, whether or not required to do so. *See, e.g., Morillon v. Royal Packing*  
9 *Co.* (2000) 22 Cal.4th 575, 578.

10 15. During the time Plaintiff was employed by Defendants, Defendants failed and refused  
11 to pay Plaintiff for all hours worked ("off-the-clock" work), including but not limited to time worked  
12 before and after the official start and end times of his shifts.

13 16. During Plaintiff's employment with Defendants, Plaintiff was regularly required to  
14 work more than the hours specified as the official start and end times of his shifts. Defendants  
15 regularly failed and refused to fully compensate Plaintiff for the additional hours he worked.

16 17. Plaintiff seeks injunctive relief in the form of an order prohibiting Defendants from  
17 requiring class members to work without compensation for all hours worked, and to ensure  
18 Defendants' compliance with Labor Code § 226.

19 18. During Plaintiff's employment with Defendants, Defendants failed and refused to  
20 provide Plaintiff with timely and accurate wage and hour statements in violation of law, thereby  
21 causing him harm due to the lack of information as to the actual hours worked.

### 22 23 CLASS ACTION ALLEGATIONS

24 19. Plaintiff brings these claims as a class action pursuant to Code of Civil Procedure §  
25 382 and Business and Professions Code §§ 17203 & 17204. Plaintiff brings this action on his own  
26 behalf and on behalf of the following class of individuals (the "Class" or "Class Members"):

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1 All non-exempt employees employed by, or formerly employed  
2 by, Defendants in Defendants' hospice/home health palliative  
3 care departments in the State of California at any time from  
4 August 22, 2008, and continuing while this action is pending  
5 ("the Class Period.").

6 20. During the Class Period, in Los Angeles County and elsewhere, Defendants: (1)  
7 required the Class Members to work off-the-clock without compensation; (2) required the Class  
8 Members to accept wages for a fixed number of hours per day without regard to how much time it  
9 actually took the Class Members to complete their assigned work; (3) failed and refused to pay the  
10 Class Members for all work performed each pay period; (4) failed to provide the Class Members  
11 timely and accurate wage and hour statements; (5) violated the Unfair Competition Law ("the  
12 UCL"); and (6) breached the parties' oral employment agreement. The foregoing acts and other acts  
13 by Defendants violated provisions of the Labor Code, including §§ 204, 210, 216, 225.5, 226, 226.3,  
14 558, 1174, 1174.5, 1199, 2698 and 2699, violated the applicable Wage Order issued by the Industrial  
15 Welfare Commission of the State of California (the "Wage Order") (collectively, the "Employment  
16 Laws and Regulations"), violated the UCL, and violated the Class Members' rights.

17 21. The proposed class is ascertainable in that its members can be identified using  
18 information contained in Defendants' payroll and personnel records.

19 22. Defendants' conduct violated the Employment Laws and Regulations. Defendants'  
20 systematic acts and practices also violated, *inter alia*, Business & Professions Code § 17200, *et seq.*

21 23. Numerosity. Upon information and belief, the number of class members is estimated  
22 to be more than forty persons. The Class Members are so numerous and geographically dispersed  
23 that joinder of each individual class member would be impracticable, and the disposition of their  
24 claims in a class action, rather than numerous individual actions, will benefit the parties, the Court  
25 and the interests of justice.

26 24. Commonality. There is a well-defined community of interest in the questions of law  
27 and fact involved in this action because Defendants' failure to pay Class Members their earned wages  
28 or afford them the protections required under the Employment Laws and Regulations affects all class  
members. Common questions of law and fact predominate over questions that affect only individual

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1 Class Members because all Class Members' duties and activities have been controlled and directed  
2 by Defendants. The predominate questions of law and fact include, but are not limited to,

3 a. Whether Defendants' conduct violated the Employment Laws and  
4 Regulations, by

5 (i) failing to compensate Plaintiff and the Class Members for all  
6 hours worked;

7 (ii) failing to compensate Plaintiff and the Class Members in a timely  
8 fashion for each pay period;

9 (iii) failing to provide Plaintiff and the Class Members with timely  
10 and accurate wage and hour statements; and

11 (iv) failing to maintain complete and accurate payroll records for  
12 Plaintiffs and the Class Members;

13 b. Whether Defendants devised a scheme and plan to circumvent California's  
14 wage and hour laws;

15 c. Whether Defendants committed oppression, which is defined as despicable  
16 conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's  
17 rights;

18 d. Whether Defendants' systematic acts and practices violate, *inter alia*, Business  
19 & Professions Code § 17200, *et seq.*; and

20 e. Whether Plaintiff and the members of the Class are entitled to the injunctive  
21 relief sought herein.

22 25. Typicality. Plaintiff's claims are typical of those of other Class Members because all  
23 Class Members share the same or similar employment duties and activities and all have been denied  
24 the benefits and protections of the Employment Laws and Regulations in the same manner. Because  
25 Defendants have uniformly applied the same labor staffing guidelines and payroll policies to Class  
26 Members, Plaintiff's claims are typical of the claims of all Class Members. Plaintiff's claims are  
27 also typical because he suffered the same damages as those suffered by all Class Members.

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1 Moreover, Plaintiff has no interests antagonistic to those of the Class Members, and Defendants have  
2 no defenses unique to Plaintiff in connection with the Class claims.

3       26.   Adequacy of Representation. Plaintiff can fairly and adequately represent and protect  
4 the interests of all Class Members because he does not have any disabling conflicts of interest which  
5 are antagonistic to those of all other Class Members. Plaintiff seeks no relief which is antagonistic or  
6 adverse to the other Class Members, and the infringement of his rights and the damages he has  
7 suffered are typical of all other Class Members. Plaintiff's counsel are competent and experienced in  
8 litigating class actions and collective actions in California based on employers' violations of the  
9 Employment Laws and Regulations.

10       27.   Superiority of Class Action. The nature of this action and the nature of remedies  
11 available to Plaintiff and the other Class Members in this putative Class make use of the class action  
12 a particularly efficient, effective and superior procedure because:

13           a.   For many of the Class Members, individual actions or other individual  
14 remedies would be impracticable and litigating individual actions would be too costly;

15           b.   The action involves a large corporate employer and a large number of  
16 individual employees, many with relatively small claims and all with common issues of law and fact;

17           c.   If the Class Members are forced to bring individual lawsuits, the corporate  
18 defendant would necessarily gain an unfair advantage due to its ability to exploit and overwhelm the  
19 limited resources of individual Class members with its vastly superior financial and legal resources;

20           d.   The costs of individual suits would likely consume the amounts recovered;

21           e.   Requiring each Class Member to pursue an individual remedy would also  
22 discourage the assertion of lawful claims by current employees of Defendants, who would be  
23 disinclined to pursue an action against their present employer due to an appreciable and justified fear  
24 of retaliation and permanent damage to their immediate and/or future employment; and

25           f.   Common business practices that Plaintiff experienced are representative of  
26 those experienced by all Class Members and can establish the right of all Class Members to  
27 recover on the alleged claims.

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1        28.     The duties and business activities of the proposed class action "Class Members" were  
2 essentially the same or very similar to the duties and activities of Plaintiff described above. At all  
3 times during the Class Period, all of the Class Members were paid in the same manner and were  
4 subject to the same standard employment procedures and practices as Plaintiff. As Defendants have  
5 uniformly applied the same labor staffing guidelines and overtime policies to all Class Members,  
6 Plaintiff's claims are typical of the claims of all Class Members. Plaintiff's claims are also typical  
7 because he suffered the same type of damages as those suffered by all Class Members.

8        29.     Class Members, including Plaintiff, were subject to the same unlawful policy or plan  
9 whereby Defendants failed to pay Class Members for all time worked, including all time during  
10 which Class Members were subject to Defendants' control, including but not limited to all time that  
11 Class Members were suffered or permitted to work, whether or not required to do so. *See, e.g.,*  
12 *Morillon v. Royal Packing Co.* (2000) 22 Cal.4th 575, 578.

13        30.     The Class Members, like Plaintiff, all were subject to the same unlawful policy or  
14 practice of performing "off-the-clock" uncompensated work, including not being paid for work  
15 performed before and after the official (but ignored) start and end time of their shifts.

16        31.     During the Class Period, Defendants were fully aware that Plaintiff and the  
17 Class Members were performing "off-the-clock" uncompensated work.

18        32.     Defendants' violations of the Employment Laws and Regulations were repeated,  
19 wilful and intentional.

20        33.     Plaintiff and the Class Members have been damaged by these violations of the  
21 Employment Laws and Regulations.

22        34.     During the Class Period, Defendants failed and refused to provide Plaintiff and the  
23 Class Members with timely and accurate wage and hour statements in violation of law, thereby  
24 causing them harm.

25        35.     While the exact number of Class Members is unknown to Plaintiff at the present time,  
26 based on information and belief, there are more than 40 such persons, and probably more than 100.  
27 A class action is the most efficient mechanism for resolution of the claims of the Class Members.

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1           36.     In addition, a class action is superior to other available methods for the fair and  
2 efficient adjudication of this controversy since the damages suffered by individual Class Members  
3 may be relatively small, and the expense and burden of individual litigation would make it  
4 impossible for such Class Members individually to redress the wrongs done to them. Moreover,  
5 because of the similarity of the Class members' claims, individual actions would present the risk of  
6 inconsistent adjudications subjecting the Defendants to incompatible standards of conduct.

7           37.     Plaintiff is currently unaware of the identities of all the Class Members. Accordingly,  
8 Defendants should be required to provide to Plaintiff a list of all non-exempt employees in  
9 Defendants' hospice/home health/palliative care departments in California beginning four years prior  
10 to the filing of the original complaint until the present, stating their last known addresses and  
11 telephone numbers, so that Plaintiff can give such persons notice of the pendency of this action and  
12 an opportunity to make an informed decision about whether to participate in it.

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14                               **FIRST CAUSE OF ACTION**

15                               **(Failure to Pay Wages – Labor Code § 204**

16                               **By Plaintiff Individually and on Behalf of All Class Members)**

17           38.     The allegations set forth in the paragraphs above are realleged and incorporated  
18 herein by reference, excepting those allegations which are inconsistent with this cause of action.

19           39.     Plaintiff brings this action to recover unpaid compensation for all hours  
20 worked.

21           40.     Defendants' conduct described in this Complaint violates, among other things,  
22 Labor Code §§ 204 and 216.

23           41.     At all times relevant to this action, Labor Code § 204 was in effect and binding on  
24 Defendants. This section requires Defendants to pay all wages due their employees within a certain  
25 number of days following each pay period.

26           42.     Defendants failed to pay Plaintiff and the Class Members for all of the actual  
27 hours worked. Defendants knew or should have known that Plaintiff and the Class Members were  
28 working these hours.

43. Defendants have failed and refused to pay wages when due and owed to Plaintiff and the Class Members.

44. Plaintiff and the Class Members are entitled to recover the unpaid balance of compensation Defendants owe Plaintiff and the Class Members, plus interest on that amount, and reasonable attorneys fees and costs of this suit. Plaintiff and the Class Members are also entitled to additional penalties pursuant to statute.

45. At all times material hereto, Labor Code § 558 was in full force and effect and was binding on Defendants. This section provides for damages and civil penalties for violations of the wage and hour laws. Plaintiff and the Class Members are also entitled to the damages and civil penalties thereunder.

46. Plaintiff and the Class Members are also entitled to penalties pursuant to Paragraph No. 20 of the applicable Wage Order which provides, in addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of the Wage Order, shall be subject to a civil penalty of \$50 (for initial violations) or \$100 (for subsequent violations) for each underpaid employee for each pay period during which the employee was underpaid in addition to the amount which is sufficient to recover unpaid wages.

47. As a result of Defendants' unlawful acts, Plaintiff and the Class Members have been deprived of compensation in an amount according to proof at the time of trial, and are entitled to recovery of such amounts, plus interest thereon.

## SECOND CAUSE OF ACTION

**(Failure to Furnish Accurate Wage and Hour Statements - Labor Code § 226**

**By Plaintiff Individually and on Behalf of All Class Members)**

48. The allegations set forth in the Paragraphs above are realleged and incorporated herein by reference, excepting those allegations which are inconsistent with this cause of action.

49. Labor Code § 226(a) requires Defendants, “semimonthly or at the time of each payment of wages,” to furnish Plaintiff and the Class Members with “an accurate itemized statement

1 in writing" showing gross and net wages earned, total hours worked, rates of pay, and other  
2 information.

3 50. During the Class Period, Defendants have routinely failed to provide Class  
4 Members, including Plaintiff, with timely and accurate wage and hour statements showing gross  
5 hours earned, total hours worked, all deductions made, net wages earned, the name and address of the  
6 legal entity employing the Class Members, and all applicable hourly rates in effect during each pay  
7 period and the corresponding number of hours worked at each hourly rate.

8 51. The Class Members suffered injury as a result of Defendants' knowing and intentional  
9 failure to provide them with the wage and hour statements required by law.

10 52. Pursuant to Labor Code § 226, subsections (e) and (f), and based on Defendants'  
11 conduct as alleged herein, the Class Members including Plaintiff is entitled to (a) fifty dollars (\$50)  
12 for the initial pay period in which a wage and hour statement violation occurred, and one hundred  
13 dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an  
14 aggregate penalty of four thousand dollars (\$4,000) per employee; (b) injunctive relief to ensure  
15 Defendants' compliance with Labor Code § 226; and (c) an award of costs and reasonable  
16 attorneys' fees.

17 53. Defendants conduct also entitles Plaintiff and the Class Members to seek preliminary  
18 and permanent injunctive relief, including but not limited to an order that Defendants issue wage and  
19 hour statements to the Class Members that comply with Labor Code § 226.

20 54. As a consequence of Defendants' actions, Plaintiff and the Class Members are  
21 entitled to all available statutory penalties, costs and reasonable attorneys' fees, including those  
22 provided in Labor Code § 226(e), as well as all other available remedies.

23 55. As a result of Defendants' unlawful acts, Plaintiff and the Class Members  
24 have been deprived of compensation in an amount according to proof at the time of trial, and are  
25 entitled to recovery of such amounts, plus interest thereon.

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1 (f) Defendants violated provisions of IWC Wage Order 7-2001 relating to hours  
2 and days of work.

3 60. Plaintiff, individually and on behalf of all others similarly situated, provided written  
4 notice on or about July 9, 2012 by certified mail to the Labor and Workforce Development Agency  
5 ("LWDA") and to Defendants of the facts and theories regarding the violations of the Employment  
6 Laws and Regulations. Attached as Exhibit 1 is a true and correct copy of the letter sent to the  
7 LWDA and Defendants.

8 61. More than 33 calendar days have elapsed since Plaintiff's notice to the LWDA and  
9 Defendants. The LWDA has not advised Plaintiff that it intends to investigate Plaintiff's claims, nor  
10 have Defendants provided notice that the alleged violations have been cured. Plaintiff has therefore  
11 exhausted all administrative procedures required under Labor Code §§ 2698, 2699 and 2699.3, and  
12 as a result, is justified as a matter of right in bringing forward this cause of action.

13 62. Pursuant to Labor Code § 2699(i), Plaintiff and all persons aggrieved should be  
14 awarded twenty-five percent (25%) of all penalties due under California law.  
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#### 16 **FOURTH CAUSE OF ACTION**

17 **(Unfair Business Practices – Business & Professions Code § 17200, *et seq.***

18 **By Plaintiff Individually and on Behalf of All Class Members)**

19 63. The allegations set forth in the Paragraphs above are realleged and incorporated herein  
20 by reference, excepting those allegations which are inconsistent with this cause of action.

21 64. At all times mentioned herein Defendants were and are subject to the requirements of  
22 the Unfair Competition Law (Business & Professions Code § 17200, *et seq.*) (henceforth, "UCL"),  
23 which prohibits unlawful, unfair, deceptive or fraudulent business practices.

24 65. Defendants' conduct, including but not limited to failing to pay employees all wages  
25 due, was and is unlawful and therefore violates the UCL. Defendants' unlawful and unfair practices  
26 occurred in connection with Defendants' trade and commerce in California.

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66. Defendants' violations of law, as alleged above, constitute unfair business practices and were done repeatedly over a substantial period of time. These practices were the result of policies that worked to the detriment of Class Members.

67. Due to these unfair, unlawful and/or deceptive business practices, Defendants gained a competitive advantage over other comparable businesses.

68. The Class Members, including Plaintiff, have suffered injury in fact and have lost money or property as a result of Defendants' unfair business practices, and Defendants have reaped unfair benefits and illegal profits at their expense.

69. Defendants' unfair business practices entitle the Plaintiff and the Class Members to seek preliminary and permanent injunctive relief, including, but not limited to, orders that Defendants account for and restore to the Class Members the compensation unlawfully withheld.

70. As a direct result of Defendants' unlawful conduct, Defendants have been unjustly enriched. Therefore, Plaintiff, on behalf of himself and all other Class Members, seeks restitution and/or disgorgement of all sums wrongfully retained by Defendants during the Class Period.

### FIFTH CAUSE OF ACTION

**(Breach of Oral Contract -**

**Plaintiff Individually and on Behalf of All Class Members)**

71. The allegations set forth in the Paragraphs above are realleged and incorporated herein by reference, excepting those allegations which are inconsistent with this cause of action.

72. On or about January 2007 Plaintiff and Defendants entered into an oral contract whereby Defendants and Plaintiff agreed Plaintiff would be employed by Defendants.

73. The aforesaid agreement was made in light of and incorporated the provisions of existing law. See, e.g., *Lockheed Aircraft Corp. v. Superior Court* (1946) 28 Cal.2d 481, 486.

74. Plaintiff is informed and believes that each of the Class Members entered into a similar agreement to be employed by Defendants during the Class Period.

75. The Class Members, including Plaintiff, have performed all conditions required under their agreements with Defendants.

76. Defendants breached these employment agreements with Plaintiff and the Class Members in that they: (1) failed to pay Plaintiff and Class Members all wages due; (2) failed to provide the Class Members with accurate wage and hour statements; and (3) violated the UCL.

77. The Class Members, including Plaintiff, have suffered damages as a direct and proximate result of Defendants' breach of contract, in an amount according to proof.

### SIXTH CAUSE OF ACTION

**(Common Law Conversion - Plaintiff Individually and on  
Behalf of the Class Against All Defendants)**

78. The allegations set forth in the Paragraphs above are realleged and incorporated herein by reference, excepting those allegations which are inconsistent with this cause of action.

79. Defendants have knowingly and wrongfully withheld Class Members' property. Earned wages for labor already performed is property. The right to possess this property fully vested at the time the labor and services was performed and, accordingly, this property belongs to Plaintiff and the Class Members, and is not and never was the property of Defendants.

80. Defendants wrongfully and knowingly converted Class Members' property as part of a deliberate scheme to maximize profits at the expense of the Class Members, including Plaintiff.

81. Defendants wrongfully converted the property of Plaintiff and the Class Members by:

a. Withholding property which the Class Members, including Plaintiff, owned and had the legal right to hold, possess and dispose of, and then

b. Taking this property and utilizing it for Defendants' own use, purpose and benefit.

82. At the time the conversion took place, Class Members, including Plaintiff, were entitled to possession of this fully-vested property.

83. The Class Members, including Plaintiff, have been injured by Defendants' wrongful conversion of their property. The Class Members, including Plaintiff, are entitled to immediate possession of all property wrongfully converted by Defendants, with interest, as well as any and all profits, whether direct or indirect, which Defendants acquired by the unlawful conversion.



84. As alleged herein, Defendants' conduct was oppressive and carried on with a willful and conscious disregard of the rights of others.

85. In addition to the actual damages caused by the unlawful conversion, the Class Members, including Plaintiff, are entitled to recover damages for the sake of example and by way of punishing Defendants.

## PRAYER FOR RELIEF

Wherefore, Plaintiff, individually and on behalf of the Class, prays for judgment against Defendants as follows:

1. For payment of wages and interest thereon;
2. For compensatory damages in an amount to be ascertained at trial;
3. For restitution in an amount to be ascertained at trial;
4. For punitive and exemplary damages in an amount to be ascertained at trial;
5. For statutory penalties;
6. For preliminary and permanent injunctive relief prohibiting the Defendants from continuing the conduct complained of;
7. For further injunctive relief, including but not limited to restitution and disgorgement and for such other injunctive relief as the Court may deem proper;
8. For pre-and post-judgment interest at the legal rate;
9. For attorneys' fees and costs pursuant to Labor Code §§ 226(e) and 2699;
10. For such other and further relief as this Court deems just and proper.

DATED: September 27, 2012

LAW OFFICES OF THOMAS W. FALVEY

By:

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Thomas W. Falvey

Attorneys for Plaintiff **ANTONIO GONZALEZ**,  
individually and on behalf of all others similarly  
situated

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DATED: September 27, 2012

By: Thomas W. Ealy  
Thomas W. Ealy

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**COMPLAINT FOR DAMAGES**