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Superior Court of California,
County of Orange

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1 Christopher A. Olsen, Esq. (236928)
2 **OLSEN LAW OFFICES, APC**
3 1010 Second Ave., Ste. 1835
4 San Diego, CA 92101
5 Phone No.: (619) 550-9352
6 Fax No.: (619) 923-2747
7 caolsen@caolsenlawoffices.com

8 Attorneys for Plaintiffs MATTHEW ASCHER, and FERNANDO CERVANTES, as individuals
9 and on behalf of all similarly situated employees

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **THE COUNTY OF ORANGE**

12 MATTHEW ASCHER, and FERNANDO
13 CERVANTES as individuals and on behalf of
14 all similarly situated employees,

15 Plaintiffs,

16 v.

17 CROWN BUILDING MAINTENANCE CO.,
18 dba ABLE BUILDING MAINTENANCE, a
19 California corporation, ABLE ACQUISITION
20 CORP. dba UNITED BUILDING
21 SERVICES, a California corporation, and
22 DOES 1 through 10, inclusive

23 Defendants.

Case No.: 30-2013-00684702-CU-OE-CXC

Assigned for All Purposes to:
Hon. Gail A. Andler

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. **Failure to Provide Meal Periods or Compensation in Lieu Thereof;**
2. **Failure to Provide Rest Periods or Compensation in Lieu Thereof;**
3. **Failure to Pay Overtime Wages;**
4. **Failure to Pay Wages Due From Reporting Time Pay;**
5. **Failure to Reimburse Expenses;**
6. **Failure to Keep Accurate Payroll Records;**
7. **Waiting Time Penalties;**
8. **Unfair Business Practices B&P 17200;**
9. **Declaratory Relief**

Trial Date: None Set

DEMAND FOR JURY TRIAL

1 Plaintiffs MATTHEW ASCHER (“Plaintiff Ascher”) and FERNANDO CERVANTES
2 (“Plaintiff Cervantes”) (collectively “Plaintiffs”), on behalf of themselves and all others similarly
3 situated, complains of Defendants, and each of them, and for the following causes of action:

4 **I.**

5 **INTRODUCTION**

6 1. This is a class action (“Action”), pursuant to California Code of Civil Procedure
7 section 382, on behalf of Plaintiffs and all non-exempt employees employed by, or formerly
8 employed by Defendant CROWN BUILDING MAINTENANCE CO. dba ABLE BUILDING
9 MAINTENANCE (“Defendant Crown”) and ABLE ACQUISITION CORP. dba UNITED
10 BUILDING SERVICES (“Defendant Able”), and any subsidiaries or affiliated companies
11 (hereinafter collectively referred to as “Defendants”), within the State of California. The non-
12 exempt employees employed by or formerly employed by Defendants within the State of
13 California are hereinafter referred to as “Plaintiff Class” or “Class Members.”

14 2. Defendants employed and continue to employ hourly, non-exempt employees
15 classified as janitorial, maintenance and related positions, and who were not provided proper
16 meal and rest periods, and paid all wages due under California law.

17 3. The “Class Period” applicable to this Action, unless otherwise specified below, is
18 defined as October 29, 2009 (four years prior to the October 29, 2013 filing of Plaintiffs’ Class
19 Action Complaint), continuing to the present, and ending upon the date as determined by the
20 Court.

21 **II.**

22 **JURISDICTION AND VENUE**

23 4. Venue is proper in this Judicial district and the County of Orange, because the
24 Defendants maintain their locations and transact business in this county, the obligations and
25 liability arise in this county, and work was performed by Plaintiffs and members of the proposed
26 class made the subject of this action in the County of Orange, California.

27 5. The California Superior Court has jurisdiction in the matter because upon
28 information and belief, Plaintiffs and Defendants are residents of and/or are domiciled in the

1 State of California. Further, there is no federal question at issue as the issues herein are based
2 solely on California Statutes and law including the California Labor Code, Industrial Welfare
3 Commission Wage Orders, Code of Civil Procedure, Rule of Court, and Business and
4 Professions Code.

5 **III.**

6 **PARTIES**

7 **A. Plaintiff MATTHEW ASCHER**

8 6. Plaintiff MATTHEW ASCHER (“Plaintiff Ascher”) is an individual over the age
9 of eighteen (18) and is now/or at all times mentioned in this Complaint a citizen of the State of
10 California, who worked for Defendants as a California-based hourly-paid employee classified as
11 a janitor, maintenance or related position from June 2011 until December 2011.

12 7. Plaintiff FERNANDO CERVANTES (“Plaintiff Cervantes”) is an individual
13 over the age of eighteen (18) and is now/or at all times mentioned in this Complaint a citizen of
14 the State of California, who worked for Defendants as a California-based hourly-paid employee
15 classified as a janitor, maintenance or related position from August 2011 until May 2012.

16 8. Plaintiffs seek recovery herein from Defendants because while acting for
17 Defendants in this capacity as a California-based hourly employee, Defendants have:

- 18 a. Failed to provide meal periods or compensation in lieu thereof;
- 19 b. Failed to provide rest periods or compensation in lieu thereof;
- 20 c. Failed to pay overtime wages for all hours worked;
- 21 d. Failed to pay all wages due from reporting time pay;
- 22 e. Failed to reimburse business expenses;
- 23 f. Failed to keep accurate payroll records;
- 24 g. Conducted Unfair Business Practices;
- 25 h. Failed to provide wages of terminated or resigned employees;

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1 **B. Defendants CROWN BUILDING MAINTENANCE CO. and ABLE**
2 **ACQUISITION CORP.**

3 9. Plaintiffs are informed and believe, and based thereon allege, that Defendants
4 Crown and Able are corporations organized under the laws of the State of California and are
5 and/or was the employers of Plaintiffs and Plaintiff Class during the Class Period. Defendants
6 Crown and Able conduct business in the State of California as Able Building Maintenance and
7 United Building Services, respectively.

8 10. Plaintiffs are ignorant of the true names, capacities, relationships and extent of
9 participation in the conduct herein alleged, of the Defendants sued herein as DOES 1 through 10,
10 inclusive, but on information and belief allege that said Defendants are legally responsible for
11 the occurrences herein alleged, and that the damages of Plaintiffs and the putative class members
12 herein alleged were proximately caused by such Defendants. Plaintiffs will amend this
13 complaint to allege the true names and capacities of the DOE Defendants when ascertained.

14 11. Plaintiffs are informed and believe, and based thereon allege, that each Defendant
15 herein was, at all times relevant to this action, the agent, employee, representing partner, and/or
16 joint venture of the remaining Defendants and was acting within the course and scope of the
17 relationship. Plaintiffs are further informed and believe that each Defendant herein gave consent
18 to, ratified and authorized the acts alleged herein to the remaining Defendants.

19 **IV.**

20 **FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

21 12. Plaintiffs and the Class Members are, and at all times pertinent hereto, have been
22 non-exempt, hourly employees within the meaning of the California Labor Code and the
23 implementing rules and regulations of IWC California Wage Orders.

24 13. At least during the Class Period, Defendants consistently maintained and enforced
25 against Defendants' non-exempt employees, among others, the following unlawful practices and
26 policies, in violation of California state wage and hour laws:

- 27 (a) Defendants have had a consistent policy of requiring Class Members
28 within the State of California, including Plaintiffs, to work at least five (5)

1 hours without a lawful meal period and failing to pay such employees one
2 (1) hour of pay at the employees' regular rate of compensation for each
3 workday that the meal period is not provided, all in violation of, among
4 others, Labor Code §§ 201, 202, 226.7, 512, and applicable Industrial
5 Welfare Commission Wage Orders, in one or more of the following
6 manners:

- 7 (i) employees were required to work through their daily meal
8 period(s), or work an unlawful "on-duty meal period";
- 9 (ii) employees were severely restricted in their ability to take a meal
10 period;

11 (b) Defendants have had a consistent policy of failing to provide Class
12 Members within the State of California, including Plaintiff, rest periods of
13 at least (10) minutes per four (4) hours worked or major fraction thereof
14 and failing to pay such employees one (1) hour of pay at the employees
15 regular rate of compensation for each workday that the rest period is not
16 provided, as required by California state wage and hour laws, in one or
17 more of the following manners:

- 18 (i) employees were required to work without being provided a
19 minimum ten minute rest period for every four hours or major
20 fraction thereof worked and not being compensated one hour of
21 pay at their regular rate of compensation for each workday that a
22 rest period was not provided; and
- 23 (ii) employees were neither permitted nor authorized to take lawful
24 rest periods.

25 (c) Defendants have had a consistent policy and practice of failing to pay all
26 wages owed to Class Members for "reporting time pay." Defendants
27 required certain Class Members to report to work but were deprived of the
28 work because of inadequate scheduling or lack of proper notice by

1 Defendants. Defendants failed to pay these Class Members “reporting
2 time pay.” Therefore, wages are owed to Class Members pursuant to IWC
3 Orders 5-16, Section 5.

4 (d) Defendants have had a consistent policy and practice of failing to
5 reimburse Class Members for all necessary expenditures or losses they
6 incurred in direct consequence of the discharge of their duties. Defendants
7 failed to reimburse Class Members pursuant to Labor Code section 2802.

8 (e) With respect to Class Members who either were discharged, laid off, or
9 resigned, Defendants failed to pay them in accordance with the
10 requirements of Labor Code §§ 201, 202, 203; and

11 (f) Defendants failed to maintain accurate records of Class Members’ earned
12 wages and work periods.

13 14. On information and belief, Plaintiffs allege on behalf of themselves and the Class
14 Members that they did not waive meal or rest periods during the Class Period.

15 15. Plaintiffs are informed and believe, and based thereon allege, that Defendants
16 willfully failed to pay their employees and Class Members in a timely manner all earned wages;
17 nor have Defendants returned to Class Members, upon or after termination of their employment
18 with Defendants, unlawful deductions and penalties due them for having failed to properly
19 provide rest and meal periods.

20 16. Plaintiffs are informed and believe, and based thereon allege that Defendants
21 currently employ, and during the Class Period have employed, hundreds of employees in the
22 State of California in non-exempt, hourly positions.

23 17. At relevant times herein, the named Plaintiffs and the Class Members were
24 employed by Defendants and were paid, on information and belief, predominantly on an hourly
25 basis.

26 18. On information and belief, Plaintiffs allege that Defendants’ actions as described
27 throughout this Complaint were willful.

1 19. On information and belief, Plaintiffs allege that Defendants willfully failed to pay
2 the legal wages, failed to provide legal rest and meal periods, and willfully failed to pay one
3 hour's wages in lieu of rest and meal periods, when each such employee quit or was discharged.

4 20. Plaintiffs, on behalf of themselves and all other Class Members, bring this action
5 pursuant to California Labor Code sections 201, 202, 203, 218, 218.6, 226, 226.7, 351, 512,
6 1194, 1199, 2802, 2804, and California Code of Regulations, Title 8, section 11000 *et seq.*,
7 seeking unpaid wages, unpaid rest and meal period compensation, penalties, injunctive, and other
8 equitable relief, and reasonable attorneys' fees and costs.

9 21. Defendants have made it difficult to account with precision for the unlawfully
10 withheld wages and meal and rest period compensation owed to Defendants' non-exempt
11 employees, including Plaintiffs, during the Class Period, because they did not implement and
12 preserve a record-keeping method to record all the unlawful deductions by its employees as
13 required for non-exempt employees by California Labor Code sections 226, 1174(d), and section
14 7 of the California Wage Orders. Defendants have failed to comply with Labor Code section
15 226(a) by itemizing in wage statements all deductions from payment of wages and accurately
16 reporting total hours worked by Plaintiffs and the Class Members. Plaintiffs and Class Members
17 are therefore entitled to penalties not to exceed \$4,000 for each employee pursuant to Labor
18 Code section 226(b).

19 22. Defendants have failed to comply with section 7 of the California IWC Wage
20 Orders by failing to maintain time records showing when the employee begins and ends each
21 work period, meal periods, wages earned pursuant to Labor Code section 226.7, and total daily
22 hours worked by itemizing in wage statements all deductions from payment of wages and
23 accurately reporting total hours worked by the Class Members.

24 23. Plaintiffs, on behalf of themselves and all Class Members, pursuant to Business
25 and Professions Code sections 17200-17208, also seek injunctive relief and restitution for the
26 unfair, unlawful, or fraudulent practices alleged in this Complaint.

27 24. California Labor Code § 1194 provides that notwithstanding any agreement to
28 work for a lesser wage, an employee receiving less than the legal overtime compensation is

1 entitled to recover in a civil action the unpaid balance of their overtime compensation, including
2 interest thereon, reasonable attorneys' fees, and costs of suit.

3 25. Further, Business and Professions Code § 17203 provides that any person who
4 engages in unfair competition may be enjoined in any court of competent jurisdiction. Business
5 and Professions Code § 17204 provides that any person who has suffered actual injury and has
6 lost money or property as a result of the unfair competition may bring an action in a court of
7 competent jurisdiction.

8 26. During all, or a portion of the Class Period, Plaintiffs and members of Plaintiff
9 Class were employed by Defendants and each of them, in the State of California. Plaintiffs and
10 each of the Plaintiff Class were non-exempt employees covered under one or more Industrial
11 Welfare Commission (IWC) Wage Orders, and Labor Code § 510, and/or other applicable wage
12 orders, regulations and statutes, and each Class member was not subject to an exemption for
13 executive, administrative and professional employees, which imposed obligations on the part of
14 the Defendants to pay Plaintiffs and Plaintiff Class lawful overtime compensation. Plaintiffs and
15 the California Plaintiff Class were covered by one or more Industrial Welfare Commission
16 (IWC) Wage Orders, and Labor Code § 226.7 and other applicable wage orders, regulations and
17 statutes which imposed an obligation on the part of the Defendants to pay Plaintiffs and the
18 Plaintiff Class rest and meal period compensation.

19 27. During the Class Period, Defendants were obligated to pay Plaintiffs and Plaintiff
20 Class overtime compensation for all hours worked over eight (8) hours of work in one (1) day or
21 forty (40) hours in one (1) week.

22 28. During the Class Period, Defendants were obligated to provide Plaintiffs and
23 Plaintiff Class members with a work free meal and/or rest period.

24 29. Plaintiffs and Plaintiff Class primarily performed non-exempt work in excess of
25 the maximum regular rate hours set by the IWC in the applicable Wage Orders, regulations or
26 statutes, and therefore entitled Plaintiffs and Plaintiff Class to overtime compensation at time and
27 a half rate, and when applicable, double time rates as set forth by the applicable Wage Orders,
28 regulations and/or statutes.

1 30. Class members who ended their employment during the Class Period, but were
2 not paid the above due overtime compensation timely upon the termination of their employment
3 as required by Labor Code §§ 201-203, and are entitled to penalties as provided by California
4 Labor Code § 203.

5 31. During the Class Period, the Defendants and each of them, required Plaintiffs and
6 Class members to work overtime without lawful compensation, in violation of the various
7 applicable Wage Orders, regulations and statutes, and the Defendants: (1) Willfully failed and
8 refused, and continue to fail and refuse to pay lawful overtime compensation to the Plaintiff
9 Class members; and (2) willfully failed and refused, and continue to fail and refuse to pay due
10 and owing wages promptly upon termination of employment to Plaintiffs and certain Plaintiff
11 Class members.

12 32. During the Class Period, the Defendants, and each of them failed and/or refused
13 to schedule Plaintiffs and Plaintiff Class in an overlapping manner so as to reasonably provide
14 meal and/or rest breaks and/or shift relief for Plaintiffs and Plaintiff Class, thereby causing
15 members of the Plaintiff Class to work without being given paid ten (10) minute rest periods for
16 every four (4) hours or major fraction thereof worked and without being given a thirty (30)
17 minute meal period for shifts of at least five (5) hours and second thirty (30) minute meal periods
18 for shifts of at least ten (10) hours during which Plaintiff Class members were relieved of all
19 duties and free to leave the premises. Defendants further failed and/or refused to schedule
20 Plaintiffs and Plaintiff Class in an overlapping manner so as to reasonably provide meal and/or
21 rest breaks were taken within the required statutory time frame as required by law. Furthermore,
22 Defendants failed and/or refused to pay any Plaintiff Class members one (1) hour's pay at the
23 employees' regular rate of pay as premium compensation for failure to provide rest and/or meal
24 periods or to providing such rest and/or meal periods within the statutory time frame as a result
25 of their scheduling policy.

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V.

CLASS ALLEGATIONS

33. Plaintiffs bring this action on behalf of themselves and all others similarly situated as a class action pursuant to section 382 of the California Code of Civil Procedure. Plaintiffs seek to represent Classes composed of and defined as follows:

- (a) All persons who are employed or have been employed by Defendants in the State of California during the Class Period, who have worked as non-exempt employees classified as janitors, maintenance and related positions and were not paid all lawful wages as regular time, overtime, and double regular time.
- (b) All persons who are employed or have been employed by Defendants in the State of California during the Class Period, who have worked as non-exempt employees classified as janitors, maintenance and related positions, and were not paid wages owed under "reporting time pay."
- (c) All persons who are employed or have been employed by Defendants in the State of California during the Class Period, who have worked as non-exempt employees classified as janitors, maintenance and related positions, and have not been provided a meal period for every five hours or major fraction thereof worked per day, and were not provided one hour's pay for each day on which such meal period was not provided.
- (d) All persons who are employed or have been employed by Defendants in the State of California during the Class Period, who have worked as non-exempt employees classified as janitors, maintenance and related position, and have not been provided a rest period for every four hours or major fraction thereof worked per day, and were not provided compensation of one hour's pay for each day on which such rest period was not provided.
- (e) All persons who have separated their employment from Defendants in the State of California since October 29, 2010, who have not been paid wages pursuant to Labor Code section 203 and are owed restitution for waiting time penalties deriving from wages.
- (f) All persons who are employed or have been employed by Defendants in the State of California during the Class Period, who have worked as non-exempt employees classified as janitors, maintenance and related position,

1 regarding whom Defendants have failed to fully
2 reimburse for all work related expenses reasonably and
necessarily incurred while performing work duties.

3 (g) All persons who are employed or have been employed by
4 Defendants in the State of California since October 29,
2012 who have worked as non-exempt employees
5 classified as janitors, maintenance and related position,
6 regarding whom Defendants have knowingly and
intentionally failed to provide accurate, itemized wage
statements in violation of Labor Code §§ 1174 and 226

7 (h) All persons who are employed or have been employed by
8 Defendants in the State of California during the Class
Period, who have worked as non-exempt employees
9 classified as janitors, maintenance and related position,
10 regarding whom Defendants have engaged in unlawful,
unfair and/or fraudulent business acts or practices
11 prohibited by the Business and Professions Code §17200, et
seq. as described herein.

12 34. Plaintiffs reserve the right under Rule 3.764 California Rules of Court, to amend
13 or modify the class descriptions with greater specificity or further division into subclasses or
14 limitation to particular issues.

15 35. This action has been brought and may properly be maintained as a class action
16 under the provisions of section 382 of the California Code of Civil Procedure because there is a
17 well-defined community of interest in the litigation and the proposed Classes are easily
18 ascertainable.

19 **A. Numerosity**

20 36. The potential members of each Class as defined are so numerous that joinder of
21 all the members of the Class is impracticable. While the precise number of Class Members has
22 not been determined at this time, Plaintiffs are informed and believe, and based thereon alleges
23 that Defendants currently employ, and during the relevant time periods employed, hundreds of
24 employees in positions as Defendants' non-exempt employees in California, who are or have
25 been affected by Defendants' unlawful practices as alleged herein.

26 37. Accounting for employee turnover during the relevant periods necessarily
27 increases this number substantially. Upon information and belief, Plaintiffs allege Defendants'
28

1 employment records would provide information as to the number and location of all Class
2 Members. Joinder of all members of the proposed Classes is not practicable.

3 **B. Commonality**

4 38. There are questions of law and fact common to each Class predominating over
5 any questions affecting only individual Class Members. These common questions of law and fact
6 include, without limitation:

- 7 (i) Whether Class Members who were subject to Defendants' illegal wage
8 policies were paid the legal and appropriate straight time pay, minimum
9 wage pay and/or overtime pay for all hours during which they were
10 subject to Defendants' control;
- 11 (j) Whether Class Members who were subject to Defendants' reporting time
12 pay policies were paid the legal and appropriate straight time pay,
13 minimum wage pay and/or overtime pay for all hours during which they
14 were subject to Defendants' control;
- 15 (k) Whether Defendants violated Labor Code sections 226.7 and 512, section
16 11 of the IWC Wage Orders, and Cal. Code Regs., Title 8, section 11000
17 *et seq.* by failing to provide a meal period to non-exempt employees on
18 days they worked work periods in excess of five hours and failing to
19 compensate said employees one hour's wages in lieu of meal periods;
- 20 (l) Whether Defendants violated Labor Code section 226.7 and section 12 of
21 the IWC Wage Orders, and Cal. Code Regs., Title 8, section 11000 *et seq.*
22 by failing to provide daily rest periods to non-exempt employees for every
23 four hours or major fraction thereof worked and failing to compensate said
24 employees one hour's wages in lieu of rest periods;
- 25 (m) Whether Defendants violated sections 226 and 1174 of the Labor Code
26 and section 7 of the IWC Wage Orders by failing to maintain accurate
27 records of Class Members' earned wages and work periods;

- 1 (n) Whether Defendants violated section 226 of the Labor Code and section 7
2 of the IWC Wage Orders by failing to itemize in wage statements all
3 reimbursable expenses and losses and accurately maintain records
4 pertaining to Plaintiff and each Class he seeks to represent;
- 5 (o) Whether Defendants violated sections 201-203 of the Labor Code by
6 failing to pay all earned wages and/or premium wages or return unlawfully
7 deducted wages, expenditures or losses, or reimbursements due and owing
8 at the time that any Class Member's employment with Defendants
9 terminated, voluntarily or involuntarily;
- 10 (p) Whether Defendants violated section 2802 by failing to reimburse fully
11 the Plaintiff and the Class he seeks to represent for all work related
12 expenses reasonably and necessarily incurred to perform their work
13 duties'
- 14 (q) Whether Defendants violated section 17200 *et seq.* of the Business and
15 Professions Code, Labor Code sections 201-203, 351, 226.7, 512, 1194,
16 1199, 1174, 2802, and applicable IWC Wage Orders, which violation
17 constitutes a violation of fundamental public policy; and
- 18 (r) Whether Plaintiff and the Class Members are entitled to equitable relief
19 pursuant to Business and Professions Code section 17200 *et seq.*

20 **C. Typicality**

21 39. The claims of the named Plaintiffs are typical of the claims of the Class Members.
22 Plaintiffs and all members of each Class sustained injuries and damages arising out of and
23 caused by Defendants' common course of conduct in violation of California laws, regulations,
24 and statutes as alleged herein.

25 **D. Adequacy of Representation**

26 40. Plaintiffs will fairly and adequately represent and protect the interests of the
27 members of each Class. Counsel who represent Plaintiffs are competent and experienced in
28 litigating large employment class actions.

1 **E. Superiority of Class Action**

2 41. A class action is superior to other available means for the fair and efficient
3 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
4 questions of law and fact common to each Class predominate over any questions affecting only
5 individual members of the Class. Each member of the Class has been damaged and is entitled to
6 recovery by reason of Defendants' unlawful policies and practices alleged in the Complaint.

7 42. Class action treatment will allow those similarly situated persons to litigate their
8 claims in the manner that is most efficient and economical for the parties and the judicial system.
9 Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of
10 this action that would preclude its maintenance as a class action.

11 **VI.**

12 **CAUSES OF ACTION**

13 **First Cause of Action**

14 ***(Plaintiffs Ascher and Cervantes against Defendants, Crown and Able for Failure to Provide
Meal Periods – Cal. Labor Code §§ 226.7 and 512)***

15 43. Plaintiffs allege and incorporate by reference the allegations in the preceding
16 paragraphs.

17 44. Labor Code §§ 226.7 and 512, provide that no employer shall employ any person
18 for a work period of more than five (5) hours without providing a meal period of not less than
19 thirty (30) minutes or employ any person for a work period of more than ten (10) hours without a
20 second meal period of not less than thirty (30) minutes.

21 45. Labor Code §§ 226.7 provides that if an employer fails to provide an employee a
22 meal period in accordance with this section, the employer shall pay the employee one (1) hour of
23 pay at the employee's regular rate of compensation for each workday that the meal period is not
24 provided in accordance with this section.

25 46. Defendants failed to schedule Plaintiffs and similarly situated persons in an
26 overlapping manner so as to reasonably provide Plaintiffs and the Plaintiff Class could take
27 and/or receive such meal periods within the statutory timeframe. As a result, Plaintiffs and
28 Plaintiff Class members were often forced to forego a meal period and/or work during their meal

1 period. In so doing, Defendants have intentionally and improperly denied meal periods to the
2 Plaintiffs and Plaintiff Class in violation of Labor Code §§226.7 and 512 and other regulations
3 and statutes. Furthermore, Defendants intentionally and knowingly falsified Plaintiffs' and
4 Plaintiff Class members' time-cards to reflect that a meal period was taken without actually
5 verifying that a meal period was received.

6 47. At all times relevant hereto, Plaintiffs and Plaintiff Class members have worked
7 more than six (6) hours in a workday.

8 48. At all times relevant hereto, the Defendants, and each of them, failed to schedule
9 Plaintiffs and similarly situated persons in a manner so as to reasonably provide meal and/or
10 work free meal period as required by Labor Code §§ 226.7 and 512.

11 49. By virtue of the Defendants' failure to schedule Plaintiffs and Plaintiff Class
12 members in such a way as to provide a meal period, and/or work free meal period to the
13 Plaintiffs and Plaintiff Class thereby causing Plaintiffs and Plaintiff Class to suffer, and will
14 continue to suffer, damages in the amounts which are presently unknown, but will be ascertained
15 according to proof at trial.

16 50. Plaintiffs individually, and on behalf of the Plaintiff Class, requests recovery of
17 meal period compensation pursuant to Labor Code §226.7 which they are owed during the Class
18 Period, as well as the assessment of any statutory penalties against the Defendants, and each of
19 them, in a sum as provided by the Labor Code and/or other statutes.

20 **Second Cause of Action**

21 ***(Plaintiffs Ascher and Cervantes against Defendants, Crown and Able for Failure to Provide
22 Rest Periods – Cal. Labor Code §§ 226.7 and 512)***

23 51. Plaintiffs allege and incorporate by reference the allegations in the preceding
24 paragraphs.

25 52. Labor Code §226.7 provides that employers authorize and permit all employees to
26 take rest periods at the rate of ten (10) minutes rest time per four (4) work hours.

27 53. Labor Code §226.7(b) provides that if an employer fails to provide an employee
28 rest periods in accordance with this section, the employer shall pay the employee one (1) hour of

1 pay at the employees' regular rate of compensation for each workday that the rest period is not
2 provided.

3 54. Defendants failed and or refused to implement a relief system by which Plaintiffs
4 and Plaintiff Class members could receive rest breaks and/or work free rest breaks. Furthermore,
5 due to Defendants' relief system, Plaintiffs and Plaintiff Class members did not receive their rest
6 breaks within the required statutory time frame. By and through their actions, Defendants
7 intentionally and improperly denied rest periods to the Plaintiffs and Plaintiff Class in violation
8 of Labor Code §§226.7 and 512.

9 55. At all times relevant hereto, the Plaintiffs and Plaintiff Class, have worked more
10 than four (4) hours in a workday.

11 56. By virtue of the Defendants' unlawful failure to provide rest periods to Plaintiffs
12 and Plaintiff Class as a result of their scheduling and shift relief system, Plaintiffs and Plaintiff
13 Class have suffered, and will continue to suffer, damages, in amounts which are presently
14 unknown, but will be ascertained according to proof at trial.

15 57. Plaintiffs, individually, and on behalf of employees similarly situated, request
16 recovery of rest period compensation pursuant to Labor Code §226.7, which they are owed
17 during the Class Period, as well as the assessment of any statutory penalties against the
18 Defendants, in a sum as provided by the Labor Code and/or any other statute.

19 **Third Cause of Action**

20 ***(Plaintiffs Ascher and Cervantes against Defendants, Crown and Able for Failure to Pay
21 Overtime Wages – Cal. Labor Code § 1194)***

22 58. Plaintiffs allege and incorporate by reference the allegations in the preceding
23 paragraphs.

24 59. Defendants failed to utilize a time-keeping system whereby Plaintiffs' and
25 Plaintiff Class' actual work time was recorded. Instead, Defendants wrote in the time worked by
26 Plaintiffs and Plaintiff Class regardless as to whether Plaintiffs and Plaintiff Class worked more
27 than Defendants assumed. Defendants simply paid Plaintiffs and Plaintiff Class based on what
28 Defendants calculated the hours in a day and/or week that Plaintiffs and Plaintiff Class worked

1 regardless of the actual hours worked, whether it was beyond eight (8) hours in a day and/or
2 forty (40) hours in a week.

3 60. Additionally, Plaintiffs and Plaintiff Class members are entitled to attorneys fees,
4 costs, pursuant to California Labor Code § 1194 and 218.5 and prejudgment interest.

5 **Fourth Cause of Action**
6 ***(Plaintiffs Ascher and Cervantes against Defendants, Crown and Able for Failure to Pay***
7 ***Reporting Time Pay)***

8 61. Plaintiffs allege and incorporate by reference the allegations in the preceding
9 paragraphs.

10 62. Under the relevant IWC Wage Order Plaintiffs and Plaintiff Class are entitled to
11 reporting-time pay of up to four (4) hours of wages at their regular rates of pay when they
12 presented themselves at the workplace but there was no work to perform or they worked less
13 than one-half of their scheduled shifts; and they are entitled to two (2) hours of wages at their
14 regular rates of pay each time they reported for work a second time in the same workday and
15 were furnished with less than two (2) hours of work on the second reporting.

16 63. As a result of the unlawful acts of Defendants, Plaintiffs and Plaintiff Class have
17 been deprived of reporting-time pay in amounts to be determined at trial. They are entitled to
18 those amounts, plus interest, attorneys' fees, and costs.

19 **Fifth Cause of Action**
20 ***(Plaintiffs Ascher and Cervantes against Defendants, Crown and Able for Failure to***
21 ***Reimburse Expenses)***

22 64. Plaintiffs allege and incorporate by reference the allegations in the preceding
23 paragraphs.

24 65. Pursuant to California Labor Code §2802, Defendants are required to reimburse
25 Plaintiff and Plaintiff Class for expenses incurred by them in the performance of their job duties.

26 66. The expenses incurred by Plaintiffs and Plaintiff Class include, but are not limited
27 to, the following: maintenance supplies, cleaning supplies, equipment replacements, and travel
28 expenses.

1 67. During the relevant time period, Defendants had a uniform policy and procedure
2 that required Plaintiffs and Plaintiff Class to personally incur and pay for expenses during the
3 performance of their employment duties for Defendants, without full reimbursement from
4 Defendants.

5 68. As a result of these expense reimbursement policies and procedures, Plaintiffs and
6 Plaintiff Class have been damaged in an amount according to proof at the time of trial, and in
7 excess of the minimum jurisdiction of this Court.

8 69. Defendants' pattern, practice, and uniform administration of corporate policy,
9 regarding failure to fully reimburse business expenses as described is unlawful.

10 70. Plaintiffs and Plaintiff Class are entitled to recover from Defendants the full
11 amount of the expenses they incurred in the course of their job duties, plus interest, plus
12 reasonable attorneys' fees and costs.

13 **Sixth Cause of Action**

14 ***(Plaintiffs Ascher and Cervantes against Defendants Crown and Able for Failure to Keep***
15 ***Accurate Payroll Records – Cal. Labor Code § 1174 and 226***

16 71. Plaintiffs allege and incorporate by reference the allegations in the preceding
17 paragraphs.

18 72. Labor Code §1174(d), requires an employer to keep at a central location in
19 California or at the plant or establishment at which the employees are employed, payroll records
20 showing the hours worked daily, and the wages paid to each employee. Labor Code § 226 (a)
21 provides that an employer shall furnish accurate itemized wage statements to its employees.
22 Plaintiffs are informed and believe that Defendants willfully failed to make or keep accurate
23 records for Plaintiffs and Class members.

24 73. IWC Wage Order No.5-2001, paragraph 7(a) requires that every employer shall
25 keep accurate information with respect to each employee, including time records showing when
26 each employee begins and ends each work period, the total daily hours worked by each employee
27 and the total hours worked in each payroll period, and applicable rates of pay. Plaintiffs are
28 informed and believe that Defendants willfully and intentionally failed to make and/or keep

1 records which accurately reflect the hours worked by Plaintiffs and Class members. Specifically,
2 Plaintiffs believe that Defendants' records do not accurately reflect where Plaintiffs and Plaintiff
3 Class members worked during their meal and/or rest breaks due to Defendants' failure to
4 schedule Plaintiff and Plaintiff Class members in an overlapping manner so as to provide them
5 with a meal and/or rest break.

6 74. Plaintiffs are informed and believe that Defendants' failure to keep accurate
7 payroll records, as described above, violated Labor Code § 1174(d) and the applicable wage
8 order. Plaintiffs and the Class members are entitled to penalties of \$100.00 for the initial
9 violation and \$200.00 for each subsequent violation for every pay period during which these
10 records and information were not kept by Defendant.

11 75. Plaintiffs are informed and believes that Defendants' failure to keep and maintain
12 accurate records and information, as described above, was willful, and Plaintiffs and the Plaintiff
13 Class are entitled to a statutory penalty of \$500.00 for Plaintiffs and each Class member pursuant
14 to Labor Code § 1174.5.

15 **Seventh Cause of Action**
16 ***(Plaintiffs Ascher and Cervantes against Defendants Crown and Able for Waiting Time***
17 ***Penalties Under Cal. Lab. Code §§ 201, 202, and 203)***

18 76. Plaintiffs allege and incorporate by reference the allegations in the preceding
19 paragraphs.

20 77. Class members have been terminated from their positions with Defendants.
21 Defendants, however, willfully failed to pay such class members all wages owed them, including
22 severance pay within the time limits set forth in California Lab. Code §§ 201, and 202.

23 78. Under California Lab. Code §§ 201, 202 and 203, certain Class members are
24 entitled to waiting time penalties for Defendants' willful failure to timely pay all wages owed
25 upon separation of their employment.

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1 **Eight Cause of Action**

2 ***(Plaintiffs Ascher and Cervantes against Defendants Crown and Able for Violation of Unfair***
3 ***Business Practices)***

4 79. Plaintiffs re-allege and incorporate by reference the allegations in the preceding
5 paragraphs.

6 80. Section 17200 of the California Business and Professions Code-California's
7 Unfair Competition law, prohibits unfair competition by prohibiting, *inter alia*, any unlawful or
8 unfair business acts or practices. The foregoing conduct by Defendants, as alleged, constitutes
9 unlawful business practices in violation of section 17200, *et seq.*

10 81. Pursuant to Bus. & Prof. Code § 17200 *et seq.*, Plaintiffs and 17200 class
11 members are entitled to restitution of the severance pay and other unpaid wages and premiums
12 alleged herein that Defendants have improperly withheld, a permanent injunction requiring
13 Defendants to pay severance pay to all workers as defined herein, an award of attorneys' fees
14 pursuant to Code of Civ. Proc. § 1021.5 and other applicable law, and costs.

15 **Ninth Cause of Action**

16 ***(Plaintiffs Ascher and Cervantes against Defendants Crown and Able for Declaratory Relief***
17 ***CCP §1060)***

18 82. Plaintiffs incorporate all previous paragraphs of this Complaint as though fully set
19 forth herein.

20 83. CCP §1060 provides that any person who desires a declaration of his or her rights
21 or duties with respect to another, in cases of actual controversy relating to the legal rights and
22 duties of their respective parties, may ask the Court for a declaration of rights or duties, and the
23 Court may make a binding declaration of these rights or duties, whether or not further relief is or
24 could be claimed at the time; any such declaration by the Court shall have the force of a final
25 judgment.

26 84. Defendants continue to this day, engage in some or all of the unlawful and unfair
27 conduct described herein.

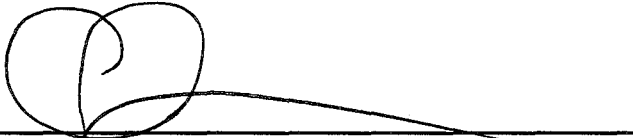
28 85. An actual controversy exists in that Defendants assert they have the legal right to
perform the acts as described herein.

1 l) Restitution; and

2 m) For such other further relief, in law or equity, as this Court may deem appropriate and
3 just.

4
5 Dated: March 24, 2014

OLSEN LAW OFFICES, APC

6
7
8 By: 
Christopher A. Olsen

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3 **PROOF OF SERVICE**

4 I am a resident of the State of California, over eighteen years of age, and not a party to this
5 action. My business address is 1010 Second Ave., Ste. 1835, San Diego, CA 92101.

6 On March 24, 2014, I served the within documents:

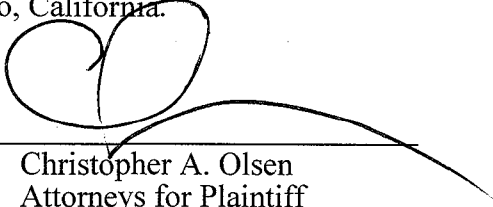
7 • **Plaintiffs' First Amended Class Action Complaint**

- 8 [] BY PERSONAL DELIVERY: by causing personal delivery (by hand) of the
9 documents listed above to the person(s) at the address set forth below.
- 10 [] BY OVERNIGHT MAIL: by causing document(s) an overnight delivery service
11 company to deliver the document(s) to the addressee(s) below on the next business
12 day.
- 13 [x] BY ELECTRONIC SERVICE: via the Orange County Superior Court's e-filing and
14 e-service provider, One Legal.
- 15 [] BY FACSIMILE: pursuant to the parties' agreement, Plaintiffs served the above
16 entitled document by facsimile to Defendants' counsel at no. 408-280-1330.

17 **Defense Counsel:**
18 **Paul McDonald**
19 **SIMONCINI & ASSOCIATES**
1694 The Alameda
20 San Jose, CA 95126
Fax: 408-280-1330

21 I declare under penalty of perjury under the laws of the State of California, that the
22 foregoing is true and correct.

23 Executed on March 24, 2014, San Diego, California.

24 
25
26 Christopher A. Olsen
27 Attorneys for Plaintiff