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UTILIQUEST, LLC
6

7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 JESUS GARCIA MUNIZ,
12 individually, and on behalf of all others
13 similarly situated and aggrieved
employees,

14 Plaintiff,

15 v.

16 UTILIQUEST, LLC, a limited liability
company, and DOES 1-100, inclusive,

17 Defendants.
18

CASE NO. 2:18-cv-1594

**NOTICE OF REMOVAL OF
ACTION**

1 **TO THE CLERK OF THE COURT AND PLAINTIFF:**

2 **PLEASE TAKE NOTICE** that Defendant UTILIQUEST, LLC
3 (“UtiliQuest”) hereby removes to this Court pursuant 28 U.S.C. §§ 1332(d), 1441,
4 and 1446, as amended in relevant part by the Class Action Fairness Act of 2005
5 (“CAFA”), this action, which was originally filed in the Superior Court of
6 California in the County of Los Angeles and assigned Case No. BC685160. The
7 grounds for this removal are set forth herein.

8 **I. INTRODUCTION**

9 1. On or about December 1, 2017, Plaintiff Jesus Garcia Muniz
10 (“Plaintiff”) commenced this action in the Superior Court of California in and for
11 County of Los Angeles by filing a complaint entitled *Jesus Garcia Muniz,*
12 *individually, and on behalf of all others similarly situated and aggrieved*
13 *employees, vs. UtiliQuest, LLC, and DOES 1 through 100, inclusive,* as Case No.
14 BC685160 (“Complaint”). Plaintiff served the Complaint on January 29, 2018.

15 2. Plaintiff alleges, on behalf of a putative class, claims for relief based
16 on violations of various California Labor Code sections and certain Industrial
17 Welfare Commission Orders.

18 3. Plaintiff purports to represent a putative class of “[a]ll persons, who at
19 any time since the date four years before the filing of the Complaint through entry
20 of final judgment in this action (‘Relevant Time Period’), were employed by
21 Defendant anywhere in California as non-exempt employees performing utility line
22 locating services, including but not limited to all Field Technicians, Technicians
23 and any other employees who used a company-owned vehicle to commute to/from
24 their work site.” (Complaint ¶ 10.)

25 **II. JURISDICTION**

26 4. This case may be removed to the Western Division of this Court
27 because the Complaint was filed in the Superior Court of the State of California for
28 the County of Los Angeles.

1 5. This Court has jurisdiction over this action pursuant to 28 U.S.C.
2 § 1332(d) and CAFA. CAFA grants federal courts original jurisdiction over, and
3 permits removal of, class actions in which: 1) any member of a class of plaintiffs is
4 a citizen of a state different from any defendant, thus establishing “minimal
5 diversity”; 2) the aggregate number of proposed plaintiffs is 100 or more; 3) the
6 primary defendants are not states, state officials or other governmental entities; and
7 4) the aggregate amount in controversy of all of the putative class members’ claims
8 exceeds \$5,000,000. *See* 28 U.S.C. §§ 1332(d)(2)(A), d(5)(A)-(B), and (d)(6).

9 **A. The Parties’ Citizenship**

10 6. The “minimal diversity” requirement is satisfied because at least one
11 member of the putative class is a citizen of a state different from at least one
12 defendant.

13 7. Plaintiff worked in California, and resided in California during the
14 entire time that he worked for UtiliQuest (Declaration of Neil Vocke in Support of
15 Notice of Removal [“Vocke Dec.”], ¶ 6), and there is no indication that he is a
16 citizen of a state other than California. (Complaint ¶ 3.)

17 8. At the time the Complaint was filed, and at the time of removal,
18 UtiliQuest was and is a citizen of the State of Georgia. For diversity purposes, a
19 corporation is deemed to be a citizen of the state in which it has been incorporated
20 and the state where it has its principal place of business. 28 U.S.C. § 1332(c)(1).
21 UtiliQuest is a limited liability company existing under the laws of Georgia. (Vocke
22 Dec., ¶ 2.)

23 9. Further, UtiliQuest’s principal place of business, at all relevant times,
24 has been Alpharetta, Georgia, which is the location of its headquarters; the location
25 from which its high level officers work and direct, control, and coordinate its
26 activities; where its policies and procedures are developed; and where its corporate
27 functions, including those relating to accounting, finance, human resources, legal,
28 and marketing, take place. (Vocke Dec., ¶ 3.)

1 10. Any potential “Doe” defendants shall be disregarded for purposes of
2 removal. 28 U.S.C. § 1441(a); *see also Newcombe v. Adolf Coors*, 157 F.3d 686,
3 690–91 (9th Cir. 1998).

4 **B. The Aggregate Number of Proposed Plaintiffs**

5 11. Plaintiff purports to represent a putative class of “[a]ll persons, who at
6 any time since the date four years before the filing of the Complaint through entry
7 of final judgment in this action (‘Relevant Time Period’), were employed by
8 Defendant anywhere in California as non-exempt employees performing utility line
9 locating services, including but not limited to all Field Technicians, Technicians
10 and any other employees who used a company-owned vehicle to commute to/from
11 their work site.” (Complaint ¶ 10.)

12 12. UtiliQuest does not use a “Field Technician” or “Technician” job
13 titles. For part of the applicable putative class period, Plaintiff Garcia-Muniz held
14 the formal job title of “Locator.” (Vocke Dec., ¶ 8.) As a Locator, Plaintiff Garcia-
15 Muniz was performing utility line locating services and using a company-owned
16 vehicle to commute to and from the worksites. (*Id.*) UtiliQuest also has a handful
17 of other non-exempt job positions under which employees perform utility line
18 locating services and use a company-owned vehicle to commute. (*Id.*)

19 13. Based on a preliminary analysis of its employment data, UtiliQuest
20 calculates that, during the applicable putative class period, it employed
21 approximately 934 individuals as non-exempt employees in California who
22 performed utility line locating services and used a company-owned vehicle to
23 commute to/from worksites. (Vocke Dec., ¶ 9.) Thus the aggregate number of
24 putative class members greatly exceeds 100.

25 **C. Primary Defendants Are Not States**

26 14. No states, state officials or other governmental entities are named as
27 defendants in this action.

1 **D. The Amount In Controversy**

2 15. While UtiliQuest disputes the allegations of wrongdoing in the
3 Complaint and further disputes that Plaintiff or the putative class are entitled to
4 relief in any amount, the amount in controversy requirement is satisfied because
5 Plaintiff's Complaint seeks aggregate relief for the putative class in excess of
6 \$5,000,000. *See* 28 U.S.C. § 1332(d)(2).

7 16. Plaintiff does not allege a specific amount of damages in the
8 Complaint. Thus UtiliQuest may establish the amount in controversy by the
9 allegations in the Complaint, or by setting forth facts in the notice of removal that
10 demonstrate that the amount in controversy "more likely than not" exceeds the
11 jurisdictional minimum. *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404
12 (9th Cir. 1996) (removing defendant must establish amount in controversy by a
13 "preponderance of the evidence").

14 17. Based on a review of the causes of action in Plaintiff's Complaint and
15 UtiliQuest's business records, UtiliQuest has determined that there are a total of
16 approximately 934 putative class members during the applicable class period, who
17 worked a total of approximately 66,816 work weeks during the putative class
18 period. (Vocke Dec., ¶ 9.)

19 18. Plaintiff Garcia-Muniz alleges that UtiliQuest failed to compensate
20 Plaintiff and the putative class members for their time spent commuting to and from
21 home in UtiliQuest vehicles. (Complaint, ¶¶ 15-16.) Plaintiff Garcia-Muniz
22 alleges "that he spent an average of 10 hours per week mandatorily commuting in a
23 company-owned vehicle...but for which time he was not paid overtime or
24 minimum wage." (Complaint, ¶ 18.) Plaintiff's Complaint also asserts other
25 claims, including for failure to provide meal breaks, rest breaks, accurate wage
26 statements, failure to provide business-related expense reimbursements, and for
27 violation of the Private Attorneys General Act. (Complaint, ¶¶ 15-20, 22, 24, 85-
28 90.)

1 19. Based on these contentions, UtiliQuest is able to determine by a
2 preponderance of the evidence that the amount in controversy exceeds the
3 \$5,000,000 jurisdictional threshold set forth in 28 U.S.C. § 1332(d), exclusive of
4 interest and costs, by applying mathematical calculations, assuming *arguendo* that
5 Plaintiff and the members of the class were to prevail on this claim, as set forth in
6 Plaintiff's Complaint.

7 20. The time that Plaintiff estimates he spent commuting can be
8 extrapolated to determine the total time class members spent commuting and the
9 wages they claim they are owed. Even assuming that each member of the class
10 spent *far less* time commuting on an average workweek than Plaintiff – using an
11 estimate of 5 hours per workweek, rather than the 10 hours per workweek that
12 Plaintiff estimates – the class spent a total of 334,080 hours commuting.
13 (Declaration of Eric S. Beane in Support of Notice of Removal [“Beane Dec.”],
14 ¶ 3(a).) The median regular rate of pay for class members was \$16.53 per hour
15 (Vocke Dec., ¶ 10), which means the total wages claimed by the class, for just 5
16 hours of commute time per workweek, is \$5,522,342.40. (Beane Dec., ¶ 3(b).)

17 21. As set forth above UtiliQuest uses a very conservative estimate for
18 Plaintiff's commute time claim,¹ and the calculation of damages for this claim alone
19 exceeds the required amount in controversy.

20 22. Because Plaintiff's claim for commute time alone easily exceeds the
21 \$5 million amount in controversy threshold, UtiliQuest does not here set forth
22 estimated damages for Plaintiff's other alleged claims, including for failure to
23 provide meal breaks, failure to provide rest breaks, failure to provide accurate wage
24 statements, failure to provide business-related expense reimbursements, or for
25

26
27 ¹ The total damages claimed by the class for Plaintiff's commuting time claim is
28 even higher if the calculation is based on the mean regular rate of pay of \$17.35 per
hour rather than the lower median hourly rate. (Vocke Dec., ¶ 10.)

1 PAGA violations. (Complaint, ¶¶ 15-20, 22, 24, 85-90.) Nor does UtiliQuest set
2 forth estimated calculations for the various penalties that Plaintiff also seeks.

3 23. Finally, attorneys' fees are properly considered when determining the
4 amount in controversy for the purpose of removal. *See Galt G/S v. JSS*
5 *Scandinavia*, 142 F.3d 1115, 1155-56 (9th Cir. 1998). Thus the amount in
6 controversy would be even greater if attorneys' fees are taken into consideration.

7 III. COMPLIANCE WITH STATUTORY 8 REQUIREMENTS FOR REMOVAL

9 24. Plaintiff served the Summons, Complaint, Civil Case Cover Sheet,
10 Civil Case Cover Sheet Addendum and Statement of Location, Notice of Case
11 Assignment – Class Action Cases, Voluntary Efficient Litigation Stipulations, and
12 Alternative Dispute Resolution (ADR) Information Packet on UtiliQuest's
13 registered agent for service of process on January 29, 2018. (Vocke Dec., ¶ 5.)

14 25. Thus, this removal is timely filed under 28 U.S.C. § 1446(b) in that it
15 is being filed within thirty days of January 29, 2018, the date UtiliQuest was
16 served. (Vocke Dec., ¶ 5).

17 26. UtiliQuest attaches hereto a copy of all process, pleadings, and orders
18 served upon UtiliQuest as well as all documents filed with the State Court in this
19 case, as follows:

20 **Exhibit A** – Summons

21 **Exhibit B** – Complaint, Civil Case Cover Sheet and Civil Case Cover Sheet
22 Addendum and Statement of Location

23 **Exhibit C** – Voluntary Efficient Litigation Stipulations

24 **Exhibit D** – ADR Information Packet

25 **Exhibit E** – Notice of Case Assignment

26 **Exhibit F** -- Minute Order of January 16, 2018

27 **Exhibit G** – Initial Status Conference Order (Complex)

28 **Exhibit H** – Proof of Service of Summons

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Exhibit I – Answer to Complaint

27. In accordance with 28 U.S.C. § 1446(d), a Notice of Filing of Notice of Removal is being filed contemporaneously with the Clerk of the Superior Court of the State of California in and for the County of Los Angeles, and UtiliQuest will provide written notice of the filing of this Notice of Removal to counsel of record for Plaintiff.

28. If any question arises as to the propriety of the removal of this action, UtiliQuest respectfully requests the opportunity to present a brief, evidence, and oral argument in support of its position that this case is removable.

For these reasons, the State Court Action is properly removed to this Court.

Dated: February 27, 2018

DLA PIPER LLP (US)

By: /s/ Eric S. Beane

ERIC S. BEANE
Attorneys for Defendant
UTILIQUEST, LLC

EXHIBIT “A”

SUMMONS (CITACION JUDICIAL)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

UTILIQUEST, LLC, a limited liability company, and DOES 1-100

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

JESUS GARCIA MUNIZ, individually, and on behalf of all others similarly situated and aggrieved employees

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

FILED

Superior Court of California
County of Los Angeles

DEC 01 2017

Sherri R. Carter, Executive Officer/Clerk
By *Shaunya Bolden* Deputy

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

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. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

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.sucorte.ca.gov), 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.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Los Angeles County Superior Court
Central District - Stanley Mosk Courthouse, 111 N Hill Street, Los Angeles, CA 90012

CASE NUMBER:
(Número del Caso): **BC 6 8 5 1 6 0**

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):
Rosa Gallenberg, 800 S Victory Blvd, Ste 203, Burbank, CA 91502; (818) 237-5267

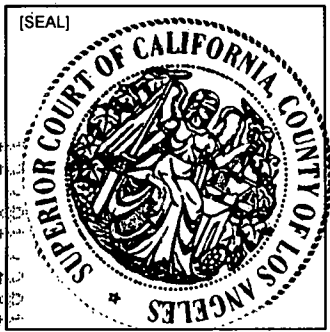
DATE: **DEC 01 2017**
(Fecha)

SHERRI R. CARTEF

Clerk, by *Shaunya Bolden*
(Secretario)

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

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- 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):
- by personal delivery on (date):

EXHIBIT “B”

FILED
Superior Court of California
County of Los Angeles

DEC 01 2017

By Sherril R. Carter, Executive Officer/Clerk
Sherril R. Carter Deputy

1 ROSA VIGIL-GALLENBERG (SBN 251872)
2 RAYMOND A. GALLENBERG (SBN 239484)
3 BRIDGET HOWZE (SBN 237413)
4 GALLENBERG PC
800 S Victory Blvd., Suite 203
5 Burbank CA 91502
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6 Facsimile: (818) 330-5266
E-mail: rosa@gallenberglaw.com
E-mail: ray@gallenberglaw.com

7 Attorneys for Plaintiffs and all similarly-situated
and/or aggrieved current or former employees.

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

10 JESUS GARCIA MUNIZ, individually, and
11 on behalf of all others similarly situated and
12 aggrieved employees,
Plaintiffs,

13 v.

14 UTILIQUEST, LLC, a limited liability
15 company, and DOES 1-100, inclusive,
16 Defendant.

Case No. BC 6 8 5 1 6 0

**CLASS ACTION AND REPRESENTATIVE
ACTION COMPLAINT FOR:**

- 1) Failure to Pay Minimum Wage in Violation of California Law (Labor Code §§ 1194, 1197 and IWC Wage Order No 4-2001);
- 2) Failure to Pay Overtime Wages in Violation of California Law (Labor Code §§ 510, 1194, 1195, and IWC Wage Order No. 4-2001);
- 3) Failure to Authorize and Permit Meal Periods (Labor Code §§ 226.7, 512, and IWC Wage Order 4-2001)
- 4) Failure to Authorize and Permit Rest Breaks (Labor Code § 226.7, IWC Wage Order 4-2001);
- 5) Failure to Provide Accurate Itemized Wage Statements in Violation of California Law (Labor Code §§ 226, 1174);
- 6) Failure to Reimburse Business Expenses (Labor Code § 2802)
- 7) Violation of California Labor Code Private Attorneys General Act of 2004 (PAGA) (Labor Code §§ 2698 *et seq.*)

Jury Trial Demanded

12/01/2017

21031843

OFFICE OF THE CLERK
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
100 WALL STREET
NEW YORK, NY 10038
TEL: 212 512 1800
FAX: 212 512 1801
WWW.USDCSDNY.GOV

CIT/CASE: BC685160
LEA/DEF#:

RECEIPT #: CCH465980077
DATE PAID: 12/01/17 11:36 AM
PAYMENT: \$1,000.00 310
RECEIVED:

CHECK: \$0.00
CASH: \$0.00
CHANGE: \$0.00
CARD: \$1,000.00

CIT/CASE: BC685160
LEA/DEF#:

RECEIPT #: CCH465980076
DATE PAID: 12/01/17 11:36 AM
PAYMENT: \$435.00 310
RECEIVED:

CHECK: \$0.00
CASH: \$0.00
CHANGE: \$0.00
CARD: \$435.00

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1 Plaintiff Jesus Garcia-Muniz, on behalf of himself and others similarly situated and
2 aggrieved, makes the following allegations against Defendant, Utiliquest, LLC, based on facts that
3 either have evidentiary support, or are likely to have evidentiary support after a reasonable
4 opportunity for further investigation and discovery:

5 **I. NATURE OF ACTION AND INTRODUCTORY STATEMENT**

6 1. Plaintiff Jesus Garcia-Muniz brings this representative and class action against
7 Defendant Utiliquest, LLC (“Utiliquest”) for engaging in systematic violations of wage and hour
8 and California Labor Code laws. Defendant has failed to pay Plaintiff and other current and
9 former non-exempt, aggrieved employees in California minimum and overtime wages in
10 violation of the California Labor Code and Industrial Welfare Commission Wage Orders (the
11 “IWC Wage Orders”). In addition, Defendant has failed to provide Plaintiff and other current
12 and former non-exempt, aggrieved employees in California with proper and accurate wage
13 statements, failed to authorize and/or permit Plaintiff and other current and former non-exempt,
14 aggrieved employees in California to take their mandatory uninterrupted meal and rest breaks,
15 and failed to reimburse employees for all business expenses, in violation of the California Labor
16 Code.

17 2. On behalf of other current and former non-exempt, aggrieved employees who are
18 or were employed by Defendant in California, Plaintiff asserts claims for failure to pay minimum
19 and overtime wages, failure to provide proper wage statements, failure to authorize or permit
20 mandatory meal periods and rest breaks, and failure to reimburse for business-related expenses,
21 as a class action pursuant to Section 382 of the California Code of Civil Procedure. As an
22 aggrieved employee, Plaintiff also brings this representative action under the California Labor
23 Code Private Attorneys General Act of 2004 (“PAGA”) to asserts claims for the Labor Code
24 violations alleged herein, seeking all available civil penalties, including all unpaid and underpaid
25 wages, on behalf of himself and all other current and former aggrieved employees.

26 **II. THE PARTIES**

27 3. Plaintiff Jesus Garcia-Muniz is an individual who resides in Los Angeles County,
28 California, and who was employed by Utiliquest as field technician from in or around September

1 2007 to in or around January 2017.

2 4. On information and belief, Defendant Utiliquest is a Georgia limited liability
3 company, which maintains its headquarters and principal place of business in Alpharetta,
4 Georgia, and serves clients in eighteen states, including California, and in the District of
5 Columbia. On information and belief, Utiliquest is a provider of damage prevention and
6 infrastructure related services, specializing in underground facility locating serving the
7 telecommunications, gas, and electric industries.

8 5. The defendants identified as Does 1 through 100, inclusive, are and were, at all
9 times relevant to this Complaint, members, officers, directors, partners, and/or managing agents
10 of some or each of the other defendants. Plaintiff is informed and believes and, on that basis,
11 alleges that at all times herein mentioned, Defendant Utiliquest and Does 1 through 100,
12 inclusive, employed and/or exercised control over the wages, hours, expense reimbursements,
13 and/or working conditions of the Plaintiff, the members of the putative class, and the other
14 aggrieved employees, in California, including in Los Angeles County.

15 6. Plaintiff is unaware of the true names and capacities of those defendants sued
16 herein as Does 1-50, inclusive and, therefore, sue these Defendants by such fictitious names.
17 Plaintiff will seek leave of court to amend this Complaint when such names are ascertained.
18 Plaintiff is informed and believes and, on that basis alleges, that each of the fictitiously-named
19 Defendants was responsible in some manner for, consented, ratified, and/or authorized the
20 conduct herein alleged and that the damages alleged herein were proximately caused thereby.

21 **III. JURISDICTION AND VENUE**

22 7. The Court has jurisdiction over all causes of action asserted herein pursuant to the
23 California Constitution, Article IV, § 10, which grants the Superior Court original jurisdiction in
24 all cases except those given to other trial courts. Plaintiff seeks damages in this case in an
25 amount exceeding the jurisdictional minimum of this Court.

26 8. Venue in the Superior Court of Los Angeles is proper under California Code of
27 Civil Procedure Section 395.5 because Defendant's unlawful conduct occurred, in part, in this
28 County, Defendant conducts substantial business in this County, a substantial part of the

1 transactions at issue took place in this County, and Defendant’s liability, in part, arose in this
2 County.

3 **IV. CLASS AND REPRESENTATIVE ACTION ALLEGATIONS**

4 9. At all relevant times, including the last four years, Plaintiff and all other current
5 and former non-exempt, aggrieved employees of Defendant in California have been similarly
6 situated in that they have not been paid overtime and/or minimum wages for all hours worked in
7 excess of 40 hours per week and/or worked. At all relevant times, Plaintiff and other current and
8 former non-exempt, aggrieved employees of Defendant in California have been subjected to
9 Defendant’s common practices, policies, programs, procedures and plans, and *de facto* policies
10 and practices, which have resulted in the willful failure by Defendant to pay overtime and
11 minimum wages in violation of California law.

12 10. Plaintiff brings his claims on behalf of himself and all other similarly-situated
13 current and former non-exempt, aggrieved employees of Defendant who worked in California
14 (collectively, the “Class”), as a class action pursuant to Section 382 of the California Code of
15 Civil Procedure. The Class is defined as:

16 **The Class:** All persons, who at any time since the date four years before the filing of the
17 Complaint through the entry of final judgment in this action (“Relevant Time Period”),
18 were employed by Defendant anywhere in California as non-exempt employees performing
19 utility line locating services, including but not limited to all Field Technicians, Technicians
20 and any other employees who used a company-owned vehicle to commute to/from their
21 work site.

22 11. Plaintiff’s claims are brought and may be maintained as a class under Section 382
23 of the California Code of Civil Procedure.

24 a. **Ascertainability & Numerosity:** Although the names and addresses of the
25 other current and former non-exempt, aggrieved employees of Defendant in
26 California are not yet known to Plaintiff, they are readily ascertainable from
27 the records maintained by Defendant and, on information and belief, number
28 in the hundreds.

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- b. **Typicality:** Plaintiff is a member of the putative Class and has the same claims and damages, and seeks the same relief as Defendant’s other current and former non-exempt, aggrieved employees in California. Thus, his claims are typical of the putative (and representative) Class.
- c. **Commonality:** There are common questions of law or fact that predominate over individual issues, which can be proved, in part, based on Defendant’s policies and practices, including *de facto* policies and practices. These common questions include, but are not limited to:
 - i. Whether Defendant failed to pay all minimum and overtime wages at the legally required and applicable rate of pay for each hour worked and for each overtime hour worked;
 - ii. Whether Defendant unlawfully failed to compensate Class members for time spent during mandatory commutes to and from their homes, during which time the putative Class members were suffered or permitted to work and/or were subject to Defendant’s control;
 - iii. Whether Defendant maintained a policy and practice of failing to authorize and/or permit an uninterrupted 30-minute meal period for each five hours worked and/or 10-minute rest break for each four hours worked;
 - iv. Whether Defendant knowingly and intentionally failed to provide to putative Class members and maintain accurate itemized wage statements, itemizing the correct gross and net wages earned, the correct rate of pay for the correct hours worked at each rate of pay, among other things required by Labor Code § 226;
 - v. Whether Defendant maintained a policy and practice of failing to reimburse putative Class members for all business-related expenses;
 - vi. The proper measure of damages, restitution, interest, and penalties owed to Plaintiff and the putative Class members and aggrieved

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employees.

- d. **Adequacy:** Plaintiff and his counsel will adequately and fairly represent the putative class because their interests are not adverse to Defendant’s other current and former non-exempt, aggrieved employees in California, and Plaintiff’s counsel are experienced in class and representative action litigation.
- e. **Superiority:** The expense and burden of individual litigation by each member of the putative class makes or make it impractical for putative Class members to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought, or be required to be brought, by each putative class member, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings, which might be dispositive of the interests of other putative class members who are parties to the adjudication and/or may substantially impeded their ability to adequately protect their interests.

V. FACTUAL ALLEGATIONS

12. Plaintiff and the putative Class members and aggrieved employees were field technicians or employees with similar job duties, who were required to perform utility maintenance service in a company-owned vehicle, in which they were also required to commute to and from their homes. They were non-exempt employees who were purportedly paid an hourly rate of pay for work performed.

13. Plaintiff and the putative Class members and aggrieved employees were provided company-owned vehicles emblazoned with the Defendant’s logo and contact information. Plaintiff and the putative Class members and aggrieved employees were required, as a matter of policy and practice, including *de facto* policies and practices, to use these company-owned vehicles to travel from their homes to their first job site of the day and to travel from their final job site of the day to their homes at the end of each work day.

14. Plaintiff also seeks to bring this case as a representative action for the recovery of

1 penalties under PAGA, California Labor Code Section 2698, *et seq.* PAGA permits an
2 “aggrieved employee” to bring a lawsuit on behalf of himself or herself and other current and
3 former employees to address an employer’s violations of the California Labor Code.

4 **A. Unpaid Commute Time In Company-Owned Vehicles**

5 15. The vehicles that Plaintiff and the putative Class members and aggrieved
6 employees are/were required to use and commute in constitute a place of work and their use
7 benefits Defendant as these vehicles are also used to store and transport tools and equipment, and
8 are constantly monitored by Defendant through an onboard GPS, computer, and camera. At all
9 times, Defendant maintained strict control over these company-owned vehicles and continually
10 monitored their speed and location, including during Plaintiff’s and the putative Class members’
11 and aggrieved employees’ purported “off-the-clock” commute time. Among other things,
12 Defendant’s express policies prohibited anyone other than the employee from driving the
13 company-owned vehicle and stated that employees were not allowed to carry any passengers in
14 their company-owned vehicles, including expressly, family members and persons not related to
15 company business, or to transport any non-company cargo. Further, while Plaintiff and the
16 putative Class members and aggrieved employees commuted in the company-owned vehicles,
17 they were suffered and/or permitted to work and remained under Defendant’s control, including,
18 but not limited to, being subject to discipline, including termination, based on their conduct
19 during their uncompensated commute time. Nonetheless, Plaintiff and the putative Class
20 members and aggrieved employees were prohibited, under Defendant’s explicit policies from
21 recording or otherwise requesting compensation for any time spent driving such vehicles from
22 home to their first job site or from their final job site to their home.

23 16. Under Defendant’s policies, including *de facto* policies, use of these vehicles,
24 including in commuting to and from home, was required to be successful and/or advance with
25 the company and was, thus, mandatory/required. This is further evidenced by Defendant’s use,
26 on information and belief, of the Internal Revenue Service’s special valuation rule for
27 commuting vehicles, which is only allowed where the commute is mandatory and which required
28 Plaintiff and the putative Class members and aggrieved employees to reimburse Defendant for

1 such use. According to the relevant IRS Publication 15-B, the commuting rule that, on
2 information and belief, Defendant employed, may only be employed, when, among other things,
3 the employer “require[s] the employee to commute in the vehicle,” and a written policy is
4 established prohibiting the use of the vehicle for personal purposes.

5 17. Plaintiff and the putative Class members and aggrieved employees were not paid
6 for any of the time spent mandatorily commuting in company-owned cars, during which time
7 they were suffered or permitted to work and remained under Defendant’s strict control. Thus,
8 Plaintiff and the putative Class and aggrieved employees were not paid minimum or overtime
9 wages for this time.

10 18. Plaintiff estimates that that he spent an average of 10 hours per week mandatorily
11 commuting in a company-owned vehicle, during which time he was suffered or permitted to
12 work and remained under Defendant’s control, but for which time he was not paid overtime or
13 minimum wage. Further, on information and belief, because Defendant constantly monitors the
14 GPS records of its company-owned vehicles, records showing the commute time of Plaintiff and
15 the putative Class member and aggrieved employees are in Defendant’s possession, custody,
16 and/or control, making Plaintiff’s and the putative Class members’ and aggrieved employees’
17 commute times readily ascertainable and verifiable.

18 **B. Forced Missed Meal and Rest Periods**

19 19. Defendant’s policies and practices, including *de facto* policies and practices, not
20 only did not authorize or permit Plaintiff and the putative Class members and aggrieved
21 employees from taking their mandatory 30-minute uninterrupted meal periods, but in fact
22 coerced, discouraged, and created incentives for Plaintiff and the putative Class members and
23 aggrieved employees not to do so, because Defendant’s practice of scheduling work assignments,
24 and its own directives to Plaintiff and the putative Class members and aggrieved employees, did
25 not permit such uninterrupted, off-duty meal breaks. Nonetheless, on information and belief,
26 Defendant’s record keeping technology would record that Plaintiff and the putative Class
27 members and aggrieved employees took such meal breaks. Indeed, on information and belief, if
28 Plaintiff or a putative Class member did not manually enter a 30-minute lunch period,

1 Defendant's time management/tracking system would automatically enter such a break during a
2 30-minute block where the employee's on-board computer showed no computer use.

3 20. Defendant's policies and practices, including *de facto* policies and practices, not
4 only did not authorize or permit Plaintiff and the putative Class members and aggrieved
5 employees from taking their mandatory 10-minute rest breaks, but in fact coerced, discouraged,
6 and created incentives for Plaintiff and the putative Class members and aggrieved employees not
7 to do so, because Defendant's practice of scheduling work assignments, and its own directives to
8 Plaintiff and the putative Class members and aggrieved employees, did not permit such rest
9 breaks.

10 21. Defendant denied Plaintiff and the putative Class their meal and rest breaks
11 through directives that they not take breaks, the imposition of a work schedule that did not
12 permit meal and rest breaks, and work demands that did not permit meal and rest breaks. For
13 example, Plaintiff and the putative Class members and aggrieved employees were instructed not
14 to take their breaks in the middle of a work assignment or during an uncompleted project.
15 Therefore, to the extent a break was taken at all, it would generally be taken while driving to or
16 planning the route to the next work site. Breaks were also interrupted by Defendant's practice of
17 transmitting calls and assignments to Plaintiff and the putative Class members and aggrieved
18 employees by phone or over their on-board work computer during supposed break periods.
19 Thus, Defendant's policies and practices limited break periods to those times that Plaintiff and
20 the putative Class members and aggrieved employees were driving to the next job and even
21 during that time, in addition to driving, Plaintiff's and the putative Class members' and
22 aggrieved employees' breaks were further interrupted by calls and messages from Defendant.

23 **C. Failure to Provide Accurate Wage Statements**

24 22. Defendant also failed to provide Plaintiff and the putative Class members and
25 aggrieved employees with accurate wage statements, as required by the California Labor Code.

26 23. Throughout the Relevant Time Period, it was Defendant's policy and practice to
27 provide wage statements that did not accurately state all hours worked by Plaintiff and the
28 putative Class members and aggrieved employees on the face of the wage statements. Among

1 other things, the wage statements provided by Defendant failed to state the total hours worked,
2 including during Plaintiff's and the putative Class members' and aggrieved employees' commute
3 time in company-owned vehicles, as explained above, and failed to accurately reflect all overtime
4 actually worked. Thus, the wage statements provided by Defendant did not accurately state the
5 correct gross and net wages due or the correct total number of hours worked.

6 **D. Failure to Provide Business-Related Expense Reimbursements**

7 24. Defendant also violated California Labor Code Section 2802 by maintaining a
8 policy and practice of failing to reimburse Plaintiff and the putative Class members and
9 aggrieved employees for business-related expenses they incurred in the performance of their job
10 duties, including, but not limited to, cost associated with the mandatory maintenance and/or
11 cleanliness of the company-owned vehicles and to the provision of water, which should have
12 been provided by Defendant free of charge. *See* Cal. Code Regs. tit. 8, §§ 3363, 3395 (Lexis
13 Advance through Register 2016, No. 53, December 30, 2016).

14 25. Indeed, Defendant's express written policy states, among other things, that the
15 employee "is responsible for the cleanliness and proper physical appearance of the assigned
16 vehicle, inside and outside," with no mention whatsoever of reimbursing employees for these
17 business-related expenses, nor did Defendant reimburse Plaintiff and the putative Class members
18 and aggrieved employees for such business-related expenses.

19 **E. Plaintiff Exhausted His Administrative Remedies & Pre-Filing Requirements**

20 26. Plaintiff has exhausted his administrative remedies and all pre-filing requirements
21 under the California Labor Code, including Section 2699.3. Plaintiff gave written notice to the
22 California Labor & Workforce Development Agency, as well as to Defendant, of the specific
23 provisions of the Labor Code alleged to have been violated, including the facts and theories to
24 support the alleged violations. Indeed, Plaintiff provided a draft complaint that is substantively
25 substantially identical to this Complaint. The time for the California Labor & Workforce
26 Development Agency to respond to the written notice has elapsed and this case is timely filed.

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1 **VI. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **FAILURE TO PAY MINIMUM WAGE FOR ALL HOURS WORKED**
4 **(In Violation of Cal. Labor Code §§ 1194, 1197 and IWC Wage Order No 4-2001)**

5 27. Plaintiff incorporates by reference the allegations of each of the foregoing
6 paragraphs as though fully set forth herein except where to do so would conflict with this cause
7 of action.

8 28. IWC Wage Order 4-2001 and California Labor Code Sections 1194 and 1197
9 require employers to pay employees at least minimum wage for all hours worked.

10 29. California Labor Code Section 1197 provides: "The minimum wage for
11 employees fixed by the commission is the minimum wage to be paid to employees, and the
12 payment of a less wage than the minimum so fixed is unlawful."

13 30. The minimum wage provisions of California Labor Code are enforceable by
14 private civil action pursuant to California Labor Code Section 1194(a).

15 31. As described, in California Labor Code Sections 1185 and 1194.2, any such
16 action incorporates the applicable IWC Order. Sections 1182.11 and 1182.12 discuss the
17 minimum wage.

18 32. California Labor Code Section 1194.2 also provides for the following remedies:

19 In any action under Section 1193.6 or Section 1194 to recover wages
20 because of the payment of a wage less than the minimum wage fixed by
21 an order of the commission, an employee shall be entitled to recover
22 liquidated damages in an amount equal to the wages unlawfully unpaid
23 and interest thereon.

24 33. Under California law, an employer is required to pay an employee the minimum
25 wage for every hour worked. California minimum wage law forbids averaging wages over the
26 course of the pay period to determine minimum wage compliance. Instead, an employer must
27 pay the minimum wage for each hour worked, and the fact that an employee's total
28 compensation for a pay period exceeds the minimum wage does not satisfy the employer's
29 statutory burden.

30 34. At all times relevant herein, Defendant had a policy and practice of failing to pay
31 Plaintiff and the putative Class members and aggrieved employees for all hours they worked that

1 qualified as compensable under California law, including, but not limited to, time Plaintiff and
2 the putative Class members and aggrieved employees spent commuting in company-owned
3 vehicles, while being suffered or permitted to work and/or being under or subject to Defendant's
4 control.

5 35. In addition, Plaintiff and putative Class members and aggrieved employees
6 worked during their meal and rest periods. Thus, Defendant's policies and practices of requiring
7 such work resulted in the nonpayment of minimum wages for the time worked in that hour by
8 Plaintiff and the putative Class members and aggrieved employees.

9 36. By refusing and failing to pay Plaintiff and the putative Class members and
10 aggrieved employees for all compensable time they worked, Defendant failed not only to pay
11 them the agreed-on rate but also failed to pay them at least the minimum wage for all hours
12 worked.

13 37. Defendant's acts and omissions as alleged herein were willful, in bad faith, and
14 without reasonable grounds for believing that the acts or omissions were not a violation of state
15 law.

16 38. As a direct and proximate result of Defendant's unlawful conduct, as set forth
17 herein, Plaintiff and putative Class members and aggrieved employees have sustained damages,
18 including lost wages, in an amount to be determined at trial.

19 39. Consequently, in addition to recovering the unpaid wages, Plaintiff and the
20 putative Class members and aggrieved employees are entitled to recover interest and liquidated
21 damages thereon, reasonable attorneys' fees and costs, pursuant to Labor Code sections 1194(a)
22 and 1194.2(a).

23 **SECOND CAUSE OF ACTION**
24 **UNLAWFUL FAILURE TO PAY OVERTIME WAGES**
25 **(In Violation of Cal. Labor Code §§ 510, 1194, 1195, and IWC Wage Order No. 4-2001)**

26 40. Plaintiff incorporates by reference the allegations of each of the foregoing
27 paragraphs as though fully set forth herein except where to do so would conflict with this cause
28 of action.

41. During the Relevant Time Period, Plaintiff and the putative Class members and

1 aggrieved employees worked, on many occasions, in excess of 8 hours in a workday and/or 40
2 hours in a workweek. The precise number of overtime hours will be proven at trial. Despite the
3 hours worked by the Plaintiff and the putative Class members and aggrieved employees,
4 Defendant willfully, in bad faith, and in knowing violation of the California Labor Code, failed
5 and refused to compensate Plaintiff and the putative Class members and aggrieved employees for
6 all of the overtime wages earned.

7 42. At all relevant times, Defendant was aware of, and under a duty to comply with,
8 the overtime provisions of the California Labor Code including, but not limited to, California
9 Labor Sections 510, 1194, and 1198.

10 43. California Labor Code Section 510, in pertinent part, provides:

11 Any work in excess of eight hours in one workday and any work in
12 excess of 40 hours in any one workweek and the first eight hours worked
13 on the seventh day of work in any one workweek shall be compensated
14 at the rate of no less than one and one-half times the regular rate of pay
15 for an employee.

14 44. California Labor Code Section 1194, in pertinent art, provides:

15 Notwithstanding any agreement to work for a lesser wage, any employee
16 receiving less than the legal minimum wage or the legal overtime
17 compensation applicable to the employee is entitled to recover in a civil
18 action the unpaid balance of the full amount of this minimum wage or
19 overtime compensation, including interest thereon, reasonable attorneys'
20 fees, and costs of suit.

19 45. California Labor Code Section 1198, in pertinent part, provides:

20 [t]he maximum hours of work and the standard conditions of labor fixed
21 by the commission shall be the maximum hours of work and the standard
22 conditions of labor for employees. The employment of any employee for
23 longer hours than those fixed by the order or under conditions of labor
24 prohibited by the order is unlawful.

23 46. IWC Wage Order No. 4 applies (or applied) to Plaintiff and all other putative
24 Class members and aggrieved employees. At all times relevant herein, IWC Wage Order No. 4
25 has provided in pertinent part:

26 (a) an employee who works more than forty hours in a week must
27 receive overtime compensation at the rate of one and one-half times his
28 or her regular hourly rate for each overtime hour worked; and (b) an
employee who works more than eight hours in a day must receive
overtime compensation at the rate of one and one-half times his or her

1 regular hourly rate for hours worked in excess of eight hours per day and
2 at a rate of two times his or her hourly rate for hours worked in excess of
3 twelve hours per day.

4 47. During the Relevant Time Period, Defendant refused to compensate Plaintiff and
5 the putative Class members and aggrieved employees for all of the overtime wages earned, in
6 violation of the applicable IWC Wage Order and provisions of the California Labor Code.

7 48. By refusing to compensate Plaintiff and the putative Class members and
8 aggrieved employees for overtime wages earned, Defendant violated those California Labor
9 Code provisions cited herein as well as the applicable IWC Wage Order.

10 49. As a direct and proximate result of Defendant's unlawful conduct, as set forth
11 herein, Plaintiff and the putative Class members and aggrieved employees have sustained
12 damages, including loss of earnings for hours of overtime worked on behalf of Defendant, in an
13 amount to be established at trial, and are entitled to recover their unpaid overtime and double
14 time compensation, including interest thereon, pursuant to California Labor Code § 1194(a).
15 Plaintiff and the putative Class members and aggrieved employees are also entitled to recover
16 reasonable attorneys' fees and costs, pursuant to California Labor Code § 1194(a).

17 **THIRD CAUSE OF ACTION**
18 **FAILURE TO AUTHORIZE OR PERMIT MEAL PERIODS**
19 **(In Violation of Cal. Labor Code §§ 226.7, 512, and IWC Wage Order No. 4-2001)**

20 50. Plaintiff incorporates by reference the allegations of each of the foregoing
21 paragraphs as though fully set forth herein except where to do so would conflict with this cause
22 of action.

23 51. On information and belief, at all relevant times, Defendant was aware of, and
24 under a duty to comply with, California Labor Code Sections 226.7 and 512.

25 52. California Labor Code Section 226.7 provides:

26 (a) No employer shall require any employee to work during any meal or
27 rest period mandated by an applicable order of the Industrial Welfare
28 Commission.

(b) If an employer fails to provide an employee a meal period or rest
period in accordance with an applicable order of the Industrial Welfare
Commission, the employer shall pay the employee one additional hour of
pay at the employee's regular rate of compensation for each work day

1 that the meal or rest period is not provided.

2 53. Moreover, California Labor Code Section 512 provides:

3 An employer may not employ an employee for a work period of more
4 than five hours per day without providing the employee with a meal
5 period of not less than 30 minutes, except that if the total work period
6 per day of the employee is no more than six hours, the meal period may
7 be waived by mutual consent of both the employer and employee. An
8 employer may not employ an employee for a work period of more than
9 10 hours per day without providing the employee with a second meal
10 period of not less than 30 minutes, except that if the total hours worked
11 is no more than 12 hours, the second meal period may be waived by
12 mutual consent of the employer and the employee only if the first meal
13 period was not waived.

14 54. Section 11 and 12, respectively of IWC Wage Order 4 mandates that the employer
15 provide all applicable meal periods to non-exempt employees.

16 55. Section 11 of the applicable IWC Wage Oder provides in pertinent part:

17 No employer shall employ any person for a work period of more than
18 five (5) hours without a meal period of not less than 30 minutes ...
19 Unless the employee is relieved of all duty during a 30 minute meal
20 period, the meal period shall be considered an "on duty" meal period and
21 counted as time worked.

22 If an employer fails to provide an employee a meal period in accordance
23 with the applicable provisions of this order, the employer shall the
24 employee one (1) hour of pay at the employee's regular rate of
25 compensation for each workday that the meal period is not provided.

26 56. Plaintiff and the putative Class members and aggrieved employees consistently
27 worked eight hours or more per day, but were not provided an uninterrupted thirty-minute meal
28 period within the first five hours of work each day.

57. By failing to consistently provide Plaintiff and the putative Class members and
aggrieved employees an uninterrupted thirty-minute meal period within the first five hours of
work each day, Defendant violated the California Labor Code and applicable IWC Wage Order
provisions.

58. As a direct and proximate result of Defendant's unlawful conduct, as set forth
herein, Plaintiff and the putative Class members and aggrieved employees have sustained
damages, including loss of compensation resulting from missed meal periods, in an amount to be

1 established at trial.

2 **FOURTH CAUSE OF ACTION**
3 **FAILURE TO AUTHORIZE OR PERMIT REST BREAKS**
4 **(In Violation of Cal. Labor Code §§ 226.7, and IWC Wage Order No. 4-2001)**

5 59. Plaintiff incorporates by reference the allegations of each of the foregoing
6 paragraphs as though fully set forth herein except where to do so would conflict with this cause
7 of action.

8 60. On information and belief, at all relevant times, Defendant was aware of, and
9 under a duty to comply with, California Labor Code Section 226.7 and Section 12 of Wage
10 Order 4-2001.

11 61. At all times herein relevant, California Labor Code Section 226.7 has applied and
12 continues to apply to Plaintiff's and the putative Class members' and aggrieved employees'
13 employment with Defendant. California Labor Code Section 226.7 states "no employer shall
14 require any employee to work during any meal or rest period mandated by an applicable order of
15 the Industrial Welfare Commission."

16 62. Section 12 of Wage Order No. 4-2001 provides in relevant part that:

17 (A) Every employer shall authorize and permit all employees to take rest
18 periods, which insofar as practicable shall be in the middle of each work
19 period. The authorized rest period time shall be based on the total hours
20 worked daily at the rate of ten (10) minutes net rest time per four (4)
21 hours or major fraction thereof. However, a rest period need not be
22 authorized for employees whose total daily work time is less than three
23 and one-half (3 ½) hours. Authorized rest period time shall be counted,
24 as hours worked, for which there shall be no deduction from wages.

25 63. If an employer fails to provide an employee a rest period in accordance with the
26 applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at
27 the employee's regular rate of compensation for each work day that the rest period is not
28 provided.

63 Defendant did not promulgate a compliant rest break policy, or direct Plaintiff and
the putative Class members and aggrieved employees that they were authorized to take rest
breaks. Rather, as described above, Defendant did not authorize or permit Plaintiff and the
putative Class members and aggrieved employees to take rest breaks. Plaintiff and the putative

1 Class members and aggrieved employees regularly worked a full work day but were denied a rest
2 period every four hours or major fraction thereof.

3 65. Defendant failed to authorize and permit Plaintiff and the putative Class members
4 and aggrieved employees to take adequate rest periods as required by law. Plaintiff and the
5 putative Class members and aggrieved employees are therefore entitled to payment of additional
6 wages as provided by law.

7 **FIFTH CAUSE OF ACTION**
8 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
9 **(In Violation of Cal. Labor Code §§ 226, 1174)**

10 66. Plaintiff incorporates by reference the allegations of each of the foregoing
11 paragraphs as though fully set forth herein except where to do so would conflict with this cause
12 of action.

13 67. California Labor Code Section 226(a) provides:

14 Each employer shall semimonthly, or at the time of each payment of
15 wages, furnish each of his or her employees either as a detachable part of
16 the check, draft or voucher paying the employee's wages, or separately
17 when wages are paid by personal check or cash, an itemized wage
18 statement in writing showing: (1) gross wages earned; (2) total number
19 of hours worked by each employee whose compensation is based on an
20 hourly wage; (3) all deductions provided that all deductions made on
21 written orders of the employee may be aggregated and shown as one
22 item; (4) net wages earned; (5) the inclusive date of the period for which
23 the employees is paid; (6) the name of the employee and his or her social
24 security number; and (7) the name and address of the legal entity which
25 is the employer.

26 68. Moreover, California Labor Code Section 226(e) provides:

27 An employee suffering injury as a result of a knowing and intentional
28 failure by an employer to comply with subdivision (a) is entitled to
recover the greater of all actual damages or fifty dollars (\$50) for the
initial pay period in which a violation occurs and one hundred dollars
(\$100) per employee for each violation in a subsequent pay period not
exceeding an aggregate penalty of four thousand dollars (\$4,000) and is
entitled to an award of costs and reasonable attorney's fees.

69. Furthermore, California Labor Code Section 1174 provides:

Every person employing labor in this state shall: (d) keep, at a central
location in the state . . . payroll records showing the hours worked daily
by and the wages paid to . . . employees. These records shall be kept in
accordance with rules established for this purpose by the commission,

1 but in any case shall be kept on file for not less than two years.

2 70. The wage statements that Defendant provided to Plaintiff and the putative Class
3 members and aggrieved employees do not include all hours worked by Plaintiff and the putative
4 Class members and aggrieved employees.

5 71. Defendant's failure to include all hours worked by Plaintiff and the putative Class
6 members and aggrieved employees on the wage statement violates Labor Code Section 226.

7 72. Defendant also failed to accurately record meal periods as detailed above, to pay
8 meal period premium wages for missed meal periods, and to report those meal period premium
9 payments on Plaintiff's and the putative Class members' and aggrieved employees' wage
10 statements.

11 73. As a consequence, Defendant knowingly and intentionally failed to provide
12 timely, accurate, itemized wage statements to the Plaintiff and the putative Class members and
13 aggrieved employees in accordance with Labor Code Section 226. Plaintiff is informed and
14 believe, and on that basis alleges, that none of the statements provided by Defendant accurately
15 reflect the actual gross wages earned, net wages earned, or the appropriate deductions of the
16 putative Class members.

17 74. Defendant's failure to include on the wage statements all hours worked and the
18 meal period premium payments injured Plaintiff and the putative Class members and aggrieved
19 employees. For example, it deprived Plaintiff and the putative Class members and aggrieved
20 employees of the ability to determine whether they were being paid lawfully for the hours they
21 worked, calculate the extent of the underpayment, and promptly bring suit to recover their unpaid
22 wages. Further, because Defendant failed to provide this most basic and statutorily required
23 information, Plaintiff has had to research and find a lawyer to take his case and has been forced
24 to file this lawsuit, and will have to conduct discovery and reconstruct time records in order to
25 analyze the extent of the underpayment, thereby causing Plaintiff to incur expenses, and spend
26 time and energy litigating this matter. Plaintiff would not have had to engage in these efforts and
27 incur these costs had Defendant provided Plaintiff and the putative Class members and aggrieved
28 employees with lawful wage statements.

1 75. Defendant’s failure to provide this most basic and statutorily required information
2 further deprived Plaintiff and the putative Class members and aggrieved employees of the ability
3 to determine if they were being denied minimum wages, since knowledge of one’s total
4 compensable time worked is necessary to calculate whether minimum wage payments have been
5 made.

6 76. As a direct and proximate result of Defendant’s unlawful conduct as set forth
7 herein, Plaintiff and the putative Class members and aggrieved employees may recover the
8 damages and penalties provided for under California Labor Code Section 226(e), plus interest
9 thereon, reasonable attorneys’ fees, and costs. In addition, Plaintiff and the putative Class
10 members and aggrieved employees are entitled to injunctive relief to ensure compliance with this
11 section, pursuant to California Labor Code section 226(h).

12 **SIXTH CAUSE OF ACTION**
13 **FAILURE TO REIMBURSE BUSINESS EXPENSES**
14 **(In Violation of Cal. Labor Code § 2802)**

15 77. Plaintiff incorporates by reference the allegations of each of the foregoing
16 paragraphs as though fully set forth herein except where to do so would conflict with this cause
17 of action.

18 78. At all times relevant herein, among other things, Defendant had a policy and
19 practice of requiring Plaintiff and the putative Class members and aggrieved employees to ensure
20 the maintenance and/or cleanliness of the company-owned vehicles. Defendant’s express written
21 policy states, among other things, that the employee “is responsible for the cleanliness and
22 proper physical appearance of the assigned vehicle, inside and outside,” with no mention
23 whatsoever of reimbursing employees for these business-related expenses, for which Plaintiff
24 and the putative Class members and aggrieved employees were not reimbursed.

25 79. Moreover, under California law, Defendant was required to provide potable
26 drinking water to all of its employees, free of charge. Cal. Code Regs. tit. 8, §§ 3363, 3395
27 (Lexis Advance through Register 2016, No. 53, December 30, 2016). However, because
28 Defendant did not provide the potable water it was required to provide to Plaintiff and the

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1 putative Class members and aggrieved employees, Plaintiff and the putative Class members and
2 aggrieved employees were forced to pay for their own potable drinking water while working, and
3 were not reimbursed for these business-related expenses by Defendant.

4 80. Thus, Plaintiff and the putative Class members and aggrieved employees made
5 necessary expenditures and incurred losses as a direct consequence of the discharge of their
6 duties and in obedience to the directions of Defendant, including, but not limited to, those costs
7 associated with mandatory maintenance and/or cleanliness services on company-owned vehicles
8 and related to the provision of potable drinking water.

9 81. Labor Code § 2802 states that:

10 An employer shall indemnify his or her employee for all necessary
11 expenditures or losses incurred by the employee in direct consequence of
12 the discharge of his or her duties [and that] For purposes of this section,
13 the terms “necessary expenditures or losses” shall include all reasonable
14 costs, including, but not limited to, attorneys’ fees incurred by the
15 employee enforcing the rights granted by this section.

16 82. Defendant’s policies and practices violated and continue to violate California
17 Labor Code § 2802. Plaintiff and the putative Class members and aggrieved employees are
18 therefore entitled to reimbursement for the expenses reasonably incurred in performing their job
19 duties, plus interest thereon (accruing from the date on which the employee incurred the
20 expense), reasonable attorneys’ fees, and costs.

21 83. As such, Plaintiff and California Class Members seek reimbursement for costs
22 incurred, interest thereon, interest, costs of suit and attorneys’ fees pursuant to California Labor
23 Code § 2802.

24 **SEVENTH CAUSE OF ACTION**
25 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**
26 **(In Violation of Cal. Labor Code §§ 2698 et seq.)**

27 84. Plaintiff incorporates by reference the allegations of each of the foregoing
28 paragraphs as though fully set forth herein except where to do so would conflict with this cause
of action.

85. Plaintiff, as an “aggrieved employee,” brings these claims under California Labor
Code sections 2698-2699 in a representative capacity on behalf of current and former employees

1 of Defendant subjected to the alleged unlawful wage and hour practices. Plaintiff is an
2 “aggrieved employee” because he was (and is) employed by the alleged violator and had the
3 alleged violations committed against him. Thus, he is properly suited to represent the interests of
4 other current and former aggrieved employees of Defendant who had the same violations
5 committed against them.

6 86. The California Labor Code Private Attorneys General Act of 2004 (PAGA),
7 Labor Code section 2698 *et seq.*, grants California employees the right to bring a civil action for
8 violation of any provision of the Labor Code on behalf of themselves and other current or former
9 employees in order to recover civil penalties. In passing PAGA, the California Legislature
10 “declared that adequate financing of labor law enforcement was necessary to achieve maximum
11 compliance with state labor laws, that staffing levels for labor law enforcement agencies had
12 declined and were unlikely to keep pace with the future growth of the labor market, and that it
13 was therefore in the public interest to allow aggrieved employees, acting as private attorneys
14 general, to recover civil penalties for Labor Code violations.” *Arias v. Super. Ct.*, 46 Cal. 4th
15 969, 980 (2009). Because PAGA deputizes employees to act as private attorneys general, class
16 action requirements do not apply to representative actions brought under PAGA. *Id.*

17 87. PAGA permits an aggrieved employee to collect the civil penalty authorized by
18 law, some of which are normally collectible by the California Labor and Workforce
19 Development Agency. To address violations for which no penalty had been established, section
20 2699(f) creates a private right of action for aggrieved employees and default penalty in the
21 amount of \$100 for each aggrieved employee per pay period for the initial violation, and \$200
22 for each aggrieved employee per pay period for each subsequent violation. Cal. Labor Code §
23 2699(f). PAGA also permits the recovery, as a civil penalty, of any and all unpaid or underpaid
24 wages. *See, e.g., Thurman v. Bayshore Transit Mgmt., Inc.*, 203 Cal. App. 4th 1112, 1145
25 (2012).

26 88. Plaintiff hereby seeks to collect these civil penalties for the above-described
27 Labor Code violations, including: (1) the penalties provided for unpaid overtime and failure to
28 provide meal periods, authorized under Labor Code section 558; (2) the penalties provided for

1 failure to provide accurate itemized wage statements, authorized under Labor Code section
2 226.3; and (3) the penalties provided for payment of a wage less than the minimum, authorized
3 under Labor Code section 1197.1. In addition, Plaintiff seeks to collect civil penalties for
4 violations of Labor Code Sections 226.7 and 2802, as authorized by Labor Code sections 2699(a)
5 and 2699.3. The exact amount of the applicable penalties is unknown at this time, but an amount
6 to be shown according to proof at trial.

7 89. California Labor Code section 2699(g) further provides that any employee who
8 prevails in an action for civil penalties is entitled to an award of reasonable attorneys' fees and
9 costs. Plaintiff hereby seeks to recover his attorneys' fees and costs under this one-way fee and
10 cost shifting statute.

11 90. Pursuant to Labor Code section 2699.3, Plaintiff sent notice to the Labor and
12 Workforce Development Agency, electronically through the mandated online submission, and to
13 Defendant by certified first class mail of the specific provisions of the Labor Code that have been
14 violated, including the facts and theories to support the violations. The sixty-day time limit for
15 the agency to respond has passed. As such, Plaintiff has exhausted his administrative and pre-
16 filing requirements.

17 **VII. PRAYER FOR RELIEF**

18 WHEREFORE, PLAINTIFF, on behalf of himself and other similarly-situated, non-
19 exempt, aggrieved current and former employees of Defendant, prays for judgment and relief
20 against Defendant as follows:

- 21 1. That this Court order certification pursuant to Section 382 of the California Code
- 22 of Civil Procedure;
- 23 2. That this Court appoint Plaintiff as Class Representative;
- 24 3. That this Court appoint Plaintiff's Counsel as Class Counsel;
- 25 4. That Plaintiff and the Class members recover their unpaid minimum wages and
- 26 overtime wages according to proof;


27
28

FILED

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
 Rosa Vigil-Gallenberg SBN 25111
 Gallenberg PC
 800 S Victory Blvd, Suite 203
 Burbank, CA 91502
 TELEPHONE NO.: (818) 237-5267 FAX NO.: (818) 330-5266
 ATTORNEY FOR (Name): Plaintiff, Jesus Garcia-Muniz

FOR COURT USE ONLY
FILED
 Superior Court of California
 County of Los Angeles
 DEC 01 2017

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles (Central District)
 STREET ADDRESS: 111 N Hill Street
 MAILING ADDRESS:
 CITY AND ZIP CODE: Los Angeles, CA 90012
 BRANCH NAME: Stanley Mosk Courthouse

Sherri R. Carter, Executive Officer/Clerk
 By  Deputy
 Shabrina Bolden

CASE NAME:
 Jesus Garcia Muniz v. Utiliquest, LLC, et al.

CIVIL CASE COVER SHEET		Complex Case Designation
<input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	<input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: **BC 6 8 5 1 6 0**
 JUDGE:
 DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/W/D (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/W/D (23) Non-PI/PD/W/D (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/W/D tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input checked="" type="checkbox"/> Large number of witnesses
b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

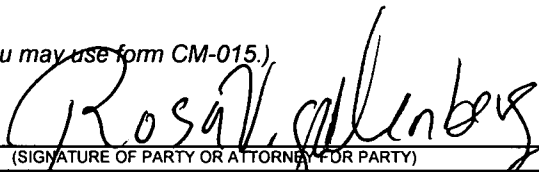
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): Seven (7)

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 12/1/2017
 Rosa Vigil-Gallenberg
 (TYPE OR PRINT NAME)


 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

- Auto (22)—Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
 - Asbestos Property Damage
 - Asbestos Personal Injury/Wrongful Death
- Product Liability (*not asbestos or toxic/environmental*) (24)
- Medical Malpractice (45)
 - Medical Malpractice—Physicians & Surgeons
 - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
 - Premises Liability (e.g., slip and fall)
 - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
 - Intentional Infliction of Emotional Distress
 - Negligent Infliction of Emotional Distress
 - Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
 - Legal Malpractice
 - Other Professional Malpractice (*not medical or legal*)
 - Other Non-PI/PD/WD Tort (35)

Employment

- Wrongful Termination (36)
- Other Employment (15)

Contract

- Breach of Contract/Warranty (06)
- Breach of Rental/Lease
 - Contract (*not unlawful detainer or wrongful eviction*)
- Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
- Negligent Breach of Contract/Warranty
- Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
- Collection Case—Seller Plaintiff
- Other Promissory Note/Collections Case
- Insurance Coverage (*not provisionally complex*) (18)
- Auto Subrogation
- Other Coverage
- Other Contract (37)
 - Contractual Fraud
 - Other Contract Dispute

Real Property

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
 - Writ of Possession of Real Property
 - Mortgage Foreclosure
 - Quiet Title
 - Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

- Commercial (31)
- Residential (32)
- Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
 - Writ—Administrative Mandamus
 - Writ—Mandamus on Limited Court Case Matter
 - Writ—Other Limited Court Case Review
- Other Judicial Review (39)
 - Review of Health Officer Order
 - Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

- Enforcement of Judgment (20)
 - Abstract of Judgment (Out of County)
 - Confession of Judgment (*non-domestic relations*)
 - Sister State Judgment
 - Administrative Agency Award (*not unpaid taxes*)
 - Petition/Certification of Entry of Judgment on Unpaid Taxes
 - Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

- RICO (27)
- Other Complaint (*not specified above*) (42)
 - Declaratory Relief Only
 - Injunctive Relief Only (*non-harassment*)
 - Mechanics Lien
 - Other Commercial Complaint Case (*non-tort/non-complex*)
 - Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

- Partnership and Corporate Governance (21)
- Other Petition (*not specified above*) (43)
 - Civil Harassment
 - Workplace Violence
 - Elder/Dependent Adult Abuse
 - Election Contest
 - Petition for Name Change
 - Petition for Relief From Late Claim
 - Other Civil Petition

SHORT TITLE: Garcia Muniz v. Utilquest, LLC, et al.	CASE NUMBER: BC 6 8 5 1 6 0
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**CIVIL CASE COVER SHEET ADDENDUM AND
STATEMENT OF LOCATION
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to Local Rule 2.3 in all new civil case filings in the Los Angeles Superior Court.

Step 1: After completing the Civil Case Cover Sheet (Judicial Council form CM-010), find the exact case type in Column A that corresponds to the case type indicated in the Civil Case Cover Sheet.

Step 2: In Column B, check the box for the type of action that best describes the nature of the case.

Step 3: In Column C, circle the number which explains the reason for the court filing location you have chosen.

Applicable Reasons for Choosing Court Filing Location (Column C)

- | | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> 1. Class actions must be filed in the Stanley Mosk Courthouse, Central District. 2. Permissive filing in central district. 3. Location where cause of action arose. 4. Mandatory personal injury filing in North District. 5. Location where performance required or defendant resides. 6. Location of property or permanently garaged vehicle. | <ul style="list-style-type: none"> 7. Location where petitioner resides. 8. Location wherein defendant/respondent functions wholly. 9. Location where one or more of the parties reside. 10. Location of Labor Commissioner Office. 11. Mandatory filing location (Hub Cases – unlawful detainer, limited non-collection, limited collection, or personal injury). |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Auto Tort
Other Personal Injury/Property Damage/Wrongful Death Tort

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1, 4, 11
Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1, 4, 11
Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	1, 11 1, 11
Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1, 4, 11
Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1, 4, 11 1, 4, 11
Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall) <input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.) <input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress <input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1, 4, 11 1, 4, 11 1, 4, 11 1, 4, 11

SHORT TITLE: Garcia Muniz v. Utiliquest, LLC, et al.	CASE NUMBER
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	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Non-Personal Injury/ Property Damage/ Wrongful Death Tort	Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1, 2, 3
	Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1, 2, 3
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1, 2, 3
	Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1, 2, 3
	Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1, 2, 3 1, 2, 3
	Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	1, 2, 3
Employment	Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1, 2, 3
	Other Employment (15)	<input checked="" type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1, 2, 3 10
Contract	Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2, 5 2, 5 1, 2, 5 1, 2, 5
	Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case <input type="checkbox"/> A6034 Collections Case-Purchased Debt (Charged Off Consumer Debt Purchased on or after January 1, 2014)	5, 6, 11 5, 11 5, 6, 11
	Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1, 2, 5, 8
	Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1, 2, 3, 5 1, 2, 3, 5 1, 2, 3, 8, 9
	Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2, 6
	Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2, 6
Real Property	Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2, 6 2, 6 2, 6
	Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	6, 11
	Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	6, 11
Unlawful Detainer	Unlawful Detainer- Post-Foreclosure (34)	<input type="checkbox"/> A6020F Unlawful Detainer-Post-Foreclosure	2, 6, 11
	Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2, 6, 11

LACIV 109 (Rev 2/16)

SHORT TITLE: Garcia Muniz v. Utiliquest, LLC, et al.	CASE NUMBER
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	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Judicial Review	Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2, 3, 6
	Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2, 5
	Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus	2, 8
		<input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter	2
		<input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2
Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2, 8	
Provisionally Complex Litigation	Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1, 2, 8
	Construction Defect (10)	<input type="checkbox"/> A6007 Construction Defect	1, 2, 3
	Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1, 2, 8
	Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1, 2, 8
	Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1, 2, 3, 8
	Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1, 2, 5, 8
Enforcement of Judgment	Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment	2, 5, 11
		<input type="checkbox"/> A6160 Abstract of Judgment	2, 6
		<input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations)	2, 9
		<input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes)	2, 8
		<input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax	2, 8
		<input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2, 8, 9
Miscellaneous Civil Complaints	RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1, 2, 8
	Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only	1, 2, 8
		<input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment)	2, 8
		<input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex)	1, 2, 8
<input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)		1, 2, 8	
Miscellaneous Civil Petitions	Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2, 8
	Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment	2, 3, 9
		<input type="checkbox"/> A6123 Workplace Harassment	2, 3, 9
		<input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case	2, 3, 9
		<input type="checkbox"/> A6190 Election Contest	2
		<input type="checkbox"/> A6110 Petition for Change of Name/Change of Gender	2, 7
		<input type="checkbox"/> A6170 Petition for Relief from Late Claim Law	2, 3, 8
<input type="checkbox"/> A6100 Other Civil Petition		2, 9	

SHORT TITLE: Garcia Muniz v. Utiliquest, LLC, et al.	CASE NUMBER
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Step 4: Statement of Reason and Address: Check the appropriate boxes for the numbers shown under Column C for the type of action that you have selected. Enter the address which is the basis for the filing location, including zip code. (No address required for class action cases).

REASON: <input checked="" type="checkbox"/> 1. <input type="checkbox"/> 2. <input checked="" type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10. <input type="checkbox"/> 11.	ADDRESS: 			
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%; padding: 5px;">CITY: South El Monte</td> <td style="width:17%; padding: 5px;">STATE: CA</td> <td style="width:50%; padding: 5px;">ZIP CODE: 91733</td> </tr> </table>	CITY: South El Monte	STATE: CA	ZIP CODE: 91733	
CITY: South El Monte	STATE: CA	ZIP CODE: 91733		

Step 5: Certification of Assignment: I certify that this case is properly filed in the Central District of the Superior Court of California, County of Los Angeles [Code Civ. Proc., §392 et seq., and Local Rule 2.3(a)(1)(E)].

Dated: 12/11/2017


 (SIGNATURE OF ATTORNEY/FILING PARTY)

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet, Judicial Council form CM-010.
4. Civil Case Cover Sheet Addendum and Statement of Location form, LACIV 109, LASC Approved 03-04 (Rev. 02/16).
5. Payment in full of the filing fee, unless there is court order for waiver, partial or scheduled payments.
6. A signed order appointing the Guardian ad Litem, Judicial Council form CIV-010, if the plaintiff or petitioner is a minor under 18 years of age will be required by Court in order to issue a summons.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

EXHIBIT “C”

VOLUNTARY EFFICIENT LITIGATION STIPULATIONS



Superior Court of California
County of Los Angeles

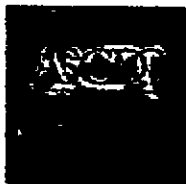


Los Angeles County
Bar Association
Litigation Section

Los Angeles County
Bar Association Labor and
Employment Law Section



Consumer Attorneys
Association of Los Angeles



Southern California
Defense Counsel



Association of
Business Trial Lawyers



California Employment
Lawyers Association

The Early Organizational Meeting Stipulation, Discovery Resolution Stipulation, and Motions in Limine Stipulation are voluntary stipulations entered into by the parties. The parties may enter into one, two, or all three of the stipulations; however, they may not alter the stipulations as written, because the Court wants to ensure uniformity of application. These stipulations are meant to encourage cooperation between the parties and to assist in resolving issues in a manner that promotes economic case resolution and judicial efficiency.

The following organizations endorse the goal of promoting efficiency in litigation and ask that counsel consider using these stipulations as a voluntary way to promote communications and procedures among counsel and with the court to fairly resolve issues in their cases.

◆ Los Angeles County Bar Association Litigation Section ◆

◆ Los Angeles County Bar Association
Labor and Employment Law Section ◆

◆ Consumer Attorneys Association of Los Angeles ◆

◆ Southern California Defense Counsel ◆

◆ Association of Business Trial Lawyers ◆

◆ California Employment Lawyers Association ◆

NAME AND ADDRESS OF ATTORNEY OR PARTY WITHOUT ATTORNEY:		STATE BAR NUMBER	Reserved for Clerk's File Stamp
TELEPHONE NO.:		FAX NO. (Optional):	
E-MAIL ADDRESS (Optional):			
ATTORNEY FOR (Name):			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES			
COURTHOUSE ADDRESS:			
PLAINTIFF:			
DEFENDANT:			
STIPULATION – EARLY ORGANIZATIONAL MEETING			CASE NUMBER:

This stipulation is intended to encourage cooperation among the parties at an early stage in the litigation and to assist the parties in efficient case resolution.

The parties agree that:

1. The parties commit to conduct an initial conference (in-person or via teleconference or via videoconference) within 15 days from the date this stipulation is signed, to *discuss and consider whether there can be agreement on the following*:
 - a. Are motions to challenge the pleadings necessary? If the issue can be resolved by amendment as of right, or if the Court would allow leave to amend, could an amended complaint resolve most or all of the issues a demurrer might otherwise raise? If so, the parties agree to work through pleading issues so that a demurrer need only raise issues they cannot resolve. Is the issue that the defendant seeks to raise amenable to resolution on demurrer, or would some other type of motion be preferable? Could a voluntary targeted exchange of documents or information by any party cure an uncertainty in the pleadings?
 - b. Initial mutual exchanges of documents at the "core" of the litigation. (For example, in an employment case, the employment records, personnel file and documents relating to the conduct in question could be considered "core." In a personal injury case, an incident or police report, medical records, and repair or maintenance records could be considered "core.");
 - c. Exchange of names and contact information of witnesses;
 - d. Any insurance agreement that may be available to satisfy part or all of a judgment, or to indemnify or reimburse for payments made to satisfy a judgment;
 - e. Exchange of any other information that might be helpful to facilitate understanding, handling, or resolution of the case in a manner that preserves objections or privileges by agreement;
 - f. Controlling issues of law that, if resolved early, will promote efficiency and economy in other phases of the case. Also, when and how such issues can be presented to the Court;
 - g. Whether or when the case should be scheduled with a settlement officer, what discovery or court ruling on legal issues is reasonably required to make settlement discussions meaningful, and whether the parties wish to use a sitting judge or a private mediator or other options as

SHORT TITLE:	CASE NUMBER:
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discussed in the "Alternative Dispute Resolution (ADR) Information Package" served with the complaint;

- h. Computation of damages, including documents, not privileged or protected from disclosure, on which such computation is based;
 - i. Whether the case is suitable for the Expedited Jury Trial procedures (see information at www.lacourt.org under "Civil" and then under "General Information").
2. The time for a defending party to respond to a complaint or cross-complaint will be extended to _____ for the complaint, and _____ for the cross-complaint, which is comprised of the 30 days to respond under Government Code § 68616(b), and the 30 days permitted by Code of Civil Procedure section 1054(a), good cause having been found by the Civil Supervising Judge due to the case management benefits provided by this Stipulation. A copy of the General Order can be found at www.lacourt.org under "Civil", click on "General Information", then click on "Voluntary Efficient Litigation Stipulations".
3. The parties will prepare a joint report titled "Joint Status Report Pursuant to Initial Conference and Early Organizational Meeting Stipulation, and if desired, a proposed order summarizing results of their meet and confer and advising the Court of any way it may assist the parties' efficient conduct or resolution of the case. The parties shall attach the Joint Status Report to the Case Management Conference statement, and file the documents when the CMC statement is due.
4. References to "days" mean calendar days, unless otherwise noted. If the date for performing any act pursuant to this stipulation falls on a Saturday, Sunday or Court holiday, then the time for performing that act shall be extended to the next Court day

The following parties stipulate:

Date: _____ (TYPE OR PRINT NAME)	>	_____
Date: _____ (TYPE OR PRINT NAME)	>	(ATTORNEY FOR PLAINTIFF)
Date: _____ (TYPE OR PRINT NAME)	>	_____
Date: _____ (TYPE OR PRINT NAME)	>	(ATTORNEY FOR DEFENDANT)
Date: _____ (TYPE OR PRINT NAME)	>	_____
Date: _____ (TYPE OR PRINT NAME)	>	(ATTORNEY FOR DEFENDANT)
Date: _____ (TYPE OR PRINT NAME)	>	_____
Date: _____ (TYPE OR PRINT NAME)	>	(ATTORNEY FOR DEFENDANT)
Date: _____ (TYPE OR PRINT NAME)	>	_____
Date: _____ (TYPE OR PRINT NAME)	>	(ATTORNEY FOR _____)
Date: _____ (TYPE OR PRINT NAME)	>	_____
Date: _____ (TYPE OR PRINT NAME)	>	(ATTORNEY FOR _____)
Date: _____ (TYPE OR PRINT NAME)	>	_____
Date: _____ (TYPE OR PRINT NAME)	>	(ATTORNEY FOR _____)

NAME AND ADDRESS OF ATTORNEY OR PARTY WITHOUT ATTORNEY:		STATE BAR NUMBER	Reserved for Clerk's File Stamp
TELEPHONE NO.: E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name):		FAX NO. (Optional):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES			
COURTHOUSE ADDRESS:			
PLAINTIFF:			
DEFENDANT:			
STIPULATION – DISCOVERY RESOLUTION			CASE NUMBER:

This stipulation is intended to provide a fast and informal resolution of discovery issues through limited paperwork and an informal conference with the Court to aid in the resolution of the issues.

The parties agree that:

1. Prior to the discovery cut-off in this action, no discovery motion shall be filed or heard unless the moving party first makes a written request for an Informal Discovery Conference pursuant to the terms of this stipulation.
2. At the Informal Discovery Conference the Court will consider the dispute presented by parties and determine whether it can be resolved informally. Nothing set forth herein will preclude a party from making a record at the conclusion of an Informal Discovery Conference, either orally or in writing.
3. Following a reasonable and good faith attempt at an informal resolution of each issue to be presented, a party may request an Informal Discovery Conference pursuant to the following procedures:
 - a. The party requesting the Informal Discovery Conference will:
 - i. File a Request for Informal Discovery Conference with the clerk's office on the approved form (copy attached) and deliver a courtesy, conformed copy to the assigned department;
 - ii. Include a brief summary of the dispute and specify the relief requested; and
 - iii. Serve the opposing party pursuant to any authorized or agreed method of service that ensures that the opposing party receives the Request for Informal Discovery Conference no later than the next court day following the filing.
 - b. Any Answer to a Request for Informal Discovery Conference must:
 - i. Also be filed on the approved form (copy attached);
 - ii. Include a brief summary of why the requested relief should be denied;

SHORT TITLE:	CASE NUMBER:
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- iii. Be filed within two (2) court days of receipt of the Request; and
 - iv. Be served on the opposing party pursuant to any authorized or agreed upon method of service that ensures that the opposing party receives the Answer no later than the next court day following the filing.
- c. No other pleadings, including but not limited to exhibits, declarations, or attachments, will be accepted.
- d. If the Court has not granted or denied the Request for Informal Discovery Conference within ten (10) days following the filing of the Request, then it shall be deemed to have been denied. If the Court acts on the Request, the parties will be notified whether the Request for Informal Discovery Conference has been granted or denied and, if granted, the date and time of the Informal Discovery Conference, which must be within twenty (20) days of the filing of the Request for Informal Discovery Conference.
- e. If the conference is not held within twenty (20) days of the filing of the Request for Informal Discovery Conference, unless extended by agreement of the parties and the Court, then the Request for the Informal Discovery Conference shall be deemed to have been denied at that time.
4. If (a) the Court has denied a conference or (b) one of the time deadlines above has expired without the Court having acted or (c) the Informal Discovery Conference is concluded without resolving the dispute, then a party may file a discovery motion to address unresolved issues.
5. The parties hereby further agree that the time for making a motion to compel or other discovery motion is tolled from the date of filing of the Request for Informal Discovery Conference until (a) the request is denied or deemed denied or (b) twenty (20) days after the filing of the Request for Informal Discovery Conference, whichever is earlier, unless extended by Order of the Court.
- It is the understanding and intent of the parties that this stipulation shall, for each discovery dispute to which it applies, constitute a writing memorializing a "specific later date to which the propounding [or demanding or requesting] party and the responding party have agreed in writing," within the meaning of Code Civil Procedure sections 2030.300(c), 2031.320(c), and 2033.290(c).
6. Nothing herein will preclude any party from applying *ex parte* for appropriate relief, including an order shortening time for a motion to be heard concerning discovery.
7. Any party may terminate this stipulation by giving twenty-one (21) days notice of intent to terminate the stipulation.
8. References to "days" mean calendar days, unless otherwise noted. If the date for performing any act pursuant to this stipulation falls on a Saturday, Sunday or Court holiday, then the time for performing that act shall be extended to the next Court day.

SHORT TITLE:	CASE NUMBER:
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The following parties stipulate:

Date: _____ (TYPE OR PRINT NAME)	➤	_____ (ATTORNEY FOR PLAINTIFF)
Date: _____ (TYPE OR PRINT NAME)	➤	_____ (ATTORNEY FOR DEFENDANT)
Date: _____ (TYPE OR PRINT NAME)	➤	_____ (ATTORNEY FOR DEFENDANT)
Date: _____ (TYPE OR PRINT NAME)	➤	_____ (ATTORNEY FOR DEFENDANT)
Date: _____ (TYPE OR PRINT NAME)	➤	_____ (ATTORNEY FOR _____)
Date: _____ (TYPE OR PRINT NAME)	➤	_____ (ATTORNEY FOR _____)
Date: _____ (TYPE OR PRINT NAME)	➤	_____ (ATTORNEY FOR _____)

NAME AND ADDRESS OF ATTORNEY OR PARTY WITHOUT ATTORNEY: TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	STATE BAR NUMBER: _____	Received for Clerk's File Stamp CASE NUMBER: _____
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES		
COURTHOUSE ADDRESS:		
PLAINTIFF:		
DEFENDANT:		
INFORMAL DISCOVERY CONFERENCE (pursuant to the Discovery Resolution Stipulation of the parties)		

1. This document relates to:

- Request for Informal Discovery Conference
- Answer to Request for Informal Discovery Conference

2. Deadline for Court to decide on Request: _____ (insert date 10 calendar days following filing of the Request).

3. Deadline for Court to hold Informal Discovery Conference: _____ (insert date 20 calendar days following filing of the Request).

4. For a Request for Informal Discovery Conference, **briefly** describe the nature of the discovery dispute, including the facts and legal arguments at issue. For an Answer to Request for Informal Discovery Conference, **briefly** describe why the Court should deny the requested discovery, including the facts and legal arguments at issue.

NAME AND ADDRESS OF ATTORNEY OR PARTY WITHOUT ATTORNEY:		STATE BAR NUMBER	Reserved for Clerk's File Stamp
TELEPHONE NO.:		FAX NO. (Optional):	
E-MAIL ADDRESS (Optional):			
ATTORNEY FOR (Name):			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES			
COURTHOUSE ADDRESS:			
PLAINTIFF:			
DEFENDANT:			
STIPULATION AND ORDER – MOTIONS IN LIMINE			CASE NUMBER:

This stipulation is intended to provide fast and informal resolution of evidentiary issues through diligent efforts to define and discuss such issues and limit paperwork.

The parties agree that:

1. At least ____ days before the final status conference, each party will provide all other parties with a list containing a one paragraph explanation of each proposed motion in limine. Each one paragraph explanation must identify the substance of a single proposed motion in limine and the grounds for the proposed motion.
2. The parties thereafter will meet and confer, either in person or via teleconference or videoconference, concerning all proposed motions in limine. In that meet and confer, the parties will determine:
 - a. Whether the parties can stipulate to any of the proposed motions. If the parties so stipulate, they may file a stipulation and proposed order with the Court.
 - b. Whether any of the proposed motions can be briefed and submitted by means of a short joint statement of issues. For each motion which can be addressed by a short joint statement of issues, a short joint statement of issues must be filed with the Court 10 days prior to the final status conference. Each side's portion of the short joint statement of issues may not exceed three pages. The parties will meet and confer to agree on a date and manner for exchanging the parties' respective portions of the short joint statement of issues and the process for filing the short joint statement of issues.
3. All proposed motions in limine that are not either the subject of a stipulation or briefed via a short joint statement of issues will be briefed and filed in accordance with the California Rules of Court and the Los Angeles Superior Court Rules.

SHORT TITLE:	CASE NUMBER:
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The following parties stipulate:

Date: _____ (TYPE OR PRINT NAME)	>	_____
Date: _____ (TYPE OR PRINT NAME)	>	(ATTORNEY FOR PLAINTIFF)
Date: _____ (TYPE OR PRINT NAME)	>	_____
Date: _____ (TYPE OR PRINT NAME)	>	(ATTORNEY FOR DEFENDANT)
Date: _____ (TYPE OR PRINT NAME)	>	_____
Date: _____ (TYPE OR PRINT NAME)	>	(ATTORNEY FOR DEFENDANT)
Date: _____ (TYPE OR PRINT NAME)	>	_____
Date: _____ (TYPE OR PRINT NAME)	>	(ATTORNEY FOR DEFENDANT)
Date: _____ (TYPE OR PRINT NAME)	>	_____
Date: _____ (TYPE OR PRINT NAME)	>	(ATTORNEY FOR _____)
Date: _____ (TYPE OR PRINT NAME)	>	_____
Date: _____ (TYPE OR PRINT NAME)	>	(ATTORNEY FOR _____)
Date: _____ (TYPE OR PRINT NAME)	>	_____
Date: _____ (TYPE OR PRINT NAME)	>	(ATTORNEY FOR _____)

THE COURT SO ORDERS.

Date: _____

JUDICIAL OFFICER

EXHIBIT “D”

Superior Court of California County of Los Angeles



ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION PACKET

The person who files a civil lawsuit (plaintiff) must include the ADR Information Packet with the complaint when serving the defendant. Cross-complainants must serve the ADR Information Packet on any new parties named to the action together with the cross-complaint.

There are a number of ways to resolve civil disputes without having to sue someone. These alternatives to a lawsuit are known as alternative dispute resolution (ADR).

In ADR, trained, impartial persons decide disputes or help parties decide disputes themselves. These persons are called neutrals. For example, in mediations, the neutral is the mediator. Neutrals normally are chosen by the disputing parties or by the court. Neutrals can help resolve disputes without having to go to court.

Advantages of ADR

- Often faster than going to trial
- Often less expensive, saving the litigants court costs, attorney's fees and expert fees.
- May permit more participation, allowing parties to have more control over the outcome.
- Allows for flexibility in choice of ADR processes and resolution of the dispute.
- Fosters cooperation by allowing parties to work together with the neutral to resolve the dispute and mutually agree to remedy.
- There are fewer, if any, court appearances. Because ADR can be faster and save money, it can reduce stress.

Disadvantages of ADR - ADR may not be suitable for every dispute.

- If ADR is binding, the parties normally give up most court protections, including a decision by a judge or jury under formal rules of evidence and procedure, and review for legal error by an appellate court.
- ADR may not be effective if it takes place before the parties have sufficient information to resolve the dispute.
- The neutral may charge a fee for his or her services.
- If the dispute is not resolved through ADR, the parties may then have to face the usual and traditional costs of trial, such as attorney's fees and expert fees.

The Most Common Types of ADR

- **Mediation**

In mediation, a neutral (the mediator) assists the parties in reaching a mutually acceptable resolution of their dispute. Unlike lawsuits or some other types of ADR, the parties, rather than the mediator, decide how the dispute is to be resolved.

- Mediation is particularly effective when the parties have a continuing relationship, like neighbors or business people. Mediation is also very effective where personal feelings are getting in the way of a resolution. This is because mediation normally gives the parties a chance to express their feelings and find out how the other sees things.
- Mediation may not be effective when one party is unwilling to cooperate or compromise or when one of the parties has a significant advantage in power over the other. Therefore, it may not be a good choice if the parties have a history of abuse or victimization.

- **Arbitration**

In arbitration, a neutral person called an "arbitrator" hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is typically less formal than a trial, and the rules of evidence may be relaxed. Arbitration may be either "binding" or "non-binding." Binding arbitration means the parties waive their right to a trial and agree to accept the arbitrator's decision as final. Non-binding arbitration means that the parties are free to request a trial if they reject the arbitrator's decision.

Arbitration is best for cases where the parties want another person to decide the outcome of their dispute for them but would like to avoid the formality, time, and expense of a trial. It may also be appropriate for complex matters where the parties want a decision-maker who has training or experience in the subject matter of the dispute.

- **Mandatory Settlement Conference (MSC)**

Settlement Conferences are appropriate in any case where settlement is an option. Mandatory Settlement Conferences are ordered by the Court and are often held near the date a case is set for trial. The parties and their attorneys meet with a judge who devotes his or her time exclusively to preside over the MSC. The judge does not make a decision in the case but assists the parties in evaluating the strengths and weaknesses of the case and in negotiating a settlement.

The Los Angeles Superior Court Mandatory Settlement Conference (MSC) program is free of charge and staffed by experienced sitting civil judges who devote their time exclusively to presiding over MSCs. The judges participating in the judicial MSC program and their locations are identified in the List of Settlement Officers found on the Los Angeles Superior Court website at <http://www.lacourt.org/>. This program is available in general jurisdiction cases with represented parties from independent calendar (IC) and Central Civil West (CCW) courtrooms. In addition, on an ad hoc basis, personal injury cases may be referred to the program on the eve of trial by the personal injury master calendar courts in the Stanley Mosk Courthouse or the asbestos calendar court in CCW.

In order to access the Los Angeles Superior Court MSC Program the judge in the IC courtroom, the CCW Courtroom or the personal injury master calendar courtroom must refer the parties to the program. Further, all parties must complete the information requested in the Settlement Conference Intake Form and email the completed form to mscdept18@lacourt.org.

Additional Information

To locate a dispute resolution program or neutral in your community:

- Contact the California Department of Consumer Affairs (www.dca.ca.gov) Consumer Information Center toll free at 800-952-5210, or;
- Contact the local bar association (<http://www.lacba.org/>) or;
- Look in a telephone directory or search online for "mediators; or "arbitrators."

There may be a charge for services provided by private arbitrators and mediators.

A list of approved State Bar Approved Mandatory Fee Arbitration programs is available at <http://calbar.ca.gov/Attorneys/MemberServices/FeeArbitration/ApprovedPrograms.aspx#19>

To request information about, or assistance with, dispute resolution, call the number listed below. Or you may call a Contract Provider agency directly. A list of current Contract Provider agencies in Los Angeles County is available at the link below.

<http://css.lacounty.gov/programs/dispute-resolution-program-drp/>

County of Los Angeles Dispute Resolution Program
3175 West 6th Street, Room 406
Los Angeles, CA 90020-1798
TEL: (213) 738-2621
FAX: (213) 386-3995

EXHIBIT “E”

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
NOTICE OF CASE ASSIGNMENT – CLASS ACTION CASES**

Case Number _____

THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT
Your case is assigned for all purposes to the judicial officer indicated below (Local Rule 3.80)

80-6 85 16 0

ASSIGNED JUDGE	DEPT.	ROOM
Judge Elihu M. Berle	323	1707
Judge William F. Highberger	322	1702
Judge John Shepard Wiley, Jr.	311	1408
Judge Kenneth Freeman	310	1412
Judge Ann Jones	308	1415
Judge Maren E. Nelson	307	1402
Judge Carolyn B. Kuhl	309	1409

Instructions for handling Class Action Civil Cases

The following critical provisions of the Chapter Three Rules, as applicable in the Central District, are summarized for your assistance.

APPLICATION

The Chapter Three Rules were effective January 1, 1994. They apply to all general civil cases.

PRIORITY OVER OTHER RULES

The Chapter Three Rules shall have priority over all other Local Rules to the extent the others are inconsistent.

CHALLENGE TO ASSIGNED JUDGE

A challenge under Code of Civil Procedure section 170.6 must be made within 15 days after notice of assignment for all purposes to a judge, or if a party has not yet appeared, within 15 days of the first appearance.

TIME STANDARDS

Cases assigned to the Individual Calendaring Court will be subject to processing under the following time standards:

COMPLAINTS: All complaints shall be served within 60 days of filing and proof of service shall be filed within 90 days of filing.

CROSS-COMPLAINTS: Without leave of court first being obtained, no cross-complaint may be filed by any party after their answer is filed. Cross-complaints shall be served within 30 days of the filing date and a proof of service filed within 60 days of the filing date.

A Status Conference will be scheduled by the assigned independent Calendar Judge no later than 270 days after the filing of the complaint. Counsel must be fully prepared to discuss the following issues: alternative dispute resolution, bifurcation, settlement, trial date, and expert witnesses.

FINAL STATUS CONFERENCE

The Court will require the parties at a status conference not more than 10 days before the trial to have timely filed and served all motions in limine, bifurcation motions, statements of major evidentiary issues, dispositive motions, requested jury instructions, and special jury instructions and special jury verdicts. These matters may be heard and resolved at this conference. At least 5 days before this conference, counsel must also have exchanged lists of exhibits and witnesses and have submitted to the court a brief statement of the case to be read to the jury panel as required by Chapter Eight of the Los Angeles Superior Court Rules.

SANCTIONS

The court will impose appropriate sanctions for the failure or refusal to comply with Chapter Three Rules, orders made by the Court, and time standards or deadlines established by the Court or by the Chapter Three Rules. Such sanctions may be on a party or if appropriate on counsel for the party.

This is not a complete delineation of the Chapter Three Rules, and adherence only to the above provisions is therefore not a guarantee against the imposition of sanctions under Trial Court Delay Reduction. Careful reading and compliance with the actual Chapter Rules is absolutely imperative.

Given to the Plaintiff/Cross Complainant/Attorney of Record on _____ SHERRI R. CARTER, Executive Officer/Clerk

BY _____, Deputy Clerk

EXHIBIT “F”

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 01/16/18

DEPT. 322

HONORABLE William F. Highberger

JUDGE

K. Tapper

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

R. Sanchez, CA

Deputy Sheriff

none

Reporter

BC685160

Plaintiff

Counsel

JESUS GARCIA MUNIZ

VS

Defendant

UTILIQUEST LLC

Counsel

NATURE OF PROCEEDINGS:

COURT ORDER REGARDING NEWLY FILED CLASS ACTION

By this order, the Court determines this case to be Complex according to Rule 3.400 of the California Rules of Court. The Clerk's Office has randomly assigned this case to this department for all purposes.

By this order, the Court stays the case, except for service of the Summons and Complaint. The stay continues at least until the Initial Status Conference. Initial Status Conference is set for 9 a.m. 3-20-18 in this department.

At least 10 days prior to the Initial Status Conference, counsel for all parties must discuss the issues set forth in the Initial Status Conference Order issued this date. The Initial Status Conference Order is to help the Court and the parties manage this complex case by developing an orderly schedule for briefing, discovery, and court hearings. The parties are informally encouraged to exchange documents and information as may be useful for case evaluation.

Responsive pleadings shall not be filed until further Order of the Court. Parties must file a Notice of Appearance in lieu of an Answer or other responsive pleading. The filing of a Notice of Appearance shall not constitute a waiver of any substantive or procedural challenge to the Complaint. Nothing in this order stays the time for filing an Affidavit of

<p>MINUTES ENTERED 01/16/18 COUNTY CLERK</p>

01232018

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 01/16/18

DEPT. 322

HONORABLE William F. Highberger

JUDGE

K. Tapper

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

R. Sanchez, CA

Deputy Sheriff

none

Reporter

BC685160

Plaintiff

Counsel

JESUS GARCIA MUNIZ

VS

Defendant

UTILIQUEST LLC

Counsel

NATURE OF PROCEEDINGS:

Prejudice pursuant to Code of Civil Procedure Section 170.6.

Counsel are directed to access the following link for information on procedures in the Complex Litigation Program courtrooms:

<http://www.lacourt.org/division/civil/CI0037.aspx>

According to Government Code Section 70616 subdivisions (a) and (b), each party shall pay a fee of \$1,000.00 to the Los Angeles Superior Court within 10 calendar days from this date.

The plaintiff must serve a copy of this minute order and the attached Initial Status Conference Order on all parties forthwith and file a Proof of Service in this department within seven days of service.

CLERK'S CERTIFICATE OF MAILING

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the

INITIAL CASE MANAGEMENT ORDER AND MINUTE ORDER upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail

<p>MINUTES ENTERED 01/16/18 COUNTY CLERK</p>

01232016

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 01/16/18

DEPT. 322

HONORABLE William F. Highberger

JUDGE

K. Tapper

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

R. Sanchez, CA

Deputy Sheriff

none

Reporter

BC685160

Plaintiff

Counsel

JESUS GARCIA MUNIZ

VS

Defendant

UTILIQUEST LLC

Counsel

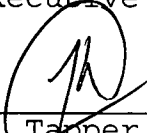
NATURE OF PROCEEDINGS:

at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: 1-16-18

Sherri R. Carter, Executive Officer/Clerk

By: _____


K. Tapper

GALLENBERG P.C.
800 S. VICTORY BLVD., #203
BURBANK, CA 91502


MINUTES ENTERED
01/16/18
COUNTY CLERK

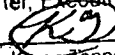
01232018

EXHIBIT “G”

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FILED
Superior Court of California
County of Los Angeles

JAN 16 2018 

Sherri R. Carter, Executive Officer/Clerk
By  Deputy
Karen Tapper

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CENTRAL DISTRICT

JESUS GARCIA MUNIZ

Plaintiff,

vs.

UTILIQUEST, LLC

Defendants.

Case No.: BC685160

INITIAL STATUS CONFERENCE ORDER
(COMPLEX LITIGATION PROGRAM)

Case Assigned for All Purposes to
Judge William F. Highberger

Department: 322

Date: March 20, 2018

Time: 9:00 a.m.

This case has been assigned for all purposes to Judge William F. Highberger in the Complex Litigation Program. An Initial Status Conference is set for March 20, 2018 at 9:00 a.m. in Department 322 located in the Central Civil West Courthouse at 600 South Commonwealth Avenue, Los Angeles, California 90005. Counsel for all parties are ordered to attend.

The court orders counsel to prepare for the Initial Status Conference by identifying and discussing the central legal and factual issues in the case. Counsel for plaintiff is ordered to initiate contact with counsel for defense to begin this process. Counsel then must negotiate and agree, as much as possible, on a case management plan. To this end, counsel must file a Joint Initial Status Conference Class Action Response Statement five court days before the Initial Status

02/23/2018

1 Conference. The Joint Response Statement must be filed on line-numbered pleading paper and
2 must specifically answer each of the below-numbered questions. Do not use the use the Judicial
3 Council Form CM-110 (Case Management Statement).

4 **1. PARTIES AND COUNSEL:** Please list all presently-named class representatives and
5 presently-named defendants, together with all counsel of record, including counsel’s contact and
6 email information.

7
8 **2. POTENTIAL ADDITIONAL PARTIES:** Indicate whether any plaintiff presently
9 intends to add additional class representatives, and, if so, the name(s) and date by which these
10 class representatives will be added. Indicate whether any plaintiff presently intends to name
11 additional defendants, and, if so, the name(s) and date by which the defendant(s) will be added.
12 Indicate whether any appearing defendant presently intends to file a cross-complaint and, if so, the
13 names of cross-defendants and the date by which the cross-complaint will be filed.

14 **3. IMPROPERLY NAMED DEFENDANT(S):** If the complaint names the wrong
15 person or entity, please explain why the named defendant is improperly named and the proposed
16 procedure to correct this error.

17
18 **4. ADEQUACY OF PROPOSED CLASS REPRESENTATIVE(S):** If any party
19 believes one or more named plaintiffs might not be an adequate class representative, including
20 reasons of conflict of interest as described in Apple Computer v. The Superior Court of Los
21 Angeles County (2005) 126 Cal.App.4th 1253, please explain. No prejudice will attach to these
22 responses.

23
24 **5. ESTIMATED CLASS SIZE:** Please discuss and indicate the estimated class size.

25 **6. OTHER ACTIONS WITH OVERLAPPING CLASS DEFINITIONS:** Please list
26 other cases with overlapping class definitions. Please identify the court, the short caption title, the
27 docket number, and the case status.

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01 23 2018

1 **7. POTENTIALLY RELEVANT ARBITRATION AND/OR CLASS ACTION**

2 **WAIVER CLAUSES:** Please state whether arbitration is an issue in this case and attach a
3 sample of any relevant clause of this sort. Opposing parties must summarize their views on this
4 issue.

5 **8. POTENTIAL EARLY CRUCIAL MOTIONS:** Opposing counsel should identify
6 and describe the significant core issues in the case, and then identify efficient ways to resolve
7 those issues, including one or more of the following:
8

- 9 ■ Motion to Compel Arbitration,
- 10 ■ Early motions in limine,
- 11 ■ Early motions about particular jury instructions and verdict forms,
- 12 ■ Demurrers,
- 13 ■ Motions to strike,
- 14 ■ Motions for judgment on the pleadings, and
- 15 ■ Motions for summary judgment and summary adjudication.

16
17 **9. CLASS CONTACT INFORMATION:** Counsel should discuss whether obtaining
18 class contact information from defendant's records is necessary in this case and, if so, whether
19 the parties consent to an "opt-out" notice process (as approved in *Belaire-West Landscape, Inc. v.*
20 *Superior Court* (2007) 149 Cal.App.4th 554, 561). Counsel should address timing and procedure,
21 including allocation of cost and the necessity of a third party administrator.
22

23 **10. PROTECTIVE ORDERS:** Parties considering an order to protect confidential
24 information from general disclosure should begin with the model protective orders found on the
25 Los Angeles Superior Court Website under "Civil Tools for Litigators."

26 **11. DISCOVERY:** Please discuss a discovery plan. If the parties cannot agree on a plan,
27 summarize each side's views on discovery. The court generally allows discovery on matters
28

02 23 2018

1 relevant to class certification, which (depending on circumstances) may include factual issues also
2 touching the merits. The court generally does not permit extensive or expensive discovery
3 relevant only to the merits (for example, detailed damages discovery) at the initial stage unless a
4 persuasive showing establishes early need. If any party seeks discovery from absent class
5 members, please estimate how many, and also state the kind of discovery you propose¹.

6 **12. INSURANCE COVERAGE:** Please state if (1) there is insurance for indemnity or
7 reimbursement, and (2) whether there are any insurance coverage issues which might affect
8 settlement.

9 **13. ALTERNATIVE DISPUTE RESOLUTION:** Please discuss ADR and state each
10 party's position about it. If pertinent, how can the court help identify the correct neutral and
11 prepare the case for a successful settlement negotiation?

12 **14. TIMELINE FOR CASE MANAGEMENT:** Please recommend dates and times for
13 the following:

- 14 ■ The next status conference,
- 15 ■ A schedule for alternative dispute resolution, if it is relevant,
- 16 ■ A filing deadline for the motion for class certification, and
- 17 ■ Filing deadlines and descriptions for other anticipated non-discovery motions.

18 **15. ELECTRONIC SERVICE OF PAPERS:** For efficiency the complex program
19 requires the parties in every new case to use a third-party cloud service.

20 Please agree on one and submit the parties' choice when filing the Joint Initial Status
21 Conference Class Action Response Statement. If there is agreement, please identify the vendor. If
22 parties cannot agree, the court will select the vendor at the Initial Status Conference. Electronic
23 service is not the same as electronic filing. Only traditional methods of filing by physical delivery
24

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28 ¹ See California Rule of Court, Rule 3.768.

02 23 2018

1 of original papers or by fax filing are presently acceptable.

2 **Reminder When Seeking To Dismiss Or To Obtain Settlement Approval:**

3 “A dismissal of an entire class action, or of any party or cause of action in a class action, requires
4 court approval... . Requests for dismissal must be accompanied by a declaration setting forth the
5 facts on which the party relies. The declaration must clearly state whether consideration, direct or
6 indirect, is being given for the dismissal and must describe the consideration in detail.”² If the
7 parties have settled the class action, that too will require judicial approval based on a noticed
8 motion (although it may be possible to shorten time by consent for good cause shown).
9

10 **Reminder When Seeking Approval of a Settlement–** Plaintiff(s) must address the issue
11 of any fee splitting agreement in their motion for preliminary approval and demonstrate
12 compliance with California Rule of Court 3.769, and the Rules of Professional Conduct 2-200(a)
13 as required by Mark v. Spencer (2008) 166 Cal.App.4th 219.

14 Pending further order of this Court, and except as otherwise provided in this Initial Status
15 Conference Order, these proceedings are stayed in their entirety. This stay precludes the filing of
16 any answer, demurrer, motion to strike, or motions challenging the jurisdiction of the Court;
17 however, any defendant may file a Notice of Appearance for purposes of identification of counsel
18 and preparation of a service list. The filing of such a Notice of Appearance is without prejudice to
19 any challenge to the jurisdiction of the Court, substantive or procedural challenges to the
20 Complaint, without prejudice to any affirmative defense, and without prejudice to the filing of any
21 cross-complaint in this action. This stay is issued to assist the Court and the parties in managing
22 this “complex” case through the development of an orderly schedule for briefing and hearings on
23 procedural and substantive challenges to the complaint and other issues that may assist in the
24 orderly management of these cases. This stay does not preclude the parties from informally
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27 ² California Rule of Court, Rule 3.770(a)
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1 exchanging documents that may assist in their initial evaluation of the issues presented in this
2 case, however it stays all outstanding discovery requests.

3 Plaintiff's counsel is directed to serve a copy of this Initial Status Conference Order along
4 with a copy of the attached Guidelines for Motions for Preliminary and Final Approval of Class
5 Settlement on counsel for all parties, or if counsel has not been identified, on all parties, within
6 five (5) days of service of this order. If any defendant has not been served in this action, service is
7 to be completed within twenty (20) days of the date of this order.
8

9 If all parties have been served, have conducted the required meet and confer, and are ready
10 to fully participate in the status conference prior to the assigned date, counsel may contact the
11 clerk of Department 322 and request an earlier date for the Initial Status Conference.
12

13 Dated:

14 1/12/18

15 
16 _____
17 Judge William F. Highberger

02 23 2018

EXHIBIT “H”

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Rosa Vigil-Gallenberg (SBN 251872) Gallenberg PC 800 S. Victory Blvd., Suite 203 Burbank, Ca 91502 TELEPHONE NO.: 818-237-5267 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff: Jesus Garcia-Muniz	FOR COURT USE ONLY FILED Superior Court of California County of Los Angeles FEB 02 2018 Sherri R. Carter, Executive Officer/Clerk By <u>Rita Nazaryan</u> Deputy Rita Nazaryan
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 N. Hill Street MAILING ADDRESS: CITY AND ZIP CODE: Los Angeles, CA 90012 BRANCH NAME: Stanley Mosk Courthouse	
PLAINTIFF/PETITIONER: Jesus Garcia-Muniz DEFENDANT/RESPONDENT: Utiliquest, LLC, et al	CASE NUMBER: BC685160
<p style="text-align: center;">PROOF OF SERVICE OF SUMMONS</p>	Ref. No. or File No.:

(Separate proof of service is required for each party served.)

BY FAX

1. At the time of service I was at least 18 years of age and not a party to this action
2. I served copies of:
 - a. summons
 - b. complaint
 - c. Alternative Dispute Resolution (ADR) package
 - d. Civil Case Cover Sheet (served in complex cases only)
 - e. cross-complaint
 - f. other (specify documents): See Attachment:
3. a. Party served (specify name of party as shown on documents served):
Utiliquest, LLC
- b. Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):
Daisy Montenegro, Authorized to Accept Service of Process
4. Address where the party was served:
C.T. Corporation System, 818 W. 7th Street, #930, los angeles, CA 90017
5. I served the party (check proper box)
 - a. **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): 01/29/2018 (2) at (time): 10:35am
 - b. **by substituted service.** On (date): at (time): I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
 - (1) (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 - (2) (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
 - (3) (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
 - (4) I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): from (city): or a declaration of mailing is attached.
 - (5) I attach a declaration of diligence stating actions taken first to attempt personal service.

PLAINTIFF/PETITIONER: Jesus Garcia-Muniz	CASE NUMBER:
DEFENDANT/RESPONDENT: Utiliquet, LLC, et al	BC685160

5. c. by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,
- (1) on (date): (2) from (city):
- (3) with two copies of the Notice and Acknowledgment of Receipt and a postage-paid return envelope addressed to me. (Attach completed Notice and Acknowledgement of Receipt.) (Code Civ. Proc., § 415.30.)
- (4) to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)
- d. by other means (specify means of service and authorizing code section):

Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. as an individual defendant.
- b. as the person sued under the fictitious name of (specify):
- c. as occupant.
- d. On behalf of (specify): Utiliquet. LLC

under the following Code of Civil Procedure section:

- | | |
|-------------------------------------------------------------------|----------------------------------------------------------------------------------|
| <input type="checkbox"/> 416.10 (corporation) | <input checked="" type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation) | <input type="checkbox"/> 416.60 (minor) |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee) |
| <input type="checkbox"/> 416.40 (association or partnership) | <input type="checkbox"/> 416.90 (authorized person) |
| <input type="checkbox"/> 416.50 (public entity) | <input type="checkbox"/> 415.46 (occupant) |
| | <input checked="" type="checkbox"/> other: Limited Liability Corporation |

7. Person who served papers

- a. Name: George Todd
- b. Address: 645 W9th street, #110-302, Los Angeles, CA 90017
- c. Telephone number: 213-308-1759
- d. The fee for service was: \$ 30.60
- e. I am:

- (1) not a registered California process server.
- (2) exempt from registration under Business and Professions Code section 22350(b).
- (3) a registered California process server:
- (i) owner employee independent contractor.
- (ii) Registration No.: 2016159739
- (iii) County: Los Angeles

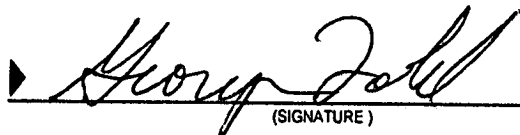
8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

or

9. I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: 01/29/2018

George Todd
(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)


(SIGNATURE)

POS-040(D)

SHORT TITLE: Jesus Garcia-Muniz VS Utiliquet, LLC, et al	CASE NUMBER: BC685160
-------------------------------------------------------------	--------------------------

ATTACHMENT TO PROOF OF SERVICE—CIVIL (DOCUMENTS SERVED)

(This Attachment is for use with form POS-040)

The documents that were served are as follows (describe each document specifically):

Civil Case Cover Sheet Addendum And Statement Of Location

Notice Of Case Assignment

Initial Status Conference Order (Complex Litigation Program)

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EXHIBIT “I”

1 **DLA PIPER LLP (US)**
ERIC S. BEANE (SBN 186029)
2 eric.beane@dlapiper.com
2000 Avenue of the Stars, Suite 400 North Tower
3 Los Angeles, California 90067-4704
Tel: (310) 595-3000
4 Fax: (310) 595-3300

CONFIRMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

FEB 23 2018

Sherril R. Carles, Executive Officer/Clerk
By: Crystal Vargas, Deputy

5 Attorneys for Defendant
6 UTILIQUEST, LLC

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA,**
9 **FOR THE COUNTY OF LOS ANGELES (CENTRAL CIVIL WEST)**

10
11 JESUS GARCIA MUNIZ, individually,
12 and on behalf of all others similarly
situated and aggrieved employees,

CASE NO. BC685160

*[Assigned to the Hon. William F. Highberger,
Dept. 322]*

13 Plaintiff,

**DEFENDANT UTILIQUEST, LLC'S
ANSWER TO PLAINTIFF'S UNVERIFIED
COMPLAINT**

14 v.

15 UTILIQUEST, LLC, a limited liability
16 company, and DOES 1-100, inclusive,

17 Defendants.

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1 Defendant UTILIQUEST, LLC (“UtiliQuest”) answers Plaintiff JESUS GARCIA
2 MUNIZ’s (“Plaintiff”) Class Action and Representative Action Complaint (“Complaint”) as
3 follows:

4 **GENERAL DENIAL**

5 1. Pursuant to California Code of Civil Procedure Section 431.30, UtiliQuest denies,
6 generally and specifically, each and every allegation and each purported cause of action contained
7 in Plaintiff’s Complaint. UtiliQuest further denies, generally and specifically, that Plaintiff has
8 been damaged in any amount, or at all, by reason of any act or omission of UtiliQuest, its
9 employees, agents, representatives, officers, directors, or any other person acting on UtiliQuest’s
10 behalf. UtiliQuest further denies, generally and specifically, that Plaintiff has suffered any loss of
11 wages, overtime, penalties, compensation, benefits or restitution, or any other legal or equitable
12 relief within the jurisdiction of this Court. UtiliQuest further denies that this matter is suitable for
13 treatment as a class action, collective action or any type of representative action.

14 2. In addition to this General Denial, UtiliQuest raises the following affirmative
15 defenses:

16 **FIRST AFFIRMATIVE DEFENSE**

17 **(Failure To State A Cause Of Action Upon Which Relief Can Be Granted)**

18 The Complaint, and each cause of action contained therein, fails to state any cause of
19 action upon which relief can be granted.

20 **SECOND AFFIRMATIVE DEFENSE**

21 **(Failure To State Sufficient Facts To Constitute A Cause of Action)**

22 The Complaint, and each cause of action contained therein, fails to state facts sufficient to
23 constitute any cause of action upon which relief can be granted.

24 **THIRD AFFIRMATIVE DEFENSE**

25 **(Waiver)**

26 Plaintiff has waived his right to assert the purported claims contained in the Complaint
27 and cause of action therein against UtiliQuest. Plaintiff, by his own conduct and actions, has
28 waived the right, if any, to assert the claims in the Complaint.

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FOURTH AFFIRMATIVE DEFENSE

(Estoppel)

Plaintiff is barred by the doctrine of estoppel from pursuing his Complaint and each purported cause of action contained therein. Plaintiff, by his conduct and actions, is estopped, as a matter of law, from pursuing the claims asserted in the Complaint.

FIFTH AFFIRMATIVE DEFENSE

(Failure To Mitigate Damages)

Plaintiff is not entitled to recover the amount of damages from UtiliQuest as alleged in his Complaint, or any damages, due to his continuous failure to make reasonable efforts to mitigate or minimize the damages that he has allegedly incurred.

SIXTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

Plaintiff is not entitled to recover the amount of damages from UtiliQuest as alleged in his Complaint to the extent that Plaintiff's claims are barred by the applicable statute of limitations for each alleged cause of action, including, but not limited to, California Code of Civil Procedure Sections 312, 338(a), 340, and 343.

SEVENTH AFFIRMATIVE DEFENSE

(Laches)

Plaintiff is not entitled to recover the amount of damages from UtiliQuest as alleged in his Complaint to the extent that Plaintiff's claims are barred by the doctrine of laches.

EIGHTH AFFIRMATIVE DEFENSE

(No Legal Right To Recovery)

Any recovery is barred because UtiliQuest has not violated any legal or contractual duty owed to Plaintiff.

NINTH AFFIRMATIVE DEFENSE

(Bad Faith)

The allegations and claims asserted in the Complaint have always been and continue to be frivolous, groundless, and without merit. Plaintiff has brought this action in bad faith.

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TENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

Plaintiff is precluded from maintaining his Complaint, and each purported cause of action alleged therein, because Plaintiff engaged in conduct showing unclean hands.

ELEVENTH AFFIRMATIVE DEFENSE

(Failure To Exhaust Administrative Remedies)

Plaintiff's Complaint, and each cause of action contained therein, is barred to the extent that Plaintiff has failed to exhaust any administrative or statutory remedies provided under California Labor Code Sections 226, 510, 512, 558, 1174, 1194, 1198, 2698, 2699, and 2699.3. To the extent that Plaintiff was required to exhaust any administrative remedies provided by various sections of the Labor Code, he lacks standing to sue.

TWELFTH AFFIRMATIVE DEFENSE

(Failure to Satisfy Jurisdictional Prerequisites For Commencing A Civil Action Under PAGA)

The Court lacks jurisdiction over Plaintiff's Cause of Action under the Labor Code Private Attorney General's Act (PAGA -- California Labor Code Section 2698 *et seq.*) on the grounds that Plaintiff has failed to satisfy the jurisdictional prerequisites mandated by California Labor Code Section 2698 *et seq.*, including the requirements set forth in California Labor Code Section 2699.3.

THIRTEENTH AFFIRMATIVE DEFENSE

(Failure To Show Lack Of Reimbursement For Expenses)

Plaintiff's Complaint, and each cause of action contained therein, fails to the extent that Plaintiff cannot allege facts showing that UtiliQuest failed to reimburse him for any personal expenses incurred in the performance of his work for UtiliQuest.

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FOURTEENTH AFFIRMATIVE DEFENSE

(Failure To Show The Lack Of Itemized Or Accurate Wage Statements)

Plaintiff’s Complaint, and each cause of action contained therein, is barred to the extent that Plaintiff cannot show that UtiliQuest failed to furnish Plaintiff “semi-monthly or at the time of each payment of wages ... either as a detachable part of the check, draft, or other voucher paying the employee’s wages, ... an accurate, itemized statement in writing...” Plaintiff, therefore, has no claim pursuant to California Labor Code Section 226(a).

FIFTEENTH AFFIRMATIVE DEFENSE

(Good Faith Dispute About Wages Owed)

Plaintiff’s Complaint, and each cause of action contained therein, is barred to the extent that UtiliQuest has a good faith and reasonable belief that Plaintiff was not owed any additional wages during his employment or at the time of his separation. UtiliQuest, therefore, did not engage in the knowing and intentional conduct required for penalties based on alleged improper pay statements under California Labor Code Section 226.

SIXTEENTH AFFIRMATIVE DEFENSE

(Failure To Show Lack Of Meal Periods)

Plaintiff’s Complaint, and each cause of action contained therein, is barred to the extent that, assuming *arguendo* that Plaintiff was entitled to meal periods, Plaintiff cannot allege facts that show that UtiliQuest failed to provide him with any meal period mandated by California Labor Code Section 512. Plaintiff also cannot show that UtiliQuest required him to work in violation of any applicable order of the California Industrial Welfare Commission, or failed to provide him with a meal period in accordance with an applicable order of the California Industrial Welfare Commission, as provided under California Labor Code Section 226.7.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Meal Periods Were Taken)

Plaintiff’s Complaint, and each cause of action contained therein, is barred to the extent that Plaintiff did, in fact, take all meal periods to which he was entitled throughout his employment.

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EIGHTEENTH AFFIRMATIVE DEFENSE

(Meal Periods Were Provided)

Plaintiff’s Complaint, and each claim therein, is barred to the extent that Plaintiff was, in fact, provided all meal periods to which he was entitled throughout his employment.

NINETEENTH AFFIRMATIVE DEFENSE

(Failure To Show Lack Of Rest Periods)

Plaintiff’s Complaint, and each cause of action contained therein, is barred to the extent that Plaintiff cannot allege facts that show UtiliQuest failed to authorize and permit rest periods as mandated by any applicable order of the California Industrial Welfare Commission, as provided under California Labor Code Section 226.7.

TWENTIETH AFFIRMATIVE DEFENSE

(Rest Periods Were Taken)

Plaintiff’s Complaint, and each cause of action contained therein, is barred to the extent that Plaintiff did, in fact, take all rest periods to which he was entitled throughout his employment.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Rest Periods Were Provided)

Plaintiff’s Complaint, and each claim therein, is barred to the extent that Plaintiff was, in fact, provided all rest periods to which he was entitled throughout his employment.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Failure To Show A Lack Of Payment Of Overtime)

Plaintiff’s Complaint, and each cause of action contained therein, is barred to the extent that he cannot allege any facts showing that UtiliQuest failed to pay the appropriate amount of overtime wages, if any, due to him.

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TWENTY-THIRD AFFIRMATIVE DEFENSE

(Contribution By Plaintiff's Own Acts)

If the injuries and/or damages alleged in the Complaint occurred (which UtiliQuest denies), such injuries were proximately caused by and/or were contributed to by Plaintiff's own acts or failures to act.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Avoidable Consequences Doctrine)

Plaintiff's Complaint, and each cause of action contained therein, is barred by the avoidable consequences doctrine.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Lack of Standing To Seek Injunctive Relief)

Plaintiff's Complaint, and each purported cause of action contained therein, fails to the extent that Plaintiff seeks injunctive relief because Plaintiff is no longer an employee of UtiliQuest. Because there is no ongoing conduct with respect to Plaintiff that can be subject to any injunctive relief, Plaintiff's request for such relief lacks standing.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Ratification)

Plaintiff's Complaint, and each cause of action contained therein, is barred on the ground that Plaintiff ratified UtiliQuest's alleged actions.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

**(Failure To State Facts Warranting Class Certification
And Class Damages Or Any Other Representative Action)**

Plaintiff's allegations that this action should be certified as a class action or representative action are barred by Plaintiff's failure to allege facts sufficient to warrant class certification and/or an award of class damages, pursuant to California Code of Civil Procedure Section 382. Plaintiff likewise failed to set forth any facts supporting any other form of representative action.

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TWENTY-EIGHTH AFFIRMATIVE DEFENSE

**(Failure To State Facts Warranting A Predominance Of
Common Questions Of Fact And Law)**

Plaintiff's Complaint, and each cause of action alleged therein, fails to the extent that Plaintiff cannot allege a predominance of common questions of fact and law, as required under California Code of Civil Procedure Section 382.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(Failure To Adequately Show Damages)

Plaintiff's Complaint, and each cause of action contained therein, fails to the extent that Plaintiff cannot show a specific or reliable measure of damages owed to him and/or members of the alleged class.

THIRTIETH AFFIRMATIVE DEFENSE

(Failure To Show Alleged Restitution)

Plaintiff's Complaint, and each cause of action contained therein, fails to the extent that Plaintiff cannot show a specific and individualized amount of property claimed by Plaintiff and/or any other member of the proposed class, on an individual basis, as required for a remedy of restitution.

THIRTY-FIRST AFFIRMATIVE DEFENSE

(Lack of Aggrieved Employees)

Plaintiff's Complaint, and each cause of action contained therein, fails on the grounds that Plaintiff is not an aggrieved employee and has not, and cannot, identify any other individuals who are aggrieved employees.

THIRTY-SECOND AFFIRMATIVE DEFENSE

(Plaintiff Paid For All Hours Worked)

Plaintiff's claims for failure to pay for all hours worked and for unpaid overtime are barred because Plaintiff was paid for all hours worked in accordance with the law.

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THIRTY-THIRD AFFIRMATIVE DEFENSE

(No Injury Suffered Based On Wage Statements)

Plaintiff’s claim based on UtiliQuest’s alleged failure to render properly itemized wage statements is barred because Plaintiff suffered no actual injury from the alleged failure to render properly itemized wage statements.

THIRTY-FOURTH AFFIRMATIVE DEFENSE

(No Right To Penalties)

Plaintiff is not entitled to any penalty award under the California Labor Code, including but not limited to sections 226, 226.7, and 1194.2 of the California Labor Code because, at all times relevant to the Complaint, UtiliQuest did not willfully fail to comply with the compensation provisions of the California Labor Code or the applicable wage order, but rather acted in good faith and had reasonable grounds for believing that it did not violate the compensation provisions of the California Labor Code or the applicable wage order.

THIRTY-FIFTH AFFIRMATIVE DEFENSE

(Reasonable Business Judgment)

The Complaint is barred because any act or omission by UtiliQuest was an exercise of reasonable business judgment.

THIRTY-SIXTH AFFIRMATIVE DEFENSE

(Unjust Enrichment)

The Complaint and each of its causes of action is barred because any recovery from UtiliQuest would result in Plaintiff’s unjust enrichment.

THIRTY-SEVENTH AFFIRMATIVE DEFENSE

(PAGA Violates United States Constitution)

Plaintiff’s claims for civil penalties are barred because PAGA violates the Constitution of the United States.

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THIRTY-EIGHTH AFFIRMATIVE DEFENSE

(PAGA Violates California Constitution)

Plaintiff’s claim for civil penalties are barred because PAGA is unconstitutional under the Constitution of the State of California, including but not limited the doctrine of the separation of the executive powers; the doctrine of the separation of judicial powers; and the doctrine that only a neutral attorney may prosecute actions on behalf of the State of California or any of its agencies.

THIRTY-NINTH AFFIRMATIVE DEFENSE

(PAGA Penalties Improper Or Subject To Reduction)

Any award of civil penalties that otherwise could be made under PAGA must not be made, or at worst, must be made in a lesser amount, pursuant to California Labor Code section 2699(e)(2).

FORTIETH AFFIRMATIVE DEFENSE

(PAGA Penalties Violate Due Process)

Recovery of statutory or civil penalties is barred to the extent that the accumulation of penalties would be so disproportionate to the harm alleged to violate due process under the Constitutions of the United States and the State of California.

FORTY-FIRST AFFIRMATIVE DEFENSE

(No Entitlement To PAGA Penalties)

Plaintiff is not entitled to penalties under PAGA because other provisions of the California Labor Code already provide for penalties, and therefore section 2699(f) is inapplicable.

FORTY-SECOND AFFIRMATIVE DEFENSE

(Potential PAGA Penalties Limited)

Without conceding that penalties may be awarded under California Labor Code section 2699(f), if any penalties are awardable in this action, they must be limited to those penalties awardable for a first violation.

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FORTY-THIRD AFFIRMATIVE DEFENSE

(UtiliQuest Not Subject To Penalties For Conduct Alleged In Complaint)

Imposition of any statutory or civil penalties against UtiliQuest would be unjust, arbitrary and capricious, and confiscatory.

FORTY-FOURTH AFFIRMATIVE DEFENSE

(Lack Of Standing To Request A Jury Trial)

Plaintiff's Complaint, and each cause of action contained therein, fails to the extent that Plaintiff seeks a jury trial for claims that are of a nature or right that did not provide for a jury trial at common law prior to the adoption of the California Constitution. To the extent that Plaintiff seeks a jury trial for such claims, there is no such jury trial right.

FORTY-FIFTH AFFIRMATIVE DEFENSE

(Inadequate Class Representative)

Plaintiff's Complaint, and each cause of action contained therein, fails to the extent that Plaintiff is not an adequate representative of the alleged class that he purports to represent. UtiliQuest alleges that Plaintiff does not have claims typical of the alleged class, if any, and that Plaintiff's interests are antagonistic to the alleged class he purports to represent. As such, the class action claims and allegations fail as a matter of law.

FORTY-SIXTH AFFIRMATIVE DEFENSE

(Enforceable Contract)

Plaintiff's Complaint, and each cause of action contained therein, is barred to the extent that there is any enforceable contract with Plaintiff that provides that UtiliQuest's conduct is lawful, pursuant to California Labor Code Section 2750.

FORTY-SEVENTH AFFIRMATIVE DEFENSE

(Failure to Use Appropriate Degree of Care)

Plaintiff's Complaint, and each cause of action contained therein, is barred to the extent that Plaintiff was employed at his own request to do that which was more for his own advantage than for that of his employer and Plaintiff failed to use great care and diligence therein to protect the interest of the employer, pursuant to California Labor Code Section 2853.

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FORTY-EIGHTH AFFIRMATIVE DEFENSE

(Failure to Use Reasonable Care)

Plaintiff's Complaint, and each cause of action contained therein, is barred by Plaintiff's failure to exercise reasonable care, as required by California Labor Code Sections 2853 and 2854.

FORTY-NINTH AFFIRMATIVE DEFENSE

(Failure to Comply with Employer's Directions)

Plaintiff's Complaint, and each cause of action contained therein, is barred to the extent that Plaintiff failed to substantially comply with all of the directions of his employer concerning the service on which he was engaged and Plaintiff's obedience to the directions of the employer was neither impossible nor unlawful, nor would impose new and unrealistic burdens upon him, pursuant to California Labor Code Section 2856.

FIFTIETH AFFIRMATIVE DEFENSE

(Failure to Conform to Usage of Place of Performance)

Plaintiff's Complaint, and each cause of action contained therein, is barred to the extent that Plaintiff failed to perform services in conformity to the usage of the place of performance and was not otherwise directed by the employer and such performance was neither impracticable nor manifestly injurious to Plaintiff, pursuant to California Labor Code Section 2857.

FIFTY-FIRST AFFIRMATIVE DEFENSE

(Degree of Skill)

Plaintiff's Complaint, and each cause of action contained therein, is barred to the extent that Plaintiff failed to exercise a reasonable degree of skill in performing his job duties, pursuant to California Labor Code Section 2858.

FIFTY-SECOND AFFIRMATIVE DEFENSE

(Failure to Use Skill Possessed)

Plaintiff's Complaint, and each cause of action contained therein, is barred to the extent that Plaintiff did not use such skill as he possessed, so far as the same as required, for the service specified for UtiliQuest, as provided under California Labor Code Section 2859.

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FIFTY-THIRD AFFIRMATIVE DEFENSE

(Failure to Show Labor Performed That Entitles Plaintiff to Receive Wages)

Plaintiff’s Complaint, and each and every claim contained therein, is barred to the extent that Plaintiff has not shown he has performed the amounts of labor entitling him to wages as defined in California Labor Code Section 200.

FIFTY-FOURTH AFFIRMATIVE DEFENSE

(Failure to Show Intentional Violation of Wage Statements)

Plaintiff’s Complaint, and each claim contained therein, is barred to the extent that Plaintiff failed to allege any facts showing that UtiliQuest or any officer, agent, employee, fiduciary, or other person who has the control, receipt, custody, or disposal of, or pays, the wages due an employee, knowingly and intentionally violated the provisions of California Labor Code Section 226. Plaintiff, therefore, has no claim for damages pursuant to California Labor Code Section 226(e).

FIFTY-FIFTH AFFIRMATIVE DEFENSE

(Failure to Show Lack of Payment of Minimum Wage)

Plaintiff’s Complaint, and each claim contained therein, fails to the extent that Plaintiff cannot allege facts showing that UtiliQuest failed to pay the required minimum wage or overtime compensation wage for all hours worked by Plaintiff while employed by UtiliQuest. Plaintiff, therefore, has no claim pursuant to California Labor Code Section 1194.

FIFTY-SIXTH AFFIRMATIVE DEFENSE

(No Time Worked Without Overtime Pay)

Even if Plaintiff did work any overtime, Plaintiff received overtime pay for all time worked.

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FIFTY-SEVENTH AFFIRMATIVE DEFENSE

(Right To Raise Other Defenses)

UtiliQuest hereby gives notice that it intends to rely upon such other and further affirmative defenses as may become available during discovery in this action and reserve the right to amend this Answer to assert any such defenses.

PRAYER

WHEREFORE, UtiliQuest prays for judgment against Plaintiff as follows:

1. That Plaintiff take nothing by way of his Complaint;
2. That UtiliQuest did not damage or harm Plaintiff in any way;
3. That Plaintiff is not entitled to any damages, penalties, restitution, injunctive relief, declaratory relief or any other legal or equitable remedy due to any act or omission of UtiliQuest;
4. That the Complaint be dismissed, in its entirety, with prejudice;
5. That Plaintiff is not an adequate representative to bring an action under California Code of Civil Procedure Section 382 or California Labor Code Section 2698 *et seq.*;
6. That the Complaint fails to allege sufficient facts to show that there are predominant issues of law or fact among Plaintiff and anybody upon whose behalf Plaintiff purports to act;
7. That judgment be entered in favor of UtiliQuest and against Plaintiff on the entire Complaint and all causes of action;
8. For attorneys' fees incurred by UtiliQuest in defense of Plaintiff's Complaint pursuant to, *inter alia*, California Labor Code Section 218.5;
9. That UtiliQuest be awarded the costs of suit herein incurred as provided by statute;


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10. That UtiliQuest be awarded such other and further relief as the Court may deem appropriate.

Dated: February 23, 2018

DLA PIPER LLP (US)

By 
ERIC S. BEANE
Attorneys for Defendant
UTILIQUEST, LLC

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 2000 Avenue of the Stars, Suite 400 North Tower, Los Angeles, California 90067-4704.

On February 23, 2018, I served the foregoing document(s) described as:

**DEFENDANT UTILIQUEST, LLC’S ANSWER TO
PLAINTIFF’S UNVERIFIED COMPLAINT**

on interested parties in this action by placing the original true copy(ies) thereof enclosed in sealed envelopes as stated below.

Rosa Vigil-Gallenberg, Esq.
Raymond A. Gallenberg, Esq.
Bridget Howze, Esq.
GALLENBERG PC
800 South Victory Boulevard, Suite 203
Burbank, CA 91502
Tel: (818) 237-5267
Fax: (818) 330-5266
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ray@gallenberglaw.com

*Attorneys for Plaintiff
JESUS GARCIA MUNIZ*

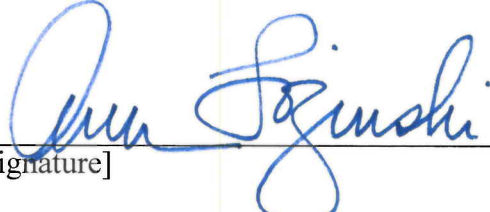
- (BY MAIL)** The envelope was mailed with postage thereon fully prepaid. As follows: I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- (BY FACSIMILE)** I delivered such document by facsimile to the following persons at the facsimile telephone numbers listed above.
- (BY HAND DELIVERY)** I delivered the within documents to County Legal Attorney Service for delivery to the above address(es) with instructions that such envelope be delivered personally on February 23, 2018 to the above named individuals.
- (BY OVERNIGHT MAIL)** I am readily familiar with the firm’s practice of collection and processing correspondence for mailing with an overnight courier service. Under that practice it would be deposited with said overnight courier service on that same day with delivery charges thereon billed to sender’s account, at Los Angeles, California in the ordinary course of business. The envelope was sealed and placed for collection and mailing on that date following ordinary business practices.
- (BY ELECTRONIC SERVICE)** The document was served, when electronically filed via One Legal (onelegal.com), by selecting electronic service on all counsel who are registered to file electronically with the Court.

1 (STATE) I declare under penalty of perjury under the laws of the State of California that
2 the above is true and correct.

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

5 Executed on February 23, 2018, at Los Angeles, California.

6
7 Ann Lozinski
8 [Print Name Of Person Executing Proof]

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[Signature]

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Field Technician Claims Utilquest Denied Wages for Commuting in Company Vehicles](#)
