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15 HASKINS, JOHN SEELY BROWN,  
16 WILLIAM B. GORDON, and ALAIN MONIÉ

17  
18 UNITED STATES DISTRICT COURT  
19 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
20

21 GILBERT ENTERPRISES, INC., a  
California corporation; ERIC  
22 SPENCER, and STEVEN SWANER, on  
behalf of themselves and all other  
23 similarly situated,

24 Plaintiffs,

25 vs.

26 AMAZON.COM, a Delaware  
corporation; AMAZON.COM  
27 SERVICES, INC., a Delaware  
corporation; MARK ANDREW  
28

Case No. 2:19-cv-02453

**NOTICE OF REMOVAL**

State Court Case No. 56-2019-  
00523685-CU-OE-VTA

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HASKINS; JOHN SEELY BROWN;  
WILLIAM B. GORDON; ALAIN  
MONIÉ and DOES 1 through 50,  
inclusive,  
  
Defendants.

1 **TO THE CLERK OF THE CENTRAL DISTRICT OF CALIFORNIA AND**  
2 **PLAINTIFFS AND THEIR COUNSEL OF RECORD:**

3 **PLEASE TAKE NOTICE THAT** the primary Defendants Amazon.com,  
4 Inc.<sup>1</sup> and Amazon Services, Inc. (collectively “Amazon Defendants”), by and  
5 through their counsel, remove the above-entitled action to this Court from the  
6 Superior Court of the State of California, County of Ventura, pursuant to 28 U.S.C.  
7 §§ 1332, 1441, and 1446. This removal is based on the following grounds:

8 **I. PROCEDURAL BACKGROUND**

9 1. On January 14, 2019, Plaintiffs Gilbert Enterprises, Inc. (“Gilbert  
10 Enterprises”), Eric Spencer (“Spencer”), and Steven Swaner (“Swaner”)  
11 (collectively, hereinafter “Plaintiffs”) filed an unverified putative class action  
12 complaint for damages in the Superior Court of the State of California, County of  
13 Ventura, entitled *GILBERT ENTERPRISES, INC, a California corporation; ERIC*  
14 *SPENCER and STEVEN SWANER, on behalf of themselves and all others similarly*  
15 *situated, v. AMAZON.COM, a Delaware corporation; AMAZON.COM SERVICES,*  
16 *INC., a Delaware corporation; MARK ANDREW HASKINS; JOHN SEELY*  
17 *BROWN; WILLIAM B. GORDON; ALAIN MONIE and DOES 1 through 50,*  
18 *inclusive*, Case No. 56-2019-00523685-CU-OE-VTA (the “Complaint”).

19 2. Plaintiffs have brought a putative class action on behalf of customers  
20 and a representative action on behalf of technicians related to the use of Amazon  
21 Home Services (“AHS”), which is an online marketplace where consumers can  
22 purchase home services from third-party providers. Plaintiffs have also brought a  
23 putative class action on behalf of home service providers who purportedly compete  
24 with AHS to provide home services in California. Specifically, Plaintiffs assert (1)  
25 consumer claims brought on behalf of customers who purchased home services  
26 from third-party providers through AHS (the “Consumer Class”) that were

27  
28 <sup>1</sup> Plaintiffs named Amazon.com in the instant lawsuit, however, the correct entity  
name is Amazon.com, Inc.

1 allegedly performed without proper licenses or compliance with statutory  
2 requirements, (2) employment claims brought by a third-party service provider  
3 technician who performed home services through AHS based on his and others’  
4 alleged misclassification as independent contractors by AHS, and (3) unfair  
5 competition claims brought by home service providers who purportedly compete  
6 with AHS to sell home services in California (the “Contractor Class”).<sup>2</sup> (Ex. B,  
7 First Amended Complaint (“FAC”) ¶¶ 1-3.)

8 3. Plaintiffs allege the following violations in seven causes of action  
9 against Defendants: (1) Failure to Pay Minimum Wage; (2) Failure to Pay Overtime  
10 Wages; (3) Failure to Provide Meal and Rest Periods; (4) Failure to Provide  
11 Accurate Wage Statements; (5) Failure to Reimburse Necessary Expenses; (6)  
12 Unlawful Acceptance of Payments for Work Requiring a Contractor’s License; (7)  
13 Violations of the Unfair Competition Law. (*Id.* ¶¶ 64-99.)

14 4. On March 25, 2019, Plaintiffs filed a First Amended Class Action  
15 Complaint (“First Amended Complaint”). The First Amended Complaint included  
16 one additional cause of action alleging “Relief Under the Private Attorneys General  
17 Act” as its eighth cause of action.

18 5. On February 8, 2019, Plaintiffs served Defendants with a copy of  
19 Plaintiffs’ original Complaint and Summons and a Notice and Acknowledgment of  
20 Receipt. On February 28, 2019, Defendants returned the Acknowledgment of  
21 Receipt. A copy of Plaintiffs’ Complaint, Summons, and accompanying service  
22 documents is attached as **Exhibit A**.

23 6. On March 28, 2019, Defendants agreed to accept service of the First  
24 Amended Complaint by Notice and Acknowledgment of Receipt.<sup>3</sup> A conformed  
25

26 <sup>2</sup> The entirety of Plaintiff Swaner’s claims and Plaintiff Spencer’s individual  
27 claims and representative claims for wages are bound by arbitration agreements,  
and therefore, Defendants will promptly move to compel these claims to  
arbitration on an individual basis.

28 <sup>3</sup> Defendants have not yet received the Notice and Acknowledgment of Receipt  
from Plaintiffs, however, service of the FAC will be effective upon Defendants’

1 copy of Plaintiffs' First Amended Complaint is attached as **Exhibit B**. Exhibits A  
2 and B constitute all of the pleadings, process, and orders filed and served upon  
3 Defendants in the Superior Court action.

4 **II. REMOVAL IS TIMELY**

5 7. On February 28, 2018, Defendants returned the Acknowledgment of  
6 Receipt, making service effective on Defendants on that date. Because this Notice  
7 of Removal is filed within thirty days of service of the Summons and Complaint  
8 (given that March 30, 2019 was a Saturday), it is timely under 28 U.S.C. §§  
9 1446(b) and 1453. *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526  
10 U.S. 344, 354 (1999). No previous Notice of Removal has been filed or made with  
11 this Court for the relief sought in this removal notice.

12 **III. THIS COURT HAS ORIGINAL SUBJECT MATTER JURISDICTION**  
13 **UNDER CAFA**

14 8. Plaintiffs seek to bring this action as a putative class action on behalf  
15 of the Consumer Class and the Contractor Class under Cal. Code Civ. Proc. § 382.  
16 (*See Ex. B, FAC ¶¶ 2, 55.*) Here, removal based on Class Action Fairness Act  
17 ("CAFA") diversity jurisdiction is proper pursuant to 28 U.S.C. §§ 1441, 1446, and  
18 1453 because (i) the aggregate number of putative class members is 100 or greater;  
19 (ii) diversity of citizenship exists between one or more Plaintiffs and one or more  
20 Defendants; and (iii) the amount placed in controversy by the Complaint exceeds,  
21 in the aggregate, \$5 million, exclusive of interest and costs. 28 U.S.C. §§  
22 1332(d)(2), 1332(d)(5)(B), and 1453. Defendants deny Plaintiffs' factual  
23 allegations and deny that Plaintiffs, or the class they purport to represent, are  
24 entitled to the relief requested; however, based on Plaintiffs' allegations in the  
25 Complaint and First Amended Complaint and their respective prayers for relief, all  
26 requirements for jurisdiction under CAFA have been met.<sup>4</sup> Accordingly, diversity

27 return of the Notice and Acknowledgment of Receipt (within 20 days of receipt  
28 pursuant to Cal. Code Civ. Proc. § 451.30).

<sup>4</sup> Defendants do not concede, and reserve the right to contest at the appropriate time, Plaintiffs' allegations that this action can properly proceed as a class

1 of citizenship exists under CAFA, and this Court has original jurisdiction over this  
2 action pursuant to 28 U.S.C. § 1332(d)(2).

3 **A. The Putative Class Has More Than 100 Members.**

4 9. Plaintiffs assert claims on behalf of a putative class comprised of “[a]ll  
5 licensed contractors in the state of California that provide Home Services in  
6 competition with Defendants” (the “Contractor Class”) and “[a]ll consumers in the  
7 state of California that purchased Home Services from Defendants that were  
8 required to be performed by a licensed contractor” (the “Consumer Class”). (Ex. A,  
9 Compl. ¶¶ 2, 55.) Based on Plaintiffs’ definition, the putative class contains more  
10 than 100 customers who purchased home services through the AHS marketplace in  
11 California.

12 **B. Diversity of Citizenship Exists.**

13 10. To satisfy CAFA’s diversity requirement, a party seeking removal  
14 need only show that minimal diversity exists; that is, one putative class member is a  
15 citizen of a state different from that of one defendant. 28 U.S.C. § 1332(d)(2);  
16 *United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv.*  
17 *Workers Int’l Union, AFL-CIO, CLC v. Shell Oil Co.*, 602 F.3d 1087, 1090–91 (9th  
18 Cir. 2010) (finding that to achieve its purposes, CAFA provides expanded original  
19 diversity jurisdiction for class actions meeting the minimal diversity requirement  
20 set forth in 28 U.S.C. § 1332(d)(2)); *United Steel, Paper & Forestry, Rubber, Mfg.,*  
21 *Energy, Allied Indus. & Serv. Workers Int’l Union, AFL-CIO, CLC v. Shell Oil Co.*,  
22 602 F.3d 1087, 1090–91 (9th Cir. 2010) (finding that to achieve its purposes,  
23 CAFA provides expanded original diversity jurisdiction for class actions meeting  
24 the minimal diversity requirement set forth in 28 U.S.C. § 1332(d)(2)).

25 11. “An individual is a citizen of the state in which he is domiciled . . . .”  
26 *Boon v. Allstate Ins. Co.*, 229 F. Supp. 2d 1016, 1019 (C.D. Cal. 2002) (citing

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action. Defendants do not concede that any of Plaintiffs’ allegations constitute  
a cause of action against it under applicable California law.

1 *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001)). For purposes  
2 of diversity of citizenship jurisdiction, citizenship is determined by the individual's  
3 domicile at the time that the lawsuit is filed. *Lew v. Moss*, 797 F.2d 747, 750 (9th  
4 Cir. 1986). Evidence of continuing residence creates a presumption of domicile.  
5 *Washington v. Havensa LLC*, 654 F.3d 340, 345 (3rd Cir. 2011).

6 12. Plaintiffs Spencer and Swaner admit that they are residents of  
7 California. (Ex. B, Compl. ¶¶ 6-7.) Plaintiff Gilbert Enterprises admits that its  
8 principal place of business is in California. (*Id.* ¶ 5.) The Complaint does not  
9 allege any alternate state citizenship. Therefore, all three Plaintiffs are citizens of  
10 California for diversity jurisdiction purposes. Moreover, Plaintiffs have brought  
11 claims on behalf of putative class members who purchased home services in  
12 California and putative class members who provide home services in California.  
13 (*Id.* ¶ 2.) Plaintiffs have also brought a representative action on behalf of current  
14 and former service providers in the state of California who were classified as  
15 independent contractors or employees and directly or indirectly performed worked  
16 for AHS. (*Id.* ¶ 3.) Thus, at least one putative class member is a citizen of  
17 California for diversity jurisdiction purposes.

18 13. Pursuant to 28 U.S.C. § 1332, “a corporation shall be deemed to be a  
19 citizen of every State and foreign state by which it has been incorporated and of the  
20 State or foreign state where it has its principal place of business.” 28 U.S.C. §  
21 1332(c)(1). The “principal place of business” for the purpose of determining  
22 diversity subject matter jurisdiction refers to “the place where a corporation’s  
23 officers direct, control, and coordinate the corporation’s activities...[I]n practice it  
24 should normally be the place where the corporation maintains its headquarters-  
25 provided that the headquarters is the actual center of direction, control, and  
26 coordination, i.e., the ‘nerve center,’ and not simply an office where the corporation  
27 holds its board meetings[.]” *See Hertz Corp. v. Friend*, 559 U.S. 77, 92-93, 130 S.  
28 Ct. 1181, 1192 (2010).



1           14. Primary Defendants Amazon.com, Inc. and Amazon.com Services,  
2 Inc. are incorporated under the laws of Delaware and have their headquarters and  
3 principal place of business in Seattle, Washington. Thus, Defendants Amazon.com,  
4 Inc. and Amazon.com Services, Inc. are citizens of Washington and Delaware for  
5 diversity purposes. 28 U.S.C. § 1332(c)(1). Accordingly, at least one member of  
6 the putative plaintiff class is a citizen of California, while the primary Amazon  
7 Defendants are citizens of Washington and Delaware. Thus, diversity of citizenship  
8 is satisfied and diversity jurisdiction exists under CAFA. 28 U.S.C. §  
9 1332(d)(2)(A) (requiring only “minimal diversity” under which “any member of a  
10 class of plaintiffs is a citizen of a State different from any Defendant”).

11           **C. The Amount In Controversy Exceeds \$5,000,000.**

12           15. Pursuant to CAFA, the claims of the individual members in a class  
13 action are aggregated to determine if the amount in controversy exceeds  
14 \$5,000,000, exclusive of interest and costs. 28 U.S.C. § 1332(d)(6). Because  
15 Plaintiffs do not expressly plead a specific amount of damages, a removing party  
16 need only show that it is more likely than not that the amount in controversy  
17 exceeds \$5 million. *See Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373,  
18 376 (9th Cir. 1997).

19           16. A removing party seeking to invoke CAFA jurisdiction “need include  
20 only a plausible allegation that the amount in controversy exceeds the jurisdictional  
21 threshold.” *Dart Cherokee*, 135 S. Ct. at 554. “If a federal court is uncertain about  
22 whether ‘all matters in controversy’ in a purported class action ‘do not in the  
23 aggregate exceed the sum or value of \$5,000,000,’ the court should err in favor of  
24 exercising jurisdiction over the case.” Senate Judiciary Report, S. REP. 109-14, at  
25 42 (2005) (citation omitted).

26           17. A removing defendant is “not required to comb through its records to  
27 identify and calculate the exact frequency of violations.” *Oda, et al. v. Gucci Am.,*  
28 *Inc.*, 2015 U.S. Dist. LEXIS 1672, at \*12 (C.D. Cal. Jan. 7, 2015); *see Sanchez v.*



1 *Russell Sigler, Inc.*, 2015 WL 12765359, \*2 (C.D. Cal. April 28, 2015) (“[A]  
 2 removing defendant is not obligated to research, state and prove the plaintiff’s  
 3 claims for damages.”) (citation omitted). *See also LaCross v. Knight*  
 4 *Transportation Inc.*, 775 F.3d 1200, 1203 (9th Cir. 2015) (rejecting plaintiff’s  
 5 argument for remand based on the contention that the class may not be able to  
 6 prove all amounts claimed: “Plaintiffs are conflating the amount in controversy  
 7 with the amount of damages ultimately recoverable.”); *Ibarra v. Manheim Invs.,*  
 8 *Inc.*, 775 F.3d 1193, 1198 n.1 (9th Cir. 2015) (in alleging the amount in  
 9 controversy, Defendants “are not stipulating to damages suffered, but only  
 10 estimating the damages in controversy.”). The ultimate inquiry is what amount is  
 11 put “in controversy” by the plaintiff’s complaint, not what a defendant will actually  
 12 owe. *LaCross*, 775 F.3d at 1202 (internal citation omitted) (explaining that courts  
 13 are directed “to first look to the complaint in determining the amount in  
 14 controversy.”).

15 18. Although Defendants deny Plaintiffs’ factual allegations and deny that  
 16 they or the class they seek to represent are entitled to the relief for which they have  
 17 prayed, as detailed below, Plaintiffs’ allegations and prayer for relief have “more  
 18 likely than not” put into controversy an amount that easily exceeds the \$5 million  
 19 threshold when aggregating the claims of the putative class members as set forth in  
 20 28 U.S.C. § 1332(d)(6).<sup>5</sup>

21 <sup>5</sup> This Notice of Removal discusses the nature and amount of damages placed at  
 22 issue by Plaintiffs’ Complaint. Defendants’ references to specific damage  
 23 amounts and citation to comparable cases are provided solely for establishing  
 24 that the amount in controversy is more likely than not in excess of the  
 25 jurisdictional minimum. Defendants maintain that each of Plaintiffs’ claims is  
 26 without merit and that Defendants are not liable to Plaintiffs or any putative  
 27 class member. Defendants expressly deny that Plaintiffs or any putative class  
 28 member are entitled to recover any of the penalties they seek in the Complaint.  
 In addition, Defendants deny that liability or damages can be established on a  
 class-wide basis. No statement or reference contained in this removal notice  
 shall constitute an admission of liability or a suggestion that Plaintiffs will or  
 could actually recover any damages based upon the allegations contained in the  
 Complaint or otherwise. “The amount in controversy is simply an estimate of  
 the total amount in dispute, not a prospective assessment of [Defendants’]  
 liability.” *Lewis v. Verizon Communs., Inc.*, 627 F.3d 395, 400 (9th Cir. 2010).

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1. **Allegations Demonstrating Amount in Controversy.**

19. Plaintiffs seek to represent a class of (1) “[a]ll licensed contractors in the state of California that provide Home Services in competition with Defendants” (the “Contractor Class”) and (2) “[a]ll consumers in the state of California that purchased Home Services from Defendants that were required to be performed by a licensed contractor.” (the “Consumer Class”). (Ex. B, FAC ¶¶ 2, 55.)

a. **Plaintiffs’ Sixth Cause of Action For Unlawful Acceptance of Payments for Work Requiring a Contractor’s License Puts More Than \$5,000,000 in Controversy.**

20. Plaintiffs’ Sixth Cause of Action, brought by Plaintiff Swaner and the Consumer Class for Unlawful Acceptance of Payments for Work Requiring a Contractor’s License, alone satisfies the amount in controversy. Plaintiffs specifically plead Swaner and the Consumer Class are “able to recover the full amount of any payments made to an unlicensed contractor.” (Ex. B, FAC ¶ 90.) Thus, this claim puts into controversy all payments for every home service fulfilled through the AHS marketplace in California since January 14, 2015 that were required to be performed by a licensed contractor. AHS fulfilled more than \$5,000,000 in gross sales between January 1, 2015 and January 1, 2019. Assuming, *arguendo*, that all of these home services were performed without the necessary contractor’s license or compliance with the other statutory requirements, as Plaintiffs allege, then the Amazon Defendants may be liable for over \$5 million in damages to consumers who contracted for these services. Accordingly, the amount in controversy here meets the CAFA threshold.

b. **Plaintiffs’ Request for Other Relief, Including Attorneys’ Fees, Put Additional Amounts in Controversy, Clearly Exceeding the CAFA Threshold.**

21. In addition to the foregoing amount, Plaintiffs’ other causes of action place yet more amounts in controversy, further demonstrating that the CAFA threshold is satisfied. Plaintiffs’ Seventh Cause of Violation of the Unfair

1 Competition Law (Labor Code §§ 17200 *et seq.*) alleges that Defendants’ conduct  
 2 as alleged in the First Amended Complaint, violated California Unfair Competition  
 3 Law, and accordingly Plaintiffs seek to recover restitution and lost profits.<sup>6</sup> (*Id.* ¶¶  
 4 95-96.)

5 22. Plaintiffs’ First, Second, Third, Fourth, and Fifth Causes of Action,  
 6 which arise out of Plaintiff Spencer’s alleged misclassification as an independent  
 7 contractor, place additional amounts in controversy. Specifically, Plaintiff Spencer  
 8 seeks seek premium wages, double back pay, compensatory damages, economic  
 9 damages, reimbursement of expenses, civil penalties, and liquidated damages,  
 10 based on Defendants alleged failure to pay minimum wage, pay overtime wages,  
 11 provide meal and rest periods, provide accurate wage statements, and reimburse  
 12 necessary business expenses. (*Id.* ¶¶ 64-88.)

13 23. Additionally, Plaintiffs seek recovery of attorneys’ fees. (Ex. B, FAC,  
 14 Prayer for Relief ¶ 9.) Attorneys’ fees are properly included in determining the  
 15 amount in controversy. *See Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 698  
 16 (9th Cir. 2007). Estimated future attorneys’ fees are properly included in  
 17 determining the amount in controversy, including for class actions seeking fees  
 18 under Labor Code Section 226. *See Fritsch v. Swift Transportation Co. of Arizona,*  
 19 *LLC*, 899 F.3d 785, 793-794 (9th Cir. 2018) (“Because the law entitles [the  
 20 plaintiff] to an award of attorneys’ fees if he is successful, such future attorneys’  
 21 fees are at stake in the litigation, and must be included in the amount in  
 22 controversy.”). The Ninth Circuit held that future fee estimates can be based on  
 23 “customary rates and proper fees,” and that “a percentage-based method,” such as  
 24

25 <sup>6</sup> Defendants refer to this allegation solely for purposes of demonstrating the  
 26 nature and amount of damages placed at issue by Plaintiffs’ Complaint.  
 27 Defendants contend that Plaintiffs cannot seek “lost profits and other damages”  
 28 under unfair competition law and reserve the right to challenge Plaintiffs’  
 assertion on this basis. *See Korea Supply Co. v. Lockheed Martin Corp.*, 29  
 Cal. 4th 1134, 1144 (2003) (clarifying that disgorgement of profits is allowed in  
 UCL claims only to the extent it constitutes restitution).

1 25% of the amount in controversy, may also be relevant when estimating the  
2 amount of fees included in the amount in controversy. *Id.* at 795 and 796, fn. 6.

3 24. Defendants deny Plaintiffs' claim for attorneys' fees. However, for  
4 purposes of removal, even though Defendants have already demonstrated by a  
5 preponderance of the evidence that the amount in controversy exceeds \$5,000,000,  
6 Defendants note that the inclusion of future attorneys' fees would increase the  
7 amount in controversy by a material amount.

8 **D. The Home State Exception to CAFA Does Not Apply Here**  
9 **Because The Primary Amazon Defendants Are Diverse.**

10 25. The Home State Exception to CAFA removal does not apply to this  
11 matter. In limited circumstances a federal district court may, in the interests of  
12 justice and looking at the totality of the circumstances, decline to exercise  
13 jurisdiction over a class action where greater than one-third but less than two-thirds  
14 of the members of all proposed plaintiff classes in the aggregate and the *primary*  
15 *defendants* are citizens of the state in which the class action was originally filed.  
16 28 U.S.C. § 1332(d)(3) (emphasis added). A "primary defendant" is one which is  
17 most able to satisfy a judgment, sued directly, and the subject of a significant  
18 portion of claims. *Kendrick v. Xerox State & Local Sols., Inc.*, 2018 WL 1605104,  
19 at \*4 (N.D. Cal. Apr. 3, 2018), *aff'd sub nom. Kendrick v. Conduent State & Local*  
20 *Sols., Inc.*, (9th Cir. Dec. 13, 2018); *Harrington v. Mattel, Inc.*, WL 4556920, at \*5  
21 (N.D. Cal. Dec. 20, 2007) (clarifying that the "primary defendant[s]" are the "real  
22 targets" of the lawsuit and "would be expected to incur most of the loss if liability  
23 is found"). This is in contrast to other defendants who played a secondary role by  
24 merely assisting in the alleged wrongdoing, or who are only vicariously liable.  
25 *See McCracken v. Verisma Sys., Inc.*, WL 2080279 at \*3 (W.D.N.Y. May 15,  
26 2017).

27 26. Here, Plaintiffs bring all of their claims against the primary Amazon  
28 Defendants and against the individual defendants John Seely Brown, William B.

1 Gordon, and Alain Monie (referenced in the Complaint as the “Director  
2 Defendants”), all of whom are *former* board members for Amazon.com, Inc. Given  
3 that the only factual allegation Plaintiffs assert against these individuals is that they  
4 are “officers or directors” of the Amazon Defendants, these “Director Defendants”  
5 appear to have been included based solely on a theory of vicarious liability. (Ex. B,  
6 FAC ¶ 9.) Plaintiffs also bring claims against Mark Haskins, an Amazon employee  
7 who does not work for AHS, based on his alleged involvement in the Amazon  
8 Defendants’ purported wrongdoing. (*Id.* ¶ 10.) However, the Amazon Defendants  
9 are clearly the “real targets” of this lawsuit. The Amazon Defendants contracted  
10 with the Consumer Class through the AHS marketplace, operate the AHS business  
11 that is in competition with the Contractor Class, “employed” the AHS technicians  
12 such as Spencer, and would incur the greatest financial loss if liability was found.  
13 Further, while Plaintiffs bring their Sixth Cause of Action for Unlawful Acceptance  
14 of Payments for Work Requiring a Contractor’s License against all defendants,  
15 Plaintiffs seek recovery of payments that were received by the Amazon Defendants,  
16 not the individual defendants. (*Id.* ¶¶ 89-92.) As noted above, the primary Amazon  
17 Defendants are both citizens of Washington and Delaware, not California.  
18 Therefore, because the primary Amazon Defendants are both non-California  
19 citizens and are the primary defendants, the Home State Exception to CAFA  
20 removal jurisdiction does not apply here.

#### 21 **IV. VENUE**

22 27. This action was originally filed in the Superior Court for the County of  
23 Ventura. Initial venue is therefore proper in this district, pursuant to 28 U.S.C. §  
24 1441(a), because it encompasses the county in which this action has been pending.

#### 25 **V. NOTICE**

26 28. Defendants will promptly serve this Notice of Removal on all parties  
27 and will promptly file a copy of this Notice of Removal with the clerk of the state  
28 court in which the action is pending, as required under 28 U.S.C. § 1446(d).

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**VI. CONCLUSION**

29. Based on the foregoing, Defendants request that this action be removed to this Court. If any question arises as to the propriety of the removal of this action, Defendants respectfully request the opportunity to present a brief and oral argument in support of their position that this case is subject to removal.

Dated: April 1, 2019 MORGAN, LEWIS & BOCKIUS LLP

By: /s/ Jennifer B. Zargarof  
Jennifer B. Zargarof  
Joseph Duffy  
Brian C. Rocca  
Meghan Phillips  
ATTORNEYS FOR DEFENDANTS

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**PROOF OF SERVICE**

I, Denise D. Brown, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within entitled action. My business address is 300 South Grand Avenue, Twenty-Second Floor, Los Angeles, CA 90071-3132. On April 1, 2019, I served a copy of the within document(s):

**NOTICE OF REMOVAL**

by placing the document(s) listed above in a sealed **FEDERAL EXPRESS** envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a **FEDERAL EXPRESS** agent for delivery.

Scott Thomas Green  
Jeff Coyner  
Matthew Bechtel  
THE GREEN LAW GROUP, LLP  
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Attorneys for Plaintiffs,  
GILBERT ENTERPRISES, INC., ERIC SPENCER, and STEVEN SWANER

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid 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.

Executed on April 1, 2019, at Los Angeles, California.



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

/s/ Denise D. Brown  
Denise D. Brown

# **EXHIBIT A**

SUM-100

**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT: AMAZON.COM**, a Delaware corporation;  
**(AVISO AL DEMANDADO): AMAZON.COM SERVICES, INC.**, a Delaware corporation; **MARK ANDREW HASKINS; JOHN SEELY BROWN; WILLIAM B. GORDAN; ALAIN MONIÉ** and

Additional Parties Attachment form is attached.

**YOU ARE BEING SUED BY PLAINTIFF: GILBERT ENTERPRISES, INC.**  
**(LO ESTÁ DEMANDANDO EL DEMANDANTE):** a California corporation; **ERIC SPENCER**, and **STEVEN SWANER**, on behalf of themselves and all others similarly situated

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

VENTURA  
SUPERIOR COURT  
FILED

JAN 14 2019

BY: \_\_\_\_\_ Deputy  
MARIA MARTINEZ

**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](http://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](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://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](http://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](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://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):  
Superior Court of California, County of Ventura  
800 South Victoria Avenue  
Ventura, California 93009

56-2019-00523685-CU-OE-VTA

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):

THE GREEN LAW GROUP, LLP Scott Thomas Green, Esq.  
1777 E. Los Angeles Ave, Simi Valley, CA 93065

805-306-1100  
Michael D. Planet  
Deputy

DATE:  
(Fecha)

JAN 14 2019

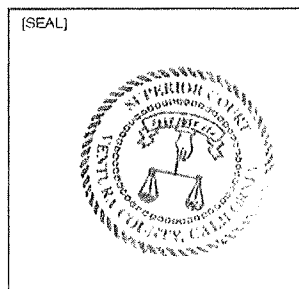
Clerk, by  
(Secretario)

(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)).

MARIA MARTINEZ



**NOTICE TO THE PERSON SERVED:** You are served

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):
3.  on behalf of (specify): AMAZON.COM, a Delaware corporation  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify):
4.  by personal delivery on (date):

SUM-200(A)

SHORT TITLE:	CASE NUMBER:
--------------	--------------

**INSTRUCTIONS FOR USE**

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff   
 Defendant   
 Cross-Complainant   
 Cross-Defendant

DOES 1 through 50, inclusive

**COPY**

1 Scott Thomas Green, SBN 82220  
2 Jeff Coyner, SBN 233499  
3 Matthew Bechtel, SBN 260450  
4 **THE GREEN LAW GROUP, LLP**  
5 1777 E. Los Angeles Avenue  
6 Simi Valley, California 93065  
7 Tel: (805) 306-1100 | Fax: (805) 306-1300  
8 SCOTT@THEGREENLAWGROUP.COM  
9 JEFF@THEGREENLAWGROUP.COM  
10 MATTHEW@THEGREENLAWGROUP.COM

VENTURA  
SUPERIOR COURT  
FILED

JAN 14 2019

MICHAEL D. PLANET  
Executive Officer and Clerk

BY: \_\_\_\_\_, Deputy

MARIA MARTINEZ

11 Attorneys for Plaintiffs,  
12 GILBERT ENTERPRISES, INC, ERIC SPENCER,  
13 STEVEN SWANER, and all others similarly situated

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **FOR THE COUNTY OF VENTURA – UNLIMITED CIVIL**

16 GILBERT ENTERPRISES, INC, a  
17 California corporation; ERIC SPENCER,  
18 and STEVEN SWANER, on behalf of  
19 themselves and all others similarly  
20 situated,

21 Plaintiffs,

22 v.

23 AMAZON.COM, a Delaware corporation;  
24 AMAZON.COM SERVICES, INC., a  
25 Delaware corporation; MARK ANDREW  
26 HASKINS; JOHN SEELY BROWN;  
27 WILLIAM B. GORDAN; ALAIN MONIÉ  
28 and DOES 1 through 50, inclusive,

Defendants.

Case No.: 56-2019-00523685-CU-OE-VTA

UNLIMITED JURISDICTION

**CLASS ACTION COMPLAINT FOR:**

1. Failure to Pay Minimum Wage [Lab. Code § 1182 and Wage Order No. 16]
2. Failure to Pay Overtime Wages [Lab. Code §§ 510, 1194 and Wage Order No. 16];
3. Failure to Provide Meal and Rest Periods, or Compensation in Lieu Thereof [Lab. Code §§ 226.7, 512 and Wage Order No. 16];
4. Failure to Provide Accurate Wage Statements [Labor Code § 226];
5. Failure to Reimburse Necessary Expenses [Labor Code § 2802];
6. Unlawful Acceptance of Payments for Work Requiring a Contractor's License [Bus. & Prof. Code § 7031];
7. Violations of the Unfair Competition Law [Bus. & Prof. Code § 17200];

**JURY TRIAL DEMANDED**

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1 Plaintiffs GILBERT ENTERPRISES, INC, a California corporation, in good  
2 standing ("GILBERT"), ERIC SPENCER ("SPENCER"), and STEVEN SWANER  
3 ("SWANER"), on behalf of themselves and all others similarly situated (hereinafter  
4 collectively "Plaintiffs"), assert claims against Defendants AMAZON.COM, INC., a  
5 Delaware corporation; AMAZON.COM SERVICES, INC., a Delaware corporation; MARK  
6 ANDREW HASKINS, an individual; JOHN SEELY BROWN, an individual; WILLIAM B.  
7 GORDAN, an individual; ALAIN MONIÉ, an individual; and DOES 1 through 50, inclusive  
8 (hereinafter collectively referred to as "Defendants"), as follows:

9 **INTRODUCTION**

10 1. Plaintiffs bring this class and representative action on behalf of employees,  
11 competitors, and customers of Defendants to remedy labor, consumer, and unfair  
12 competition violations related to various assembly, installation, and home improvement  
13 services (hereinafter "Home Services") marketed and sold by Defendants as "Amazon  
14 Home Services," "expert assembly," "expert installation," or similar descriptor.

15 2. Plaintiffs bring this action on their own behalf and on behalf of the following  
16 classes:

17 i. All licensed contractors in the state of California that provide Home Services  
18 in competition with Defendants (hereinafter referred to as "Contractor Class").

19 ii. All consumers in the state of California that purchased Home Services from  
20 Defendants that were required to be performed by a licensed contractor (hereinafter  
21 referred to as "Consumer Class").

22 3. Concurrently with the filing of this complaint, SPENCER filed a claim under  
23 the Private Attorneys General Act with the California Labor and Workforce Development  
24 Agency ("LWDA"). If the LWDA does not investigate the claim, Plaintiffs will amend this  
25 complaint to include a representative cause if action on behalf of current and former  
26 service providers in the state of California, whether classified as independent contractors  
27 or employees by Defendants, who either directly or indirectly performed Home Services  
28 for Defendants' customers.

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1 4. By way of this action, Plaintiffs seek damages on behalf of themselves and  
2 each class during the entire liability period, which is defined as the applicable statute of  
3 limitations for each and every cause of action contained herein ("Liability Period").

4 VENUE

5 5. Venue as to each Defendant is proper in this judicial district pursuant to  
6 Code of Civil Procedure section 395. Defendants conduct substantial and continuous  
7 commercial activities in Ventura County, California and each Defendant is within the  
8 jurisdiction of this Court for service of process. Plaintiffs are informed and believe, and  
9 thereon allege, that Defendants market to, perform work, and employ numerous class  
10 members in Ventura County, California.

11 PARTIES

12 6. Plaintiff GILBERT is, and at all times relevant herein was, a California  
13 corporation with its principal place of business in Thousand Oaks, California, that is a  
14 licensed contractor that performs Home Services in competition with Defendants.

15 7. Plaintiff SPENCER is, and at all times relevant herein was, an individual  
16 who resides in Simi Valley, California, that was hired by Defendants to perform Home  
17 Services.

18 8. Plaintiff SWANER is, and at all times relevant herein was, an individual who  
19 resides in Los Angeles, California, that contracted with and had Home Services provided  
20 by Defendants.

21 9. Defendants AMAZON.COM, INC.; AMAZON.COM SERVICES, INC.;  
22 DOES 1 through 40 inclusive; and each of them (hereinafter collectively referred to as  
23 "Corporate Defendants"); are e-commerce retailers that sells a broad range of goods  
24 through the website "Amazon.com," and through applications installed on various  
25 hardware devices, including smart phones, tablets, and a voice-activated assistant known  
26 as the Amazon Echo. Corporate Defendants also marketed and sold, and continue to  
27 market and sell, Home Services.

28 10. Defendants JOHN SEELY BROWN; WILLIAM B. GORDAN; ALAIN



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1 MONIÉ; and DOES 41 through 50 are officers or directors of Corporate Defendants  
2 residing and doing business in California hereinafter referred to as “Director Defendants”.

3 11. The true names and capacities of Defendants, whether individual,  
4 corporate, associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are  
5 currently unknown to Plaintiffs, who therefore sue Defendants by such fictitious names  
6 under Code of Civil Procedure section 474. Plaintiffs are informed and believe, and based  
7 thereon allege, that each of the Defendants designated herein as a DOE is legally  
8 responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek to  
9 amend this Complaint to reflect the true names and capacities of the Defendants  
10 designated hereinafter as DOES when such identities become known.

11 12. Plaintiffs are informed and believe, and thereon allege, that Defendant  
12 MARK ANDREW HASKINS (hereinafter “HASKINS”) is an employee of Corporate  
13 Defendants who resides in California, and is the qualifying individual for Amazon.com  
14 Services, Inc.’s C-10 electrical contractors license. As the license qualifier, HASKINS is  
15 statutorily responsible for exercising that direct supervision and control of Corporate  
16 Defendants’ construction operations to ensure compliance with California’s contractors’  
17 license laws, and is a managing agent of Corporate Defendants.

18 13. Plaintiffs are informed and believe, and thereon allege, that Defendants  
19 acted in all respects pertinent to this action as the agent of the other Defendants, carried  
20 out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts  
21 of each Defendant are legally attributable to the other Defendants.

22 14. At all times relevant herein, Defendants have been transacting business  
23 throughout California.

24 **FACTUAL BACKGROUND FOR ALL CAUSES OF ACTION**

25 15. California law requires that certain assembly, installation, and home  
26 improvement services whose total cost (labor and materials) exceeds \$500.00 be  
27 performed by a contractor licensed by the Contractors’ State License Board (“CSLB”) for  
28 the type of work being performed. California law further requires that certain work, such

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1 as electrical work, only be performed by employees of contractors who have received  
2 certain safety training.

3 16. The CSLB issues three types of licenses: (A) a General Engineering  
4 Contractor license; (B) a General Building Contractor license; and (C) Specialty  
5 Contractor licenses covering 60 trades. A General Engineering Contractor and a General  
6 Building Contractor may subcontract work to a Specialty Contractor if the subcontracted  
7 work is within the scope of the subcontractor's license. A Specialty Contractor cannot act  
8 as a General Engineering Contractor or a General Building Contractor, and can only  
9 subcontract work to other Specialty Contractors within its own trade.

10 17. On or about May 29, 2018, Amazon.com Services, Inc. was issued a C-10  
11 (Electrical) license by the CSLB. Plaintiffs are informed and believe, and thereon allege,  
12 that AMAZON is not licensed as a General Engineering Contractor, General Building  
13 Contractor, or any other Specialty Contractor.

14 18. Every licensed contractor in California must have a qualifying individual, or  
15 "qualifier," who is listed in CSLB's personnel of record, and has demonstrated his  
16 knowledge and experience for the license sought. The qualifier must exercise direct  
17 supervision and control of his employer's construction operations as is necessary to  
18 secure full compliance with California licensing law. HASKINS is the qualifier for the C-  
19 10 license issued to Amazon.com Services, Inc.

20 19. California Business and Professions Code § 7159(c) requires Home  
21 Improvement Contracts to include certain disclosures, and prohibits a contractor from  
22 charging a down payment greater than the lesser of \$1,000.00 or 10% of the contract  
23 price. A "Home Improvement Contract" is defined as "an agreement, whether oral or  
24 written, or contained in one or more documents, between a contractor and an owner ...  
25 for the performance of a home improvement ... and includes all labor, services, and  
26 materials to be furnished and performed thereunder, if the aggregate contract price  
27 specified in one or more improvement contracts, including all labor, services, and  
28 materials to be furnished by the contractor, exceeds five hundred dollars (\$500)." (Cal

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1 Bus & Prof Code § 7159.) A Home Improvement Contract also includes an agreement  
2 between a property owner and salesperson, whether or not he or she is a home  
3 improvement salesperson, which provides for the sale, installation, or furnishing of home  
4 improvement goods or services. (*Id.*)

5 20. Home Improvement Contracts must contain a “Three-Day Right to Cancel”  
6 notice. The notice must be in at least 12-point boldface type, and be in the immediate  
7 proximity to a space reserved for the owner’s signature. Before any work is started, a  
8 contractor is required to give the buyer a copy of the Home Improvement Contract that is  
9 signed and dated by both the contractor and the buyer. The buyer’s receipt of the copy of  
10 the contract initiates the buyer’s rights to cancel the contract.

11 21. “Home improvement” means “the repairing, remodeling, altering,  
12 converting, or modernizing of, or adding to, residential property and shall include, but not  
13 be limited to, the construction, erection, replacement, or improvement of driveways,  
14 swimming pools, including spas and hot tubs, terraces, patios, awnings, storm windows,  
15 landscaping, fences, porches, garages, fallout shelters, basements, and other  
16 improvements of the structures or land which is adjacent to a dwelling house.” “Home  
17 improvement” also means the “installation of home improvement goods or the furnishing  
18 of home improvement services.” (Cal Bus & Prof Code § 7151.)

19 22. Corporate Defendants market and sell Home Services through the  
20 Amazon.com website along with other products and services. Home Services are often  
21 purchased by consumers in conjunction with the home improvement products to be  
22 installed. All contracts for Home Services are entered into between the Corporate  
23 Defendants and the consumer. Plaintiffs are informed and believe, and thereon allege,  
24 that Corporate Defendants’ contracts are not compliant with Business and Professions  
25 Code § 7159 and related statutes for home improvement contract requirements.

26 23. The price of the goods and Home Services sold on Amazon.com are set by  
27 Corporate Defendants, with a line item break-down of the cost for the goods and the cost  
28 for the services. Corporate Defendants advertise that their Home Services are performed

1 by "pros" that are licensed where required.

2 **FACTUAL BACKGROUND FOR PLAINTIFF SPENCER**

3 24. Corporate Defendants employed SPENCER and others to perform Home  
4 Services at customers' residences and businesses, including Home Services that were  
5 required to be performed by a contractor licensed by the CSLB. These Home Services  
6 include, but are not limited to, electrical and plumbing work; assembly and installation of  
7 structures requiring building permits, building plans approved by the local departments of  
8 Building and Safety, and compliance with local and state building codes and industry  
9 standards, including foundation anchoring; and the installation of mounts and brackets to  
10 comply with earthquake safety requirements. This work was within Corporate Defendants'  
11 usual course of business.

12 25. And all times relevant herein, HASKINS was SPENCER's joint employer,  
13 who is statutorily obligated to oversee all work performed by SPENCER. HASKINS is  
14 also statutorily obligated to ensure that all employees performing electrical work for  
15 Corporate Defendants are properly certified and trained, including but not limited to the  
16 certifications required by Labor Code 108.2. HASKINS permitted SPENCER to perform  
17 electrical work requiring certification without obtaining the required certification.

18 26. SPENCER and others employed by HASKINS and Corporate Defendants  
19 were not customarily engaged in an independently established trade, occupation, or  
20 business of the same nature as the work performed when they were hired by Corporate  
21 Defendants. SPENCER and other Class Members performed the work at the control of  
22 HASKINS and Corporate Defendants. The value of the Home Services performed was  
23 often over \$500.00, fell within the statutory definition of work requiring a contractors'  
24 license issued by the CSLB, and was part of HASKINS' and Corporate Defendants' usual  
25 course of business.

26 27. SPENCER and others also performed labor for HASKINS and Corporate  
27 Defendants at the residences and businesses of their customers, including but not limited  
28 to, removal of old appliances and mattresses and assembling furniture. These Home

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1 Services typically do not require a CSLB license, but are part of Corporate Defendants'  
2 usual course of business.

3 28. HASKINS and Corporate Defendants knowingly and intentionally  
4 misclassified SPENCER and others as independent contractors. Under California law,  
5 there is a presumption that any person who performs services that requires a CSLB  
6 license for another person or entity is an employee of that person or entity. Unlicensed  
7 subcontractors are deemed to be the employees of the person or company retaining  
8 them. Such misclassification was a pattern and practice implemented by HASKINS and  
9 Corporate Defendants to avoid California wage and hour laws. The misclassification  
10 resulted in SPENCER and others: (1) not being paid wages for all hours worked; (2) not  
11 being paid minimum wage; (3) not being paid overtime for work in excess of 8 hours a  
12 day or 40 hours a week; (4) not being permitted to take rest and meal periods, or had  
13 their rest and meal periods shortened or provided to them late due to the scheduling and  
14 work load and time requirements placed upon them by HASKINS and Corporate  
15 Defendants; and (5) not being reimbursed for business expenses, including but not limited  
16 to mileage, tools, materials, cell phone, and internet.

17 29. HASKINS and Corporate Defendants have also failed to maintain accurate  
18 itemized records reflecting total hours worked by SPENCER and others and have failed  
19 to provide employees with accurate, itemized wage statements reflecting total hours  
20 worked and appropriate rates of pay for those hours worked.

21 30. SPENCER is informed and believes, and based thereon alleges, that  
22 HASKINS and Corporate Defendants have failed to pay all wages owed to discharged or  
23 resigned employees in a timely manner.

24 31. SPENCER brings this action pursuant to Labor Code sections 201, 202,  
25 203, 204, 226, 226.7, 510, 512, 1182, 1194, 2802, California Code of Regulations, Title  
26 8, section 11010 *et seq.* and any other applicable Industrial Welfare Commission ("IWC")  
27 Wage Orders, seeking unpaid wages and overtime compensation, unpaid rest and meal  
28 period compensation, unreimbursed expenses, other equitable relief, and reasonable

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1 attorneys' fees and costs.

2 32. Pursuant to Business and Professions Code sections 17200-17208,  
3 SPENCER also seeks restitution from HASKINS and Corporate Defendants for their  
4 failure to pay minimum wage for all hours worked, overtime wages, and rest and meal  
5 period premiums to each of their Non-Exempt Employees, as well as injunctive relief on  
6 behalf of other similarly situated employees.

7 33. SPENCER is informed and believes, and thereon alleges, that HASKINS  
8 and Corporate Defendants currently employ, and during the relevant period have  
9 employed, hundreds of employees in California to perform Home Services. At all times  
10 pertinent and within the last 4 years from the date of the filing of this complaint, said  
11 employees have been non-exempt employees within the meaning of the California Labor  
12 Code, and the implementing rules and regulations of the IWC California Wage Orders.

13 34. During the relevant time frame, SPENCER and others were subjected to  
14 Defendants' policy and practice of requiring employees to frequently log on to Defendants'  
15 website and check for new tasks available. Defendants' customers would purchase goods  
16 and services through Defendants' website, and Defendants would deliver the goods  
17 through its own or a third-party delivery service. SPENCER and others would use  
18 Defendants' website to schedule services sold by Defendants to their customers.  
19 SPENCER and others were required to communicate with Defendants' customers to  
20 schedule and prepare for performing the contracted services. SPENCER and others were  
21 also required to purchase any materials and special tools needed to complete the  
22 contracted service, transport materials and special tools to the Defendants' customers'  
23 residences and businesses, and use the materials and tools to perform the contracted  
24 services.

25 35. SPENCER and others were not compensated for all time worked, including  
26 but not limited to the time spent: (1) checking for work assignments; (2) scheduling  
27 services; (3) purchasing materials and tools; and (4) traveling to and from and between  
28 the service locations.



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1           36. At all times relevant, SPENCER and others routinely worked in excess of  
2 eight (8) hours in a day and forty (40) hours in a week. SPENCER and others were often  
3 required by Defendants to complete tasks within a single day that could not be completed  
4 within 8 hours. Defendants did not pay SPENCER and others any overtime wages.

5           37. Due to the time spent traveling to multiple service locations, and the  
6 requirement to complete all tasks within a single day, SPENCER and others were  
7 frequently required to work in excess of five (5) hours without a thirty (30) minute meal  
8 period. SPENCER and others were also not provided with a second meal period when  
9 they worked in excess of ten (10) hours in a day. SPENCER and others did not execute  
10 an on-duty meal period agreement, nor were they compensated by Defendants for their  
11 missed meal periods.

12           38. Due to the time spent traveling to multiple service locations, and the  
13 requirement to complete all tasks within a single day, SPENCER and others were  
14 frequently denied a ten (10) minute rest period for every four hours or major fraction  
15 thereof. SPENCER and others were not provided a third ten (10) minute rest break when  
16 they worked over ten hours in a day. Defendants did not provide any additional  
17 compensation when rest periods were not provided.

18           39. At all relevant times herein, Defendants did not have a policy permitting  
19 SPENCER and others to take meal or rest breaks, and never advised SPENCER or  
20 others of their right to take meal and rest breaks.

21           40. Defendants did not reimburse SPENCER and others for expenses incurred  
22 in carrying out Defendants' business, including but not limited to, mileage expenses for  
23 traveling, purchasing required materials and tools, and the cost of internet and telephone  
24 service.

25           41. Defendants set the price for the goods and services sold to their customers,  
26 with a line item break-down of the cost for the goods and the cost for the services. If  
27 SPENCER or others completed a service, they would be credited for eighty percent of the  
28 amount consumers paid for the service. The remaining twenty percent was retained by



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1 Defendants. Defendants' would issue SPENCER and others a check for the balance of  
2 the funds remaining in the employees' online accounts at regular intervals. These piece  
3 work payments did not comply with the requirements of Labor Code § 226.2.

4 42. Plaintiffs are informed and believe, and thereon allege, that Defendants  
5 willfully and intentionally failed to report SPENCER and others to its workers'  
6 compensation insurer. A contractor that fails to maintain workers' compensation  
7 insurance for its employees is unlicensed under California law.

8 43. At all times relevant hereto, SPENCER and others have been non-exempt  
9 employees within the meaning of the California Labor Code, and the implementing rules  
10 and regulations of the IWC California Wage Orders.

11 **FACTUAL BACKGROUND FOR CONTRACTOR CLASS**

12 44. At all times pertinent hereto, GILBERT and Contractor Class members have  
13 been licensed contractors in California that market and sell Home Services in competition  
14 with HASKINS and Corporate Defendants.

15 45. California law prohibits a licensed contractor from contracting with a non-  
16 licensed contractor to perform work requiring a contractor's license. Licensed contractors  
17 also incur costs associated with obtaining and maintaining their licenses, including a  
18 requirement that they obtain and maintain a contractors license bond in the amount of  
19 \$15,000.00 to protect members of the public who by damaged by their violation of  
20 contractor license laws, carry workers' compensation insurance for their employees,  
21 comply with employee safety laws, comply with building code requirements and provide  
22 appropriate oversight and training of employees performing construction work to ensure  
23 compliance with industry standards, building codes and applicable local, state and federal  
24 laws. As such, licensed contractors have significantly greater operating costs than non-  
25 licensed contractors ranging from 25 to 50 percent for payroll burden, compliance with all  
26 applicable wage and hour requirements, Occupational Health and Safety Administration  
27 compliance, workers' compensation insurance coverage and other insurance and legally  
28 mandated requirements.

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1 46. GILBERT and Contractor Class members have been harmed by Corporate  
2 Defendants' false advertising that they use licensed pros, while often sending unlicensed,  
3 untrained, unqualified and uninsured individuals to perform work in an unsafe manner  
4 without a contractors' license or building permits. Defendants' have also gained an unfair  
5 competitive advantage over GILBERT and Contractor Class members by contracting for  
6 Home Services without complying with the statutory requirements for Home Improvement  
7 Contracts, which provide consumers with notifications regarding their rights and remedies  
8 against licensed contractors who violate the law and/or want to cancel their contracts  
9 within 3 days without liability.

10 **FACTUAL BACKGROUND FOR CONSUMER CLASS**

11 47. SWANER and Consumer Class members are individuals or entities that  
12 purchased Home Services from Corporate Defendants that were required to be  
13 performed by a licensed contractor.

14 48. On or about November 29, 2018, SWANER purchased a water heater from  
15 Defendants along with "Expert Installation." The total amount paid to Defendants was  
16 \$743.50, including \$197.84 for the water heater, \$516.98 for installation, \$9.89 for an  
17 extended service plan, and \$18.79 for tax.

18 49. Defendants required SWANER to make a down payment of \$226.52 (30.5%  
19 of the purchase price) at the time of purchase. Defendants required SWANER to pay an  
20 additional \$41.41 for parts at the time of install, and the balance was charged to his credit  
21 card after the installation was complete. Defendants did not provide SWANER with a  
22 Home Improvement Contract that complied with California Business and Professions  
23 Code § 7159.

24 50. Defendants delivered the water heater to SWANER on or about December  
25 2, 2018. Defendants' installed the water heater on December 4, 2018.

26 51. SWANER is informed and believes, and thereon alleges, that the water  
27 heater was installed without a building permit or an inspection by the Department of  
28 Building and Safety. SWANER is informed and believes, and thereon alleges, that

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1 Defendants do not have a C-36 (plumbing) license and therefore performed this work  
2 without the correct specialty contractors' license. SWANER is informed and believes, and  
3 thereon alleges, that HASKINS did not oversee any part of the Home Services performed  
4 on his property.

5 52. Plaintiffs are informed and believe, and thereon allege, that Defendants  
6 have a practice of contracting for Home Services that require a CSLB license other than  
7 a C-10 (electrical license). Business and Professions Code § 7031(b) provides "[a] person  
8 who utilizes the services of an unlicensed contractor may bring an action . . . to recover  
9 all compensation paid to the unlicensed contractor for performance of any act or contract."  
10 SWANER, on behalf of himself and Consumer Class members, brings this action seeking  
11 disgorgement of all amounts paid to Defendants for labor, services, and materials for all  
12 Home Services requiring a CSLB license and treble damages up to \$10,000 plus  
13 attorneys' fees and costs. (*Code of Civil Procedure § 1029.8.*)

14 53. Pursuant to Business and Professions Code § 7159(c)(3)(A), SWANER  
15 hereby elects to cancel his contract with Defendants.

16 54. SWANER is informed and believes, and thereon alleges, that Defendants  
17 did not obtain or maintain workers' compensation insurance for their employees who  
18 performed construction work. Business and Professions Code § 7152.2 provides that  
19 failing to maintain or obtain workers' compensation insurance, if required, results in  
20 automatic suspension of license.

21 **CLASS ACTION ALLEGATIONS**

22 55. Plaintiffs seek to represent the Contractor Class and Consumer Class as  
23 set forth in Paragraph 2 hereinabove.

24 56. Plaintiffs reserve the right under Rule 3.765 of the California Rules of Court  
25 to amend or modify the class description with greater specificity or further division into  
26 subclasses or limitation to particular issues.

27 57. This action has been brought and may properly be maintained as a class  
28 action under the provisions of section 382 of the Code of Civil Procedure because there

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1 is a well-defined community of interest in the litigation and the proposed Class is easily  
2 ascertainable.

3 **A. Numerosity**

4 58. The potential members of the classes as defined are so numerous that  
5 joinder of all the members is impracticable. While the precise number of class members  
6 has not been determined at this time, Plaintiffs are informed and believe, and thereon  
7 allege, that: (1) Defendants currently employ, and during the relevant time period,  
8 employed hundreds of individuals or entities in California who are or have been affected  
9 by Defendants' unlawful practices as alleged herein; (2) have harmed thousands of  
10 contractors through their unfair competition; and (3) contracted to perform Home Services  
11 without a proper CSLB license with thousands of consumers.

12 **B. Commonality**

13 59. There are questions of law and fact common to the classes predominating  
14 over any questions affecting only individual class members. These common questions of  
15 law and fact include, without limitation:

- 16 i. Whether Defendants are performing services requiring a CSLB license;
- 17 ii. Whether Defendants are properly licensed;
- 18 iii. Whether HASKINS was properly overseeing the work performed by  
19 Corporate Defendants; and
- 20 iv. Whether Defendants' contract is compliant with California law.

21 **C. Typicality**

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

26 **D. Adequacy of Representation**

27 61. Plaintiffs will fairly and adequately represent and protect the interests of the  
28 members of the Classes. Plaintiffs' counsel is competent and experienced in litigating

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1 large employment actions, and complicated actions involving California Contractors'  
2 State License Law.

3 **E. Superiority of Class Action**

4 62. A class action is superior to other available means for the fair and efficient  
5 adjudication of this controversy. Individual joinder of all class members is not practicable,  
6 and questions of law and fact common to the classes predominate over any questions  
7 affecting only individual members of the classes. Each member of the classes has been  
8 damaged and is entitled to recovery by reason of Defendants' unlawful policies and  
9 practices referenced herein.

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

15 **FIRST CAUSE OF ACTION**

16 **Failure to Pay Minimum Wage**

17 [Lab. Code § 1182 and Wage Order No. 16]

18 (By SPENCER against ALL DEFENDANTS)

19 64. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully  
20 set forth herein.

21 65. Labor Code section 1182 and Wage Order 16 require employers to pay  
22 employees at least the minimum wage for each hour worked.

23 66. During the Liability Period, Defendants deliberately and willfully failed to pay  
24 SPENCER and others any amount whatsoever for many hours worked, and are owed  
25 unpaid wages in an amount to be proven at trial.

26 67. SPENCER also seeks liquidated damages, attorneys' fees, costs, and  
27 interest in an amount to be proven at trial.

28 68. Wherefore, Plaintiffs request relief as hereinafter provided.

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**SECOND CAUSE OF ACTION**

**Failure to Pay Overtime Wages**

[Lab. Code §§ 510, 1194, and Wage Order No. 16]

(By SPENCER against ALL DEFENDANTS)

69. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

70. During the Liability Period, Defendants' policies and practices resulted in SPENCER and others working in excess of eight (8) hours in a workday or forty (40) hours in a workweek without being compensated at one and one-half times their regular rate of pay.

71. As a result of the unlawful acts of Defendants, SPENCER and others have been deprived of overtime compensation in an amount to be determined at trial, and are entitled to recovery of such amounts, plus interest, liquidated damages, and penalties thereon, attorneys' fees, and costs.

72. WHEREFORE, SPENCER and the Employee Class members request relief as described herein and below.

**THIRD CAUSE OF ACTION**

**Failure to Provide Meal and Rest Periods**

[Lab. Code §§ 226.7, 512, and IWC Wage Order No. 16]

(By SPENCER against ALL DEFENDANTS)

73. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

74. At all times relevant herein, California Labor Code §226.7 and Wage Order No. 16 required Defendants to provide meal periods and rest breaks to their employees. Wage Order No. 16 prohibits employers from employing an employee for more than five (5) hours without an off-duty meal period of not less than thirty (30) minutes and from employing an employee more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes.



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1 75. Unless the employee is relieved of all duties during the 30-minute meal  
2 period, the employee is considered "on duty," and the meal period is counted as time  
3 worked under Wage Order No. 16. Wage Order No. 16 also requires employers to  
4 provide and/or to make available and/or to authorize or permit employees ten (10)  
5 minutes of net rest time per four (4) hours or major fraction thereof of work and to pay  
6 employees their full wages during those rest periods.

7 76. Under California Labor Code §226.7(b) and Wage Order 4, an employer  
8 who fails to provide a required meal period must pay the employee one additional hour of  
9 pay at the employee's regular rate of compensation for each workday that the meal period  
10 was not provided. Similarly, an employer must pay an employee who was denied a  
11 required rest period one hour of pay at the employee's regular rate of compensation for  
12 each workday that the rest period was not provided.

13 77. During the liability period, Defendants failed to provide bona fide off-duty  
14 meal and rest periods to SPENCER and Employee Class members, and are entitled to  
15 the relief provided by California Labor Code §226.7(b).

16 78. Defendants knowingly and willfully refused to perform their obligations to  
17 provide SPENCER and Employee Class Members with meal and rest periods as required  
18 by California law. Defendants committed the acts alleged herein with the wrongful and  
19 deliberate intention of injuring SPENCER and Employee Class members with improper  
20 motives amounting to malice, and in conscious disregard of the rights of Plaintiffs. As a  
21 proximate result of the aforementioned violations, Defendants damaged Plaintiffs in  
22 amounts to be determined according to proof at the time of trial, but in an amount in  
23 excess of the jurisdictional requirements of this Court. Plaintiffs are thus entitled to  
24 recover nominal, actual and compensatory damages in amounts according to proof at  
25 time of trial.

26 79. Defendants' conduct described herein violates California Labor Code §§  
27 226.7 and 512, and Wage Order No. 16. Therefore, SPENCER and Employee Class  
28 members are entitled to the relief provided in California Labor Code §226.7(b) and Wage



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1 Order No. 16, damages, restitution for the failure to provide meal and rest periods, plus  
2 interest, applicable civil penalties, attorneys' fees, expenses and costs of suit.

3 80. WHEREFORE, SPENCER and the Employee Class members request relief  
4 as described herein and below.

5 **FOURTH CAUSE OF ACTION**

6 **Failure to Provide Accurate Wage Statements**

7 [Labor Code § 226]

8 (By SPENCER against ALL DEFENDANTS)

9 81. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully  
10 set forth herein.

11 82. Labor Code section 226 requires employers to furnish employees with  
12 accurate itemized wage statement with each payment of wages. If an employer fails to  
13 provide the required information, the employee may recover \$50.00 for the first violation  
14 and \$100.00 for each subsequent violation. An employee may recover a maximum of  
15 \$4,000.00 for such violations or actual damages, whichever is greater.

16 83. Defendants willfully and intentionally failed to provide accurate itemized  
17 wage statements to SPENCER and Employee Class Members, and are therefore  
18 entitled to recover for the violations an amount according to proof at trial, but of not less  
19 than \$4,000.00 for SPENCER and each Employee Class member.

20 84. WHEREFORE, SPENCER and the Employee Class members request relief  
21 as described herein and below.

22 **FIFTH CAUSE OF ACTION**

23 **Failure to Reimburse Necessary Expenses**

24 [Lab. Code § 2802]

25 (By SPENCER against ALL DEFENDANTS)

26 85. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully  
27 set forth herein.

28 86. Section 2802 of the Labor Code requires Defendants to reimburse

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1 SPENCER and Employee Class members for all necessary expenses or losses that  
2 class members incur as the direct consequence of the discharge of SPENCER's and  
3 Employee Class members' duties.

4 87. As set forth herein, SPENCER and Employee Class members incurred  
5 necessary expenses in the discharge of their duties that were not reimbursed by  
6 Defendants. These expenses include, but are not limited to, compensation for travel,  
7 materials, tools, phone and internet services. Therefore, SPENCER and Employee Class  
8 members are entitled to recover their unreimbursed expenses, plus interest, applicable  
9 civil penalties, attorneys' fees, and costs.

10 88. WHEREFORE, SPENCER and the Employee Class members request relief  
11 as described herein and below.

12 **SIXTH CAUSE OF ACTION**

13 **Unlawful Acceptance of Payments for Work Requiring a Contractor's License**

14 [Bus. & Prof. Code § 7031]

15 (By SWANER and Consumer Class against CORPORATE DEFENDANTS and  
16 HASKINS)

17 89. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully  
18 set forth herein.

19 90. Section 7031 of the Business and Professions Code prohibits Defendants  
20 from collecting any money for work governed by the Contractors' State License Law  
21 (Cal. Bus. & Prof. § 7000 et seq.) when Defendants are not properly licensed. Section  
22 7031 authorizes anyone who made payment to an unlicensed contractor to be able to  
23 recover the full amount of any payments made to an unlicensed contractor.

24 91. SWANER and Consumer Class members made payments to Defendants  
25 for services and materials that required a license. As a result of the unlawful acts of  
26 Defendants, SWANER and Consumer Class members are entitled to recovery of such  
27 amounts, plus interest, attorneys' fees, and costs.

28 92. WHEREFORE, SWANER and the Employee Class members request relief

1 as described herein and below.

2 **SEVENTH CAUSE OF ACTION**

3 **Violation of Unfair Competition Law**

4 (Bus. & Prof. Code, §§ 17200-17208)

5 (By all Plaintiffs against Corporate Defendants and HASKINS)

6 93. Plaintiff repeats and incorporates herein by reference each and every  
7 allegation set forth above, as though fully set forth herein.

8 94. Defendants have engaged in unlawful, unfair, and fraudulent business  
9 acts, and have engaged in a pattern and practice of unfair, deceptive, untrue, and  
10 misleading advertising by: (1) misclassifying employees as independent contractors to  
11 avoid the burden and costs of complying with California laws; (2) contracting and selling  
12 Home Services without obtaining the proper CSLB licenses for the type of work  
13 performed; (3) selling and subcontracting Home Services to licensed contractors  
14 outside the scope of their C-10 license; (4) contracting and selling Home Services  
15 requiring a C10 license, and having the work performed by a non-certified installer; (5)  
16 contracting to perform work requiring a building permit without obtaining the necessary  
17 permits and inspections by the department of building and safety; (6) contracting to  
18 perform Home Services requiring a C-10 license, without having HASKINS oversee the  
19 work being performed; and (7) falsely advertising that Home Services would be  
20 performed by a licensed professional.

21 95. GILBERT and Contractor Class members have been personally aggrieved  
22 and damaged by Defendants' unlawful and unfair business acts and practices alleged  
23 due their inability to compete Defendants given the additional costs GILBERT and the  
24 Contractor Class members incur to comply with California law. The only way for  
25 GILBERT to compete with Defendants is to sell its services below costs. By way of this  
26 action, GILBERT seeks to recover (on behalf of itself and the Contractor Class  
27 members) its lost profit and other damages caused by Defendants' unfair practices, as  
28 well as injunctive relief requiring Defendants to: (1) cease contracting for work requiring

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1 a CSLB license without the proper license; (2) require Haskins to oversee all work  
2 performed by Defendants' requiring a C-10 license; and (3) cease contracting for Home  
3 Services requiring a CSLB license.

4 96. SPENCER has been personally aggrieved by Defendants' unlawful and  
5 unfair business acts and practices alleged, and seek restitution of all amounts due and  
6 owing under California employment laws.

7 97. GILBERT and Contractor Class members have been personally aggrieved  
8 by Defendants' unlawful and unfair business acts and practices alleged due its inability  
9 to compete given the costs of complying with California employment and CSLB  
10 licensing laws. By way of this action, GILBERT seeks to recover (on behalf of itself and  
11 the Contractor Class members) its lost profit and other damages caused by Defendants'  
12 unfair practices, as well as injunction relief requiring Defendants to: (1) cease  
13 contracting for work requiring a CSLB license without the proper license; and (2) require  
14 Haskins to oversee all work performed by Defendants' requiring a C-10 license.

15 98. SWANER and Consumer Class members have been personally aggrieved  
16 by Defendants' unlawful and unfair business acts and practices alleged herein. As a  
17 result of Defendants contracting without a CSLB license, and failure to maintain  
18 workers' compensation insurance for its employees, SWANER and Consumer Class  
19 members become personally liable for any injury that may result from Defendants'  
20 employees' work on their property. As a result of Defendants' contracting without a  
21 CSLB license, SWANER and Consumer Class members are also being deprived of  
22 consumer protections available under California law, including but not limited to the  
23 requirement that all contractors maintain a license bond as security for damages they  
24 may incur from the violation of contractor license laws. By way of this action, SWANER  
25 seeks (on behalf of himself and the Consumer Class members) injunctive relief  
26 requiring Defendants to: (1) cease contracting for work requiring a CSLB license without  
27 the proper license; (2) require Defendants to comply with all applicable building code  
28 requirements; (3) require Defendants to comply with all safety requirements; and (4)

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1 require Haskins to comply with his statutory obligations as the Responsible Managing  
2 Employee and qualifying individual for Defendants' C-10 license.

3 99. WHEREFORE, Plaintiff and the classes they seek to represent request  
4 relief as described herein and below.

5 **PRAYER**

6 WHEREFORE, Plaintiff prays for judgment as follows:

- 7 1. That the Court determine that this action may be maintained as a class action;
- 8 2. For compensatory damages in an amount according to proof with interest  
9 thereon;
- 10 3. For economic and/or special damages in an amount according to proof with  
11 interest thereon;
- 12 4. For premium wages pursuant to Labor Code §§ 226.7 and 512;
- 13 5. For double the amounts withheld that caused payment of less than the  
14 minimum wage pursuant to Labor Code section 1182;
- 15 6. For premium pay and penalties pursuant to Labor Code §203;
- 16 7. For reimbursement of expenses incurred pursuant to Labor Code § 2802;
- 17 8. For repayment of amounts paid to Defendants as unlicensed contractors  
18 pursuant to Business and Professions Code section 7031;
- 19 9. For attorneys' fees, interests and costs of suit under Labor Code §§ 1182,  
20 1194, and 2802; and Code of Civil Procedure § 1021.5.
- 21 10. For injunctive relief, including (1) requiring Defendants to cease contracting  
22 for work requiring a CSLB license without the proper license; and (2) requiring  
23 Haskins to oversee all work performed by Defendants' requiring a C-10  
24 license.
- 25 11. For such other and further relief as the Court deems just and proper.

26 ///

27 ///

28 ///

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

Dated: January 10, 2019

**THE GREEN LAW GROUP, LLP**

By: \_\_\_\_\_

Scott Thomas Green  
Jeff Conyer  
Matthew Bechtel  
Attorneys for PLAINTIFFS GILBERT  
ENTERPRISES, INC, ERIC SPENCER and  
STEVEN SWANER, on behalf of themselves  
and all others similarly situated

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CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) Scott Thomas Green, Esq. SBN 82220 THE GREEN LAW GROUP, LLP 1777 E. Los Angeles Avenue Simi Valley, CA 93065 TELEPHONE NO: (805) 306-1100 FAX NO: (805) 306-1300 ATTORNEY FOR (Name): Gilbert Enterprises, Inc., et al.	FOR COURT USE ONLY  CLERK OF SUPERIOR COURT FILED  JAN 14 2019  RECEIVED BY MARIA MARTINEZ Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Ventura STREET ADDRESS: 800 So. Victoria Avenue MAILING ADDRESS: 800 So. Victoria Avenue CITY AND ZIP CODE: Ventura, CA 93009 BRANCH NAME: Hall of Justice	CASE NAME: Gilbert Enterprises, Inc. v. Amazon, et al.
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
CASE NUMBER: 56-2019-00523685-CU-OE-VTA 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:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <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/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	<b>Contract</b> <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) <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <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)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b> <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) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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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 type="checkbox"/> Large number of witnesses  |
| b. <input 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
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: January 10, 2019  
 Scott Thomas Green  
 \_\_\_\_\_  
 (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.

Page 1 of 2



## 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

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF VENTURA**

800 South Victoria Avenue  
Ventura , CA 93009  
(805) 289-8525  
WWW.VENTURA.COURTS.CA.GOV

**NOTICE OF CASE ASSIGNMENT AND MANDATORY APPEARANCE**

Case Number: 56-2019-00523685-CU-OE-VTA

Your case has been assigned for all purposes to the judicial officer indicated below.

**A copy of this Notice of Case Assignment and Mandatory Appearance shall be served by the filing party on all named Defendants/Respondents with the Complaint or Petition, and with any Cross-Complaint or Complaint in Intervention that names a new party to the underlying action.**

ASSIGNED JUDICIAL OFFICER	COURT LOCATION	DEPT/ROOM
Hon. Henry Walsh	Ventura	42
<b>HEARING MANDATORY APPEARANCE CMC/Order to Show Cause Re Sanctions/Dismissal for Failure to File Proof of Service/Default</b>		
EVENT DATE	EVENT TIME	EVENT DEPT/ROOM
06/14/2019	08:15 AM	22B

**SCHEDULING INFORMATION**

<p><b>Judicial Scheduling Information</b></p> <p><b>AT THE ABOVE HEARING IS MANDATORY.</b> Each party must file a Case Management Statement no later than 15 calendar days prior to the hearing and serve it on all parties. If your Case Management Statement is untimely, it may NOT be considered by the court (CRC 3.725). If proof of service and/or request for entry of default have not been filed: At the above hearing you are ordered to show cause why you should not be compelled to pay sanctions and/or why your case should not be dismissed (CCP 177.5, Local Rule 3.17).</p>
<p><b>Advance Jury Fee Requirement</b></p> <p>At least one party demanding a jury trial on each side of a civil case must pay a non-refundable jury fee of \$150. The non-refundable jury fee must be paid timely pursuant to Code of Civil Procedure section 631.</p>
<p><b>Noticed Motions/Ex Parte Matters</b></p> <p>To set an ex parte hearing, contact the judicial secretary in the assigned department. Contact the clerk's office to reserve a date for a law and motion matter.</p>
<p><b>Telephonic Appearance</b></p> <p>Telephonic appearance at the Case Management Conference is permitted pursuant to CRC 3.670. In addition, see Local Rule 7.01 regarding notice to the teleconference provider. The court, through the teleconference provider, will contact all parties and counsel prior to the hearing.</p>

Date: 01/23/2019

Clerk of the Court,  
By: Maria Martinez  
Maria Martinez, Clerk

# **EXHIBIT B**

Electronically  
**FILED**  
by Superior Court of California  
County of Ventura  
03/25/2019  
MICHAEL D. PLANET  
Executive Officer and Clerk  
*Susanne Leon*  
Susanne Leon  
Deputy Clerk

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11 Attorneys for Plaintiffs,  
12 GILBERT ENTERPRISES, INC, ERIC SPENCER,  
13 STEVEN SWANER, and all others similarly situated

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **FOR THE COUNTY OF VENTURA – UNLIMITED CIVIL**

16 GILBERT ENTERPRISES, INC, a  
17 California corporation; ERIC SPENCER,  
18 and STEVEN SWANER, on behalf of  
19 themselves and all others similarly  
20 situated,

21 Plaintiffs,

22 v.

23 AMAZON.COM, a Delaware corporation;  
24 AMAZON.COM SERVICES, INC., a  
25 Delaware corporation; MARK ANDREW  
26 HASKINS; JOHN SEELY BROWN;  
27 WILLIAM B. GORDAN; ALAIN MONIÉ  
28 and DOES 1 through 50, inclusive,

Defendants.

Case No.: 56-2019-00523685-CU-OE-VTA

UNLIMITED JURISDICTION

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR:**

1. Failure to Pay Minimum Wage [Lab. Code § 1182 and Wage Order No. 16]
2. Failure to Pay Overtime Wages [Lab. Code §§ 510, 1194 and Wage Order No. 16];
3. Failure to Provide Meal and Rest Periods, or Compensation in Lieu Thereof [Lab. Code §§ 226.7, 512 and Wage Order No. 16];
4. Failure to Provide Accurate Wage Statements [Labor Code § 226];
5. Failure to Reimburse Necessary Expenses [Labor Code § 2802];
6. Unlawful Acceptance of Payments for Work Requiring a Contractor's License [Bus. & Prof. Code § 7031];
7. Violations of the Unfair Competition Law [Bus. & Prof. Code § 17200];

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1A/CMC 6-14-19  
05 att. on F.A.C.  
5 not to S.  
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8. Relief Under the Private Attorneys General Act (Labor Code §§ 2698, et seq.)

JURY TRIAL DEMANDED

Plaintiffs GILBERT ENTERPRISES, INC, a California corporation, in good standing ("GILBERT"), ERIC SPENCER ("SPENCER"), and STEVEN SWANER ("SWANER"), on behalf of themselves and all others similarly situated (hereinafter collectively "Plaintiffs"), assert claims against Defendants AMAZON.COM, INC., a Delaware corporation; AMAZON.COM SERVICES, INC., a Delaware corporation; MARK ANDREW HASKINS, an individual; JOHN SEELY BROWN, an individual; WILLIAM B. GORDAN, an individual; ALAIN MONIÉ, an individual; and DOES 1 through 50, inclusive (hereinafter collectively referred to as "Defendants"), as follows:

**INTRODUCTION**

1. Plaintiffs bring this class and representative action on behalf of employees, competitors, and customers of Defendants to remedy labor, consumer, and unfair competition violations related to various assembly, installation, and home improvement services (hereinafter "Home Services") marketed and sold by Defendants as "Amazon Home Services," "expert assembly," "expert installation," or similar descriptor.

2. Plaintiffs bring this action on their own behalf and on behalf of the following classes:

i. All licensed contractors in the state of California that provide Home Services in competition with Defendants (hereinafter referred to as "Contractor Class").

ii. All consumers in the state of California that purchased Home Services from Defendants that were required to be performed by a licensed contractor (hereinafter referred to as "Consumer Class").

3. On January 17, 2019, SPENCER filed a claim under the Private Attorneys General Act with the California Labor and Workforce Development Agency ("LWDA"). The

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1 LWDA has not investigated SPENCER's claim, and over 65 days have passed since  
 2 SPENCER made the claim. By this action, SPENCER seeks relief under the Private  
 3 Attorneys General Act of 2004 (Lab. Code §§ 2698 – 2699.6) ("PAGA"), on behalf of  
 4 current and former service providers in the state of California, whether classified as  
 5 independent contractors or employees by Defendants, who either directly or indirectly  
 6 performed Home Services for Defendants' customers. By way of this action, Plaintiffs  
 7 seek damages on behalf of themselves and each class during the entire liability period,  
 8 which is defined as the applicable statute of limitations for each and every cause of action  
 9 contained herein ("Liability Period").

10 VENUE

11 4. Venue as to each Defendant is proper in this judicial district pursuant to  
 12 Code of Civil Procedure section 395. Defendants conduct substantial and continuous  
 13 commercial activities in Ventura County, California and each Defendant is within the  
 14 jurisdiction of this Court for service of process. Plaintiffs are informed and believe, and  
 15 thereon allege, that Defendants market to, perform work, and employ numerous class  
 16 members in Ventura County, California.

17 PARTIES

18 5. Plaintiff GILBERT is, and at all times relevant herein was, a California  
 19 corporation with its principal place of business in Thousand Oaks, California, that is a  
 20 licensed contractor that performs Home Services in competition with Defendants.

21 6. Plaintiff SPENCER is, and at all times relevant herein was, an individual  
 22 who resides in Simi Valley, California, that was hired by Defendants to perform Home  
 23 Services.

24 7. Plaintiff SWANER is, and at all times relevant herein was, an individual who  
 25 resides in Los Angeles, California, that contracted with and had Home Services provided  
 26 by Defendants.

27 8. Defendants AMAZON.COM, INC.; AMAZON.COM SERVICES, INC.;  
 28 DOES 1 through 40 inclusive; and each of them (hereinafter collectively referred to as



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1 "Corporate Defendants"); are e-commerce retailers that sells a broad range of goods  
2 through the website "Amazon.com," and through applications installed on various  
3 hardware devices, including smart phones, tablets, and a voice-activated assistant known  
4 as the Amazon Echo. Corporate Defendants also marketed and sold, and continue to  
5 market and sell, Home Services.

6 9. Defendants JOHN SEELY BROWN; WILLIAM B. GORDAN; ALAIN  
7 MONIÉ; and DOES 41 through 50 are officers or directors of Corporate Defendants  
8 residing and doing business in California hereinafter referred to as "Director Defendants".

9 10. Plaintiffs are informed and believe, and thereon allege, that Defendant  
10 MARK ANDREW HASKINS (hereinafter "HASKINS") is an employee of Corporate  
11 Defendants who resides in California, and is the qualifying individual for Amazon.com  
12 Services, Inc.'s C-10 electrical contractors license. As the license qualifier, HASKINS is  
13 statutorily responsible for exercising that direct supervision and control of Corporate  
14 Defendants' construction operations to ensure compliance with California's contractors'  
15 license laws, and is a managing agent of Corporate Defendants.

16 11. The Corporate Defendants, Director Defendants, HASKINS, and Does 1  
17 through 50, inclusive, are collectively referred to herein as "Defendants."

18 12. The true names and capacities of Defendants, whether individual,  
19 corporate, associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are  
20 currently unknown to Plaintiffs, who therefore sue Defendants by such fictitious names  
21 under Code of Civil Procedure section 474. Plaintiffs are informed and believe, and based  
22 thereon allege, that each of the Defendants designated herein as a DOE is legally  
23 responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek to  
24 amend this Complaint to reflect the true names and capacities of the Defendants  
25 designated hereinafter as DOES when such identities become known.

26 13. Plaintiffs are informed and believe, and thereon allege, that Defendants  
27 acted in all respects pertinent to this action as the agent of the other Defendants, carried  
28 out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts



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1 of each Defendant are legally attributable to the other Defendants.

2 14. At all times relevant herein, Defendants have been transacting business  
3 throughout California.

4 **FACTUAL BACKGROUND FOR ALL CAUSES OF ACTION**

5 15. California law requires that certain assembly, installation, and home  
6 improvement services whose total cost (labor and materials) exceeds \$500.00 be  
7 performed by a contractor licensed by the Contractors' State License Board ("CSLB") for  
8 the type of work being performed. California law further requires that certain work, such  
9 as electrical work, only be performed by employees of contractors who have received  
10 certain safety training.

11 16. The CSLB issues three types of licenses: (A) a General Engineering  
12 Contractor license; (B) a General Building Contractor license; and (C) Specialty  
13 Contractor licenses covering 60 trades. A General Engineering Contractor and a General  
14 Building Contractor may subcontract work to a Specialty Contractor if the subcontracted  
15 work is within the scope of the subcontractor's license. A Specialty Contractor cannot act  
16 as a General Engineering Contractor or a General Building Contractor, and can only  
17 subcontract work to other Specialty Contractors within its own trade.

18 17. On or about May 29, 2018, Amazon.com Services, Inc. was issued a C-10  
19 (Electrical) license by the CSLB. Plaintiffs are informed and believe, and thereon allege,  
20 that AMAZON is not licensed as a General Engineering Contractor, General Building  
21 Contractor, or any other Specialty Contractor.

22 18. Every licensed contractor in California must have a qualifying individual, or  
23 "qualifier," who is listed in CSLB's personnel of record, and has demonstrated his  
24 knowledge and experience for the license sought. The qualifier must exercise direct  
25 supervision and control of his employer's construction operations as is necessary to  
26 secure full compliance with California licensing law. HASKINS is the qualifier for the C-  
27 10 license issued to Amazon.com Services, Inc.

28 19. California Business and Professions Code § 7159(c) requires Home

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1 Improvement Contracts to include certain disclosures, and prohibits a contractor from  
 2 charging a down payment greater than the lesser of \$1,000.00 or 10% of the contract  
 3 price. A "Home Improvement Contract" is defined as "an agreement, whether oral or  
 4 written, or contained in one or more documents, between a contractor and an owner ...  
 5 for the performance of a home improvement ... and includes all labor, services, and  
 6 materials to be furnished and performed thereunder, if the aggregate contract price  
 7 specified in one or more improvement contracts, including all labor, services, and  
 8 materials to be furnished by the contractor, exceeds five hundred dollars (\$500)." (Cal  
 9 Bus & Prof Code § 7159.) A Home Improvement Contract also includes an agreement  
 10 between a property owner and salesperson, whether or not he or she is a home  
 11 improvement salesperson, which provides for the sale, installation, or furnishing of home  
 12 improvement goods or services. (*Id.*)

13 20. Home Improvement Contracts must contain a "Three-Day Right to Cancel"  
 14 notice. The notice must be in at least 12-point boldface type, and be in the immediate  
 15 proximity to a space reserved for the owner's signature. Before any work is started, a  
 16 contractor is required to give the buyer a copy of the Home Improvement Contract that is  
 17 signed and dated by both the contractor and the buyer. The buyer's receipt of the copy of  
 18 the contract initiates the buyer's rights to cancel the contract.

19 21. "Home improvement" means "the repairing, remodeling, altering,  
 20 converting, or modernizing of, or adding to, residential property and shall include, but not  
 21 be limited to, the construction, erection, replacement, or improvement of driveways,  
 22 swimming pools, including spas and hot tubs, terraces, patios, awnings, storm windows,  
 23 landscaping, fences, porches, garages, fallout shelters, basements, and other  
 24 improvements of the structures or land which is adjacent to a dwelling house." "Home  
 25 improvement" also means the "installation of home improvement goods or the furnishing  
 26 of home improvement services." (Cal Bus & Prof Code § 7151.)

27 22. Corporate Defendants market and sell Home Services through the  
 28 Amazon.com website along with other products and services. Home Services are often

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1 purchased by consumers in conjunction with the home improvement products to be  
2 installed. All contracts for Home Services are entered into between the Corporate  
3 Defendants and the consumer. Plaintiffs are informed and believe, and thereon allege,  
4 that Corporate Defendants' contracts are not compliant with Business and Professions  
5 Code § 7159 and related statutes for home improvement contract requirements.

6 23. The price of the goods and Home Services sold on Amazon.com are set by  
7 Corporate Defendants, with a line item break-down of the cost for the goods and the cost  
8 for the services. Corporate Defendants advertise that their Home Services are performed  
9 by "pros" that are licensed where required.

10 **FACTUAL BACKGROUND FOR PLAINTIFF SPENCER**

11 24. Corporate Defendants employed SPENCER and others to perform Home  
12 Services at customers' residences and businesses, including Home Services that were  
13 required to be performed by a contractor licensed by the CSLB. These Home Services  
14 include, but are not limited to, electrical and plumbing work; assembly and installation of  
15 structures requiring building permits, building plans approved by the local departments of  
16 Building and Safety, and compliance with local and state building codes and industry  
17 standards, including foundation anchoring; and the installation of mounts and brackets to  
18 comply with earthquake safety requirements. This work was within Corporate Defendants'  
19 usual course of business.

20 25. And all times relevant herein, HASKINS was SPENCER's joint employer,  
21 who is statutorily obligated to oversee all work performed by SPENCER. HASKINS is  
22 also statutorily obligated to ensure that all employees performing electrical work for  
23 Corporate Defendants are properly certified and trained, including but not limited to the  
24 certifications required by Labor Code 108.2. HASKINS permitted SPENCER to perform  
25 electrical work requiring certification without obtaining the required certification.

26 26. SPENCER and others employed by HASKINS and Corporate Defendants  
27 were not customarily engaged in an independently established trade, occupation, or  
28 business of the same nature as the work performed when they were hired by Corporate

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1 Defendants. SPENCER and other Class Members performed the work at the control of  
2 HASKINS and Corporate Defendants. The value of the Home Services performed was  
3 often over \$500.00, fell within the statutory definition of work requiring a contractors'  
4 license issued by the CSLB, and was part of HASKINS' and Corporate Defendants' usual  
5 course of business.

6 27. SPENCER and others also performed labor for HASKINS and Corporate  
7 Defendants at the residences and businesses of their customers, including but not limited  
8 to, removal of old appliances and mattresses and assembling furniture. These Home  
9 Services typically do not require a CSLB license, but are part of Corporate Defendants'  
10 usual course of business.

11 28. HASKINS and Corporate Defendants knowingly and intentionally  
12 misclassified SPENCER and others as independent contractors. Under California law,  
13 there is a presumption that any person who performs services that requires a CSLB  
14 license for another person or entity is an employee of that person or entity. Unlicensed  
15 subcontractors are deemed to be the employees of the person or company retaining  
16 them. Such misclassification was a pattern and practice implemented by HASKINS and  
17 Corporate Defendants to avoid California wage and hour laws. The misclassification  
18 resulted in SPENCER and others: (1) not being paid wages for all hours worked; (2) not  
19 being paid minimum wage; (3) not being paid overtime for work in excess of 8 hours a  
20 day or 40 hours a week; (4) not being permitted to take rest and meal periods, or had  
21 their rest and meal periods shortened or provided to them late due to the scheduling and  
22 work load and time requirements placed upon them by HASKINS and Corporate  
23 Defendants; and (5) not being reimbursed for business expenses, including but not limited  
24 to mileage, tools, materials, cell phone, and internet.

25 29. HASKINS and Corporate Defendants have also failed to maintain accurate  
26 itemized records reflecting total hours worked by SPENCER and others and have failed  
27 to provide employees with accurate, itemized wage statements reflecting total hours  
28 worked and appropriate rates of pay for those hours worked.

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1           30. SPENCER is informed and believes, and based thereon alleges, that  
2 HASKINS and Corporate Defendants have failed to pay all wages owed to discharged or  
3 resigned employees in a timely manner.

4           31. SPENCER brings this action pursuant to Labor Code sections 201, 202,  
5 203, 204, 226, 226.7, 510, 512, 1182, 1194, 2802, California Code of Regulations, Title  
6 8, section 11010 *et seq.* and any other applicable Industrial Welfare Commission ("IWC")  
7 Wage Orders, seeking unpaid wages and overtime compensation, unpaid rest and meal  
8 period compensation, unreimbursed expenses, other equitable relief, and reasonable  
9 attorneys' fees and costs.

10           32. Pursuant to Business and Professions Code sections 17200-17208,  
11 SPENCER also seeks restitution from HASKINS and Corporate Defendants for their  
12 failure to pay minimum wage for all hours worked, overtime wages, and rest and meal  
13 period premiums to each of their Non-Exempt Employees, as well as injunctive relief on  
14 behalf of other similarly situated employees.

15           33. SPENCER is informed and believes, and thereon alleges, that HASKINS  
16 and Corporate Defendants currently employ, and during the relevant period have  
17 employed, hundreds of employees in California to perform Home Services. At all times  
18 pertinent and within the last 4 years from the date of the filing of this complaint, said  
19 employees have been non-exempt employees within the meaning of the California Labor  
20 Code, and the implementing rules and regulations of the IWC California Wage Orders.

21           34. During the relevant time frame, SPENCER and others were subjected to  
22 Defendants' policy and practice of requiring employees to frequently log on to Defendants'  
23 website and check for new tasks available. Defendants' customers would purchase goods  
24 and services through Defendants' website, and Defendants would deliver the goods  
25 through its own or a third-party delivery service. SPENCER and others would use  
26 Defendants' website to schedule services sold by Defendants to their customers.  
27 SPENCER and others were required to communicate with Defendants' customers to  
28 schedule and prepare for performing the contracted services. SPENCER and others were

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1 also required to purchase any materials and special tools needed to complete the  
2 contracted service, transport materials and special tools to the Defendants' customers'  
3 residences and businesses, and use the materials and tools to perform the contracted  
4 services.

5 35. SPENCER and others were not compensated for all time worked, including  
6 but not limited to the time spent: (1) checking for work assignments; (2) scheduling  
7 services; (3) purchasing materials and tools; and (4) traveling to and from and between  
8 the service locations.

9 36. At all times relevant, SPENCER and others routinely worked in excess of  
10 eight (8) hours in a day and forty (40) hours in a week. SPENCER and others were often  
11 required by Defendants to complete tasks within a single day that could not be completed  
12 within 8 hours. Defendants did not pay SPENCER and others any overtime wages.

13 37. Due to the time spent traveling to multiple service locations, and the  
14 requirement to complete all tasks within a single day, SPENCER and others were  
15 frequently required to work in excess of five (5) hours without a thirty (30) minute meal  
16 period. SPENCER and others were also not provided with a second meal period when  
17 they worked in excess of ten (10) hours in a day. SPENCER and others did not execute  
18 an on-duty meal period agreement, nor were they compensated by Defendants for their  
19 missed meal periods.

20 38. Due to the time spent traveling to multiple service locations, and the  
21 requirement to complete all tasks within a single day, SPENCER and others were  
22 frequently denied a ten (10) minute rest period for every four hours or major fraction  
23 thereof. SPENCER and others were not provided a third ten (10) minute rest break when  
24 they worked over ten hours in a day. Defendants did not provide any additional  
25 compensation when rest periods were not provided.

26 39. At all relevant times herein, Defendants did not have a policy permitting  
27 SPENCER and others to take meal or rest breaks, and never advised SPENCER or  
28 others of their right to take meal and rest breaks.



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1 40. Defendants did not reimburse SPENCER and others for expenses incurred  
2 in carrying out Defendants' business, including but not limited to, mileage expenses for  
3 traveling, purchasing required materials and tools, and the cost of internet and telephone  
4 service.

5 41. Defendants set the price for the goods and services sold to their customers,  
6 with a line item break-down of the cost for the goods and the cost for the services. If  
7 SPENCER or others completed a service, they would be credited for eighty percent of the  
8 amount consumers paid for the service. The remaining twenty percent was retained by  
9 Defendants. Defendants' would issue SPENCER and others a check for the balance of  
10 the funds remaining in the employees' online accounts at regular intervals. These piece  
11 work payments did not comply with the requirements of Labor Code § 226.2.

12 42. Plaintiffs are informed and believe, and thereon allege, that Defendants  
13 willfully and intentionally failed to report SPENCER and others to its workers'  
14 compensation insurer. A contractor that fails to maintain workers' compensation  
15 insurance for its employees is unlicensed under California law.

16 43. At all times relevant hereto, SPENCER and others have been non-exempt  
17 employees within the meaning of the California Labor Code, and the implementing rules  
18 and regulations of the IWC California Wage Orders.

19 **FACTUAL BACKGROUND FOR CONTRACTOR CLASS**

20 44. At all times pertinent hereto, GILBERT and Contractor Class members have  
21 been licensed contractors in California that market and sell Home Services in competition  
22 with HASKINS and Corporate Defendants.

23 45. California law prohibits a licensed contractor from contracting with a non-  
24 licensed contractor to perform work requiring a contractor's license. Licensed contractors  
25 also incur costs associated with obtaining and maintaining their licenses, including a  
26 requirement that they obtain and maintain a contractors license bond in the amount of  
27 \$15,000.00 to protect members of the public who by damaged by their violation of  
28 contractor license laws, carry workers' compensation insurance for their employees,



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1 comply with employee safety laws, comply with building code requirements and provide  
2 appropriate oversight and training of employees performing construction work to ensure  
3 compliance with industry standards, building codes and applicable local, state and federal  
4 laws. As such, licensed contractors have significantly greater operating costs than non-  
5 licensed contractors ranging from 25 to 50 percent for payroll burden, compliance with all  
6 applicable wage and hour requirements, Occupational Health and Safety Administration  
7 compliance, workers' compensation insurance coverage and other insurance and legally  
8 mandated requirements.

9 46. GILBERT and Contractor Class members have been harmed by Corporate  
10 Defendants' false advertising that they use licensed pros, while often sending unlicensed,  
11 untrained, unqualified and uninsured individuals to perform work in an unsafe manner  
12 without a contractors' license or building permits. Defendants' have also gained an unfair  
13 competitive advantage over GILBERT and Contractor Class members by contracting for  
14 Home Services without complying with the statutory requirements for Home Improvement  
15 Contracts, which provide consumers with notifications regarding their rights and remedies  
16 against licensed contractors who violate the law and/or want to cancel their contracts  
17 within 3 days without liability.

18 **FACTUAL BACKGROUND FOR CONSUMER CLASS**

19 47. SWANER and Consumer Class members are individuals or entities that  
20 purchased Home Services from Corporate Defendants that were required to be  
21 performed by a licensed contractor.

22 48. On or about November 29, 2018, SWANER purchased a water heater from  
23 Defendants along with "Expert Installation." The total amount paid to Defendants was  
24 \$743.50, including \$197.84 for the water heater, \$516.98 for installation, \$9.89 for an  
25 extended service plan, and \$18.79 for tax.

26 49. Defendants required SWANER to make a down payment of \$226.52 (30.5%  
27 of the purchase price) at the time of purchase. Defendants required SWANER to pay an  
28 additional \$41.41 for parts at the time of install, and the balance was charged to his credit

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1 card after the installation was complete. Defendants did not provide SWANER with a  
2 Home Improvement Contract that complied with California Business and Professions  
3 Code § 7159.

4 50. Defendants delivered the water heater to SWANER on or about December  
5 2, 2018. Defendants' installed the water heater on December 4, 2018.

6 51. SWANER is informed and believes, and thereon alleges, that the water  
7 heater was installed without a building permit or an inspection by the Department of  
8 Building and Safety. SWANER is informed and believes, and thereon alleges, that  
9 Defendants do not have a C-36 (plumbing) license and therefore performed this work  
10 without the correct specialty contractors' license. SWANER is informed and believes, and  
11 thereon alleges, that HASKINS did not oversee any part of the Home Services performed  
12 on his property.

13 52. Plaintiffs are informed and believe, and thereon allege, that Defendants  
14 have a practice of contracting for Home Services that require a CSLB license other than  
15 a C-10 (electrical license). Business and Professions Code § 7031(b) provides "[a] person  
16 who utilizes the services of an unlicensed contractor may bring an action . . . to recover  
17 all compensation paid to the unlicensed contractor for performance of any act or contract."  
18 SWANER, on behalf of himself and Consumer Class members, brings this action seeking  
19 disgorgement of all amounts paid to Defendants for labor, services, and materials for all  
20 Home Services requiring a CSLB license and treble damages up to \$10,000 plus  
21 attorneys' fees and costs. (*Code of Civil Procedure § 1029.8.*)

22 53. Pursuant to Business and Professions Code § 7159(c)(3)(A), SWANER  
23 hereby elects to cancel his contract with Defendants. By way of this action, Plaintiffs also  
24 seek an injunction voiding all contracts entered into between Consumer Class members  
25 that are not in compliant Home Improvement Contracts.

26 54. SWANER is informed and believes, and thereon alleges, that Defendants  
27 did not obtain or maintain workers' compensation insurance for their employees who  
28 performed construction work. Business and Professions Code § 7152.2 provides that

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1 failing to maintain or obtain workers' compensation insurance, if required, results in  
2 automatic suspension of license.

3 **CLASS ACTION ALLEGATIONS**

4 55. Plaintiffs seek to represent the Contractor Class and Consumer Class as  
5 set forth in Paragraph 2 hereinabove.

6 56. Plaintiffs reserve the right under Rule 3.765 of the California Rules of Court  
7 to amend or modify the class description with greater specificity or further division into  
8 subclasses or limitation to particular issues.

9 57. This action has been brought and may properly be maintained as a class  
10 action under the provisions of section 382 of the Code of Civil Procedure because there  
11 is a well-defined community of interest in the litigation and the proposed Class is easily  
12 ascertainable.

13 **A. Numerosity**

14 58. The potential members of the classes as defined are so numerous that  
15 joinder of all the members is impracticable. While the precise number of class members  
16 has not been determined at this time, Plaintiffs are informed and believe, and thereon  
17 allege, that: (1) Defendants currently employ, and during the relevant time period,  
18 employed hundreds of individuals or entities in California who are or have been affected  
19 by Defendants' unlawful practices as alleged herein; (2) have harmed thousands of  
20 contractors through their unfair competition; and (3) contracted to perform Home Services  
21 without a proper CSLB license with thousands of consumers.

22 **B. Commonality**

23 59. There are questions of law and fact common to the classes predominating  
24 over any questions affecting only individual class members. These common questions of  
25 law and fact include, without limitation:

- 26 i. Whether Defendants are performing services requiring a CSLB license;
- 27 ii. Whether Defendants are properly licensed;
- 28 iii. Whether HASKINS was properly overseeing the work performed by

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1 Corporate Defendants; and

2 iv. Whether Defendants' contract is compliant with California law.

3 **C. Typicality**

4 60. The claims of the named plaintiffs in each class are typical of the claims of  
5 the class members. Plaintiffs and all members of the classes sustained injuries and  
6 damages arising out of and caused by Defendants' common course of conduct in violation  
7 of California laws, regulations, and statutes as alleged herein.

8 **D. Adequacy of Representation**

9 61. Plaintiffs will fairly and adequately represent and protect the interests of the  
10 members of the Classes. Plaintiffs' counsel is competent and experienced in litigating  
11 large employment actions, and complicated actions involving California Contractors'  
12 State License Law.

13 **E. Superiority of Class Action**

14 62. A class action is superior to other available means for the fair and efficient  
15 adjudication of this controversy. Individual joinder of all class members is not practicable,  
16 and questions of law and fact common to the classes predominate over any questions  
17 affecting only individual members of the classes. Each member of the classes has been  
18 damaged and is entitled to recovery by reason of Defendants' unlawful policies and  
19 practices referenced herein.

20 63. Class action treatment will allow those similarly situated persons and  
21 entities to litigate their claims in the manner that is most efficient and economical for the  
22 parties and the judicial system. Plaintiffs are unaware of any difficulties that are likely to  
23 be encountered in the management of this action that would preclude its maintenance as  
24 a class action.

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**FIRST CAUSE OF ACTION**

**Failure to Pay Minimum Wage**

[Lab. Code § 1182 and Wage Order No. 16]

(By SPENCER against all Defendants)

64. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

65. Labor Code section 1182 and Wage Order 16 require employers to pay employees at least the minimum wage for each hour worked.

66. During the Liability Period, Defendants deliberately and willfully failed to pay SPENCER and others any amount whatsoever for many hours worked, and are owed unpaid wages in an amount to be proven at trial.

67. SPENCER also seeks liquidated damages, attorneys' fees, costs, and interest in an amount to be proven at trial.

68. Wherefore, Plaintiffs request relief as hereinafter provided.

**SECOND CAUSE OF ACTION**

**Failure to Pay Overtime Wages**

[Lab. Code §§ 510, 1194, and Wage Order No. 16]

(By SPENCER against all Defendants)

69. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

70. During the Liability Period, Defendants' policies and practices resulted in SPENCER and others working in excess of eight (8) hours in a workday or forty (40) hours in a workweek without being compensated at one and one-half times their regular rate of pay.

71. As a result of the unlawful acts of Defendants, SPENCER and others have been deprived of overtime compensation in an amount to be determined at trial, and are entitled to recovery of such amounts, plus interest, liquidated damages, and penalties thereon, attorneys' fees, and costs.

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1 72. WHEREFORE, SPENCER and the Employee Class members request relief  
2 as described herein and below.

3 **THIRD CAUSE OF ACTION**

4 **Failure to Provide Meal and Rest Periods**

5 [Lab. Code §§ 226.7, 512, and IWC Wage Order No. 16]

6 (By SPENCER against all Defendants)

7 73. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully  
8 set forth herein.

9 74. At all times relevant herein, California Labor Code §226.7 and Wage Order  
10 No. 16 required Defendants to provide meal periods and rest breaks to their employees.  
11 Wage Order No. 16 prohibits employers from employing an employee for more than five  
12 (5) hours without an off-duty meal period of not less than thirty (30) minutes and from  
13 employing an employee more than ten (10) hours per day without providing the employee  
14 with a second meal period of not less than thirty (30) minutes.

15 75. Unless the employee is relieved of all duties during the 30-minute meal  
16 period, the employee is considered "on duty," and the meal period is counted as time  
17 worked under Wage Order No. 16. Wage Order No. 16 also requires employers to  
18 provide and/or to make available and/or to authorize or permit employees ten (10)  
19 minutes of net rest time per four (4) hours or major fraction thereof of work and to pay  
20 employees their full wages during those rest periods.

21 76. Under California Labor Code §226.7(b) and Wage Order 4, an employer  
22 who fails to provide a required meal period must pay the employee one additional hour of  
23 pay at the employee's regular rate of compensation for each workday that the meal period  
24 was not provided. Similarly, an employer must pay an employee who was denied a  
25 required rest period one hour of pay at the employee's regular rate of compensation for  
26 each workday that the rest period was not provided.

27 ///

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1 77. During the liability period, Defendants failed to provide bona fide off-duty  
2 meal and rest periods to SPENCER and Employee Class members, and are entitled to  
3 the relief provided by California Labor Code §226.7(b).

4 78. Defendants knowingly and willfully refused to perform their obligations to  
5 provide SPENCER and Employee Class Members with meal and rest periods as required  
6 by California law. Defendants committed the acts alleged herein with the wrongful and  
7 deliberate intention of injuring SPENCER and Employee Class members with improper  
8 motives amounting to malice, and in conscious disregard of the rights of Plaintiffs. As a  
9 proximate result of the aforementioned violations, Defendants damaged Plaintiffs in  
10 amounts to be determined according to proof at the time of trial, but in an amount in  
11 excess of the jurisdictional requirements of this Court. Plaintiffs are thus entitled to  
12 recover nominal, actual and compensatory damages in amounts according to proof at  
13 time of trial.

14 79. Defendants' conduct described herein violates California Labor Code §§  
15 226.7 and 512, and Wage Order No. 16. Therefore, SPENCER and Employee Class  
16 members are entitled to the relief provided in California Labor Code §226.7(b) and Wage  
17 Order No. 16, damages, restitution for the failure to provide meal and rest periods, plus  
18 interest, applicable civil penalties, attorneys' fees, expenses and costs of suit.

19 80. WHEREFORE, SPENCER and the Employee Class members request relief  
20 as described herein and below.

21 **FOURTH CAUSE OF ACTION**

22 **Failure to Provide Accurate Wage Statements**

23 [Labor Code § 226]

24 (By SPENCER against all Defendants)

25 81. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully  
26 set forth herein.

27 82. Labor Code section 226 requires employers to furnish employees with  
28 accurate itemized wage statement with each payment of wages. If an employer fails to

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1 provide the required information, the employee may recover \$50.00 for the first violation  
2 and \$100.00 for each subsequent violation. An employee may recover a maximum of  
3 \$4,000.00 for such violations or actual damages, whichever is greater.

4 83. Defendants willfully and intentionally failed to provide accurate itemized  
5 wage statements to SPENCER and Employee Class Members, and are therefore  
6 entitled to recover for the violations an amount according to proof at trial, but of not less  
7 than \$4,000.00 for SPENCER and each Employee Class member.

8 84. WHEREFORE, SPENCER and the Employee Class members request relief  
9 as described herein and below.

10 **FIFTH CAUSE OF ACTION**

11 **Failure to Reimburse Necessary Expenses**

12 [Lab. Code § 2802]

13 (By SPENCER against all Defendants)

14 85. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully  
15 set forth herein.

16 86. Section 2802 of the Labor Code requires Defendants to reimburse  
17 SPENCER and Employee Class members for all necessary expenses or losses that  
18 class members incur as the direct consequence of the discharge of SPENCER's and  
19 Employee Class members' duties.

20 87. As set forth herein, SPENCER and Employee Class members incurred  
21 necessary expenses in the discharge of their duties that were not reimbursed by  
22 Defendants. These expenses include, but are not limited to, compensation for travel,  
23 materials, tools, phone and internet services. Therefore, SPENCER and Employee Class  
24 members are entitled to recover their unreimbursed expenses, plus interest, applicable  
25 civil penalties, attorneys' fees, and costs.

26 88. WHEREFORE, SPENCER and the Employee Class members request relief  
27 as described herein and below.

28 ///

**SIXTH CAUSE OF ACTION**

**Unlawful Acceptance of Payments for Work Requiring a Contractor's License**

[Bus. & Prof. Code § 7031]

(By SWANER and Consumer Class against Corporate Defendants, HASKINS, and Does 1 through 40, inclusive)

89. Plaintiffs re-allege and incorporate the foregoing paragraphs as though fully set forth herein.

90. Section 7031 of the Business and Professions Code prohibits Defendants from collecting any money for work governed by the Contractors' State License Law (Cal. Bus. & Prof. § 7000 et seq.) when Defendants are not properly licensed. Section 7031 authorizes anyone who made payment to an unlicensed contractor to be able to recover the full amount of any payments made to an unlicensed contractor.

91. SWANER and Consumer Class members made payments to Defendants for services and materials that required a license. As a result of the unlawful acts of Defendants, SWANER and Consumer Class members are entitled to recovery of such amounts, plus interest, attorneys' fees, and costs.

92. WHEREFORE, SWANER and the Employee Class members request relief as described herein and below.

**SEVENTH CAUSE OF ACTION**

**Violation of Unfair Competition Law**

(Bus. & Prof. Code, §§ 17200-17208)

(By all Plaintiffs and classes against Corporate Defendants, HASKINS, and Does 1 through 40, inclusive)

93. Plaintiff repeats and incorporates herein by reference each and every allegation set forth above, as though fully set forth herein.

94. Defendants have engaged in unlawful, unfair, and fraudulent business acts, and have engaged in a pattern and practice of unfair, deceptive, untrue, and misleading advertising by: (1) misclassifying employees as independent contractors to

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1 avoid the burden and costs of complying with California laws; (2) contracting and selling  
 2 Home Services without obtaining the proper CSLB licenses for the type of work  
 3 performed; (3) selling and subcontracting Home Services to licensed contractors  
 4 outside the scope of their C-10 license; (4) contracting and selling Home Services  
 5 requiring a C10 license, and having the work performed by a non-certified installer; (5)  
 6 contracting to perform work requiring a building permit without obtaining the necessary  
 7 permits and inspections by the department of building and safety; (6) contracting to  
 8 perform Home Services requiring a C-10 license, without having HASKINS oversee the  
 9 work being performed; and (7) falsely advertising that Home Services would be  
 10 performed by a licensed professional.

11 95. GILBERT and Contractor Class members have been personally aggrieved  
 12 and damaged by Defendants' unlawful and unfair business acts and practices alleged  
 13 due their inability to compete Defendants given the additional costs GILBERT and the  
 14 Contractor Class members incur to comply with California law. The only way for  
 15 GILBERT to compete with Defendants is to sell its services below costs. By way of this  
 16 action, GILBERT seeks to recover (on behalf of itself and the Contractor Class  
 17 members) its lost profit and other damages caused by Defendants' unfair practices, as  
 18 well as injunctive relief requiring Defendants to: (1) cease contracting for work requiring  
 19 a CSLB license without the proper license; (2) require Haskins to oversee all work  
 20 performed by Defendants' requiring a C-10 license; and (3) cease contracting for Home  
 21 Services requiring a CSLB license.

22 96. SPENCER has been personally aggrieved by Defendants' unlawful and  
 23 unfair business acts and practices alleged, and seek restitution of all amounts due and  
 24 owing under California employment laws.

25 97. GILBERT and Contractor Class members have been personally aggrieved  
 26 by Defendants' unlawful and unfair business acts and practices alleged due its inability  
 27 to compete given the costs of complying with California employment and CSLB  
 28 licensing laws. By way of this action, GILBERT seeks to recover (on behalf of itself and

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1 the Contractor Class members) its lost profit and other damages caused by Defendants'  
2 unfair practices, as well as injunction relief requiring Defendants to: (1) cease  
3 contracting for work requiring a CSLB license without the proper license; and (2) require  
4 Haskins to oversee all work performed by Defendants' requiring a C-10 license.

5 98. SWANER and Consumer Class members have been personally aggrieved  
6 by Defendants' unlawful and unfair business acts and practices alleged herein. As a  
7 result of Defendants contracting without a CSLB license, and failure to maintain  
8 workers' compensation insurance for its employees, SWANER and Consumer Class  
9 members become personally liable for any injury that may result from Defendants'  
10 employees' work on their property. As a result of Defendants' contracting without a  
11 CSLB license, SWANER and Consumer Class members are also being deprived of  
12 consumer protections available under California law, including but not limited to the  
13 requirement that all contractors maintain a license bond as security for damages they  
14 may incur from the violation of contractor license laws. By way of this action, SWANER  
15 seeks (on behalf of himself and the Consumer Class members) injunctive relief  
16 requiring Defendants to: (1) cease contracting for work requiring a CSLB license without  
17 the proper license; (2) require Defendants to comply with all applicable building code  
18 requirements; (3) require Defendants to comply with all safety requirements; and (4)  
19 require Haskins to comply with his statutory obligations as the Responsible Managing  
20 Employee and qualifying individual for Defendants' C-10 license.

21 99. WHEREFORE, Plaintiff and the classes they seek to represent request  
22 relief as described herein and below.

23 **EIGHTH CAUSE OF ACTION**

24 **Relief Under PAGA**

25 (Labor Code §§ 2698 – 2699.6)

26 (By SPENCER and all aggrieved employees, Against all Defendants)

27 100. SPENCER hereby repeats, realleges, and incorporates by this reference  
28 each and every allegation from each and every paragraph before and after this

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1 paragraph, as though said paragraphs were set forth in full herein.

2 101. The Private Attorney General Act ("PAGA"), codified in Labor Code sections  
3 2698 – 2699.6, authorizes aggrieved employees to stand in the shoes of the Labor  
4 Commissioner to seek penalties for violations of California’s wage-and-hour laws. Under  
5 Labor Code section 558, which is enforceable through PAGA, aggrieved employees may  
6 also obtain any underpaid wages in addition to any penalties. This Court should remedy  
7 the widespread and egregious wage-and-hour violations of Defendants, and each of  
8 them, by assessing the full amount of penalties and underpaid wages against Defendants  
9 for all current and former aggrieved employees.

10 102. PAGA expressly establishes that any provision of the Labor Code which  
11 provides for a civil penalty to be assessed and collected by the Labor and Workforce  
12 Development Agency ("LWDA") or any of its departments, divisions, commissions,  
13 boards, agencies or employees for a violation of the Labor Code, may be recovered  
14 through a civil action brought by an aggrieved employee on behalf of himself or herself,  
15 and other current or former employees.

16 103. Defendants’ managing agents are individually liable, pursuant to Cal. Lab.  
17 Code § 558.1 et al., as managing agents acting on behalf of an employer who caused a  
18 violation of a statute or wage order relating to working hours.

19 104. On January 17, 2019, SPENCER provided written notice to the LWDA and  
20 Defendants of the specific provisions of the Labor Code they contend were violated, and  
21 the theories supporting their contentions, and promptly paid the \$75 filing fee to LWDA.  
22 A true and correct copy of the PAGA Notice and PAGA “online submission” are attached  
23 hereto as Exhibits “A” and “B” respectively, and incorporated herein. No attempts to cure  
24 were made by the employers, and the LWDA did not take any action; therefore satisfying  
25 all administrative prerequisites for plaintiffs to file this suit. By way of this action,  
26 SPENCER seeks to remedy all of the alleged violations set forth in the attached notice  
27 on behalf of himself and all other aggrieved employees.

28 105. This complaint challenges Defendants’ systemic illegal employment



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1 practices resulting in violations of the stated provisions of the Labor Code.

2 106. SPENCER and other employees of Defendants are "aggrieved employees"  
3 as defined by Labor Code section 2699, subd. (c), in that they are current or former  
4 employees of Defendants, and one or more of the alleged violations was committed  
5 against them within the statutory period.

6 **Failure to Pay Minimum and Overtime Wages**

7 107. Defendants' managing agents directed and oversaw Defendants'  
8 operations including without limitation, scheduling SPENCER and other employees for  
9 work and determining whether to compensate him and the other aggrieved employees  
10 for all hours worked and overtime. Accordingly, Defendants, and each of them, caused  
11 the violations of the applicable statutes and wage order set forth below.

12 108. At all times relevant herein, Defendants' were required to pay their non-  
13 exempt employees: (1) their regular wages for all hours worked; and (2) overtime wages  
14 at the rate of one and one-half times their respective regular rates of pay for all hours  
15 worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant  
16 to Labor Code sections 510, 1194, 1194.2, and 1197.1.

17 109. At all times relevant herein, Defendants were required to compensate their  
18 non-exempt employees at a rate of one and one-half times their respective regular rates  
19 of pay for the first eight hours worked on the seventh workday in a workweek, pursuant  
20 to Labor Code sections 510 and 1194.

21 110. As a pattern and practice, Defendants failed to compensate SPENCER and  
22 other aggrieved current and former employees for all hours worked, resulting in a failure  
23 to pay all minimum wages and overtime wages, where applicable.

24 **Failure to Provide Meal Periods and Rest Breaks**

25 111. Defendants' managing agents directed and oversaw DEFENDANTS'  
26 operations including without limitation, requiring SPENCER and other employees to work  
27 through their rest breaks, and failing to have any policy in place that authorized or  
28 permitted SPENCER or other aggrieved employees to take meal and rest breaks, and

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1 failing to notify SPENCER or other aggrieved employees of their statutory right to take  
2 meal and rest breaks during their work for Defendants. The Defendants, and each of  
3 them, caused the violations of the applicable statutes and/or wage order(s) set forth  
4 below.

5 112. Pursuant to Labor Code sections 226.7, and 512, Defendants were required  
6 to authorize and permit their non-exempt employees to take a 10-minute paid rest break  
7 for every four (4) hours worked or major fraction thereof. Defendants have no written  
8 break policy applicable to SPENCER and aggrieved employees, that would permit  
9 employees to receive paid breaks of ten minutes for every four (4) hours worked or major  
10 fraction thereof, nor do Defendants have a written policy permitting their non-exempt  
11 employees with a 30-minute meal period for every five (5) hours worked.

12 113. As a pattern and practice, Defendants failed to provide SPENCER and other  
13 aggrieved current and former employees with legally-mandated meal periods and rest  
14 breaks and failed to pay proper compensation for this failure.

15 **Failure to Provide Complete and Accurate Wage Statements**

16 114. Defendants' managing agents, and each of them, directed and oversaw  
17 Defendants' operations, including without limitation, its record-keeping.

18 115. At all times relevant herein, Defendants were required to keep accurate  
19 records regarding their California employees pursuant to Labor Code sections 226 and  
20 1174(d).

21 116. Defendants failed to keep accurate records regarding SPENCER's and  
22 other aggrieved current and former employees. For example, Defendants failed to keep  
23 accurate records regarding gross wages earned, total hours worked, net wages earned,  
24 all applicable hourly rates, the number of hours worked at each hourly rate, and the  
25 beginning and end dates of the each pay period for PLAINTIFFS and other aggrieved  
26 current and former employees.

27 117. Defendants knowingly and intentionally violated Labor Code section 226,  
28 which constitutes a violation of Labor Code section 226.6.

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**Failure to Reimburse Expenses**

118. Defendants failed to reimburse all expenses necessarily incurred by SPENCER and other aggrieved employees in carrying out their job duties for Defendants, including mileage expenses for traveling to, from, and between service locations, expenses for special tools and materials, and telephone and internet costs in violation of Labor Code § 2802. SPENCER and aggrieved employees seek penalties for each violation and reimbursement of the expenses necessarily incurred.

**Failure to Pay Full Wages When Due**

119. By failing to compensate SPENCER and aggrieved employees for all time worked, Defendants continued to violate Labor Code Section 204, which requires employers, including Defendants, to pay SPENCER and aggrieved employees their full wages when due. SPENCER and aggrieved employees also seek interest under Labor Code § 218.6.

**Failure to Provide Sick Leave**

120. At all relevant times, SPENCER and aggrieved employees who had worked for Defendants for more than 90 days in California were entitled to paid sick leave under California Labor Code 246 et. Seq. Due to Defendants' refusal to honor requests to take paid sick leave, certain aggrieved employees were deprived of pay for accrued but unused sick leave, and denied the right to take paid sick leave for their own and their immediate family members', including for their children's, medical conditions and disabilities, in violation of California Labor Code Section 246 et. seq,

121. Pursuant to California Labor Code section 248.5, SPENCER and other aggrieved employees seek lost wages and administrative penalties based thereon.

**Willful Employment of Uncertified Electricians**

122. SPENCER and other aggrieved employees performed electrical work under AMAZON's C-10 electrical license issued by the CSLB. SPENCER and aggrieved employees were not certified as electricians pursuant to Labor Code § 108.

Nevertheless, Defendants willfully employed SPENCER and aggrieved employees to

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1 perform electrical work in violation of Labor Code § 108.2.

2 123. SPENCER and aggrieved employees seek penalties for each violation of  
3 Labor Code §108.2.

4 Damages

5 124. Pursuant to California Labor Code section 2699, SPENCER, all other  
6 current and former aggrieved employees, and each of them, request and are entitled to  
7 recover from Defendants, and each of them, unpaid wages, civil penalties, interest,  
8 attorneys' fees, and costs, including but not limited to:

9 a. Penalties under California Labor Code section 2699 in the amount of  
10 one hundred dollars (\$100) for each aggrieved employee per pay period for the initial  
11 violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for  
12 each subsequent violation;

13 b. Penalties under California Code of Regulations Title 8, section  
14 11040, in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for  
15 the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay  
16 period for each subsequent violation;

17 c. Penalties under California Labor Code section 210 in addition to, and  
18 entirely independent and apart from, any other penalty provided in the California Labor  
19 Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay  
20 period for the initial violation, and two hundred dollars (\$200) for each aggrieved  
21 employee per pay period for each subsequent violation;

22 d. Penalties under Labor Code section 1197.1 in the amount of one  
23 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation,  
24 and two hundred fifty dollars (\$250) for each aggrieved employee per pay period for each  
25 subsequent violation;

26 e. An amount sufficient to recover all unpaid wages under Labor Code  
27 section 558;

28 f. An amount sufficient to recover unpaid wages under Labor Code

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section 1197.1;

g. An amount sufficient to recover pay for missed rest breaks under Labor Code section 226.7;

h. An amount sufficient to recover pay for missed or untimely meal periods under Labor Code section 512;

i. An amount sufficient to reimburse expenses that SPENCER and aggrieved employees incurred in performing their job duties for Defendants, which were required to be reimbursed under Labor Code section 2802;

j. Any and all additional penalties and sums as provided by the Labor Code and/or other statutes and regulations; and

k. Attorneys' fees and costs pursuant to Labor Code sections 210, 1194, and 2699, and any other applicable statute.

**PRAYER**

WHEREFORE, Plaintiff prays for judgment as follows:

1. That the Court determine that this action may be maintained as a class action;
2. For compensatory damages in an amount according to proof with interest thereon;
3. For economic and/or special damages in an amount according to proof with interest thereon;
4. For premium wages pursuant to Labor Code §§ 226.7 and 512;
5. For double the amounts withheld that caused payment of less than the minimum wage pursuant to Labor Code section 1182;
6. For premium pay and penalties pursuant to Labor Code §203;
7. For reimbursement of expenses incurred pursuant to Labor Code § 2802;
8. For repayment of amounts paid to Defendants as unlicensed contractors pursuant to Business and Professions Code section 7031;
9. For attorneys' fees, interests and costs of suit under Labor Code §§ 1182, 1194, and 2802; and Code of Civil Procedure § 1021.5.

Ventura Superior Court Accepted through eDelivery submitted 03-25-2019 at 05:00:01 PM

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10. For statutory penalties, unpaid wages, and related PAGA damages.

11. For injunctive relief, including (1) requiring Defendants to cease contracting for work requiring a CSLB license without the proper license; (2) requiring Haskins to oversee all work performed by Defendants' requiring a C-10 license; and (3) voiding all contracts entered into between Defendants and Consumer Class members that are not in compliance with California Business and Professions Code § 7159.

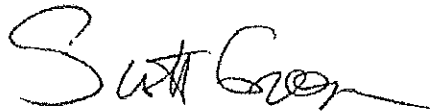
11. For such other and further relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

Dated: March 25, 2019

**THE GREEN LAW GROUP, LLP**



By: \_\_\_\_\_  
Scott Thomas Green  
Jeff Conyer  
Matthew Bechtel  
Attorneys for PLAINTIFFS GILBERT  
ENTERPRISES, INC, ERIC SPENCER and  
STEVEN SWANER, on behalf of themselves  
and all others similarly situated



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**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF VENTURA

I am employed in the County of Ventura, State of California. I am over the age of 18 and not a party to the within action. My business address is: 1777 E. Los Angeles Ave., Simi Valley, California 93065

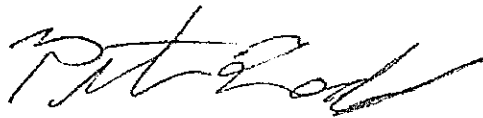
On March 25, 2019, I served the foregoing document described as: **FIRST AMENDED CLASS ACTION COMPLAINT** all interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

Megan McDonough, Esq.  
**Morgan Lewis & Bockius LLP**  
300 S. Grand Ave  
Twenty-Second Floor  
Los Angeles, CA 90071-3132

megan.mcdonough@morganlewis.com  
Tel: (213) 612-7337

- BY MAIL** – I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Simi Valley, 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 (1) day after date of deposit for mailing in affidavit.
- BY PERSONAL SERVICE** – I caused such envelope to be personally delivered by a process server employed by ABC Legal Attorney Services.
- BY ELECTRONIC SERVICE** – Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents, described above, to be transmitted in PDF version to be sent to the persons at the electronic service address, listed above, and the transmission was reported as complete and without error.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 25, 2019 at Simi Valley, California.



\_\_\_\_\_  
Peter Rodby

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Targets Amazon Home Services' Alleged Labor, Consumer, Unfair Competition Violations](#)

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