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KONE INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MATTHEW LUCCHESE and JULIO CHAVEZ, individuals, on behalf of themselves and on behalf of all persons similarly situated,

Plaintiff,

v.

KONE INC., a Corporation; and DOES 1 through 50, inclusive,

Defendants.

CASE NO. 3:21-cv-00889

NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. SECTIONS 1331, 1441 (a) & (c), AND 1446 (a), (b), & (d)

(FEDERAL QUESTION)

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA AND TO PLAINTIFFS:

PLEASE TAKE NOTICE that Defendant KONE INC. ("Defendant") hereby respectfully removes the above-entitled action from the Superior Court of the State of California for the County of San Francisco, to the United States District Court for the Northern District of California pursuant to 28 U.S.C. §§ 1331, 1441 (a) & (c), and 1446 (a), (b), & (d). The removal is based on federal question jurisdiction based on the following allegations.

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I.

STATEMENT OF THE CASE

1. On November 16, 2020, Plaintiff Matthew Lucchese ("Lucchese") filed a lawsuit in the Superior Court of the State of California, County of San Francisco, entitled *Matthew Lucchese v. KONE, Inc., et al.*, Case No. CGC-20-588225. (Declaration of Edwin M. Boniske ("Boniske Decl."), at ¶ 4.)

2. In his "Class Action Complaint," Lucchese asserted a total of seven causes of action: (1) Unfair Competition in Violation of Cal. Bus. & Prof. §§ 17200, *et seq.*; (2) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197 & 1197.1; (3) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code § 510, *et seq.*; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (6) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code § 226; and (7) Retaliation in Violation of Labor Code § 1102.5, *et seq.* Each claim (with the sole exception of Lucchese's Seventh Cause of Action for Retaliation) is asserted both individually and on behalf of a putative class defined as "all individuals who are or previously were employed by DEFENDANT in California and classified as non-exempt employees at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court." A copy of Plaintiff's November 16, 2020 Class Action Complaint is attached hereto as "**Exhibit A**."

3. Lucchese personally served the summons and Class Action Complaint on Defendant's registered agent on January 6, 2021. (Boniske Decl., at ¶ 5.) A copy of the Summons, Civil Case Cover Sheet, Notice to Plaintiff re Case Management Conference, San Francisco Superior Court ADR Information Package, and a blank Stipulation to Alternative Dispute Resolution (constituting all documents served on KONE together with the Complaint) are attached to this Notice of Removal as "**Exhibit B**."

4. On January 15, 2021, Lucchese personally served Defendant's registered agent with their First Amended Class Action Complaint ("FAC"). (Boniske Decl., at ¶ 6.) A copy of

the FAC filed by Lucchese and Plaintiff JULIO CHAVEZ (collectively, "Plaintiffs") is attached to this Notice of Removal as "**Exhibit C**."

5. In the operative FAC, Plaintiffs assert eight causes of action: (1) Unfair Competition in Violation of Cal. Bus. & Prof. §§ 17200, *et seq.*; (2) Failure to Pay Minimum Wages in Violation of Cal. Lab. Code §§ 1194, 1197 & 1197.1; (3) Failure to Pay Overtime Wages in Violation of Cal. Lab. Code § 510, *et seq.*; (4) Failure to Provide Required Meal Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (5) Failure to Provide Required Rest Periods in Violation of Cal. Lab. Code §§ 226.7 & 512 and the Applicable IWC Wage Order; (6) Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code § 226; (7) Failure to Provide Wages when Due in Violation of Cal. Lab. Code §§ 201, 202, and 203; and (8) Retaliation in Violation of Labor Code § 1102.5, *et seq.*

6. On February 3, 2021, Defendant answered Plaintiffs' FAC in the Superior Court of the State of California, County of San Francisco. (Boniske Decl., at ¶ 7.) A copy of Defendant's Answer to the FAC, as filed, is attached hereto as "**Exhibit D**."

7. In accordance with 28 U.S.C. section 1446(a), the documents attached hereto as Exhibit A [Class Action Complaint], Exhibit B [Summons and Service Documents], Exhibit C [First Amended Class Action Complaint], and Exhibit D [Answer] constitute all process, pleadings and orders served by or upon Defendant in the action. (Boniske Decl., at ¶ 8.)

II.

TIMELINESS OF REMOVAL

8. A defendant in a civil action has thirty (30) days from the date it is served with a summons and complaint to remove the action to federal court. 28 U.S.C. § 1446(b); Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 347-48 (1999). Where the deadline falls on a weekend, it is extended to the next day that is not a weekend or holiday. FED. R. CIV. P. 6(a)(1).

9. In this case, Defendant was served with Summons and Complaint on January 6, 2021. The thirty-day statutory period therefore falls on February 5, 2021, and this Notice of Removal was timely filed. See 28 U.S.C. § 1446(b).

10. To Defendant's knowledge, no fictitious "Doe" have been identified or served in this action. As such, their consent to this removal is not required.

III.

BASIS FOR REMOVAL

A. Federal Question (LRMA Preemption).

11. This Court has original jurisdiction under 28 U.S.C section 1331, and this case may be removed pursuant to the provisions of 28 U.S.C. section 1441(b), in that it is a civil action that presents a federal question. As set forth below, this case meets all of Section 1331's requirements for removal and is properly removed by the filing of this Notice.

12. Each of the claims in this action are founded directly on rights created by the applicable CBA between Defendant and the International Union of Elevator Contractors ("IUEC"). A copy of the applicable CBA between Defendant and the IUEC is attached hereto as "**Exhibit E**." Accordingly, the proper interpretation of these claims would substantially depend on an in-depth analysis of the CBA's terms.

13. Plaintiffs, and the vast majority of the putative class members, are members of the IUEC and subject to the CBA and its terms. Accordingly, every cause of action in Plaintiffs' First Amended Complaint are preempted by Section 301 of the LMRA.

14. This action falls within the District Court's original jurisdiction under 28 U.S.C. § 1331, which provides: "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

15. This action may be removed to this Court by Defendant pursuant to the provisions of 28 U.S.C. 1441(b) in that the relief sought in the Complaint by Plaintiffs, on behalf of themselves and all putative class members they seek to represent, arises under and is completely preempted by Section 301 of the LMRA. (29 U.S.C. § 185), which states: "Suits for violation of [collective bargaining agreements] . . . may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

/ / /

16. At all relevant times, Defendant has been, and is, a corporation engaged in commerce and in an industry affecting commerce, and has been, and is, engaged in the provision of construction, repair, and modernization work at various facilities, including facilities designed and operated directly for interstate commerce, including airports.

17. At all relevant times, IUEC has been, and is a labor organization in which both named Plaintiffs and the vast majority of other employees of Defendant participate and which exists for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of work. At all relevant times, IUEC has been, and is a labor organization within the meaning of Section 2(5) and 301(a) of the LMRA, 29 U.S.C. §§ 152(5) and 185(a).

18. At all relevant times, the CBA has been and is the contract between an employer and a labor organization within the meaning of Section 301(a) of the LMRA. See 29 U.S.C. § 185(a).

19. Each of Plaintiffs' claims in the FAC require a detailed analysis of the CBA in that the CBA governs hour of work, regular and overtime compensation, breaks, and various other conditions of employment that tie directly to the alleged violations of California law asserted in the action.

20. Further, the promotion of extra-judicial dispute resolution is another purpose of § 301 preemption. Here, the CBA between the parties specifically recognizes the duty of the Parties to the CBA to grieve any dispute pursuant to its terms. Therefore, interpretation of this language of the Agreement will similarly be necessary to analyze Plaintiffs' claims in this case. Accordingly, this case is preempted by Section 301 of the LMRA.

B. Supplemental Jurisdiction.

21. To the extent that there are remaining claims for relief that do not arise under Federal law or are not completely preempted by Section 301 (including, among other things, any claims by the small percentage of non-union putative class members), these claims are within the supplemental jurisdiction of this Court under 29 U.S.C. § 1367(a) in that they are so related to the Section 301 claims that they form part of the same case or controversy under Article III of the

United States Constitution. In the alternative, any such other claims for relief are separate and independent claims which are properly removable to this Court pursuant to 28 U.S.C. § 1441(c).

III.

ALL PROCEDURAL REQUIREMENTS HAVE BEEN MET

22. Plaintiffs originally filed their complaint in the Superior Court of California, County of San Francisco, which is located within the United States District Court for the Northern District of California. Therefore, venue is proper in this Court pursuant to 28 U.S.C. section 84(a), as it is the "district and division embracing the place where such action is pending." See 28 U.S.C. § 114(a).

23. Pursuant to 28 U.S.C. § 1446(d), Defendant will give written notice of the removal of this action to all parties and is filing a copy of that notice with the Superior Court of California, County of San Francisco. True and correct copies of the notice to Plaintiff and to the state court shall be filed promptly.

III.

CONCLUSION

24. Wherefore, Defendant prays that the above-entitled action now pending against it in the Superior Court of California, County of San Francisco, be removed to this Court.

DATED: February 4, 2021

HIGGS FLETCHER & MACK LLP

By: */s/ Edwin M. Boniske*
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KYLE W. NAGEOTTE, ESQ.
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EXHIBIT A

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

CGC-20-588225

MATTHEW LUCCHESE, an individual, on behalf of himself and on behalf of all persons similarly situated,

Plaintiff,

vs.

KONE INC., a Corporation ; and DOES 1 through 50, inclusive,

Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226; and,
7. RETALIATION IN VIOLATION OF LABOR CODE § 1102.5, *et seq.*

DEMAND FOR A JURY TRIAL

BY FAX

Plaintiff Matthew Lucchese ("PLAINTIFF"), an individual, on behalf of himself and all other similarly situated current and former employees alleges on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

THE PARTIES

1. Defendant Kone Inc. ("DEFENDANT") is a corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California.

2. DEFENDANT provides elevators, escalators and automatic building doors, as well as solutions for maintenance and modernization to add value to buildings throughout their life cycle.

3. PLAINTIFF has been employed by DEFENDANT in California since June of 2016 and has been at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

4. PLAINTIFF brings this Class Action on behalf of himself and a California class, defined as all individuals who are or previously were employed by DEFENDANT in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars ($5,000,000.00).

5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT's policy and practice which failed to lawfully compensate these employees. DEFENDANT's policy and practice alleged herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA

CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable relief.

6. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief alleges, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

7. The agents, servants and/or employees of the Defendants and each of them acting on behalf of the Defendants acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and the other members of the CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the Defendants' agents, servants and/or employees.

THE CONDUCT

8. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have in place an immutable timekeeping system to accurately record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual time these employees worked each day. DEFENDANT engaged in the unilateral modification of PLAINTIFF's and CALIFORNIA

CLASS Members' time records to avoid paying meal break penalties and proper wages to these employees. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they are under DEFENDANT's control. Specifically, DEFENDANT requires PLAINTIFF to work while clocked out during what is supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF is from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFF's off-duty meal break. Additionally, PLAINTIFF and CALIFORNIA CLASS Members clock out of DEFENDANT's timekeeping system, in order to perform additional work for DEFENDANT as required to meet DEFENDANT's job requirements. DEFENDANT's policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, is evidenced by DEFENDANT's business records.

9. State and federal law provides that employees must be paid overtime at one-and-one-half times their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members are compensated at an hourly rate plus incentive pay that is tied to specific elements of an employee's performance.

10. The second component of PLAINTIFF's and other CALIFORNIA CLASS Members' compensation is DEFENDANT's non-discretionary incentive program that paid PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their performance for DEFENDANT. The non-discretionary incentive program provided all employees paid on an hourly basis with incentive compensation when the employees met the various performance goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay overtime to PLAINTIFF and other CALIFORNIA CLASS Members, DEFENDANT failed to include the incentive compensation as part of the employees' "regular rate of pay" for purposes of calculating overtime pay. Management and supervisors described

the incentive program to potential and new employees as part of the compensation package. As a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA CLASS Members must be included in the "regular rate of pay." The failure to do so has resulted in a underpayment of overtime compensation to PLAINTIFF and other CALIFORNIA CLASS Members by DEFENDANT.

11. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty meal breaks and are not fully relieved of duty for their meal periods. PLAINTIFF and other CALIFORNIA CLASS Members are required from time to time to perform work as ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANT from time to time fails to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which these employees are required by DEFENDANT to work ten (10) hours of work. PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeit meal breaks without additional compensation and in accordance with DEFENDANT's corporate policy and practice.

12. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other CALIFORNIA CLASS Members are also required from time to time to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees are denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other CALIFORNIA CLASS Members are also not provided with one hour wages in lieu thereof. Additionally, the applicable California Wage Order requires employers to provide employees with off-duty rest periods, which the California Supreme Court defined as time during which an employee is relieved from all work related duties and free from employer control. In so doing, the Court held that the requirement under

California law that employers authorize and permit all employees to take rest period means that employers must relieve employees of all duties and relinquish control over how employees spend their time which includes control over the locations where employees may take their rest period. Employers cannot impose controls that prohibit an employee from taking a brief walk - five minutes out, five minutes back. Here, DEFENDANT's policy restricts PLAINTIFF and other CALIFORNIA CLASS Members from unconstrained walks and is unlawful based on DEFENDANT's rule which states PLAINTIFF and other CALIFORNIA CLASS Members cannot leave the work premises during their rest period.

13. During the CALIFORNIA CLASS PERIOD, DEFENDANT fails to accurately record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount of time these employees work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, meaning the time during which an employee was subject to the control of an employer, including all the time the employee was permitted or suffered to permit this work. DEFENDANT requires these employees to work off the clock without paying them for all the time they are under DEFENDANT's control. As such, DEFENDANT knew or should have known that PLAINTIFF and the other members of the CALIFORNIA CLASS are under compensated for all time worked. As a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeit time worked by working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime wage rates. To the extent that the time worked off the clock does not qualify for overtime premium payment, DEFENDANT fails to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

14. From time to time, DEFENDANT also fails to provide PLAINTIFF and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all

applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. Specifically, DEFENDANT violated Section 226 by failing to identify the correct rates of pay and number of hours worked, including for the "Dir. Lab 1.0""Dir. Lab 1.5.0 Dir. Lab 2.0""Undist. Lab 1.0""Undist. Lab 1.5""Undist. Lab 2.0" and "FLD Train 1.0" items of pay, which are wage payments. Aside, from the violations listed above in this paragraph, DEFENDANT fails to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq*. As a result, DEFENDANT from time to time provides PLAINTIFF and the other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

15. Specifically as to PLAINTIFF, DEFENDANT fails to provide all the legally required off-duty meal and rest breaks to him as required by the applicable Wage Order and Labor Code and failed to pay him all minimum and overtime wages due to him. DEFENDANT does not have a policy or practice which provided timely off-duty meal and rest breaks to PLAINTIFF and also fails to compensate PLAINTIFF for his missed meal and rest breaks. The nature of the work performed by the PLAINTIFF does not prevent him from being relieved of all of his duties for the legally required off-duty meal periods. As a result, DEFENDANT's failure to provide PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's business records.

16. Furthermore, specifically as to PLAINTIFF, DEFENDANT failed to properly maintain standard safety measures at job sites as well as on work Machinery. As such, PLAINTIFF was placed in a constant risk of harm while performing his job duties for DEFENDANT. In March of 2020, PLAINTIFF informed DEFENDANT about such safety issues, but to no avail. In or around March of 2020, and continuing through out the rest of PLAINTIFF's employment, PLAINTIFF engaged in protected activity by complaining to DEFENDANT of DEFENDANT's failure to maintain compliant safety standards, including, but not limited to, DEFENDANT's failure to maintain the safety of work machines on DEFENDANT's job sites, and DEFENDANT's insistence on jeopardizing public safety and worker safety in order to accommodate the best interests of DEFENDANT itself. As a direct

consequence of PLAINTIFF's complaints to DEFENDANT, DEFENDANT retaliated against PLAINTIFF by removing him from the job site and demoting him to a helper position from the mechanic position which resulted in lost wages. The amount in controversy for PLAINTIFF individually does not exceed the sum or value of $75,000.

JURISDICTION AND VENUE

17. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

18. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities in this County and/or conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

THE CALIFORNIA CLASS

19. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who are or previously were employed by DEFENDANT in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars ($5,000,000.00).

20. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted

accordingly.

21. DEFENDANT, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to record all meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work.

22. DEFENDANT has the legal burden to establish that each and every CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as required by California laws. The DEFENDANT, however, as a matter of policy and procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to ensure that each and every CALIFORNIA CLASS Member is paid as required by law. This common business practice is applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.* (the "UCL") as causation, damages, and reliance are not elements of this claim.

23. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA CLASS Members is impracticable.

24. DEFENDANT violated the rights of the CALIFORNIA CLASS under California law by:

(a) Committing an act of unfair competition in violation of , Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having in place company policies, practices and procedures that failed to record and pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked, including minimum wages owed and overtime wages owed for work performed by these employees; and,

(b) Committing an act of unfair competition in violation of the UCL, by failing to provide the PLAINTIFF and the other members of the CALIFORNIA CLASS with the legally required meal and rest periods.

25. This Class Action meets the statutory prerequisites for the maintenance of a Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

(a) The persons who comprise the CALIFORNIA CLASS are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;

(b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA CLASS will apply to every member of the CALIFORNIA CLASS;

(c) The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of the CALIFORNIA CLASS, was classified as a non-exempt employee paid on an hourly basis who was subjected to the DEFENDANT's deceptive practice and policy which failed to provide the legally required meal and rest periods to the CALIFORNIA CLASS and thereby underpaid compensation to PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFF and the members of the CALIFORNIA CLASS were and are similarly or identically harmed by the same unlawful, deceptive and unfair misconduct engaged in by DEFENDANT; and,

(d) The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA CLASS, and has retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFF and the members of the CALIFORNIA CLASS that would

make class certification inappropriate. Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all CALIFORNIA CLASS Members.

26. In addition to meeting the statutory prerequisites to a Class Action, this action is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

(a) Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:

1) Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,

2) Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

(b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT failed to pay all wages due to members of the CALIFORNIA CLASS as required by law;

1) With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFF seeks declaratory relief holding that the DEFENDANT's policy and practices constitute unfair competition, along with declaratory

relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;

(c) Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

1) The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:

A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,

B. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

3) In the context of wage litigation because a substantial number of

individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,

4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

27. This Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

(a) The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT's employment practices are applied with respect to the CALIFORNIA CLASS;

(b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;

(c) The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;

(d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;

(e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA CLASS;

(f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;

(g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA CLASS as a whole;

(h) The members of the CALIFORNIA CLASS are readily ascertainable from the business records of DEFENDANT; and,

(i) Class treatment provides manageable judicial treatment calculated to bring a efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA CLASS.

28. DEFENDANT maintains records from which the Court can ascertain and identify by job title each of DEFENDANT's employees who have been intentionally subjected to DEFENDANT's company policy, practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include any additional job titles of similarly situated employees when they have been identified.

THE CALIFORNIA LABOR SUB-CLASS

29. PLAINTIFF further brings the Second, Third, Fourth, Fifth and Sixth causes Action on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California (the "CALIFORNIA LABOR SUB-CLASS") at any time during the period three (3) years prior to

the filing of the complaint and ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars ($5,000,000.00).

30. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate compensation for the time worked by PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to these employees, even though DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permitted or suffered to permit this work. DEFENDANT has denied these CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

31. DEFENDANT maintains records from which the Court can ascertain and identify by name and job title, each of DEFENDANT's employees who have been intentionally subjected to DEFENDANT's company policy, practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint to include any additional job titles of similarly situated employees when they have been identified.

32. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable.

33. Common questions of law and fact exist as to members of the CALIFORNIA LABOR SUB-CLASS, including, but not limited, to the following:

(a) Whether DEFENDANT unlawfully failed to correctly calculate and pay compensation due to members of the CALIFORNIA LABOR SUB-CLASS for missed meal and rest breaks in violation of the California

Labor Code and California regulations and the applicable California Wage Order;

(b) Whether DEFENDANT failed to provide the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;

(c) Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;

(d) The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and,

(e) Whether DEFENDANT's conduct was willful.

34. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS under California law by:

(a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;

(b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

(c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the corresponding correct amount of wages earned by the employee;

(d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required off-duty rest breaks;

(e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment; and,

(f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members with necessary expenses incurred in the discharge of their job duties.

35. This Class Action meets the statutory prerequisites for the maintenance of a Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

(a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;

(b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply to every member of the CALIFORNIA LABOR SUB-CLASS;

(c) The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF, like all the other members of the CALIFORNIA LABOR SUB-CLASS, was a non-exempt employee paid on an hourly basis who was subjected to the DEFENDANT's practice and policy which failed to pay the correct amount of wages due to the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or

identically harmed by the same unlawful, deceptive, and unfair misconduct engaged in by DEFENDANT; and,

(d) The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

36. In addition to meeting the statutory prerequisites to a Class Action, this action is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

(a) Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA LABOR SUB-CLASS will create the risk of:

1) Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA LABOR SUB-CLASS; or,

2) Adjudication with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

(b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide relief with respect

to the CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT fails to pay all wages due. Including the correct wages for all time worked by the members of the CALIFORNIA LABOR SUB-CLASS as required by law;

(c) Common questions of law and fact predominate as to the members of the CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California Law as listed above, and predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

1) The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:

A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,

B. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or

impede their ability to protect their interests;

3) In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,

4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

37. This Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

(a) The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;

(b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;

(c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;

(d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS

Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;

(e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;

(f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

(g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;

(h) The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who worked for DEFENDANT in California at any time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

(i) Class treatment provides manageable judicial treatment calculated to bring a efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA LABOR SUB-CLASS.

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FIRST CAUSE OF ACTION

For Unlawful Business Practices

[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)

38. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

39. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof. Code § 17021.

40. California Business & Professions Code §§ 17200, *et seq.* (the "UCL") defines unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

> Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

Cal. Bus. & Prof. Code § 17203.

41. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a business practice which violates California law, including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations and the California Labor Code including Sections 204, 210, 226.7, 510, 512, 1194, 1197, 1197.1 & 1198, for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

42. By the conduct alleged herein, DEFENDANT's practices were unlawful and unfair in that these practices violate public policy, were immoral, unethical, oppressive, unscrupulous or substantially injurious to employees, and were without valid justification or

utility for which this Court should issue equitable and injunctive relief pursuant to Section 17203 of the California Business & Professions Code, including restitution of wages wrongfully withheld.

43. By the conduct alleged herein, DEFENDANT's practices were deceptive and fraudulent in that DEFENDANT's policy and practice failed to provide the legally mandated meal and rest periods, the required amount of compensation for missed meal and rest periods and overtime and minimum wages owed, failed to timely pay wages, and failed to reimburse al necessary business expenses incurred, due to a business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

44. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the other members of the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANT.

45. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and deceptive in that DEFENDANT's policies, practices and procedures failed to provide all legally required meal breaks to PLAINTIFF and the other members of the CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

46. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each workday in which a second off-duty meal period was not timely provided for each ten (10) hours of work.

47. PLAINTIFF further demands on behalf of himself and each member of the CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off duty paid rest period was not timely provided as required by law.

48. By and through the unlawful and unfair business practices described herein, DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the other members of the CALIFORNIA CLASS, including earned wages for all time worked, and has deprived them of valuable rights and benefits guaranteed by law and contract, all to the detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete against competitors who comply with the law.

49. All the acts described herein as violations of, among other things, the Industrial Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

50. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to, and do, seek such relief as may be necessary to restore to them the money and property which DEFENDANT has acquired, or of which PLAINTIFF and the other members of the CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair business practices, including earned but unpaid wages for all time worked.

51. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to, and do, seek a declaration that the described business practices are unlawful, unfair and deceptive, and that injunctive relief should be issued restraining DEFENDANT from engaging in any unlawful and unfair business practices in the future.

52. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic harm unless DEFENDANT is restrained from continuing to engage in these unlawful and unfair business practices.

SECOND CAUSE OF ACTION

For Failure To Pay Minimum Wages

[Cal. Lab. Code §§ 1194, 1197 and 1197.1]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

53. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

54. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

55. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

56. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed in unlawful.

57. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including minimum wage compensation and interest thereon, together with the costs of suit.

58. DEFENDANT maintained a wage practice of paying PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they work. As set forth herein, DEFENDANT's policy and practice was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS.

59. DEFENDANT's unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a policy and practice that denies accurate compensation to PLAINTIFF and the

other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.

60. In committing these violations of the California Labor Code, DEFENDANT inaccurately calculated the correct time worked and consequently underpaid the actual time worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.

61. As a direct result of DEFENDANT's unlawful wage practices as alleged herein, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive the correct minimum wage compensation for their time worked for DEFENDANT.

62. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members to work without paying them for all the time they were under DEFENDANT's control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they were entitled to, constituting a failure to pay all earned wages.

63. By virtue of DEFENDANT's unlawful failure to accurately pay all earned compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS for the true time they worked, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic injury in amounts which are presently unknown to them and which will be ascertained according to proof at trial.

64. DEFENDANT knew or should have known that PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of company policy, practice and procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

65. In performing the acts and practices herein alleged in violation of California labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all time worked and provide them with the requisite compensation, DEFENDANT acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard for their legal rights, or the consequences to them, and with the despicable intent of depriving them of their property and legal rights, and otherwise causing them injury in order to increase company profits at the expense of these employees.

66. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable statutes. To the extent minimum wage compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

THIRD CAUSE OF ACTION

For Failure To Pay Overtime Compensation

[Cal. Lab. Code §§ 510, *et seq.*]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

67. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though full set forth herein, the prior paragraphs of this Complaint.

68. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees for all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

69. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

70. Cal. Lab. Code § 510 further provides that employees in California shall not be employed more than eight (8) hours per workday and more than forty (40) hours per workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

71. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including minimum wage and overtime compensation and interest thereon, together with the costs of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

72. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by DEFENDANT to work for DEFENDANT and were not paid for all the time they worked, including overtime work.

73. DEFENDANT's unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a policy and practice that failed to accurately record overtime worked by PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and denied accurate compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

74. In committing these violations of the California Labor Code, DEFENDANT inaccurately recorded overtime worked and consequently underpaid the overtime worked by PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.

75. As a direct result of DEFENDANT's unlawful wage practices as alleged herein, the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive full compensation for overtime worked.

76. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from the overtime requirements of the law. None of these exemptions are applicable to the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were not subject to a valid collective bargaining agreement that would preclude the causes of action contained herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of himself and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable, non-waiveable rights provided by the State of California.

77. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for overtime worked that they are entitled to, constituting a failure to pay all earned wages..

78. DEFENDANT failed to accurately pay the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed to accurately record and pay as evidenced by DEFENDANT's business records and witnessed by employees.

79. By virtue of DEFENDANT's unlawful failure to accurately pay all earned

compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS for the true amount of time they worked, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic injury in amounts which are presently unknown to them and which will be ascertained according to proof at trial.

80. DEFENDANT knew or should have known that PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of company policy, practice and procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

81. In performing the acts and practices herein alleged in violation of California labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked and provide them with the requisite overtime compensation, DEFENDANT acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter disregard for their legal rights, or the consequences to them, and with the despicable intent of depriving them of their property and legal rights, and otherwise causing them injury in order to increase company profits at the expense of these employees.

82. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS therefore request recovery of all overtime wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable statutes. To the extent minimum and/or overtime compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein

was willful, intentional and not in good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

FOURTH CAUSE OF ACTION

For Failure to Provide Required Meal Periods

[Cal. Lab. Code §§ 226.7 & 512]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

83. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

84. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records from time to time. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period in some workdays in which these employees were required by DEFENDANT to work ten (10) hours of work from time to time. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice.

85. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable

IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members who were not provided a meal period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that a meal period was not provided.

86. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

FIFTH CAUSE OF ACTION

For Failure to Provide Required Rest Periods

[Cal. Lab. Code §§ 226.7 & 512]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

87. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

88. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from time to time required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees from time to time were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

89. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members who were not provided a rest period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that rest period was not provided.

90. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

SIXTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

91. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

92. Cal. Labor Code § 226 provides that an employer must furnish employees with an "accurate itemized" statement in writing showing:

> (1) gross wages earned,
> (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
> (3) the number of piecerate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
> (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
> (5) net wages earned,
> (6) the inclusive dates of the period for which the employee is paid,
> (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
> (8) the name and address of the legal entity that is the employer, and
> (9) all applicable hourly rates in effect during the pay period and the corresponding

number of hours worked at each hourly rate by the employee.

93. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements which failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. Specifically, DEFENDANT violated Section 226 by failing to identify the correct rates of pay and number of hours worked, including for the "Dir. Lab 1.0""Dir. Lab 1.5.0 Dir. Lab 2.0""Undist. Lab 1.0""Undist. Lab 1.5""Undist. Lab 2.0" and "FLD Train 1.0" items of pay, which are wage payments. Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq*. As a result, DEFENDANT from time to time provided PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal. Lab. Code § 226.

94. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meal and rest breaks and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars ($50.00) for the initial pay period in which the violation occurred, and one hundred dollars ($100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no event more than four thousand dollars ($4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

SEVENTH CAUSE OF ACTION

Retaliation

[Violation of Cal. Lab. Code § 1102.5, *et seq.*]

(By PLAINTIFF Against All Defendants)

95. PLAINTIFF realleges and incorporates by reference, as though fully set forth herein, the prior paragraphs of this Complaint.

96. At all relevant times, Labor Code section 1102.5 was in effect and was binding on DEFENDANT. This statute prohibits DEFENDANT from retaliating against any employee, including PLAINTIFF, for raising complaints of illegality and/or belief that the employee may disclose illegality.

97. DEFENDANT failed to properly maintain standard safety measures at job sites as well as on work Machinery. As such, PLAINTIFF was placed in a constant risk of harm while performing his job duties for DEFENDANT. In March of 2020, PLAINTIFF informed DEFENDANT about such safety issues, but to no avail. In or around March of 2020, and continuing through out the rest of PLAINTIFF's employment, PLAINTIFF engaged in protected activity by complaining to DEFENDANT of DEFENDANT's failure to maintain compliant safety standards, including, but not limited to, DEFENDANT's failure to maintain the safety of work machines on DEFENDANT's job sites, and DEFENDANT's insistence on jeopardizing public safety and worker safety in order to accommodate the best interests of DEFENDANT itself. As a direct consequence of PLAINTIFF's complaints to DEFENDANT, DEFENDANT retaliated against PLAINTIFF by removing him from the job site and demoting him to a helper position from the mechanic position which resulted in lost wages. PLAINTIFF raised complaints of illegality while he worked for DEFENDANT and was believed to be willing to raise complaints, and DEFENDANT retaliated against him by taking adverse employment actions, including removal form the job site at which he worked and job demotion, against him.

98. As a proximate result of DEFENDANT'S willful, knowing, and intentional violation(s) of Labor Code section 1102.5, PLAINTIFF has suffered and continues to suffer

humiliation, emotional distress, and mental and physical pain and anguish, all to his damage in a sum according to proof.

99. As a result of DEFENDANT'S adverse employment actions against PLAINTIFF, PLAINTIFF has suffered general and special damages in sums according to proof.

100. DEFENDANT'S misconduct was committed intentionally, in a malicious, oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages against defendants.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

   A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

   B) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;

   C) An order requiring DEFENDANT to pay all wages and all sums unlawfuly withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and,

   D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

   A) That the Court certify the Second, Third, Fourth, Fifth and Sixth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

   B) Compensatory damages, according to proof at trial, including compensatory

damages for minimum and overtime compensation due PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;

C) The greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars ($4,000), and an award of costs for violation of Cal. Lab. Code § 226;

D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order; and,

E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197.

3. On behalf of PLAINTIFF for the Seventh Cause of Action:

A) For all special damages which were sustained as a result of DEFENDANT's conduct, including, but not limited to, back pay, front pay, lost compensation and job benefits that PLAINTIFF would have received but for the retaliatory practices of DEFENDANT; and,

B) For all exemplary damages, according to proof, which were sustained as a result of DEFENDANT's conduct.

4. On all claims:

A) An award of interest, including prejudgment interest at the legal rate;

B) Such other and further relief as the Court deems just and equitable; and,

C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §226, §1194, and/or §2802.

Dated: November 13, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: 
Norman B. Blumenthal
Attorneys for Plaintiff

DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: November 13, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff

EXHIBIT B

SUM-100

SUMMONS
(CITACION JUDICIAL)

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

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
KONE INC., a Corporation; and DOES 1 through 50, inclusive,

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
MATTHEW LUCCHESE, an individual, on behalf of himself and on behalf of all persons similarly situated,

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

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

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (*www.lawhelpcalifornia.org*), the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of $10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. *¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.*

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

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de $10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

CASE NUMBER (Número del Caso): CGC-20-588229

The name and address of the court is:
(El nombre y dirección de la corte es):
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO
Central
400 McAllister St., San Francisco, CA 94102-4514

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):
Norman Blumenthal (Bar # 68687)
Blumenthal Nordrehaug Bhowmik De Blouw LLP
2255 Calle Clara, La Jolla, CA 92037
Fax No.: (858) 551-1232
Phone No.: (858) 551-1223

DATE: DEC 8 2020 (*Fecha*)
Clerk, by (*Secretario*) ANNA J. THORNES CLERK OF THE COURT, Deputy (*Adjunto*)

(For proof of service of this summons, use Proof of Service of Summons *(form POS-010).)*
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, *(POS-010)).*

[SEAL] SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN FRANCISCO EUREKA

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)*: KONE INC.
   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)*: 01/06/2021

BY FAX

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Norman B. Blumenthal (Bar # 68687)
Kyle Nordrehaug (Bar # 205975)
Blumenthal Nordrehaug Bhowmik De Blouw LLP
2255 Calle Clara, La Jolla, CA 92037
TELEPHONE NO.: (858) 551-1223 FAX NO.: (858) 551-1232
ATTORNEY FOR (Name): Plaintiff Matthew Lucchese

FOR COURT USE ONLY

FILED
Superior Court of California
County of San Francisco
NOV 16 2020
CLERK OF THE COURT
BY: Amalie Torres
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO
STREET ADDRESS: 400 McAllister St.
MAILING ADDRESS: 400 McAllister St.
CITY AND ZIP CODE: San Francisco 94102-4514
BRANCH NAME: Central

CASE NAME:
MATTHEW LUCCHESE v. KONE INC.

CASE NUMBER: CGC-20-588225

JUDGE:
DEPT:

CIVIL CASE COVER SHEET

[X] **Unlimited** (Amount demanded exceeds $25,000) [ ] **Limited** (Amount demanded is $25,000 or less)

Complex Case Designation

[ ] Counter [ ] Joinder

Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

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

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

Auto Tort
- [ ] Auto (22)
- [ ] Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
- [ ] Asbestos (04)
- [ ] Product liability (24)
- [ ] Medical malpractice (45)
- [ ] Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort
- [ ] Business tort/unfair business practice (07)
- [ ] Civil rights (08)
- [ ] Defamation (13)
- [ ] Fraud (16)
- [ ] Intellectual property (19)
- [ ] Professional negligence (25)
- [ ] Other non-PI/PD/WD tort (35)

Employment
- [ ] Wrongful termination (36)
- [X] Other employment (15)

Contract
- [ ] Breach of contract/warranty (06)
- [ ] Rule 3.740 collections (09)
- [ ] Other collections (09)
- [ ] Insurance coverage (18)
- [ ] Other contract (37)

Real Property
- [ ] Eminent domain/Inverse condemnation (14)
- [ ] Wrongful eviction (33)
- [ ] Other real property (26)

Unlawful Detainer
- [ ] Commercial (31)
- [ ] Residential (32)
- [ ] Drugs (38)

Judicial Review
- [ ] Asset forfeiture (05)
- [ ] Petition re: arbitration award (11)
- [ ] Writ of mandate (02)
- [ ] Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)
- [ ] Antitrust/Trade regulation (03)
- [ ] Construction defect (10)
- [ ] Mass tort (40)
- [ ] Securities litigation (28)
- [ ] Environmental/Toxic tort (30)
- [ ] Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment
- [ ] Enforcement of judgment (20)

Miscellaneous Civil Complaint
- [ ] RICO (27)
- [ ] Other complaint *(not specified above)* (42)

Miscellaneous Civil Petition
- [ ] Partnership and corporate governance (21)
- [ ] Other petition *(not specified above)* (43)

2. This case [X] 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. [ ] Large number of separately represented parties
   b. [X] Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   c. [X] Substantial amount of documentary evidence
   d. [X] Large number of witnesses
   e. [ ] Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
   f. [ ] Substantial postjudgment judicial supervision
3. Remedies sought *(check all that apply)*: a. [X] monetary b. [X] nonmonetary; declaratory or injunctive relief c. [X] punitive
4. Number of causes of action *(specify)*: SEVEN (7)
5. This case [X] 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: November 13 2020

Norman Blumenthal
(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.

Form Adopted for Mandatory Use
Judicial Council of California
CM-010 [Rev. July 1, 2007]

CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 2.30, 3.220, 3.400–3.403, 3.740;
Cal. Standards of Judicial Administration, std. 3.10
www.courtinfo.ca.gov
LexisNexis® Automated California Judicial Council Forms

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

NOTICE TO PLAINTIFF

A Case Management Conference is set for:

DATE: **APR-21-2021**

TIME: **10:30AM**

PLACE: **Department 610**
400 McAllister Street
San Francisco, CA 94102-3680

All parties must appear and comply with Local Rule 3.

CRC 3.725 requires the filing and service of a case management statement form CM-110 no later than 15 days before the case management conference. However, it would facilitate the issuance of a case management order **without an appearance** at the case management conference if the case management statement is filed and served twenty-five days before the case management conference.

Plaintiff must serve a copy of this notice upon each party to this action with the summons and complaint. Proof of service subsequently filed with this court shall so state. **This case is eligible for electronic filing and service per Local Rule 2.11. For more information, please visit the Court's website at www.sfsuperiorcourt.org under Online Services.**

[DEFENDANTS: Attending the Case Management Conference does not take the place of filing a written response to the complaint. You must file a written response with the court within the time limit required by law. See Summons.]

ALTERNATIVE DISPUTE RESOLUTION REQUIREMENTS

IT IS THE POLICY OF THE SUPERIOR COURT THAT EVERY CIVIL CASE SHOULD PARTICIPATE IN MEDIATION, ARBITRATION, NEUTRAL EVALUATION, AN EARLY SETTLEMENT CONFERENCE, OR OTHER APPROPRIATE FORM OF ALTERNATIVE DISPUTE RESOLUTION PRIOR TO A TRIAL.

(SEE LOCAL RULE 4)

Plaintiff **must** serve a copy of the Alternative Dispute Resolution (ADR) Information Package on each defendant along with the complaint. (CRC 3.221.) The ADR package may be accessed at www.sfsuperiorcourt.org/divisions/civil/dispute-resolution or you may request a paper copy from the filing clerk. All counsel must discuss ADR with clients and opposing counsel and provide clients with a copy of the ADR Information Package prior to filing the Case Management Statement.

Superior Court Alternative Dispute Resolution Administrator
400 McAllister Street, Room 103-A
San Francisco, CA 94102
(415) 551-3869

See Local Rules 3.3, 6.0 C and 10 B re stipulation to judge pro tem.

Superior Court of California, County of San Francisco
Alternative Dispute Resolution
Information Package

The plaintiff must serve a copy of the ADR Information Package on each defendant along with the complaint. Cross-complainants must serve a copy of the ADR Information Package on any new parties to the action together with the cross-complaint. (CRC 3.221(c).)

WHAT IS ADR?

Alternative Dispute Resolution (ADR) is the term used to describe the various options available for settling a dispute without a trial. There are many different ADR processes, the most common forms of which are mediation, arbitration and settlement conferences. In ADR, trained, impartial people decide disputes or help parties decide disputes themselves. They can help parties resolve disputes without having to go to trial.

WHY CHOOSE ADR?

It is the policy of the Superior Court that every long cause, non-criminal, non-juvenile case should participate either in an early settlement conference, mediation, arbitration, early neutral evaluation or some other alternative dispute resolution process prior to trial. (Local Rule 4.)

ADR can have a number of advantages over traditional litigation:

- **ADR can save time.** A dispute often can be resolved in a matter of months, even weeks, through ADR, while a lawsuit can take years.
- **ADR can save money,** including court costs, attorney fees, and expert fees.
- **ADR encourages participation.** The parties may have more opportunities to tell their story than in court and may have more control over the outcome of the case.
- **ADR is more satisfying.** For all the above reasons, many people participating in ADR have reported a high degree of satisfaction.

Electing to participate in an ADR process does not stop the time period to respond to a complaint or cross-complaint

WHAT ARE THE ADR OPTIONS?

The San Francisco Superior Court offers different types of ADR processes for general civil matters. The programs are described below:

1) MANDATORY SETTLEMENT CONFERENCES

Settlement conferences are appropriate in any case where settlement is an option. The goal of settlement conferences is to provide participants an opportunity to reach a mutually acceptable settlement that resolves all or part of a dispute. Mandatory settlement conferences are ordered by the court and are often held near the date a case is set for trial, although they may be held earlier if appropriate. A party may elect to apply to the Presiding Judge for a specially set mandatory settlement conference by filing an ex parte application. See Local Rule 5.0 for further instructions. Upon approval by the Presiding Judge, the court will schedule the conference and assign a settlement conference officer.

2) MEDIATION

Mediation is a voluntary, flexible, and confidential process in which a neutral third party facilitates negotiations. The goal of mediation is to reach a mutually satisfactory agreement that resolves all or part of a dispute after exploring the interests, needs, and priorities of the parties in light of relevant evidence and the law.

(A) MEDIATION SERVICES OF THE BAR ASSOCIATION OF SAN FRANCISCO (BASF), in cooperation with the Superior Court, is designed to help civil litigants resolve disputes before they incur substantial costs in litigation. While it is best to utilize the program at the outset of litigation, parties may use the program at any time while a case is pending. Experienced professional mediators work with parties to arrive at a mutually agreeable solution. The mediators provide one hour of preparation time and the first two hours of mediation time. Mediation time beyond that is charged at the mediator's hourly rate. BASF pre-screens all mediators based upon strict educational and experience requirements. Parties can select their mediator from the panels at www.sfbar.org/mediation or BASF can assist with mediator selection. BASF staff handles conflict checks and full case management. The success rate for the program is 67% and the satisfaction rate is 99%. BASF charges an administrative fee of $295 per party. The hourly mediator fee beyond the first three hours will vary depending on the mediator selected. Waivers of the fee are available to those who qualify. For more information, call 415-982-1600 or email adr@sfbar.org.

(B) JUDICIAL MEDIATION PROGRAM provides mediation with a San Francisco Superior Court judge for civil cases, which include but are not limited to, personal injury, construction defect, employment, professional malpractice, insurance coverage, toxic torts and industrial accidents. Parties may utilize this program at any time throughout the litigation process. Parties interested in judicial mediation should file a Stipulation to Judicial Mediation indicating a joint request for inclusion in the program. A preference for a specific judge may be indicated. The court will coordinate assignment of cases for the program. There is no charge. Information about the Judicial Mediation Program may be found by visiting the ADR page on the court's website: www.sfsuperiorcourt.org/divisions/civil/dispute-resolution

(C) PRIVATE MEDIATION: Although not currently a part of the court's ADR program, parties may select any private mediator of their choice. The selection and coordination of private mediation is the responsibility of the parties. Parties may find mediators and organizations on the Internet. The cost of private mediation will vary depending on the mediator selected.

(D) COMMUNITY BOARDS MEDIATION SERVICES: Mediation services are offered by Community Boards (CB), a nonprofit resolution center, under the Dispute Resolution Programs Act. CB utilizes a three-person panel mediation process in which mediators work as a team to assist the parties in reaching a shared solution. To the extent possible, mediators are selected to reflect the demographics of the disputants. CB has a success rate of 85% for parties reaching a resolution and a consumer satisfaction rate of 99%. The fee is $45-$100 to open a case, and an hourly rate of $180 for complex cases. Reduction and waiver of the fee are available. For more information, call 415-920-3820 or visit communityboards.org.

3) ARBITRATION

An arbitrator is a neutral attorney who presides at a hearing where the parties present evidence through exhibits and testimony. The arbitrator applies the law to the facts of the case and makes an award based upon the merits of the case.

(A) JUDICIAL ARBITRATION

When the court orders a case to arbitration it is called "judicial arbitration". The goal of arbitration is to provide parties with an adjudication that is earlier, faster, less formal, and usually less expensive than a trial. Pursuant to CCP 1141.11, all civil actions in which the amount in controversy is $50,000 or less, and no party seeks equitable relief, shall be ordered to arbitration. (Upon stipulation of all parties, other civil matters may be submitted to judicial arbitration.) An arbitrator is chosen from the court's arbitration panel. Arbitrations are generally held between 7 and 9 months after a complaint has been filed. Judicial arbitration is not binding unless all parties agree to be bound by the arbitrator's decision. Any party may request a trial within 60 days after the arbitrator's award has been filed. Local Rule 4.1 allows for mediation in lieu of judicial arbitration, so long as the parties file a stipulation to mediate after being assigned to judicial arbitration. There is no cost to the parties for judicial arbitration.

(B) PRIVATE ARBITRATION

Although not currently a part of the court's ADR program, civil disputes may also be resolved through private arbitration. Here, the parties voluntarily consent to arbitration. If all parties agree, private arbitration may be binding and the parties give up the right to judicial review of the arbitrator's decision. In private arbitration, the parties select a private arbitrator and are responsible for paying the arbitrator's fees.

HOW DO I PARTICIPATE IN ADR?

Litigants may elect to participate in ADR at any point in a case. General civil cases may voluntarily enter into the court's or court-affiliated ADR programs by any of the following means:

- Filing a Stipulation to ADR: Complete and file the Stipulation form (attached to this packet and available on the court's website); or
- Indicating your ADR preferences on the Case Management Statement (available on the court's website); or
- Contacting the court's ADR Department (see below), the Bar Association of San Francisco's ADR Services, or Community Boards.

For more information about ADR programs or dispute resolution alternatives, contact:

Superior Court Alternative Dispute Resolution
400 McAllister Street, Room 103-A, San Francisco, CA 94102
415-551-3869
Or, visit the court's ADR page at www.sfsuperiorcourt.org/divisions/civil/dispute-resolution

TO PARTICIPATE IN ANY OF THE COURT'S ADR PROGRAMS, PLEASE COMPLETE AND FILE THE ATTACHED STIPULATION TO ADR AND SUBMIT IT TO THE COURT. YOU MUST ALSO CONTACT BASF OR COMMUNITY BOARDS TO ENROLL IN THEIR LISTED PROGRAMS. THE COURT DOES NOT FORWARD COPIES OF STIPULATIONS TO BASF OR COMMUNITY BOARDS.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):	FOR COURT USE ONLY
ATTORNEY FOR (Name):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO 400 McAllister Street San Francisco, CA 94102-4514	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION (ADR)	CASE NUMBER: _____ **DEPARTMENT 610**

1) The parties hereby stipulate that this action shall be submitted to the following ADR process:

☐ **Mediation Services of the Bar Association of San Francisco (BASF)** - Experienced professional mediators, screened and approved, provide one hour of preparation and the first two hours of mediation time for a BASF administrative fee of $295 per party. Mediation time beyond that is charged at the mediator's hourly rate. Waivers of the administrative fee are available to those who qualify. BASF assists parties with mediator selection, conflicts checks and full case management. www.sfbar.org/mediation

☐ **Mediation Services of Community Boards (CB)** – Service in conjunction with DRPA, CB provides case development and one three-hour mediation session. Additional sessions may be scheduled. The cost is $45-$100 to open a case, and an hourly rate of $180 for complex cases. Reduction and waiver of the fee are available to those who qualify. communityboards.org

☐ **Private Mediation** - Mediators and ADR provider organizations charge by the hour or by the day, current market rates. ADR organizations may also charge an administrative fee. Parties may find experienced mediators and organizations on the Internet.

☐ **Judicial Arbitration** - Non-binding arbitration is available to cases in which the amount in controversy is $50,000 or less and no equitable relief is sought. The court appoints a pre-screened arbitrator who will issue an award. There is no fee for this program. www.sfsuperiorcourt.org/divisions/civil/dispute-resolution

☐ **Judicial Mediation** - The Judicial Mediation program offers mediation in civil litigation with a San Francisco Superior Court judge familiar with the area of the law that is the subject of the controversy. There is no fee for this program. www.sfsuperiorcourt.org/divisions/civil/dispute-resolution

Judge Requested (see list of Judges currently participating in the program): _____

Date range requested for Judicial Mediation (from the filing of stipulation to Judicial Mediation):

☐ 30-90 days ☐ 90-120 days ☐ Other (please specify) _____

☐ **Other ADR process** (describe) _____

2) The parties agree that the ADR Process shall be completed by (date): _____

3) Plaintiff(s) and Defendant(s) further agree as follows:

_____

_____
Name of Party Stipulating

_____
Name of Party or Attorney Executing Stipulation

_____
Signature of Party or Attorney

☐ Plaintiff ☐ Defendant ☐ Cross-defendant

_____
Name of Party Stipulating

_____
Name of Party or Attorney Executing Stipulation

_____
Signature of Party or Attorney

☐ Plaintiff ☐ Defendant ☐ Cross-defendant

_____
Signature of Additional Attorneys

EXHIBIT C

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
Norman B. Blumenthal (State Bar #068687)
Kyle R. Nordrehaug (State Bar #205975)
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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

MATTHEW LUCCHESE and JULIO CHAVEZ, individuals, on behalf of themselves and on behalf of all persons similarly situated, Plaintiff, vs. KONE INC., a Corporation; and DOES 1 through 50, Inclusive, Defendants.	CASE No. **CGC-20-588225** **CLASS ACTION** **PROOF OF SERVICE** Action Filed: November 16, 2020

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I, Victoria B. Rivapalacio, am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 2255 Calle Clara, La Jolla, California 92037.

On January 12, 2021, I served the document(s) described as:

1. FIRST AMENDED CLASS ACTION COMPLAINT

X (BY MAIL): I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at San Diego, California. I am readily familiar with this firm's business practice for collection and processing of correspondence for mailing with the U.S. Postal Service pursuant to which practice the correspondence will be deposited with the U.S. Postal Service this same day in the ordinary course of business (C.C.P. Section 10139a); 2015.5):

Kone Inc., a Corporation
c/o CSC-Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

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

Executed on January 12, 2021, at La Jolla, California.

Victoria B. Rivapalacio

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
Norman B. Blumenthal (State Bar #068687)
Kyle R. Nordrehaug (State Bar #205975)
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Website: www.bamlawca.com

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

MATTHEW LUCCHESE and JULIO CHAVEZ, individuals, on behalf of themselves and on behalf of all persons similarly situated,

Plaintiff,

vs.

KONE INC., a Corporation ; and DOES 1 through 50, inclusive,

Defendants.

Case No. CGC-20-588225

FIRST AMENDED CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq*;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and,
8. RETALIATION IN VIOLATION OF LABOR CODE § 1102.5, *et seq.*

DEMAND FOR A JURY TRIAL

Plaintiff Matthew Lucchese and Julio Chavez ("PLAINTIFFS"), individuals, on behalf of themselves and all other similarly situated current and former employees alleges on information and belief, except for their own acts and knowledge which are based on personal knowledge, the following:

THE PARTIES

1. Defendant Kone Inc. ("DEFENDANT") is a corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California.

2. DEFENDANT provides elevators, escalators and automatic building doors, as well as solutions for maintenance and modernization to add value to buildings throughout their life cycle.

3. Plaintiff Lucchese has been employed by DEFENDANT in California since June of 2016 and has been at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

4. Plaintiff Chavez was employed by DEFENDANT in California from April of 2019 until November of 2020 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

5. PLAINTIFFS bring this Class Action on behalf of themselves and a California class, defined as all individuals who are or previously were employed by DEFENDANT in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars ($5,000,000.00).

6. PLAINTIFFS bring this Class Action on behalf of themselves and a

CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT's policy and practice which failed to lawfully compensate these employees. DEFENDANT's policy and practice alleged herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT retained and continues to retain wages due PLAINTIFFS and the other members of the CALIFORNIA CLASS. PLAINTIFFS and the other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the named PLAINTIFFS and the other members of the CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and current unlawful conduct, and all other appropriate legal and equitable relief.

7. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFFS who therefore sue these Defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFFS are informed and believes, and based upon that information and belief alleges, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

8. The agents, servants and/or employees of the Defendants and each of them acting on behalf of the Defendants acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally liable to PLAINTIFFS and the other members of the CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the Defendants' agents, servants and/or employees.

THE CONDUCT

9. During the CALIFORNIA CLASS PERIOD, DEFENDANT did not have in place an immutable timekeeping system to accurately record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the actual time these employees worked each day. DEFENDANT engaged in the unilateral modification of PLAINTIFFS' and CALIFORNIA CLASS Members' time records to avoid paying meal break penalties and proper wages to these employees. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFFS and CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFFS and CALIFORNIA CLASS Members to work without paying them for all the time they are under DEFENDANT's control. Specifically, DEFENDANT requires PLAINTIFFS to work while clocked out during what is supposed to be PLAINTIFFS' off-duty meal break. PLAINTIFFS are from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFFS' off-duty meal break. Additionally, PLAINTIFFS and CALIFORNIA CLASS Members clock out of DEFENDANT's timekeeping system, in order to perform additional work for DEFENDANT as required to meet DEFENDANT's job requirements. DEFENDANT's policy and practice not to pay PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked, is evidenced by DEFENDANT's business records.

10. State and federal law provides that employees must be paid overtime at one-and-one-half times their "regular rate of pay." PLAINTIFFS and other CALIFORNIA CLASS Members are compensated at an hourly rate plus incentive pay that is tied to specific elements of an employee's performance.

11. The second component of PLAINTIFFS' and other CALIFORNIA CLASS Members' compensation is DEFENDANT's non-discretionary incentive program that paid PLAINTIFFS and other CALIFORNIA CLASS Members incentive wages based on their performance for DEFENDANT. The non-discretionary incentive program provided all

employees paid on an hourly basis with incentive compensation when the employees met the various performance goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay overtime to PLAINTIFFS and other CALIFORNIA CLASS Members, DEFENDANT failed to include the incentive compensation as part of the employees' "regular rate of pay" for purposes of calculating overtime pay. Management and supervisors described the incentive program to potential and new employees as part of the compensation package. As a matter of law, the incentive compensation received by PLAINTIFFS and other CALIFORNIA CLASS Members must be included in the "regular rate of pay." The failure to do so has resulted in a underpayment of overtime compensation to PLAINTIFFS and other CALIFORNIA CLASS Members by DEFENDANT.

12. As a result of their rigorous work schedules, PLAINTIFFS and other CALIFORNIA CLASS Members are from time to time unable to take thirty (30) minute off duty meal breaks and are not fully relieved of duty for their meal periods. PLAINTIFFS and other CALIFORNIA CLASS Members are required from time to time to perform work as ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANT from time to time fails to provide PLAINTIFFS and CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which these employees are required by DEFENDANT to work ten (10) hours of work. PLAINTIFFS and other members of the CALIFORNIA CLASS therefore forfeit meal breaks without additional compensation and in accordance with DEFENDANT's corporate policy and practice.

13. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and other CALIFORNIA CLASS Members are also required from time to time to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees are denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours

or more from time to time. PLAINTIFFS and other CALIFORNIA CLASS Members are also not provided with one hour wages in lieu thereof. Additionally, the applicable California Wage Order requires employers to provide employees with off-duty rest periods, which the California Supreme Court defined as time during which an employee is relieved from all work related duties and free from employer control. In so doing, the Court held that the requirement under California law that employers authorize and permit all employees to take rest period means that employers must relieve employees of all duties and relinquish control over how employees spend their time which includes control over the locations where employees may take their rest period. Employers cannot impose controls that prohibit an employee from taking a brief walk - five minutes out, five minutes back. Here, DEFENDANT's policy restricts PLAINTIFFS and other CALIFORNIA CLASS Members from unconstrained walks and is unlawful based on DEFENDANT's rule which states PLAINTIFFS and other CALIFORNIA CLASS Members cannot leave the work premises during their rest period.

14. During the CALIFORNIA CLASS PERIOD, DEFENDANT fails to accurately record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the actual amount of time these employees work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is required to pay PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked, meaning the time during which an employee was subject to the control of an employer, including all the time the employee was permitted or suffered to permit this work. DEFENDANT requires these employees to work off the clock without paying them for all the time they are under DEFENDANT's control. As such, DEFENDANT knew or should have known that PLAINTIFFS and the other members of the CALIFORNIA CLASS are under compensated for all time worked. As a result, PLAINTIFFS and other CALIFORNIA CLASS Members forfeit time worked by working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime wage rates. To the extent that the time worked off the clock does not qualify for overtime premium payment, DEFENDANT fails to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

15. From time to time, DEFENDANT also fails to provide PLAINTIFFS and the other members of the CALIFORNIA CLASS with complete and accurate wage statements which failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. Specifically, DEFENDANT violated Section 226 by failing to identify the correct rates of pay and number of hours worked, including for the "Dir. Lab 1.0""Dir. Lab 1.5.0 Dir. Lab 2.0""Undist. Lab 1.0""Undist. Lab 1.5""Undist. Lab 2.0" and "FLD Train 1.0" items of pay, which are wage payments. Aside, from the violations listed above in this paragraph, DEFENDANT fails to issue to PLAINTIFFS an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq*. As a result, DEFENDANT from time to time provides PLAINTIFFS and the other members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code § 226.

16. Specifically as to PLAINTIFFS, DEFENDANT fails to provide all the legally required off-duty meal and rest breaks to them as required by the applicable Wage Order and Labor Code and failed to pay them all minimum and overtime wages due to them. DEFENDANT does not have a policy or practice which provided timely off-duty meal and rest breaks to PLAINTIFFS and also fails to compensate PLAINTIFFS for their missed meal and rest breaks. The nature of the work performed by the PLAINTIFFS does not prevent them from being relieved of all of his duties for the legally required off-duty meal periods. As a result, DEFENDANT's failure to provide PLAINTIFFS with the legally required meal periods is evidenced by DEFENDANT's business records.

17. Furthermore, specifically as to Plaintiff Lucchese, DEFENDANT failed to properly maintain standard safety measures at job sites as well as on work Machinery. As such, Plaintiff Lucchese was placed in a constant risk of harm while performing his job duties for DEFENDANT. In March of 2020, Plaintiff Lucchese informed DEFENDANT about such safety issues, but to no avail. In or around March of 2020, and continuing through out the rest

of Plaintiff Lucchese's employment, Plaintiff Lucchese engaged in protected activity by complaining to DEFENDANT of DEFENDANT's failure to maintain compliant safety standards, including, but not limited to, DEFENDANT's failure to maintain the safety of work machines on DEFENDANT's job sites, and DEFENDANT's insistence on jeopardizing public safety and worker safety in order to accommodate the best interests of DEFENDANT itself. As a direct consequence of Plaintiff Lucchese's complaints to DEFENDANT, DEFENDANT retaliated against Plaintiff Lucchese by removing him from the job site and demoting him to a helper position from the mechanic position which resulted in lost wages. The amount in controversy for Plaintiff Lucchese individually does not exceed the sum or value of $75,000.

JURISDICTION AND VENUE

18. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This action is brought as a Class Action on behalf of PLAINTIFFS and similarly situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

19. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because PLAINTIFFS worked in this County for DEFENDANT and DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities in this County and/or conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

THE CALIFORNIA CLASS

20. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as all individuals who are or previously were employed by DEFENDANT in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as

determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five million dollars ($5,000,000.00).

21. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

22. DEFENDANT, as a matter of company policy, practice and procedure, and in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to record all meal and rest breaks missed by PLAINTIFFS and other CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permits or suffers to permit this work.

23. DEFENDANT has the legal burden to establish that each and every CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as required by California laws. The DEFENDANT, however, as a matter of policy and procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to ensure that each and every CALIFORNIA CLASS Member is paid as required by law. This common business practice is applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq*. (the "UCL") as causation, damages, and reliance are not elements of this claim.

24. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA CLASS Members is impracticable.

25. DEFENDANT violated the rights of the CALIFORNIA CLASS under California law by:

(a) Committing an act of unfair competition in violation of , Cal. Bus. & Prof. Code §§ 17200, *et seq*. (the "UCL"), by unlawfully, unfairly and/or

deceptively having in place company policies, practices and procedures that failed to record and pay PLAINTIFFS and the other members of the CALIFORNIA CLASS for all time worked, including minimum wages owed and overtime wages owed for work performed by these employees; and,

(b) Committing an act of unfair competition in violation of the UCL, by failing to provide the PLAINTIFFS and the other members of the CALIFORNIA CLASS with the legally required meal and rest periods.

26. This Class Action meets the statutory prerequisites for the maintenance of a Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

(a) The persons who comprise the CALIFORNIA CLASS are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;

(b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA CLASS will apply to every member of the CALIFORNIA CLASS;

(c) The claims of the representative PLAINTIFFS are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFFS, like all the other members of the CALIFORNIA CLASS, were classified as a non-exempt employee paid on an hourly basis who was subjected to the DEFENDANT's deceptive practice and policy which failed to provide the legally required meal and rest periods to the CALIFORNIA CLASS and thereby underpaid compensation to PLAINTIFFS and CALIFORNIA CLASS. PLAINTIFFS sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFFS and the members of the CALIFORNIA CLASS were and are similarly or identically harmed by the same unlawful, deceptive and unfair misconduct engaged in by DEFENDANT; and,

(d) The representative PLAINTIFFS will fairly and adequately represent and protect the interest of the CALIFORNIA CLASS, and have retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFFS and the members of the CALIFORNIA CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all CALIFORNIA CLASS Members.

27. In addition to meeting the statutory prerequisites to a Class Action, this action is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

(a) Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:

1) Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,

2) Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

(b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT failed to pay all wages due to members of the CALIFORNIA CLASS as required by law;

1) With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFFS seek declaratory relief holding that the DEFENDANT's policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;

(c) Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

1) The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:

A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,

B. Adjudications with respect to individual members of the

CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

3) In the context of wage litigation because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,

4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

28. This Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

(a) The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA CLASS Members because the DEFENDANT's employment practices are applied with respect to the CALIFORNIA CLASS;

(b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;

(c) The members of the CALIFORNIA CLASS are so numerous that it is

impractical to bring all members of the CALIFORNIA CLASS before the Court;

(d) PLAINTIFFS, and the other CALIFORNIA CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;

(e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA CLASS;

(f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;

(g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA CLASS as a whole;

(h) The members of the CALIFORNIA CLASS are readily ascertainable from the business records of DEFENDANT; and,

(i) Class treatment provides manageable judicial treatment calculated to bring a efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA CLASS.

29. DEFENDANT maintains records from which the Court can ascertain and identify by job title each of DEFENDANT's employees who have been intentionally subjected to DEFENDANT's company policy, practices and procedures as herein alleged. PLAINTIFFS will seek leave to amend the Complaint to include any additional job titles of similarly situated employees when they have been identified.

THE CALIFORNIA LABOR SUB-CLASS

30. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth and Seventh causes Action on behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS who are or previously were employed by DEFENDANT in California (the "CALIFORNIA LABOR SUB-CLASS") at any time during the period three (3) years prior to the filing of the complaint and ending on the date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars ($5,000,000.00).

31. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate compensation for the time worked by PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to these employees, even though DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permitted or suffered to permit this work. DEFENDANT has denied these CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

32. DEFENDANT maintains records from which the Court can ascertain and identify by name and job title, each of DEFENDANT's employees who have been intentionally subjected to DEFENDANT's company policy, practices and procedures as herein alleged. PLAINTIFFS will seek leave to amend the complaint to include any additional job titles of similarly situated employees when they have been identified.

33. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable.

34. Common questions of law and fact exist as to members of the CALIFORNIA LABOR SUB-CLASS, including, but not limited, to the following:

(a) Whether DEFENDANT unlawfully failed to correctly calculate and pay compensation due to members of the CALIFORNIA LABOR SUB-CLASS for missed meal and rest breaks in violation of the California Labor Code and California regulations and the applicable California Wage Order;

(b) Whether DEFENDANT failed to provide the PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;

(c) Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;

(d) The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and,

(e) Whether DEFENDANT's conduct was willful.

35. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS under California law by:

(a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to correctly pay the PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS all wages due for overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;

(b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage pay for which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;

(c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS with an accurate itemized statement in writing showing the corresponding correct

amount of wages earned by the employee;

(d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS with all legally required off-duty, uninterrupted thirty (30) minute meal breaks and the legally required off-duty rest breaks;

(e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that when an employee is discharged or quits from employment, the employer must pay the employee all wages due without abatement, by failing to tender full payment and/or restitution of wages owed or in the manner required by California law to the members of the CALIFORNIA LABOR SUB-CLASS who have terminated their employment; and,

(f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS members with necessary expenses incurred in the discharge of their job duties.

36. This Class Action meets the statutory prerequisites for the maintenance of a Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

(a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS Members is impracticable and the disposition of their claims as a class will benefit the parties and the Court;

(b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that are raised in this Complaint are common to the CALIFORNIA LABOR SUB-CLASS and will apply to every member of the CALIFORNIA LABOR SUB-CLASS;

(c) The claims of the representative PLAINTIFFS are typical of the claims of each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS, like all the other members of the CALIFORNIA LABOR SUB-CLASS, were non-exempt employee paid on an hourly basis who

was subjected to the DEFENDANT's practice and policy which failed to pay the correct amount of wages due to the CALIFORNIA LABOR SUB-CLASS. PLAINTIFFS sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS were and are similarly or identically harmed by the same unlawful, deceptive, and unfair misconduct engaged in by DEFENDANT; and,

(d) The representative PLAINTIFFS will fairly and adequately represent and protect the interest of the CALIFORNIA LABOR SUB-CLASS, and have retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFFS and the members of the CALIFORNIA LABOR SUB-CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

37. In addition to meeting the statutory prerequisites to a Class Action, this action is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

(a) Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA LABOR SUB-CLASS will create the risk of:

1) Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA LABOR SUB-CLASS; or,

2) Adjudication with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would as a practical matter be dispositive of interests of the other members not party to

the adjudication or substantially impair or impede their ability to protect their interests.

(b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT fails to pay all wages due. Including the correct wages for all time worked by the members of the CALIFORNIA LABOR SUB-CLASS as required by law;

(c) Common questions of law and fact predominate as to the members of the CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California Law as listed above, and predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

1) The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:

A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards of

conduct for the DEFENDANT; and/or,

B. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

3) In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,

4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

38. This Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

(a) The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;

(b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of

retaliation or adverse impact on their employment;

(c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;

(d) PLAINTIFFS, and the other CALIFORNIA LABOR SUB-CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;

(e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA LABOR SUB-CLASS;

(f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

(g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;

(h) The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who worked for DEFENDANT in California at any time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

(i) Class treatment provides manageable judicial treatment calculated to bring a efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA LABOR SUB-CLASS.

FIRST CAUSE OF ACTION

For Unlawful Business Practices

[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]

(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)

39. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

40. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof. Code § 17021.

41. California Business & Professions Code §§ 17200, *et seq.* (the "UCL") defines unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

> Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

Cal. Bus. & Prof. Code § 17203.

42. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a business practice which violates California law, including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations and the California Labor Code including Sections 204, 210, 226.7, 510, 512, 1194, 1197, 1197.1 & 1198, for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

43. By the conduct alleged herein, DEFENDANT's practices were unlawful and unfair in that these practices violate public policy, were immoral, unethical, oppressive, unscrupulous or substantially injurious to employees, and were without valid justification or

utility for which this Court should issue equitable and injunctive relief pursuant to Section 17203 of the California Business & Professions Code, including restitution of wages wrongfully withheld.

44. By the conduct alleged herein, DEFENDANT's practices were deceptive and fraudulent in that DEFENDANT's policy and practice failed to provide the legally mandated meal and rest periods, the required amount of compensation for missed meal and rest periods and overtime and minimum wages owed, failed to timely pay wages, and failed to reimburse al necessary business expenses incurred, due to a business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

45. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFFS and the other members of the CALIFORNIA CLASS to be underpaid during their employment with DEFENDANT.

46. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and deceptive in that DEFENDANT's policies, practices and procedures failed to provide all legally required meal breaks to PLAINTIFFS and the other members of the CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

47. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of each CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each workday in which a second off-duty meal period was not timely provided for each ten (10) hours of work.

48. PLAINTIFFS further demand on behalf of themselves and each member of the CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off duty paid rest period was not timely provided as required by law.

49. By and through the unlawful and unfair business practices described herein, DEFENDANT has obtained valuable property, money and services from PLAINTIFFS and the other members of the CALIFORNIA CLASS, including earned wages for all time worked, and has deprived them of valuable rights and benefits guaranteed by law and contract, all to the detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete against competitors who comply with the law.

50. All the acts described herein as violations of, among other things, the Industrial Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

51. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled to, and do, seek such relief as may be necessary to restore to them the money and property which DEFENDANT has acquired, or of which PLAINTIFFS and the other members of the CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair business practices, including earned but unpaid wages for all time worked.

52. PLAINTIFFS and the other members of the CALIFORNIA CLASS are further entitled to, and do, seek a declaration that the described business practices are unlawful, unfair and deceptive, and that injunctive relief should be issued restraining DEFENDANT from engaging in any unlawful and unfair business practices in the future.

53. PLAINTIFFS and the other members of the CALIFORNIA CLASS have no plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a result of the unlawful and unfair business practices described herein, PLAINTIFFS and the other members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic harm unless DEFENDANT is restrained from continuing to engage in these unlawful and unfair business practices.

SECOND CAUSE OF ACTION

For Failure To Pay Minimum Wages

[Cal. Lab. Code §§ 1194, 1197 and 1197.1]

(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

54. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

55. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay minimum wages to PLAINTIFFS and CALIFORNIA CLASS Members.

56. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

57. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed in unlawful.

58. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including minimum wage compensation and interest thereon, together with the costs of suit.

59. DEFENDANT maintained a wage practice of paying PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct amount of time they work. As set forth herein, DEFENDANT's policy and practice was to unlawfully and intentionally deny timely payment of wages due to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS.

60. DEFENDANT's unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a policy and practice that denies accurate compensation to PLAINTIFFS and the other members

of the CALIFORNIA LABOR SUB-CLASS in regards to minimum wage pay.

61. In committing these violations of the California Labor Code, DEFENDANT inaccurately calculated the correct time worked and consequently underpaid the actual time worked by PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.

62. As a direct result of DEFENDANT's unlawful wage practices as alleged herein, PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive the correct minimum wage compensation for their time worked for DEFENDANT.

63. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT required, permitted or suffered PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members to work without paying them for all the time they were under DEFENDANT's control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that they were entitled to, constituting a failure to pay all earned wages.

64. By virtue of DEFENDANT's unlawful failure to accurately pay all earned compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS for the true time they worked, PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic injury in amounts which are presently unknown to them and which will be ascertained according to proof at trial.

65. DEFENDANT knew or should have known that PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their time worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of company policy, practice and procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wages for their time worked.

66. In performing the acts and practices herein alleged in violation of California labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all time worked and provide them with the requisite compensation, DEFENDANT acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious and utter disregard for their legal rights, or the consequences to them, and with the despicable intent of depriving them of their property and legal rights, and otherwise causing them injury in order to increase company profits at the expense of these employees.

67. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS therefore request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable statutes. To the extent minimum wage compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

THIRD CAUSE OF ACTION

For Failure To Pay Overtime Compensation

[Cal. Lab. Code §§ 510, *et seq.*]

(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

68. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though full set forth herein, the prior paragraphs of this Complaint.

69. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees for all overtime worked, including, work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

70. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

71. Cal. Lab. Code § 510 further provides that employees in California shall not be employed more than eight (8) hours per workday and more than forty (40) hours per workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

72. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including minimum wage and overtime compensation and interest thereon, together with the costs of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

73. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by DEFENDANT to work for DEFENDANT and were not paid for all the time they worked, including overtime work.

74. DEFENDANT's unlawful wage and hour practices manifested, without limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of implementing a policy and practice that failed to accurately record overtime worked by PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members and denied accurate compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

75. In committing these violations of the California Labor Code, DEFENDANT

inaccurately recorded overtime worked and consequently underpaid the overtime worked by PLAINTIFFS and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.

76. As a direct result of DEFENDANT's unlawful wage practices as alleged herein, the PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS did not receive full compensation for overtime worked.

77. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from the overtime requirements of the law. None of these exemptions are applicable to the PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS. Further, PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS were not subject to a valid collective bargaining agreement that would preclude the causes of action contained herein this Complaint. Rather, PLAINTIFFS bring this Action on behalf of themselves and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of non-negotiable, non-waiveable rights provided by the State of California.

78. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for overtime worked that they are entitled to, constituting a failure to pay all earned wages..

79. DEFENDANT failed to accurately pay the PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they worked which was in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even though PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS were required to work, and did in fact work, overtime as to which DEFENDANT failed to accurately record and pay as evidenced by DEFENDANT's business records and witnessed by employees.

80. By virtue of DEFENDANT's unlawful failure to accurately pay all earned compensation to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-

CLASS for the true amount of time they worked, PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an economic injury in amounts which are presently unknown to them and which will be ascertained according to proof at trial.

81. DEFENDANT knew or should have known that PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all overtime worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of company policy, practice and procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

82. In performing the acts and practices herein alleged in violation of California labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked and provide them with the requisite overtime compensation, DEFENDANT acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter disregard for their legal rights, or the consequences to them, and with the despicable intent of depriving them of their property and legal rights, and otherwise causing them injury in order to increase company profits at the expense of these employees.

83. PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS therefore request recovery of all overtime wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable statutes. To the extent minimum and/or overtime compensation is determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFFS and other

CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and recover statutory costs.

FOURTH CAUSE OF ACTION

For Failure to Provide Required Meal Periods

[Cal. Lab. Code §§ 226.7 & 512]

(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

84. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

85. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time failed to provide all the legally required off-duty meal breaks to PLAINTIFFS and the other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were from time to time not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business records from time to time. Further, DEFENDANT failed to provide PLAINTIFFS and CALIFORNIA CLASS Members with a second off-duty meal period in some workdays in which these employees were required by DEFENDANT to work ten (10) hours of work from time to time. As a result, PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal breaks without additional compensation and in accordance with DEFENDANT's strict corporate policy and practice.

86. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-

CLASS Members who were not provided a meal period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that a meal period was not provided.

87. As a proximate result of the aforementioned violations, PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

FIFTH CAUSE OF ACTION

For Failure to Provide Required Rest Periods

[Cal. Lab. Code §§ 226.7 & 512]

(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

88. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

89. PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were from time to time required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees from time to time were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were also not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFFS and other CALIFORNIA LABOR SUB-CLASS Members were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

90. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable

IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members who were not provided a rest period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that rest period was not provided.

91. As a proximate result of the aforementioned violations, PLAINTIFFS and CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

SIXTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

92. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

93. Cal. Labor Code § 226 provides that an employer must furnish employees with

an "accurate itemized" statement in writing showing:

> (1) gross wages earned,
> (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
> (3) the number of piecerate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
> (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
> (5) net wages earned,
> (6) the inclusive dates of the period for which the employee is paid,
> (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,

(8) the name and address of the legal entity that is the employer, and
(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

94. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements which failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. Specifically, DEFENDANT violated Section 226 by failing to identify the correct rates of pay and number of hours worked, including for the "Dir. Lab 1.0""Dir. Lab 1.5.0 Dir. Lab 2.0""Undist. Lab 1.0""Undist. Lab 1.5""Undist. Lab 2.0" and "FLD Train 1.0" items of pay, which are wage payments. Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFFS an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq*. As a result, DEFENDANT from time to time provided PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal. Lab. Code § 226.

95. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meal and rest breaks and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars ($50.00) for the initial pay period in which the violation occurred, and one hundred dollars ($100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no event more than four thousand dollars ($4,000.00) for PLAINTIFFS and each respective member of the

CALIFORNIA LABOR SUB-CLASS herein).

EIGHTH CAUSE OF ACTION

For Failure to Pay Wages When Due

[Cal. Lab. Code §§ 201, 202, 203]

(By Plaintiff Chavez and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

96. Plaintiff Chavez, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior paragraphs of this Complaint.

97. Cal. Lab. Code § 200 provides that:

> As used in this article:
> (a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, Commission basis, or other method of calculation.
> (b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

98. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

99. Cal. Lab. Code § 202 provides, in relevant part, that:

> If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

100. There was no definite term in PLAINTIFFS' or any CALIFORNIA LABOR SUB-CLASS Members' employment contract.

101. Cal. Lab. Code § 203 provides:

> If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

102. The employment of Plaintiff Chavez and many CALIFORNIA LABOR SUB-CLASS Members terminated and DEFENDANT has not tendered payment of overtime wages, to these employees who actually worked overtime, as required by law.

103. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and the members of the CALIFORNIA LABOR SUB-CLASS whose employment has, Plaintiff Chavez demands up to thirty days of pay as penalty for not paying all wages due at time of termination for all employees who terminated employment during the CALIFORNIA LABOR SUB-CLASS PERIOD, and demands an accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

EIGHTH CAUSE OF ACTION

Retaliation

[Violation of Cal. Lab. Code § 1102.5, *et seq.*]

(By Plaintiff Lucchese Against All Defendants)

104. Plaintiff Lucchese realleges and incorporates by reference, as though fully set forth herein, the prior paragraphs of this Complaint.

105. At all relevant times, Labor Code section 1102.5 was in effect and was binding on DEFENDANT. This statute prohibits DEFENDANT from retaliating against any employee, including Plaintiff Lucchese, for raising complaints of illegality and/or belief that the employee may disclose illegality.

106. DEFENDANT failed to properly maintain standard safety measures at job sites as well as on work Machinery. As such, Plaintiff Lucchese was placed in a constant risk of harm while performing his job duties for DEFENDANT. In March of 2020, Plaintiff Lucchese informed DEFENDANT about such safety issues, but to no avail. In or around

March of 2020, and continuing through out the rest of Plaintiff Lucchese's employment, Plaintiff Lucchese engaged in protected activity by complaining to DEFENDANT of DEFENDANT's failure to maintain compliant safety standards, including, but not limited to, DEFENDANT's failure to maintain the safety of work machines on DEFENDANT's job sites, and DEFENDANT's insistence on jeopardizing public safety and worker safety in order to accommodate the best interests of DEFENDANT itself. As a direct consequence of Plaintiff Lucchese's complaints to DEFENDANT, DEFENDANT retaliated against Plaintiff Lucchese by removing him from the job site and demoting him to a helper position from the mechanic position which resulted in lost wages. Plaintiff Lucchese raised complaints of illegality while he worked for DEFENDANT and was believed to be willing to raise complaints, and DEFENDANT retaliated against him by taking adverse employment actions, including removal form the job site at which he worked and job demotion, against him.

107. As a proximate result of DEFENDANT'S willful, knowing, and intentional violation(s) of Labor Code section 1102.5, Plaintiff Lucchese has suffered and continues to suffer humiliation, emotional distress, and mental and physical pain and anguish, all to his damage in a sum according to proof.

108. As a result of DEFENDANT'S adverse employment actions against Plaintiff Lucchese, Plaintiff Lucchese has suffered general and special damages in sums according to proof.

109. DEFENDANT'S misconduct was committed intentionally, in a malicious, oppressive manner, and fraudulent manner entitling Plaintiff Lucchese to punitive damages against defendants.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

B) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;

C) An order requiring DEFENDANT to pay all wages and all sums unlawfuly withheld from compensation due to PLAINTIFFS and the other members of the CALIFORNIA CLASS; and,

D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFFS and to the other members of the CALIFORNIA CLASS.

2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

A) That the Court certify the Second, Third, Fourth, Fifth, Sixth and Seventh Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

B) Compensatory damages, according to proof at trial, including compensatory damages for minimum and overtime compensation due PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the statutory rate;

C) The greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per each member of the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars ($4,000), and an award of costs for violation of Cal. Lab. Code § 226;

D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order; and,

E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and 1197; and,

F) The wages of all terminated employees from the CALIFORNIA LABOR SUB-CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203

3. On behalf of Plaintiff Lucchese for the Eighth Cause of Action:

A) For all special damages which were sustained as a result of DEFENDANT's conduct, including, but not limited to, back pay, front pay, lost compensation and job benefits that Plaintiff Lucchese would have received but for the retaliatory practices of DEFENDANT; and,

B) For all exemplary damages, according to proof, which were sustained as a result of DEFENDANT's conduct.

4. On all claims:

A) An award of interest, including prejudgment interest at the legal rate;

B) Such other and further relief as the Court deems just and equitable; and,

C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §226, §1194, and/or §2802.

Dated: January 12, 2021

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff

DEMAND FOR A JURY TRIAL

PLAINTIFFS demand a jury trial on issues triable to a jury.

Dated: January 12, 2021

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff

EXHIBIT D

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

MATTHEW LUCCHESE and JULIO CHAVEZ, individuals, on behalf of themselves and on behalf of all persons similarly situated, Plaintiffs, v. KONE INC., a Corporation; and DOES 1 through 50, inclusive, Defendants.	CASE NO. CGC-20-588225 **ANSWER TO FIRST AMENDED CLASS ACTION COMPLAINT OF PLAINTIFFS MATTHEW LUCCHESE AND JULIO CHAVEZ; DEMAND FOR JURY TRIAL** CASE FILED: November 16, 2020 TRIAL DATE: Not Yet Assigned.

Defendant KONE, INC. ("KONE"), severing itself from all other defendants named in this action, answers the First Amended Class Action Complaint (the "Complaint") filed by Plaintiffs MATTHEW LUCCHESE and JULIO CHAVEZ (collectively, "Plaintiffs") as follows:

GENERAL DENIAL

Pursuant to California Code of Civil Procedure § 431.30(d), KONE denies each and every allegation in the Complaint and the whole thereof, including each and every cause of action therein, and denies that Plaintiffs or putative class members sustained or will sustain damages in the sums alleged, or any other sums, or at all.

Further answering the Complaint, KONE denies that Plaintiffs or putative class members sustained any injuries, damages, or losses by reason of any act or omission, whether active or passive, expressed or implied, or any other conduct or absence thereof on the part of KONE, and denies that KONE has breached any statute, acted unlawfully, or was or is guilty of any other wrongful or recoverable act or omission whatsoever, in the manner alleged in the Complaint or otherwise.

AFFIRMATIVE DEFENSES

As separate affirmative defenses to the Complaint and the whole thereof, KONE alleges and states as follows:

FIRST AFFIRMATIVE DEFENSE

(Failure To State A Cause Of Action)

Neither the Complaint, nor any purported cause of action stated therein, state facts sufficient to constitute a cause of action upon which relief can be granted against KONE.

SECOND AFFIRMATIVE DEFENSE

(Statute Of Limitations)

The Complaint and each purported cause of action alleged therein is barred, in whole or in part, by the applicable statutory periods, including, but not limited to, the limitations periods set forth in the California Code of Civil Procedure sections 335.1, 337, 338(a), 339, 340 and/or 343, the California Labor Code, California Government Code sections 12960(d) and 12965(b), and any other applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE

(Laches)

The Complaint and each purported cause of action alleged therein are barred, in whole or in part, by the equitable doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

(Estoppel)

The Complaint, and each and every purported cause of action alleged therein is barred by reason of the acts, omissions, representations and courses of conduct by Plaintiffs and putative class members, which KONE relied upon to its detriment, thereby barring under the doctrine of equitable estoppel any claim asserted by Plaintiffs or putative class members.

FIFTH AFFIRMATIVE DEFENSE

(Waiver)

The Complaint and each purported cause of action alleged therein are barred by the doctrine of waiver, as Plaintiffs and putative class members have, by their acts and conduct, waived and released the claims asserted against KONE, in whole or in part.

SIXTH AFFIRMATIVE DEFENSE

(Unclean Hands)

The Complaint, and each and every purported cause of action alleged therein, is barred by virtue of unlawful, immoral, careless, negligent and other wrongful conduct, and Plaintiffs and putative class members are thereby barred from recovery against KONE by the doctrine of unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

(Satisfaction of Duties Owed)

KONE alleges that, without admitting the existence of any duties or obligations as alleged in Plaintiffs' Complaint, it fully performed, satisfied, or discharged any obligations and/or duties owed to Plaintiffs and putative class members in connection with their employment.

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EIGHTH AFFIRMATIVE DEFENSE

(Ratification)

The Complaint, and each and every purported cause of action contained therein, is barred because Plaintiffs and putative class members ratified the alleged wrongful acts, and therefore the doctrine of ratification bars these claims.

NINTH AFFIRMATIVE DEFENSE

(Consent)

Plaintiffs and putative class members, by their acts and conduct, have consented to all conduct as alleged on the part of KONE.

TENTH AFFIRMATIVE DEFENSE

(After Acquired Evidence)

As a separate and distinct affirmative defense, to the extent that, during the course of the litigation, KONE acquires any evidence of wrongdoing by Plaintiffs or putative class members which wrongdoing would have materially affected the terms and conditions of their employment or would have resulted in them either being demoted, disciplined or terminated, such after-acquired evidence shall bar Plaintiffs' or putative class members' claims on liability or damages, or shall reduce such claims as required by law.

ELEVENTH AFFIRMATIVE DEFENSE

(Good Faith)

The Complaint and each purported cause of action therein are barred in that, at all relevant times, any acts, conduct or statements attributed to KONE and/or any of KONE's agents were justified, reasonable, made in good faith, and were not malicious, discriminatory, retaliatory, or harassing in nature.

TWELFTH AFFIRMATIVE DEFENSE

(Plaintiffs' Breach Of Duties)

As a separate and distinct affirmative defense, the Complaint and every alleged cause of action therein are barred by Plaintiffs' and putative class members' own breach of duties owed to KONE, including but not limited to those under Labor Code sections 2856 and 2859.

THIRTEENTH AFFIRMATIVE DEFENSE

(Complete Performance)

KONE has appropriately, completely, and fully performed and discharged any and all obligations and legal duties vis-à-vis Plaintiffs and putative class members arising out of the matters alleged in the Complaint.

FOURTEENTH AFFIRMATIVE DEFENSE

(No Willful Withholding of Wages)

At all times relevant to the Complaint, KONE did not willfully, knowingly or intentionally fail to comply with wage laws, and did not willfully, knowingly or intentionally withhold wages from Plaintiffs or the putative class members, and is therefore not obligated to pay waiting time penalties, interest or attorneys' fees for the amounts, if any, owed to Plaintiffs or any putative class members.

FIFTEENTH AFFIRMATIVE DEFENSE

(No Willful Violation of Wage and Hour Laws)

KONE did not willfully violate any applicable wage order or labor law, and is thus not obligated to pay waiting time penalties, interest or attorneys' fees for the amounts, if any, allegedly owed to Plaintiffs or putative class members.

SIXTEENTH AFFIRMATIVE DEFENSE

(Reasonable, Good-Faith Efforts to Comply With Applicable Law)

KONE acted reasonably at all times in good faith and in a reasonable manner, based on reasonable grounds in attempting to comply with all applicable wage and hour laws and regulations, including, but not limited to, for purposes of Lab. Code § 1194.2.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Good Faith Dispute)

As a separate and distinct affirmative defense, KONE alleges that a good faith dispute exists and existed over whether any alleged wages are due to Plaintiffs or the putative class members, KONE contends none are owed, and therefore it owes no waiting time penalties. (Labor Code §203.)

EIGHTEENTH AFFIRMATIVE DEFENSE

(Claims Must be Submitted to Arbitration)

KONE alleges that Plaintiffs and putative class members are bound by contractual arbitration terms that require the arbitration of this dispute, and the action must be submitted to binding arbitration pursuant to agreements contained within applicable Collective Bargaining Agreements, and others. The filing of this Complaint violates such agreements to arbitrate and the Complaint should be dismissed and / or stayed and Plaintiffs, and / or putative class members, should be compelled to arbitration. KONE reserves its right to compel arbitration of this dispute, and does not waive such right by filing this "Answer."

NINETEENTH AFFIRMATIVE DEFENSE

(Failure To Mitigate Damages)

KONE is informed and believes that Plaintiffs' or putative class members' recovery of damages, if any, must limited in whole or in part by their failure and/or refusal to mitigate their alleged damages. Plaintiffs and putative class members failed, refused and/or neglected to mitigate or avoid the damages complained of in the Complaint, and if any damages or injuries were in fact suffered by Plaintiffs and putative class members, such damages or injuries must be reduced excused, diminished, and/or discharged by amounts received or receivable by Plaintiffs and putative class members in the exercise of reasonable diligence.

TWENTIETH AFFIRMATIVE DEFENSE

(No Damages)

KONE alleges that Plaintiffs' claims, and the claims brought on behalf of putative class members, are barred as they have not been damaged or injured in any way by any alleged act or omission of KONE.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(No Causation)

KONE alleges that if Plaintiffs or the putative class members have suffered any loss, damage or injury, which is expressly denied, such loss, damage or injury was not caused, either legally or proximately, by any act or omission of KONE.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(LMRA Preemption)

KONE is informed and believes that the claims of Plaintiffs and putative class members for alleged violations of California law are preempted under section 301 of the Labor Management Rights Act (LMRA) in that Plaintiffs and the putative class members are subject to the terms of a collective bargaining agreement governing the issues raised in Plaintiffs' complaint, and are thereby barred.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Punitive Damages Barred)

Plaintiffs' and putative class members' claims for punitive damages are barred because California's laws regarding the conduct alleged in the Complaint are too vague to permit the imposition of punitive or exemplary damages, and because California's laws, substantive rules, procedures and standards regarding punitive or exemplary damages deny due process, impose criminal penalties without the requisite protection, violate KONE's rights under the First, Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and Article I, §§ 7 and 17 of the California Constitution, place an unreasonable burden on interstate commerce, and would be improper under the common law and public policies of the State of California.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(No Oppressive, Fraudulent, Or Malicious Acts)

Plaintiffs fail to state facts sufficient to constitute a claim for punitive and/or exemplary damages under California Civil Code section 3294 in that KONE committed no oppressive, fraudulent, or malicious acts, and neither authorized nor ratified any such acts.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Avoidance / Recusal)

Any claim for alleged failure to timely pay wages (under Labor Code § 203) is barred because KONE is informed and believes that Plaintiffs and putative class members secreted or absented themselves away to avoid payment to themselves and/or refused to receive payment when fully tendered to them. (Lab. Code, § 203(a).)

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(No Unlawful or Unfair Business Practices)

KONE's business practices are not unlawful in that it has complied with all applicable statutes and regulations, and are not unfair within the meaning of Business and Professions Code sections 17200, *et seq.*

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(No Injury, Damages, or Loss of Money or Property)

KONE is informed and believes that Plaintiffs and the putative class members have not sustained the required injury in the Complaint and/or the requisite money or property necessary to confer standing pursuant to California Business & Professions Code §§ 17200, *et seq*.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(Unjust Enrichment)

KONE alleges that the causes of action asserted by Plaintiffs and the putative class are barred, or recovery should be reduced, because any such recovery would result in unjust enrichment.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(Failure to Exhaust Administrative Remedies)

KONE is informed and believes that the Complaint, and each purported cause of action contained therein, is barred because Plaintiffs and putative class failed to exhaust required and available administrative remedies before instituting this lawsuit.

THIRTIETH AFFIRMATIVE DEFENSE

(Failure to Exhaust Internal Procedures)

KONE is informed and believes that the Complaint, and each purported cause of action contained therein, is barred by the fact that Plaintiffs and putative class failed to exhaust the existing internal administrative procedures at KONE and/or any applicable collective bargaining agreement for resolution of their claims.

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THIRTY-FIRST AFFIRMATIVE DEFENSE

(Res Judicata / Collateral Estoppel)

The Complaint, and each and every purported cause of action and issue contained/alleged therein, is barred by virtue of the doctrines of res judicata and/or collateral estoppel

THIRTY-SECOND AFFIRMATIVE DEFENSE

(Reservation)

KONE does not presently know all facts concerning the conduct of Plaintiffs and putative class members and their claims, and insufficient knowledge or information upon which to determine whether additional affirmative defenses may be available to it which have not been asserted in this Answer and, therefore, reserves the right to assert additional affirmative defenses based upon subsequent discovery, investigation and analysis.

ATTORNEYS' FEES

KONE alleges, based on Plaintiffs' request for attorneys' fees, that in the event KONE is determined to be prevailing party, KONE is entitled to recover its attorneys' fees pursuant to California Labor Code section 218.5, and/or other applicable standards.

DEMAND FOR JURY TRIAL

KONE hereby demands a trial by jury for all claims so triable.

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PRAYER FOR RELIEF

WHEREFORE, Defendant KONE, INC. prays for judgment as follows:

1. That Plaintiffs' First Amended Class Action Complaint be dismissed;
2. That Plaintiffs and the putative class take nothing by reason thereof;
3. That KONE be awarded its reasonable attorneys' fees and costs of suit herein; and
4. For such other and further relief as the court deems just and proper.

DATED: February 3, 2021

HIGGS FLETCHER & MACK LLP

By: _____

EDWIN M. BONISKE, ESQ.
KYLE W. NAGEOTTE, ESQ.
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Attorneys for Defendant
KONE INC.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO

MATTHEW LUCCHESE and JULIO CHAVEZ, individuals, on behalf of themselves and on behalf of all persons similarly situated, Plaintiff, v. KONE INC., a Corporation; and DOES 1 through 50, inclusive, Defendants.	CASE NO. CGC-20-588225 **PROOF OF SERVICE** DATE: ** TIME: ** DEPT: ** IC JUDGE: ** CASE FILED: November 16, 2020 TRIAL DATE: Not Yet Assigned.

I, the undersigned, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within-entitled action; my business address is 401 West "A" Street, Suite 2600, San Diego, California 92101-7913. On February 3, 2021, I served the within documents, with all exhibits (if any):

ANSWER TO FIRST AMENDED CLASS ACTION COMPLAINT OF PLAINTIFFS MATTHEW LUCCHESE AND JULIO CHAVEZ; DEMAND FOR JURY TRIAL

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Diego, California addressed as set forth below.

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

☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

☐ by transmitting via an electronic service address the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

☐ **ONLY BY ELECTRONIC TRANSMISSION:** Only by emailing the document(s) to the person(s) at the email address(es) listed based on Executive Order N-38-20 issued by the Executive Department of the State of California and signed by California Governor Gavin Newsom on March 27, 2020 that, during the Coronavirus (COVID-19) pandemic, this office will be working remotely, not able to send physical mail as usual, and is therefore only using electronic mail, pursuant to California Judicial Council Emergency Rule 12. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after transmission.

Norman B. Blumenthal, Esq. Kyle R. Nordrehaug, Esq. Aparajit Bhowmik, Esq. Nicholas J. De Blouw, Esq. **Blumenthal Nordrehaug Bhowmik De Blouw, LLP** 2255 Calle Clara La Jolla, CA 92037 norm@bamlawca.com kyle@bamlawca.com aj@bamlawlj.com DeBlouw@bamlawca.com	Attorneys for PLAINTIFF MATTHEW LUCCHESE T: 858.551.1223 F: 858.551.1232

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

Executed on February 3, 2021, at San Diego, California.

JENNIFER LINDLEY

EXHIBIT E

NEBA AGREEMENT

WITH

INTERNATIONAL UNION

of

ELEVATOR CONSTRUCTORS

July 9, 2017 to
July 8, 2022

NEBA AGREEMENT

WITH

INTERNATIONAL UNION

of

ELEVATOR CONSTRUCTORS

July 9, 2017 to
July 8, 2022

Whenever any words are used in this Agreement in the masculine gender they shall be construed as though they are also used in the feminine gender or neuter gender in all situations where they would so apply.

INDEX

ARTICLE I

Parties to the Agreement

This Agreement, made by and between the National Elevator Bargaining Association (hereinafter referred to as "NEBA") and the INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS (hereinafter referred to as "IUEC" or the "Union"), for the purpose of establishing harmonious relations and facilitating peaceful adjustment of wage schedules and working conditions. The INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS makes this Agreement for and on behalf of its affiliated local unions and a list of the local unions for which the International negotiates and executes this Agreement is attached hereto and made a part hereof. NEBA makes this Agreement for and on behalf of its employer members (hereinafter referred to individually as the "Company" or the "Employer"), and a list of the Employers for which NEBA negotiates and executes this Agreement is attached hereto and made a part hereof.

ARTICLE II

Recognition Clause

Par. 1. The Union claims and the Employer acknowledges and agrees that the Union has supplied proof that a majority of its Elevator Constructor Mechanics, Elevator Constructor Helpers, Elevator Constructor Apprentices

and Elevator Constructor Assistant Mechanics have authorized the Union to represent them in collective bargaining with the Employer.

The Employer recognizes the Union as the exclusive Section 9(a) bargaining representative for all Elevator Constructor Mechanics, Elevator Constructor Helpers, Elevator Constructor Apprentices and Elevator Constructor Assistant Mechanics (hereinafter referred to sometimes as "Mechanics, Helpers, Apprentices and Assistant Mechanics " or collectively as "Elevator Constructor(s)") in the employ of the Employers engaged in the installation, repair, modernization, maintenance and servicing of all equipment referred to in Article IV, Par. 2 and Article IV (A).

Par. 2. The Union recognizes that it is the responsibility of the Company in the interest of the purchaser, the Company and its employees to maintain the highest degree of operating efficiency and to continue technical development to obtain better quality, reliability, and cost of its product provided, however, that this provision is not intended to affect the work jurisdiction specified in Article IV and other Articles of the Agreement.

ARTICLE III

Membership Requirements

Par. 1. All Mechanics**,** Helpers, Apprentices and Assistant Mechanics covered by this Agree-

ment shall, as a condition of employment obtain and maintain membership in a local union of the International Union of Elevator Constructors on and after the thirtieth (30th) day following the beginning of their employment or the date this Article becomes effective, whichever is later.

Par. 2. The Company shall be obligated under this Article, after it becomes effective as above provided, to terminate the employment of any employee who fails to obtain or maintain membership in a local union as required by this Article, upon receipt of a written request for such termination from his local union: except that the Company shall have the right to refuse such request if it has reasonable grounds for believing (1) that such membership is not available to the employee on the same terms and conditions generally applicable to other members, or (2) that membership has been denied or terminated for reasons other than the failure of the employee to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership.

Par. 3. Beginning January 1, 2018, the Company agrees to deduct from the wages, each week, the IUEC dues or service fees of each employee who authorizes the Company to do so. The Union shall notify the Company in writ-

ing, of the amount of such dues or service fees or any change in the amount of such dues or service fees prior to December 1 of each year. Any change in deduction shall become effective beginning with the second full pay period after the Company receives such written notice of change from the Union.

Beginning with the second pay period following receipt of a written authorization signed and dated by a bargaining unit employee on a form approved by NEBA, the Company shall deduct, from the employee's pay, the appropriate IUEC Dues or Service Fees payable by the employee to the IUEC during the period provided for in the authorization. The dues check-off authorization is irrevocable for a period of one year from the date it is delivered to the Company or until termination of the collective bargaining agreement between the Company and the IUEC, whichever occurs sooner. The authorization, assignment and direction shall be automatically renewed and shall be irrevocable for successive periods of one year each and for the period of each successive agreement between the Company and the IUEC, whichever shall be shorter, unless notice is given to the Company with whom the employee is employed at that time and the IUEC not more than twenty (20) days and not less than the ten (10) days prior to the expiration of each period of one year, or of each applicable collective bargain-

ing agreement between the Company and the IUEC, whichever occurs sooner, by submitting a written revocation to the Company with a copy to the IUEC and NEBA. Said revocation shall be in effect on the date of receipt by the Company.

A list of all employees, along with the last four digits of their respective Social Security Numbers and amounts deducted for each week shall be sent to the Union along with the remittance for the total amounts checked off.

The Company shall not be required to make deductions with respect to any employee for a payroll period in which the employee:

(a) is in an unpaid leave status for the pay period;

(b) is receiving Workers' Compensation, Unemployment Compensation or disability benefits for the pay period; or

(c) has a net pay which is less than the amount of IUEC Dues or Service Fees to be deducted. The Union shall receive the above monthly remittance and the list of employees on the same schedule as applies to the Benefit Plans (currently by the 15th day of the month following the month in which the funds were deducted).

The Union will hold NEBA and/or the Companies harmless and indemnify NEBA and/or the Companies for any costs, damages or liabilities, including, but not limited to, reasonable litigation costs and attorneys' fees, in-

curred by NEBA and/or the Companies as a result of this Article.

Par. 4. Employees working in any state which prohibits the execution or application of Agreements requiring membership in a labor organization as a condition of employment have the right to join or refrain from joining the International Union of Elevator Constructors. Employees who decide not to join the Union, however, and who are covered by this Agreement shall, as a condition of employment, be required to pay a monthly service fee to the Union. The service fee shall be the employees' prorata share of costs of collective bargaining and the handling of grievances and arbitrations. The service fee shall not include any prorata share of costs of items other than collective bargaining and handling of grievances and arbitrations, and under no circumstances will the service fee be used by the Union for any purpose other than to meet the expenses of collective bargaining and handling of grievances and arbitrations.

On and after the thirtieth (30th) day following the date of this Agreement or on and after the thirtieth (30th) day following the date of commencement of employment by an employee, whichever is later, regular tendering of the service fee shall be a condition of employment, subject to the rights of employees and obligations of parties under the law. Service

fees shall be payable on or before the first day of each month.

Par. 5. All the provisions of this Article shall be effective to the extent permitted by applicable law.

ARTICLE IV

Work Jurisdiction

Par. 1. It is agreed by the parties to this Agreement that all work specified in Article IV shall be performed exclusively by Elevator Constructor Mechanics, Elevator Constructor Helpers, Elevator Constructor Apprentices and Elevator Constructor Assistant Mechanics in the employ of the Company.

Par. 2.

(a) The handling and unloading of all equipment coming under the jurisdiction of the Elevator Constructor, from the time such equipment arrives at or near the building site, shall be handled and unloaded by the Elevator Constructors. Mechanical equipment such as a fork lift or truck mounted swing boom may be used by the Elevator Constructors. A derrick, crane or material hoist can be used under the supervision of Elevator Constructors to handle and unload the heavy material described in Par. 5(a). Where unusual conditions are expected to exist prior to delivery of equipment at or near the building site in regard to han-

dling and unloading of equipment in the primary or secondary jurisdiction of the local union, the Company shall contact the Local's Business Representative to make appropriate arrangements for the handling and unloading of such equipment. In areas outside the jurisdiction of the local union, the Company shall contact the Regional Director.

(b) The erecting and assembling of all elevator equipment to wit: electric, hydraulic, steam, belt, dumbwaiters, residence elevators, parking garage elevators (such as Bowser, Pigeon Hole, or similar types of elevators), shuttles, compressed air and handpower, automatic people movers, monorails, airport shuttles and like-named devices used in the transportation of people for short distances of travel (less than 5 miles), as well as vertical reciprocating conveyor systems.

(c) It is understood and agreed that the preassembly of all escalators, moving stairways and link belt carriers that may be done in the factory shall include the following:

1. Truss or truss sections with tracks, drive units, machines, handrail drive sheaves, drive chains, skirts on the incline sections but not curved sections, step chains and steps installed and permanently aligned.

2. Balustrade brackets may be shipped attached but not aligned.

3. Setting of all controllers and all wiring and conduit from the controller.

All other work on escalators, moving stairways and link belt carriers shall be performed in the field by Elevator Constructor Mechanics, Helpers, Apprentices and Assistant Mechanics either before or after the truss or truss sections are joined and/or hoisted and placed in permanent position. This includes any and all work not done in the factory.

The erecting and assembly of all theater stage and curtain elevator equipment and guides and rigging thereto, organ consoles and orchestra elevators shall be performed by Elevator Constructor Mechanics, Helpers, Apprentices and Assistant Mechanics.

(d) All wiring, conduit, and raceways from main line feeder terminals on the controller to other elevator apparatus and operating circuits. Controllers are not to be shipped from the factory with extended wiring attached thereto.

(e) The erecting of all guide rails.

(f) The installation of all grating under the control of the Company. The installation of all counterweight screens, overhead work, either wood or iron, and all material used for mounting of elevator apparatus in machine room, overhead or below.

(g) The drilling of overhead beams for attaching machines, sheaves, kick angles, and all other elevator equipment.

(h) The setting of all templates.

(i) All foundations, either of wood or metal, that should take the place of masonry.

(j) The assembly of all cabs complete.

(k) The installation of all indicators.

(1) The erecting of all electrical or mechanical automatic or semi-automatic gates complete.

(m) The hanging of all automatic or semi-automatic elevator hoistway doors, together with the installation of hangers and tracks.

(n) The installation of all devices for opening and closing, and locking of elevator car and hoistway doors and gates.

(o) The drilling of doors for mounting of closing devices.

(p) The drilling of angle supports for mounting of closing devices except one template hole.

(q) The drilling of sills for sill trips.

(r) The operating of temporary cars.

(s) The setting of all elevator pressure open or pit tanks.

(t) The setting of hydraulic power units (power units include: motor, pump, drive valve system, internal piping, muffler, internal wiring, controller and tank). Where power units arrive in parts, they shall be assembled at the job site. The wiring and piping to and between multiple hydraulic power units shall be performed at the job site.

(u) All air cushions with the exception of those built of brick or those put together with hot rivets.

(v) Landing door entrances.

Par. 3.

(a) Nothing contained in Article IV shall preclude the Company from preassembling and prefabricating the following:

(1) Temporary elevators

A temporary elevator is defined as a nonpermanent elevator installed prior to or during construction work inside or outside buildings. The assembly, disassembly and moving of temporary elevators from job to job or area to area may be accomplished in the most economical fashion provided, however, whatever work is required to be performed at the job site in connection therewith shall be performed exclusively by Elevator Constructor Mechanics**,** Helpers, Apprentices and Assistant Mechanics.

(2) Residence elevators

Residence elevators shall mean elevators installed solely for use in a single family residence and not for general public use. Single family residences may be part of a multi-unit structure.

(3) Dumbwaiters

(4) Dock elevators

(5) Parking garage elevators (such as Bowser, Pigeon Hole or similar types of elevators)

(6) Apartment House elevators

Apartment house elevators shall mean an elevator installed in a multi-unit, multifamily structure, (excluding condominiums) but not to ex-

ceed three (3) stories in height (i.e. 36 ft.) and the elevator shall not make more than three (3) stops nor exceed a capacity of 2500 lbs.

(7) Preassembled plug connectors may be used to interconnect the solid state components of the elevator systems (solid state to solid state only), and to connect any component in and on the car.

When the use of fiber optics is applied to the elevator system, preassembled plugs/coupling devices may be used to maintain the integrity of the connection(s).

It is understood and agreed that the connecting and/or coupling of devices will be done by the Elevator Constructor whether accomplished by external wiring or preassembled plug connectors as provided in this Paragraph.

(8) Limited Use/Limited Access Elevators which shall mean elevators described under the scope of Limited Use/Limited Access Elevators as defined in A.S.M.E. A17.1. Incline stairway chair lifts and incline and vertical wheelchair lifts shall mean lifts described under the scope of A.S.M.E. A17.1.

Limited Use/Limited Access Elevators, incline stairway chair lifts, inclined and vertical wheelchair lifts, and residence elevators may be installed in the most economical fashion, provided there is no factor of safety involved. Whatever work is required to be performed at the job site in connection therewith shall be

performed exclusively by Elevator Constructor Mechanics, Helpers, Apprentices and Assistant Mechanics.

(9) Landing door entrance assemblies which will be limited to struts, sills, headers, frames and associated hardware for installation purposes: door header including tracks, hangers, and all relating devices (adjusting and aligning to be done in the field).

(10) Car-top inspection station which may only include pre-wired service light, gate switch, alarm device and inspection station.

(a) Pre-wired canopies with lights and fans.

Par. 3.

(b) It is understood and agreed that the preassembly and/or prefabrication of electric walks, Trav-o-lators, speed ramps or similar type of moving walks, (limited to 15° incline per ANSI Code), shall include the following:

(1) Truss sections with drive units, machines, handrail drive sheaves and drive chains installed and aligned.

(2) Truss sections with tracks installed and aligned.

(3) Balustrade brackets may be shipped attached but not aligned.

(4) Setting of all controllers and all wiring and conduit from controllers.

Work to be done in the field shall include setting and aligning of truss sections and supports, installation of pallets (platforms and

belting), handrails, handrail idler sheaves, centering guides, combplates, balustrades and trim.

Par. 4.

(a) It is agreed that when sinking, drilling, boring or digging cylinder wells for hydraulic lifts, hydraulic elevators or screw lifts, the Company shall employ Elevator Constructor Mechanics, Elevator Constructor Helpers, Elevator Constructor Apprentices and Elevator Constructor Assistant Mechanics.

(b) On any job where the Company subcontracts the sinking, drilling, boring or digging of cylinder wells for hydraulic lifts, hydraulic elevators or screw lifts, one Elevator Constructor Mechanic shall be employed by the Company to supervise and assist in any and/or all work related to sinking, drilling, boring or digging of the cylinder well including the installation of the casing whether its sections be welded, screwed or riveted or by any other method joined.

(c) It is agreed that the work performed by the subcontractor shall be strictly limited to work in connection with the digging of the hole and the installation of the casing. It is understood that the Company will have the preceding sentence inserted in his contract with the subcontractor.

(d) The Company shall have the Elevator Constructor Mechanic on the job at the time

the subcontractor arrives on the job for the drilling of the hole and during the entire time the subcontractor performs any work in connection with the drilling of the hole including the setting up and/or assembly and disassembly of the rig.

(e) If the Company violates the requirement defined in Par. (d) it shall be assessed and pay as liquidated damages a sum equal to double the total compensation of the Elevator Constructor Mechanic in the area for the number of hours an Elevator Constructor Mechanic should have been on the job and was not on the job in the sinking, drilling, boring or digging the cylinder well. This liquidated damage shall be paid by the Company to the said jointly administered trust fund.

In the case of a second offense, the liquidated damages shall be computed on the same basis as the first offense, except that the amount shall be tripled instead of doubled; for the third and subsequent offenses during the term of this Agreement, the liquidated damages shall be $500 more than the second offense.

The Company's Regions shall constitute separate areas for the counting of repeated violations by the Company and only violations in the same district shall be counted for the purpose of imposing graduated penalties.

(f) Should a work stoppage or strike occur because of a dispute over the application or

interpretation of this paragraph none of the foregoing penalties will be imposed.

Par. 5.

(a) Where heavy material is to be hoisted or lowered outside of the structure, a derrick, crane or material hoist can be used under the supervision of Elevator Constructors in the employ of the Company. Heavy material under subparagraph (a) is confined to machines, controllers, generators, trusses, or sections of trusses, plungers and cylinders. (Where multiple sections of cylinders and plungers are used, they shall be connected in the field by Elevator Constructors. Exception: the Company's multiple sections of cylinders may be connected either in the field or factory up to thirty-eight (38) feet in length; where multiple sections of plungers are used, they shall be connected in the field by Elevator Constructors.) In addition to the foregoing, the Company shall have the right to utilize derricks, cranes or a material hoist to hoist or lower tools of the trade, gang boxes, welders, air and gas tanks, cutting torches, material handling equipment and safety equipment.

(b) Where conditions are such that the following heavy material can be hoisted up the hoistway, it shall be hoisted by the Elevator Constructors. Where conditions are such that the following heavy material cannot be hoisted up the hoistway, it can be hoisted with

a crane or material hoist under the supervision of Elevator Constructors. Heavy material under subparagraph

(b) is confined to beams, sheaves, bundles of rails and preassembled landing door entrances.

(c) The above heavy material in subparagraphs (a) and (b) shall be hoisted separately with the exception of plungers and cylinders, rails, beams, preassembled landing door entrances and where conditions warrant machines with beams, which may be hoisted together.

(d) All other material is to be hoisted or lowered by Elevator Constructors without the use of derrick or crane.

Par. 6. The wrecking or dismantling of elevator plants shall be performed by Elevator Constructor Mechanics, Elevator Constructor Helpers, Elevator Constructor Apprentices and Elevator Constructor Assistant Mechanics. It is understood and agreed that the Union reserves the right to refuse to install any new elevators in any plant where the wrecking or dismantling of the old elevator plant has been done by other than Elevator Constructor Mechanics, Elevator Constructor Helpers, Elevator Constructor Apprentices and Elevator Constructor Assistant Mechanics. Before the local union shall refuse to install a new elevator, such action must be first approved by the

International. Elevator plants as referred to in this paragraph are understood to include elevators, escalators, moving stairways, dumbwaiters, moving walks and all other equipment coming under the jurisdiction of the Elevator Constructor.

Par. 7. Where Elevator Constructor Mechanics are not available to lay car floor covering, it is agreed that the Company may employ others to do this work.

Par. 8. Inserts and/or bond blocks are to be set by Elevator Constructor Mechanics in the primary jurisdictions of local unions at the option of the Company. Inserts may be set by others outside of the primary jurisdictions of local unions where a full day's work cannot be provided.

Par. 9. No restrictions shall be imposed as to methods, tools, or equipment used.

Par. 10. It is agreed that the work specified in Article IV has always been performed exclusively by Elevator Constructor Mechanics, Helpers, Apprentices and Assistant Mechanics in the employ of the Company at the site of the installation. It is agreed that effective July 9, 1977, the work specified in Article IV that is performed exclusively by Elevator Constructor Mechanics, Helpers, Apprentices and Assistant Mechanics may be performed at the

site of the installation or at another assembly point provided that (1) the assembly point is not in or adjacent to the Company's manufacturing facility, (2) the assembly point is within the primary or secondary jurisdiction of the local union in whose jurisdiction the site of installation is located, and (3) the work is performed by Elevator Constructor Mechanics, Helpers, Apprentices and Assistant Mechanics of the local union in whose jurisdiction the site of installation is located. If the site of installation is located outside the jurisdiction of a local union (in open territory), it is agreed that (1) the assembly point must be within twenty-five (25) miles of the site of installation, (2) the assembly point is not in or adjacent to the Company's manufacturing facility, and (3) the work is performed by Elevator Constructor Mechanics, Helpers, Apprentices and Assistant Mechanics from the local union who ordinarily perform work for the Company in the vicinity of the site of the installation. The unloading and handling of all equipment coming under the jurisdiction of the Elevator Constructor at an assembly point shall be performed in accordance with Par. 2(a) of this Article.

Par. 11.

(a) All differences and disputes concerning Article IV or Article IV(A) shall be settled in accordance with the grievance procedures in Article XV.

(b) While any question or dispute pertaining to Article IV or Article IV(A) is being processed the Company, where possible, shall assign the employees work other than the work in dispute. Where the work has progressed to a point where it is not possible to perform work other than the work in dispute, then the employee shall perform the disputed work pending final resolution as provided herein.

ARTICLE IV(A)

Systems, Modular and Industrial Structures

Par. 1. Systems Building. Systems, modular, industrialized or similar structures are those whose superstructures and components are pre-assembled in sections, rooms, or floors, in whole or in part, in areas adjacent to or remote from the permanent site of the structure. The erection and assembly of elevator components in building modules is to be done by Elevator Constructor Mechanics, Helpers, Apprentices and Assistant Mechanics whether the assembly site is adjacent to the job or remote from the job. Where the Company has a choice or selection of the assembly site, such sites are to be mutually agreed upon by the General President of the International Union of Elevator Constructors and the Company. It is understood that if members of

one local perform part of such work at an assembly site remote from the permanent job site, members of the local covering the permanent job site will perform the remainder of the work. The elevator work remaining to be done after modules have been put into permanent place, shall be performed by Elevator Constructor Mechanics, Helpers, Apprentices and Assistant Mechanics so that the jurisdiction of the Elevator Constructor as related to any other Building Trade, shall remain intact as outlined in the latest "Green Book" or "Plan for Settling Jurisdictional Disputes, Nationally & Locally" or its successor as approved by the Building & Construction Trades Dept., AFL-CIO.

Par. 2. The work to be done by Elevator Constructors is as follows:

(a) The installation and assembly of all machine room equipment whether overhead or below on prefabricated machine room floors.

(b) Assemble car frames and cabs complete with door operating equipment, control, signal and operating devices.

(c) Connect electric traveling cables to either car, controller or half-way junction box. The connections to be prepared and/or made at both ends of assembly site.

(d) Shackle hoist, compensating and governor cables and pre-connect to car or counterweight hitches.

(e) The setting of templates.

(f) The installation of all grating and counterweight screens, overhead work, either wood or iron, and all material used for mounting of elevator apparatus in machine rooms, overhead or below.

(g) All foundations, either of wood or metal, that should take the place of masonry.

(h) The installation and aligning of guide rails in hoistway modules.

(i) Erect and assemble doors, hangers, tracks, door locks or locking devices for opening or closing and all related equipment.

(j) Install corridor side operating and signal devices.

(k) Install hoistway wiring.

(1) Install all elevator equipment and devices in hoistway and hoistway modules including governor rope tension sheaves, control equipment, buffers and supports.

(m) The operating of temporary elevators.

(n) The installation and aligning of all pistons and cylinders on hydraulic elevators.

(o) Landing door entrances.

Unloading, handling, hoisting and lowering of material covered in (a) through (o) will be performed under the supervision of Elevator Constructors.

Par. 3. Nothing in this Article is intended to change the practices either party has previously enjoyed in erection of elevators in con-

ventional type buildings as related to Article IV.

ARTICLE V

Wages

Par. 1. The rate of wages to be paid to Elevator Constructor Mechanics, Helpers, Apprentices and Assistant Mechanics shall be determined in accordance with the following schedule. Effective January 1, 2018 and every twelve (12) months thereafter, during the term of this agreement, each local's existing total package shall be increased according to the following schedule:

1st Year Gross Increase	3.28%
2nd Year Gross Increase	3.28%
3rd Year Gross Increase.	3.28%
4th Year Gross Increase.	3.28%
5th Year Gross Increase.	3.28%

Par. 2. Subtracted from the gross increase shall be the credits agreed upon in Par. 3 below. The remainder shall be the wage rate increase for the Elevator Constructor Mechanics in that Local.

Par. 3. The amounts of credits for wage rate increases effective January 1, 2018 and every twelve months thereafter shall be as follows:

Current Wage Rate Amount Contribution Level $31.885	Fringe	Total
January 1, 2018	$1.12	$33.005
January 1, 2019	$1.12	$34.125
January 1, 2020	$1.12	$35.245
January 1, 2021	$1.12	$36.365
January 1, 2022	$1.12	$37.485

The above gross increases will be reallocated and the above credit amounts increased or decreased accordingly after the effective date of this Agreement by whatever different amounts, if any, the Union, at its discretion, determines are necessary to fund the Health Plan, the Pension Plan, Education Fund, the Annuity Fund and Elevator Industry Work Preservation Fund by modifying the hourly contribution rate up to twenty five ($.25) cents per fund per year, provided that this reallocation cannot be used to increase the wage rate.

Par. 4. Subtracting the credits from the gross increases yields the following wage rate increases for the Elevator Constructor Mechanic:

1st, 2nd, 3rd, 4th, 5th Year Wage Rate Increase	Subtract the $1.12 per hour fringe contribution in-

crease from the computed total package percentage, and the result will be the wage rate increase for the Elevator Constructor Mechanic.

Par. 5. The wage rate for the Elevator Constructor Helpers shall be seventy (70) percent of the Elevator Constructor Mechanic's rate.

Par. 6. The wage rate for Elevator Constructor Apprentices shall be the progressive scale of wages set forth below, and those progressive elevations shall become effective the next full pay cycle following September 1st, commencing September 1, 2003 and each year thereafter:

Probationary Apprentice, (0-6months): 50% of Mechanic's Rate.

First Year Apprentice, 55% of Mechanic's Rate, plus fringe benefits as provided by the collective bargaining agreement. (This shall include months 7-12 of the Probationary period).

Second Year Apprentice, 65% of Mechanic's Rate, plus fringe benefits as provided by the collective bargaining agreement.

Third Year Apprentice, 70% of Mechanic's Rate, plus fringe benefits as provided by the collective bargaining agreement.

Fourth Year Apprentice and Assistant Mechanic, 80% of Mechanic's Rate, plus fringe

benefits as provided by the collective bargaining agreement.

Par. 7. When four (4) or more men, including the Elevator Constructor Mechanic–In-Charge, are employed on new construction or modernization jobs, the Elevator Constructor Mechanic-In-Charge of the job shall have his hourly rate increased 12-1/2% for all hours worked.

Par. 8. The gross increases set out in this Article shall apply to all Elevator Constructor Mechanics, Elevator Constructor Helpers, Elevator Constructor Apprentices and Elevator Constructor Assistant Mechanics engaged in construction, repair, modernization and contract service work, as defined and covered in this Agreement.

ARTICLE VI

Holidays

Par. 1. The following shall be designated as paid holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, the Friday after Thanksgiving Day and Christmas Day.

Par. 2. In addition, each local may retain established unpaid holidays already agreed upon by past procedure or observed by local building

trades councils or declared by State or National Governments. Any new Federal holidays such as President's Day and Columbus Day are not to be considered as paid or unpaid holidays unless previously celebrated by the parties to this Agreement.

Par. 3. To be eligible for a paid holiday, an employee must have been on the Company's payroll within the calendar week, Sunday to Saturday inclusive, previous to the week in which the holiday occurs. "On the payroll" means that an employee must have performed actual work or have been on an authorized paid vacation. If an employee desires to extend his vacation beyond the earned paid vacation period, such extension of that time shall not be considered as "on the payroll."

Par. 4. The holiday provisions of this Article shall apply to all Elevator Constructor Mechanics, Elevator Constructor Helpers, Elevator Constructor Apprentices and Elevator Constructor Assistant Mechanics engaged in construction, repair, modernization and contract service work as defined and covered in this Agreement.

Par. 5. Eligible employees shall be paid for the regular workday and the paid holidays enumerated in Par. 1 at the regular straight time rate of the classification worked prior to the observance of the holiday. The rate of pay for

all work performed on paid holidays shall be at the double time rate in addition to the holiday pay. Any unpaid holidays observed as provided in Par. 2 shall be without pay, but if worked shall be double time rate.

Par. 6. When a paid holiday falls on Saturday, it shall be observed on Friday. When a paid holiday falls on Sunday, it shall be observed on Monday.

Par. 7. The Company shall not lay off or terminate an employee to circumvent holiday pay as provided herein.

Par. 8. Employees who work on a holiday that falls on a Saturday or Sunday and that holiday is observed on a Friday or Monday, respectively, shall be paid at the specified overtime rates for work performed on Saturdays or Sundays. (i.e., if July 4th falls on Saturday it will be celebrated on Friday, July 3rd. Work performed on July 3rd will be double time (2X) and work performed on July 4th will be paid at the specified overtime rate).

ARTICLE VII

Construction Work

Par. 1. Construction work is hereby defined as erecting and assembling of apparatus as enumerated in Article IV and Article IV (A) of this

Agreement, except general repairs and modernization as defined in Article VIII and VIII (A). It is hereby agreed that all Construction Work as above defined shall be performed exclusively by Mechanics, Helpers, Apprentices and Assistant Mechanics.

Par. 2. It is agreed that the regular working day shall consist of eight (8) hours worked consecutively with an unpaid lunch period, between 6 A.M., and 5 P.M., five (5) days per week, Monday to Friday, inclusive. Hours of work at each job site shall be those established by the general contractor and worked by the majority of trades. (The above working hours may be changed by mutual agreement as provided in Article XXVI). If the general contractor shuts down operations on a day not recognized as a holiday under this Agreement, the Company shall make every effort to place the affected employees on other work for that day.

Par. 2A. Upon written notification to the Local Business Representative, the Company may establish hours worked on a job site for a four (4) ten (10) hour day workweek at straight time pay for construction work. It is agreed that the regular working day shall consist of ten (10) hours worked consecutively with an unpaid lunch period, between 6 A.M. and 6 P.M., four (4) days per week, Monday to Thursday inclusive or Tuesday to Friday in-

clusive. All employees on the jobsite shall work the same four (4) ten (10) hour day workweek schedule. Any work performed on a day other than the days established for the four (4) ten (10) hour day workweek and before and after the regular working day where a four (4) ten (10) hour day workweek has been established, will be paid double the rate of single time.

When working in a per diem area, the employee shall receive per diem for all days during the established four (4) ten (10) hour day workweek, Monday to Thursday inclusive or Tuesday to Friday inclusive. When working in a per diem area and work continues on the same job site the following week, the employee shall receive per diem for all days other than the days established for the four (4) ten (10) hour day workweek, including Saturday and Sunday.

It is agreed that when a Holiday is observed on one of the established four (4) ten (10) hour day workweek days and providing the employee complies with Article VI, Par. 3, he/she will be paid ten (10) hours for that Holiday. If the Holiday is observed on any day not part of the established four (4) ten (10) hour day workweek, the employee will be paid eight (8) hours for that Holiday.

Par. 3. Work performed on Construction Work on Saturdays, Sundays and before and after

the regular working day on Monday to Friday, inclusive, shall be classed as overtime, and paid for at double the rate of single time.

Par. 4. When any four (4) of the seven (7) Atlantic City Formula Trades obtain a six (6) hour day, the Union shall work a six (6) hour day, the working day to be between the hours of 6 A.M. and 5 P.M. When sufficient Mechanics, Helpers, Apprentices and Assistant Mechanics are not available, an eight (8) hour day shall be worked. Whenever a local union obtains a six (6) hour day under this paragraph, the local union and the Company shall bargain as to the hours and overtime rates to be applied on the six (6) hour day.

Par. 5.

(a) When a majority of the Atlantic City Formula Trades (this means there must be four (4) of the seven (7) union Atlantic City trades), on a job work a shift or shifts following the day shift, the Company may work the following shifts. However, trades who perform the work as per their regular overtime rates shall not be considered as shift work.

(b) It is agreed that the "Day Shift" shall consist of eight (8) hours between 8 A.M. and 4:30 P.M., five (5) days per week, Monday through Friday, inclusive.

(c) The shift following the "Day Shift" shall work 7-1/2 hours between the hours of 4:30

P.M. and 12:30 A.M. and shall receive eight (8) hours pay plus an additional 10% per hour. The shift preceding the "Day Shift" shall work seven (7) hours between the hours of 12:30 A.M. and 8 A.M. and receive eight (8) hours pay plus an additional 15% per hour.

Any and all work during hours other than the established hours for any one of the three shifts shall be paid at double the hourly wage rate including any premium rate of the assigned shift.

(1) When an employee is called in prior to the regular starting time for his shift or he works beyond the regular quitting time of his shift, he shall receive double the hourly wage rate of his assigned shift for all hours in excess of the established hours for his shift.

(2) When an employee is required to work hours that are not continuous with the established hours for his assigned shift he shall be paid for such hours at double the hourly wage rate of his assigned shift or double the hourly wage rate of the shift on which such excess hours are performed whichever rate is higher.

(3) When the Company assigns an employee to a shift the employee shall work that shift a minimum of five (5) consecutive days. However, should the Company reassign an employee to another shift prior to working five (5) consecutive days, or within twenty-four (24) hours of completing a shift, the employee

shall receive the applicable overtime rate of the new shift he is assigned to for the first day only or the applicable overtime rate of the shift to which he had previously been assigned, whichever is higher, thereafter the employee shall receive the applicable rates for the new shift to which he is assigned. An employee who requests a shift reassignment and is reassigned as outlined herein, shall receive the applicable rates for the new shift to which he is assigned at single time only.

(4) When an employee has performed work on another job and he is directed to work on a shift job within twenty-four (24) hours after completing work on the other job, he shall receive the applicable overtime rate of his prior job or the applicable overtime rate of the shift to which he is assigned whichever rate is higher.

(d) Any work performed on Saturday, Sunday, or a Holiday shall be paid at double the hourly wage rate of the applicable shift including any premium rate.

(e) In the case of the second and third shifts and for the purpose of fringe benefit computations, each employee who works a full shift shall be considered to have worked eight (8) hours.

(f) The working hours set forth in Par. 3 and Par. 4 above may be changed by mutual agreement as provided in Article XXVI.

ARTICLE VIII

Repair Work

Par. 1. Repair Work is hereby defined as general repairs on apparatus enumerated in Article IV and Article IV(A) of this Agreement. Repair work shall be exclusively performed by Mechanics, Helpers, Apprentices and Assistant Mechanics.

Par. 2. General repairs are hereby defined as follows:

Team repairs:

Renewal of all ropes.

Renewal of brake linings (except small machines).

Shortening of all hoisting and counterweight cables.

Replacement of any traveling cable exceeding 50 feet in length.

Safety test where test weights are required.

Replacement of crosshead, counterweight or deflector sheave bearings.

Rescoring of sheaves or drums.

Replacement of worm and gears.

Rebabbitting of bearings.

Hydraulic repair work except cleaning, oiling, greasing, belts, small valves, adjusting and one man pressure relief valve test performed in accordance with Appendix A, item 22.

Adjusting or readjusting using test weights.

Realigning guide rails.

Replacing crossheads, stiles, safeties or equalizers.

Hoistway door closers with hydraulic or pneumatic checks.

All escalator and moving walk repair work must be done by a team. (Exception Article IX, Contract Service Work, call-backs and examination may be done by one person if there is no factor of safety).

Exception to above: Residence elevator as described in A.S.M.E. A17.1 code which shall be one person.

One man repairs:

Installing sound isolation.

Replacement of door hangers (except for freight bi-parting doors).

All door closer work (except for freight bi-parting doors).

Rewiring car switches, governors and selectors or any other apparatus in the car.

Refastening guide rails.

Replacing or repairing car floor covering.

Rewiring or reinstalling limit switches.

Replacing automatic rail or track oilers.

One or Two Man Repairs:

Armature repairs.

Renewing of car shoes or roller guides.

Repairs to cab or car gate.

Renewal of motor bearings.

Replacing thrust bearings.

Rewiring controllers.

Installation and/or replacement of the following (except when the completion of such work requires more than eight (8) hours, excluding travel time, it shall be performed by a team):

Proximity devices (door protection only).

Emergency lighting (battery chargers and lights).

Braille Plates.

Telephones/Communication Devices (with existing wiring and box in place).

Fixture Cover Plates (no wiring).

Key switches/Security devices (with existing wiring, excluding full Fireman's Service Operation).

Controller Wiring Changes (minor changes).

Fixture Replacement (in existing locations only).

Replacement of relays, timers, or mechanical devices with solid state devices and circuitry.

The replacement of equipment on existing elevator installations.

Other repair work assignments not listed above may be one man assignments providing there is no factor of safety involved.

Par. 3. When escalators are prepared and/or disassembled for cleaning, oiling, greasing, adjusting and minor replacement, (minor replacement meaning work requiring one (1) hour or less), the work shall not be classed as repair work.

When escalators are prepared and/or disassembled for cleaning, etc., purposes as mentioned above, and any replacement and/or repairs requiring more than one (1) hour, only the replacement and/or repairs shall be classed as repair work.

When escalators are prepared and/or disassembled primarily for replacement and/or repairs, all work shall be classed as repair work.

Par. 4. When men who are employed on contract service work perform any of the repair work listed above during hours other than between 6 A.M. and 6 P.M., Monday to Friday, inclusive, it shall be paid for at double the rate of single time. (Exception: employees performing one man repair while on call-backs shall be paid at 1.7 times the single time rate).

Par. 5. It is agreed the regular working day shall consist of eight (8) hours worked consecutively with an unpaid lunch period, between 6 A.M. and 6 P.M., five (5) days per week, Monday to Friday, inclusive. All other working time shall be classed as overtime and paid for at double the rate of single time.

ARTICLE VIII(A)

Modernization Work

Par. 1. Modernization work is hereby defined as any and all work performed on apparatus enumerated in Article IV and Article IV(A) in any existing or occupied building, to bring equipment up to date, including general repairs which are a part of a modernization job. Installation in existing unused hoistways shall be considered construction work unless such installation is part of modernizing an existing elevator or an entire group. However, a job which both the machine is changed out and the rails are removed or the machine is converted to a different type (e.g., hydro to traction, traction to hydro, traction to traction, drum to traction, drum to hydro, hydro to hydro) and all new rails are installed shall be construction work. An escalator modernization shall be defined as the replacement of any or all components except the truss including general repairs which may be a part of a modernization job. Any other general repairs and contract service work shall be excluded from this Article. Modernization work shall be exclusively performed by Elevator Constructor Mechanics, Elevator Constructor Helpers, Elevator Constructor Apprentices and Elevator Constructor Assistant Mechanics.

Par. 2. It is agreed the regular working day shall consist of eight (8) hours worked consecu-

tively with an unpaid lunch period, between 6 A.M. and 6 P.M., five (5) days per week, Monday to Friday, inclusive. All other working time shall be classed as overtime and paid for at double the rate of single time.

Par. 2A. Upon written notification to the Local Business Representative, the Company may establish hours worked on a job site for a four (4) ten (10) hour day workweek at straight time pay for modernization work. It is agreed that the regular working day shall consist of ten (10) hours worked consecutively with an unpaid lunch period, between 6 A.M. and 6 P.M., four (4) days per week, Monday to Thursday inclusive or Tuesday to Friday inclusive. All employees on the jobsite shall work the same four (4) ten (10) hour day workweek schedule. Any work performed on a day other than the days established for the four (4) ten (10) hour day workweek and before and after the regular working day where a four (4) ten (10) hour day workweek has been established, will be paid double the rate of single time.

When working in a per diem area, the employee shall receive per diem for all days during the established four (4) ten (10) hour day workweek, Monday to Thursday inclusive or Tuesday to Friday inclusive. When working in a per diem area and work continues on the same job site the following week, the em-

ployee shall receive per diem for all days other than the days established for the four (4) ten (10) hour day workweek, including Saturday and Sunday.

It is agreed that when a Holiday is observed on one of the established four (4) ten (10) hour day workweek days and providing the employee complies with Article VI, Par. 3, he/she will be paid ten (10) hours for that Holiday. If the Holiday is observed on any day not part of the established four (4) ten (10) hour day workweek, the employee will be paid eight (8) hours for that Holiday.

Par. 3. Upon notification to the Local Business Representative or to the Regional Director, if the modernization job is outside the jurisdiction of a local union, the Company may establish shift work. Shift work shall not be permitted except in cases where at least two (2) shifts per day are established for at least five (5) or more consecutive days including Saturday, Sunday, or Holiday when worked. One of the shifts must be the "Day Shift" as defined in Par. 4 below. When special circumstances exist, such as production or operation needs of the customer, a second and third shift will be worked without any day shift when the Company and the Local Business Representative or Regional Director, if the modernization job is outside the jurisdiction of the local union, have mutually agreed that one of the

two (2) shifts does not have to be the "Day Shift."

Par. 4. It is agreed that the "Day Shift" shall consist of eight (8) hours between 8 A.M. and 4:30 P.M., five (5) days per week, Monday through Friday, inclusive.

Par. 5. The shift following the "Day Shift" shall work 7-1/2 hours between the hours of 4:30 P.M. and 12:30 A.M. and shall receive eight (8) hours pay plus an additional 10% per hour. The shift preceding the "Day Shift" shall work seven (7) hours between the hours 12:30 A.M. and 8 A.M. and shall receive eight (8) hours pay plus an additional 15% per hour.

Par. 6. Any and all work during hours other than the established hours for any one of the three shifts shall be paid at double the hourly wage rate including any premium rate of the assigned shift.

(a) When an employee is called in prior to the regular starting time for his shift or he works beyond the regular quitting time of his shift, he shall receive double the hourly wage rate of his assigned shift for all hours in excess of the established hours for his shift.

(b) When an employee is required to work hours that are not continuous with the established hours for his assigned shift he shall be paid for such hours at double the hourly wage rate of his assigned shift or double the hourly

wage rate of the shift on which such excess hours are performed whichever rate is higher.

(c) When the Company assigns an employee to a shift the employee shall work that shift a minimum of five (5) consecutive days. However, should the Company reassign an employee to another shift prior to working five (5) consecutive days, or within twenty-four (24) hours of completing a shift, the employee shall receive the applicable overtime rate of the new shift he is assigned to for the first day only or the applicable overtime rate of the shift to which he had previously been assigned, whichever is higher, thereafter the employee shall receive the applicable rates for the new shift to which he is assigned. An employee who requests a shift reassignment and is reassigned as outlined herein, shall receive the applicable rates for the new shift to which he is assigned at single time only.

(d) When an employee has performed work on another job and he is directed to work on a shift job within twenty-four (24) hours after completing work on the other job, he shall receive the applicable overtime rate of his prior job or the applicable overtime rate of the shift to which he is assigned whichever rate is higher.

Par. 7. Any work performed on Saturday, Sunday, or Holiday shall be paid at double the hourly wage rate of the applicable shift including any premium rate.

Par. 8. In the case of the second and third shifts and for the purpose of fringe benefit computations, each employee who works a full shift shall be considered to have worked eight (8) hours.

Par. 9. The working hours set forth in Par. 4 and Par. 5 above may be changed by mutual agreement as provided in Article XXVI.

ARTICLE IX

Contract Service

Par. 1. Contract Service is hereby defined as any contract obtained by the Company for regular examination or care of apparatus enumerated in Article IV and Article IV(A) of this Agreement and general repairs as indicated in Article VIII, Par. 2 for a period of not less than one (1) month. Contract Service Work shall be exclusively performed by Elevator Constructor Mechanics, Elevator Constructor Helpers, Elevator Constructor Apprentices and Elevator Constructor Assistant Mechanics.

Par. 2. Two (2) Helpers, Apprentices or Assistant Mechanics to each three (3) Mechanics may be employed in contract service work. The Helper, Apprentice or Assistant Mechanic when working with the Mechanic shall perform all work assigned to him by the Mechanic.

A 70% Helper, a second year Apprentice, third year Apprentice, fourth year Apprentice or Assistant Mechanic may work alone under the general supervision of the Mechanic in his assigned district provided such Helper or Apprentice is met on the first job daily. The requirement to meet on the first job daily shall not apply to the Assistant Mechanic provided that he/she shall notify the office and the Mechanic when starting the first job daily. The Helper, Apprentice or Assistant Mechanic shall notify the office and the Mechanic when changing jobs and at the completion of the work day.

When working alone the Helper, second year Apprentice, third year Apprentice, fourth year Apprentice or Assistant Mechanic shall perform only oiling, cleaning, greasing, painting, replacing of combplate teeth, relamping and fixture maintenance, the inspection, cleaning and lubrication of hoistway doors, car tops, bottoms, and pits, observing operation of equipment and at no time when working alone shall such a Helper, Apprentice or Assistant Mechanic perform any other work or function normally performed by Mechanics. The word “District” means the regular contract service route of the Mechanic or Mechanics to whom the Helper, Apprentice or Assistant Mechanic has been assigned that day.

Par. 2A. When the Company obtains a contract that requires a Mechanic and Helper, Appren-

tice or Assistant Mechanic to be on the job and/or in a building at all times during the regular weekly working hours, such Helper, Apprentice or Assistant Mechanic shall not be considered as part of the two (2) to three (3) agreement mentioned above, provided no Probationary Helpers or Probationary Apprentices are assigned to such regularly scheduled work.

Par. 2B. Where a Local Office has contract service work requiring more than two (2) Elevator Constructor Mechanics full time, the third Elevator Constructor employed in that office may be a Helper, Apprentice or Assistant Mechanic. A 70% Helper, second year Apprentice, third year Apprentice, fourth year Apprentice or Assistant Mechanic may work alone under the general supervision of the Mechanic in his assigned district provided such Helper or Apprentice is met on the first job daily. The requirement to meet on the first job daily shall not apply to the Assistant Mechanic provided that he/she shall notify the office and the Mechanic when starting the first job daily. The Helper, Apprentice or Assistant Mechanic shall notify the Mechanic when changing jobs and at the completion of the workday. When working alone such Helper, second year Apprentice, third year Apprentice, fourth year Apprentice or Assistant Mechanic shall perform only cleaning, oiling, greasing, painting, replacing of combplate teeth, relamping and

fixture maintenance, the inspection, cleaning and lubrication of hoistway doors, car tops, bottoms, and pits, observing operation of equipment and at no time when working alone shall such a Helper, Apprentice or Assistant Mechanic perform any other work or functions normally performed by Mechanics. The word "District" means the regular contract service route of the Mechanic or Mechanics to whom the Helper, Apprentice or Assistant Mechanic has been assigned that day. The phrase "Local Office" as mentioned in this paragraph means Local Representatives, Resident Mechanics, etc. performing contract service work as defined in Par. 1 of this Article, in a city outside the primary of a local union. (Local Representatives, Resident Mechanics, etc., as referred to above, shall be permitted to do one man or as a member of a team, team repairs, in accordance with Article VIII, Par. 2), and, as a member of a team, ADA modernization and unloading of construction material. However, where a local office is located within a zoned or per diem area of a local union, the employee(s) assigned to such office shall be paid expenses in accordance with the Local Travel and Expense Agreement when performing work, as a member of a team, team repairs, ADA modernization and unloading of construction materials.

Inasmuch as Local Representatives are on-call for extended periods of time, they shall,

upon request, receive a minimum of six (6) weekends per year when they are relieved of their on-call obligation. These weekends are in addition to their accrued vacation. The Local Representative must give fourteen (14) calendar days notice before each requested weekend off.

Par. 2C. Upon reasonable request of the International Office of the IUEC, the Company shall make available to the properly designated International Representative the information necessary to determine that all employees in a service office are being treated relative to wages, hours worked, straight time and overtime hours paid, Pension and Health Benefit Plan payments in accordance with the NEBA Agreement.

Par. 3. It is agreed the regular working day shall consist of eight (8) consecutive work hours, with an unpaid lunch period, between 6 A.M. and 6 P.M., five (5) days per week, Monday to Friday, inclusive. Any Mechanic, Helper, Apprentice or Assistant Mechanic assigned regular hours beginning before 8 A.M. or ending after 5 P.M. shall be so assigned for a five (5) consecutive working day increment. It is agreed that for business reasons of the Company or personal reasons of the affected employee, the Company and the local union may modify these times.

It is agreed that in order for call-backs to be answered in downtown business areas or similar business areas, the Company may assign a Mechanic or Mechanics to remain at a mutually agreed building beyond regularly established working hours not to extend beyond 6:30 P.M. For all such work beyond his regularly established working hours the Mechanic or Mechanics shall be paid at the rate of time and one-half. Should such assigned Mechanic or Mechanics be authorized to continue work on a job when a call-back extends beyond 6:30 P.M., the man or men shall receive applicable travel time and travel expense home. Where a paid or non-paid holiday occurs, Monday through Friday, inclusive, the work performed on Saturday during the week in which any holiday occurs shall be time and one-half the single time rates.

Par. 4. Work performed on Sundays shall be classed as overtime and paid for at the rate of double time (2x). All other time worked before and after the regular working day or in excess of eight (8) consecutive work hours with an unpaid lunch period and on Saturdays shall be at the rate of time and one-half.

Par. 5. Call-backs on contract service on overtime, except Sundays and holidays, shall be paid for at the rate of 1.7 times the rate of single time.

Par. 6. Call-backs on contract service on Sundays and holidays shall be paid for at double the rate of single time.

Par. 7. On contract service where the Company has a contract in one building only or adjacent buildings, for the examination and care of enough elevators to warrant keeping a man or men working continuously for sixteen (16) hours, the Company may establish a shift (s) from 5:00 pm to 12:00 am or 12:00 am to 7:00 am. Pay for this work will be eight (8) hour's pay for seven (7) hours worked at the regular rate of pay. Saturday, Sunday, and Holidays are classed as overtime and paid at the overtime rate. For the sixteen (16) hour calculation the seven (7) hour shift will be counted as an eight (8) hour shift.

Par. 8.

(a) Employees engaged in contract service work agree they will respond to call-backs outside of their regular work hours. The Company, the local union, and the employees shall meet and cooperate in establishing a call-back system, which will cover such issues as a list of employees available on designated dates to respond to overtime call-backs, the number of employees on call-back at any given time, replacements for vacations and holidays, and trading of on-call duty. In the event the local union, the employees, and the Company can-

not agree on the establishment of the call-back system, the Company and the IUEC will meet to establish the system.

Travel time from home to job and from job to home on overtime call-backs (starting after regular working hours and terminating before start of regular working hours) shall be paid for at the same overtime rate applying to the work. Travel expenses on overtime call-backs shall be paid as agreed in Local Expense Agreements.

When consecutive overtime call-backs occur, the employee shall receive the applicable overtime rate and travel expenses from home to job, from that job to one or more other jobs and then back home.

Men called out before the regular working hours shall receive the applicable travel time and travel expense from home to job. (Exception: The Company may call and instruct men to report to any given job at his regular starting time on his route in the primary.)

When call-backs made during regular working hours extend into overtime and the employee is authorized to continue work, he shall receive the applicable travel time and travel expense home.

(b) Employees who are designated to be available for overtime call-backs pursuant to paragraph (a) above, or who are called out before the regular working hours, or who are on call-backs that extend into overtime, shall be

entitled to and receive such compensation as described below during the period of time that such employees are responding to call-backs outside of their regular hours of work:

The rate of pay for overtime call-backs shall not be less than 1.7 times the straight time rate of pay.

The premium pay described above is made in lieu of standby pay and in recognition of the fact that contract service employees agree to make themselves available for overtime calls.

(c) It is understood and agreed that employees who are available to respond to overtime call-backs are waiting to be engaged (as defined by the Fair Labor Standards Act) by the Company. Employees who are waiting to be engaged are free to participate in personal activities; are not required to remain at home, at the Company's premises or any other specified location during the period that they are on-call. Employees who are "on-call" may leave the location they have indicated as the place of their primary contact. However, such employees will be available for callout by either leaving another phone number where they can be contacted or by carrying on their person a communication device such as a pager, cellular telephone, two-way radio, or other such communication device which enables the Company to contact them.

ARTICLE X

Designation of Helper's, Apprentice's and Assistant Mechanic's Work and Qualifications

Par. 1. It is agreed by the Union that there shall be no restrictions placed on the character of work which a Helper, Apprentice or Assistant Mechanic may perform under the direction of a Mechanic. A Helper, Apprentice or Assistant Mechanic certified to weld shall be paid Mechanic's rate when performing welding, (excluding tack welding). However, Helpers, Apprentices and Assistant Mechanics on contract service work are subject to the provisions of Article IX.

Par. 2. The total number of Helpers, Apprentices and Assistant Mechanics employed shall not exceed the number of Mechanics on any one job, except on jobs where two teams or more are working, one extra Helper, Apprentice or Assistant Mechanic may be employed for the first two teams and an extra Helper, Apprentice or Assistant Mechanic for each additional three teams.Further, the Company may use as many Helpers, Apprentices and Assistant Mechanics as best suits his convenience under the direction of a Mechanic in wrecking old plants and in handling and hoisting material, and on foundation work. When removing old and installing new cables on ex-

isting elevator installations, the Company may use two Helpers, Apprentices or Assistant Mechanics to one Mechanic.

Par. 3. A newly-hired employee without previous mechanical experience shall be classified as a Probationary Apprentice and shall work as a probationary employee for a period or periods totaling twelve (12) months within the aggregate period of not more than eighteen (18) months.

The Company and the Union shall have the privilege of testing the ability of Probationary Apprentices during this twelve (12) month period. If they agree that the Apprentice during this probationary period does not display sufficient aptitude to become a first year Apprentice he/she shall be discharged at any time during the probationary period as stated above.

Probationary Apprentices shall advance from the fifty (50) percent wage rate to the first year Apprentice's wage rate upon completion of six (6) months in the elevator industry provided such Probationary Apprentices have worked a minimum of one hundred (100) hours in each thirty (30) day period during the six (6) months. The first year Apprentice wage rate shall be effective at the beginning of the next weekly pay period following completion of the six (6) months.

It is understood that Probationary Apprentices during the probationary period above set

out may be discharged or laid off at any time with or without cause and no reason need be assigned therefore, and no such discharge shall be construed as a grievance. The probationary period may be worked with more than one employer provided such employer has a labor contract with the IUEC, and the period of twelve (12) months probation may cover an aggregate period of not more than eighteen (18) months. A month shall be deemed worked when the Probationary Apprentice completes one hundred (100) hours in any thirty (30) day period.

Par. 4. An Apprentice may work as a Temporary Mechanic provided he/she has completed a minimum of his/her first year Apprenticeship requirements, and other requirements for Temporary Mechanics prescribed from time to time by NEIEP, and upon agreement of the Employer and the Union Representative, or Regional Director if he/she works outside the jurisdiction of the Local Union, and at the same scale as a regular Mechanic. Those selected first will be Apprentices who have completed all of their Apprenticeship training and are waiting to take the Mechanic's Exam and/or Assistant Mechanics. Those selected second will be Apprentices who have completed all of their training and failed the Mechanic's Exam and are actively participating in the educational program, they must maintain

attendance and passing requirements mandated by NEIEP. Those selected third will be fourth year Apprentices and those selected fourth will be third year Apprentices, followed by finally second year Apprentices and/or Helpers. Employers may select Apprentices, Assistant Mechanics and Helpers in its employ to work as Temporary Mechanics under the provisions of this paragraph if there are no qualified Mechanics available in that Local. Apprentices, Assistant Mechanics and Helpers serving as Temporary Mechanics will be put back to Apprentice, Assistant Mechanic or Helper status when their temporary assignment is completed or within fifteen (15) working days of when the Employer is notified there is a qualified Mechanic available whichever comes first. The order for putting back Temporary Mechanics to Apprentice, Assistant Mechanic or Helper status will be in reverse order; 1) second year Apprentices and/or Helpers, 2) third year Apprentices, 3) fourth year Apprentices, and 4) Apprentices who have completed all their training and failed the Mechanic's Examination and are actively participating in the educational program and finally Apprentices who have completed all of their Apprenticeship training and are waiting to take the Mechanic's Exam and/or Assistant Mechanics.

In order to administer this procedure, NEIEP will provide to the Company on a semi-

annual basis a listing of all the Employer's eligible Apprentices and Helpers and the education they have completed.

It is agreed that the withdrawal of or failure to issue a Temporary Mechanic's card will not be used by the Union to advance its position with respect to a dispute unrelated to this paragraph of Article X.

No Apprentice may qualify or be raised to the capacity of Mechanic until he/she has worked for a period of three (3) years in the elevator industry, has successfully completed the required NEIEP courses, has been certified by NEIEP that he/she has completed the necessary "on the job" training and has passed a Mechanic's Examination administered by the NEIEP Director's Office. Such examination shall only be administered by NEIEP no more or no less than once every twelve months in each local. The National Elevator Industry Education Program has developed and will periodically update a standardized Mechanic's Examination which will be used in each local. An Apprentice who has successfully passed a Mechanic's Examination shall become a Mechanic no later than sixty (60) days after the date the examination results are posted on the NEIEP website. Each Employer will be entitled to receive the results of its respective employees only. Should he/she fail to qualify, he/she cannot again take the Mechanic's Examination for a period of one (1) year.

Par. 5. Employees who enter the Military Service shall, upon re–employment, be accorded all rights provided by law.

Par. 6. Upon completion of the required classroom education program and mandatory on-the-job training (OJT) hours, all fourth (4th) year Apprentices shall sit for the NEIEP Mechanic's Exam. Those who pass the exam are elevated to the status of Mechanic, as referred to in Article X, Par. 4.

Those who do not pass the Mechanic's Exam, upon completion of the required classroom education program and mandatory on-the-job training (OJT) hours shall continue to be classified as a fourth year Apprentice so long as they continue to participate in the NEIEP education program and sit for each annual Mechanic's Exam.

Par. 7. There shall be a classification to be known as "Assistant Mechanic" and Mechanics may be employed as Assistant Mechanics in accordance with Article XXII and the following:

(a) The wage rate for the Assistant Mechanic shall be identical to that of a fourth year Apprentice.

(b) The Mechanic, the Mechanic's Business Representative and the Employer signify their agreement to employ an Assistant Mechanic by executing the document attached

hereto and identified as “Attachment A”. No other agreement is required nor shall any other agreement be recognized by the Parties; and

(c) When electing Assistant Mechanic status, the Mechanic agrees that he/she shall not be eligible to work as a Mechanic for a twelve-month period except as provided herein. The Agreement may again be renewed at the end of the twelve-month period. An Assistant Mechanic can be elevated to Mechanic status during that 12 month period should his/her employer offer the Assistant Mechanic a permanent Mechanic’s position. If the Assistant Mechanic chooses to accept such position, the signed Assistant Mechanic agreement will be rendered void and should the Mechanic become unemployed he/she cannot enter into another agreement until the 12 month time period of their Assistant Mechanic agreement expires.

(d) An Assistant Mechanic can become a temporary Mechanic should his/her current employer choose to employ the Assistant Mechanic as a Mechanic for a period not to exceed any ninety (90) day period at the appropriate Mechanic’s wage rate. Should an assignment as Mechanic exceed ninety (90) days, then the Mechanic shall not be eligible to return to Assistant Mechanic status and “Attachment A” shall be considered void. An Assistant Mechanic can only be considered for a Tempo-

rary Mechanic position provided there are no available Mechanics on the Local's out of work list.

ARTICLE XI

System of Payment

Par. 1. It is agreed that all Mechanics, Helpers, Apprentices and Assistant Mechanics shall be paid weekly by check, which shall be sent to any address they elect to designate other than the Company's address. Mechanics, Helpers, Apprentices and Assistant Mechanics shall be given the option to be paid by direct deposit or by direct mail. However, there shall be no obligation on the part of any employee or the Company to participate in the direct deposit/direct mail program and no discrimination against either one if either should elect not to participate. Once enrolled, an employee in direct deposit/direct mail program may elect to discontinue enrollment by giving the Company ten (10) working days written notice. Should a change to a time ticket be required, the Company shall notify the Mechanic and/or Helper, Apprentice or Assistant Mechanic in writing of the reason for such change within five (5) working days.

Mechanics, Helpers, Apprentices and Assistant Mechanics shall be paid by voucher on the next regular work day following the em-

ployee's regular pay day if the employee does not receive his regular pay check.

It is further agreed that in those instances where the Company is consistently unable to comply with the provisions of this paragraph, the Company shall pay each employee on the job or at the office on company time by cash or by check.

Par. 2. Elevator Constructors shall receive at the time of weekly payment, a check stub containing the following information:

1. Employee's name and some form of identification number other than the full social security number.

2. Total hours worked-regular and overtime, accumulative.

3. Total wages-weekly and accumulative.

4. Federal income taxes withheld.

5. FICA taxes withheld.

6. Health Benefit Plan & Pension deductions weekly and accumulative.

7. Any other authorized or legitimate deductions.

8. Vacation Pay and PTO-weekly and accumulative in amount of money.

9. Annuity contributions-weekly and accumulative in amount of money.

10. 401(k) deductions-weekly and accumulative in amount of money.

At the time of weekly payment, at the employee's request, the Employer shall also pro-

vide the employee with a document, in writing, reporting the time the employee submitted to his Employer for that payment regardless of whether the employee submitted his time on paper, electronically, or by any other medium.

Should the Company's payroll and/or accounting department experience a short work week due to a holiday or any other reason, the Company shall make any special arrangements necessary to insure employees receiving pay on schedule.

Par. 3. The Employer agrees to deduct from an employee's wages, for each hour of work performed, the sum indicated on a voluntary check-off authorization card signed by that employee, as a voluntary contribution to NECPAC, the Union's political action fund. The amount shall be remitted by the Employer to the Union's political action fund no later than the 15th day of the month after the month the funds have been collected and shall be accompanied by a list of names of those employees for whom such deductions have been made and the amount deducted for each such employee. An employee may cancel his check-off authorization in writing to the Union and the Employer at any time, and the deduction will be stopped no later than 21 days from the date of the close of the next payroll period.

ARTICLE XII

Vacations and Paid Time Off

Par. 1. The following plan is established for Vacation Pay and Paid Time Off : Vacation Pay shall accrue and be paid in accord with the provisions of this Article but shall also be used as Paid Time Off ("PTO") and to satisfy paid leave laws, to the extent and in the manner permitted by said laws. Where any paid leave law or other governing law requires the employer to pay fringe benefits in accord with said law, the Company shall pay in addition to the Vacation Pay and PTO under this Article the fringe contributions required by this Agreement to the Funds for such hours of paid leave required by said law. The fringe contributions shall not be paid from an employee's accrued Vacation Pay and PTO.

(a) An employee who has worked less than five (5) years in the business shall receive Vacation Pay and PTO credit on the basis of 6% of his regular hourly rate for all hours actually worked. An employee who has worked more than five (5) years in the business shall receive Vacation Pay and PTO credit on the basis of 8% of his regular hourly rate for all hours actually worked.

Vacation Pay and PTO shall begin to accrue on the first day of employment.

(b) Unless prohibited by a paid leave law, and except as provided in Par. 1. (q) of this Article,

the Vacation Pay and PTO accrued from January 1 of one year through June 30 of the same year shall be paid in full to the employee by July 15 of that year. The Vacation Pay and PTO accrued from July 1 of one year through December 31 of the same year shall be paid in full to the employee by January 15 of the succeeding year.

(c) An employee with less than five (5) years in the business who works 1750 hours or more but less than 2000 hours in any vacation and PTO year shall receive at least 120 hours of Vacation Pay and PTO. An employee with more than five (5) years in the business who works 1750 hours or more but less than 2000 hours in any vacation and PTO year shall receive at least 160 hours of Vacation Pay and PTO. The vacation and PTO year shall run from January l through December 31.

(d) Unless prohibited by a paid leave law, an employee with less than five (5) years of service must take all accumulated Vacation Pay and PTO up to fifteen (15) days in a calendar year. An employee with more than five (5) years of service must take all accumulated Vacation Pay and PTO, up to twenty (20) days in a calendar year.

(e) An employee shall have the option of taking any additional vacation and PTO accrued in excess of the amount stated under Paragraph 1. (d) above provided he has obtained prior approval from the Company or as permitted by any paid leave law.

(f) It is understood and agreed that work conditions must be taken into consideration when vacations are arranged. Time off for vacation shall be taken as a full complete period whenever possible. PTO for other purposes may be taken in hourly or daily increments. Employees shall provide prior notice to the Company whenever possible.

(g) Vacation Pay and PTO accrued will change from 6% to 8% on the first payroll period after the first month following completion of five (5) years in the business. These five (5) years include the six (6) months probationary period.

(h) The local union shall furnish the Company, on request, dates that Elevator Constructor Mechanics, Elevator Constructor Helpers, Elevator Constructor Apprentices and Elevator Constructor Assistant Mechanics were first employed in the elevator industry.

(i) When an employee leaves the Company, the employee's accrued Vacation Pay and PTO as of the date of separation from the Company, shall be paid out by separate check, along with a final check on the following pay date for all hours worked.

(j) When an employee retires from the industry, the Company shall pay any Vacation Pay and PTO he is owed within thirty (30) days after his retirement provided he notifies the Company in advance and in writing.

(k) Where vacations and PTO interfere by temporarily breaking up a team, the Company shall have the right to place the extra employee to the Company's advantage. Serious interference shall be taken up with the Business Representative.

(l) Time spent outside the industry, whether or not a member of the local union, shall not count toward vacation and PTO eligibility status. An employee with at least one (1) year's service in the industry who takes time off for service in the Armed Services shall have such service time counted toward his vacation and PTO eligibility status upon return to the industry.

(m) Hours worked for the Company by a member of a local union, while outside of the jurisdiction of that local, shall count for Vacation Pay and PTO.

(n) Hours paid as holiday pay, Vacation Pay and PTO, or traveling time outside of the regular working hours are not to be counted as hours worked when computing Vacation Pay and PTO (Exception: traveling time on overtime call-backs, whether emergency maintenance or emergency repair work, shall be counted as hours worked when computing Vacation Pay and PTO).

(o) At the time Vacation Pay and PTO is paid, Federal and State taxes shall be withheld on the basis of the number of weeks of vacation and PTO or portion of a week of vacation

and PTO the accrued Vacation Pay and PTO represents. The intent of this provision is that taxes will be withheld at weekly rates rather than the higher rates for a lump sum payment of Vacation Pay and PTO.

(p) Notwithstanding any prior interpretations or awards to the contrary, vacation and PTO can be used for any reason, including any reason set forth in any applicable present or future paid leave laws. The Company shall take no action that discourages or penalizes an employee's exercise of his right to take vacation and PTO.

(q) Notwithstanding Par. 1(b), accrued Vacation Pay and PTO shall be paid at the time it is used, at the request of the employee or required by a paid leave law.

(r) The provisions of any and all paid leave laws are expressly waived by the parties to this Agreement, to the extent permitted by such laws. Additionally, should any other municipality, county, state or other governmental agency adopt a law or regulation providing for paid leave for employees of employers signatory to a collective-bargaining agreement between NEBA and the IUEC and such law or regulation permits the parties to elect a waiver of such paid leave, the parties agree that all such waivers are adopted and incorporated herein, to the extent permitted by law.

(s) For those jurisdictions that do not provide for a waiver of the paid leave law's re-

quirements, the parties to this Agreement acknowledge and agree that to the extent allowed by applicable law, the preceding provisions shall satisfy, and shall be construed to satisfy, the requirements of any and all laws or regulations requiring employers to provide paid leave to eligible employees. A Company may modify its procedures for implementing the preceding provisions to comply with any existing laws and new laws enacted during the life of this Agreement, upon prior notification to the Union and provided further that the benefits provided in the Article cannot be reduced.

ARTICLE XIII

Traveling Time and Expenses

Par. 1. When Elevator Constructors are sent outside the primary jurisdiction, but within the zoned area of the secondary, travel time and travel expense shall be paid in accordance with the Local Expense Agreement.

When Elevator Constructors are sent beyond the zoned area of the secondary jurisdiction or outside the secondary jurisdiction all travel time during the regular established work hours, Monday through Friday, inclusive, shall be paid at single time rates. Likewise, all travel time before and after the regular established work hours, Monday through Friday, inclusive, shall be paid at time and one-half rates. Fur-

ther, all travel time on Saturdays, Sundays and Holidays shall be paid at time and one-half rates (as agreed to in Article IX, Contract Service, travel time on overtime call-backs is excepted from the above). Expenses incurred on trip to be paid by the Company in accordance with the Local Expense Agreement.

Employees operating vehicles provided by the Company shall not be entitled to payment of wages or commuting expenses for time spent driving before or after the regular working hours from the employee's home to the first job site of the regular workday or driving from the last job site of the regular work day to the employee's home. (Note: Employees shall be reimbursed for any tolls in excess of the toll charge for passenger vehicles). This is not intended to circumvent expenses or travel time paid pursuant to Art. IX or Art. XIII and/or a Local Travel and Expense Agreement or established local practice.

Par. 2. Local Unions and NEBA Representatives are requested to establish zones within the secondary jurisdiction and traveling time and traveling expense allowances for each zone, consistent with existing arrangements.

Par. 3. When the Local Union and the NEBA Representative are unable to resolve differences regarding local travel time and travel expense agreements and presently recognized

primary and secondary jurisdiction, either party may request the General President, IUEC and the NEBA Executive Director to study the dispute. The General President, IUEC and the NEBA Executive Director, or their designees, shall entertain the request, and after investigation and study, are authorized to make recommendations to the Local Union and the NEBA Representative.

The General President, IUEC and the NEBA Executive Director, or their designees, may issue guidelines that the Local Union and the NEBA Representative may utilize in negotiating changes to and resolving disputes over local travel time and travel expense agreements.

All parties shall continue to work under the existing local travel time and local travel expense agreement for thirty (30) days from the date that NEBA and the IUEC are notified that the parties have reached an impasse. The General President, IUEC and the NEBA Executive Director, or their designees, may at their discretion extend the present Agreement for one additional thirty (30) day period.

ARTICLE XIV

Strikes and Lockouts

Par. 1. It is agreed by both parties to this Agreement that so long as the provisions herein con-

tained are conformed to, no strikes or lockouts shall be ordered against either party. It is understood that this Paragraph shall be applied and construed consistent with the provisions of Article IV, Par. 11 concerning Grievance and Arbitration procedure.

Par. 2. No strike will be called against the Company by the Union unless the strike is approved by the International Office of the International Union of Elevator Constructors. Sufficient notice shall be given to the Company before a strike shall become effective. Except in the case of Contract Service Work as specified in Article IX of this Agreement, work stoppages brought about by lawful picketing or strikes by building trades local unions affiliated with Building Trades Councils shall not constitute a strike within the meaning of this Article.

Par. 3. In the event of a strike, work stoppage or lockout affecting Mechanics, Helpers, Apprentices and Assistant Mechanics on New Construction or Repair Work, men working on Contract Service shall not be affected by such strike, work stoppage or lockout, and the Union will supply competent men to the Company to do all work covered under Contract service whether such men are continuously employed in this work or not prior to the strike, work stoppage or lockout.

ARTICLE XV

Arbitration

Par. 1. Any difference or dispute regarding the application and construction of this Agreement, shall be referred to as a "grievance" and shall be resolved under the following procedure. Both parties commit to making an earnest effort to resolve differences in accordance with the procedure outlined below:

Par. 2. Oral Step. Any employee, local union, or the Employer with a grievance (hereinafter called the "grievant"), shall discuss the grievance with the designated Employer Representative (or Local Union Business Representative) within ten (10) working days after the cause of the grievance is known or should reasonably have been known. The Employer shall designate to each local union the Employer's Representative(s) for the purpose of responding to grievances at this step. If the grievance is initiated by an employee, the Local Business Representative shall be present during the discussion.

Within three (3) working days after the above discussion, the Employer's Representative shall notify the employee and the Local Union Business Representative of his disposition of the matter.

The Local Business Representative shall similarly respond to the Employer's grievance.

Par. 3. Written Step One. If the issue remains unresolved after the conclusion of the Oral Step, the grievant, within ten (10) working days of the conclusion of the Oral Step, may submit in writing on provided forms a brief statement of the grievance, including the Article and paragraph of the Agreement allegedly violated (if known), and the remedy requested.

Within fifteen (15) working days after the written grievance is received by the Employer (or the Union), a meeting will be held to discuss the grievance. The Employer shall be represented by the Regional Field Manager, Field Employee Relations or his designee and the designated Employer Representative described in Par. 2. The union shall be represented by the IUEC Regional Director or other Representative designated by the General President and the Local Business Representative described in Par. 2.

At the meeting (or any continuation thereof agreed to by the parties), the Employer (or the Union) shall give its written answer to the grievance on the provided form. Within ten (10) working days of that disposition, the Employer or the Union shall indicate on the grievance form whether it appeals therefrom. If the grievance disposition is not appealed, it shall be final and binding on all parties.

Par. 4. Written Step Two. If the grievance is appealed it shall be placed on the agenda of a

scheduled meeting of the National Arbitration Committee. The Employer shall be represented by the NEBA Executive Director or his designee and a panel of two (2) additional Employer Representatives. The Union shall be represented by the General President or his designee and two (2) additional representatives. The General President of the IUEC (or his designee) and the NEBA Executive Director (or the Company's Director of Labor Relations), may mutually agree that a grievance that has been appealed from written step one proceed directly to Impartial Arbitration.

The National Arbitration Committee shall meet once per calendar quarter. Each party shall submit an agenda not less than seven (7) working days prior to the meeting.

The NEBA Executive Director or his designee (or the General President, IUEC or his designee) shall render a disposition of the grievance in writing at the National Arbitration Committee Meeting. If the grievance disposition is accepted, it shall be final and binding on all parties.

Par. 5. Impartial Arbitration. If the grievance is not settled by the National Arbitration Committee, the Union or the Employer, within fifteen (15) working days of the Employer's or Union's disposition as outlined in Par. 4, may appeal the grievance to impartial arbitration.

Such appeal shall take the form of a letter to the NEBA Executive Director or the General President, IUEC.

Par. 6. (a) The parties shall mutually agree upon the selection of an impartial arbitrator. If, within fifteen (15) days, the parties are unable to agree on the person to be selected as arbitrator, the parties shall jointly request to submit the matter to arbitration conducted in accordance with the Labor Arbitration Rules and Procedures of the American Arbitration Association and by an arbitrator who is a member of the National Academy of Arbitrators.

The arbitrator shall render his decision immediately upon the close of the record if the parties mutually agree otherwise the decision shall be rendered within thirty (30) days of the close of the record or the receipt of the briefs if the parties desire to file briefs. In an arbitration, either party may rely upon Articles in the Agreement other than those set forth in the original grievance form. The decision of the impartial arbitrator shall be final and binding on all parties.

(b) NEBA and the Union agree to the following program for Impartial Arbitration of grievances on a test basis. Either party may terminate the program upon ninety (90) days' written notification to the other at any time after July 8, 2014: There shall be a mutually agreed

upon designated panel of twelve (12) permanent arbitrators selected from arbitrators who have been mutually selected by both parties at least two (2) times in the last ten (10) years. Each Arbitrator selected for the panel will be provided in advance of the hearings, a written description of the industry collective bargaining history and setting, mutually agreed upon by the parties. Each party at its sole discretion may within the life of this agreement discharge one (1) permanent Arbitrator from hearing any further cases with 90 days' notice to the other party.

For grievances filed under this Agreement, NEBA and the IUEC agree that the second Wednesday and Thursday of each month will be reserved for an arbitration hearing. An arbitrator from the panel will be scheduled for the next available second Wednesday and Thursday that are acceptable to the arbitrator. Alternatively, the parties may mutually agree on a date for arbitration. If more than one grievance is to be scheduled, the grievance with the earliest filing date will be scheduled first. No grievance will be scheduled for arbitration with less than ninety (90) days' notice to the parties. The arbitrator will retain ultimate authority to schedule, postpone or continue a hearing.

Par. 7. It is understood that the arbitrator does not have the authority to add to, subtract from

or modify in any way the provisions of this Agreement.

Par. 8. Grievances of the Union or the Employer shall originate at Written Step Two by submission to the NEBA Executive Director (or the General President, IUEC). The grievance of an IUEC Regional Director shall be filed and processed beginning at Written Step One of the procedure.

Par. 9. Discharge Grievances Expedited Impartial Arbitration. Recognizing the special nature of cases involving the discharge of an employee, the parties agree that such case(s) shall be handled under the following procedure:

(a) Any discharge grievance not resolved at the Written Step One meeting may immediately be referred by either party to the NEBA Executive Director or his designee and the General President of the Union or his designee for their immediate review and discussion. Such grievance need not wait to be placed on the agenda of the scheduled National Arbitration Committee, but rather shall be discussed, either in person or by telephone, by the parties within ten (10) working days of the referral from Written Step One. The parties shall make an earnest effort to resolve their differences at this meeting, but failing such agreement, either party may request immediate, expedited impartial arbitration.

(b) Within ten (10) working days of a request for impartial arbitration by either party, the parties shall mutually agree upon the selection of an impartial arbitrator who shall be obliged to schedule a hearing at the earliest possible available date on his/her schedule where both parties are available to present their respective cases. The arbitrator shall hear the case. If the parties cannot agree on an arbitrator they will use the selection procedure in Par. 6 (b) (or Par. 6 (a), if Par. 6 (b) is no longer in effect). Post hearing briefs must be submitted within two (2) weeks of the conclusion of the hearing. The arbitrator shall render the award within two (2) weeks of the submission of briefs. Post hearing briefs may be waived by mutual agreement of the parties.

Par. 10. Compensation and expenses of the arbitrator shall be shared equally between the Employer and the Union.

Par. 11. Any of the time limits contained herein may be mutually extended by the representatives of the parties. Failure to appeal the grievance within the time limits described above without mutual agreement shall be considered an abandonment of the grievance. If a grievance is not dispositioned within the above time limits, it shall be immediately processed to the next step of the procedure.

ARTICLE XVI

Jurisdictional Territory

Par. 1. The primary jurisdiction of any local union shall include only that territory in which its members will agree to travel on their own time.

The secondary jurisdiction shall include the balance of the territory now within the jurisdiction of the local union.

Par. 2. Any change to the present jurisdiction of a local must be approved by the International Union of Elevator Constructors and the NEBA Executive Director before becoming effective.

Par. 3. The primary jurisdiction of Local No. _____ of the City of _____, relative to the wage scale and working conditions shall include the following territory: _____

_____

The secondary jurisdiction of Local No. _____ of the City of _____, relative to working conditions shall include the following territory: _____

Par. 4. The parties agree that they meet annually and by mutual agreement more often, if necessary to discuss jurisdictional issues. The parties agree to fairly act upon justifiable written requests by Local Unions for extensions of ex-

isting jurisdictions. The Company and the IUEC shall advise a Local Union within sixty (60) days after the meeting at which the request is considered, of its disposition of the request.

When opening a Local Office the following steps shall be followed:

1. The Company shall notify the Local Business Manager/Representative when opening a new "Local Office" in a Local Union's secondary jurisdiction or open territory.

2. The Company shall bargain with the Local Business Manager/Representative or International when considering the assignment of a bargaining unit employee to a Local Office. No bargaining unit employee will negotiate directly with the Company.

3. The Company agrees to make forty (40) hours per week available to the first employee assigned to a Local Office. As each additional employee is assigned to such office thereafter, the Company agrees to make not less than thirty-two (32) hours of work available to the most recent addition and forty (40) hours per week available to all but the last employee so assigned.

4. Local Office employees will perform work per Article IX, Par. 1 and Article IX, Par. 2B.

5. Local Office employees shall not perform work in the primary of a local union unless mutually agreed to by the Company and the Local Business Manager/Representative.

6. Local Office Employees shall perform their work in accordance with the NEBA National Agreement at all times.

ARTICLE XVII

Health Benefit Plan

Par. 1. The Health Benefit Plan covering life insurance, sickness and accident benefits, and hospitalization insurance, or any changes thereto that are in accordance with the National Elevator Industry Health Benefit Plan and Declaration of Trust, shall be a part of this Agreement and adopted by all parties signatory thereto.

Par. 2. The Health Benefit Plan shall be financed by mutual contribution, of Employers and Elevator Constructor Mechanics, Helpers, Apprentices and Assistant Mechanics as provided herein. The Employer agrees to continue to pay and contribute fifteen dollars and twenty seven and one-half cents ($15.275) for each hour of work performed by all Elevator Constructor Mechanics, Helpers, Apprentices and Assistant Mechanics in its employ. The fifteen dollars and twenty seven and one-half cents ($15.275) hourly contribution rate shall increase upon every anniversary of the wage rate change of each Local Union, in accor-

dance with the following (except as modified pursuant to Article V, Par. 3):

Effective Date	Amount of Increase	Hourly Contribution Rate
January 1, 2018	$0.15	$15.425
January 1, 2019	$0.15	$15.575
January 1, 2020	$0.15	$15.725
January 1, 2021	$0.15	$15.875
January 1, 2022	$0.15	$16.025

Each Elevator Constructor Mechanic, Helper, Apprentice and Assistant Mechanic shall continue to contribute three and one-half cents ($.035) per hour. Payments of said contributions by the Employer and Elevator Constructor Mechanics, Helpers, Apprentices and Assistant Mechanics shall be in accordance with the National Elevator Industry Health Benefit Plan and Declaration of Trust.

Par. 3. It is understood and agreed that the contributions provided for in Par. 2 shall be used by the Trustees to maintain the plan of benefits provided by the Health Benefit Plan to the extent that it is feasible to do so on a sound financial basis without any change in said hourly contribution rates during the term of this Agreement (except as modified by Article V, Par. 3).

Par. 4. It is understood and agreed that the decision(s) to increase or decrease the benefits provided by the Health Benefit Plan are matters committed to the discretion of the Trustees, except that the Trustees should not make any change in the plan of benefits which would result in the need for an increase in the contribution rates set forth in Par. 2. It is further understood and agreed, that the Actuary of the Health Benefit Plan shall continuously monitor the financial condition of the Health Benefit Plan and shall promptly advise the Trustees whenever in the opinion of the Actuary, it is necessary for the Trustees to modify benefits provided by the Health Benefit Plan in order to maintain the Health Benefit Plan in sound financial condition without any increase in the hourly contribution rates set forth in Par. 2. The Actuary shall report to the Trustees with respect to such matters at least once each year as soon as is feasible after the financial and actuarial information for the Health Benefit Plan as of the end of the plan year is available. Nothing in this Par. 4 shall limit the Union's authority under Article V. Par. 3.

Par. 5. In no event shall a contribution rate of the Company exceed the lowest contribution rate paid by any other contributor to the Health Benefit Plan for the type of work covered by this Agreement.

ARTICLE XVIII

Pension Plan

Par. 1. The National Elevator Industry, Inc., and the International Union of Elevator Constructors shall continue the Pension Trust Fund known as the "National Elevator Industry Pension Plan," which is administered by a board of ten (10) Trustees, five (5) appointed by the National Elevator Industry, Inc., and five (5) appointed by the International Union of Elevator Constructors. The Board of Trustees have adopted a Declaration of Trust and Plan of Pension Benefits which shall be a part of this Agreement and binding on all parties signatory to this Agreement. The normal retirement age of the Pension Plan is sixty-five (65) years of age.

Par. 2. The Plan of Pension Benefits shall be financed by contributions as provided herein. The Company agrees to continue to pay and contribute nine dollars and forty six cents ($9.46) cents for each hour of work performed by all Elevator Constructor Mechanics, Helpers, Apprentices and Assistant Mechanics in its employ. The nine dollars and forty six cents ($9.46) hourly contribution shall increase upon every anniversary of the wage rate change of each Local Union, in accordance with the following (except as modified pursuant to Article V, Par. 3):

Effective Date	Amount of Increase	Hourly Contribution Rate
January 1, 2018	$0.25	$9.71
January 1, 2019	$0.25	$9.96
January 1, 2020	$0.25	$10.21
January 1, 2021	$0.25	$10.46
January 1, 2022	$0.25	$10.71

Payments of said contributions by the Company shall be in accordance with the terms of the Declaration of Trust adopted by the Board of Trustees. However, in no event shall contributions by the Company exceed the lowest contribution paid by any employer contributor to the Pension Plan for the type of work covered by this Agreement performed in the same geographical jurisdiction of a given local.

Par. 3. Under the terms of this Agreement, including the agreed-upon contribution rate to the Pension Plan, it is the understanding and intention of the parties that the Trustees of the Plan, in fulfilling their duties as Trustees, will operate and administer the Pension Plan in a sound fiscal manner and in accordance with the Agreement and Declaration of Trust. It is the intention of the parties that the Trustees will annually review the applicable benefit rates of the Plan, and following such review, may increase the benefit rate to a level such

that the funding period will be fifteen (15) years or less, so that neither withdrawal liability nor an unfunded vested liability will be created and so that the Plan will remain comfortably in the "green zone" under the rules of the Pension Protection Act of 2006, that is, the Plan will stay outside of "endangered" and "critical" status as defined by the Pension Protection Act. Each year, as soon as feasible after the financial and actuarial information for the Plan as of the last day of the prior Plan Year is available, the Plan actuary shall advise the Trustees with respect to the funding of the Plan, taking into account the criteria set forth in this paragraph.

ARTICLE XVIII(A)

401 (k) Annuity

The National Elevator Industry 401(k) Retirement Plan shall have a provision added to enable the Plan to accept annuity contributions and shall be known as the Elevator Constructors Annuity and 401(k) Plan.

The Plan shall be administered by a board of ten (10) Trustees; five (5) appointed by the International Union of Elevator Constructors and five (5) appointed by the National Elevator Industry, Inc.

The Board of Trustees shall adopt a Declaration of Trust and Plan of Benefits which shall be

part of this Agreement and binding on all parties signatory to this Agreement.

The annuity benefits shall be funded by Employer contributions as follows (except as modified pursuant to Article V, Par. 3):

Effective Date	Amount of Increase	Hourly Contribution Rate
January 1, 2018	$0.65	$6.90
January 1, 2019	$0.65	$7.55
January 1, 2020	$0.65	$8.20
January 1, 2021	$0.65	$8.85
January 1, 2022	$0.65	$9.50

ARTICLE XIX

Educational Fund

Par. 1. The National Elevator Industry, Inc., and the International Union of Elevator Constructors have established an Education Trust Fund administered by a joint board of trustees. The Educational Trust Fund known as the "National Elevator Industry Education Program" shall provide an Apprenticeship program for the education and training of Apprentices as well as a continuing education program for Elevator Constructor Mechanics. Such Fund has

been established pursuant to and in compliance with the provisions of Section 302 of the Labor-Management Relations Act, as amended.

Par. 2. The Apprenticeship program called for herein shall be for a period of four (4) years and shall in all respects conform to the regulations of the United States Department of Labor and/or applicable state Apprenticeship councils governing registered Apprenticeship programs. The pattern standards for the Apprenticeship program are set forth in the National Guidelines for Apprenticeship Standards and are incorporated herein. Through coordination with the Director of the National Elevator Industry Education Program, local committees consisting of representatives of employers signatory to this agreement and IUEC Local Unions, shall prepare and submit for approval to the applicable state Apprenticeship councils such documents as may be necessary to secure registration of the Apprenticeship program called for herein. Upon the approval of the parties hereto, such committees may alter the program of Apprenticeship set forth in the National Guidelines for Apprenticeship Standards if in their opinion such alterations are called for by applicable state law.

Par. 3. The Board of Trustees of the Education Trust Fund shall have full authority and discretion to adopt Agreements and Declarations of Trust and educational and training pro-

grams which shall become a part of this Agreement and binding on all parties to the Agreement. Individuals, Companies and Local Unions may appeal decisions of a Local Joint Apprenticeship Committee to the Board of Trustees of the Educational Trust Fund which may review, modify or set aside such decision and order relief as appropriate. This provision of this Article shall be effective to the extent permitted by applicable law.

Par. 4. The National Elevator Industry Education Program shall be financed by contributions by Employers as provided. Upon the effective date of this Agreement the Company agrees to continue to pay and contribute to such Fund sixty cents ($.60) per hour for each hour of work performed by all Elevator Constructor Mechanics, Helpers, Apprentices and Assistant Mechanics. The amount of the Company contribution will be as follows (except as modified by Article V, Par. 3):

Effective Date	Amount of Increase	Hourly Contribution Rate
January 1, 2018	$0.01	$0.61
January 1, 2019	$0.01	$0.62
January 1, 2020	$0.01	$0.63
January 1, 2021	$0.01	$0.64
January 1, 2022	$0.01	$0.65

Payment of said contributions shall be in accordance with the terms of the Declaration of Trust adopted by the Board of Trustees. However, in no event shall contributions by the Company exceed the lowest contribution paid by any employer contributor to the Fund.

Par. 5. It is understood and agreed that if prior to any calendar year the Trustees shall advise the IUEC and NEBA that the amount of the contributions set forth in Par. 4. above are providing more than sufficient funds to finance and maintain the existing education program, then the IUEC and NEBA shall meet to discuss and agree upon whether the amount of the Companies' contributions to the Education Plan should be reduced and the wage rate of Elevator Constructor Mechanics, Helpers, Apprentices and Assistant Mechanics increased by the amount of any agreed upon reduction.

It is also understood and agreed that if at any time the Trustees of the Education Plan shall advise the IUEC and NEBA that the Education Plan does not have sufficient funds to maintain the existing education program, then the IUEC and NEBA shall meet to discuss and agree upon whether the amount of the Companies' contributions to the Education Plan shall be increased. In no event shall the Companies' contribution exceed the lowest contribution paid by any employer contributor to the Education Plan.

ARTICLE XX

Elevator Industry Work Preservation Fund

Par. 1. The Elevator Industry Work Preservation Fund shall be funded by a contribution of thirty cents ($0.30) per hour and continued each year thereafter for each hour of work performed by each employee covered by this Agreement to the Elevator Industry Work Preservation Fund (except as modified by Article V, Par. 3). The amount of the Company contribution will be as follows (except as modified by Article V, Par. 3):

Effective Date	Amount of Increase	Hourly Contribution Rate
January 1, 2018	$0.06	$0.36
January 1, 2019	$0.06	$0.42
January 1, 2020	$0.06	$0.48
January 1, 2021	$0.06	$0.54
January 1, 2022	$0.06	$0.60

Except for the transfer of contributions described in Section 5 below, the monies of the Fund shall be at all times segregated from other Union or Employer assets, and shall not be used or controlled by the Union or Employers party to this Agreement, but shall be administered solely by the Trustees and its duly

authorized representatives for the purposes permitted.

Par. 2. The Fund shall be governed by a written Trust Agreement and administered by a Board of Trustees, in accordance with, and so provided in, the governing documents of the Fund and subsequent amendments thereto.

Par. 3. The assets of the Fund shall be used for any purpose authorized by Section 6(b) of the Labor-Management Cooperation Act of 1978 and Section 302(c)(9) of the Taft Hartley Act, 29 U.S.C. Section 186(c)(9). The Fund shall not be used for any other purpose, including a purpose which is inconsistent with the provisions of this Agreement, or used for the purpose of funding any lobbying effort or participation in any litigation, or administrative proceeding in which the Fund is seeking or supporting a result which is contrary to the interests of any Employer signatory to this Agreement, or used in connection with an organizational campaign to organize any employees of an Employer which is bound by the terms of this Agreement in a job classification other than the classifications of Elevator Constructor Mechanic, Elevator Constructor Helper, Elevator Constructor Apprentice and Elevator Constructor Assistant Mechanic.

Par. 4. No Employer signatory to this Agreement shall be obligated to provide information

to the Union or to the Fund with respect to any matter which the Fund may be reviewing or pursuing or otherwise related to the activities of the Fund, nor shall any Employer signatory to this Agreement be obligated to participate in any of the activities of the Fund in any other manner. The Trustees of the Fund shall not take any action which directly or indirectly changes any of the Articles or intent of this Agreement, nor shall any provision of this Article be construed to change the meaning or intent of any other Article of this Agreement.

Par. 5. Contributions to the Elevator Industry Work Preservation Fund will be reported on and transferred on a monthly basis using the Monthly Remittance Report to the National Elevator Industry Benefit Funds (NEIBF), which will in turn segregate and deposit the contributions to the Work Preservation Fund in that Fund's separate account.

ARTICLE XXI

Payment for Lost or Stolen Tools

Par. 1. The Company agrees that they should make every effort to provide a reasonably safe place for tools and likewise the employee shall make every effort to protect not only his own tools but also to protect the Company tools. The Company and the local union agree

to jointly reimburse Elevator Constructor Mechanics, Elevator Constructor Helpers, Elevator Constructor Apprentices and Elevator Constructor Assistant Mechanics for tools lost on the job or stolen while in transit or stolen from any vehicle being used by the employee on the following basis:

a) Up to a maximum claim of $200, the Company will pay 75% and the local union will pay 25%.

b) On claims of more than $200, the local union will pay $50 with the remainder, up to a maximum of $900, paid by the Company.

Alternatively, the Company may elect to list those tools which its employees are required to utilize. In that event the Company shall not be required to reimburse its employees for other than those tools it shall require.

Actual receipts for replacement tools must be submitted, in either case, to the local union and the Company by the Employee claiming the loss before reimbursement can be authorized. The local union and the Company reserve the right to inspect replacement tools.

ARTICLE XXI (A)

Metric Tools

When and if the Company requires the use of metric tools by an employee in the course of his

employment, the Company agrees, upon receipt from the employee, to reimburse the employee for all tools required or to provide such tools, at the Company's option.

ARTICLE XXII

Hiring, Layoffs and Transfers

Par. 1. In the interest of maintaining an efficient system of production in the industry, providing for an orderly procedure of employment of applicants and of preventing discrimination because of age, citizenship, disability, race, color, creed, sex, religion or national origin, the parties hereto agree to the following system of employment:

(a) The Union shall establish, maintain and keep current an open list for the employment of workmen qualified to perform the duties required. Such list shall be established, maintained and kept current on a nondiscriminatory basis and shall not be based on or in any way affected by Union membership, Union By-Laws, regulations or constitutional provisions or any other aspect or obligation of Union membership, policies or requirements. The open employment list shall be kept current and produced to each company's local office on a weekly basis or immediately upon request, by electronic means (i.e. fax or e-mail).

The open employment list must include the names, classification and home primary or subprimary. An employee who does not meet the requirements set forth in the Substance Abuse Program will be deemed unqualified and not placed on any list for referral or referred out to any company.

(b) The Company shall hire experienced Mechanics, Assistant Mechanics, Helpers and Apprentices who permanently live in the area and are seeking employment and are qualified to perform the work required by the Company before hiring a transient employee or a new inexperienced employee. An employee shall be considered a transient until he makes a showing that he is permanently changing his home and residing in the territorial jurisdiction of the local with which he has registered for referral. The employee shall verify the change by providing to the local, a motor vehicle registration and driver's license with the new address. The employee shall send the change of address to the International in order to be registered with the local for referral.

Provided the foregoing criteria are met, an employee's status as a transient shall continue for a period of six (6) months from the time he has registered with the local. When hiring an experienced Mechanic, Assistant Mechanic, Helper or Apprentice the Company shall use the Union as the first source of applicants for employment. Upon the Company's request,

the Union shall refer, on the basis set forth hereinafter, such an applicant within a period of 72 hours after such request, exclusive of Saturdays and Sundays. When seeking Apprentice applicants, the Company will utilize the list provided by the Local Joint Apprenticeship Committee. If the Union or JAC fails to refer qualified workmen within the specified period the Company may obtain workmen from any other available source. The Company has the right to reject any and all applicants referred to it by the Union. The Company, where requested by the Union, shall give, in writing, the reason for any rejection. It is further understood and agreed that if any workman is continually rejected by the Company within a local union's jurisdiction or if the Company, as a matter of practice, repeatedly rejects applicants referred by the Union, the local union Business Representative or the Company may submit the matter of rejection to the designated Company Labor Relations Representative and IUEC Regional Director. Failing agreement, the matter may be referred to the National Arbitration Committee under Article XV. The Company Labor Relations Representative and IUEC Regional Director, National Arbitration Committee or the impartial arbitrator shall have authority to decide the matter and impose an appropriate remedy. If they find that the continued rejection of a particular workman was justified, the appropriate

remedy may include directing the removal of the named workman from the list for a period of time. If they find that the Company has unreasonably or discriminatorily exercised its right of rejection, the appropriate remedy may include directing that the Company not have a right of exercising his right of rejection for a period of time.

(c) The Union shall refer to the Company only workmen whose names appear on the open employment list and in so doing shall be governed by the following criteria:

(1) If the Company requests by name from the open employment list a particular workman previously employed by the Company, who permanently lives in the area, that workman shall be referred by the Union to the Company unless the workman is unwilling to accept employment with the Company.

(2) If the Company requests by name from the open employment list a particular workman who has not previously been employed by the Company, who permanently lives in the area, that workman shall be referred by the Union to the Company unless the workman is unwilling to accept employment with the Company.

(3) In the event the General President of the IUEC shall be of the opinion that a severe unemployment situation exists in any local's jurisdiction, he shall contact the NEBA Executive Director and confer with him as to the

problem and possible resolutions. Failing agreement the matter may be submitted to the impartial arbitrator as provided under Article XV. An agreement as to resolution of the problem between the General President of the IUEC and the NEBA Executive Director or the decision of the arbitrator may modify the provisions of subparagraph (1) and (2) above as may be deemed necessary under the circumstances.

(d) All Employment Practice provisions are to be posted in the Union Hall and in the Company's Personnel Office.

(e) As soon as practical the General President of the IUEC shall review all locals of the Union where there is a part-time Business Representative for the purpose of determining whether such Business Representative is able to establish and maintain an open employment list and to operate the procedures in this Article in a satisfactory manner. He shall then advise the NEBA Executive Director as to such determination and if there is any disagreement, they shall endeavor to resolve the matter. Failing agreement, the matter may be submitted to the impartial arbitrator provided under Article XV.

Par. 2. Applicants for Apprenticeship shall be evaluated and ranked in accordance with the selection procedures contained in the pattern affirmative action plan set forth in the Na-

tional Guidelines for Apprenticeship Standards, as they may be amended from time to time, or such similar procedures adopted to conform to applicable state laws or regulations, by local committees consisting of representatives of IUEC Local Unions and Employers signatory to this collective bargaining agreement. Employers seeking new employees shall contact the appropriate local committee for dispatch of an Apprentice in accordance with that committee's referral procedures.

The Local Union and the Companies are entitled to a copy of the complete ranked applicant list. If applicants for Apprenticeship are not referred from the Apprentice applicant list, the Employer may obtain Apprentices from any other available source.

Par. 3. When an Employer makes layoffs, the probationary Apprentice (as defined in Article X Par. 3) will be laid off first; thereafter, any transient Helper, then any transient Apprentice, then any transient Assistant Mechanic, then any first year Apprentice, followed by any Helper who permanently lives in the area and/or any second year Apprentice and/or any third year Apprentice and/or any fourth year Apprentice and/or any Assistant Mechanic (these 5 classifications shall be combined to be a single classification/pool for the purposes of layoff) at the Employer's sole discretion.

The employer will determine the order of lay off in each classification. Employees laid off shall be paid at the next weekly payroll period following the layoff.

The Temporary Mechanic shall be set back in the same order as mentioned in Article X Par.4 prior to layoff of a transient Mechanic, not including temporary transfers referred to in paragraph (4) below, and lastly those Mechanics who permanently live in the area will be laid off.

Par. 4. The Company shall have the right to transfer temporarily from one local union's jurisdiction to another, key Mechanics (such as adjustor, certified welder, Mechanic-In-Charge, experienced escalator Mechanic, Mechanic trained to handle special equipment such as hydro drilling equipment, Mechanic required to train or orient other employees in that local union's jurisdiction as to the Company's equipment, Mechanic transferred temporarily to open an office). A Mechanic-In-Charge is only on a construction or modernization job where there are four (4) or more Elevator Constructors including the Mechanic-In-Charge. In addition, where the Company does not have a regular work force, the Company shall have the right to transfer Mechanics temporarily on a one-to-one basis in the case of two (2) man jobs up to a maximum of three (3) such jobs at any given time. It is

understood that the foregoing limitations shall not be applicable where there are no qualified Mechanics available in the local union. Mechanics temporarily transferred under the above provisions may remain in the area only until completion of their work on the particular job for which they have been transferred.

The Company and the IUEC shall mutually decide upon what is a regular work force as used in this Par. 4 and that decision shall become incorporated in and a part of this Agreement.

Par. 5. Where the Company is opening a new office in one local union's jurisdiction they may permanently transfer one Mechanic from the jurisdiction of another local union to start the new office provided they have advised the Business Representative in advance of the transfer. The Company may permanently transfer an employee from one local union to work in the jurisdiction of another local union subject to the following conditions:

(a) Prior notice shall be given to the International Union.

(b) The Company shall consider the following factors in reaching a decision to transfer such an employee:

1. The availability of qualified personnel in the other local union.

2. The business necessity for such a transfer and other relevant considerations.

(c) The Company shall not permanently transfer any employee for the purpose of circumventing an expense agreement.

(d) Any dispute concerning such a transfer shall be subject to the grievance and arbitration procedure herein.

(e) It is understood and agreed that prior to terminating an employee for unsatisfactory performance who is to be replaced under this paragraph or any other employee, the Company will give a written warning to the employee with a copy to the Business Representative in order that the employee be given an opportunity to improve his work performance. Such a termination may be submitted as a grievance to the National Arbitration Committee as provided under Article XV as a final source of appeal.

Written warnings for unsatisfactory performance (other than safety infractions) cannot be used to justify additional discipline under this agreement, provided the employee has no additional/subsequent performance issues within 24 months of the date on which the work performance letter was issued.

Par. 6. Whenever a building owner or other customer of the Employer requires persons working on its premises to provide personal identification as a condition of entering or working on the premises, the Employer will provide the employee with such identification for use

on such jobs which will not contain the employee's Social Security, driver's license or any other personal identification numbers of the employee.

ARTICLE XXIII

Scope and Terms of Agreement

Par. 1. This Agreement shall be binding upon all Employers and the local unions which are named in the attached lists. This Agreement shall be incorporated in and become a part of any Agreement entered into between the Employers and the local unions of the International Union and no local Agreements between the Employers and local unions shall be made changing this Agreement except as herein provided for in Article XXVI. No local union shall, through its by-laws, constitution, or otherwise, change any of the Articles or intent of this Agreement. Nor shall the Employers make any rules or issue any instructions that are contrary to this Agreement.

This Agreement defines the entire relationship between the parties for the term of this Agreement and, except as herein specifically provided for, neither party shall during the term of this Agreement have any obligation to bargain with respect to any matter not covered by this Agreement nor concerning any change or addition hereto.

ARTICLE XXIV

Re-Opening Clause

Par. 1. NEBA and the Union agree that if the Labor Management Relations Act of 1947 is repealed, modified or amended in any respect, the Union and NEBA agree that upon service of a thirty (30) days notice by either party, this contract may be reopened for negotiation dealing with Union security or secondary strikes, that will be covered by the repeal, modification or amendment of that Act.

ARTICLE XXV

Termination of Agreement

Par. 1. This Agreement shall become effective on the Ninth day of July 2017, and shall terminate at midnight on the Eighth day of July 2022.

ARTICLE XXVI

Local Option

Par. 1. It is agreed between the Company and the Union that in order to more effectively compete or to address other local conditions to benefit the entire elevator industry, it is permissible for any local union to negotiate spe-

cial conditions with the Company for the following classes of work, except that the wage rate as determined by Article V of this Agreement may not be changed:

1. Modernization Work
2. General Repairs
3. Contract Service
4. Construction Work

Special conditions include but are not restricted to such items as terms associated with Local Transportation and Expense Agreements, work jurisdiction associated with Article IV of this Agreement, staffing, premium rates of pay, shift work or working hours on Modernization, Construction, Repair and Contract Service. In the case of Contract Service, special conditions shall also include problems arising because of areas where an employee's physical well-being may be in jeopardy.

Par. 2. The above mentioned special conditions shall be negotiated by a Committee of two (2) Representatives from the local Union, one (1) International Representative and three (3) Representatives from the Company and their decisions shall be binding on both parties.

Par. 3. Agreement on special conditions shall continue as long as satisfactory to both parties, but no change shall be made more often than six (6) months except that changes in

construction working hours may be changed more often if mutually agreed. Sixty (60) days notice in writing shall be given by the party desiring such changes and such written notice shall constitute cause for a meeting of both parties.

Par. 4. Both parties commit to making an earnest effort to reach an agreement, however, when the Local Union Representative and the Company's designated representative are unable to resolve a dispute over changes in the Local Option Agreement as provided in this Article, either party may request the General President of the IUEC and the NEBA Executive Director to review, make recommendations or issue guidelines to resolve the dispute.

ARTICLE XXVII

Reporting Time, Subpoenaed Witnesses, Uniforms

Par. 1. Whenever a Mechanic, Helper, Apprentice or Assistant Mechanic covered by this Agreement reports to work on a construction, service or maintenance job on request of the Company and there is no work available, except for reasons beyond the control of the Company, the employee shall receive two hours pay at straight time rates.

Par. 2. Any employee who is covered by this Agreement who is subpoenaed to court by the Company or by the Company's Counsel shall be paid for all time at the straight time hourly wage rate, fringe benefits, and all reasonable expenses.

Par. 3. When required by the Company, Elevator Constructor Mechanics, Helpers, Apprentices and Assistant Mechanics shall wear uniforms bearing the Company's name and/or trademark. Such uniforms shall be furnished by the Company at no cost to the employee.

Par. 4. Whenever the Company asks an employee to work with cleaning solvents or other materials and substances that pose a risk to life or health, the Company will first advise the employee of the risks and train the employee in proper use or handling of the materials and substances. The contents of all such materials and substances and their possible risks and adverse effects shall be clearly marked on their containers. Suitable protective clothing and equipment must be provided to employees handling such materials and substances.

IN WITNESS WHEREOF, the parties hereunder have set forth their hand and seal on the date stated above.

_____

For:
National Elevator Bargaining Association

By:
Rick Amarosa
Christian Grenier
Ken Dzierzawiec
Vincent Schiavone
J.P. Heaney

EMPLOYER MEMBERS OF NATIONAL ELEVATOR BARGAINING ASSOCIATION

KONE Inc.

Otis Elevator Company

Schindler Elevator Corporation

ThyssenKrupp Elevator Corporation

Fujitec America Inc.

Mitsubishi Electric and Electronics USA, Inc.

North American Elevator Service

INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS

By:
Frank J. Christensen,
General President
James K. Bender II,
Assistant General President
Larry J. McGann,
General Secretary – Treasurer
Steven A. Bruno,
Labor Committee
James H. Chapman III,
Labor Committee
Harry H. Gilbert Jr.,
Labor Committee
Patrick J. McGarvey,
Labor Committee
Kevin A. Moody,
Labor Committee
Lloyd R. Storr,
Labor Committee
Daniel J. Baumann,
Labor Committee
James R. Biagini,
Labor Committee
Edward F. Christensen,
Labor Committee
Dale E. Coalmer,
Labor Committee
Gilbert E. Duncan III,
Labor Committee

Michael J. Langer,
Labor Committee
James A. Lowery,
Labor Committee
Kevin L. McGettigan,
Labor Committee

LOCAL UNIONS
OF
INTERNATIONAL UNION OF
ELEVATOR CONSTRUCTORS

Local No. 1, New York, NY
Local No. 2, Chicago, IL
Local No. 3, St. Louis, MO
Local No. 4, Boston, MA
Local No. 5, Philadelphia, PA
Local No. 6, Pittsburgh, PA
Local No. 7, Baltimore, MD
Local No. 8, San Francisco, CA
Local No. 9, Minneapolis, MN
Local No. 10, Washington, DC
Local No. 11, Cincinnati, OH
Local No. 12, Kansas City, MO
Local No. 14, Buffalo, NY
Local No. 15, Milwaukee, WI
Local No. 16, New Orleans, LA
Local No. 17, Cleveland, OH
Local No. 18, Los Angeles, CA
Local No. 19, Seattle, WA
Local No. 20, Louisville, KY
Local No. 21, Dallas/Fort Worth, TX
Local No. 23, Portland, OR
Local No. 24, Birmingham, AL
Local No. 25, Denver, CO
Local No. 27, Rochester, NY
Local No. 28, Omaha & Lincoln, NE and Council Bluffs, IA
Local No. 30, Memphis, TN

Local No. 31, Houston, TX
Local No. 32, Atlanta, GA
Local No. 33, Des Moines, IA
Local No. 34, Indianapolis, IN
Local No. 35, Albany, NY
Local No. 36, Detroit, MI
Local No. 37, Columbus, OH
Local No. 38, Salt Lake City, UT
Local No. 39, Providence, RI
Local No. 41, Springfield, MA
Local No. 44, Toledo, OH
Local No. 45, Akron, OH
Local No. 48, Charleston, WV
Local No. 49, Jacksonville, FL
Local No. 51, Richmond, VA
Local No. 52, Norfolk, VA
Local No. 55, Peoria, IL
Local No. 59, Harrisburg, PA
Local No. 62, Syracuse, NY
Local No. 63, Oklahoma City, OK
Local No. 71, Miami, FL
Local No. 74, Tampa, FL
Local No. 79, Little Rock, AR
Local No. 80, Greensboro, NC
Local No. 81, San Antonio, TX
Local No. 83, Tulsa, OK
Local No. 84, Reading - Scranton, PA
Local No. 85, Lansing, MI
Local No. 91, New Haven, CT
Local No. 93, Nashville, TN
Local No. 124, Mobile, AL
Local No. 126, Honolulu, HI

Local No. 131, Albuquerque, NM
Local No. 132, Madison, WI
Local No. 133, Austin, TX
Local No. 135, Charlotte, NC
Local No. 138, Poughkeepsie, NY
Local No. 139, Orlando, FL
Local No. 140, Phoenix - Tucson, AZ

APPENDIX A

Decisions of the Joint Industry Committee

The following decisions of the Joint Industry Committee were included as Appendix A to the Standard Agreement between NEII and the IUEC which expired on July 8, 2017. NEBA and the Union recognize these decisions as binding during the term of the present Agreement, except to the extent any of these decisions are in conflict with changes made to Article IV or Article IV (A) during negotiations for the present Agreement.

1. Wiring of Car Stations

After due consideration of all the information that the Executive Board could gather, back as far as 1948, it was the decision of the Board that the Manufacturers be permitted to do the internal wiring in the car stations to a terminal block within the car station.

2. Pre-Drilled Overhead Beams

Decision arrived at was that Otis would refrain from drilling holes on the bottom flange of the eye beam used to support the deflector sheave as soon as it was possible to stop the production line.

3. Pre-Wiring of Controllers

On the protest registered over the pre-wiring of controllers, the employers agreed that the pre-wiring

of cross connections on controllers would be discontinued and in the future, auxiliary panels would go out without any leads for any wiring on them.

The employers further agreed that there would be no objection to a local removing the wiring, and replacing it, until the situation is corrected.

4. Multi-Wire Cable

The ruling of the Board was that the use of multi wire cable has become prevalent throughout the Industry and they can find no objection to its use.

5. Key Hole Slots

A review of past decisions and precedent established the fact that it had been previously agreed that key hole slots provided in car and/or landing doors are not a violation of Article IV of the Standard Agreement.

Also, it is found that it had previously been agreed that holes provided in the factory for mounting of interlocks, safety edges, detectors and photocells, are not a violation of Article IV of the Standard Agreement.

When Door Closer arms, lazy arms, or relating arms are fastened to the doors by means of drilled and/or tapped holes on the door such drilling and tapping shall be done in the field by Elevator Constructors. In cases where doors are delivered to the job site, pre-drilled or tapped for such devices as referred to in this paragraph, doors will not be installed until a

satisfactory settlement between the employer and the Union is made.

6. Escalators

It is agreed that the escalator truss or parts of truss maybe used as a shipping container for escalator components, such as tracks, sprockets, etc. Such components shall be secured within the truss with only sufficient fastenings to provide safe transit and shall not be permanently aligned.

It shall not be a requirement that tracks be removed from the truss prior to final alignment.

Connections between the straight inclined track system and the upper and lower end curved track systems shall be made in the field by Elevator Constructors.

Upper and lower sprockets or carriages are to be installed in the field by Elevator Constructors. See Article IV, Par. 2, Item C for additional information.

7. Extended Wiring On Controllers

Controllers are not to be shipped from the factory with extended wiring attached thereto.

In the case of escalator controllers, because of limited space available, extended wiring in the form of cables or separate wires may be connected at one end to the controller in the factory provided, however, that the other end of such extended wiring is not prepared for connections.

8. Plug-in Connections Door Protection

Prepared plug-in connections for door protection devices such as furnished on the photobell protection device is not a violation of Article IV of the Standard Agreement.

9. DMR Plug-in Connection

The plug connection presently being used on the DMR Regulating Unit will be discontinued. Factory installed wires leading out of the regulator shall have the loose ends unprepared for field connection by the Elevator Constructor.

It is agreed that the employer will use up present stock of regulators equipped with plugs. However, any regulators installed on new jobs after July 1, 1964, will be prepared as described in the above paragraph.

10. Car Door Operators

Haughton Type ‘T’ and ‘TH’ and Westinghouse Type ‘E’ and other similar car door operators shall have the external wiring to the motor and the door or gate contact installed in the field by Elevator Constructors.

11. Wood Flooring

When wood flooring on elevator platforms, including stage lifts, organ consoles and orchestra elevators, is to be installed in the field the work shall be done by Elevator Constructors.

12. Door Operators

(1) The pattern for the Industry, for shipping door operators would be based on the practice in existence at the time of the Joint Industry Committee's decision of December 12, 1963.

(2) As a guide for present and future Joint Industry Committees, it was determined that the following Exhibits would be used to settle any future dispute relative to the shipping of door operators and would be construed as examples of the practice in existence in December 9-12, 1963.

Exhibit 'A' (Haughton 'T' Operator as per photo dated 12/13/67)

Operators may be shipped as per this Exhibit except all external wiring, all greenfield, all greenfield connectors and the gate switch shall be removed.

Exhibit `B' (Haughton 'TH' Two-speed Operator as per photo dated 12/13/67)

Operators may be shipped as per this Exhibit except all external wiring, all greenfield, all greenfield connectors and the gate switch shall be removed.

Exhibit 'C' (Haughton 'TH' Center-opening Operator as per photo dated 12/13/67)

Operators may be shipped as per this Exhibit except all external wiring, all greenfield, all greenfield connectors and the gate switch shall be removed.

Exhibit ‘D’ (Westinghouse ‘E’ Line Operator as per photo 500581A, dated 12/13/67)

Operators may be shipped as per this Exhibit except all external wiring, all greenfield, all greenfield connectors and the magnetic locks shall be removed.

Exhibit ‘E’ (Dover Operator per photo dated 12/13/67)

Operators may be shipped as per this Exhibit except all external wiring, all greenfield, all greenfield connectors, the gate switch and the cams to actuate the safety edges shall be removed.

13. Pre-Assembling of Machine to Machine Beams (Armor Elevator Co.)

It was agreed by the Joint Industry Committee that the Armor Elevator Company is in violation of Article IV, Par. 2, sub-item “g” of the Standard Agreement by the method of pre-assembling the machine to the machine beams and the pre-drilling of the governor mounting plate.

14. Holes Drilled in the Factory for the Mounting of Sight Guards

shall not be considered a violation of Article IV of the Standard Agreement. The installation (and tapping if required), shall be done in the field by Elevator Constructors.

15. Type M Hoistway Door Track Assembly (Haughton Elevator Company)

It was mutually agreed that the spirator would be removed and that the pre-drilling and tapping was covered by Decision #1 of the Joint Industry Committee dated December 12, 1963.

16. Pre-Fastening Booster or Blocking Beams to Machine Beams (General Elevator Company of Baltimore)

The Joint Industry Committee finds that General Elevator of Baltimore method of pre-fastening booster or blocking beams, as established and shown on Exhibit 'A' entitled "Standard Machine Beam Detail with Booster Beam" dated May 7, 1968 is not a violation of Article IV.

17. Dover Leveling Switches

Dover Leveling Switches, as they are now constructed, are not a violation of the Standard Agreement.

18. Westinghouse and Otis Basement Machines

Westinghouse Basement Type #28 Geared Machine with deflector sheave attached as per DS Sheet 274D and Otis Basement Type 16BT machine with attached deflector sheave as per sheet 6588G are not in violation of Article IV of the Standard Agreement.

19. Top Emergency Exit Switches (Otis)

It was agreed that the switch could be removed in the field and remounted.

20. Otis Integral Hanger

That the primary function and responsibility of both the Union and the Industry is to assure a safe, reliable and workmanlike installation as regard door equipment. The employers agree that they cannot object to the dismantling of components if such becomes necessary to accomplish this.

(It continues:) There has been some question on interpretation of this clause, therefore, it has been agreed that the application of this decision requires that the Mechanic-in-charge use his discretion with regard to removal of the hanger bar to accomplish the stated objective. Management supervisors should not be critical or attempt to penalize the Mechanic for using such discretion but if he questions the decision, it should be adjusted between the Construction Manager and the Local Business Representative.

At the 1954 meeting of the International Executive Board and the Manufacturers' Labor Committee, it was mutually agreed that:

The Executive Board believes that when Article IV, Par. 8, that states "NO restrictions shall be imposed as to methods, tools, or equipment used" was written in the Standard Agreement, neither party, at the time, had in mind lethal tools, therefore; we believe the

members of the International Union have a perfect right to refuse to use explosive powered tools.

21. Cargo Masters 500 lbs. up to 1000 lbs.

All door assembly units must be removed before installation of car.

Pre-wiring of Cargo Master to be limited to door and ejector operation.

Ejector unit must be shipped separately.

The above conditions apply specifically to the Cargo Master with a capacity of 500 lbs. to 1000 lbs. as manufactured by Guilbert, Inc., and are not to be applied to the D/W provision of Article IV, Par. 3, Item 3, of the Standard Agreement.

22. Procedure For One Man Pressure Relief Valve Test

At a meeting of the National Arbitration Committee held on February 8, 1984, at the Sheraton Bal Harbour, Bal Harbour, Florida, it was jointly agreed that pressure relief valve test work may be performed by one Mechanic so long as the following procedure is followed:

Item 1. The elevator must be equipped with a quick release coupling to which a pressure gauge could be connected.

Item 2. The Elevator Constructor Mechanic is to be supplied with a temporary run button (the cable

is to be of a length which would permit the Elevator Constructor to position himself outside of the machine room or the hoistway while performing the test).

Item 3. With the elevator at the top floor, doors closed, shut off the main line disconnect.

Item 4. Disconnect one wire, which places the elevator on inspection, add one jumper on the directional limit, one jumper on the final limit, and connect the temporary run button to the appropriate terminals.

Item 5. Connect the pressure gauge to the quick release coupling.

Item 6. Put in the main line disconnect and position yourself outside of the machine room and/or hoistway and using the temporary run button, run the elevator up against the stop ring until you observe (hear) the bypass valve open.

Item 7. After checking the pressure gauge the Mechanic is to open the bottom hoistway door and observe the cylinder and pipe for possible damage or leakage.

Item 8. If damage has occurred it will be repaired in the normal manner using a repair crew.

Item 9. The car will then be restored to normal service and observed as it runs the first few trips.

Frank Christensen, General President
International Union of Elevator Constructors
7154 Columbia Gateway Drive
Columbia, MD 21046

Dear Mr. Christensen:

This is to confirm the understanding and agreement reached at the recent contract negotiations between NEBA and the Union.

It is understood and agreed that where a man has worked for more than one company and has worked at least 1750 hours entitles him to the minimum vacation pay guaranteed by Article XII. The obligation to pay minimum Vacation Pay shall be prorated between all the companies for whom the man worked based upon the hours the man worked for each company. The determination regarding a proration shall be made as of the end of the Vacation year December 31.

Very truly yours,
Rick Amarosa

AGREED:
Frank Christensen

Frank Christensen, General President
International Union of Elevator Constructors
7154 Columbia Gateway Drive
Columbia, MD 21046

Dear Mr. Christensen:

At our recent contract negotiations the parties agreed that effective July 9, 2017 as part of the Company Management Training Program, the Company shall have the right to work up to twelve (12) salaried non-bargaining unit employees per year as Temporary Helpers for a total of three to eighteen months duration each with no more than one working per local per year; for which it shall pay $1800.00 per person to the local union and $180.00 per person to the International Union. The International shall be notified as to the names of the trainees and the location of their assignments.

Very truly yours,
Rick Amarosa

AGREED:
Frank Christensen

Frank Christensen, General President
International Union of Elevator Constructors
7154 Columbia Gateway Drive
Columbia, MD 21046

Dear Mr. Christensen:

This is to confirm the understanding and agreement reached at the recent contract negotiations between NEBA and the Union, that the International Union of Elevator Constructors will hold the Company harmless in the event of administrative proceedings, arbitrations or litigations involving the applicability and/or enforcement of Article III, Par. 4.

Very truly yours,
Rick Amarosa

AGREED:
Frank Christensen

MEMORANDUM OF AGREEMENT

This will confirm that during the negotiations for the collective bargaining agreement between NEBA and the IUEC to be effective July 9, 2017, the parties agreed to the following:

a) In the event that the Company experiences difficulties with employee response to emergency overtime call-backs in any local office, the Company shall inform the local union and the local union shall cooperate with the Company in establishing a call-back system. In the event the Company and the local union cannot agree on the establishment of the call-back system the Company and the IUEC shall establish a call-back system.

b) Employees on contract service shall be required to carry and use beepers or any other designated communication devices that permit them to be contacted and informed of an emergency call while the employee is on the way to work at the beginning of the workday and while the employee is on the way home from work at the end of the workday.

AGREED:
Rick Amarosa

AGREED:
Frank Christensen

TRADE SECRET AGREEMENT

During the term of my employment with the Company and thereafter, I will refrain from disclosing to other persons or entities, except with the Company's consent and for the Company's benefit during the course of such employment, any trade secrets or confidential information of the Company.

I will deliver to or leave with the Company all written and other materials containing The Company's trade secret, confidential, or proprietary information upon termination of my employment.

I acknowledge receipt of an executed copy of this agreement

By: _____ _____
Employee signature Print name

Date

By: _____
For the Company

Frank Christensen, General President
International Union of Elevator Constructors
7154 Columbia Gateway Drive
Columbia, MD 21046

Dear Mr. Christensen:

This will confirm the understanding reached during the recent contract negotiations concerning holidays that fall on Saturday or Sunday and that are celebrated on Friday or Monday, respectively.

The Union agrees that the Employer has an obligation to provide contract service to some of its customers on these Friday or Monday holidays. The Union further agrees that to provide such service it must require contract service employees to work on such days. It is agreed that the Employer shall have the right to schedule employees to work on such days in sufficient numbers needed to perform such work. The Employer agrees that it will make every effort to consider the desires of its employees when employees are scheduled to work such days.

Very truly yours,
Rick Amarosa

AGREED:
Frank Christensen

Dear Mr. Amarosa:

All new hires hired after July 8, 1997 will be classified as probationary Apprentices.

This is to confirm our understanding and agreement that any individual with an industry date prior to July 9, 1997, who is still a Helper as of the effective date of our new agreement, will receive 70% of Mechanic's rate, plus fringe benefit and will remain at that rate until such time as he is qualified and meets the requirements as a fourth year Apprentice.

AGREED:
Frank Christensen

AGREED:
Rick Amarosa

Frank Christensen, General President
International Union of Elevator Constructors
7154 Columbia Gateway Drive
Columbia, MD 21046

Dear Mr. Christensen:

This letter will confirm the transfer policy between the primary and subprimary of the newly merged locals will be as follows:

a) Each merged local becomes a subprimary of the local with which it was merged.

b) The current employees form the permanent bench in each subprimary and primary.

c) The current expense Agreement in each affected local will remain in effect until replaced by a new expense Agreement negotiated between NEBA and the IUEC.

d) An employee sent from the primary to the subprimary, or vice versa, on a temporary basis will be paid expenses as required by his/her permanent base expense Agreement.

e) An employee who is transferred on a permanent basis from the primary to the subprimary, or vice versa, and this assignment does not require a household move shall receive four (4) weeks per diem from his/her old location expense Agreement, thereafter he/she is a permanent employee in the new location.

f) An employee who is transferred on a permanent basis from the primary to the subprimary, or vice

versa, and does require a household move shall receive six (6) weeks per diem from his/her old location expense Agreement, thereafter he/she is a permanent employee in the new location.

g) When a person on the bench is hired in the primary and/or subprimary he/she shall be used in the new location by application of paragraphs (d), (e), or (f) above.

h) When an employee is permanently transferred as outlined in paragraphs (e) and (f) above, he/she is guaranteed a total of six (6) months employment in the new location or he/she will be paid per diem for the entire period less the per diem already paid.

This provision (h) does not apply if the employee is discharged for cause.

Very truly yours,
Rick Amarosa

AGREED:
Frank Christensen

LETTER OF UNDERSTANDING

The parties agree that no Local Joint Apprenticeship Committee may implement any rule that conflicts with any language of the Collective Bargaining Agreement.

_____

For NEBA

_____

Title

_____

Date

_____

For the Union

_____

Title

_____

Date

Frank Christensen, General President
International Union of Elevator Constructors
7154 Columbia Gateway Drive
Columbia, MD 21046

Dear Mr. Christensen:

This will confirm the understanding reached during our recent negotiations concerning local unions that may be merged or dissolved by the International Union of Elevator Constructors (IUEC) after January 1, 1992 and until the termination of the Agreement that will expire on July 8, 2022. NEBA agrees to meet and discuss the effects of such mergers on a local by local basis. Such discussions shall include but are not limited to hiring, expense agreements and open-territory between the merged locals.

There shall be no change in any term or condition of employment under the Agreement or any local expense agreement until such time as the parties reach a mutual agreement as to such changes.

It is further agreed that such discussions are to begin as expeditiously as possible following the conclusion of negotiations for a new Agreement.

Very truly yours,
Rick Amarosa

AGREED:
Frank Christensen

MERGED LOCALS

Due to the wage disparity created by merging the following locals, for the benefit of both the Employer and the IUEC, we will use the language in the letter confirming the transfer policy between the Primary and Sub-Primary of the newly merged locals contained in this Agreement. Using the increase schedule that we have provided, parity will be achieved for all of the merged locals within two (2) years.

Receiving Local	Merged Local	Percentage of Parity	1st Wage Increase	2nd Wage Increase	3rd Wage Increase	4th Wage Increase	5th Wage Increase

MEMORANDUM OF UNDERSTANDING

Except as otherwise agreed to by the parties, the terms of all agreements between the International Union of Elevator Constructors and/or its local Unions and the National Elevator Bargaining Association and its member Companies, including but not limited to local expense and local option agreements, that are in existence on the effective date of this Agreement shall continue in effect unless inconsistent with or superseded by this Agreement in which case the terms of this Agreement prevail.

AGREED:
Frank Christensen

AGREED:
Rick Amarosa

ASSISTANT MECHANIC AGREEMENT

I agree to accept Assistant Mechanic status for twelve (12) months from the date of this agreement. The terms and conditions of employment as an Assistant Mechanic have been agreed upon by the IUEC and my employer and are contained in the NEBA-IUEC Agreement relating to Assistant Mechanics included in the amended collective bargaining agreement. The definition of Assistant Mechanic Work and Qualifications are specified in Article X of the NEBA-IUEC Agreement.

I understand that the wage rate for Assistant Mechanic shall be 80% of the wage rate for Mechanics in the local union where I am working.

It is understood that by signing this Agreement, there is no guarantee of employment.

Should the terms of the Letter of Agreement for Assistant Mechanics be violated, this agreement will immediately become null and void.

Print Name: _____

Signed: _____

Date: _____

Company: _____

Signed: _____

Date: _____

Local Union: _____

Business Representative: _____

Date: _____

July 9, 2017

Frank Christensen, General President
International Union of Elevator Constructors
7154 Columbia Gateway Drive
Columbia, MD 21046

Re: Letter of Agreement

Dear Mr. Christensen:

This memorandum details the agreement between the parties concerning potential conflicts posed whenever customers, as a precondition for securing contracts for the Company, require background checks for employees who will be working on the customer's premises.

The Company agrees to the following whenever customers require background checks:

1. The Company shall seek volunteers to man said jobs.

2. The Company will not discipline, discharge or lay off employees solely due to their refusal to volunteer. However, such employees may be laid off if there is not sufficient other work to which they may be assigned.

3. The IUEC recognizes the importance of securing adequate volunteers and will cooperate in efforts to secure them.

Implementation of this agreement and terms and conditions related thereto cannot be introduced or consid-

ered in any proceeding except one to enforce this agreement.

Very truly yours,
Rick Amarosa

AGREED:
Frank Christensen

MEMORANDUM OF UNDERSTANDING

When a pre-task safety document (e.g. Job Hazard Analysis (JHA), Job Safety Assessment (JSA) or similar document) is required by the company, employees will not be permitted to re-use a previously completed document.

AGREED:
Frank Christensen

AGREED:
Rick Amarosa

Frank Christensen, General President
International Union of Elevator Constructors
7154 Columbia Gateway Drive
Columbia, MD 21046

Re: Letter of Agreement

Dear Frank:

This memorandum details the agreement between the parties concerning potential conflicts between the Company's Alcohol and Drug Policy and those policies provided by customers as a precondition for securing contracts for the Company.

The Company will continue its practice of applying good faith efforts to apply its own policy. Should these efforts be unsuccessful and a customer insists on implementation of their own policy, the Company may institute such policies to the extent necessary to obtain the work.

Good faith efforts by the Company to avoid using the customer's policy will include:

1. Advising the customer that the Company has agreed with the IUEC to a comprehensive company wide policy that addresses the maintenance of a safe and healthy work environment for its employees, and that it does not wish to apply any additional or different regulations.
2. If written confirmation of the company's position fails to change the customer's position, the Company will attempt to obtain customer approval to as much of its policy as possible.

3. If the customer insists on the complete substitution of its policy for the Company's policy, the Company shall then seek volunteers to man said jobs.
4. The Company will not discipline, discharge or lay off employees solely due to their refusal to volunteer. However, such employees may be laid off if there is not sufficient other work to which they may be assigned.
5. The IUEC recognizes the importance of securing adequate volunteers and will cooperate in assisting in efforts to secure them.

AGREED:
Rick Amarosa

SUBSTANCE ABUSE

Par. 1. In order to eliminate substance abuse in the workplace; to assist employees with substance abuse related illnesses, to have a safe workplace and efficient work-force. Such Substance Abuse Program shall be subject to the conditions set forth in this Article.

Par. 2. There shall be no random testing for drugs or alcohol for any reason other than stated in Par. 6. An employee who refuses to submit to random testing of any kind, for reasons other than stated in Par. 6, shall not be disciplined, nor shall that employee be refused access to the jobsite.

Par. 3. Testing may be performed on new-hire applicants for employment as a condition of employment prior to placing them on the payroll. The employer shall have the right to require a drug test for any referral for employment if such referral has not worked for that employer within the past three (3) months.

Testing will only include alcohol and the following drugs:

Nine Panel Drug Test

1. Cocaine (and its derivatives, including crack cocaine).
2. Cannabinoids (THC/marijuana, hash).
3. Opiates (heroin, codeine, etc.).
4. Amphetamine (including methamphetamine – central nervous system stimulants).

5. Phencyclidine (PCP).
6. Barbiturates
7. Benzodiazepines
8. Methadone
9. Propoxyphene

Testing of referrals will be considered a part of the employer's pre-employment process. The referral will be employed while the employer is awaiting the return of the test results. If the test result is positive, subject to Par. 5, the employer has no responsibility to that referral and may terminate the referral without consequence. However, said individual shall become eligible for employment in the industry at such time that the individual complies with a recognized rehabilitation or counseling program under this Substance Abuse Policy.

Par. 4. An employee may be tested when probable cause exists to believe that the employee is impaired on the job. The Local Union Business Manager or Agents will be notified by the Employer within 72 hours after the employee has been tested under (a) or (b) below. Probable cause will be deemed to exist under the following circumstances:

(a) The employee's conduct or actions indicating alleged impairment shall be observed by one supervisor on the jobsite and confirmed by a second supervisor whenever possible. The supervisor(s) shall record their observations in writ-

ing stating the date, time, length of observation, jobsite and actions of the employee which they believe constitute drug or alcohol impairment. Such statements shall be signed; or

(b) A determination is made that the employee's conduct is symptomatic of alcohol or drug impairment by an independent physician or health care professional qualified to make such a determination, following a consultation with the employee. The physician or health care professional shall be of the Employer's choosing and the cost of such consultation and determination shall be borne by the Employer if it is not covered by applicable insurance; or

(c) Any employee involved in an accident which results in professional medical treatment or damage to company property will be required to submit to a test for the presence of alcohol or drugs.

Par. 5. An employee who is properly requested to undergo testing in accordance with the minimum procedures set forth in Par. 4 above shall be tested within 24 hours. The Local Union shall be notified of all positive test results within 72 hours of the employer receiving the results. If the employee refuses, the employee is subject to disciplinary action up to and including

termination and the employee shall be deemed unqualified and barred from work within the industry until such time the employee successfully complies with a recognized rehabilitation or counseling program under Par. 6 of this section.

The Company must use a recognized and reputable concern for testing, with sufficient facilities and quality control features to ensure accuracy in test diagnosis and the capability to store samples. Chain of custody procedures must be observed at all times. The Company will comply with any state laws concerning drug testing.

The results of the test of an employee who tests positive the first time must be confirmed by SAMHSA standards. For a positive, adulterated or substituted result reported on a single specimen or a primary specimen, the employee may request through the MRO that the same specimen (or split specimen) be tested by a second authorized (SAMHSA certified) laboratory. The employee has 72 hours (from the time the MRO notified the employee that the specimen was reported positive, adulterated or substituted to request a retest of the same specimen (or split specimen). If the independent retest indicates a negative result, the Employer may elect to retest the employee's initial sample. If the results are again negative, the employee will be put back to work immediately (if he is off work) and made whole for any loss of pay occasioned by the first positive test results.

Par. 6. An employee whose final test results are positive (and who has not tested positive previously) will be referred to the Company's Medical Review Officer, (see attachment) Employee Assistance Program or some other recognized and approved rehabilitation or counseling program. The cost of such programs may be offset by appropriate insurance coverage. Any program whose cost is borne by the National Elevator Industry Health Benefit Plan shall be deemed an acceptable program under this paragraph. If the employee enters such a program, his status as an employee will not be affected, except as provided for in Par. 3 above, and he will be allowed access to the job under the conditions established by the program. An employee who refuses a proper request to enter, participate in and successfully comply with such a program shall be deemed unqualified and barred from returning to work within the industry. Employees may be disciplined, up to and including discharge, for subsequent positive test results. Employees who test positive two (2) times, and have been discharged by the Employer, shall be deemed unqualified and shall not return to work within the industry until he/she has successfully complied with a substance abuse program. Said individual, upon returning to work, may be randomly tested for substance abuse for a period of one year at the Employer's expense.

Par. 7. Testing may be for drug or alcohol impairment only and not for any other medical conditions. Neither the Company nor any medical or testing personnel shall disclose any information regarding the fact of testing or the results of testing to any other employer or customer. All test results and related information will be given the same confidentiality as any other medical information in the Company.

Par. 8. Any employee(s) who possesses, sells, transports or distributes illegal drugs or unauthorized alcohol at a work site, on the company premises, or on company time is subject to immediate discharge.

Par. 9. There shall be a mutually agreed upon designated panel of five (5) permanent arbitrators assigned to this Policy. Any dispute regarding the application or construction of this Substance Abuse Program, including the sections on Rights of Employees and Medical Review Officer, may be submitted to expedited binding arbitration by either the Union or the Employer. Such disputes will be reduced to a written grievance and may be submitted to the NEBA Executive Director or his designee and the General President of the Union or his designee for their immediate review and discussion by phone or in person within ten (10) working days of the submission. If the grievance is not resolved, it can be submitted directly to expedited arbitration.

Such cases will be heard by one of the arbitrators contained in the permanent panel. Arbitrators from the permanent panel will be selected by mutual agreement or if there is no mutual agreement, by random selection.

This statement of principles shall apply to all employees represented by the International Union of Elevator Constructors. Substance abuse testing and treatment measures are appropriate for all employer non-bargaining unit employees as well, including company executives and officers.

RIGHTS OF EMPLOYEES

a) Before requesting an employee to undergo drug or alcohol testing, the employer shall provide the employee with a form on which to acknowledge that the employee has seen the drug and alcohol testing policy.

b) If an employee tests positive for drug or alcohol use, the employee must be given written notice of the right to explain the positive test and indicate any over-the-counter or prescription medication that the employee is currently taking or has recently taken and any other information relevant to the reliability of, or explanation for, a positive test.

c) Within three (3) working days after notice of a positive initial test result the employee may submit information to the MRO, in addition to any information already submitted under paragraph (b), to explain that result. Within three (3) working days after receiving final notification of a positive test result, an employee who is the subject of a drug test may, upon written request through the MRO, have access to any records relating to his or her drug test.

d) An employee who tests positive will have 72 hours following the date which the employee is notified of the test result to advise the company, in writing, of the employee's desire to request a retest of the original sample at the employee's own expense. An employee who properly requests in writing the records as stated above in (c), shall have 72 hours from the date of receiving such requested information to request a retest of the original sample.

e) Unless a positive test result is confirmed as positive, it shall be deemed negative and reported by the laboratory as such.

f) The employer will bear the costs of all testing except for retests requested by employees after an initial positive test result.

g) Anytime an employee submits to a drug test under the Substance Abuse Program of this Agreement at the request of an employer, a copy of a positive test result shall be confidentially delivered to the employee no later than the end of the next business day after receipt of the test results by the employer.

Refusal to test or provide an adequate sample when required by this policy shall constitute insubordination and is a violation of this agreement.

Any specimen altered by the employee will be considered a positive test result and therefore a violation of this policy. Any specimen altered by the employer will be considered a negative test result.

MEDICAL REVIEW OFFICER

The Company will appoint a Medical Review Officer (MRO) to administer this Policy. The responsibilities of the MRO shall be to:

a) Select and utilize services of a testing laboratory that meets one of the criteria for drug testing established by SAMSHA.

b) Provide specimen test kits and collection locations that follow chain of custody collection techniques mandated by SAMSHA.

c) Maintain appropriate systems, records, and administrative procedures to provide participating employers with accurate and timely information as to the drug and alcohol free status of employees.

d) Ensure that the testing facility conducts both an initial drug screen and a confirmation test on specimens before reporting positive results.

e) Notify the tested individual of a positive result and provide the individual with an opportunity to explain the reasons why their test might be positive.

f) Review and verify a confirmed positive test result and process the donor's request for a confirmatory retest of the original sample.

g) Review a participating employee's medical record if so requested by the employee.

h) Notify the employer's contact person of all test results, both positive and negative, if required.

i) Refer individuals testing positive to the appropriate medical evaluation and participate in return to duty decisions as set forth in this Policy.

j) Ensure the drug and alcohol policy and program complies with Federal, State, and local law.