

1 STEVEN A. GROODE, Bar No. 210500
sgroode@littler.com
2 SEVAG M. SHIRVANI, Bar No. 278540
sshirvanian@littler.com
3 LITTLER MENDELSON, P.C.
2049 Century Park East
4 5th Floor
Los Angeles, CA 90067.3107
5 Telephone: 310.553.0308
Facsimile: 310.553.5583

6 Attorneys for Defendants
7 MASTEC NETWORK SOLUTIONS, LLC,
MASTEC SERVICES COMPANY, INC.,
8 MASTEC NETWORK SOLUTIONS, INC., AND
WESTOWER COMMUNICATIONS INC.

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 JORGE A. ZEPEDA, an individual, on
13 behalf of himself and others similarly
situated,

14 Plaintiff,

15 v.

16 MASTEC NETWORK SOLUTIONS,
17 LLC, a Florida limited liability
company; MASTEC SERVICES
18 COMPANY, INC., a Florida
corporation; MASTEC NETWORK
19 SOLUTIONS, INC., a Florida
corporation; WESTOWER
20 COMMUNICATIONS INC., a
Delaware corporation; and DOES 1
21 through 50, inclusive,

22 Defendants.

Case No. 2:18-cv-3065

**DEFENDANTS' NOTICE OF
REMOVAL OF CIVIL ACTION
PURSUANT TO 28 U.S.C. §§ 1332,
1441, 1446**

Complaint Filed: February 16, 2018
(Riverside County Superior Court Case
No. RIC 1803871)

1 **TO THE CLERK OF THE ABOVE-ENTITLED COURT, PLAINTIFF JORGE**
2 **A. ZEPEDA AND TO HIS ATTORNEYS OF RECORD:**

3 PLEASE TAKE NOTICE that Defendants MasTec Network Solutions, LLC
4 (“MNS LLC”), MasTec Services Company, Inc. (“MSC”), MasTec Network
5 Solutions, Inc. (“MNS Inc.”) and Westower Communications, LLC (formerly known
6 as “Westower Communications, Inc.” (“Westower”) (collectively, “Defendants”)
7 hereby remove the above-entitled action, Case No. RIC1803871 from the Superior
8 Court of the State of California, County of Riverside, to the United States District
9 Court for the Central District of California, pursuant to 28 U.S.C. §§ 1332, 1441 and
10 1446. Defendants make the following allegations in support of their Notice of
11 Removal:¹

12 **I. STATEMENT OF JURISDICTION**

13 1. This Court has original jurisdiction over this action pursuant to the Class
14 Action Fairness Act of 2005 (“CAFA”). *See* 28 U.S.C. § 1332(d). CAFA grants
15 district courts original jurisdiction over civil class actions filed under federal or state
16 law in which any member of a class of plaintiffs is a citizen of a state different from
17 any defendant, and where the amount in controversy for the putative class members in
18 the aggregate exceeds the sum or value of \$5 million, exclusive of interest and
19 costs. CAFA authorizes removal of such actions in accordance with United States
20 Code, title 28, section 1446. Here, as set forth below, this case meets all of CAFA’s
21 requirements for removal because the proposed class contains at least 100 members,
22 there is diversity between at least one class member and one defendant and the amount
23 in controversy for all putative class members exceeds \$5 million. *See* 28 U.S.C. §
24 1332(d).

25
26 ¹ “To remove a case from a state court to a federal court, a defendant must file in the
27 federal forum a notice of removal ‘containing a short and plain statement of the
28 grounds for removal.’” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct.
547 (2014), *quoting* 28 U. S. C. §1446(a). “A statement ‘short and plain’ need not
contain evidentiary submissions.” *See Dart* at 547.

1 **II. VENUE**

2 2. The action was filed in the Superior Court of the State of California,
3 County of Riverside. Venue properly lies in the United States District Court for the
4 Central District of California because it is the district court where the state court
5 action is pending. *See* 28 U.S.C. §§ 84(c), 1391(a), 1441(a).

6 **III. PLEADINGS, PROCESS AND ORDERS**

7 3. This lawsuit arises out of Plaintiff Jorge A. Zepeda’s (“Plaintiff”) alleged
8 employment with Defendants. On February 16, 2018, Plaintiff filed a Class Action
9 Complaint in the Superior Court of the State of California, County of Riverside,
10 entitled *Jorge A. Zepeda, an individual, on behalf of himself and others similarly*
11 *situated v. MASTEC NETWORK SOLUTIONS, LLC, a Florida limited liability*
12 *company; MASTEC SERVICES COMPANY, INC., a Florida corporation; MASTEC*
13 *NETWORK SOLUTIONS, INC., a Florida corporation; WESTOWER*
14 *COMMUNICATIONS INC., a Delaware corporation; and DOES 1 through 50,*
15 *inclusive,* designated as Case No. RIC1803871 (herein referred to as the
16 “Complaint”). A true and correct copy of the Summons, Complaint, and Civil Case
17 Cover Sheet are attached to this Notice collectively as **Exhibit “A”** pursuant to 28
18 U.S.C. §1446(a).

19 4. The Complaint purports to assert the following claims for relief: (1)
20 Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime [California
21 Labor Code § 510]; (3) Meal Period Liability [California Labor Code § 226.7]; (4)
22 Rest-Break Liability [California Labor Code § 226.7]; (5) Failure to Reimburse
23 Necessary Business Expenditures [California Labor Code § 2801]; (6) Violation of
24 Labor Code § 226(a); (7) Violation of Labor Code § 221; (8) Violation of Labor Code
25 § 203; (9) Violation of California Business & Professions Code § 17200, *et. seq.* (*See*
26 Complaint (“Compl.”), Exhibit “A”).

27 5. On March 15, 2018, Plaintiff served the Complaint with its attachments
28 on defendants MNS LLC and MNS Inc. through their agent for service of process.

1 True and correct copies of the Proofs of Service to MNS LLC and MNS Inc. are
2 attached to this Notice of Removal as **Exhibit “B”** and **Exhibit “C”**, respectively.

3 6. On March 16, 2018, Plaintiff served the Complaint with its attachments
4 on defendant MSC through its agent for service of process. A true and correct copy of
5 the Proof of Service to MSC is attached to this Notice of Removal as **Exhibit “D”**.

6 7. On March 21, 2018, Plaintiff served the Complaint with its attachments
7 on defendant Westower through its agent for service of process. A true and correct
8 copy of the Proof of Service to Westower is attached to this Notice of Removal as
9 **Exhibit “E”**.

10 8. On April 11, 2018, Defendants filed an Answer to Plaintiff’s Complaint
11 pursuant to Cal. Code of Civ. Proc. § 431.30 in the Superior Court of California,
12 County of Riverside. Pursuant to 28 U.S.C. §1446(a), a true and correct copy of the
13 Answer is attached hereto as **Exhibit “F”**.

14 9. To the best of Defendants’ knowledge, no further documents from the
15 state court action have been filed by Plaintiff. Nor have any other documents been
16 filed in the state court action by Defendants. The attachments thereby satisfy the
17 requirements of 28 U.S.C. § 1446(a).

18 **IV. NOTICE TO STATE COURT AND PLAINTIFF’S COUNSEL**

19 10. Contemporaneously with the filing of this Notice of Removal in the
20 United States District Court for the Central District of California, written notice of the
21 removal will be given by the undersigned to Plaintiff’s Counsel of Record and a copy
22 of this Notice of Removal will be filed with the Clerk of the Superior Court for the
23 State of California for the County of Riverside as required by 28 U.S.C. §1446(d).

24 **V. TIMELINESS OF REMOVAL**

25 11. This Notice of Removal is filed within 30 days after the initial receipt by
26 Defendants of a copy of Plaintiff’s Complaint in accordance with 28 U.S.C. § 1446(b)
27 and Rule 6(a)(1)(C) of the Federal Rules of Civil Procedure. Here, defendants MNS
28 LLC and MNS Inc. were both served on March 15, 2018, and defendant MSC was

1 served on March 16, 2018. Thirty days from both March 15, 2018 and March 16,
2 2018 falls on a weekend (April 14 and 15, 2018 respectively), therefore removal on or
3 before April 16, 2018, is timely as to defendants MNS LLC, MNS Inc., and MSC.
4 *See* Fed. R. Civ. Proc. 6(a); *Yanik v. Countrywide Home Loans*, 2010 U.S. Dist.
5 LEXIS 115717, fn. 6 (C.D. Cal. 2010); *see also Graiser v. Visionworks of Am. Inc.*,
6 819 F.3d 277, 281 (6th Cir. 2016). Defendant Westower was served on March 21,
7 2018, making removal on or before April 20, 2018, timely as to Westower.
8 Defendants have filed this Notice of Removal in accordance with their respective
9 filing deadlines, thus making this Notice timely.

10 12. The Complaint also names as defendants “DOES 1 through 50.”
11 Defendants are informed and believe, and on that basis allege, that none of the
12 fictitiously-named defendants have been served with a copy of the Summons and
13 Complaint. Therefore, the fictitiously-named defendants are not parties to the above-
14 captioned action and need not consent to removal. *See Fristoe v. Reynolds Metals*
15 *Co.*, 615 F.2d 1209, 1213 (9th Cir. 1980); 28 U.S.C. section 1441(a).

16 VI. CAFA JURISDICTION

17 13. CAFA grants federal district courts original jurisdiction over civil class
18 action lawsuits in which any plaintiff is a citizen of a state different from any
19 defendant, and where the amount in controversy exceeds \$5,000,000, exclusive of
20 interest and costs. *See* 28 U.S.C. § 1332(d). CAFA authorizes removal of such
21 actions in accordance with 28 U.S.C. § 1446. As set forth below, this case meets each
22 CAFA requirement for removal, and is timely and properly removed by the filing of
23 this Notice. Specifically, this Court has jurisdiction over this case under CAFA
24 because it is a civil class action wherein: (1) the proposed class contains at least 100
25 members; (2) no defendant is a state, state official or other governmental entity;
26 (3) there is diversity between at least one class member and one defendant; and (4) the
27 amount in controversy for all putative class members exceeds \$5 million.

1 **A. The Proposed Class Contains More Than 100 Members**

2 14. As set forth in the Complaint, Plaintiff pursues his alleged claims on
3 behalf of himself and a class defined as “All individuals employed by Defendants at
4 any time during the period of four (4) years prior to the filing of this lawsuit and
5 ending on a date as determined by the Court, and who have been employed as non-
6 exempt, hourly employees working on communications towers and support structures
7 within the State of California.” (Compl. at ¶ 35, Exhibit “A”). Plaintiff includes both
8 current and former employees across the entire State of California in his allegations.
9 Based on Defendants’ personnel data maintained in the ordinary course of business,
10 the class, as defined by Plaintiff, currently consists of approximately 443 individuals
11 who are and/or were employed by one or more of the Defendants during the putative
12 class period.

13 **B. No Defendant Is A Governmental Entity**

14 15. No Defendant is state, state official or any other governmental entity.

15 **C. CAFA Diversity Of Citizenship Exists**

16 16. CAFA’s minimal diversity requirement is satisfied, *inter alia*, when “any
17 member of a class of plaintiffs is a citizen of a State different from any defendant.” 28
18 U.S.C. §§ 1332(d)(2)(A); 1453(b). In a class action, only the citizenship of the named
19 parties is considered for diversity purposes and not the citizenship of the class
20 members. *Snyder v. Harris*, 394 U.S. 332, 339-40 (1969). Minimal diversity of
21 citizenship exists here because Plaintiff and Defendants are citizens of different states.

22 **D. Citizenship of Plaintiff**

23 17. Citizenship of a natural person is established by domicile. 28 U.S.C. §
24 1332(a)(1) (an individual is a citizen of the state in which he or he is domiciled). A
25 person’s domicile is established by physical presence and intent to remain indefinitely.
26 *Lew v. Moss*, 797 F.2d 747, 749-50 (9th Cir. 1986); *State Farm Mutual Auto*
27 *Insurance Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994) (residence is *prima facie*
28 evidence of domicile for purposes of determining citizenship). Moreover, “[o]nce an

1 individual has established his state of citizenship, he remains a citizen of that state
2 until he legally acquires a new state of citizenship.” *Altimore v. Mount Mercy*
3 *College*, 420 F.3d 763, 769 (8th Cir. 2005). A person's old domicile also is not lost
4 until a new one is acquired. *Barber v. Varleta*, 199 F.2d 419, 423 (9th Cir. 1952).

5 18. Plaintiff is a resident of Riverside County, California and is a citizen of
6 the State of California. (Compl. ¶2, Exhibit “A”).

7 **E. No Defendant Is A Citizen Of California**

8 19. For diversity purposes, a corporation “shall be deemed a citizen of any
9 State by which it has been incorporated and of the State where it has its principal place
10 of business.” 28 U.S.C. § 1332(c)(1). The United States Supreme Court has
11 confirmed that to determine a corporation’s principal place of business, a court must
12 apply the “nerve center” test. *See Hertz Corp. v. Friend*, 130 S. Ct. 1181 (2010). In
13 relevant part, the Court explained, as follows:

14 We conclude that ‘principal place of business’ is best read as
15 referring to the place where a corporation's officers direct,
16 control, and coordinate the corporation's activities. It is the
17 place that Courts of Appeals have called the corporation's
18 ‘nerve center.’ And in practice it should normally be the
19 place where the corporation maintains its headquarters --
20 provided that the headquarters is the actual center of
21 direction, control, and coordination, i.e., the ‘nerve center,’
22 and not simply an office where the corporation holds its
23 board meetings (for example, attended by directors and
24 officers who have traveled there for the occasion).

25 *Id.*, at 1041-42.

26 20. The “nerve center” test of a corporation’s principal place of business
27 looks to the place in which the corporation’s executives and administrative functions
28 are located. *Scot Typewriter Co. v. Underwood Corp.*, 170 F. Supp. 862 (S.D.N.Y.
1959) (corporation’s principal place of business was New York, where its
management was located, rather than Connecticut where most of its manufacturing

1 was done); *see also Diaz-Rodriguez v. Pep Boys Corp.*, 410 F. 3d 56, 60 (1st Cir.
2 2005) (nerve center test governs where corporation has “complex” and “far flung”
3 activities).

4 21. Plaintiff has correctly pled that Defendants MNS, Inc. and MSC, Inc. are
5 incorporated in the State of Florida. Moreover, the principal place of business and
6 headquarters for each are in Florida, because their executive, operational and
7 administrative offices and functions are located in Florida. *See Breitman v. May Co.*,
8 37 F.3d 562, 564 (9th Cir. 1994) (corporation is citizen of state in which its corporate
9 headquarters are located and where its executive and administrative functions are
10 performed). Accordingly, citizenship of MNS, Inc. and MSC is in Florida.

11 22. Under CAFA, “[f]or purposes of this section and section 1453, an
12 unincorporated association shall be deemed to be a citizen of the State where it has its
13 principal place of business and the State under whose laws it is organized.” 28 U.S.C.
14 § 1332(d)(10). Unincorporated associations include limited liability companies. *See*
15 *Marroquin v. Wells Fargo LLC*, 2011 WL 476540, at *2 (S.D. Cal. Feb. 3, 2011)
16 (treating limited liability corporation as an “unincorporated association” under
17 CAFA); *see also Parker v. Dean Transp., Inc.*, 2013 WL 12091841, at *8-9 (C.D. Cal.
18 June 26, 2013) (following *Marroquin* and similarly treating limited liability
19 corporation as an “unincorporated association” under CAFA).

20 23. Plaintiff has correctly pled that MNS, LLC, is a Florida limited liability
21 company. Its principal place of business and headquarters are in Florida, because its
22 executive, operational and administrative offices and functions are located in Florida.
23 *See Breitman v. May Co.*, 37 F.3d 562, 564 (9th Cir. 1994) (corporation is citizen of
24 state in which its corporate headquarters are located and where its executive and
25 administrative functions are performed). Accordingly, for the purposes of this CAFA
26 removal, citizenship of MNS, LLC is in Florida.

27 24. Plaintiff has pled that “Westower Communications, Inc.” is incorporated
28 in the State of Delaware. Westower Communications, Inc. has merged into

1 Westower, a limited liability company. Westower, LLC is a Florida limited liability
2 company. Its principal place of business and headquarters are in Florida, because its
3 executive, operational and administrative offices and functions are located in Florida.
4 *See Breitman at 564.* Accordingly, for the purposes of this CAFA removal,
5 citizenship of Westower LLC is in Florida.

6 **F. Complete Diversity Exists As No Other Parties Have Been Identified**

7 25. There are no other identified defendants. Defendants Does 1 through 50
8 are wholly fictitious. The Complaint does not set forth the identity or status of any
9 fictitious defendants, nor does it set forth any charging allegation against any fictitious
10 defendants. Thus, pursuant to Section 1441(a), the citizenship of defendants sued
11 under fictitious names must be disregarded for purposes of determining diversity
12 jurisdiction and cannot destroy the diversity of citizenship between the parties in this
13 action. *See Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 690-91 (9th Cir. 1998).

14 26. Accordingly, because Plaintiff is a citizen of California and Defendants
15 are not, complete diversity of citizenship exists in this case.

16 **G. The Amount In Controversy Exceeds \$5,000,000**

17 27. “Under CAFA the burden of establishing removal jurisdiction remains, as
18 before, on the proponent of federal jurisdiction.” *Abrego v. Dow Chemical Co.*, 443
19 F.3d 676, 685 (9th Cir. 2006). Where, as here, the Complaint is silent as to the
20 amount in controversy, a preponderance of the evidence standard applies. *See Lewis*
21 *v. Verizon Communs., Inc.*, 627 F.3d 395, 397 (9th Cir. 2010), *citing Guglielmino v.*
22 *McKee Foods Corp.*, 506 F.3d 696, 699 (9th Cir. 2007).

23 28. Although Defendants expressly deny any liability for the damages
24 alleged in Plaintiff’s Complaint, for purposes of determining whether the minimum
25 amount in controversy has been satisfied the Court must presume that Plaintiff will
26 prevail on his claims. *Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*, 199
27 F. Supp. 2d 993, 1001 (C.D. Cal. 2002) (citing *Burns v. Windsor Ins. Co.*, 31 F.3d
28 1092, 1096 (11th Cir. 1994)) (stating that the amount in controversy analysis

1 presumes that “plaintiff prevails on liability”). “The amount in controversy is simply
2 an estimate of the total amount in dispute, not a prospective assessment of
3 [defendant’s] liability.” *Lewis, supra*, 627 F. 3d at 400 (9th Cir. 2010). Stated
4 differently, the ultimate inquiry is what amount is put “in controversy” by Plaintiff’s
5 Complaint, not what defendants might actually owe. *Rippee v. Boston Market Corp.*,
6 408 F. Supp. 2d 982, 986 (S.D. Cal. 2005); *accord Ibarra v. Manheim Investments,*
7 *Inc.* 775 F.3d 1193, 1198 n. 1 (9th Cir. 2015) (explaining that even when the court is
8 persuaded the amount in controversy exceeds \$5,000,000, defendants are still free to
9 challenge the actual amount of damages at trial because they are only estimating the
10 amount in controversy).

11 29. CAFA authorizes the removal of class actions in which, among other
12 factors mentioned above, the amount in controversy for all class members exceeds \$5
13 million. *See* 28 U.S.C. § 1332(d). Here, the Complaint unquestionably places more
14 than \$5 million in controversy.

15 30. The removal statute requires that a defendant seeking to remove a case to
16 federal court must file a notice “containing a short and plain statement of the grounds
17 for removal.” 28 U.S.C. §1446(a). The United States Supreme Court in *Dart*
18 *Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014), recognized
19 that “as specified in section 1446(a), a defendant’s notice of removal need include
20 only a plausible allegation that the amount in controversy exceeds the jurisdictional
21 threshold.” Only if the plaintiff contests or the court questions the allegations of the
22 notice of removal is supporting evidence required. *Id.* Otherwise, “the defendant’s
23 amount in controversy allegation should be accepted” just as plaintiff’s amount in
24 controversy allegation is accepted when a plaintiff invokes federal court jurisdiction.
25 *Id.* at 553. “[N]o antiremoval presumption attends cases invoking CAFA.” *Id.* at 554.

26 31. Here, Plaintiff does not allege the amount in controversy. When the
27 plaintiff’s complaint does not state the amount in controversy, the defendant’s notice
28 of removal may do so, and the notice of removal must simply include “a plausible

1 allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart*
2 *Cherokee Basin Operating Company LLC*, 135 S. Ct. at 554.

3 32. While Defendants deny Plaintiff’s claims of wrongdoing and denies his
4 request for relief therein, as specifically outlined below, the factual allegations in
5 Plaintiff’s Complaint and the total amount of wages, penalties, attorneys’ fees, and
6 other monetary relief at issue in this action clearly demonstrate that the total amount in
7 dispute is far in excess of this Court’s jurisdictional minimum. *Lockett v. Delta*
8 *Airlines, Inc.*, 171 F.3d 295 (5th Cir. 1999) (facts presented in notice of removal,
9 combined with plaintiffs’ allegations, sufficient to support finding that jurisdictional
10 limits satisfied). “[W]hen the defendant relies on a chain of reasoning that includes
11 assumptions to satisfy its burden of proof [as to CAFA’s amount-in controversy
12 requirement], the chain of reasoning and its underlying assumptions must be
13 reasonable.” *LaCross v. Knight Transp. Inc.*, 775 F.3d 1200, 1201 (9th Cir. 2015).
14 The Defendants’ chain of reasoning and assumptions presented below in support of its
15 analysis of the amount in controversy for CAFA removal are not only reasonable, they
16 are extremely conservative.

17 33. Plaintiff seeks to recover damages during the four year statute of
18 limitations for claims alleged as unfair business practices. *See* Bus. & Prof. Code §
19 17200, *et seq.* (Compl. at ¶¶ 107-115, Exhibit “A”). For the purposes of this analysis,
20 Defendants based the calculations on the personnel and timekeeping data maintained
21 in the ordinary course of business from the beginning of the statutory period, February
22 16, 2014, to March 12, 2018, and shorter periods therein where applicable limitations
23 period apply, such as with regard to statutory penalties. This period is referred to
24 herein as the “Removal Damages Period.”

25 34. During the Removal Damages Period, there were approximately 443 non-
26 exempt, hourly employees working on communications towers and support structures
27 employed by one or more of the Defendants within the State of California (“Putative
28 Class Members”). During the one-year period prior to the filing of the Complaint,

1 approximately 183 non-exempt, hourly employees employed by one or more of the
2 Defendants within the State of California worked on communications towers and
3 support structures. These employees were compensated on an hourly basis and paid
4 weekly.

5 35. The hourly rates paid to Putative Class Members during the Removal
6 Damages Period range from approximately \$12.00 per hour to \$36.57 per hour. The
7 average straight time hourly rate for the Removal Damages Period is \$21.62 per hour.
8 The average straight time hourly rate for the three year period prior to the filing of the
9 Complaint is \$21.81 per hour. The average straight time hourly rate for the one year
10 period prior to the filing of the Complaint is \$23.00 per hour.

11 36. During the Removal Damages Period, Putative Class Members worked a
12 cumulative total of approximately 29,409 workweeks. During the one year period
13 prior to the filing of the Complaint, Putative Class Members worked a cumulative
14 total of approximately 6,530 workweeks.

15 37. During the Removal Damages Period, each Putative Class Member
16 worked an average of 66 workweeks (29,409 total workweeks/443 Putative Class
17 Members).

18 38. During the one year period prior to the filing of the Complaint, each
19 Putative Class Member worked an average of 36 workweeks (6,530 total
20 workweeks/183 Putative Class Members).

21 39. During the three year period prior to the filing of the Complaint 234
22 Putative Class Members ceased employment.

23 **VII. THE AMOUNT IN CONTROVERSY FOR REMOVAL DAMAGES**

24 **A. First and Second Causes of Action: Alleged Unpaid Wages**

25 40. Plaintiff alleges that he and the putative class members “generally
26 worked five (5) to six (6) days a week and for shifts of at least ten (10) to twelve (12)
27 hours, and in many instances well over twelve (12) hours or for as many as eighteen
28 (18) hours.” (Compl. at ¶ 15, Exhibit “A”). Plaintiff further alleges that Plaintiff and

1 the putative class members were not compensated for their time worked in excess of
2 eight (8) hours in a day, and/or in excess of forty (40) hours in a week. (*Id.* at ¶ 64).
3 In addition, Plaintiff alleges that Defendants “failed to pay Employees minimum
4 wages for all hours worked.” (*Id.* at ¶ 50).

5 41. Plaintiff makes no specific allegations regarding the frequency or
6 duration of the claimed time worked off-the-clock for himself or any putative class
7 member. However, Plaintiff asserts that Plaintiff and putative class members
8 “[t]imekeeping entries were also frequently and consistently inputted in large time
9 increments, such as to the nearest hour or half hour, and were impermissible rounded
10 to the detriment of Employee Class Members.”) (Compl., ¶ 17, Exhibit “A”. Plaintiff
11 further asserts that while Plaintiff and class members were off-the-clock, they would
12 receive emails and phone calls relating to compensable work. (Compl., ¶ 18, Exhibit
13 “A”). Further, Plaintiff asserts that due to the daily demands of work, Plaintiff and
14 class members were required to work through their breaks without pay. (Compl. ¶ 19,
15 Exhibit “A”).

16 42. Plaintiff seeks to recover damages during the four year statute of
17 limitations for restitution of unpaid wages as an unfair business practice. *See* Bus. &
18 Prof. Code § 17200, *et seq.*; Compl. at ¶¶ 107-115, Exhibit “A”.

19 43. Defendants deny that any putative class member, including Plaintiff,
20 worked off-the-clock. Plaintiff does not allege on behalf of himself, or any other
21 Putative Class Member, any minimum or maximum amount of time worked off-the-
22 clock. However, as set forth above and in Plaintiff’s Complaint, Plaintiff’s allegations
23 make clear that Plaintiff is alleging frequent and consistent off-the-clock work taking
24 various forms, including alleged impermissible rounding, emails and calls related to
25 work off the clock, and working through breaks.

26 44. Thus, even if each Putative Class Member worked only sixty (60)
27 minutes off-the-clock during each workweek, the total amount in controversy would
28 be at least \$635,823 for the Removal Damages Period. For purposes of this analysis,

1 Defendants calculated the unpaid wages based on total Removal Damages Period
2 workweeks [29,409] x 1 hour off-the-clock work x average straight hourly rate for the
3 Removal Damages Period [\$21.62]. Based on the Plaintiff's own allegations, this
4 amount is not only plausible, it is very conservative.

5 **B. First Cause of Action: Failure To Pay Minimum Wages**

6 45. In his first cause of action, Plaintiff alleges that Defendants failed to pay
7 minimum wage in violation of California law. (Compl. at ¶50, Exhibit "A"). In
8 addition to the unpaid balance of unpaid wages and liquidated damages, Plaintiff
9 seeks to recover statutory penalties under California Labor Code section 1197.1. (*Id.*
10 at ¶¶ 58-59).

11 46. California Labor Code section 1197.1 provides employees with penalties
12 of one hundred dollars (\$100) for the initial failure to pay minimum wages and two
13 hundred and fifty dollars (\$250) for each subsequent failure to pay minimum wages.

14 47. The applicable statute of limitations for civil penalties under California
15 Labor Code section 1197.1 is one year. *See* California Code Civ. Proc. § 340(a);
16 *Hernandez v. Towne Park, Ltd.*, 2012 U.S. Dist. LEXIS 86975, *29-31 (C.D. Cal.
17 June 22, 2012).

18 48. Of the total Putative Class Members, approximately 183 employees had
19 approximately 6,530 workweeks in the year prior to the filing of the Complaint.
20 Defendants deny that any employee, including Plaintiff, has any claim for penalties
21 for failure to pay minimum wage. However, if all of these employees were entitled to
22 recover penalties for failure to pay minimum wages, the amount of penalties would be
23 at least \$1,619,550. For purposes of this analysis, Defendants calculated the
24 minimum wage penalty using the average number of pay periods for the applicable
25 time period [36], calculating the number of applicable employees [183] x the statutory
26 penalty rate (initial pay period [1] \$100 + \$250 for subsequent pay periods [35]). This
27 amount is for statutory penalties only and does not include the additional amounts of
28 alleged unpaid wages and liquidated damages placed in controversy by Plaintiff's

1 Complaint. Based on the Plaintiff's own allegations, this amount is not only
2 plausible, it is very conservative.

3 **C. Third Cause of Action: Premiums For Alleged Missed Meal Periods**

4 49. In his third cause of action, Plaintiff alleges that Defendants failed to
5 provide duty-free meal periods and/or to pay one additional hour of pay when a duty-
6 free meal period was not provided in violation of California law. (Compl. at ¶¶ 71-77,
7 Exhibit "A"). Plaintiff alleges that "Defendants had a consistent and uniformly
8 applied policy and practice of not providing Plaintiff and the Class members with
9 either first or second meal periods on their shifts" and that this practice caused him "to
10 not be provided with a lawful meal period on each of his work shifts." (*Id.* at ¶ 23).

11 50. Labor Code section 226.7(b) requires that an employer pay a premium
12 equal to one-hour of an employee wages for each meal break that an employer fails to
13 provide. Cal. Lab. Code § 226.7. Plaintiff seeks to recover that one-hour meal
14 premium pursuant to an unfair business practices theory during the four year statute of
15 limitations for restitution. *See* Bus. & Prof. Code § 17200, *et seq.*; Compl. at ¶¶ 107-
16 115, Exhibit "A".

17 51. Defendants deny that any employee, including Plaintiff, has any claim for
18 alleged missed meal periods. However, Plaintiff's allegations make clear that Plaintiff
19 is alleging a consistent and uniform failure to provide such breaks. Conservatively
20 assuming that Defendants failed to provide two meal periods per employee during
21 each workweek, the potential amount in controversy for the one-hour premium on
22 Plaintiff's third cause of action is at least \$1,264,251 for the Removal Damages
23 Period. For purposes of this analysis, Defendants calculated the premiums for alleged
24 missed meal periods based on the average number of workweeks for the applicable
25 time period [66] x number of applicable employees [443] x number of missed meal
26 breaks [2] x average straight time hourly rate for Removal Damages Period [\$21.62].
27 Based on the Plaintiff's own allegations, this amount is not only plausible, it is very
28 conservative.

1 **D. Fourth Cause of Action: Premiums For Alleged Missed Rest Breaks**

2 52. In his fourth cause of action, Plaintiff alleges that Defendants failed to
3 provide rest periods and/or to pay one additional hour of pay when a rest period was
4 not provided in violation of California law. (Compl. at ¶¶ 78-85, Exhibit “A”).
5 Plaintiff alleges that “Defendant [sic] did not schedule or permit time for Plaintiff and
6 the Class to climb down from the towers and take an uninterrupted, timely, and duty-
7 free thirty minute rest period.” (*Id.* at ¶ 23). Plaintiff makes no further allegations
8 regarding the frequency or duration of the claimed missed rest breaks for himself or
9 any putative class member.

10 53. Labor Code section 226.7(b) requires that an employer pay a premium
11 equal to one-hour of an employee wages for each rest break that an employer fails to
12 permit or authorize. Cal. Lab. Code § 226.7. Plaintiff seeks to recover damages
13 during the four year statute of limitations for restitution of unpaid rest break premiums
14 as an unfair business practice. *See* Bus. & Prof. Code § 17200, *et seq.*; Compl., ¶¶
15 107-115, Exhibit “A”.

16 54. Defendants deny that any employee, including Plaintiff, has any claim for
17 alleged failure to permit or authorize rest breaks. However, conservatively assuming
18 each Putative Class Member was not permitted or authorized to take two of their rest
19 breaks during each workweek, the potential amount in controversy on Plaintiff’s
20 fourth cause of action is at least \$1,264,251 for the Removal Damages Period. For
21 purposes of this analysis, Defendants calculated the premiums for alleged missed rest
22 breaks based on the average number of workweeks for the applicable time period [66]
23 x number of applicable employees [443] x number of missed rest breaks [2]) x
24 average straight time hourly rate for Removal Damages Period [\$21.62]. Based on the
25 Plaintiff’s own allegations, this amount is not only plausible, it is very conservative.

26
27
28

1 **E. Sixth Cause of Action: Wage Statement Penalties**

2 55. Plaintiff alleges that Defendants “intentionally failed to furnish Plaintiff
3 and the Class members” with complete and accurate wage statements. (Compl. at ¶
4 93, Exhibit “A”). Plaintiff makes no specific allegations regarding the frequency or
5 duration of the claimed wage statement violations for himself or any putative class
6 member. However, given Plaintiff’s allegations regarding the purported frequency,
7 consistency and uniformity of his other claims, coupled with the fact that Plaintiff’s
8 claim for inaccurate wage statements is derivative of those claims, Plaintiff’s
9 allegations make clear that he has placed every wage statement at issue during the
10 relevant period.

11 56. California Labor Code section 226(e) provides employees with penalties
12 of fifty dollars (\$50) for the initial pay period in which a wage statement violation
13 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period,
14 not to exceed an aggregate penalty of four thousand dollars (\$4,000) for each
15 employee.

16 57. The statutory period for Labor Code section 226(e) penalties is one year.
17 *See* California Code Civ. Proc. § 340(a).

18 58. For the total Putative Class Members, approximately 183 employees had
19 approximately 6,530 workweeks in the year prior to the filing of the Complaint. For
20 purposes of this analysis, Defendants calculated the wage statement penalty based on
21 the average number of pay periods for the applicable time period [36], calculating the
22 number of applicable employees [183] x the statutory penalty rate (initial pay period
23 [1] \$50 + \$100 for subsequent pay periods [35]), with a statutory penalty cap of
24 \$4,000.

25 59. If each applicable Putative Class Member was entitled to recover the
26 wage statement claim penalties, the amount in controversy for this claim would be at
27 least \$649,650, and at most \$732,000 based on the statutory cap. Based on the
28 Plaintiff’s own allegations, the range of \$649,650 to \$732,000 accurately estimates the

1 amount in controversy related to Plaintiff's cause of action for inaccurate wage
2 statements.

3
4 **F. Eighth Cause of Action: Waiting Time Penalties**

5 60. In his eighth cause of action, Plaintiff seeks to recover under California
6 Labor Code section 203, which provides for waiting time penalties for employees who
7 were not paid all wages upon their separation and whose employment with Defendants
8 was separated within four years preceding the filing of Plaintiff's Complaint. (Compl.
9 at ¶¶ 101-106, Exhibit "A"). Plaintiff makes no allegations regarding the frequency or
10 duration of the claimed waiting time violations for himself or any Putative Class
11 Member, nor does he allege any facts in support of a stand-alone claim for violation of
12 California Labor Code section 203.

13 61. The applicable statute of limitations for penalties under California Labor
14 Code section 203 is three years and the four year limitations period under the
15 California Unfair Competition Law does not apply. *Pineda v. Bank of America, N.A.*,
16 50 Cal. 4th 1389, 117 Cal. Rptr. 3d 377, 241 P.3d 870 (2010); *see also* Bus. & Prof.
17 Code § 17203. The maximum penalty authorized under California Labor Code
18 section 203 is thirty (30) days of wages per employee.

19 62. Defendants deny the validity and merit of Plaintiff's waiting time penalty
20 claims. However, for purposes of removal only, and because the claim as alleged is
21 purely derivative of the other claims, Defendants assess the potential amount in
22 controversy by applying the maximum penalty authorized by statute.

23 63. Of the total Putative Class Members, 234 ceased employment with
24 Defendants during the three year period prior to the filing of the Complaint. Although
25 Plaintiff asserts that he and the Putative Class Members worked off-the-clock and
26 therefore incurred unpaid overtime wages (Compl. at ¶¶ 15, 64, Exhibit "A"),
27 Defendants conservatively estimate eight hours of work per day for this calculation.
28 For purposes of this analysis, Defendants calculated the waiting time penalty at the

1 average straight time hourly rate for the three year period prior to the filing of the
2 Complaint, \$21.81 per hour.

3 64. If all of the Putative Class Members who ceased working for Defendants
4 during the three year period prior to the filing of the Complaint were entitled to
5 recover statutory waiting time penalties, the amount in controversy for this claim
6 would be at least \$1,224,850. For purposes of this analysis, Defendants calculated the
7 waiting time penalty based on number of applicable employees [234] x 30 days x 8
8 hours x average straight time hourly rate for the applicable period [\$21.81]. Based on
9 the Plaintiff's own allegations, this amount is not only plausible, it is a conservative
10 estimate of the amount in controversy related to Plaintiff's claim for waiting time
11 penalties.

12 VIII. SUMMARY OF AMOUNT IN CONTROVERSY

13 65. The conservative amount in controversy breaks down as follows:

15 Plaintiff's Alleged Claim	Amount in Controversy
16 Unpaid Wages	\$635,823
17 Minimum Wage Penalties	\$1,619,550
18 Meal Break Premium	\$1,264,251
19 Rest Period Premium	\$1,264,251
20 Wage Statements Penalties	\$649,650
21 Waiting Time Penalties	\$1,224,850
22 Conservative Sum Amount in	\$6,658,375
23 Controversy²	

24 66. Even without assessing the amount in controversy with respect to
25 Plaintiff's remaining claims for alleged violations of California Labor Code sections
26

27 _____
28 ² This excludes penalties under Labor Code sections 210, 225.5, 1174.5 and alleged
unreimbursed expenses pursuant to Labor Code section 2802.

1 204,³ 221,⁴ 1174(d), 2802, California Business & Professions Code section 17200,
2 and various other penalties, interest and attorneys' fees, and considering only a very
3 conservative estimate of alleged violations, the amount in controversy clearly exceeds
4 \$5 million.

5 67. As noted above, the amount in controversy set forth above has been
6 calculated based on Defendants' payroll and timekeeping records only through March
7 12, 2018. Plaintiff, however, defines the putative class as continuing "a date as
8 determined by the Court." (Compl. at ¶ 35, Exhibit "A".) As such, the size of the
9 class will continue to expand, as will the amount in controversy. This means that the
10 amount in controversy on Plaintiff's claims is even greater than the amount set out in
11 this Notice of Removal.

12 68. Moreover, Plaintiff seeks attorneys' fees and costs in his Complaint
13 pursuant to Labor Code sections 1021.5 and 1194. It is well settled that, in
14 determining whether a complaint meets the amount in controversy requirement, the
15 Court should consider the aggregate value of claims for damages *as well as* attorneys'
16 fees. *See, e.g., Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-1156 (9th Cir.
17 1998) (attorneys' fees may be taken into account to determine jurisdictional amounts).
18 In California, where wage and hour class actions have settled prior to trial for millions
19 of dollars, it is not uncommon for an attorneys' fees award to be twenty-five (25%) to
20 thirty-three (33%) percent of the settlement of the award. *See, e.g., Chavez v. Netflix,*
21 *Inc.*, 162 Cal. App. 4th 43, 66 n.11 (2008), *quoting Shaw v. Toshiba Am. Info. Sys.,*
22 *Inc.*, 91 F. Supp. 2d 942, 972 (E.D. Tex. 2000) ("Empirical studies show that,
23 regardless whether the percentage method or the lodestar method is used, fee awards

24 _____
25 ³ Pursuant to Labor Code section 225.5, a violation of Labor Code section 221 gives
26 rise to a penalty of \$100 for any initial violation. Moreover, for any subsequent
27 violation, or any willful or intentional violation of Section 221, a penalty of \$200, plus
28 25 percent of the amount unlawfully withheld, may be imposed. Accordingly,
Plaintiff's Seventh Cause of Action for Violation of Labor Code Section 221,
substantially increases the amount in controversy.

1 in class actions average around one-third of the recovery.”) Based on the Defendants’
2 conservative amount in controversy calculation attorneys’ fees could exceed
3 \$1,250,000 [25% of \$5,000,000].

4 69. Accordingly, although Defendants deny Plaintiff’s claims of wrongdoing,
5 based on the foregoing, under the Class Action Fairness Act, Plaintiff’s claims for
6 damages, penalties, attorneys’ fees, and other monetary relief easily exceed the \$5
7 million jurisdictional limit of this Court, as required by 28 U.S.C ¶ 1332(d).

8 **IX. CONCLUSION**

9 70. WHEREFORE, Defendants remove the action now pending in the
10 Superior Court of the State of California, County of Riverside, to this Honorable
11 Court, and requests that this Court retain jurisdiction for all further proceedings.

12 Dated: April 12, 2018

13 Respectfully submitted,
14 LITTLER MENDELSON, P.C.

15
16 /s/ Steven A. Groode
17 STEVEN A. GROODE
18 SEVAG M. SHIRVANIAN
19 Attorneys for Defendants
20 MASTEC NETWORK SOLUTIONS,
21 LLC, MASTEC SERVICES
22 COMPANY, INC., MASTEC
23 NETWORK SOLUTIONS, INC., AND
24 WESTOWER COMMUNICATIONS
25 INC. (NOW KNOWN AS WESTOWER
26 COMMUNICATIONS, LLC)
27
28

EXHIBIT A

COPY

BY FAX

SUM-100

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

MASTEC NETWORK SOLUTIONS, LLC, a Florida limited liability company; "Additional Parties Attachment," is attached.

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

JORGE A. ZEPEDA, an individual, on behalf of himself and others similarly situated

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

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

FEB 16 2018

L SIRACUSA

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

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

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

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

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

The name and address of the court is:
(El nombre y dirección de la corte es): Riverside Superior Court
4050 Main Street, Riverside, CA 92501

CASE NUMBER
(Número de caso) **RIC 1803871**

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):
David Yerman, 535 N. Brand Blvd. Suite 705, Glendale, CA 91203 (818) 230-8380

DATE: **FEB 16 2018**
(Fecha)

Clerk, by L Siracusa, Deputy
(Secretario) (Adjunto)

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

NOTICE TO THE PERSON SERVED: You are served

1. I am an individual defendant.
2. I am the person sued under the fictitious name of (specify):

3. on behalf of (specify): Mastec Network Solutions, Inc., a Florida corporation
- under: CCP 416.10 (corporation) CCP 416.60 (minor) ;
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):

4. by personal delivery on (date):

SUM-200(A)

SHORT TITLE: Zepeda v. Mastec Network Solutions, LLC	CASE NUMBER:
---	--------------

INSTRUCTIONS FOR USE

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

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

Plaintiff
 Defendant
 Cross-Complainant
 Cross-Defendant

MASTEC SERVICES COMPANY, INC., a Florida corporation; MASTEC NETWORK SOLUTIONS, INC., a Florida corporation; WESTOWER COMMUNICATIONS INC., a Delaware corporation; and DOES 1 through 50, inclusive

ORIGINAL FEB 16 2018

1 DAVID YEREMIAN & ASSOCIATES, INC.
David Yeremian (SBN 226337)
2 david@yeremianlaw.com
Alvin B. Lindsay (SBN 220236)
3 alvin@yeremianlaw.com
535 N. Brand Blvd., Suite 705
4 Glendale, California 91203
Telephone: (818) 230-8380
5 Facsimile: (818) 230-0308

6 UNITED EMPLOYEES LAW GROUP, PC
Walter Haines (SBN 71075)
7 walterhaines@yahoo.com
5500 Bolsa Ave., Suite 201
8 Huntington Beach, CA 92649
Telephone: (310) 652-2242
9

10 Attorneys for Plaintiff JORGE A. ZEPEDA,
on behalf of himself and others similarly situated

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

FEB 16 2018

L. SIRACUSA

ASW
FEB 26 2018
R

11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF RIVERSIDE**

14 JORGE A. ZEPEDA, an individual, on
behalf of himself and others similarly
15 situated,

16 Plaintiff,

17 vs.

18 MASTEC NETWORK SOLUTIONS, LLC,
a Florida limited liability company;
19 MASTEC SERVICES COMPANY, INC., a
Florida corporation; MASTEC NETWORK
20 SOLUTIONS, INC., a Florida corporation;
WESTOWER COMMUNICATIONS INC., a
21 Delaware corporation; and DOES 1 through
22 50, inclusive,

23 Defendants.

Case No.: **RIC 1803871**

CLASS ACTION

Assigned for All Purposes To:

Hon.

Dept.:

BY FAX

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Failure to Reimburse Necessary Business Expenditures Under Labor Code § 2802
6. Violation of Labor Code §§ 226(a)
7. Violation of Labor Code § 221;
8. Violation of Labor Code § 203;
9. Violation of Business & Professions Code § 17200 *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff JORGE A. ZEPEDA, (hereinafter "Plaintiff") on behalf of himself and all others
2 similarly situated (collectively, "Employees"; individually, "Employee") complains of
3 Defendants, and each of them, as follows:

4 **INTRODUCTION**

5 1. Plaintiff brings this action on behalf of himself and all current and former
6 Employees within the State of California who, at any time four (4) years prior to the filing of this
7 lawsuit, are or were employed as non-exempt, hourly employees by Defendants MASTEC
8 NETWORK SOLUTIONS, LLC, a Florida limited liability company; MASTEC SERVICES
9 COMPANY, INC., a Florida corporation; MASTEC NETWORK SOLUTIONS, INC., a Florida
10 corporation; WESTOWER COMMUNICATIONS INC., a Delaware corporation, and DOES 1
11 through 50 (all defendants being collectively referred to herein as "Defendants"). Plaintiff alleges
12 that Defendants, and each of them, violated various provisions of the California Labor Code,
13 relevant orders of the Industrial Welfare Commission (IWC), and California Business &
14 Professions Code, and seeks redress for these violations.

15 2. The Defendants operating as MasTec Network Solutions are well-known
16 throughout California as a telecommunications services company offering services to wireless
17 network operators including communication tower related construction, installation, servicing and
18 maintenance, along with related engineering support services. Plaintiff has been a resident of
19 California and Riverside County during the relevant time period and worked for Defendants based
20 out of their facility in Corona, California. Plaintiff and the Class were employed by Defendants
21 and based out of their California facilities as non-exempt, hourly Foreman and Technicians and in
22 similar and related positions performing job duties attendant to the construction, installation,
23 servicing and maintenance of communications towers and support structures. The work was and is
24 demanding, requiring both irregular and long hours spent climbing and working on
25 communications towers and driving to and from work sites and Defendant's facility locations.
26 Foreman were responsible for daily site construction work efforts assigned by Defendant's
27 management and the overall work performed by the tower teams at the various construction sites,
28 and were employed by Defendants with one to three Technicians per team to maintain and install

1 the newest technologies for cell phone carriers on the cell phone towers. Upon information and
2 belief, Plaintiff was employed by Defendants and (1) shared similar job duties and responsibilities
3 (2) was subjected to the same policies and practices (3) endured similar violations at the hands of
4 Defendants as the other Employee Class members who served in similar and related positions.

5 3. Defendants conduct business throughout California, including at their facilities in
6 Riverside County, and employed the Employees in the Class at locations within California.
7 Defendants required Plaintiff and the Employees in the Class to work off the clock and failed to
8 record accurate time worked by these Employees, including by rounding hours worked to their
9 detriment and requiring off the clock work, failed to pay them at the appropriate rates for all hours
10 worked, failed to reimburse business expenses, and provided Plaintiff and the Class members with
11 inaccurate wage statements and failed to maintain accurate timekeeping records that prevented
12 Plaintiff and the Class from learning of these unlawful pay practices. Defendants also failed to
13 provide Plaintiff and the Class with lawful meal and rest periods, as employees were not provided
14 with the opportunity to take uninterrupted and duty-free rest periods and meal breaks as required
15 by the Labor Code.

16 4. Defendant MASTEC NETWORK SOLUTIONS, LLC is a Florida limited liability
17 company which lists its principal offices in Coral Gables, Florida and does not presently list a
18 California office with the California Secretary of State, although in 2014 it was listed in
19 Sacramento, California. MASTEC NETWORK SOLUTIONS, LLC describes its type of business
20 as "Telecommunications Infrastructure," and is a wholly-owned subsidiary of MasTec, Inc. Some
21 documents in Plaintiff's personnel file list MasTec Network Solutions on them, or emanate from
22 MasTec, Inc., the publicly traded Florida parent corporation.

23 5. Defendant MASTEC SERVICES COMPANY, INC. is a Florida corporation which
24 lists its principal executive office in Coral Gables, Florida, and does not list a principal business
25 office in California with the Secretary of State. It describes its type of business as "HR
26 Management for Construction." MASTEC SERVICES COMPANY, INC. was the entity listed on
27 Plaintiff's wage statements as his employer during the relevant time period following MasTec,
28 Inc.'s acquisition of Defendant WESTOWER COMMUNICATIONS INC.

1 6. Defendant MASTEC NETWORK SOLUTIONS, INC. is a Florida corporation
2 which lists its principal executive office in Coral Gables, Florida, and lists with the California
3 Secretary of State as of September 20, 2017, its principal business office in California in Corona,
4 California. As of September 13, 2016, the principal business office in California was listed in
5 Brea, California. MASTEC NETWORK SOLUTIONS, INC. describes its type of business as
6 "Construction." Defendants MASTEC NETWORK SOLUTIONS, LLC, MASTEC SERVICES
7 COMPANY, INC., and MASTEC NETWORK SOLUTIONS, INC. are collectively referred to as
8 "the MasTec Defendants" or "Defendants."

9 7. WESTOWER COMMUNICATIONS INC. was a Delaware corporation initially
10 registered in 1999 in California which also listed its principal executive offices in Coral Gables,
11 Florida, and for a period of time listed a principal business office in California in Chino Hills,
12 California. Plaintiff initially began his employment with WESTOWER COMMUNICATIONS,
13 INC. in 2011, and upon information and belief, MasTec, Inc. acquired WESTOWER
14 COMMUNICATIONS INC. in October of 2014 and took control of all its operations as its
15 successor in interest under one of the named MasTec Defendants. WESTOWER
16 COMMUNICATIONS INC.'S right to transact business in California was surrendered in January
17 of 2016.

18 8. This Court has jurisdiction over this Action pursuant to California Code of Civil
19 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
20 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
21 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
22 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
23 obligations and liabilities giving rise to this lawsuit occurred in part in the County of Riverside
24 and Defendants maintain and operates facilities in Corona, California, thus employing Plaintiff
25 and other Class members in Riverside County, as well as throughout California.

26 9. The true names and capacities, whether individual, corporate, associate, or
27 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently
28 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of

1 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants
2 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in
3 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend
4 this Complaint to reflect the true names and capacities of the Defendants designated herein as
5 Does 1 through 50 when their identities become known.

6 10. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
7 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
8 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
9 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
10 all respects as the employers or joint employers of Employees. Defendants, and each of them,
11 exercised control over the wages, hours or working conditions of Employees, or suffered or
12 permitted Employees to work, or engaged, thereby creating a common law employment
13 relationship, with Employees, and were listed on Plaintiff's wage statements or in the company
14 documents in his personnel file. Therefore, Defendants, and each of them, employed or jointly
15 employed Employees.

16 **FACTUAL BACKGROUND**

17 11. The Employees who comprise the Class, including Plaintiff, are non-exempt
18 employees pursuant to the applicable Wage Order of the IWC. Defendants hire Employees who
19 work in non-exempt positions at the direction of Defendants in the State of California. Plaintiff
20 and the Class members were either not paid by Defendants for all hours worked or were not paid
21 at the appropriate minimum, regular and overtime rates. Plaintiff also contends that Defendants
22 failed to pay Plaintiff and the Class members all wages due and owing, including by unlawful
23 rounding to their detriment or under-recording of hours worked, made unlawful deductions from
24 their pay, failed to provide meal and rest breaks, failed to reimburse necessary business expenses,
25 and failed to furnish accurate wage statements, all in violation of various provisions of the
26 California Labor Code and applicable Wage Orders.

27 12. During the course of Plaintiff and the Class members' employment with
28 Defendants, they were not paid all wages they were owed, including for all work performed

1 (resulting in “off the clock” work) and for all overtime hours worked and were forced to work
2 off-the-clock to keep labor budgets low in an effort to satisfy the difficult production
3 requirements and demands Defendants’ managers required of them.

4 13. Plaintiff, when working in his capacity as a Foreman, was assigned a company
5 truck which he would drive to and from work sites and company facilities with the tower team’s
6 necessary equipment and supplies for the job. Plaintiff and the other Technicians in the Class,
7 including those referred to as Technician 1, Technician 2, and Technician 3 based on their
8 experience, would drive their personal vehicles to and from work sites, and they were reimbursed
9 for neither this mileage nor their time driving. The job duties for Plaintiff and the other Class
10 members required them to perform many tasks above and beyond their actual time working at
11 tower work sites, including preparing equipment and supplies for the bill of materials and scope
12 of work for the job, inspecting and maintaining the vehicle, completing paper work and other
13 administrative requirements, completing timekeeping records, including phantom meal period
14 times, and time spent reviewing and responding to e-mails and messages sent from Defendants’
15 managers.

16 14. Additionally, a substantial portion of the time Plaintiff and the Class members
17 spent working and under Defendants’ control during all of their work shifts was dedicated to
18 driving between their homes or hotels and the work sites and Defendants’ facilities, and this
19 would include in many instances driving through check points and weighing facilities set up by
20 the CHP to monitor truck driving times and distances, including under 13 California Code of
21 Regulations § 1200 *et seq.* Defendants did not compensate Plaintiff and the Class members for
22 driving time as a matter of uniform policy, but Foremen and Technicians who were company
23 vehicle drivers were under Defendants’ control during driving times. For other Technicians or on
24 occasions when Employees were required to drive personal vehicles to company facilities and
25 work sites, they were not reimbursed for drive time and also were not reimbursed for their miles
26 driven.

27 15. Plaintiff and the Employees in the Class generally worked five (5) to six (6) days a
28 week and for work shifts of at least ten (10) to twelve (12) hours, and in many instances well over

1 twelve (12) hours or for as many as eighteen (18) hours. Defendants did not maintain real time
2 punch records accurately reflecting the actual hours worked by Plaintiff and the Class members.
3 Instead, tower team Foremen or Technicians would input time into the computer in the company
4 vehicle and its system referred to as SPACCS by completing daily work reports. These reports
5 were completed and inputted at the end of a daily shift, or else after work hours, and Plaintiff and
6 the Class members were required by Defendants to input times that did not reflect all hours
7 actually worked and were instead intended to conform to the number of hours a job was expected
8 to take or took in reality.

9 16. Plaintiff and the Class members were, as a matter of Defendants' policy and
10 practice, only paid generally for the time they were working at a given job site, and managers
11 made it clear that they were not to report time spent in preparation for the day's work, for post-
12 shift clean up and completion of administrative requirements, and were not paid for their time
13 driving to and from their various worksites as a matter of company policy and despite being
14 under the company's control. Plaintiff also was not paid for inspections of the vehicle or
15 preparation time or for compiling bills of material supplies and compiling the necessary
16 equipment, or putting it away and end of day inspections, or for time inputting the time worked
17 each shift and completing paperwork away from the work site. Upon information and belief, so
18 too were the other Employee Class members.

19 17. Timekeeping entries were also frequently and consistently inputted in large time
20 increments, such as to the nearest hour or half hour, and were impermissibly rounded to the
21 detriment of the Employee Class members. More specifically, rather than paying Plaintiff and the
22 Class members for all hours and minutes they actually worked, Defendants followed a uniform
23 policy and practice of rounding all time entries to the nearest hour or half hour, or required
24 Employees to round them when reporting, and generally did so to the detriment of the
25 Employees. Plaintiff contends this policy is not neutral and results, over time, to the detriment of
26 the Class members by systematically undercompensating them. These unlawfully rounded time
27 entries were inputted into Defendants' payroll system from which wage statements and payroll
28 checks were created. By implementing policies, programs, practices, procedures and protocols

1 which rounded the hours worked by Class members down to their detriment, Defendants' willful
2 actions resulted in the systematic underpayment of wages to Class members, including
3 underpayment of overtime pay to Class members over the relevant time period. Defendant has
4 also either failed to maintain timekeeping records for Plaintiff that would permit him to discover
5 the nature and extent of Defendants' unlawful rounding or have refused to produce them to
6 Plaintiff in response to his timely request to be provided with them.

7 18. Plaintiff and the Class members also received e-mails and messages from
8 Defendants' managers on company provided cell phones or personal cell phones that they had to
9 review and respond to, with many of these occurring during time when they were not working at
10 a tower site and were not being paid. These calls and messages and e-mails would pertain to work
11 requirements or duties or questions about work requirements, and Defendants thus required
12 Plaintiff and the Class members to be under their control and work while Employees were off the
13 clock.

14 19. As a result of the above described unlawful rounding and requirements to work off
15 the clock, the failure to calculate and pay wages at the correct rates, the daily work demands and
16 pressures to work through breaks, and the other wage violations they endured at Defendants'
17 hands, Plaintiff and the Class members were not properly paid for all wages earned and for all
18 wages owed to them by Defendants, including when working more than eight (8) hours in any
19 given day and/or more than forty (40) hours in any given week. As a result of Defendants'
20 unlawful policies and practices, Plaintiff and Class members incurred overtime hours worked for
21 which they were not adequately and completely compensated, in addition to the hours they were
22 required to work off the clock. To the extent applicable, Defendants also failed to pay Plaintiff
23 and the Class members at an overtime rate of 1.5 times the regular rate for the first eight hours of
24 the seventh consecutive work day in a week and overtime payments at the rate of 2 times the
25 regular rate for hours worked over eight (8) on the seventh consecutive work day, as required
26 under the Labor Code and applicable IWC Wage Orders.

27 20. More specifically, Defendants failed to pay all overtime and double time wages
28 owed to Plaintiff and the Class members, including by under reporting or rounding down their

1 regular hours worked or by the other off the clock work addressed above. However, Defendants
2 also failed to compensate Plaintiff and the Class member for all overtime premium wages by
3 scheduling them to work on shifts that began before midnight and continued after midnight, when
4 a new work day would commence. Rather than paying overtime at time and a half for hours
5 worked over eight or double time for hours over twelve in a given twenty-four hour work day,
6 Defendants systematically under-paid Plaintiff and the Employee Class members by starting a new
7 work day at midnight and paying regular rate wages through the end of the shift, but then starting
8 a new calculation with the next shift commencing in the same twenty-four hour period. In other
9 words, rather than rolling time over between shifts commencing and beginning in the same work
10 day and paying overtime and double time accordingly, Defendants would start a new work day
11 calculation both at midnight and at the start of the next shift commencing later that day. This
12 occurred with frequency, as Plaintiff and the Class members were often asked to work shifts
13 commencing on one day and spanning across midnight into the next day so that they could be
14 working on towers with the least amount of service interruptions during hours when many
15 customers were sleeping. Defendants also were not paid hours worked over forty in a given work
16 week at the required overtime rate, including for the same reasons addressed above.

17 21. Therefore, from at least four (4) years prior to the filing of this lawsuit and
18 continuing to the present, Defendants thus had a consistent policy or practice of failing to pay
19 Employees for all hours worked, and failing to pay minimum wage for all time worked as required
20 by California Law. Also, from at least four (4) years prior to the filing of this lawsuit and
21 continuing to the present, Defendants also had a consistent policy or practice of failing to pay
22 Employees overtime compensation at premium overtime rates for all hours worked in excess of
23 eight (8) hours a day and/or forty (40) hours a week, and double-time rates for all hours worked in
24 excess of twelve (12) hours a day, in violation of Labor Code § 510 and the corresponding
25 sections of IWC Wage Orders.

26 22. Additionally, Defendants failed to provide all the legally required unpaid, off-duty
27 meal periods and all the legally required paid, off-duty rest periods to the Plaintiff and the other
28 Class members, as required by the applicable Wage Order and Labor Code. Defendants did not

1 have a policy or practice which provided or recorded all the legally required unpaid, off-duty meal
2 periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Class
3 members. Plaintiff and other Class members were required to perform work as ordered by
4 Defendants for more than five (5) hours during a shift, but were often required to do so without
5 receiving a meal break.

6 23. Plaintiff and the Class members were required to record fictitious meal periods and
7 timekeeping entries for a thirty (30) minute meal break when in fact these employees were not at
8 all times provided an off duty meal break. Defendants had a consistent and uniformly applied
9 policy and practice of not providing Plaintiff and the Class members with either first or second
10 meal periods on their shifts, which generally exceeded twelve hours. Plaintiff and the Class
11 members would arrive at their work sites and prepare the equipment and riggings and would climb
12 the tower, and from there would work straight through on their shifts until the day's work was
13 complete. They would generally not eat anything on the tower, for safety reasons, but were
14 required to bring what they could to eat when time and the work permitted it. Defendant did not
15 schedule or permit time for Plaintiff and the Class to climb down from the towers and take an
16 uninterrupted, timely, and duty-free thirty minute rest period for every five (5) hours worked, and
17 the time to climb down and back up when done would occupy the majority of any thirty minute
18 meal period they could attempt to take. However, Defendants management made it clear to
19 Plaintiff and the Class members that the timekeeping entries inputted into the SPACCS system
20 had to reflect a thirty (30) minute meal period was taken and commenced before the fifth hour of
21 the work shift. These phantom meal period entries were intended to reflect a facial compliance
22 while maintaining an unwritten policy and actual practice of systematically failing to provide meal
23 periods. On shifts where Plaintiff and the Class members worked shifts of over ten (10) hours,
24 which they consistently did, they were not provided with a second uninterrupted, timely and duty-
25 free thirty minute meal period. Plaintiff was compelled to do this and Defendants' managers and
26 management were aware of Plaintiff working off the clock during meal periods. This practice and
27 unwritten policy caused Plaintiff to not be provided with a lawful meal period on each of his work
28 shifts.

1 24. Also, when he was provided with an opportunity to take a meal break or even a rest
2 break, it was often interrupted with text messages or phone calls regarding work matters requiring
3 Plaintiff's attention. Additionally, as addressed above, Defendants followed a practice of under-
4 reporting or rounding down hours worked in a manner that would impact when Employees were to
5 receive meal periods, and meal periods were therefore either provided late or were interrupted by
6 work demands. On occasions when Employees in the Class worked over 10 hours in a shift,
7 Defendants also failed to provide them with a second meal period. As a result, Defendants' failure
8 to provide the Plaintiff and the Class members with all the legally required off-duty, unpaid meal
9 periods and all the legally required off-duty, paid rest periods is and will be evidenced by
10 Defendants' business records, or lack thereof. Defendants have either failed to maintain required
11 records of when meal periods were provided or failed to produce them in response to Plaintiff's
12 timely and lawful request. Defendants also failed to pay Employees "premium pay," i.e. one hour
13 of wages at each Employee's effective hourly rate of pay, for each meal period or rest break that
14 Defendants failed to provide or deficiently provided. While Defendant may contend that it paid
15 Plaintiff and the Class Members for on-duty meal periods for thirty (30) minutes in a shift, the fact
16 that the opportunity to take meal periods timely or for their full duration was not provided to
17 Plaintiff and the Class members requires Defendant to pay premium wages of one full hour of
18 regular wages for each unprovided or untimely or impermissibly shortened meal period.

19 25. Therefore, for at least four years prior to the filing of this action and through to the
20 present, Plaintiff and the Class members were forced to place attaining production requirements
21 and responding to manager demands above taking their authorized breaks, and they could not be
22 relieved to take breaks, or were required to remain on-duty at all times and were unable to take
23 off-duty breaks or were otherwise not provided with the opportunity to take required breaks due to
24 Defendants' policies and practices. On the occasions when Plaintiff and the Class members were
25 provided with a meal period, it was often untimely or interrupted, as they were required to respond
26 to work demands, and they were not provided with one (1) hour's wages in lieu thereof. Meal
27 period violations thus occurred in one or more of the following manners:

28 ///

- 1 (a) Class members were not provided full thirty-minute duty free meal periods
2 for work days in excess of five (5) hours and were not compensated one (1)
3 hour's wages in lieu thereof, all in violation of, among others, Labor Code
4 §§ 226.7, 512, and the applicable Industrial Welfare Commission Wage
5 Order(s);
- 6 (b) Class members were not provided second full thirty-minute duty free meal
7 periods for work days in excess of ten (10) hours;
- 8 (c) Class members were required to work through at least part of their daily
9 meal period(s);
- 10 (d) Meal periods were provided after five hours of continuous work during a
11 shift; and
- 12 (e) Class members were restricted in their ability to take a full thirty-minute
13 meal period.

14 26. A similar problem occurred with the rest breaks Defendants were and are required
15 to provide to Plaintiff and the Class members for every four (4) hours worked, or major fraction
16 thereof. Accordingly, on shifts of over ten hours, which Plaintiff and the Class members
17 consistently worked, they should have been entitled to received three (3) rest periods for an
18 uninterrupted and duty free ten (10) minutes. Plaintiff and the Class members were required to
19 work through their shifts without taking rest breaks because they were required to remain on duty
20 and work until the work was done. Plaintiff also does not recall being provided with training or
21 policies addressing meal periods and rest breaks or new forms to fill out when MasTec took over
22 the operations for WesTower, and Defendants also required Plaintiff and the Class members to
23 review messages and e-mails on their phones throughout their daily work shifts and during off
24 duty hours and during any meal periods and rest breaks they may have received. Thus, production
25 requirements and work demands prevented Plaintiff and the Class members from taking all
26 authorized rest periods, or required them to be untimely or interrupted or on-duty. Plaintiff and the
27 Employees in the Class were systematically required by Defendants to work through or during
28 breaks, and were not provided with one (1) hour's wages in lieu thereof. On the shifts when

1 Plaintiff was able to take a first rest period during a shift, he was not generally not able to take a
2 second rest period, and when Plaintiff worked shifts over ten (10) hours, he was not authorized
3 and permitted to take a third rest period. Rest period violations therefore arose in one or more of
4 the following manners:

- 5 (a) Class members were required to work without being provided a minimum
6 ten (10) minute rest period for every four (4) hours or major fraction
7 thereof worked and were not compensated one (1) hour of pay at their
8 regular rate of compensation for each workday that a rest period was not
9 provided;
- 10 (b) Class members were not authorized and permitted to take timely rest
11 periods for every four hours worked, or major fraction thereof; and
- 12 (c) Class members were required to remain on-duty during rest periods or
13 otherwise had their rest periods interrupted by work demands.

14 27. Additionally, from at least four (4) years prior to the filing of this lawsuit and
15 continuing to the present, Defendants have regularly required Plaintiff and the Class members to
16 incur certain necessary expenses in performing their job duties, which included but were not
17 limited to costs related to uniforms and purchasing and maintaining tools required to complete
18 work requirements. Defendants failed to provide necessary tools specific to tower team work, and
19 this policy and practice required Plaintiff and the Class members to purchase their own. The work
20 they performed was demanding and occurred high on towers, and personal tools and equipment
21 would often be damaged or lost by falling from the tower. These tools were not only necessary,
22 but Plaintiff and the Class members required them to perform the job duties within the course and
23 scope of their employment for Defendants. Plaintiff estimates he spent approximately \$1,000.00
24 per year of his own money to purchase tools and equipment he required to perform his job duties
25 under Defendants' employment. Plaintiff and the Class were also required to purchase uniform
26 items, including shirts with company logos and work boots, which were mandated items all
27 Employees had to purchase and clean and maintain. Plaintiff estimates he spent \$20.00 per pay
28 period on uniform purchases and washing and cleaning them and on work boots and other required

1 uniform items. These expenses incurred by Plaintiff and the Class were necessary and required of
2 them in performing their assigned job duties, but Defendants failed to reimburse Plaintiff and the
3 Class for all such necessary expenditures, thus entitling them to reimbursement according to proof
4 as required under Labor Code § 2802 and the applicable provisions of the IWC Wage Orders.

5 28. From at least four (4) years prior to the filing of this lawsuit and continuing to the
6 present, Defendants have consistently and unlawfully collected or received wages from Employees
7 by making automatic deductions or withholdings from Employees' wages, including for any
8 unpaid meal periods Employees were denied and for all hours deducted through unlawful
9 rounding or required as off the clock work.

10 29. As a result of these illegal policies and practices, Defendants engaged in and
11 enforced the following additional unlawful practices and policies against Plaintiff and the Class
12 members he seeks to represent:

- 13 a. failing to pay all wages owed to Class members who either were discharged, laid
14 off, or resigned in accordance with the requirements of Labor Code §§ 201, 202,
15 203;
- 16 b. failing to pay all wages owed to the Class members twice monthly in accordance
17 with the requirements of Labor Code § 204;
- 18 c. failing to pay Class members all wages owed, including all meal and rest period
19 premium wages;
- 20 d. failing to maintain accurate records of Class members' earned wages and meal
21 periods in violation of Labor Code §§ 226 and 1174(d) and section 7 of the
22 applicable IWC Wage Orders; and
- 23 e. failing to produce timekeeping records in response to Plaintiff's timely and lawful
24 request to receive them under these authorities.

25 30. From at least four (4) years prior to the filing of this lawsuit, and continuing to the
26 present, Defendants have also consistently failed to provide Employees with timely, accurate, and
27 itemized wage statements, in writing, as required by California wage-and-hour laws, including by
28 the above-described requirement of off the clock work, unlawful rounding to the detriment of

1 Employees, and incorrect calculation and payment of overtime and double time. Defendants have
2 also made it difficult to account with precision for the unlawfully withheld meal and rest period
3 compensation owed to Plaintiff and the Class, during the liability period, because they did not
4 implement and preserve a record-keeping method as required for non-exempt employees by
5 California Labor Code §§ 226, 1174(d), and paragraph 7 of the applicable California Wage
6 Orders. Upon information and belief, time clock punches were not maintained, or were not
7 accurately maintained, for work shifts and meal periods, which were automatically presumed by
8 Defendants to have been lawfully provided when they were not under Defendants' policy and
9 practice of requiring phantom meal period entries before the fifth hour of work on a shift.
10 Defendants also failed to accurately record and pay for all regular and overtime hours worked and
11 submitted by Plaintiff and the Class members, as Defendants' policy of unlawfully rounding time
12 entries to the detriment of Employees resulted in changed timekeeping records and corresponding
13 payroll records reflecting that Employees worked less hours than they actually worked.

14 31. Defendants have thus also failed to comply with Labor Code § 226(a) by
15 inaccurately reporting total hours worked and total wages earned by Plaintiff and the Class
16 members, along with the appropriate applicable rates, among others requirements. Plaintiff and
17 Class members are therefore entitled to penalties not to exceed \$4,000.00 for each employee
18 pursuant to Labor Code § 226(b). Defendants have also failed to comply with paragraph 7 of the
19 applicable California IWC Wage Orders by failing to maintain time records showing when the
20 employee begins and ends each work period, meal periods, wages earned pursuant to Labor Code
21 § 226.7, and total daily hours worked by itemizing in wage statements all deductions from
22 payment of wages and accurately reporting total hours worked by the Class members.

23 32. From at least four (4) years prior to filing this lawsuit and continuing to the present,
24 Defendants have thus also had a consistent policy of failing to pay all wages owed to Employees
25 at the time of their termination of within seventy-two (72) hours of their resignation, as required
26 by California wage-and-hour laws.

27 33. In light of the foregoing, Employees bring this action pursuant to, *inter alia*, Labor
28 Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.7, 510, 511, 512, 558, 1174, 1185,

1 1194, 1194.2, 1197, 2802 and California Code of Regulations, Title 8, section 11000 *et seq.*,

2 34. Furthermore, pursuant to Business and Professions Code §§ 17200-17208,
3 Employees seek injunctive relief, restitution, and disgorgement of all benefits Defendants have
4 enjoyed from their violations of Labor Code and the other unfair, unlawful, or fraudulent practices
5 alleged in this Complaint.

6 **CLASS ALLEGATIONS**

7 35. Plaintiff brings this class action on behalf of himself and all others similarly situated
8 pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (or “the Class” or
9 “Class members”) defined as follows: “All individuals employed by Defendants at any time
10 during the period of four (4) years prior to the filing of this lawsuit and ending on a date as
11 determined by the Court (“the Class Period”), and who have been employed as non-exempt,
12 hourly employees working on communications towers and support structures within the State of
13 California.”

14 Further, Plaintiff seeks to represent the following Subclasses composed of and defined as
15 follows:

16 a. Subclass 1. Minimum Wages Subclass. All Class members who were not
17 compensated for all hours worked for Defendants at the applicable minimum wage.

18 b. Subclass 2. Wages and Overtime Subclass. All Class members who were not
19 compensated for all hours worked for Defendants at the required rates of pay, including for all
20 hours worked in excess of eight in a day and/or forty in a week.

21 c. Subclass 3. Meal Period Subclass. All Class members who were subject to
22 Defendants’ policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-
23 free meal periods or one hour of pay at the Employee’s regular rate of pay in lieu thereof.

24 d. Subclass 4. Rest Break Subclass. All Class members who were subject to
25 Defendants’ policy and/or practice of failing to authorize and permit Employees to take
26 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction
27 thereof, and failing to pay one hour of pay at the Employee’s regular rate of pay in lieu thereof.

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1 e. Subclass 5. Expense Reimbursement Subclass. All Class members who incurred
2 necessary and reasonable expenses in connection with performing their job duties for Defendants
3 and who were subject to a policy and/or practice under which such expenses were not reimbursed.

4 f. Subclass 5. Wage Statement Subclass. All Class members who, within the
5 applicable limitations period, were not provided with accurate itemized wage statements.

6 g. Subclass 6. Unauthorized Deductions from Wages Subclass. All Class members
7 who were subject to Defendants' policy and/or practice of automatically deducting 30-minutes
8 worth of wages from Employees for alleged meal periods they were denied and/or by understating
9 the hours worked by rounding or requiring off the clock work.

10 h. Subclass 7. Termination Pay Subclass. All Class members who, within the
11 applicable limitations period, either voluntarily or involuntarily separated from their employment
12 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
13 termination.

14 i. Subclass 8. UCL Subclass. All Class members who are owed restitution as a result
15 of Defendants' business acts and practices, to the extent such acts and practices are found to be
16 unlawful, deceptive, and/or unfair.

17 36. Plaintiff reserves the right under California Rule of Court 3.765 to amend or
18 modify the class description with greater particularity or further division into subclasses or
19 limitation to particular issues. To the extent equitable tolling operates to toll claims by the Class
20 against Defendants, the Class Period should be adjusted accordingly.

21 37. Defendants, as a matter of company policy, practice and procedure, and in violation
22 of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements,
23 and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged
24 in a practice whereby Defendants failed to correctly calculate compensation for the time worked
25 by the Plaintiff and the other members of the Class, even though Defendants enjoyed the benefit of
26 this work, required employees to perform this work and permitted or suffered to permit this work.
27 Defendants have uniformly denied these Class members wages to which these employees are
28 entitled, and failed to provide meal periods or authorize and permit rest periods, in order to

1 unfairly cheat the competition and unlawfully profit.

2 38. This action has been brought and may properly be maintained as a class action
3 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
4 of interest in litigation and proposed class is easily ascertainable.

5 **A. Numerosity**

6 39. The potential members of the class as defined are so numerous that joinder of all
7 the member of the class is impracticable. While the precise number of class member has not been
8 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the
9 time period relevant to this lawsuit, hundreds of Employees who satisfy the Class definition within
10 the State of California.

11 40. Accounting for employee turnover during the relevant time period increases this
12 number substantially. Plaintiff alleges that Defendants' employment records will provide
13 information as to the number and location of all class members.

14 **B. Commonality**

15 41. There are questions of law and fact common to the Class that predominate over any
16 questions affecting only individual Class members. These common questions of law and fact
17 include:

- 18 a. Whether Defendants failed to pay Employees minimum wages;
- 19 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 20 c. Whether Defendants failed to pay Employees overtime as required under Labor
21 Code § 510;
- 22 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
23 IWC Wage Orders, by failing to provide Employees with requisite meal periods or
24 premium pay in lieu thereof;
- 25 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
26 Orders, by failing to authorize and permit Employees to take requisite rest breaks
27 or provide premium pay in lieu thereof;
- 28 f. Whether Defendants violated Labor Code § 226(a) by providing Employees with

- 1 inaccurate wage statements;
- 2 g. Whether Defendants violated Labor Code § 221;
- 3 h. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
4 wages and compensation due and owing at the time of termination of employment;
- 5 i. Whether Defendants' conduct was willful;
- 6 j. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage
7 Orders by failing to maintain accurate records of Class members' earned wages and
8 work periods;
- 9 k. Whether Defendants violated Labor Code § 1194 by failing to compensate all
10 Employees during the relevant time period for all hours worked, whether regular or
11 overtime;
- 12 l. Whether Defendants violated Business and Professions Code § 17200 *et seq.*;
- 13 m. Whether Defendants failed to reimburse necessary business expenses under Labor
14 Code § 2802; and
- 15 m. Whether Employees are entitled to equitable relief pursuant to Business and
16 Professions Code § 17200 *et seq.*

17 **C. Typicality**

18 42. The claims of the named plaintiff are typical of those of the other Employees. The
19 Employee Class members all sustained injuries and damages arising out of and caused by
20 Defendants' common course of conduct in violation of statutes, as well as regulations that have
21 the force and effect of law, as alleged herein.

22 **D. Adequacy of Representation**

23 43. Plaintiff will fairly and adequately represent and protect the interest of the
24 Employees. Counsel who represents the Employees are experienced and competent in litigating
25 employment class actions.

26 **E. Superiority of Class Action**

27 44. A class action is superior to other available means for the fair and efficient
28 adjudication of this controversy. Individual joinder of all Employees is not practicable, and

1 questions of law and fact common to all Employees predominate over any questions affecting only
2 individual Employees. Each Employee has been damaged and is entitled to recovery by reason of
3 Defendants' illegal policies or practices of failing to compensate Employees properly.

4 45. As to the issues raised in this case, a class action is superior to all other methods for
5 the fair and efficient adjudication of this controversy, as joinder of all Class members is
6 impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class
7 members. Further, as the economic or other loss suffered by vast numbers of Class members may
8 be relatively small, the expense and burden of individual actions makes it difficult for the Class
9 members to individually redress the wrongs they have suffered. Moreover, in the event
10 disgorgement is ordered, a class action is the only mechanism that will permit the employment of
11 a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in
12 managing this case as a class action, and proceeding on a class-wide basis will permit Employees
13 to vindicate their rights for violations they endured which they would otherwise be foreclosed
14 from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to them.

15 46. Class action treatment will allow those persons similarly situated to litigate their
16 claims in the manner that is most efficient and economical for the parties and the judicial system.
17 Plaintiff is unaware of any difficulties in managing this case that should preclude class treatment.
18 Plaintiff contemplates the eventual issuance of notice to the proposed Class members that would
19 set forth the subject and nature of the instant action. The Defendants' own business records can be
20 utilized for assistance in the preparation and issuance of the contemplated notices. To the extent
21 that any further notice is required additional media and/or mailings can be used.

22 47. Defendants, as prospective and actual employers of the Employees, had a special
23 fiduciary duty to disclose to prospective Class members the true facts surrounding Defendants'
24 pay practices, policies and working conditions imposed upon the similarly situated Employees as
25 well as the effect of any alleged arbitration agreements that may have been forced upon them. In
26 addition, Defendants knew they possessed special knowledge about pay practices and policies,
27 most notably intentionally refusing to pay for all hours actually worked which should have been
28 recorded in Defendants' pay records and the consequence of the alleged arbitration agreements

1 and policies and practices on the Employees and Class as a whole.

2 48. Plaintiff and the Employees in the Class did not discover the fact that they were
3 entitled to all pay under the Labor Code until shortly before the filing of this lawsuit nor was there
4 ever any discussion about Plaintiff's and the Class' wavier of their Constitutional rights of trial by
5 jury, right to collectively organize and oppose unlawful pay practices under California and federal
6 law as well as obtain injunctive relief preventing such practices from continuing. As a result, the
7 applicable statutes of limitation were tolled until such time as Plaintiff and the Class members
8 discovered their claims.

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO PAY MINIMUM WAGES**

11 **(Against All Defendants)**

12 49. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
13 full herein.

14 50. Defendants failed to pay Employees minimum wages for all hours worked.
15 Defendants had a consistent policy of misstating Employees time records and failing to pay
16 Employees for all hours worked. Employees would work hours and not receive wages, including
17 as alleged above in connection with off the clock work and regarding rounding of timekeeping
18 entries and requiring Class members to remain on duty and working during breaks due to the
19 production and other demands placed upon them by Defendants' management. Defendants, and
20 each of them, have also intentionally and improperly rounded, changed, adjusted and/or modified
21 Employee hours, and imposed difficult to attain job and shift scheduling requirements on
22 Plaintiff and the Class members, which resulted in off the clock work and underpayment of all
23 wages owed to employees over a period of time, while benefiting Defendants. During the
24 relevant time period, Defendants thus regularly failed to pay minimum wages to Plaintiff and the
25 Class members, including by unlawful rounding to their detriment. Additionally, Defendants also
26 maintained a practice of managers contacting Plaintiff and the Class members by calling
27 Employees and sending messages and e-mails while they were off-duty, including after or before
28 on the clock work hours or during their meal periods and rest breaks. Defendants' uniform

1 pattern of unlawful wage and hour practices manifested, without limitation, applicable to the
2 Class as a whole, as a result of implementing a uniform policy and practice that denied accurate
3 compensation to Plaintiff and the other members of the Class as to minimum wage pay.

4 51. In California, employees must be paid at least the then applicable state minimum
5 wage for all hours worked. (IWC Wage Order MW-2014). Additionally, pursuant to California
6 Labor Code § 204, other applicable laws and regulations, and public policy, an employer must
7 timely pay its employees for all hours worked. Defendants failed to do so.

8 52. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"
9 states:

10 The minimum wage for employees fixed by the commission is the
11 minimum wage to be paid to employees, and the payment of a less
12 wage than the minimum so fixed is unlawful.

13 53. The applicable minimum wages fixed by the commission for work during the
14 relevant period is found in the Wage Orders. Pursuant to the Wage Orders, Employees are
15 therefore entitled to double the minimum wage during the relevant period.

16 54. The minimum wage provisions of California Labor Code are enforceable by private
17 civil action pursuant to Labor Code § 1194(a) which states:

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

24 55. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
25 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
26 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
27 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
28 all hours worked. All hours must be paid at the statutory or agreed rate and no part of this rate may
29 be used as a credit against a minimum wage obligation.

30 56. In committing these violations of the California Labor Code, Defendants
31 inaccurately recorded or calculated the correct time worked and consequently underpaid the actual

1 time worked by Plaintiff and other members of the Class. Defendants acted in an illegal attempt
2 to avoid the payment of all earned wages, and other benefits in violation of the California Labor
3 Code, the Industrial Welfare Commission requirements and other applicable laws and regulations.
4 As a result of these violations, Defendant also failed to timely pay all wages earned in accordance
5 with California Labor Code § 1194.

6 57. California Labor Code § 1194.2 also provides for the following remedies:

7 In any action under Section 1194 . . . to recover wages because of
8 the payment of a wage less than the minimum wages fixed by an
9 order of the commission, an employee shall be entitled to recover
liquidated damages in an amount equal to the wages unlawfully
unpaid and interest thereon.

10 58. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
11 1197.1, Plaintiff and Class members are entitled to recover a penalty of \$100.00 for the initial
12 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to
13 pay each employee minimum wages.

14 59. Pursuant to California Labor Code § 1194.2, Plaintiff and Class members are
15 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and
16 interest thereon.

17 60. Defendants have the ability to pay minimum wages for all time worked and have
18 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this
19 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

20 61. Wherefore, Plaintiff and the Employee Class members are entitled to recover the
21 unpaid minimum wages (including double minimum wages), liquidated damages in an amount
22 equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees
23 and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other members of
24 the Class further request recovery of all unpaid wages, according to proof, interest, statutory costs,
25 as well as the assessment of any statutory penalties against Defendants, in a sum as provided by
26 the California Labor Code and/or other applicable statutes. To the extent minimum wage
27 compensation is determined to be owed to the Class members who have terminated their
28 employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202, and therefore

1 these individuals are also be entitled to waiting time penalties under California Labor Code § 203,
2 which penalties are sought herein on behalf of these Class members. Defendants' failure to timely
3 pay all wages owed also violated Labor Code § 204 and resulted in violations of Labor Code §
4 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as
5 alleged herein was willful, intentional and not in good faith. Further, Plaintiff and other Class
6 members are entitled to seek and recover statutory costs.

7 **SECOND CAUSE OF ACTION**

8 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

9 **(Against All Defendants)**

10 62. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
11 full herein.

12 63. California Labor Code § 1194 provides that "any employee receiving less than the
13 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
14 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
15 compensation, including interest thereon, reasonable attorney's fees, and costs of suit." The action
16 may be maintained directly against the employer in an employee's name without first filing a
17 claim with the Department of Labor Standards and Enforcement.

18 64. By their conduct, as set forth herein, Defendants violated California Labor Code §
19 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees:
20 (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a
21 workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked
22 on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours
23 worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight
24 (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not
25 paying Employees wages for all hours worked, including by requiring off the clock work as
26 addressed above and by unlawfully rounding down and under-reporting actual hours worked.
27 Also, rather than paying overtime at time and a half for hours worked over eight or double time for
28 hours over twelve in a given twenty-four hour work day, Defendants systematically under-paid

1 Plaintiff and the Employee Class members by starting a new work day at midnight and paying
2 regular rate wages through the end, but then starting a new calculation with the next shift
3 commencing in the same twenty-four hour period.

4 65. Defendants had a consistent policy of not paying Employees wages for all hours
5 worked. Defendants, and each of them, have intentionally and improperly rounded, changed,
6 adjusted and/or modified certain employees' hours, including Plaintiff's, or otherwise caused them
7 to work off the clock to avoid paying Plaintiff and the Class members all earned and owed straight
8 time and overtime wages and other benefits, in violation of the California Labor Code, the
9 California Code of Regulations and the IWC Wage Orders and guidelines set forth by the Division
10 of Labor Standards and Enforcement. Defendants have also violated these provisions by requiring
11 Plaintiff and other similarly situated non-exempt employees to work through meal periods when
12 they were required to be clocked out or to otherwise work off the clock to complete their daily job
13 duties or to attend and participate in company required activities. Therefore, Employees were not
14 properly compensated, nor were they paid overtime rates for hours worked in excess of eight hours
15 in a given day, and/or forty hours in a given week. Based on information and belief, Defendants
16 did not make available to Employees a reasonable protocol for correcting time records when
17 Employees worked overtime hours or to fix incorrect time entries or those that Defendants
18 unlawfully rounded to the Employee's detriment. Defendants have also violated these provisions
19 by requiring Plaintiff and other similarly situated Employees in the Class to work through meal
20 periods when they were required to be clocked out or to work off the clock to complete their daily
21 job duties, and by failing to accurately record, calculate and pay overtime compensation.

22 66. Defendants' failure to pay Plaintiff and the Class members the unpaid balance of
23 regular wages owed and overtime compensation, as required by California law, violates the
24 provisions of Labor Code §§ 510 and 1198, and is therefore unlawful.

25 67. Additionally, Labor Code § 558(a) provides "any employer or other person acting
26 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
27 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
28 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each

1 pay period for which the employee was underpaid in addition to an amount sufficient to recover
2 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
3 underpaid employee for each pay period for which the employee was underpaid in addition to an
4 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall
5 be paid to the affected employee.” Labor Code § 558(c) states, “the civil penalties provided for in
6 this section are in addition to any other civil or criminal penalty provided by law.” Defendants
7 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC
8 Wage Orders. Accordingly, Plaintiff and the Class members seek the remedies set forth in Labor
9 Code § 558.

10 68. Defendants’ failure to pay compensation in a timely fashion also constituted a
11 violation of California Labor Code § 204, which requires that all wages shall be paid
12 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct
13 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
14 and overtime compensation earned by Employees. Each such failure to make a timely payment of
15 compensation to Employees constitutes a separate violation of California Labor Code § 204.

16 69. Employees have been damaged by these violations of California Labor Code §§
17 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

18 70. Consequently, pursuant to California Labor Code, including Labor Code §§ 204,
19 510, and 1194 (and the relevant orders of the Industrial Welfare Commission), Defendants are
20 liable to Employees for the full amount of all their unpaid wages and overtime compensation,
21 with interest, plus their reasonable attorneys’ fees and costs, as well as the assessment of any
22 statutory penalties against Defendants, and each of them, and any additional sums as provided by
23 the Labor Code and/or other statutes.

24 **THIRD CAUSE OF ACTION**

25 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

26 **(Against All Defendants)**

27 71. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
28 full herein.

1 72. Employees regularly worked shifts greater than five (5) hours and in most
2 instances, greater than ten (10) hours. Pursuant to Labor Code § 512 an employer may not employ
3 someone for a shift of more than five (5) hours without providing him or her with a meal period of
4 not less than thirty (30) minutes or for a shift of more than ten (10) hours without providing him or
5 her with a second meal period of not less than thirty (30) minutes.

6 73. Defendants failed to provide Employees with meal periods as required under the
7 Labor Code. Employees were often required to work through their meal periods or provided with
8 them after working beyond the fifth hour of their shifts or otherwise had them shortened and
9 interrupted by work demands and responding to calls and text messages from managers.
10 Furthermore, upon information and belief, on the occasions when Employees worked more than
11 10 hours in a given shift, they did so without receiving a second uninterrupted thirty (30) minute
12 meal period as required by law.

13 74. As addressed above Defendants had a consistent policy and practice of not
14 providing Plaintiff and the Class members with either first or second meal periods on their shifts,
15 which generally exceeded twelve hours. Plaintiff and the Class members would arrive at their
16 work sites and prepare the equipment and riggings and would climb the tower, and from there
17 would work straight through on their shifts until the day's work was complete. However,
18 Defendants management made it clear to Plaintiff and the Class members that the timekeeping
19 entries inputted into the SPACCS system had to reflect a thirty minute meal period was taken and
20 commenced before the fifth hour of the work shift. These phantom meal period entries were
21 intended to reflect a facial compliance while maintaining an unwritten policy and actual practice
22 of systematically failing to provide meal periods. On shifts where Plaintiff and the Class members
23 worked shifts of over ten hours, which they consistently did, they were not provided with a second
24 uninterrupted, timely and duty-free thirty minute meal period.

25 75. Defendants thus failed to provide Plaintiff and the Class members with meal
26 periods as required by the Labor Code, including by not providing them with the opportunity to
27 take meal breaks, by providing them late or for less than thirty (30) minutes, or by requiring them
28 to perform work during breaks.

1 to take a third rest period.

2 81. Plaintiff and the Class members were required to work through their shifts without
3 taking rest breaks because they were required to remain on duty and work until the work was
4 done. Plaintiff does not recall being provided with training or policies addressing meal periods and
5 rest breaks or new forms to fill out, and Defendants also required Plaintiff and the Class members
6 to review messages and e-mails on their phones throughout their daily work shifts and during off
7 duty hours and during any meal periods and rest breaks they may have received.

8 82. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders
9 provide that if an employer fails to provide an employee rest period in accordance with this
10 section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of
11 compensation for each workday that the rest period is not provided.

12 83. Defendants, and each of them, have therefore intentionally and improperly denied
13 rest periods to Plaintiff and the Class members in violation of Labor Code §§ 226.7 and 512 and
14 paragraph 12 of the applicable IWC Wage Orders.

15 84. Defendants failed to authorize and permit Plaintiff and the Class members to take
16 rest periods, as required by the Labor Code. Defendants also did not compensate Employees with
17 an additional hour of pay at each Employee's effective hourly rate for each day that Defendants
18 failed to provide them with adequate rest breaks, as required under Labor Code § 226.7.

19 85. Therefore, pursuant to Labor Code § 226.7 and paragraph 12 of the applicable IWC
20 Wage Orders, Employees are entitled to damages in an amount equal to one (1) hour of wages at
21 their effective hourly rates of pay for each day worked without the required rest breaks, a sum to
22 be proven at trial, as well as the assessment of any statutory penalties against Defendants, and each
23 of them, in a sum as provided by the Labor Code and/or other statutes.

24 **FIFTH CAUSE OF ACTION**

25 **FOR FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

26 **UNDER LABOR CODE § 2802**

27 **(Against All Defendants)**

28 86. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in

1 full herein.

2 87. Plaintiff and the Class are informed and believe and based thereon allege that
3 throughout the period applicable, Defendants required Plaintiff and the Class members to pay for
4 necessary work related expenses they incurred, including expenses for uniform purchases and
5 cleaning and for tools necessary for performing their job duties, as addressed above, and such
6 expenses were necessary for performing those duties. Plaintiff and the Class members were not
7 reimbursed for those lawful and necessary work related expenses or losses incurred in direct
8 discharge of their job duties during employment with Defendants and at the direction of the
9 Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

10 88. Defendants' knowing and willful failure to reimburse lawful necessary work related
11 expenses and losses to Plaintiff and the Class members resulted in damages because, among other
12 things, Defendants did not inform employees of their right to be reimbursed for those work related
13 expenses. As Defendants failed to inform and misled Plaintiff and the Class members with regard
14 to their rights, Plaintiff and the Class members were led to believe that incurring those lawful and
15 necessary expenses was an expected and essential function of their employment with Defendants
16 and that failure to incur those expenses would have adverse consequences on their employment.

17 89. Therefore, Plaintiff and the Class members are entitled to reimbursement for any
18 and all necessary work related expenses, as provided for in Labor Code § 2802(b), incurred during
19 the direct discharge of their duties while employed by Defendants, as well as accrued interest on
20 those expenses that were not reimbursed from the date Plaintiff and the Class members incurred
21 those expenses. Further, Plaintiff and the Class members are entitled to costs and attorney's fees
22 pursuant to Labor Code § 2802(c).

23 **SIXTH CAUSE OF ACTION**

24 **VIOLATION OF LABOR CODE § 226(a)**

25 **(Against All Defendants)**

26 90. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
27 full herein.

28 91. California Labor Code § 226(a) requires an employer to furnish each of his or her

1 employees with an accurate, itemized statement in writing showing the gross and net earnings,
2 total hours worked, and the corresponding number of hours worked at each hourly rate; these
3 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
4 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
5 statements may be given to the employee separately from the payment of wages; in either case the
6 employer must give the employee these statements twice a month or each time wages are paid.

7 92. Defendants failed to provide Employees with accurate itemized wage statements in
8 writing, as required by the Labor Code. Specifically, the wage statements given to Employees by
9 Defendants failed to accurately account for wages, overtime, and premium pay for deficient meal
10 periods and rest breaks, and rounded timekeeping entries to the detriment of the Class members,
11 all of which Defendants knew or reasonably should have known were owed to Employees, as
12 alleged hereinabove.

13 93. Throughout the liability period, Defendants intentionally failed to furnish to
14 Plaintiff and the Class members, upon each payment of wages, itemized statements accurately
15 showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-
16 rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net
17 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of
18 the employee and only the last four digits of his or her social security number or an employee
19 identification number other than a social security number, (8) the name and address of the legal
20 entity that is the employer and (9) all applicable hourly rates in effect during the pay period and
21 the corresponding number of hours worked at each hourly rate by the employee pursuant to Labor
22 Code § 226, amongst other statutory requirements. Defendants knowingly and intentionally failed
23 to provide Plaintiff and the Class members with such timely and accurate wage and hour
24 statements.

25 94. Plaintiff and the Class members suffered injury as a result of Defendants' knowing
26 and intentional failure to provide them with the wage and hour statements as required by law and
27 are presumed to have suffered injury and entitled to penalties under Labor Code § 226(e), as the
28 Defendants have failed to provide a wage statement, failed to provide accurate and complete

1 information as required by any one or more of items Labor Code § 226 (a)(1) to (9), inclusive,
2 and the Plaintiff and Class members cannot promptly and easily determine from the wage
3 statement alone one or more of the following: (i) The amount of the gross wages or net wages
4 paid to the employee during the pay period or any of the other information required to be
5 provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of
6 subdivision (a), (ii) Which deductions the employer made from gross wages to determine the net
7 wages paid to the employee during the pay period, (iii) The name and address of the employer
8 and, (iv) The name of the employee and only the last four digits of his or her social security
9 number or an employee identification number other than a social security number. For purposes
10 of Labor Code § 226(e) “promptly and easily determine” means a reasonable person [i.e. an
11 objective standard] would be able to readily ascertain the information without reference to other
12 documents or information.

13 95. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code
14 § 226(a), Employees suffered injuries, including among other things confusion over whether they
15 received all wages owed them, the difficulty and expense involved in reconstructing pay records,
16 and forcing them to make mathematical computations to analyze whether the wages paid in fact
17 compensated them correctly for all hours worked.

18 96. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover
19 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
20 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not
21 exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an
22 award of costs and reasonable attorneys’ fees.

23 **SEVENTH CAUSE OF ACTION**

24 **VIOLATION OF LABOR CODE § 221**

25 **(Against All Defendants)**

26 97. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
27 full herein.

28 98. Labor Code § 221 provides, “It shall be unlawful for any employer to collect or

1 receive from an employee any part of wages theretofore paid by said employer to said employee.”
2 Additionally, pursuant to California Labor Code § 204, other applicable laws and regulations, and
3 public policy, an employer must timely pay its employees for all hours worked. Defendants failed
4 to do so.

5 99. Defendants unlawfully received and/or collected wages from the Employees in the
6 Class by implementing a policy rounding down and understating the hours worked by Employees,
7 requiring them to work through meal periods for which they were not compensated, and deducting
8 uniform expenses from their wages for items Defendants required of them and which were specific
9 to their employment by Defendants, as alleged above.

10 100. As a direct and proximate cause of the unauthorized deductions, Employees have
11 been damaged, in an amount to be determined at trial.

12 **EIGHTH CAUSE OF ACTION**

13 **VIOLATION OF LABOR CODE § 203**

14 **(Against All Defendants)**

15 101. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
16 full herein.

17 102. Numerous Employees are no longer employed by Defendants; they either quit
18 Defendants' employ or were fired therefrom.

19 103. Defendants failed to pay these Employees all wages due and certain at the time of
20 termination or within seventy-two (72) hours of resignation.

21 104. The wages withheld from these Employees by Defendants remained due and owing
22 for more than thirty (30) days from the date of separation of employment.

23 105. Defendants failed to pay Plaintiff and the Class members without abatement, all
24 wages as defined by applicable California law. Among other things, these Employees were not
25 paid all regular and overtime wages, including by failing to pay for all hours worked or requiring
26 off the clock work or by unlawful rounding of time entries to the detriment of Employees, and by
27 failing to correctly calculate the regular rate used to calculate and pay overtime compensation, and
28 failed to pay premium wages owed for unprovided meal periods and rest periods, as further

1 detailed in this Complaint. Defendants' failure to pay said wages within the required time was
2 willful within the meaning of Labor Code § 203.

3 106. Defendants' failure to pay wages, as alleged above, was willful in that Defendants
4 knew wages to be due but failed to pay them; this violation entitles these Employees to penalties
5 under Labor Code § 203, which provides that an employee's wages shall continue until paid for up
6 to thirty (30) days from the date they were due.

7 **NINTH CAUSE OF ACTION**

8 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.**

9 **(Against All Defendants)**

10 107. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
11 full herein.

12 108. Plaintiff, on behalf of himself, the Employees in the Class, and the general public,
13 brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of
14 Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and
15 harmful to Employees and the general public. Plaintiff seeks to enforce important rights affecting
16 the public interest within the meaning of Code of Civil Procedure § 1021.5.

17 109. Plaintiff is a "person" within the meaning of Business & Professions Code
18 § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive
19 relief, restitution, and other appropriate equitable relief.

20 110. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
21 business practices. By the conduct alleged herein, Defendants' practices were deceptive and
22 fraudulent in that Defendants' policy and practice failed to provide the required amount of
23 compensation for missed meal and rest breaks, and failed to adequately compensate Plaintiff and
24 Class members for all hours worked, due to systematic business practices as alleged herein that
25 cannot be justified, pursuant to the applicable California Labor Code and Industrial Welfare
26 Commission requirements in violation of California Business and Professions Code §§ 17200, *et*
27 *seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to California
28 Business & Professions Code § 17203, including restitution of wages wrongfully withheld.

1 111. Wage-and-hour laws express fundamental public policies. Paying employees their
2 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental
3 public policies of California. Labor Code § 90.5(a) articulates the public policies of this State
4 vigorously to enforce minimum labor standards, to ensure that employees are not required or
5 permitted to work under substandard and unlawful conditions, and to protect law-abiding
6 employers and their employees from competitors who lower costs to themselves by failing to
7 comply with minimum labor standards.

8 112. Defendants have violated statutes and public policies. Through the conduct alleged
9 in this Complaint Defendants have acted contrary to these public policies, have violated specific
10 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
11 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiff,
12 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
13 guaranteed to all employees under the law.

14 113. Defendants' conduct, as alleged hereinabove, constitutes unfair competition in
15 violation of the Business & Professions Code § 17200 *et seq.*

16 114. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and
17 overtime, failing to provide meal periods and rest breaks, etc., either knew or in the exercise of
18 reasonable care should have known that their conduct was unlawful; therefore their conduct
19 violates the Business & Professions Code § 17200 *et seq.*

20 115. By the conduct alleged herein, Defendants have engaged and continue to engage in
21 a business practice which violates California and federal law, including but not limited to, the
22 applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor
23 Code including Sections 204, 226, 226.7, 512, 1194, 1197, and 1198, for which this Court should
24 issue declaratory and other equitable relief pursuant to California Business & Professions Code §
25 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
26 competition, including restitution of wages wrongfully withheld.

27 116. As a proximate result of the above-mentioned acts of Defendants, Employees have
28 been damaged, in a sum to be proven at trial.

1 117. Unless restrained by this Court Defendants will continue to engage in such
2 unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court
3 should make such orders or judgments, including the appointment of a receiver, as may be
4 necessary to prevent the use by Defendants or their agents or employees of any unlawful or
5 deceptive practice prohibited by the Business & Professions Code, including but not limited to the
6 disgorgement of such profits as may be necessary to restore Employees to the money Defendants
7 have unlawfully failed to pay.

8 **RELIEF REQUESTED**

9 WHEREFORE, Plaintiff prays for the following relief:

- 10 1. For an order certifying this action as a class action;
- 11 2. For compensatory damages in the amount of the unpaid minimum wages for work
12 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
13 the filing of this action, as may be proven;
- 14 3. For liquidated damages in the amount equal to the unpaid minimum wage and
15 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 16 4. For compensatory damages in the amount of all unpaid wages, including overtime
17 and double-time pay, as may be proven;
- 18 5. For compensatory damages in the amount of the hourly wage made by Employees
19 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
20 years prior to the filing of this action, as may be proven;
- 21 6. For compensatory damages in the amount of the hourly wage made by Employees
22 for each day requisite rest breaks were not provided or were deficiently provided where no
23 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
24 be proven;
- 25 7. For damages and restitution for failure to reimburse all reasonable and necessary
26 business expenses incurred by Employees as required by Labor Code § 2802, as may be proven;
- 27 8. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
- 28 9. For restitution and/or damages for all amounts unlawfully withheld from the wages

1 for all class members in violation of Labor Code § 221, as may be proven;

2 10. For penalties pursuant to Labor Code § 203 for all Employees who quit or were
3 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

4 11. For restitution for unfair competition pursuant to Business & Professions Code
5 § 17200 *et seq.*, including disgorgement or profits, as may be proven;

6 12. For an order enjoining Defendants and their agents, servants, and employees, and
7 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
8 duties adumbrated in this Complaint;

9 13. For all general, special, and incidental damages as may be proven;

10 14. For an award of pre-judgment and post-judgment interest;

11 15. For an award providing for the payment of the costs of this suit;

12 16. For an award of attorneys' fees; and

13 17. For such other and further relief as this Court may deem proper and just.

14

15 DATED: February 15, 2018

DAVID YEREMIAN & ASSOCIATES, INC.

16

17

By 

18

David Yeremian
Alvin B. Lindsay
Attorneys for Plaintiff JORGE A. ZEPEDA
and all others similarly situated

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DEMAND FOR JURY TRIAL

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

DATED: February 15, 2018

DAVID YEREMIAN & ASSOCIATES, INC.

By 
David Yeremian
Alvin B. Lindsay
Attorneys for Plaintiff JORGE A. ZEPEDA
and all others similarly situated

ORIGINAL FEB 16 2018

CM-010

FOR COURT USE ONLY

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
 Alvin B. Lindsay (220236)
 David Yeremian & Associates Inc.
 535 N. Brand Blvd., Suite 705
 Glendale, CA 91203
 TELEPHONE NO.: (818) 230-8380 FAX NO.: (818) 230-0308
 ATTORNEY FOR (Name): Plaintiff, Jorge Zepeda

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Riverside
 STREET ADDRESS: 4050 Main Street
 MAILING ADDRESS:
 CITY AND ZIP CODE: Riverside, 92501
 BRANCH NAME: Historic Courthouse

CASE NAME:
 Zepeda v. Mastec Network Solutions, LLC

CIVIL CASE COVER SHEET

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)

CASE NUMBER: **RIC 1803871**
 JUDGE:
 DEPT:

BY FAX

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

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

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): Nine (9)
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: February 15, 2018
Alvin B. Lindsay

(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.

EXHIBIT B

ORIGINAL

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY David Yeremian SBN 226337 David Yeremian & Associates, Inc. 535 N Brand Blvd Ste 705 Glendale CA 91203 (818) 230-8380 ATTORNEY FOR Plaintiff	FOR COURT USE ONLY FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF RIVERSIDE MAR 20 2018 J. Marcial
SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE 4050 Main St. Riverside, CA 92501	
PLAINTIFF/PETITIONER: Jorge Zepeda	CASE NUMBER: RIC1803871
DEFENDANT/RESPONDENT: Mastec Network Solutions, LLC	
Proof of Service of Summons	

MAR 23 2018

BY FAX

BY FAX

1. At the time of service I was at least 18 years of age and not a party to this action.

2. I served copies of:

- Summons
- Complaint
- Civil Case Cover Sheet
- Certificate of Counsel
- Notice of Case Assignment

Court Case Management Order
notice of case assignment

3a. Party Served:

Mastec Network Solutions, LLC, a Florida limited liability company

3b. Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made):

Becky DeGeorge
Person Authorized to Accept Service

4. Address where the party was served:

2710 Gateway Oaks Dr 150N
Sacramento, CA 95833

5. I served the party:

CONTINUED ON NEXT PAGE

PLAINTIFF/PETITIONER: Jorge Zepeda	CASE NUMBER: RIC1803871
DEFENDANT/RESPONDENT: Mastec Network Solutions, LLC	

a. By personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive process for the party.

(1) on: 3/15/2018 (2) at: 03:40 PM

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

d. on behalf of: Mastec Network Solutions, LLC, a Florida limited liability company

under the following Code of Civil Procedure section:

416.40 (association or partnership)

7. Person who served papers

- a. Name: Jason Marshall
- b. Address: 15345 Fairfield Ranch Rd Suite 200, Chino Hills, CA 91709
- c. Telephone number: 909-664-9577
- d. The fee for this service was: 59.50
- e. I am:
 - (3) a registered California process server:
 - (i) Independent Contractor
 - (ii) Registration No.: 1998-61 Expires: 6/27/2018
 - (iii) County: Sacramento

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

3/20/2018

Jason Marshall



EXHIBIT C

ORIGINAL

POS-010

BY FAX

ATTORNEY OR PARTY WITHOUT ATTORNEY David Yeremian SBN 226337 David Yeremian & Associates, Inc. 535 N Brand Blvd Ste 705 Glendale CA 91203 (818) 230-8380 ATTORNEY FOR Plaintiff	FOR COURT USE ONLY <div style="text-align: center;"> FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF RIVERSIDE MAR 20 2018 <u>J. Marcial</u> </div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE 4050 Main St. Riverside, CA 92501	
PLAINTIFF/PETITIONER: Jorge Zepeda DEFENDANT/RESPONDENT: Mastec Network Solutions, LLC	CASE NUMBER: RIC1803871
Proof of Service of Summons	

MAR 23 2018

BY FAX

1. At the time of service I was at least 18 years of age and not a party to this action.

2. I served copies of:

- Summons
- Complaint
- Civil Case Cover Sheet
- Certificate of Counsel
- Notice of Case Assignment

Court Case Management Order
notice of case assignment

3a. Party Served:

Mastec Network Solutions, Inc., a Florida corporation

3b. Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made):

Becky DeGeorge
Person Authorized to Accept Service

4. Address where the party was served:

2710 Gateway Oaks Dr 150N
Sacramento, CA 95833

5. I served the party:

CONTINUED ON NEXT PAGE

PLAINTIFF/PETITIONER: Jorge Zepeda	CASE NUMBER: RIC1803871
DEFENDANT/RESPONDENT: Mastec Network Solutions, LLC	

a. By personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive process for the party.

(1) on: 3/15/2018 (2) at: 03:40 PM

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

d. on behalf of: Mastec Network Solutions, Inc., a Florida corporation

under the following Code of Civil Procedure section:

416.10 (Corporation)

7. Person who served papers

- a. Name: Jason Marshall
- b. Address: 15345 Fairfield Ranch Rd Suite 200, Chino Hills, CA 91709
- c. Telephone number: 909-664-9577
- d. The fee for this service was: 59.50
- e. I am:

- (3) a registered California process server:
 - (i) Independent Contractor
 - (ii) Registration No.: 1998-61 Expires: 6/27/2018
 - (iii) County: Sacramento

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

3/20/2018

Jason Marshall



EXHIBIT D

ORIGINAL

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY David Yeremian SBN 226337 David Yeremian & Associates, Inc. 535 N Brand Blvd Ste 705 Glendale CA 91203 (818) 230-8380 ATTORNEY FOR Plaintiff	FOR COURT USE ONLY FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF RIVERSIDE MAR 20 2018 <u>J. Marcial</u>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE 4050 Main St. Riverside, CA 92501	
PLAINTIFF/PETITIONER: Jorge Zepeda DEFENDANT/RESPONDENT: Mastec Network Solutions, LLC	CASE NUMBER: RIC1803871
Proof of Service of Summons	

MAR 23 2018

BY FAX

BY FAX

1. At the time of service I was at least 18 years of age and not a party to this action.

2. I served copies of:

- Summons
- Complaint
- Civil Case Cover Sheet
- Certificate of Counsel
- Notice of Case Assignment

Court Case Management Order
notice of case assignment

3a. Party Served:

Mastec Services Company, Inc., a Florida corporation

3b. Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made):

Liliana Gomez
Agent for Service

4. Address where the party was served:

1430 Truxtun Ave 5th Floor
Bakersfield, CA 93301

5. I served the party:

CONTINUED ON NEXT PAGE

PLAINTIFF/PETITIONER: Jorge Zepeda	CASE NUMBER: RIC1803871
DEFENDANT/RESPONDENT: Mastec Network Solutions, LLC	

a. By personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive process for the party.

(1) on: 3/16/2018 (2) at: 04:30 PM

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

d. on behalf of: Mastec Services Company, Inc., a Florida corporation
under the following Code of Civil Procedure section:
416.10 (Corporation)

7. Person who served papers

- a. Name: Caleb Barger
- b. Address: 15345 Fairfield Ranch Rd Suite 200, Chino Hills, CA 91709
- c. Telephone number: 909-664-9577
- d. The fee for this service was: 89.50
- e. I am:
 - (3) a registered California process server:
 - (i) Independent Contractor
 - (ii) Registration No.: 715 Expires: 1/2/2019
 - (iii) County: Kern

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

3/19/2018


Caleb Barger



EXHIBIT E

ORIGINAL

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY David Yeremian SBN 226337 David Yeremian & Associates, Inc. 535 N Brand Blvd Ste 705 Glendale CA 91203 (818) 230-8380 ATTORNEY FOR Plaintiff	FOR COURT USE ONLY FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF RIVERSIDE MAR 23 2018 D. VOTRUBA 
SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE 4050 Main St. Riverside, CA 92501	
PLAINTIFF/PETITIONER: Jorge Zepeda DEFENDANT/RESPONDENT: Mastec Network Solutions, LLC	CASE NUMBER: RIC1803871
Proof of Service of Summons	

BY FAX

MAR 26 2018

BY FAX

1. At the time of service I was at least 18 years of age and not a party to this action.

2. I served copies of:

- Summons
- Complaint
- Civil Case Cover Sheet
- Certificate of Counsel
- Notice of Case Assignment

Court Case Management Order
notice of case assignment

3a. Party Served:

Westover Communications Inc., a Delaware corporation
By Serving Robert E. Apple, Agent for Service

4. Address where the party was served:

806 S Douglas Rd 11th Floor
Coral Gables, FL 33134

5. I served the party:

b. By substituted service. On: 3/19/2018 at: 07:21 AM I left the documents listed in item 2 with or in the presence of:

Chantel Bernard
Designated Employee for Service of process

CONTINUED ON NEXT PAGE

PLAINTIFF/PETITIONER: Jorge Zepeda	CASE NUMBER: RIC1803871
DEFENDANT/RESPONDENT: Mastec Network Solutions, LLC	

(1) (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.

(4) A declaration of mailing is attached.

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

d. on behalf of:

Westover Communications Inc., a Delaware corporation

under the following Code of Civil Procedure section:

416.10 (Corporation)

7. Person who served papers

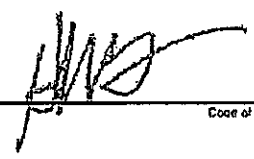
- a. Name: Hubert Wilcox
- b. Address: 15345 Fairfield Ranch Rd Suite 200, Chino Hills, CA 91709
- c. Telephone number: 909-664-9577
- d. The fee for this service was: 169.50
- e. I am an independent contractor:

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

3/21/2018

Hubert Wilcox

>



Form Approved for Mandatory Use
Judicial Council of California PCS-011a
(Rev. January 1, 2007)

Code of Civil Procedure, §417.10

Proof of Service of Summons

Billing Code: Zepeda v. Mastec Network Solutions, LLC

Invoice No: 1908222-05

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address) David Yeremian SBN 226337 David Yeremian & Associates, Inc. 535 N Brand Blvd Ste 705 Glendale CA 91203 ATTORNEY FOR Plaintiff		TELEPHONE NUMBER (818) 230-8380 Ref. No. or File No. Zepeda v. Mastec Network	FOR COURT USE ONLY	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE - CENTRAL 4050 Main St. Riverside, CA 92501				
SHORT TITLE OF CASE: Zepeda, Jorge v. Mastec Network Solutions, LLC				
INVOICE NO. 1908222-05	DATE:	TIME:	DEP./DIV.	CASE NUMBER: RIC1803871

BY FAX

Proof of Service by Mail

I am a citizen of the United States and employed in the County of State of California. I am and was on the dates herein mentioned, over the age of eighteen years and not a party to the action.

On 03/21/2018 after substituted service under section C.C.P. 415.20(a), 415.20(b), or 415.95(a) was made, I served the within:

Summons; Complaint; Civil Case Cover Sheet; Certificate of Counsel; Notice of Case Assignment; Court Case Management Order; notice of case assignment;

On the defendant, in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon pre-paid for first class in the United States mail At: Chino Hills, California, addressed as follows:

Westower Communications Inc., a Delaware corporation
 806 S Douglas Rd 11th Floor
 Coral Gables, FL 33134

Declarant:

- a. Name: Patricia Gonzalez
- b. Address: 15345 Fairfield Ranch Rd Suite 200, Chino Hills, CA 91709
- c. Telephone number: 909-664-9577
- d. The fee for this service was: 169.50
- e. I am:
 - (3) a registered California process server:
 - (i) Employee
 - (ii) Registration No.: 1086
 - (iii) County:

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

3/21/2018

Patricia Gonzalez



Proof of Service by Mail

EXHIBIT F

COPY

1 STEVEN A. GROODE, Bar No. 210500
sgroode@littler.com
2 SEVAG M. SHIRVANIAN, Bar No. 278540
shirvanian@littler.com
3 LITTLER MENDELSON, P.C.
2049 Century Park East
4 5th Floor
Los Angeles, CA 90067.3107
5 Telephone: 310.553.0308
Fax No.: 310.553.5583
6

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

APR 11 2018

C. Mundo

7 Attorneys for Defendants
MASTEC NETWORK SOLUTIONS, LLC,
8 MASTEC SERVICES COMPANY, INC.,
MASTEC NETWORK SOLUTIONS, INC., AND
9 WESTOWER COMMUNICATIONS, INC.

10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF RIVERSIDE

12 JORGE A. ZEPEDA, an individual, on
behalf of himself and others similarly
13 situated,

Case No. RIC1803871

ASSIGNED FOR ALL PURPOSES TO JUDGE
CRAIG G. RIEMER, DEPT. 5

14 Plaintiff,

15 v.

DEFENDANTS' ANSWER TO PLAINTIFF
JORGE A. ZEPEDA'S UNVERIFIED
CLASS ACTION COMPLAINT

16 MASTEC NETWORK SOLUTIONS,
LLC, a Florida limited liability company;
17 MASTEC SERVICES COMPANY, INC.,
a Florida corporation; MASTEC
18 NETWORK SOLUTIONS, INC., a Florida
corporation; WESTOWER
19 COMMUNICATIONS INC., a Delaware
corporation; and DOES 1 through 50,
20 inclusive,

Complaint Filed: February 16, 2018

21 Defendants.

LITTLER MENDELSON, P.C.
2049 Century Park East
5th Floor
Los Angeles, CA 90067 2107
310 553 0308

Firmwide:153303056.2 097125.1001

DEFENDANTS' ANSWER TO PLAINTIFF JORGE A. ZEPEDA'S UNVERIFIED CLASS ACTION COMPLAINT

1 **TO PLAINTIFF AND TO HIS ATTORNEYS OF RECORD:**

2 Defendants MASTEC NETWORK SOLUTIONS, LLC, MASTEC SERVICES COMPANY,
3 INC., MASTEC NETWORK SOLUTIONS, INC., and WESTOWER COMMUNICATIONS, INC.
4 (“Defendants”), answer the unverified Class Action Complaint (“Complaint”) of Plaintiff Jorge A.
5 Zepeda (“Plaintiff”) as follows:

6 **GENERAL DENIAL**

7 Defendants generally deny each and every allegation in the Complaint pursuant to Section
8 431.30 of the California Code of Civil Procedure, and deny that Plaintiff and/or the putative class
9 members have been damaged or will be damaged in any sum.

10 Defendants reserve their due process rights to receive a determination regarding class
11 certification, and contend that class certification is not appropriate in this instance for the reasons set
12 forth herein as well as for public policy reasons.

13 Finally, given the conclusory nature of the Complaint, Defendants hereby reserve their right
14 to amend/supplement their answer upon further investigation and discovery of facts supporting its
15 defenses.

16 By way of separate, additional and/or affirmative defenses to the Complaint and without
17 conceding that Defendants bear the burden of proof or the burden of persuasion as to any of these
18 issues, Defendants allege as follows:

19 **FIRST AFFIRMATIVE DEFENSE**

20 (Inadequate Representation)

21 1. As a separate and distinct affirmative defense, Defendants allege that the Complaint
22 and each cause of action set forth therein are barred because Plaintiff lacks standing as a
23 representative of the group of allegedly similarly situated individuals he seeks to represent, and
24 does not adequately represent the putative class members or other current and/or former employees
25 of Defendants.

26 **SECOND AFFIRMATIVE DEFENSE**

27 (Lack of Standing)

28 2. As a separate and distinct affirmative defense, Defendants allege that Plaintiff lacks

1 standing to pursue the claims alleged in the Complaint on behalf of himself, putative class members
2 or other current and/or former employees of Defendants.

3 **THIRD AFFIRMATIVE DEFENSE**

4 (Collateral Estoppel/Res Judicata)

5 3. As a separate and distinct affirmative defense, Defendants allege that the Complaint
6 and each cause of action asserted therein, are barred by collateral estoppel and/or res judicata
7 insofar as Plaintiff and/or individual putative class members have litigated or will litigate issues
8 raised by the Complaint prior to adjudication of those issues in the instant action.

9 **FOURTH AFFIRMATIVE DEFENSE**

10 (Waiver and Release)

11 4. As a separate and distinct affirmative defense to the Complaint, Defendants allege
12 that the Complaint and each cause of action asserted therein, are barred by waiver and release insofar
13 as Plaintiff and/or individual putative class members have released or will release Defendants from
14 liability for such claims asserted in the Complaint prior to adjudication of those claims in the instant
15 action.

16 **FIFTH AFFIRMATIVE DEFENSE**

17 (Laches)

18 5. As a separate and distinct affirmative defense, Defendants allege that the Complaint,
19 and each and every cause of action alleged therein, is barred by the equitable doctrine of laches.

20 **SIXTH AFFIRMATIVE DEFENSE**

21 (Unclean Hands)

22 6. As a separate and distinct affirmative defense, Defendants allege that the Complaint,
23 and each and every cause of action alleged therein, is barred by the equitable doctrine of unclean
24 hands.

25 **SEVENTH AFFIRMATIVE DEFENSE**

26 (Accord and Satisfaction)

27 7. As a separate and distinct affirmative defense, Defendants allege that the Complaint
28 and each cause of action asserted therein, in whole or in part, fails to the extent Plaintiff and/or any

1 putative class members have been fully paid all amounts legally owed to them by Defendants, since
2 by accepting the payments made to them, Plaintiff and/or any putative class members have
3 effectuated an accord and satisfaction of their claims.

4 **EIGHTH AFFIRMATIVE DEFENSE**

5 (Unjust Enrichment)

6 8. As a separate and distinct affirmative defense, Defendants allege that the Complaint,
7 and each and every cause of action alleged therein, is barred by the equitable doctrine of unjust
8 enrichment.

9 **NINTH AFFIRMATIVE DEFENSE**

10 (Statute of Limitations)

11 9. As a separate and distinct affirmative defense, Defendants allege that the Complaint
12 and each cause of action asserted therein, is barred in whole or in part by the applicable statute(s) of
13 limitation, including without limitation, California Code of Civil Procedure sections 337, 338, 339,
14 340, and 343, Labor Code section 200, *et seq.*, and Business and Professions Code section 17208.

15 **TENTH AFFIRMATIVE DEFENSE**

16 (Labor Code section 226(e) – Lack of Injury)

17 10. As a separate and distinctive affirmative defense, Defendants allege any claims for
18 penalties pursuant to Labor Code section 226 are barred, in whole or in part, because that Plaintiff
19 and any putative class members sustained no injury from any alleged failure to provide wage
20 statements in conformity with Labor Code section 226(a).

21 **ELEVENTH AFFIRMATIVE DEFENSE**

22 (Labor Code section 226(e) – Willfulness)

23 11. As a separate and distinctive affirmative defense, Defendants allege that any claims
24 for penalties pursuant to Labor Code section 226 are barred, in whole or in part, because Defendants'
25 alleged failure to comply with California Labor Code section 226(a) was not a knowing and
26 intentional failure under California Labor Code section 226(e)

27 **TWELFTH AFFIRMATIVE DEFENSE**

28 (Consent)

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SIXTEENTH AFFIRMATIVE DEFENSE

(*De Minimis* Time)

16. As a separate and distinct affirmative defense, without conceding that Defendants violated any law, Defendants allege that all or portions of the claims of Plaintiff and/or any putative class members are barred, in whole or in part, to the extent that any time spent by Plaintiff or the putative class members beyond their compensated workweek was *de minimis* in that it only consisted of a few minutes of time, and/or was not predictable and/or easily measured. Employees cannot recover for otherwise compensable time if the time is *de minimis*. *Cervantez v. Celestica Corp.*, 618 F. Supp. 2d 1208, 1217-19 (C.D. Cal. 2009); *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 692 (1946).

SEVENTEENTH AFFIRMATIVE DEFENSE

(Due Process)

17. As a separate and distinct affirmative defense, Defendant alleges that the Complaint and each cause of action therein, or some of them, are barred because the applicable wage order(s) of the Industrial Welfare Commission is unconstitutionally vague and ambiguous and violate Defendants' rights under the United States Constitution and the California Constitution as to, among other things, due process of law.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Avoidable Consequences)

18. As a separate and distinct affirmative defense, Defendants allege that the Complaint is barred, or any recovery should be reduced, pursuant to the avoidable consequences doctrine because Defendants took reasonable steps to prevent and correct improper wage payments, if any. Plaintiff and any putative class members unreasonably failed to use the preventative and corrective opportunities provided to them by Defendants or any of them, and reasonable use of Defendants' procedures would have prevented at least some, if not all, of the harm that Plaintiffs allegedly suffered.

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NINETEENTH AFFIRMATIVE DEFENSE

(No Uniform Practice Causing Harm)

19. As a separate and distinct affirmative defense, Defendants allege that Plaintiff's and any putative class member's alleged injuries were not proximately caused by any unlawful policy, custom, practice and/or procedure promulgated and/or tolerated by Defendants.

TWENTIETH AFFIRMATIVE DEFENSE

(Avoiding Tendered Payments)

20. As a separate and distinct affirmative defense, Defendants allege that the Complaint cannot be maintained against Defendants because Plaintiff and any putative class members, or some of them, secreted or absented themselves to avoid payment of wages, thereby relieving Defendants of liability for penalties under Labor Code sections 201, 202 and 203.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(*Bona Fide* Dispute)

21. As a separate and distinct affirmative defense, Defendants allege that Plaintiff, as well as any putative class member's, claims for penalties, including, but not limited to penalties pursuant to Labor Code sections 201-204, are barred, in whole or in part, because (1) there are *bona fide* disputes as to whether Defendants failed to timely pay all wages due, (2) there are *bona fide* disputes as to whether Defendants failed to present wage statements on a timely basis, and (3) Defendants have not intentionally or willfully failed to pay such compensation, if any is owed.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Good Faith)

22. As a separate and distinct affirmative defense, Defendants allege that they acted with a reasonable and good faith belief that they complied with all obligations, if any, under the California Labor Code, specifically including sections 226, 226.3, and 226.7 thereof, as to Plaintiff, and any putative class members.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Unpaid Wages Not Willful)

23. As a separate and distinct affirmative defense, insofar as it seeks recovery of penalties

1 under Labor Code sections 203 and/or 210, Defendants allege that such claim is barred because
2 even assuming, *arguendo*, that Plaintiff and any putative class members are entitled to additional
3 compensation, and Defendants have not willfully or intentionally failed to pay any such additional
4 compensation.

5 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

6 (Due Process)

7 24. As a separate and distinct affirmative defense, Defendants allege that an award of
8 civil penalties in this case would result in the imposition of excessive fines in violation of the Eighth
9 Amendment to the United States Constitution and Article I, Section 7 of the California Constitution,
10 and violate Defendants' Due Process rights under the Fourteenth Amendment of the United States
11 Constitution. *See Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 433-434
12 (2001) (stating that the Due Process of the Fourteenth Amendment prohibits states from imposing
13 grossly excessive punishments); *City of San Francisco v. Sainez*, 77 Cal. App. 4th 1302, 1321
14 (2000); *Angelucci v. Century Supper Club*, 41 Cal. 4th 160, 180 (2007) (recognizing the
15 constitutional constraints on the accrual of multiple penalties); *People ex rel. Lockyer v. R.J.*
16 *Reynolds Tobacco Co.*, 37 Cal. 4th 707, 728-31 (2005) (triable issues remained whether due process
17 principles or the constitutional prohibition against excessive fines should reduce an accrued fine for
18 ongoing violation of a statute); *Hale v. Morgan*, 22 Cal. 3d 388, 398-99 (1978) (constitutional
19 provisions limited accrual of a \$100 per day statutory penalty).

20 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

21 (Mootness)

22 25. As a separate and distinct affirmative defense, the purported cause of action for
23 alleged violations of California Business and Professions Code section 17200 et seq. is barred to the
24 extent that the Complaint seeks to enjoin Defendants from engaging in "unfair" or otherwise
25 "unlawful" business practices, if any, such claims are now moot because, assuming *arguendo* that
26 Defendants engaged in such business practices, Defendants have since discontinued, modified,
27 and/or corrected their policies and practices and it no longer engages in the alleged conduct.
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TWENTY-SIXTH AFFIRMATIVE DEFENSE

(B&P Code section 17200 Unconstitutional)

26. As a separate and distinct affirmative defense, Defendants allege that California Business and Professions Code sections 17203 and 17204 violate the Due Process Clauses of the United States and California Constitutions: (a) to the extent that the standards of liability under those statutes are unduly vague and subjective, and permit retroactive, random, arbitrary and capricious punishment that serves no legitimate governmental interest; and (b) to the extent they authorize the award of restitution or damages based upon asserted interests or injuries of the general public in violation of the Excessive Fines Clause of the United States and California Constitutions.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(B&P Code section 17200 Standing)

27. As a separate and distinct affirmative defense, Defendants allege that any claims for unfair competition are barred, in whole or in part, because Plaintiff lacks standing to pursue the claims alleged in the Complaint on behalf of himself and any putative class members under California Business and Professions Code sections 17200 and 17204, as he has not suffered any injury in fact or lost money or property as a result of any allegedly unlawful business practice of Defendants.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(B&P Code section 17200 Not Willful)

28. As a separate and distinct affirmative defense, the Complaint, and each and every cause of action alleged therein, cannot be maintained because Defendants did not willfully fail to comply with any provisions of the California Labor Code, any applicable Wage Order or the California Business and Professions Code, instead acting in good faith and with reasonable grounds for believing it did not violate them, Defendants had reasonable grounds for believing that their policies and practices complied with applicable laws and regulations, and that any violation thereof by Defendants was neither willful nor intentional.

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TWENTY-NINTH AFFIRMATIVE DEFENSE

(Arbitration)

29. As a separate and distinct affirmative defense, Defendants are informed and believe that further investigation and discovery will reveal, and on that basis allege that the Court lacks jurisdiction over this matter in whole or or in part because the Complaint and each cause of action set forth therein are subject to binding arbitration and may not proceed on a class basis as Plaintiff and/or members of the putative class are parties to binding arbitration agreements containing class action waivers. .

THIRTIETH AFFIRMATIVE DEFENSE

(Contributory Negligence)

30. As a separate and distinct affirmative defense, Defendants allege that the Complaint and each cause of action therein, or some of them, cannot be maintained against Defendants because Plaintiff and any putative class members failed to exercise reasonable and ordinary care, caution and/or prudence in order to avoid the alleged injuries and/or damages, if any were in fact suffered, and such alleged injuries and/or damages were thus proximately contributed to and/or caused by Plaintiff's and any putative class member's own negligent and/or intentional conduct.

THIRTY-FIRST AFFIRMATIVE DEFENSE

(Failure to Satisfy Requirements for Maintenance of a Class)

31. As a separate and distinct affirmative defense, Defendants allege that Plaintiff has failed to and cannot satisfy the requirements for the maintenance of a class, representative, or collective action, including, and without limitation, ascertainability, predominance, typicality, adequacy of representation (of both the proposed class representatives and proposed class counsel), and superiority, and further alleges that public policy considerations do not favor such a certification.

THIRTY-SCOND AFFIRMATIVE DEFENSE

(Class Certification Would Deny Defendants' Due Process Rights)

32. As a separate and distinct affirmative defense, Defendants allege that certification of a class, as applied to the facts and circumstances of this case, would constitute a denial of Defendants' due process rights, both substantive and procedural, in violation of the Fourteenth

1 Amendment to the United States Constitution and the Due Process and Equal Protection Clauses of
2 the California Constitution.

3 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

4 (Policy of Authorizing and Providing Meal and Rest Periods)

5 33. As a separate and affirmative defense, Defendants allege that the Complaint cannot
6 be maintained against Defendants because Defendants had a policy of authorizing and providing
7 meal and rest periods as required Wage Order(s) of the California Industrial Welfare Commission
8 and/or under applicable California law.

9 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

10 (Meal and Rest Periods Election)

11 34. As a separate and distinct affirmative defense, Defendants allege that Plaintiff and
12 any putative class members have no right to a premium payment under California Labor Code
13 section 226.7 because, to the extent, if any, that person did not take breaks, it was because he/she:
14 (1) failed to take breaks that were provided to him/her in compliance with California law; (2) chose
15 not to take rest breaks that were authorized and permitted; or (3) waived his/her right to meal breaks
16 under California Labor Code section 512(a).

17 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

18 (On-Duty Meal Period)

19 35. As a separate and distinct affirmative defense, Defendants allege that civil penalties
20 pursuant Labor Code section 558 predicated on Labor Code sections 226.7 and 512 are inappropriate
21 because, to the extent, if any, that Plaintiff and any putative class member did not take his/her meal
22 periods, it was because they waived any rights to recovery by expressly or impliedly agreeing to an
23 on-duty meal period.

24 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

25 (Not "Hours Worked")

26 36. As a separate and distinct affirmative defense, Defendants are informed and believe
27 that further investigation and discovery will reveal, and on that basis allege that some or all of
28 certain alleged work hours are not "hours worked" within the meaning of any Wage Order(s) of the

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1 California Industrial Welfare Commission and/or under applicable California law, so that any
2 claimed compensation, including overtime premium, need not be paid for those hours.

3 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

4 (Failure to State a Claim)

5 37. As a separate and distinct affirmative defense, Defendants allege that the Complaint,
6 and each and every cause of action alleged therein, fails, in whole or in part, to state facts sufficient
7 to constitute a cause of action upon which relief may be granted; Plaintiff's allegations consist of
8 recitations of the law but insufficient facts to support his allegations of violations of the law.

9 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

10 (Liquidated Damages)

11 38. As a separate and distinct affirmative defense, Defendants allege that the Complaint,
12 and each and every cause of action alleged therein, fails to state a claim for an award of liquidated
13 damages, costs or attorneys' fees under California Labor Code section 218.5, 226, 1194 1194.2(a),
14 and 2698 et seq., Code of Civil Procedure section 1021.5, California Business and Professions Code
15 section 17200, et seq., or any other basis.

16 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

17 (Failure to Reimburse Business Expenses – Expenses Not Job Related)

18 39. As a separate and distinct affirmative defense, Defendants allege that any claims for
19 civil penalties pursuant to Labor Code section 2802 are barred because such expenses for which
20 Plaintiff and any putative class members seek reimbursement were not incurred in direct
21 consequence of the discharge of their duties and/or were not reasonable and/or unnecessary.

22 **FORTIETH AFFIRMATIVE DEFENSE**

23 (No Unlawful Deductions)

24 40. As a separate and distinct affirmative defense, Defendants allege that any claims for
25 unlawful wage deductions pursuant to Labor Code section 221 are barred because such deductions
26 for which Plaintiff and any putative class members seek reimbursement were (a) required of by
27 federal or state law, such as income taxes or garnishments, (b) deductions expressly authorized in
28 writing by the employee to cover insurance premiums, hospital or medical dues or other deductions

1 not amounting to a rebate or deduction from the wage paid to the employee, or (c) deductions
2 authorized by a collective bargaining or wage agreement, specifically to cover health and welfare or
3 pension payments.

4 **ADDITIONAL AFFIRMATIVE AND OTHER DEFENSES**

5 Defendants presently have insufficient knowledge or information upon which to form
6 a belief as to whether there may be additional, as yet unstated, defenses and reserve the right to
7 assert additional defenses or affirmative defenses in the event discovery indicates such defenses are
8 appropriate.

9 **PRAYER FOR RELIEF**

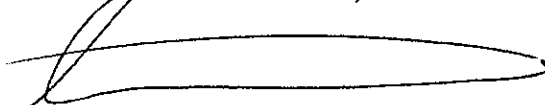
10 WHEREFORE, Defendants pray for relief as follows:

- 11 1. That the Complaint be dismissed in its entirety with prejudice;
- 12 2. That Plaintiff and any putative class members take nothing by way of the
13 Complaint;
- 14 3. That judgment be entered against Plaintiff in favor of Defendants on all of Plaintiff's
15 causes of action;
- 16 4. That Plaintiff be ordered to pay Defendants' costs of suit and attorneys' fees incurred
17 in this action, as provided by law and/or contract; and
- 18 5. That Defendants be awarded such other and further relief as the Court deems just and
19 proper.

20 Dated: April 11, 2018

Respectfully submitted,

LITTLER MENDELSON, P.C.



STEVEN A. GROODE
SEVAG M. SHIRVANIAN
Attorneys for Defendants
MASTEC NETWORK SOLUTIONS, LLC,
MASTEC SERVICES COMPANY, INC.,
MASTEC NETWORK SOLUTIONS, INC.,
AND WESTOWER COMMUNICATIONS,
INC.

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 2049 Century Park East, 5th Floor, Los Angeles, California 90067.3107. On April 11, 2018, I served the within document(s):

DEFENDANTS' ANSWER TO PLAINTIFF JORGE A. ZEPEDA'S UNVERIFIED CLASS ACTION COMPLAINT

- This document was transmitted by using a facsimile machine that complies with California Rules of Court Rule 2003(3), telephone number 310.553.5583. The transmission was reported as complete and without error. A copy of the transmission report, properly issued by the transmitting machine, is attached. The names and facsimile numbers of the person(s) served are as set forth below.
- by placing a true copy of the document(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at Los Angeles, California addressed as set forth below.
- by depositing a true copy of the same enclosed in a sealed envelope, with delivery fees provided for, in an overnight delivery service pick up box or office designated for overnight delivery, and addressed as set forth below.
- I caused to be personally delivered a copy of the document(s) listed above to **NATIONWIDE LEGAL LLC** to be delivered to the address(es) set forth below.
- Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses on the attached service list on the dates and at the times stated thereon. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. The electronic notification address of the person making the service is rjones@littler.com.

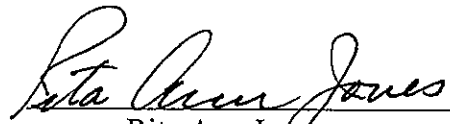
Attorneys for Plaintiff:
 David Yeremian
 Alvin B. Lindsay
 DAVID YEREMIAN & ASSOCIATES, INC.
 535 North Brand Boulevard, Suite 705
 Glendale, California 91203
 Telephone: (818) 230-8380
 Facsimile: (818) 230-0308
 E-mail: david@yeremianlaw.com
alvin@yeremianlaw.com

Attorneys for Plaintiff:
 Walter Haines
 UNITED EMPLOYEES LAW GROUP, INC.
 5500 Bolsa Avenue, Suite 201
 Huntington Beach, California 92649
 Telephone: (310) 652-2242
 E-mail: walterhaines@yahoo.com

I am readily familiar with the firm's practice of collection and processing correspondence for mailing and for shipping via overnight delivery service. Under that practice it

1 would be deposited with the U.S. Postal Service or if an overnight delivery service shipment,
2 deposited in an overnight delivery service pick-up box or office on the same day with postage or fees
thereon fully prepaid in the ordinary course of business.

3 I declare under penalty of perjury under the laws of the State of California that the
4 above is true and correct. Executed on April 11, 2018, at Los Angeles, California.

5 
6 Rita Ann Jones

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [MasTec Hit with Class Action Alleging Towering List of Labor Law Infractions](#)
