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ROSELLO, VICTOR CORTEZ, and ALL PERSONS
7 SIMILARLY SITUATED

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

12 ROGELIO ANGEL ROSELLO, an
13 individual, VICTOR CORTEZ, an individual,
and ALL THOSE PERSONS SIMILARLY
14 SITUATED,

15 Plaintiff,

16 vs.

17 DOMINO'S PIZZA, INC. a Michigan
18 corporation; DOMINO'S PIZZA, LLC, a
Michigan limited liability company; and
19 DOES 1 through 50, inclusive,

20 Defendants.

Case No. BC 356165

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES FOR:**

1. **VIOLEATION OF CALIFORNIA
LABOR CODE §§ 1194, 1198, AND 510
(Overtime);**
2. **VIOLEATION OF CALIFORNIA
LABOR CODE § 512, (Meal Periods)**
3. **VIOLEATION OF THE FAIR LABOR
STANDARDS ACT, 29 U.S.C. § 201
ET SEQ.;**
4. **WILLFUL VIOLEATION OF FAIR
LABOR STANDARDS ACT § 207(a);
AND**
5. **UNFAIR COMPETITION IN
VIOLEATION OF CALIFORNIA
BUSINESS AND PROFESSIONS
CODE § 17200**

DEMAND FOR JURY TRIAL

1 Plaintiffs, ROGELIO ANGEL ROSELLO, VICTOR CORTEZ, and ALL PERSONS
2 SIMILARLY SITUATED, allege as follows:

3 **THE PARTIES**

- 4
- 5 1. Plaintiff, ROGELIO ANGEL ROSELLO, (hereinafter referred to as “ROSELLO”), is an
6 individual residing in the County of Los Angeles, State of California. ROSELLO is and
7 has been employed by defendants for approximately five years as a delivery driver who’s
8 duties include home delivery, making pizza, taking telephone orders, and, among other
9 things, cleaning the store.
- 10 2. Plaintiff, VICTOR CORTEZ, (hereinafter referred to as “CORTEZ”), is an individual
11 residing in the County of Los Angeles, State of California. CORTEZ is and has been
12 employed by defendants for approximately nine years, the first five of which were as a
13 delivery driver while the last four have been as a store manager and/or assistant manager.
- 14 3. Members of the plaintiff class are all either currently employed by defendants or they are
15 prior employees of defendants. Members of the plaintiff class either reside in or engage
16 in business throughout the State of California. ROSELLO and the plaintiff class may
17 hereinafter sometimes be collectively referred as “Plaintiffs.” At all times relevant to this
18 complaint, Plaintiffs were employed by defendants as delivery drivers, pizza chefs,
19 cashiers, order takers, store managers, assistant store managers, and insiders, and they
20 rendered actual service in defendants’ business for wages or pay.
- 21 4. Defendant, DOMINO’S PIZZA, INC., is a Michigan corporation authorized to do
22 business and doing business in the State of California.
- 23 5. Defendant, DOMINO’S PIZZA, LLC, is a Michigan limited liability company authorized
24 to do business and doing business in the State of California.
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1 6. Defendants, DOMINO'S PIZZA, INC. and DOMINO'S PIZZA, LLC shall hereinafter
2 collectively be referred to as "DOMINO'S." Established in 1960, DOMINO'S bills itself
3 as the world leader in pizza delivery and it operates approximately 8,124 stores
4 worldwide with approximately 145,000 employees in 55 countries. At all times relevant
5 to this complaint DOMINO'S was an employer within the definition of the Fair Labor
6 Standards Act and California law in that it exercised control over wages, hours and
7 working conditions of each and every Plaintiff.
8

9 7. Plaintiffs are ignorant of the true names and capacities of the defendants sued herein as
10 DOES 1 through 50, inclusive, and therefore sue these defendants by such fictitious
11 names. Plaintiffs will amend this complaint to allege the true names and capacities of
12 these defendants when they have been ascertained. Plaintiffs are informed and believe,
13 and on that basis allege, that each of these fictitiously named defendants is responsible in
14 some manner for the acts and/or omissions alleged in this complaint, and Plaintiffs'
15 damages were proximately caused by the actions or omissions of these defendants.
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17 8. Plaintiffs are informed and believe and on that basis allege that at all times herein
18 mentioned, DOES 1 through 50, inclusive, were the agents, servants or employees of
19 each of the other defendants and, in doing the acts and/or omissions herein alleged, were
20 acting within the course and scope of such agency and with the knowledge, permission,
21 ratification, and consent of each of the other co-defendants.
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23 CLASS ACTION ALLEGATIONS

24 9. Plaintiffs ROSELLO and CORTEZ bring this action both on behalf of themselves and as
25 a class action on behalf of all persons similarly situated in the United States who were
26 employed by DOMINO'S from July 28, 2002 through the present.
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- 1 10. All members of the class were injured in their business or property by reason of the
2 unlawful conduct of DOMINO'S as set forth in this complaint.
- 3 11. Plaintiffs' claims are typical of the claims of each Class member. They, like all Class
4 members, sustained damages arising from DOMINO'S' violations of California and
5 federal statutory and decisional laws. Plaintiffs' and the members of the Class were
6 similarly or identically harmed by the unlawful conduct engaged in by DOMINO'S.
- 7 12. Plaintiffs ROSELLO and CORTEZ will fairly and adequately represent and protect the
8 interests of the members of the Class and have retained counsel who are both competent
9 and experienced in commercial, employment, wage and hour, and class action litigation.
10 Between the claims of the representative plaintiffs and the members of the Class, there
11 are no material conflicts that would make class certification inappropriate. Counsel for
12 the Class will vigorously assert the claims of all Class members.
- 13 13. In this case, a class action is superior to all other methods for the fair and efficient
14 adjudication of this controversy, since joinder of all Class members is impracticable.
15 Furthermore, as the damages suffered by individual members of the Class may be
16 relatively small, the expense and burden of individual actions makes it impossible for
17 Class members to individually redress the wrongs they have suffered. There will be no
18 difficulty in managing this case as a class action.
- 19 14. Common questions of law and fact exist as to all members of the Class and predominate
20 over any questions affecting solely individual members of the Class. Among the
21 questions of law and fact common to the Class are:
- 22 a. Whether DOMINO'S regularly and intentionally or negligently failed to provide the
23 appropriate meal breaks required by California and federal law;
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- 1 b. Whether DOMINO’S regularly and intentionally or negligently failed to provide
2 proper overtime pay when requiring Plaintiffs to perform duties before or after their
3 regularly scheduled working hours as required by California and federal law
4
5 c. Whether DOMINO’S failure to provide appropriate meal breaks as required by
6 California and federal law constitutes unfair competition as that term is defined
7 pursuant to *Business & Professions Code* § 17200, et seq.;
- 8 d. Whether DOMINO’S regularly and intentionally or negligently failed to compensate
9 Plaintiffs and other Class members for overtime at the rates required by law;
- 10 e. Whether DOMINO’S regularly and intentionally or negligently misclassified
11 employees as exempt under *Labor Code* § 515 because they lacked the requisite level
12 of input in hiring and firing decisions, among others;
- 13
14 f. Whether DOMINO’S should be disgorged of the ill-gotten profits obtained through
15 unfair competition in violation of *Business & Professions Code* § 17200;
- 16 g. Whether Plaintiffs and other members of the Class were injured in their business or
17 property by reason of the defendants’ unlawful conduct;
- 18 h. The appropriate Class-wide measure of damages.

19 **FACTUAL ALLEGATIONS**

- 20
21 15. In or about 2001 ROSELLO began working for DOMINO’S as a driver for its Woodland
22 Hills, California store. Generally, his standard duties included delivering pizza orders in
23 and around the territory assigned to the Woodland Hills store. In addition to those
24 standard duties, ROSELLO was required to perform other functions including working in
25 the stock room, making pizza answering the telephone and taking telephone orders,
26 preparing the food, cleaning the store, and making basic repairs to various items of
27 equipment.
28

- 1 16. In exchange for performing his duties, ROSELLO was paid a regular hourly rate plus tips
2 received while making deliveries
- 3 17. ROSELLO'S hours on Saturday and Sunday began at approximately 9:45 a.m. and lasted
4 for ten hours until approximately 7:45 p.m. ROSELLO'S hours on Monday through
5 Friday began in the morning when he was assigned to open the store and ended at
6 approximately 5:00 p.m. when he was required to close the store. His shifts generally
7 lasted approximately 8 to 10 hours and he was afforded one day off per week.
- 8 18. In or about 1997 CORTEZ began working for DOMINO'S as a delivery driver.
9
10 Generally, his duties included delivering pizza orders, working in the stock room, making
11 pizza, answering the telephone and taking telephone orders, preparing the food, and
12 cleaning the store. Thereafter, in or about 2002 CORTEZ became a manager and/or
13 assistant manager working in the Woodland Hills, West Hills, Semi Valley, and Norwalk
14 stores.
- 15 19. In exchange for performing his duties, CORTEZ was paid a regular hourly rate plus tips
16 he received while making deliveries. Upon ascending to his managerial position,
17 CORTEZ continued earning an hourly rate of pay but he was denied overtime pay.
- 18 20. During their shifts, ROSELLO, CORTEZ, and other members of the class, were never
19 afforded rest breaks of any duration. Moreover, ROSELLO, CORTEZ and other class
20 members were never afforded a full, uninterrupted lunch break of any duration.
21
22 DOMINO'S policy was to provide a 30-minute meal break, without pay. In practice,
23 however, DOMINO'S frequently put ROSELLO, CORTEZ and other Class members in
24 for a lunch break that coincided with deliveries. ROSELLO, CORTEZ and other
25 members of the class were advised of this fact but none got the opportunity to take the
26 break on an uninterrupted basis or otherwise, because of the deliveries. Even when the
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1 employee put in for the meal break, it was frequently interrupted by the manager
2 dispatching the driver to a delivery in which case no additional compensation was
3 received other than the minimum hourly wage and a \$.70 cent stipend per delivery.

4 21. Neither ROSELLO, CORTEZ, nor other Class members were actually permitted the
5 uninterrupted meal break as required by law and they were not compensated for that time.

6 22. Neither ROSELLO, CORTEZ, nor other Class members were fully compensated for
7 hours worked in a single workday in excess of eight hours or for a single workweek in
8 excess of forty hours.
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10 **FIRST CAUSE OF ACTION**

11 (Violation of California *Labor Code* §§ 1194, 1198 and 510 –
12 Failure to Provide Overtime Compensation –
Against All Defendants)

13 23. Plaintiffs reallege and incorporate the allegations contained in paragraphs 1 through 22 as
14 though fully set forth herein.

15 24. DOMINO’S conduct described herein violates the provisions of California *Labor Code* §
16 1198 which provides that it is unlawful to employ persons for longer than the hours set by
17 the California Industrial Welfare Commission (“IWC”).
18

19 25. At all times herein mentioned the IWC Wage Order applicable to Plaintiffs and the Class
20 members employment by DOMINO’S provides that such employees employed for more
21 than 8 hours in a workday or more than 40 hours in a workweek are entitled to payment
22 at the rate of time and one-half for all hours so worked. Additionally, employees who
23 work more than 12 hours in a workday or more than 8 hours on a seventh workday are
24 entitled to overtime compensation at a rate of two times their regular rates of pay.
25

26 Further, effective January 1, 2000, the right to overtime compensation at one and one-half
27 times the regular rate for hours worked in excess of 8 hours in a workday or 40 hours in a
28 workweek or on a seventh workday in a workweek, and to overtime compensation at

1 twice the regular hourly rate for hours worked in excess of 12 hours in a workday or in
2 excess of 8 hours on a seventh workday in a workweek, has been codified in California
3 *Labor Code* § 510. DOMINO’S has failed and continues to fail to pay Plaintiffs and
4 other Class members the uncompensated overtime owed.

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6 26. During their employment by DOMINO’S, Plaintiffs and other Class members
7 consistently worked over 8 hours in a workday, over 40 hours in a workweek, over 6
8 workdays in a workweek, and over 8 hours on a seventh workday in a workweek, for
9 which they were not paid overtime compensation pursuant to California law. Despite the
10 hours worked by Plaintiffs and other Class members, DOMINO’S willfully, in bad faith,
11 and in knowing violation of the California *Labor Code*, failed and refused to pay the
12 lawfully required overtime compensation premiums.

13
14 27. DOMINO’S failure to pay Plaintiffs and other Class members the overtime compensation
15 premiums they were entitled to and as required by the applicable IWC Wage Order and
16 the California *Labor Code* violates the provisions of *Labor Code* § 1198 and is unlawful.

17 28. Therefore, Plaintiffs and other Class members are entitled to recover from DOMINO’S
18 the unpaid overtime compensation plus interest on that amount, reasonable attorneys’
19 fees and costs of suit pursuant to *Labor Code* § 1194.

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21 **SECOND CAUSE OF ACTION**
22 (Violation of California *Labor Code* § 512 –
23 Failure to Provide Mandatory Meal Periods –
24 Against All Defendants)

25 29. Plaintiffs reallege and incorporate the allegations contained in paragraphs 1 through 28 as
26 though fully set forth herein.

27 30. California *Labor Code* § 512(a) provides that “[a]n employer may not employ an
28 employee for a work period of more than five hours per day without providing the
employee with a meal period of not less than 30 minutes.”

- 1 31. Plaintiffs and Class members were not provided full, uninterrupted meal breaks. Instead,
2 they were required to work full six to nine hour shifts prior to being provided with the
3 required meal breaks. Moreover, DOMINO'S often scheduled Plaintiffs' meal breaks
4 such that they coincided with Plaintiffs' delivery schedule. The result was to require
5 Plaintiffs to eat while driving to a delivery location or to skip the meal break altogether.
6
- 7 32. Plaintiffs and Class members were not compensated for the missed meal breaks.
- 8 33. DOMINO'S failure to provide Plaintiffs and Class members with a meal period of not
9 less than 30 minutes violated *Labor Code* § 512(a)..
- 10 34. As a direct and proximate result of DOMINO'S actions and inactions, Plaintiffs and
11 Class members have been damaged and are entitled to compensatory damages in an
12 amount according to proof at the time of trial. Such damages include, but are not limited
13 to, a sum equivalent to their unpaid compensation.
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- 15 35. Plaintiffs and Class members are entitled to recover interest on any and all unpaid
16 compensation due from the day such amounts were due and owing pursuant to *Labor*
17 *Code* §§ 218.6 and 1194. Plaintiffs and Class members are further entitled to recover
18 reasonable attorneys' fees and costs of suit pursuant to *Labor Code* §§ 218.5 and/or 1194.
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20 **THIRD CAUSE OF ACTION**

21 (Violation of The Fair Labor Standards Act –
22 29 U.S.C. § 201 et seq. –
23 Against All Defendants)

- 24 36. Plaintiffs reallege and incorporate the allegations contained in paragraphs 1 through 35 as
25 though fully set forth herein.
- 26 37. Defendants, and each of them, have either recklessly or knowingly and intentionally
27 failed and refused to compensate Plaintiffs and Class members for all of the overtime
28 hours they have worked and they have failed and refused to compensate Plaintiffs at the
rate of one and one-half times their regular rate of pay for all hours worked in excess of

1 eight hours per workday and/or for all hours worked in excess of forty hours per
2 workweek. Plaintiffs and Class members were not compensated for missed uninterrupted
3 meal periods and DOMINO'S enacted procedures that created an environment where it
4 was difficult, if not impossible, for Plaintiffs and Class members to receive overtime for
5 missed and interrupted meal periods. DOMINO'S also required Plaintiffs and Class
6 members to start work before their scheduled shift, continue working after their
7 scheduled shift, and work by making deliveries during meal periods, all without
8 compensation.

9
10 38. Defendants, and each of them, have been apprized of the law regarding the payment of
11 hours covered by the Fair Labor Standards Act ("FLSA") and have said they would pay
12 compensatory time off at the time and one-half rate. Notwithstanding the foregoing,
13 Defendants failed and refused, and continue to fail and refuse, to pay Plaintiffs and Class
14 members for all of their actual hours worked.

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16 39. Plaintiffs are informed and believe and on that basis allege that DOMINO'S similarly
17 failed to pay overtime compensation at the proper rate of one and one-half times the
18 regular rate to all other persons similarly employed by DOMINO'S throughout the State
19 of California.

20
21 40. In doing all of the things alleged herein, Defendants, and each of them, deprived
22 Plaintiffs and Class members of their rights, privileges, and immunities secured to them
23 by federal law which clearly sets forth that Plaintiffs and Class members are entitled to be
24 paid at the rate of one and one-half times their regular rate of pay for all overtime hours
25 worked. DOMINO'S knew, or should have known, that their reckless, willful, and/or
26 intentional failure and refusal to pay Plaintiffs and Class members' overtime violates
27 these rights, privileges and immunities.
28

1 41. As a direct, proximate and legal result of DOMINO'S acts and omissions as described
2 herein, Plaintiffs and Class members have been damaged and are entitled to
3 compensatory and/or liquidated damages in an amount according to proof at the time of
4 trial. Such damages include, but are not limited to, a sum equivalent to their unpaid
5 compensation for the three (3) years preceding the date they opt-in to the present action
6 as required by 29 U.S.C. § 216(b). Plaintiffs and Class members are also entitled to
7 recovery of statutory attorney fees and costs of suit.
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9 **FOURTH CAUSE OF ACTION**
10 (Willful Violation of Fair Labor Standards Act § 207(a) –
11 Against All Defendants)

12 42. Plaintiffs reallege and incorporate the allegations contained in paragraphs 1 through 41 as
13 though fully set forth herein.

14 43. Defendants, and each of them, have either recklessly or knowingly and intentionally
15 failed and refused to compensate Plaintiffs and Class members for overtime
16 compensation earned in a particular work period by the regular payday for the period in
17 which the work ended.

18 44. Defendants, and each of them, have delayed the payment of overtime for a period longer
19 than is reasonably necessary for them to compute and arrange for payments of the
20 amounts due. As set forth above, DOMINO'S knew or should have known that Plaintiffs
21 and other Class members assigned to non-exempt jobs were regularly working through
22 their required rest and meal periods and that they were working in excess of forty hours
23 per workweek without overtime compensation. Notwithstanding such knowledge,
24 DOMINO'S failed to pay Plaintiffs and Class members for overtime hours worked in a
25 timely manner as required under the FLSA.
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- 1 45. Although DOMINO'S has been apprized of the law regarding the payment of hours
2 covered by the FLSA, DOMINO'S routinely failed to compensate Plaintiffs and Class
3 members for overtime in a timely manner.
- 4 46. In doing all the things alleged herein, DOMINO'S deprived Plaintiffs and Class members
5 of their rights, privileges and immunities secured to them by federal law which clearly
6 sets forth that Plaintiffs and Class members are entitled to be paid for overtime hours
7 worked in a workweek by the regular payday for the period in which such workweek
8 ended. DOMINO'S knew or should have known that their reckless and/or willful and
9 intentional failure and refusal to pay such wages in a timely manner for the overtime
10 worked by Plaintiffs and Class members violates these rights, privileges, and immunities.
- 11 47. As a direct, proximate, and legal result of DOMINO'S actions and inactions, Plaintiffs
12 and Class members have been damaged and are entitled to compensatory and liquidated
13 damages in an amount according to proof at the time of trial. Such damages include, but
14 are not limited to, a sum equivalent to and in addition to their overtime compensation
15 which was paid late for the three years preceding the date of their opt-in into the present
16 action as required by 29 U.S.C. § 216(b). Plaintiffs and Class members are also entitled
17 to recovery of statutory attorney fees and costs of suit.

18 **FIFTH CAUSE OF ACTION**

19 (Unfair Competition –

20 Violation of California *Business and Professions Code* § 17200 –

21 Against All Defendants)

- 22 48. Plaintiffs reallege and incorporate the allegations contained in paragraphs 1 through 47 as
23 though fully set forth herein
- 24 49. DOMINO'S has committed acts of unfair competition as defined by *Business &*
25 *Professions Code* § 17200, et seq. by their conduct as alleged above.
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1 50. DOMINO'S, by its above-referenced conduct, has engaged in unlawful business practices
2 with respect to its unfair practice of failing and refusing to compensate its employees for
3 overtime hours worked as well as its refusal to allow its employees to take the
4 uninterrupted meal periods required by federal and state law.

5
6 51. Plaintiffs are informed and believe, and on that basis allege, that the unlawful practices
7 alleged above are continuing in nature and are widespread practices engaged in by
8 DOMINO'S.

9 52. On behalf of the general public, Plaintiffs respectfully requests that an injunction against
10 DOMINO'S issue to enjoin them from continuing to engage in the unlawful conduct
11 alleged herein.

12 53. On behalf of the general public, Plaintiffs respectfully requests that DOMINO'S be
13 required to disgorge the profits it has wrongfully obtained through the use of these
14 practices.
15

16 54. Plaintiffs respectfully request an award of attorneys' fees upon prevailing in this request
17 for injunctive relief.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs prays on behalf of themselves and all other similarly situated
20 persons, for relief and judgment against defendants, and each of them, jointly and severely, as
21 follows:
22

23 **CLASS CERTIFICATION**

- 24 1. That this action be certified as a class action;
25 2. That Plaintiffs be appointed as the representatives of the class; and
26 3. That counsel for Plaintiffs', Castle, Petersen & Krause, LLP be appointed as class
27 counsel.
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1 **AS TO THE FIRST AND SECOND CAUSES OF ACTION**

- 2 1. For general unpaid wages at overtime rates, and such general and special damages as may
3 be appropriate according to proof at the time of trial;
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5 2. For pre-judgment interest on any unpaid overtime compensation due from the day such
6 amounts were due;
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8 3. For reasonable attorneys' fees pursuant to *Labor Code* § 1194;
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10 4. For costs of suit incurred herein; and
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12 5. For such other and further relief as the Court may deem just and proper.

13 **AS TO THE THIRD AND FOURTH CAUSES OF ACTION**

- 14 1. For all actual, consequential, liquidated and incidental losses and damages according to proof
15 at the time of trial;
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17 2. Such other damages as may be allowed in accordance with Federal Rules of Civil Procedure,
18 Rule 54 (c) and 29 U.S.C. § 216(b) according to proof at the time of trial;
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20 3. Liquidated damages, attorneys' fees, and costs of suit pursuant to 29 U.S.C. § 216(b); and
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22 4. Any and all other relief, including equitable relief, as the Court may deem just and proper.

23 **AS TO THE FIFTH CAUSE OF ACTION**

- 24 1. For restitution of unpaid overtime premiums for the past four years;
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26 2. For pre-judgment interest on all funds from the day such amounts were due;
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28 3. For reasonable attorneys' fees pursuant to *Labor Code* § 1194 and/or *Code of Civil
Procedure* § 1021.5;
4. For costs of suit incurred herein; and
5. For such other and further relief as the Court deems just and proper.

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1 DATED: November 2, 2006

CASTLE, PETERSEN & KRAUSE

2
3 BY: _____

GREGORY G. PETERSEN
DANIEL J. PADOVA
Attorneys for Plaintiff,
ROGELIO ANGEL ROSELLO,
VICTOR CORTEZ, and
ALL PERSONS SIMILARLY
SITUATED

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1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs and all persons similarly situated hereby demand a trial by jury.

3
4 DATED: November 2, 2006 CASTLE, PETERSEN & KRAUSE

5
6 BY: _____
7 GREGORY G. PETERSEN
8 DANIEL J. PADOVA
9 Attorneys for Plaintiff,
10 ROGELIO ANGEL ROSELLO,
11 VICTOR CORTEZ, and
12 ALL PERSONS SIMILARLY
13 SITUATED
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