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11 Attorneys for Plaintiff Taylor Kalin, the Classes
 12 and Aggrieved Employees

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 15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA

17
 18 Taylor Kalin, individually and on behalf of
 all the classes and aggrieved employees,

19 Plaintiff,

20 vs.

21 Apple, Inc.,

22 Defendant.

Case No.

**Class, Collective and Representative
 Action Complaint:**

1. Failure To Pay Wages
2. Fair Labor Standards Act
Violations
3. Waiting Time Penalties
4. Wage Statement Violations
5. Unfair Competition
6. Civil Penalties under the Private
Attorneys General Act (Labor
Code § 2698 *et seq.*)

Demand for Jury Trial

Class, Collective and Representative Action Complaint

1 Plaintiff Taylor Kalin (“Plaintiff”) brings this Class, Collective and Representative
2 Action Complaint against Defendant Apple, Inc. and on information and belief alleges as
3 follows:
4

5 **JURISDICTION**

- 6 1. Plaintiff, on behalf of himself and all others similarly situated and aggrieved
7 employees, brings this class, collective, and representative action for recovery of
8 unpaid wages and penalties under California Labor Code Sections identified
9 below, Industrial Welfare Commission Wage Order No. 4 (“IWC Wage Order”),
10 California Business and Professions Code Section 17200, *et seq.*, and the Fair
11 Labor Standards Act (“FLSA”) and for injunctive relief, declaratory relief, and
12 restitution.
- 13 2. This Court has jurisdiction over Defendant’s violations of the FLSA pursuant to 29
14 U.S.C. Section 216 and 28 U.S.C. Section 1331 because the action asserts rights
15 arising under federal law.
- 16 3. This Court has jurisdiction over Defendant’s violations of the state law provisions
17 alleged herein because these claims derive from the same common nucleus of
18 operative facts as the FLSA claim.
- 19 4. Defendant is subject to the personal jurisdiction of this Court pursuant to 28 U.S.C.
20 Section 1391(c) because it operated retail stores where it employed Plaintiff
21 within the Northern District of California.

22 **VENUE**

- 23 5. Venue is proper in the Northern District of California under 28 U.S.C. Section
24 1391 because Apple is headquartered in this judicial district and a substantial part
25 of the events giving rise to the claims asserted herein occurred in this judicial
26 district.
- 27 6. This matter is properly assigned to the San Francisco Division of this District
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1 pursuant to Civil Local Rule 3-2(c) because Defendant maintains numerous retail
2 stores within the counties comprising the San Francisco Division and employs
3 numerous hourly non-exempt employees at those locations, who, on information
4 and belief, were subjected to Defendant’s illegal policies and practices alleged in
5 this action. As stated in Defendant’s written rules, the mandatory personal package
6 and bag search policy “appl[ies] to all employees of Apple Inc. and participating
7 subsidiaries in the United States.” See Apple Employee Policies. Therefore, a
8 substantial part of the events or omissions that give rise to the claims occurred
9 within this Division within the meaning of Civil Local Rule 3-2(c).
10

11 PARTIES

12 7. Plaintiff is a California resident residing in San Francisco County. During the four
13 years immediately preceding the filing of the Complaint in this action and within
14 the statute of limitations periods applicable to each cause of action pled herein,
15 Plaintiff was employed by Defendant as an hourly non-exempt employee. Plaintiff
16 has lost money and/or property and has been deprived of the rights guaranteed to
17 him by the FLSA, California Labor Code provisions, California Business and
18 Professions Code Section 17200 *et seq.* (Unfair Competition), and California
19 Industrial Welfare Commission Wage Order 4-2001 (hereafter “Wage Order 4-
20 2001”).

21 8. Defendant Apple, Inc. is a California corporation that is headquartered in
22 California. During the four years preceding the filing of the Complaint and
23 continuing to the present, Defendant operated retail stores in California and
24 elsewhere within the United States and the world.

25 GENERAL FACTUAL ALLEGATIONS

26
27 9. For the purposes of this matter, Class Members include, but are not limited to,
28 Kalin and all non-exempt employees who were employed by Apple as non-exempt

1 Specialists, Lead Specialists and Expert Specialists (“Specialists”) and non-exempt
2 Managers, Senior Managers, Developmental Managers and Business Managers
3 (“Managers,”). Specialists and Managers are collectively referred to as Hourly
4 Employees.

5 10. A Specialist’s duties include customer support relating to retail sales of Apple
6 products and accessories. Specialists are also required to have knowledge of and be
7 able to perform light diagnostic checks on Apple hardware and software. A
8 Manager’s duties include overseeing the Specialists and tending to customer-
9 related needs. Specialists and Managers are non-exempt hourly employees who are
10 entitled to overtime compensation.

11 11. Plaintiff was employed by Defendant as a full-time non-exempt Specialist at stores
12 in Spokane and San Francisco from approximately September 2010 to November
13 2012.

14 12. Hourly Employees are required to clock in when they arrive at work, clock out
15 when they go on a meal break, clock in when they return from a meal break and
16 clock out when they leave for the day. The time-keeping system and the
17 procedures for using it are the same at each Apple retail store. In this regard, Apple
18 uses time tracking software developed by Kronos, Inc. The software requires
19 Hourly Employees to enter a username and password to clock in and clock out
20 each day.

21 13. Kalin typically was required to arrive 15 minutes or more before his shift was
22 scheduled to begin because there was typically a line of employees waiting to
23 clock in on time and he never knew how long the line would be. On Launch days,
24 it would take up to 30 minutes or more to clock in because of the lines. Similarly,
25 when Hourly Employees returned from their meal periods, they were required to
26 wait in line to clock in.

27 14. Apple did not compensate Kalin or the other Hourly Employees for the time they
28

1 were required to spend waiting in line to clock in.

- 2 15. Kalin and other Hourly Employees were required to use company devices at work.
3 Kalin and other Hourly Employees were required by Apple to check the devices
4 out at the beginning of their shift and check the devices back in at beginning of the
5 meal period if they left the premises and at the end of the shift, after the employees
6 had clocked out. Because many Hourly Employees were required to do this, the
7 check-in time could take anywhere from five to 45 minutes or more.
- 8 16. After they had clocked out at the end of their shifts or at the beginning of the meal
9 breaks, after they checked in the devices, Kalin and other Hourly Employees were
10 required to undergo personal package and bag searches before they were permitted
11 to leave the store.
- 12 17. Apple has adopted a uniform nationwide policy that provides “[a]ll employees,
13 including managers and Market Support employees, are subject to personal
14 package and bag searches.” *See* Apple Employee Conduct Manual. If an Hourly
15 Employee refuses to submit to this security screening or deviates from the
16 corporate policy in any way, it “could result in disciplinary action, up to and
17 including termination.” *See* Apple Employee Policies. Hourly Employees were and
18 are required to wait in line and be searched for potential or possible store items or
19 merchandise taken without permission and/or other contraband. Thus, at the
20 discretion and control of the Defendant and solely for its benefit, Plaintiff and
21 other Hourly Employees were and are required to wait in line for security checks
22 for at least 10-15 minutes each day before leaving for their meal breaks and at the
23 end of their shift after they had already clocked out. This daily 10-15 minute
24 uncompensated waiting time during security checks was done in order to undergo
25 searches for possible contraband and/or pilferage of inventory. Because such
26 screening is designed to prevent and deter employee theft, a concern that stems
27 from the nature of the employee’s work (specifically, their access to high value
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- 1 electronics and merchandise), the security checks and consequential wait time are
2 necessary to the employee's primary work and done solely for Apple's benefit.
- 3 18. A large number of Specialists and Managers leave for lunch at the same time
4 and/or end their shifts at the same time. This creates lengthy lines and backups for
5 managers, members of the security team and others authorized to conduct security
6 screenings who are often times engaged in other job related duties. As a result,
7 Hourly Employees are forced to wait in these lines and undergo lengthy off-the-
8 clock security screenings before they are allowed to leave the premises. This
9 work, done primarily for the employer's benefit, is time which Hourly Employees
10 should be, but are not compensated for, both straight hours and overtime hours
11 worked in excess of 40 in a week or, in California, in excess of eight in a day.
- 12 19. Apple's corporate employee conduct policy mandates and requires that Specialists
13 "[f]ind a Manager or member of the security team (where applicable) to search
14 [their] bags and packages before [they] left the store." *See* Apple Employee
15 Conduct Manual. Additionally, the policy forbids Specialists and Managers from
16 leaving the store "prior to having [their] personal package or bag searched by a
17 member of management or the security team (where applicable)." *Id.*
- 18 20. These policies are uniform throughout every Apple retail store and "apply to all
19 employees of Apple Inc. and participating subsidiaries in the United States." *See*
20 Apple Employee Policies. Thus, these uncompensated wait times and security
21 screenings unlawfully deprive Hourly Employees in Apple's retail stores
22 throughout the country of the proper compensation due them.
- 23 21. Waiting in lines to clock in, waiting in lines to check equipment in, and waiting in
24 line and undergoing security checks were significant, integral, indispensable, not
25 de minimis tasks or requests and were done solely for Apple's benefit to allow
26 Apple to track its employees' hours and to prevent employee pilferage.
- 27 22. Apple did not compensate Kalin or the Hourly Employees for this time.
28

1 23. Defendant knowingly and intentionally, as a matter of uniform policy and practice,
2 failed to furnish Plaintiff and members of the Wage Statement Class with accurate
3 and complete wage statements regarding their regular rates of pay, rates of
4 overtime pay, total gross wages earned, and total net wages earned in violation of
5 Labor Code Section 226.

6 24. Defendant's failure to furnish Plaintiff and members of the Wage Statement Class
7 with complete and accurate itemized wage statements resulted in actual injury
8 because such failures led to, among other things, the non-payment of all their
9 regular and overtime wages and deprived them of the information necessary to
10 identify the discrepancies in Defendant's reported data.

11 **CLASS AND COLLECTIVE ACTION ALLEGATIONS**

12
13 25. **Class Definition:** Plaintiff brings this action on behalf of himself and the
14 following Classes pursuant to Rule 23 of the Rules of Federal Procedure and the
15 FLSA.

16 26. **The California Unpaid Wages Class.** This consists of:

17 All Hourly Employees who worked in an Apple, Inc. retail store in the
18 United States, who are or were employed within the three years preceding
19 the filing of this action by the Defendant to the present and who were: (a)
20 not compensated for off-the-clock time spent waiting to clock in, waiting to
21 check in equipment, or waiting in security screening lines and undergoing
22 personal package and bag searches before being allowed to leave the
23 premises; and/or (b) were not fully compensated for this time worked over
24 eight per day and/or over 40 hours per week at overtime rates.

25 Excluded from the California Unpaid Wages Class are Defendant, its legal
26 representatives, officers, directors, assigns, and successors, and any
27 individual who has or had a controlling interest in Apple. Also excluded are
28 persons and entities who submit timely and otherwise proper requests for
exclusion from the FLSA Class.

27 27. **The FLSA Class.** This consists of:

1 All Hourly Employees who worked in an Apple, Inc. retail store in the
2 United States, who are or were employed within the three years preceding
3 the filing of this action by the Defendant to the present and who were: (a)
4 not compensated for off-the-clock time spent waiting to clock in, waiting to
5 check in equipment, or waiting in security screening lines and undergoing
6 personal package and bag searches before being allowed to leave the
7 premises; and/or (b) were not fully compensated for this time worked over
8 40 hours per week at overtime rates.

9 Excluded from the FLSA Class are Defendant, its legal representatives,
10 officers, directors, assigns, and successors, and any individual who has or
11 had a controlling interest in Apple. Also excluded are persons and entities
12 who submit timely and otherwise proper requests for exclusion from the
13 FLSA Class.

14 28. **The Wage Statement Class.** This consists of members of the California Unpaid
15 Wages Class for whom Defendant failed to pay all compensation owing them.

16 29. **The Waiting Time Penalty Class.** This consists of Defendant's formerly
17 employed members of the California Unpaid Wages Class.

18 30. **Numerosity/Ascertainability.** The members of the Classes are so numerous that
19 joinder of all members would be unfeasible and impracticable. The membership of
20 the classes and subclasses are unknown to Plaintiff at this time, but Plaintiff
21 estimates that the Classes number greater than 1,000 individuals as to each Class.
22 The identity of such membership is readily ascertainable via inspection of
23 Defendant's employment records.

24 31. **Common Questions of Law and Fact Predominate/Well Defined Community
25 of Interest.** There are common questions of law and fact as to Plaintiff and all
26 other similarly situated employees, which predominate over questions affecting
27 only individual members including, without limitation to:

28 A. Whether Defendant violated the applicable Labor Code provisions including,
but not limited to Sections 510 and 1194 by failing to pay for all regular
and/or overtime hours worked;

- 1 B. Whether Defendant failed to keep legally compliant records for the members
2 of the Wage Statement Class pursuant to Labor Code 226;
3
4 C. Whether Defendant failed to maintain accurate records for members of the
5 Record Keeping Class;
6
7 D. Whether Defendant's policies and/or practices for the amount of payment of
8 final wages to members of the Waiting Time Class at the time of the
9 termination of their employment were unlawful;

10 32. **Predominance of Common Questions.** Common questions of law and fact
11 predominate over questions that affect only individual members of the Classes.
12 The common questions set forth above are numerous and substantial and stem
13 from Defendant's policies and/or practices applicable to each individual class
14 member, such as their failure to pay for time waiting to clock-in, time waiting to
15 check-in equipment, and/or time waiting in security lines. These common
16 questions predominate over individual questions concerning each individual class
17 member's showing as to his or her eligibility for recovery or as to the amount of
18 his or her damages.

19 33. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because
20 Plaintiff was employed by Defendant as an hourly, non-exempt employee in
21 California and the United States during the statutes of limitation applicable to each
22 claim alleged in the Complaint in this action. Plaintiff, like the members of the
23 Classes, was deprived of all regular and overtime wages, was furnished with
24 inaccurate and incomplete wage statements, and was not paid all wages owed at
25 the time of Plaintiff's termination.

26 34. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps
27 to represent fairly and adequately the interests of the members of the Classes.
28 Moreover, Plaintiff's attorneys are ready, willing and able to fully and adequately
represent the members of the Classes and Plaintiff. Plaintiff's attorneys have

1 prosecuted numerous wage-and-hour class actions in state and federal courts in the
2 past and are committed to vigorously prosecuting this action on behalf of the
3 members of the classes.

4 35. **Superiority:** The California Labor Code is broadly remedial in nature and serves
5 an important public interest in establishing minimum working conditions and
6 standards in California. Similarly, the FLSA is remedial in nature and serves an
7 important public interest in establishing minimum working conditions and
8 standards through the United States. These laws and labor standards protect the
9 working employee from exploitation by employers who have the responsibility to
10 follow the laws and who may seek to take advantage of superior economic and
11 bargaining power in setting onerous terms and conditions of employment. The
12 nature of this action and the laws available to Plaintiff and members of the Classes
13 make the class action format a particularly efficient and appropriate procedure to
14 redress the violations alleged herein. If each employee were required to file an
15 individual lawsuit, Defendant would necessarily gain an unconscionable advantage
16 since they would be able to exploit and overwhelm the limited resources of each
17 individual plaintiff with their vastly superior financial and legal resources.
18 Moreover, requiring each member of the Classes to pursue an individual remedy
19 would also discourage the assertion of lawful claims by employees who would be
20 disinclined to file an action against their former and/or current employer for real
21 and justifiable fear of retaliation and permanent damages to their careers at
22 subsequent employment. Further, the prosecution of separate actions by the
23 individual class members, even if possible, would create a substantial risk of
24 inconsistent or varying verdicts or adjudications with respect to the individual class
25 members against Defendant herein; and which would establish potentially
26 incompatible standards of conduct for Defendant; and/ or legal determinations with
27 respect to individual class members which would, as a practical matter, be
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1 dispositive of the interest of the other class members not parties to adjudications or
2 which would substantially impair or impede the ability of the class members to
3 protect their interests. Further, the claims of the individual members of the class
4 are not sufficiently large to warrant vigorous individual prosecution considering all
5 of the concomitant costs and expenses attending thereto.

- 6 36. As such, the Rule 23 Classes identified above are maintainable as a Class under
7 Rule 23(b)(1) and/or Rule 23(b)(3).
8

9 **First Claim for Relief - Failure To Pay Wages**
10 **(On Behalf of Plaintiff and the California Unpaid Wages Class)**

- 11 37. Plaintiff re-alleges paragraphs 1 through 36.

12 38. This cause of action is brought on behalf of the California Unpaid Wages Class
13 pursuant to Labor Code Sections 204, 510, 1194, and 1198, which provide that
14 hourly non-exempt employees are entitled to all overtime wages and compensation
15 for hours worked and provide a private right of action for the failure to pay all
16 compensation for regular and overtime work performed.

17 39. Plaintiff and members of the California Unpaid Wages Class worked hours for
18 which they were not compensated, including overtime hours.

19 40. Defendant's policy and practice of failing to pay Plaintiff and members of the
20 California Unpaid Wages Class for time spent waiting to clock in, time spent
21 waiting to check in equipment, and/or time spent waiting in security lines violates
22 California labor laws, and Plaintiff and members of the California Unpaid Wages
23 Class are entitled to the unpaid wages owed, including interest thereon, statutory
24 penalties, civil penalties, attorney's fees, and costs of suit.

25 **Second Claim for Relief - FLSA Violations**
26 **(On Behalf of Plaintiff and the FLSA Class)**

- 27 41. Plaintiff re-alleges paragraphs 1 through 40.
28

- 1 42. This claim is brought pursuant to 29 U.S.C. Sections 206 and 207.
2
3 43. Plaintiff and members of the FLSA Class worked hours for which they were not
4 compensated and/or worked in excess of 40 hours per workweek.
5 44. Defendant's policy and practice of failing to pay Plaintiff and members of the
6 FLSA Class for time spent waiting to clock in, time spent waiting to check in
7 equipment, and/or time spent waiting in security lines violates the FLSA's wage
8 and overtime requirements including, but not limited to 29 U.S.C. Sections 206
9 and 207.
10 45. Defendant's policies and practices constitute a willful violation of the FLSA,
11 within the meaning of 29 U.S.C. Section 255.
12 46. Plaintiffs and members of the FLSA Class are entitled to unpaid wages and/or
13 overtime owing, including liquidated damages, attorney's fees, costs, and interest.

14 **Third Claim for Relief - Waiting Time Penalties**
15 **(On Behalf of Plaintiff and the Waiting Time Penalty Class)**

- 16 47. Plaintiff re-alleges paragraphs 1 through 46.
17 48. Labor Code Section 201 provides in relevant part:
18 If an employer discharges an employee, the wages earned and unpaid at the
19 time of discharge are due and payable immediately...
20 49. Defendant violated Section 201 as to members of the Waiting Time Penalty Class
21 who were discharged by willfully failing to pay the wages earned and unpaid upon
22 the termination of their employment, including unpaid wages for regular hours
23 worked, unpaid overtime, unpaid meal premiums and/or unpaid rest period
24 premiums in the manner required by Section 201.
25 50. Labor Code Section 202 provides:
26 If an employee not having a written contract for a definite period quits his
27 or her employment, his or her wages shall become due and payable not later
28 than 72 hours thereafter, unless the employee has given 72 hours previous

1 notice of his or her intention to quit, in which case the employee is entitled
2 to his or her wages at the time of quitting. .

- 3 51. Defendant violated Section 202 as to Plaintiff and members of the Waiting Time
4 Penalty Class who quit by willfully failing to pay the wages earned and unpaid
5 upon the termination of their employment, including unpaid wages for regular
6 hours worked, unpaid overtime, unpaid meal premiums and/or unpaid rest period
7 premiums in the manner required by Section 202.
- 8 52. Plaintiff and members of the Waiting Time Penalty Class are entitled to
9 compensation pursuant to Labor Code Section 203, plus reasonable attorney's fees
10 and costs of suit.

11 **Fourth Claim for Relief - Wage Statement Violations**
12 **(On Behalf of Plaintiff and the Wage Statement Class)**

- 13 53. Plaintiff re-alleges paragraphs 1 through 52.
- 14 54. Defendant knowingly and intentionally, as a matter of uniform policy and practice,
15 failed to furnish Plaintiff and members of the Wage Statement Class with accurate
16 and complete wage statements regarding their hours worked, total gross wages
17 earned, and total net wages earned in violation of Labor Code Section 226.
- 18 55. Defendant's failure to furnish Plaintiff and members of the Wage Statement Class
19 with complete and accurate itemized wage statements resulted in actual injury
20 because such failures led to, among other things, the non-payment of all their
21 regular and overtime wages and deprived them of the information necessary to
22 identify the discrepancies in Defendant's reported data.
- 23 56. Plaintiff and members of the Wage Statement Class are entitled to damages and/or
24 penalties pursuant to Labor Code Section 226, including statutory penalties, civil
25 penalties, reasonable attorney's fees, and costs of suit.
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1 **Fifth Claim For Relief - Unfair Competition**
2 **(On Behalf of Plaintiff and All Classes)**

3 57. Plaintiff re-alleges paragraphs 1 through 56.

4 58. In doing the acts alleged above, Defendant have engaged and continue to engage in
5 unfair and/or unlawful business practices in California in violation of California
6 Business and Professions Code Section 17200 *et seq.*

7 59. Defendant's unfair and/or unlawful business practices have deprived Plaintiff and
8 members of the classes compensation and/or moneys to which they are legally
9 entitled

10 60. Plaintiff and members of the Classes are entitled to restitution of all moneys
11 withheld, acquired and/or converted by the Defendant pursuant to Business and
12 Professions Code Sections 17203 and 17208.

13 61. The acts complained of herein occurred within the last four years immediately
14 preceding the filing of the Complaint in this action.

15 62. Plaintiff was compelled to retain the services of counsel to file this court action to
16 protect Plaintiff's interests and those of the Classes and to enforce important rights
17 affecting the public interest. Plaintiff is entitled to recover attorney's fees and costs
18 pursuant to Code of Civil Procedure Section 1021.5.

19 **Sixth Claim for Relief - Penalties Pursuant to the Private Attorney General Act**
20

21 63. Plaintiff re-alleges paragraphs 1 through 62.

22 64. Pursuant to Labor Code Sections 2698, *et seq.*, the Private Attorney General Act of
23 2004 ("PAGA"), Plaintiff is entitled to recover civil penalties on behalf of himself
24 and other persons who are or were employed by the alleged violator and against
25 whom one or more of the alleged violations was committed.

26 65. One or more of the alleged violations alleged herein was committed against
27 Plaintiff, and Plaintiff is therefore an "aggrieved employee" under Labor Code
28 Section 2699(c), which provides in relevant part:

1 (c) For purposes of this part, “aggrieved employee” means any person
2 who was employed by the alleged violator and against whom one or more of
3 the alleged violations was committed.

4 66. As alleged above, Defendant have committed Labor Code violations against
5 Plaintiff, members of the Classes, and other aggrieved employees.

6 67. Plaintiff’s attorney gave written notice by certified mail to the Labor and
7 Workforce Development Agency (“LWDA”) and to the Defendant identifying
8 violations alleged herein. Once thirty-three days have passed from the date of the
9 mailing of the notice, Plaintiff will seek leave to amend this Complaint to allege
10 exhaustion of the administrative requirements for bringing a claim under PAGA.

11 68. Labor Code Section 2699(g) provides that any “employee who prevails in any
12 action shall be entitled to an award of reasonable attorney’s fees and costs.”
13 Plaintiff has incurred attorney’s fees and costs in pursuing this claim.

14 **PRAYER**

15 WHEREFORE, Plaintiff prays for judgment for himself and for all others on
16 whose behalf this suit is brought against Defendant as follows:

- 17 1. For an order certifying the proposed Classes;
- 18 2. For an order appointing Plaintiff as representative of the Classes;
- 19 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
- 20 4. For compensatory damages according to proof;
- 21 5. For liquidated damages according to proof;
- 22 6. For statutory damages according to proof;
- 23 7. For civil penalties according to proof;
- 24 8. For restitution according to proof;
- 25 9. For injunctive relief according to proof;
- 26 10. For costs and attorney’s fees according to proof;
- 27 11. For prejudgment interest according to proof;
- 28

1 12. For such other and further relief the Court may deem just and proper.

2 Dated: October 8, 2013

THE DION-KINDEM LAW FIRM

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6 BY: _____
7 PETER R. DION-KINDEM, P.C.
8 PETER R. DION-KINDEM
9 Attorneys for Plaintiff Taylor Kalin
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