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15 Attorneys for Defendants Shell Oil Company, Shell Oil Products
16 Company LLC, and Equilon Enterprises LLC dba Shell Oil Products US

17 **UNITED STATES DISTRICT COURT**

18 **NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION**

19 DAVID GARDNER, STEVE MATTERN, BRIAN
20 CERRE, and WILLIAM SULLIVAN, individually
and on behalf of all similarly situated current and
former employees,

21 Plaintiffs,

22 v.

23 SHELL OIL COMPANY, SHELL OIL
24 PRODUCTS COMPANY LLC, and EQUILON
ENTERPRISES LLC dba SHELL OIL
25 PRODUCTS US and DOES 1 through 20,
inclusive,

26 Defendants.
27

Case No. C 09-05876 CW (DMR)

Assigned to the Honorable Claudia Wilken

**STIPULATION AND PROPOSED ORDER
FOR PLAINTIFFS TO FILE THIRD
AMENDED COMPLAINT FOR
SETTLEMENT PURPOSES**

1 Pursuant to Local Rule 7-12 and Federal Rule of Civil Procedure 15, Plaintiffs David Gardner,
2 Steve Mattern, Brian Cerri, and William Sullivan, and Defendant Equilon Enterprises LLC dba Shell Oil
3 Products US (“SOPUS”) (collectively, “the Parties”), by and through their undersigned counsel, hereby
4 stipulate as follows:

5 WHEREAS, on November 17, 2009, Plaintiffs brought this action on behalf of current and former
6 shift employees who have worked at the Martinez refinery owned by SOPUS;

7 WHEREAS, the Parties have reached a settlement in principle, which, in addition to current and
8 former shift employees at the Martinez refinery, includes current and former employees of four additional
9 work sites owned (or formerly owned) by SOPUS or owned (or operated) by two affiliated entities;

10 WHEREAS, the Parties would like to amend the operative complaint in this action to expand the
11 definition of the putative class, as set forth above, and include the following parties and work sites:

- 12 1. Two additional defendants – CRI U.S. LP and Shell Pipeline Company LP;
- 13 2. Three additional plaintiffs – Mark Landre, Lawrence Long, and Cheri Davidson; and
- 14 3. Four additional work sites – the Los Angeles refinery, Carson Terminal facility, and two
15 Criterion Catalyst plants.

16 WHEREAS, the Parties agree to dismiss Shell Oil Company and Shell Oil Products Company
17 LLC without prejudice and the dismissed and dismissing parties will bear their own attorneys’ fees and
18 costs with regard to their claims against each other only; and

19 WHEREAS, the Parties agree that it is in the interest of judicial economy and the preservation of
20 the Parties’ resources to add these parties and putative class members to this action for the purposes of
21 settlement.

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1 NOW, THEREFORE, the Parties agree and stipulate to request that the Court sign and enter the
2 attached Order permitting and directing the following actions:

- 3 1. Plaintiffs shall be permitted to file a Third Amended Complaint in substantially the same
4 form as attached hereto as Exhibit 1, within one week of an Order approving this
5 stipulation;
- 6 2. Plaintiffs shall dismiss Shell Oil Company and Shell Oil Products Company LLC from the
7 action without prejudice and the dismissed and dismissing parties will bear their own
8 attorneys' fees and costs with regard to their claims against each other only; and
- 9 3. Defendants shall respond to the third amended complaint within two weeks of the filing of
10 the third amended complaint.

11 IT IS SO STIPULATED.

12 Dated: December __, 2011

GILBERT & SACKMAN, A Law Corporation

13 By: /s/ Linda S. Fang
14 Jay Smith
Linda S. Fang

15 Attorneys for Plaintiffs David Gardner, Steve Mattern, Brian
16 Cerri, and William Sullivan

17 Dated: December __, 2011

EPSTEIN BECKER & GREEN, P.C.

18 By: /s/ Angel Gomez
19 Angel Gomez

20 Attorneys for Defendants Shell Oil Company, Shell Oil
21 Products Company LLC, and Equilon Enterprises LLC dba
22 Shell Oil Products US

23 **[PROPOSED] ORDER**

24 PURSUANT TO STIPULATION ON PAGES 1-2, ABOVE, IT IS SO ORDERED.

25 Dated: 12/22/2011

26 
27 Claudia Wilken
28 United States District Judge

Exhibit 1

1 JAY SMITH (CA Bar No. 166105)
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Fax: (205) 803-4142

10 Attorneys for Plaintiffs David Gardner, Steve Mattern, Brian Cerri,
11 William Sullivan, Mark Landre, Lawrence Long, and Cheri Davidson

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12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION**

14 DAVID GARDNER, STEVE MATTERN, BRIAN
CERRI, WILLIAM SULLIVAN, MARK
15 LANDRE, LAWRENCE LONG, and CHERI
16 DAVIDSON individually and on behalf of all
similarly situated current and former employees,

Case No. C 09-05876 CW

CLASS ACTION

THIRD AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF, RESTITUTION,
ATTORNEYS’ FEES, AND COSTS OF SUIT

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17 Plaintiffs,

18 v.

19 EQUILON ENTERPRISES LLC dba SHELL OIL
PRODUCTS US, SHELL PIPELINE COMPANY
20 LP, and CRI U.S. LP,

1. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512);
2. Failure to Pay All Wages Due at the Time of Termination (Lab. Code §§ 201, 202, 203);
3. Violation of the California Unfair Competition Law (Bus. & Prof. Code § 17200 *et seq.*)

Deleted: SHELL OIL COMPANY, SHELL OIL PRODUCTS COMPANY LLC, and

Deleted: and DOES 1 through 10, inclusive,

21 Defendants.

22 **INTRODUCTION**

23
24
25 1. Plaintiffs David Gardner, Steve Mattern, Brian Cerri, William Sullivan, Mark Landre,
26 Lawrence Long, and Cheri Davidson (“Named Plaintiffs”) bring this action against Defendants Equilon
27 Enterprises LLC dba Shell Oil Products US (“SOPUS”), Shell Pipeline Company LP (“Shell Pipeline”),
28 and CRI U.S. LP (“Criterion”), alleging unfair business practices and violations of the California Labor

Deleted: Shell Oil Company, Shell Oil Products Company LLC, and

Deleted: collectively, “Shell”, “Defendants”, or “Shell Defendants” and other as of yet unnamed Defendants

1 Code. Named Plaintiffs bring this action individually and as a proposed class action on behalf of
2 similarly situated current and former employees who have been employed by one or more of the
3 Defendants at the ~~oil refinery and distribution facilities located in or around Martinez, California~~
4 ~~(“Martinez refinery”); oil refinery and distribution facilities located in or around Wilmington, California~~
5 ~~(“Los Angeles refinery”), shipping and storage terminal facilities located in or around Carson, California~~
6 ~~(“Carson Terminal facility”), and two catalyst production plants located in or around Martinez and~~
7 ~~Pittsburg, California (collectively, “Criterion Catalyst plants”).~~

Deleted: Martinez, California

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8 2. Named Plaintiffs seek class-wide relief under California law for Defendants’ breach of
9 their legal obligations to provide meal periods and to pay all wages due at the time of termination,
10 pursuant to California Labor Code §§ 201, 202, 203, 204, 226.3, 226.7, and 512, and California
11 Industrial Welfare Commission Wage Order No. 1-2001 (“Wage Order 1-2001”), to employees at the
12 Martinez ~~refinery, Los Angeles refinery, Carson Terminal facility, and Criterion Catalyst plants.~~

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13 3. Named Plaintiffs, suing on behalf of themselves, the putative class members, and the
14 general public, also seek restitution and injunctive relief under California law for Defendants’ unlawful,
15 unfair, and fraudulent business practices which have deprived their employees of their rights under
16 California labor laws and regulations, in order to reduce its payroll costs and increase profits, in
17 violation of applicable laws.

18 **THE PARTIES**

19 4. Named Plaintiff David Gardner is, and at all relevant times was, a competent adult
20 residing in the State of California.

21 5. Named Plaintiff Steve Mattern is, and at all relevant times was, a competent adult
22 residing in the State of California.

23 6. Named Plaintiff Brian Cerri is, and at all relevant times was, a competent adult residing
24 in ~~the State of~~ California.

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25 7. Named Plaintiff William Sullivan is, and at all relevant times was, a competent adult
26 residing in ~~the State of California.~~

Deleted: Contra Costa County, California

27 8. Named Plaintiff Mark Landre is, and at all relevant times was, a competent adult residing
28 in ~~the State of California.~~

1 9. Named Plaintiff Lawrence Long is, and at all relevant times was, a competent adult
2 residing in the State of California.

3 10. Named Plaintiff Cheri Davidson is, and at all relevant times was, a competent adult
4 residing in the State of California.

5 11. Named Plaintiffs are and have been employed by one or more of the Defendants within
6 the State of California and are “employees” as defined in Wage Order 1-2001. Named Plaintiffs
7 currently are or were employed by Defendants in California.

8 12. Named Plaintiffs bring this action individually and on behalf of the following class of
9 individuals (the “putative class members”) (collectively, “Plaintiffs”):

10 All current and former shift employees of Defendants Equilon Enterprises LLC
11 dba Shell Oil Products US, Shell Pipeline Company LP, or CRI U.S. LP who
12 worked at least one 8- or 12-hour shift since April 25, 2004, at the Martinez
13 refinery or the Criterion Catalyst plants in Martinez or Pittsburg, California, or
14 who worked at least one 8- or 12-hour shift between April 25, 2004 and May 10,
15 2007 at the Los Angeles refinery, or who worked at least one 12-hour shift since
16 January 1, 2007, at the Carson Terminal facility.

17 13. Defendant SOPUS is a corporation doing business in California and is a “person” as
18 defined by California Labor Code § 18 and by California Business and Professions Code § 17201.
19 Defendant SOPUS is an “employer” as that term is used in the California Labor Code and Wage Order
20 1-2001.

21 14. Defendant Shell Pipeline is a corporation doing business in California and is a “person”
22 as defined by California Labor Code § 18 and by California Business and Professions Code § 17201.
23 Defendant Shell Pipeline is an “employer” as that term is used in the California Labor Code and Wage
24 Order 1-2001.

25 15. Defendant Criterion is a corporation doing business in California and is a “person” as
26 defined by California Labor Code § 18 and by California Business and Professions Code § 17201.
27 Defendant Criterion is an “employer” as that term is used in the California Labor Code and Wage Order
28 1-2001.

16. Defendant SOPUS has owned and/or operated the Martinez refinery, which includes an
oil refinery and distribution facilities located in or around Martinez, California, from at least April 25,
2004 to the present. Defendant SOPUS owned and/or operated the Los Angeles refinery, which includes

Deleted: as shift employees at

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Deleted: Named Plaintiffs currently reside in the State of California.

Deleted: Shell Oil Company, Shell Oil Products Company LLC, and/or

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<#>Defendant Shell Oil Company is a corporation doing business in California and is a “person” as defined by California Labor Code § 18 and by California Business and Professions Code § 17201. Defendant Shell Oil Company is an “employer” as that term is used in the California Labor Code and Wage Order 1-2001.¶
<#>Defendant Shell Oil Products Company LLC is a corporation doing business in California and is a “person” as defined by California Labor Code § 18 and by California Business and Professions Code § 17201. Defendant Shell Oil Products LLC is an “employer” as that term is used in the California Labor Code and Wage Order 1-2001.¶

Deleted: Equilon Enterprises LLC

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1 an oil refinery and distribution facilities located in or around Wilmington, California, from at least April
2 25, 2004 until May 10, 2007. Defendant Shell Pipeline has owned and/or operated the Carson Terminal
3 facility located in or around Carson, California, from at least January 1, 2007 to the present. Defendant
4 Criterion has owned and/or operated the Criterion Catalyst plants, located in Martinez and Pittsburg,
5 California, from at least April 25, 2004 to the present.

6 17. Named Plaintiffs are informed and believe and thereupon allege that, at all relevant times,
7 Defendants and each of them, directly or indirectly, or through an agent or any other person, employed
8 and/or exercised control over the wages, hours, and/or working conditions of Named Plaintiffs and
9 putative class members, and that Defendants and each of them were the joint employers of Named
10 Plaintiffs and putative class members and/or alter egos of each other.

11 18. Venue is proper based on the location of work performed by Defendants in Contra Costa
12 County, the location of the Martinez refinery and the Criterion Catalyst plants in Contra Costa County,
13 the performance of various contracts pertaining to working conditions at the Martinez refinery, Criterion
14 Catalyst plants, and Carson Terminal facility by Defendants in Contra Costa County, as well as the
15 location of the commission of the acts alleged herein in Contra Costa County. The relief requested is
16 within the jurisdiction of this Court.

17 **FACTUAL ALLEGATIONS**

18 19. A class action complaint was filed against Defendant SOPUS and other defendants in Los
19 Angeles County Superior Court on April 25, 2008, alleging the same unfair business practices and
20 violations of the California Labor Code on behalf of a larger class, which included the narrower class
21 proposed in this complaint. Class certification was denied in that case on August 21, 2009. Because the
22 filing of the class action complaint equitably tolled the statute of limitations for members of the putative
23 class in that case, the statutory period for this action runs from April 25, 2004, four years prior to the
24 filing of the previous class action complaint in Los Angeles County Superior Court, to the present.

25 20. Between April 25, 2004 and the present, Defendants SOPUS and Criterion have
26 employed Named Plaintiffs and putative class members as “shift employees” (as opposed to “day
27 employees”) at the Martinez facility, Carson Terminal facility, and Criterion Catalyst plants. Defendant
28 ///

Deleted: Plaintiffs are ignorant of the true names and capacities of Defendants sued herein as Does 1 through 10, inclusive, and therefore sue these Defendants by such fictitious names. Plaintiffs will amend this Complaint to allege Doe Defendants' true names and capacities when ascertained.¶

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1 SOPUS also employed putative class members as “shift employees” (as opposed to “day employees”) at
2 the Los Angeles refinery between April 25, 2004 and May 10, 2007.

3 21. Throughout the relevant statutory period, Defendants uniformly required Named
4 Plaintiffs and putative class members to remain on duty throughout their shifts. Plaintiffs and putative
5 class members are not, among other things, allowed to leave the work site during their shifts, and they
6 are also required to remain in their work areas unless given specific permission to leave. Additionally,
7 Named Plaintiffs and putative class members are required to perform work duties, monitor the operation
8 of their units, and remain in communication with supervisors and other employees throughout their
9 shifts.

Deleted: refinery

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10 22. As a result, Defendants routinely fail to provide Named Plaintiffs and putative class
11 members with uninterrupted, off-duty 30-minute meal periods for every work period in excess of five
12 hours, as required by law.

13 23. Defendants do not have a policy or system for providing relief to Named Plaintiffs or
14 putative class members so as to allow them to take uninterrupted 30-minute meal periods during which
15 they are relieved of all duties.

16 24. Defendants do not pay Named Plaintiffs or putative class members an extra hour of
17 wages for each work day during which they are not provided a meal period.

18 25. Defendants routinely fail to maintain complete and accurate payroll records for Named
19 Plaintiffs and putative class members showing, *inter alia*, the gross and net wages earned or whether
20 they are provided with or actually take meal periods.

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21 26. Defendants also routinely fail to timely pay all accrued wages and other compensation
22 due to Plaintiff Sullivan and putative class members who have been terminated, resigned, or otherwise
23 separated from employment with Defendants.

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Deleted: and routinely fail to pay all accrued wages and other compensation due within 72 hours to putative class members who have resigned from their employment with Defendants

24 CLASS ALLEGATIONS

25 27. Named Plaintiffs seek, on their own behalf and on behalf of putative class members,
26 unpaid wages owed as a result of Defendants’ failure to provide meal periods as required by law, plus all
27 other benefits and relief provided by California’s labor laws and regulations based on sums withheld
28 from them by Defendants, plus additional penalties as provided by statute. Named Plaintiffs also seek

1 injunctive relief in the form of an order prohibiting Defendants from requiring their employees to work
2 shifts in excess of five hours without providing an uninterrupted 30-minute meal period. Named
3 Plaintiffs also seek restitution and disgorgement of all sums wrongfully obtained by Defendants through
4 ~~their~~ unfair business practices in violation of California Business and Professions Code sections 17200
5 ~~et seq.~~, to prevent Defendants from benefitting from ~~their~~ violations of law and/or acts of unfair
6 competition. Such sums recovered under the Unfair Competition Law are equitable in nature and are not
7 to be considered damages. This action is appropriate for class treatment pursuant to Federal Rule of
8 Civil Procedure 23.

9 28. The proposed class which Named Plaintiffs seek to represent is composed of all current
10 and former shift employees of Defendants Equilon Enterprises LLC dba Shell Oil Products US, Shell
11 Pipeline Company LP, or CRI U.S. LP who worked at least one 8- or 12-hour shift between April 25,
12 2004 and September 30, 2011, at the Martinez refinery or the Criterion Catalyst plants in Martinez or
13 Pittsburg, California, or who worked at least one 8- or 12-hour shift between April 25, 2004 and May
14 10, 2007 at the Los Angeles refinery, or who worked at least one 12-hour shift between January 1, 2007
15 and September 30, 2011 at the Carson Terminal facility. Named Plaintiffs also seek to represent the
16 following subclass:

17 All former shift employees of Defendants Equilon Enterprises LLC dba Shell Oil
18 Products US, Shell Pipeline Company LP, or CRI U.S. LP, who worked at least
19 one 8- or 12-hour shift since April 25, 2004, at the Martinez refinery or the
20 Criterion Catalyst plants in Martinez or Pittsburg, California, or who worked at
21 least one 8- or 12-hour shift between April 25, 2004 and May 10, 2007, at the Los
22 Angeles refinery, or who worked at least one 12-hour shift since January 1, 2007,
23 at the Carson Terminal facility and who, at any time between April 25, 2005, and
24 the present, were terminated, resigned, or otherwise separated from employment
25 with one or more of the Defendants and were not timely paid all wages due and
26 owing, pursuant to California Labor Code section 203. This subclass does not
27 include any employee at the Los Angeles refinery who continued employment at
28 the refinery after its acquisition by Tesoro in May 2007.

29. The proposed class is estimated to include between 400 and 600 members. This proposed
class is so numerous that joinder of all such persons is impracticable and the disposition of their claims
as a class will benefit the parties and the Court.

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Deleted: Shell Oil Company, Shell Oil Products Company LLC, and/or

Deleted: who worked 8-hour, 10-hour, 12-hour, or longer shifts at the oil refinery located in Martinez, California between April 25, 2004 and the time class certification is granted.¶ Plaintiffs

Deleted: es of the above-described class

Deleted: a. All current and former shift employees of Defendants Shell Oil Company, Shell Oil Products Company LLC, and/or Equilon Enterprises LLC dba Shell Oil Products US who were not provided uninterrupted 30-minute meal periods in accordance with California Labor Code sections 226.7 and 512 and Industrial Welfare Commission Wage Order I-2001 section 11, between April 25, 2004 and the present.¶ b. .

Deleted: Shell Oil Company, Shell Oil Products Company LLC, and/or

Deleted: or Criterion Catalysts & Technologies L.P.

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1 30. There is a well-defined commonality of interest in the questions of fact and law involving
2 and affecting the putative class members to be represented by Named Plaintiffs, in that all of these
3 employees have been harmed by Defendants' failure to provide meal periods as required by law.

4 31. Common questions of fact and law involved in this action include the following:

- 5 a. Whether Defendants failed to provide Named Plaintiffs and putative class
6 members with meal periods in accordance with applicable California law because
7 they failed to relieve shift employees of all work duties;
- 8 b. Whether Defendants failed to keep complete and accurate records of whether
9 meal periods were provided to Named Plaintiffs and putative class members in
10 accordance with applicable California law;
- 11 c. Whether Defendants failed to pay all wages due Named Plaintiffs and putative
12 class members at the time of termination in accordance with applicable California
13 law;
- 14 d. Whether Defendants maintain or have maintained common policies that failed to
15 properly compensate Named Plaintiffs and putative class members in accordance
16 with applicable California law;
- 17 e. Whether Defendants maintain or have maintained policies that adequately provide
18 for meal periods in accordance with the requirements of applicable California
19 law;
- 20 f. What compensatory damages, injunctive relief, and other equitable relief Named
21 Plaintiffs and putative class members are entitled to receive from Defendants; and
- 22 g. Whether Defendants' policies and practices constitute unlawful or unfair business
23 practices under California's Unfair Competition Law.

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24 32. The claims alleged by Named Plaintiffs herein encompass the challenged practices and
25 common courses of conduct of Defendants and are typical of those claims which could be alleged by
26 any member of the proposed class. Named Plaintiffs' claims arise out of the alleged courses of conduct
27 by Defendants and are based on the same legal theories as the claims of the putative class members. The
28 legal issues as to which California laws are violated by such conduct apply equally to Named Plaintiffs

1 and putative class members. Further, the relief sought by Named Plaintiffs is typical of the relief which
2 would be sought by each member of the proposed class if they were to file separate actions.

3 33. Named Plaintiffs are proper representatives of the proposed class because they will fairly
4 and adequately represent and protect the interests of all putative class members and because there are no
5 known conflicts of interest between Named Plaintiffs and any putative class members. Other current and
6 former employees of Defendants are available to serve as class representatives if the Named Plaintiffs
7 are found to be inadequate.

8 34. The prosecution of separate actions by individual members of the proposed class would
9 create a risk of inconsistent and/or varying adjudications with respect to the individual members of the
10 class, establishing incompatible standards of conduct for Defendants, and resulting in the impairment of
11 putative class members' rights and the disposition of their interests through actions to which they are not
12 parties. This action is manageable as a class action because, compared with other methods such as
13 intervention or the consolidation of individual actions, a class action is fairer and more efficient.

14 35. Common issues predominate with regard to the claims of Named Plaintiffs and putative
15 class members in that all of their claims arise out of Defendants' failure to provide meal periods as
16 required by California law. A class action is superior to other available methods for the fair and efficient
17 adjudication of this controversy because the putative class members have little or no interest in
18 individually controlling the prosecution of separate actions and individualized litigation would increase
19 the delay and expense to all parties and the court system. Furthermore, it is desirable to concentrate the
20 litigation of the claims in this Court because the practices and procedures complained of occurred within
21 this Court's jurisdiction.

22 36. Finally, Named Plaintiffs have retained attorneys who are competent and experienced in
23 class action litigation and they intend to prosecute this action vigorously. Therefore, the interests of
24 putative class members will be fairly and adequately protected by Named Plaintiffs and their counsel.

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FIRST CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Lab. Code §§ 226.7, 512, Wage Order 1-2001)

(By All Named Plaintiffs Against All Defendants)

37. Named Plaintiffs reallege and incorporate by reference paragraphs 1 through 36, above, as though fully set forth herein.

38. Labor Code section 512 and Wage Order 1-2001 require employers to provide employees with a 30-minute meal period for every work period in excess of five hours. If an employee is not relieved of all duty during the required meal periods, the employer must pay the employee for work performed during those meal periods, plus an additional penalty of one hour's wage for each day in which the required meal periods were not provided. Lab. Code § 226.7; Wage Order 1-2001 § 11(C).

39. Named Plaintiffs and putative class members worked 12-hour shifts while employed by Defendants and, therefore, they were entitled to at least two 30-minute meal periods per shift, during which they must have been relieved of all duty. Wage Order 1-2001 §§ 2(G), 11(C). During the statutory period, Defendants have had a policy and/or practice of refusing and/or failing to provide their employees with required meal periods.

40. Named Plaintiffs and putative class members have not been provided all meal periods as required by applicable law and seek to recover their unpaid wages for Defendants' violations of the meal period requirements of Labor Code section 226.7 and Wage Order 1-2001. As a result of Defendants' unlawful practices, Named Plaintiffs and putative class members have lost money and property as alleged above, in that they were required to work shifts of 12 hours without receiving their required meal periods. Further, Named Plaintiffs and putative class members were not compensated for having been denied such meal periods. The extra hour of pay mandated by Labor Code section 226.7 and Wage Order 1-2001 for missed meal periods is in the nature of wages and is for the purpose of compensating the employee for being required to work through his or her meal period. The additional wages to which Named Plaintiffs and putative class members are entitled pursuant to this provision will be discernable from Defendants' records and will be proven at the time of trial.

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1 41. Named Plaintiffs are entitled to an award of attorneys' fees and costs of suit incurred in
2 bringing this action pursuant to Code of Civil Procedure section 1021.5.

3 WHEREFORE, Named Plaintiffs pray for judgment as set forth herein below.

Deleted: Plaintiffs

4 **SECOND CAUSE OF ACTION**

5 FAILURE TO PAY ALL WAGES DUE AT THE TIME OF DISCHARGE OR RESIGNATION

6 (Lab. Code §§ 201-203)

7 (By Named Plaintiff William Sullivan and All Similarly Situated Former Employees

8 Against All Defendants)

9 42. Named Plaintiffs reallege and incorporate by reference paragraphs 1 through 41, above,
10 as though fully set forth herein.

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11 43. Labor Code sections 201 and 202 require an employer to pay its employees all wages due
12 within the time specified by law. Labor Code section 203 provides that if an employer willfully fails to
13 pay such wages when due, the employer must continue to pay the employees' daily wages until the back
14 wages are paid in full or an action is commenced, up to a maximum of 30 days' wages.

15 44. Putative class members whose employment with Defendants has ceased are entitled to all
16 of their unpaid wages, including their premium wages for missed meal periods. To date, they have not
17 received such compensation and more than 30 days have passed since putative class members left
18 Defendants' employ. As a consequence of Defendants' willful failure to timely pay all wages due to
19 such putative class members, they are entitled to 30 days' wages pursuant to Labor Code section 203.

Deleted: employees

20 45. Named Plaintiffs are entitled to an award of attorneys' fees and costs of suit incurred in
21 bringing this action pursuant to Code of Civil Procedure section 1021.5.

22 WHEREFORE, Named Plaintiffs pray for judgment as set forth herein below.

Deleted: Plaintiffs

23 **THIRD CAUSE OF ACTION**

24 UNFAIR BUSINESS PRACTICE AND UNFAIR COMPETITION

25 (Bus. & Prof. Code § 17200 *et seq.*)

26 (By All Named Plaintiffs Against All Defendants)

27 46. Named Plaintiffs reallege and incorporate by reference paragraphs 1 through 45, above,
28 as though fully set forth herein.

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1 47. The California Unfair Competition Law, Business and Professions Code section 17200 *et*
2 *seq.* (“UCL”), defines unfair competition to include any unlawful, unfair, or fraudulent business act or
3 practice. The UCL “borrows violations” from other statutes and authorizes any person who has suffered
4 injury in fact and who has lost money or property as a result of such unfair business practices to bring an
5 action for relief under the statute. The UCL also provides that a court may enjoin acts of unfair
6 competition, issue declaratory and other equitable relief, and order restitution of money or property
7 acquired by means of such unfair competition.

8 48. Beginning on an exact date unknown to Named Plaintiffs, but since at least April 25,
9 2004 to the present, Defendants have committed acts of unfair competition proscribed by Business and
10 Professions Code section 17200 *et seq.*, including the acts and practices alleged herein. Defendants have
11 engaged in unlawful and unfair business practices including, but not limited to, violations of:

- 12 a. Labor Code § 204 (payment of wages);
- 13 b. Labor Code §§ 226.7, 512 (meal periods); and
- 14 c. California Industrial Welfare Commission Order No. 1-2001 (meal periods).

15 49. Defendants’ violations of these laws, as well as violations of Labor Code sections 201-
16 203, for which only injunctive relief – and not restitution – may be sought, serve as unlawful predicate
17 acts that resulted in economic harm and injury in fact to Named Plaintiffs and putative class members
18 for purposes of the UCL and the remedies provided therein. As a direct and proximate result of the
19 aforementioned unfair business practices, Defendants have received and continue to hold ill-gotten gains
20 belonging to Named Plaintiffs and putative class members and Defendants have profited in that amount
21 from their unlawful practices.

22 50. Business and Professions Code section 17203 provides that a court may restore to any
23 person in interest any money or property which may have been acquired by means of such unfair
24 competition and order disgorgement of all profits gained by operation of the unfair business practices.
25 Named Plaintiffs and putative class members are entitled to restitution pursuant to Business and
26 Professions Code sections 17203 and 17208 for all wages and other monies, excluding penalties
27 provided under the Labor Code, unlawfully withheld from them from April 25, 2004 to the present.

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1 Named Plaintiffs will, upon leave of the Court, amend this complaint to state such amounts when they
2 are ascertained.

3 51. Named Plaintiffs' success in this action will enforce important rights affecting the public
4 interest and, in that regard, they sue individually and on behalf of other similarly situated employees of
5 Defendants. Named Plaintiffs seek and are entitled to unpaid wages, injunctive relief, and any other
6 relief to which they are entitled under the UCL.

7 52. Defendants' violations of the UCL are ongoing and will continue until and unless this
8 Court enters an injunction barring such violations. Named Plaintiffs therefore seek damages and
9 injunctive relief pursuant to Business and Professions Code section 17203.

10 53. Named Plaintiffs are entitled to an award of attorneys' fees and costs of suit incurred in
11 bringing this action pursuant to Code of Civil Procedure section 1021.5.

12 WHEREFORE, Named Plaintiffs pray for judgment as set forth herein below.

13 **PRAYER FOR RELIEF**

14 Named Plaintiffs pray for relief as follows:

15 1. For an order certifying this action as a class action;

16 2. For an award of all unpaid wages due to Named Plaintiffs and putative class members
17 during the statutory period as defined by the Court at the time of certification;

18 3. For an award of one hour of pay at each employee's regular rate of pay for each work day
19 during which they were not provided with an uninterrupted, off-duty 30-minute meal period for every
20 work period in excess of five hours during the statutory period as defined by the Court at the time of
21 certification;

22 4. For an award of waiting-time penalties to Defendants' former employees pursuant to
23 Labor Code section 203;

24 5. For pre-judgment interest to the extent permitted by law;

25 6. For an award of attorneys' fees and costs incurred in the filing and prosecution of this
26 action, as provided by Code of Civil Procedure section 1021.5, and other applicable legal authorities;

27 7. For declaratory and injunctive relief against Defendants' unlawful business practices;

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1 8. For an order to pay restitution to Named Plaintiffs and putative class members as a result
2 of Defendants' unlawful activities, pursuant to Business and Professions Code sections 17200-05; and

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3 9. For such other and further relief as the Court may deem just and proper.

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5 Dated: _____, 2011

Gilbert & Sackman, A Law Corporation

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7 By: _____
8 Linda S. Fang
9 Attorneys for Named Plaintiffs David Gardner,
Steve Mattern, Brian Cerri, William Sullivan, Mark
Landre, Lawrence Long and Cheri Davidson

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