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Counsel Of Record On Following Page

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ANDREW KING, CLIFFORD SHAW  
AND DEIDRA CULPEPPER on  
behalf of themselves and others  
similarly situated,

Plaintiffs,

v.

S & B ENGINEERS AND  
CONSTRUCTORS LTD., a Texas  
Corporation doing business in  
California, and DOES 1 through 50,  
inclusive,

Defendants.

Case No. C09-05986PJH

Hon. Phyllis J. Hamilton, Judge

**STIPULATION TO AMEND  
COMPLAINT; ORDER THEREON**

Action Filed: November 19, 2009

1 ELLYN MOSCOWITZ, Bar No. 129287  
2 (emoscowitz@moscowitzlaw.com)  
3 LAW OFFICES OF ELLYN MOSCOWITZ, P.C.  
4 20 N. Raymond, Suite 240  
5 Pasadena, CA 91103  
6 Telephone: 626.568.0200  
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8 Attorneys for Plaintiffs

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10 (rhill@littler.com)  
11 LITTLER MENDELSON  
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17 DEMERY RYAN, Bar No. 217176  
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20 A Professional Corporation  
21 2049 Century Park East, 5th Floor  
22 Los Angeles, CA 90067  
23 Telephone: 310.553.0308  
24 Facsimile: 310.553.5583

25 Attorneys for Defendant  
26  
27  
28

1 Pursuant to Federal Rule of Civil Procedure 15(a) (Amended and  
2 Supplemental Pleadings) and Local Rule 7-12 (Stipulations), the parties to the  
3 above-entitled action, by and through their respective counsel, hereby stipulate as  
4 follows, subject to the Court's approval:

5 WHEREAS, Plaintiffs filed its Complaint in this matter on November 19,  
6 2009;

7 WHEREAS, Plaintiffs and Defendants have reached a conditional settlement  
8 agreement which includes a payment to the California Labor & Workforce  
9 Development Agency ("LWDA") for penalties under the California Private  
10 Attorney General Act ("PAGA", Cal. Labor Code Section 2699 *et. seq.*);

11 WHEREAS, Plaintiffs agreed to exhaust all administrative remedies with the  
12 LWDA, pursuant to Cal. Labor Code Section 2699.3(a), and to amend the  
13 Complaint to include a claim under PAGA;

14 WHEREAS, Plaintiffs have exhausted all administrative remedies with the  
15 LWDA by 1) sending written notice via certified mail to the LWDA, pursuant to  
16 Labor Code § 2699.3(a)(1), on March 22, 2010 (attached hereto as Exhibit A), and  
17 2) the LWDA notified Plaintiffs that it does not intend to assume jurisdiction over  
18 the applicable penalty claims, pursuant to Labor Code § 2699.3(a)(2)(A), on April  
19 19, 2010 (attached hereto as Exhibit B);

20 WHEREAS, Plaintiffs wish to file an amended complaint in the form of the  
21 First Amended Class Action Complaint (the "First Amended Complaint"), attached  
22 hereto as Exhibit C;

23 NOW THEREFORE, pursuant to the foregoing, the parties hereby agree and  
24 stipulate as follows:

25 Subject to the Court's approval of this Stipulation, plaintiffs may file the  
26 First Amended Complaint attached hereto as Exhibit C.

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**SO STIPULATED:**

**Plaintiffs' Counsel and Class Counsel**

Dated: April 26, 2010

LAW OFFICES OF ELLYN  
MOSCOWITZ, P.C.

By: [Signature]  
ELLYN MOSCOWITZ  
Attorney for Plaintiffs

**Defendant' Counsel**

Dated: April 26, 2010

LITTLER MENDELSON, P.C.

By: [Signature]  
DEMERY RYAN  
Attorneys for Defendant

**PURSUANT TO STIPULATION, IT IS SO ORDERED:**

May 3  
Dated: ~~April~~ \_\_\_\_\_, 2010

By: [Signature]  
THE HONORABLE JUDGE PHYLLIS J. HAMILTON  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

# **EXHIBIT A**

LAW OFFICES OF ELLYN MOSCOWITZ, P.C.

Principal, All Offices

Ellyn Moscowitz

Oakland

Matthew Kleckner\*  
M. Cristina Molteni  
Ken Lau  
Yuri Gottesman

20 N. Raymond Ave., Suite 240  
Pasadena, California 91103  
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Pasadena

Adam Luetto  
Erika Gurrola

Writer's email:

[emoscowitz@moscowitzlaw.com](mailto:emoscowitz@moscowitzlaw.com)

\*Also Admitted in Ohio

March 22, 2010

**Via Certified Mail and Email**

Victoria Bradshaw  
Director, Labor Work Force Development Agency  
801 K Street  
Sacramento, CA. 95814

**Re: Labor Code Private Attorney General Act Notice**

**On Behalf of Aggrieved Employees:**

**Deidra Culpepper, Andrew King and Clifford Shaw, on  
behalf of themselves and others similarly situated**

**Against:**

**S & B Engineers and Constructors, Ltd.**

Dear Ms. Bradshaw:

Please consider this a request under Labor Code § 2699.3 that the Labor and Workforce Development Agency investigate the violations described below or, alternatively, notify us of its intent not to investigate them, so that we may pursue a claim for civil penalties under the Labor Code Private Attorney General Act against **S & B Engineers and Constructors, Ltd.** Our office represents the above-named aggrieved employees. They filed a Class Action Unfair Competition Act Lawsuit on November 19, 2009, (King, et al. v. S & B Engineers and Constructors, Ltd., Case No. C09-05986) alleging violations of the Labor Code and Industrial Welfare Commission ("IWC") Wage Order 16-2001 and wish to seek penalties in the suit on behalf of the aggrieved employees.

The employees' allegations include:

- Failure to pay wages for all hours worked in violation of Labor Code § 510 and IWC Wage Order 16-2001;

Victoria Bradshaw

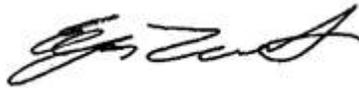
March 22, 2010

Page 2

- Failure to pay minimum wages in violation of Labor Code §§ 1182.11 & 1194 et seq.;
- Failure to pay daily overtime in violation of Labor Code § 510 and IWC Wage Order 16-2001;
- Failure to provide rest periods in violation of Labor Code § 226.7 and IWC Wage Order 16-2001;
- Failure to provide meal periods in violation of Labor Code §§ 226.7 & 512 and IWC Wage Order 16-2001;
- Waiting time penalties under Labor Code §§ 202 & 203;
- Failure to provide complete and accurate wage statements in violation of Labor Code § 226.

Please let us know within the required time period whether the State will pursue these penalties or whether we are free to pursue our civil suit against this employer and seek those penalties.

Sincerely,



Ellyn Moscovitz

cc:

**Via Certified Mail**

Richard Hill

LITTLER MENDELSON, P.C.

650 California Street

20<sup>th</sup> Floor

San Francisco, CA 94108-2693

# **EXHIBIT B**



# C A L I F O R N I A Labor & Workforce Development Agency

**Governor**  
Arnold  
Schwarzenegger

April 19, 2010

**CERTIFIED MAIL**

**Secretary**  
Victoria I. Bradshaw

Law Offices of Ellyn Moscovitz  
20 N. Raymond Avenue, Suite 240  
Pasadena, CA 91103

Agricultural  
Labor  
Relations  
Board

RE: Employer: S&B Engineers & Constructors, Ltd. c/o Littler Mendelson  
RE: Employee(s): Deidra Culpepper, Andrew King and Clifford Shaw  
RE: LWDA No: 6104

California  
Unemployment  
Insurance  
Appeals  
Board

This is to inform you that the Labor and Workforce Development Agency (LWDA) received your notice of alleged Labor Code violations pursuant to Labor Code Section 2699, postmarked March 22, 2010, and after review, does not intend to investigate the allegations.

California  
Workforce  
Investment  
Board

As a reminder to you, the provisions of Labor Code Section 2699(i) provides that "...civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the LWDA for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code." Labor Code Section 2699(l) specifies "[T]he superior court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part."

Department of  
Industrial  
Relations

Consequently, you must advise us of the results of the litigation, and forward a copy of the court judgment or the court-approved settlement agreement. Please be certain to reference the above LWDA assigned Case Number in any future correspondence.

Economic  
Strategy  
Panel

Sincerely,

Employment  
Development  
Department

Doug Hoffner  
Undersecretary

Employment  
Training  
Panel

Cc: S&B Engineers & Constructors, Ltd. c/o Littler Mendelson  
650 California Street, 20th Floor  
San Francisco, CA 94108

# **EXHIBIT C**

1 Ellyn Moscowitz, Esq. (SBN 129287)  
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5 Fax (626) 568-0210

6 Attorneys for Plaintiffs  
ANDREW KING, CLIFFORD SHAW, and DEIDRA CULPEPPER  
7

8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10

11 ANDREW KING, CLIFFORD SHAW, and )  
12 DEIDRA CULPEPPER, individually and on )  
behalf of all others similarly situated, )

13 )  
14 Plaintiffs, )

15 vs. )

16 S & B ENGINEERS AND )  
17 CONSTRUCTORS LTD., a Texas )  
corporation doing business in California, and )  
18 DOES 1 through 50, inclusive, )

19 Defendants. )  
20 )  
21 )  
22 )  
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Case No.: C09-05986PJH

**FIRST AMENDED CLASS ACTION  
COMPLAINT**

- (1) **UNFAIR BUSINESS PRACTICES**  
(Business and Professions Code §§ 17200  
*et seq.*)  
(2) **FAILURE TO PAY MINIMUM WAGE**  
(Labor Code §§1182.11, 1194, 1197 and  
Wage Order 16-2001)  
(3) **FAILURE TO PAY OVERTIME AND  
DOUBLETIME** (Labor Code §§ 510, 511  
and Wage Order 16-2001)  
(4) **FAILURE TO PROVIDE MEAL AND  
REST PERIODS** (Labor Code §§ 226.7,  
512 and Wage Order 16-2001)  
(5) **FAILURE TO FURNISH ACCURATE  
WAGE STATEMENTS** (Labor Code §§  
226, 226.3)  
(6) **WAITING TIME PENALTIES** (Labor  
Code §§ 201-203)  
(7) **PAGA PENALTIES** (Labor Code § 2698  
*et seq.*)

**DEMAND FOR JURY TRIAL**

1 Individual and representative Plaintiffs ANDREW KING, CLIFFORD SHAW and DEIDRA  
2 CULPEPPER (“Plaintiffs”), on behalf of themselves and all others similarly situated, complain against  
3 Defendants S & B ENGINEERS AND CONSTRUCTORS, LTD., a Texas corporation doing business  
4 in California (hereinafter “S & B”), and DOES 1 through 50 (hereinafter collectively as “Defendants”)  
5 as follows:

6 **I. INTRODUCTION**

7 Plaintiffs bring this action on behalf of a proposed state-wide class of employees who worked  
8 in California to challenge S & B’s:

- 9 (a) failure to pay daily overtime to employees who worked more than 8 hours in a day as  
10 mandated by California Labor Code § 510 and Industrial Welfare Commission Wage  
11 Order 16-2001 (hereinafter “Wage Order 16”);
- 12 (b) failure to pay overtime wages to employees who worked more than eight hours in a day  
13 and were not subject to a *bona fide* alternative workweek schedule as mandated by  
14 California Labor Code §§ 510 and 511 and Wage Order 16;
- 15 (c) failure to provide second meal periods to employees who worked more than 10 hours in  
16 a day as mandated by California Labor Code §§ 226.7 and 512 and Wage Order 16;
- 17 (d) failure to provide third rest periods to employees who worked more than 10 hours in a  
18 day as provided by California Labor Code § 226.7 and Wage Order 16;
- 19 (e) failure to provide complete and accurate itemized wage statements, as required by  
20 California Labor Code § 226;
- 21 (f) failure to pay any wages whatsoever, including the minimum wage, to employees for  
22 compensable travel time, including on company provided transportation within the  
23 refineries and other facilities;
- 24 (g) failure to take certain bonus payments into account when calculating the regular rate,  
25 thereby leading to incorrect and lower overtime and double-time rate; and
- 26 (h) failure to pay former employees all wages due and owing at the time of discharge or  
27 voluntary quit, in violation of California Labor Code §§ 201, 202, and 203.

28 Plaintiffs bring this action on behalf of themselves and a proposed plaintiff class of all hourly,

1 non-exempt on-site construction workers at the Chevron El Segundo refinery, including but not  
2 limited to pipefitters, welders, boilermakers, fire watches, hole watches, bottle watches, safety  
3 attendants, electricians, crane operators, asbestos workers, ironworkers, and quality assurance  
4 personnel employed by S & B at job sites located within the State of California from January 1, 2009  
5 to the present. Plaintiffs seek recovery of all allowable compensation for the above-described  
6 violations, including unpaid wages, unpaid minimum wages, unpaid overtime and double-time pay,  
7 penalties for missed meal and rest periods, restitution and restoration of sums owed, statutory  
8 penalties, declaratory and injunctive relief, and attorneys' fees and costs.

## 9 10 **II. JURISDICTION**

11 Plaintiffs commenced this action by filing a Complaint in the Superior Court of the State of  
12 California, County of Alameda, originally entitled ANDREW KING, CLIFFORD SHAW AND  
13 DEIDRA CULPEPPER, individually and on behalf of all others similarly situated, Plaintiffs, vs. S &  
14 B ENGINEERS AND CONSTRUCTORS, LTD., a Texas corporation doing business in California as  
15 S & B, and Does 1-50, inclusive, Defendants, and designated Alameda Superior Court Case No. RG  
16 09485375. Defendants removed this action to the United States District Court for the Northern  
17 District pursuant to 28 U.S.C §§ 1441(a) and (b) and 1446. This court has diversity jurisdiction over  
18 the action.

19 (a) Plaintiffs are citizens of the State of California.

20 (b) Plaintiffs allege on information and belief that Defendant S & B is a limited  
21 liability partnership organized and formed under the law of the State of Texas and has its principle  
22 place of business in the State of Texas.

23 (c) The action is a civil action where the matter in controversy exceeds the sum  
24 \$75,000, exclusive of interests and costs.

1 **III. PARTIES**

2 1. Plaintiff ANDREW KING is an adult who, at all times relevant hereto, was working for  
3 S & B at the Chevron Refinery in El Segundo California from January 1, 2009 to the present. Plaintiff  
4 KING was employed by S & B as a pipefitter at the rate of pay of \$26.00 per hour.

5 2. Plaintiff CLIFFORD SHAW is an adult who, at all times relevant hereto, was working  
6 for S & B at the Chevron Refinery in El Segundo California from January 1, 2009 to the present.  
7 Plaintiff SHAW was employed by S & B as a pipefitter helper at the rate of pay of \$19.00 per hour.

8 3. Plaintiff DEIDRA CULPEPPER is an adult who, at all times relevant hereto, was  
9 working for S & B at the Chevron Refinery in El Segundo California from January 1, 2009 to the  
10 present. Plaintiff CULPEPPER was employed by S & B as a pipefitter helper at the rate of pay of  
11 \$19.00 per hour.

12 4. Plaintiffs are individuals who were employed by S & B as construction employees and  
13 bring this action on their own behalf as well as on behalf of the class more fully described below.

14 5. S & B is a corporation doing business in California, including an office in El Segundo,  
15 California, and is a “person” as defined by California Labor Code § 18 and California Business and  
16 Professions Code § 17201. In addition, it is an “employer” as that term is used in the California Labor  
17 Code and in the California Industrial Welfare Commission’s Orders regulating wages, hours, and  
18 working conditions.

19 6. S & B is also an “employer” as that term is used in the California Labor Code and in  
20 the California Industrial Welfare Commission’s Orders regulating wages, hours, and working  
21 conditions.

22 7. Plaintiffs are ignorant of the true names and capacities of Defendants sued herein as  
23 Does 1 through 50, inclusive, and therefore sue those Defendants by those fictitious names. Plaintiffs  
24 will amend this Complaint to allege their true names and capacities when ascertained. Plaintiffs are  
25 informed and believe and thereupon allege that each of the fictitiously named Defendants is  
26 responsible in some manner for the occurrences alleged and that Plaintiffs’ damages as alleged are  
27 proximately caused by those occurrences.

1 **IV. FACTUAL ALLEGATIONS**

2 8. S & B provides safety support and maintenance, turnaround and construction services  
3 for the oil and natural gas, petrochemical, water and wastewater, and food industries in California.

4 9. Plaintiffs, at all relevant times herein, were employed by S & B as non-exempt hourly  
5 employees, in on-site construction occupations, as defined by Wage Order 16, 8 CCR § 11160(2)(C).  
6 During their employment with S & B, Plaintiffs typically worked 10- to 12-hour shifts, six to seven  
7 days per week.

8 10. S & B regularly required Plaintiffs and other putative class members to work more than  
9 12 hours per day and/or more than eight hours on the seventh day in a workweek, but did not pay them  
10 for overtime at the correct time and one-half as well as double-time rate of pay.

11 11. S & B regularly required Plaintiffs and other putative class members who were not  
12 subject to a bona fide alternative workweek schedule to work more than eight hours per day, but did  
13 not pay them for overtime at one and one-half times their regular rate of pay.

14 12. S & B failed to pay Plaintiffs and other putative class members for all hours worked by  
15 failing to pay them any wages, including minimum wage, for compensable travel time, including time  
16 spent traveling on company-provided shuttles or buses to their work locations within the Chevron  
17 refinery.

18 13. S & B failed to pay Plaintiffs and other putative class members all wages due and  
19 owing by failing to take certain bonus payments into account when calculating the regular rate,  
20 thereby leading to incorrect and lower overtime and double-time rates.

21 14. During the respective periods in which Plaintiffs were employed by S & B, Plaintiffs  
22 were required to work shifts of more than 10 hours. When Plaintiffs and other putative class members  
23 were required by S & B to work shifts of more than 10 hours, they were not provided a second meal  
24 period of at least 30 minutes, as required by Labor Code §§ 226.7 and 512 and Wage Order 16,  
25 § (10)(B). On information and belief, Plaintiffs allege that they and other putative class members were  
26 not informed of their right to take a second meal period and never waived their right to a second meal  
27 period. Further, Plaintiffs and other putative class members sometimes worked more than 12 hours in  
28 a day and, pursuant to Labor Code § 512(a), meal periods are not waiveable for employees who work

1 more than 12 hours in a day.

2 15. During the respective periods in which Plaintiffs were employed by S & B, Plaintiffs  
3 were required to work shifts of more than 10 hours. When Plaintiffs and other putative class members  
4 were required by S & B to work shifts of more than 10 hours, they were not provided with discrete rest  
5 periods of at least 10 minutes for every four hours of work performed, or major fraction thereof, as  
6 required by Labor Code § 226.7 and Wage Order 16, § (16)(11).

7 16. Labor Code § 226 provides that every employer is required, “semimonthly or at the  
8 time of each payment of wages,” to provide each employee an itemized wage statement, including,  
9 *inter alia*, the total hours worked by the employee (except for salaried employees), and “all applicable  
10 hourly rates in effect during the pay period and the corresponding number of hours worked at each  
11 hourly rate by the employee.” Lab. Code § 226(a). During the respective periods in which Plaintiffs  
12 were employed by S & B, S & B failed to provide complete and accurate itemized wage statements as  
13 required by Labor Code § 226 in that the wage statements provided did not include the correct hourly  
14 rates of pay in effect during the pay period and/or did not include the accurate number of hours  
15 worked and/or did not provide the correct regular, overtime or double-time rates of pay. The wage  
16 statements provided by S & B to Plaintiffs and other putative class members were incomplete and  
17 defective in that they did not include and state the hourly rates at which employees were paid and the  
18 correct “corresponding number of hours worked at each hourly rate by the employee.” Labor Code §  
19 226(a).

20 17. S & B failed to pay former employees all wages due and owing at the time of discharge  
21 or voluntary quit, in violation of California Labor Code §§ 201, 202, and 203.

22 18. Plaintiffs bring this action as a class action on behalf of all of S & B’s non-exempt  
23 construction employees harmed by Defendants’ failure to follow and satisfy the requirements of the  
24 Labor Code and Wage Order 16. Plaintiffs seek back pay, restitution and restoration of property,  
25 penalties, and attorneys’ fees and costs under Wage Order 16 and, among other sections, Labor Code  
26 §§ 226, 226.7, 558 and 1194 and Business and Professions Code §§ 17200, *et seq.*



1 paid any wages whatsoever, including minimum wage, for certain hours  
2 worked, including their time spent traveling on company mandated  
3 transportation within the refineries and other facilities to their work locations;

4 (d) All hourly non-exempt construction employees who performed work for S & B  
5 at the Chevron Refinery in El Segundo, California from January 1, 2009  
6 through the present and until compliance with the law, inclusive, who worked  
7 more than 10 hours in a day and were not provided a second meal period;

8 (e) All hourly non-exempt construction employees who performed work for S & B  
9 at the Chevron Refinery in El Segundo, California from January 1, 2009  
10 through the present and until compliance with the law, inclusive, who worked  
11 more than 10 hours in a day but were not permitted to take a third rest period;

12 (f) All hourly non-exempt construction employees who performed work for S & B  
13 at the Chevron Refinery in El Segundo, California from January 1, 2009  
14 through the present and until compliance with the law, inclusive, who did not  
15 receive complete and accurate wage statements;

16 (g) All hourly non-exempt construction employees who performed work for S & B  
17 at the Chevron Refinery in El Segundo, California from January 1, 2009  
18 through the present and until compliance with the law, inclusive, whose regular  
19 rates of pay were miscalculated by S & B as a result of S & B's failure to take  
20 certain bonus payments into account, thereby leading to an incorrect and lower  
21 overtime and double-time rates; and

22 (h) All hourly non-exempt construction employees who performed work for S & B  
23 at the Chevron Refinery in El Segundo, California from January 1, 2009  
24 through the present and until compliance with the law, inclusive, who were not  
25 paid all wages due upon discharge or voluntary quit as required by Labor Code  
26 §§ 201-203.

27 21. The class and subclasses Plaintiffs seek to represent, as described above, contain  
28 numerous members and are clearly ascertainable. Plaintiffs reserve the right under Rule 3.765 of the

1 California Rules of Court, to amend or modify the class and sub-class descriptions with greater  
2 specificity or further division into additional sub-classes or limitation to particular issues.

3 22. Defendants, by their practices and policies, have unlawfully violated the rights of  
4 employees under the laws and regulations of the State of California. The questions raised are,  
5 therefore, of common or general interest to the class members, and they have a well-defined  
6 community of interest in the questions of law and fact raised in this action.

7 23. Plaintiffs' claims are typical of those of the class, as Plaintiffs now suffer and have  
8 suffered in the past from the same violations of the law as other putative class members. Plaintiffs  
9 have retained competent counsel to represent themselves and the class, and Plaintiffs will fairly and  
10 adequately represent the interests of the class.

11 24. This action may properly be maintained as a class action under Code of Civil Procedure  
12 § 382 because there is a well-defined community of interest in the litigation and the proposed class and  
13 subclasses are easily ascertainable.

14  
15 **Numerosity**

16 25. The members of the proposed class are so numerous that joinder of all the members of  
17 the class is impracticable. While the precise number of class members has not been determined at this  
18 time, Plaintiffs are informed and believe that Defendants have employed as many as 700 workers or  
19 more in the relevant time period.

20 26. Plaintiffs allege that Defendants' employment records would contain relevant  
21 information as to the number of putative class members.

22 **Commonality**

23 27. There are questions of law and fact common to the class that predominate over any  
24 questions affecting only individual class members. Those common questions of law and fact include,  
25 without limitation, the following:

- 26 (a) Whether Defendants violated Labor Code § 226 by failing to provide required  
27 information on wage statements, such as hours worked, and whether those  
28 statements were accurate;

- 1 (b) Whether Defendants paid class members for all hours worked, including their  
2 time spent traveling on company mandated transportation within the refineries  
3 and other facilities to their work locations;
- 4 (c) Whether Defendants paid class members at the correct overtime rate for hours  
5 worked in excess of 12 in a day and/or in excess of eight hours on the seventh  
6 day in a workweek;
- 7 (d) Whether Defendants paid class members who were not subject to a bona fide  
8 alternative workweek schedule at the correct time and one-half for hours  
9 worked in excess of eight;
- 10 (e) Whether Defendants failed to provide class members with all of their required  
11 meal periods;
- 12 (f) Whether Defendants failed to provide class members with all of their required  
13 rest periods;
- 14 (g) Whether Defendants failed to pay departing class members all wages due at the  
15 time of discharge or voluntary quit in violation of Labor Code §§ 201-203;
- 16 (h) Whether Defendants failed to calculate the regular rate of pay correctly by  
17 failing to account for certain bonuses in that calculation;
- 18 (i) Whether Defendants had a policy or practice of not paying class members for  
19 travel time, including on company provided transportation within the refineries;
- 20 (j) Whether Plaintiffs and the members of the class are entitled to equitable relief  
21 pursuant to Business and Professions Code §§ 17200, *et seq.*
- 22

23 **Typicality & Adequacy of Representation**

24 28. The claims of Plaintiffs are typical of the claims of the proposed class. Plaintiffs and  
25 all members of the proposed class sustained injuries and economic loss arising out of and caused by  
26 Defendants' common course of conduct in violation of laws and regulations alleged herein.

27 29. Plaintiffs will fairly and adequately protect the interests of all proposed class members.  
28 Plaintiffs have no interests that are antagonistic to those of the proposed class and are not subject to

1 any unique defenses. Plaintiffs also have retained counsel who are experienced in class actions and in  
2 representing the rights of employees.

3 **Superiority of Class Action**

4 30. A class action is superior to other available means for the fair and efficient adjudication  
5 of this controversy. Individual joinder of all proposed class members is not practicable, and questions  
6 of law and fact common to the class predominate over any questions affecting only individual  
7 members of the class. Each member of the class has been damaged and is entitled to recovery by  
8 reason of Defendants’ illegal policies and/or practices.

9 31. Class action treatment will allow those similarly-situated persons to litigate their claims  
10 in the manner that is most effective and economical for the parties and the judicial system. Plaintiffs  
11 are unaware of any difficulties that are likely to be encountered in the management of this action that  
12 would preclude its maintenance as a class action.

13 32. A class action is superior to other available methods for the fair and efficient  
14 adjudication of this controversy because individual litigation of the claims of all proposed class  
15 members is impractical. Even if every proposed class member could afford individual litigation, the  
16 court system could not. It would be unduly burdensome to the courts if individual litigation of  
17 numerous cases were to be required. Individualized litigation also would also present the potential for  
18 varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all  
19 parties and to the court system resulting from multiple trials of the same complex factual issues. By  
20 contrast, the conduct of this action as a class action, with respect to some or all of the issues presented  
21 herein, gives rise to fewer management difficulties, conserves the resources of the parties and the court  
22 system, and protects the rights of each proposed class member. Plaintiffs do not anticipate difficulties  
23 in the management of this action.

24  
25 **VII. LABOR CODE PRIVATE ATTORNEY GENERAL ACT (“PAGA”)**  
26 **REPRESENTATIVE ACTION DESIGNATION**

27 33. Plaintiffs reallege and incorporate paragraphs 1 through 32, inclusive, as though set forth  
28 fully herein.



- 1 (a) Labor Code §§ 201-203 (wages at discharge);
- 2 (b) Labor Code § 204 (payment of wages);
- 3 (c) Labor Code § 226 (itemized wage statements);
- 4 (d) Labor Code §§ 226.7 and 512 (failure to provide meal periods and rest breaks)
- 5 (e) Labor Code § 510 (day worked is 8 hours);
- 6 (f) Labor Code § 511 (alternative workweeks schedules)
- 7 (g) Labor Code §§ 1174 and 1174.5 (failure to maintain accurate records);
- 8 (h) Labor Code §§ 1194 (failure to pay all wages, including overtime and minimum
- 9 wage); and
- 10 (i) Industrial Welfare Commission Wage Order No. 16-2001.

11 38. The violations of those laws and the acts and practices described in this Complaint  
12 constitute unlawful, unfair and fraudulent business practices, and unfair competition, within the  
13 meaning of Business and Professions Code §§ 17200, *et seq.*

14 39. As a direct and proximate result of those acts and practices, Defendants have received  
15 and continue to hold as ill-gotten gains money and property belonging to Plaintiffs and the class, in  
16 that Defendants have profited in those amounts from their unlawful practices.

17 40. Business and Professions Code § 17203 provides that the Court may restore to any  
18 person in interest any money or property which may have been acquired by means of such unfair  
19 competition and order restitution by Defendants to Plaintiffs for the practices alleged therein.  
20 Plaintiffs and putative class members are entitled to restitution pursuant to Business and Professions  
21 Code §§ 17203 and 17208 for all wages unlawfully withheld from them during the four years prior to  
22 the filing of this Complaint and through the present and until the violations have been corrected,  
23 together with all civil penalties owed in connection with those violations. Plaintiffs will, upon leave of  
24 the Court, amend this Complaint to state such amounts when they become ascertained.

25 41. Plaintiffs' success in this action will enforce important rights affecting the public  
26 interest, and in that regard, Plaintiffs sue on behalf of the proposed class as well as on behalf of  
27 themselves and others similarly situated. Plaintiffs seek and are entitled to unpaid wages, unpaid  
28 overtime, and injunctive relief, and any other remedy owing to Plaintiffs and all others similarly

1 situated.

2 42. Injunctive relief is necessary and appropriate to prevent Defendants from repeating or  
3 continuing their wrongful business practices alleged above.

4 43. In order to prevent Defendants from profiting and benefiting from their wrongful and  
5 illegal acts, an order requiring Defendants to restore to Plaintiffs all monies and property unlawfully  
6 gained through Defendants' unlawful conduct is appropriate and necessary.

7 44. Plaintiffs herein take upon themselves enforcement of these laws and lawful claims.  
8 There is a financial burden incurred in pursuing this action and it would be against the interests of  
9 justice to penalize Plaintiffs by forcing them to pay attorneys' fees from the recovery in this action.  
10 Therefore, an award of attorneys' fees is appropriate. Cal. Code of Civ. Proc. § 1021.5.

11 Wherefore, Plaintiffs pray judgment as set forth below.

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13 **IX. SECOND CAUSE OF ACTION**

14 **(FAILURE TO PROVIDE SECOND MEAL PERIOD --**

15 **ALL PLAINTIFFS AGAINST ALL DEFENDANTS)**

16 45. Plaintiffs reallege and incorporate herein by reference the allegations of paragraphs 1  
17 through 44 above as though set forth fully herein.

18 46. At all times relevant herein, Defendants S & B were "employers" of Plaintiffs and  
19 members of the proposed class within the meaning of Labor Code §§ 510, 511 and 512 and Wage  
20 Order 16, § (2)(I).

21 47. At all times relevant herein, Plaintiffs and members of the proposed class were  
22 "employees" of S & B within the meaning of Labor Code §§ 510, 511 and 512 and Wage Order 16,  
23 § (2)(H). At all relevant times, Plaintiffs and members of the proposed class also were employed by S  
24 & B in on-site construction occupations, as defined in and within the meaning of Wage Order 16, §  
25 (2)(C).

26 48. As alleged above, Plaintiffs and members of the proposed class were required by S & B  
27 at various times to work more than 10 hours in a single day, including 12- to 14-hour shifts and,  
28 occasionally, shifts lasting longer than 16 hours. On such occasions, when Plaintiffs and members of

1 the proposed class worked more than 10 hours on a single day, S & B had a policy and practice of  
2 refusing and/or failing to provide employees a second meal period of not less than 30 minutes, as  
3 required by Labor Code § 512(a) and Wage Order 16, § (10)(B). On information and belief, Plaintiffs  
4 allege that they and members of the proposed class regularly did not waive their rights to a second  
5 meal period.

6 49. Defendants' practice of failing to provide employees a second meal period of not less  
7 than 30 minutes when employees were required to work more than 10 hours in a day, and of requiring  
8 employees to work through such meal periods, constitutes a violation Labor Code §§ 226.7 and 512(a)  
9 and Wage Order 16, § (10)(B).

10 50. Plaintiffs and members of the proposed class lost money and property as a direct result  
11 of the unlawful practices of S & B as alleged above in that they were required to work shifts in excess  
12 of 10 hours, were not provided a second meal period and were not compensated correctly for having  
13 been denied a second meal period. Accordingly, Plaintiffs and members of the proposed class are  
14 entitled to proper compensation for each meal period that they wrongfully were denied and the waiting  
15 time penalties attached thereto.

16 51. S & B's violations of Labor Code §§ 226.7 and 512 and Wage Order 16, as alleged  
17 above, are on-going, and will continue unless and until this Court enters an injunction barring those  
18 violations.

19 52. Plaintiffs are entitled to an award of attorneys' fees and costs and expenses incurred in  
20 this action pursuant to Labor Code §§ 226 (g) and 1194 and Code of Civil Procedure § 1021.5.

21 53. Plaintiffs and putative class members are entitled to recover civil penalties for  
22 Defendants' unlawful failure to provide meal periods pursuant to the Labor Code Private Attorneys  
23 General Act ("PAGA"), Labor Code section 2698, *et seq.* Under Labor Code section 2699(g)(1),  
24 Plaintiffs are also entitled to recover costs and reasonable attorneys' fees.

25 Wherefore, Plaintiffs pray for relief as set forth below.  
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1 **X. THIRD CAUSE OF ACTION**

2 **(FAILURE TO PROVIDE THIRD REST PERIODS –**  
3 **ALL PLAINTIFFS AGAINST ALL DEFENDANTS)**

4 54. Plaintiffs reallege and incorporate herein by reference the allegations of paragraphs 1  
5 through 53 above as though set forth fully herein.

6 55. As alleged above, Plaintiffs and members of the proposed class were required by  
7 Defendants S & B at various times to work more than 10 hours in a single day. Often, the shifts lasted  
8 12 to 14 hours and occasionally they lasted more than 16 hours. On such occasions, when Plaintiffs  
9 and members of the proposed class worked more than 10 hours in a single day, S & B had a policy and  
10 practice of refusing and/or failing to authorize and permit employees to take a third rest period of not  
11 less than 10 minutes, as required by Labor Code § 226.7 and Wage Order 16, § (11)(A). On  
12 information and belief, Plaintiffs allege that they and members of the proposed class regularly did not  
13 waive their rights to a third rest period.

14 56. Defendants' practice of failing to provide employees a third rest period of not less than  
15 10 minutes when employees were required to work more than 10 hours in a day, and of requiring  
16 employees to work through such rest periods, constitutes a violation of Labor Code § 226.7 and Wage  
17 Order 16, § (11)(A).

18 57. Accordingly, Plaintiffs and members of the proposed class are entitled to restitution and  
19 premium pay for each rest period they were wrongfully denied as provided by Labor Code § 226.7.

20 58. S & B's violations of Labor Code § 226.7 and Wage Order 16, as alleged above, are  
21 on-going, and will continue unless and until this Court enters an injunction barring such violations.

22 59. Plaintiffs are entitled to an award of attorneys' fees and costs and expenses incurred in  
23 this action pursuant to Labor Code §§ 226(g) and 1194 and Code of Civil Procedure § 1021.5.

24 60. Plaintiffs and putative class members are entitled to recover civil penalties for  
25 Defendants' unlawful failure to provide rest breaks pursuant to the Labor Code Private Attorneys  
26 General Act ("PAGA"), Labor Code section 2698, *et seq.* Under Labor Code section 2699(g)(1),  
27 Plaintiffs are also entitled to recover costs and reasonable attorneys' fees.

28 Wherefore, Plaintiffs pray for relief as set forth below.

1 **XI. FOURTH CAUSE OF ACTION**

2 **(FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS –**  
3 **ALL PLAINTIFFS AGAINST ALL DEFENDANTS)**

4 61. Plaintiffs reallege and incorporate herein by reference the allegations of paragraphs 1  
5 through 60 above as though set forth fully herein.

6 62. As alleged above, during all or some portion of the proposed class period, Defendants  
7 violated Labor Code § 226 in that they failed to provide their employees, including Plaintiffs and  
8 members of the proposed class, with complete and accurate itemized wage statements. In particular,  
9 the statements provided by Defendants failed to accurately state “all applicable hourly rates in effect  
10 during the pay period and the corresponding number of hours worked at each hourly rate by the  
11 employee,” as required by Labor Code § 226(a)(9).

12 63. Pursuant to Labor Code § 226(e), Plaintiffs and members of the proposed class are  
13 entitled to recover the greater of actual damages or \$50 for the initial pay period in which a violation  
14 occurred and \$100 for each subsequent pay period in which Defendants failed to comply with the  
15 statute, up to a maximum of \$4000 per employee.

16 64. Pursuant to Labor Code § 226(g), Plaintiffs are entitled to injunctive relief and an order  
17 by this Court requiring Defendants to comply with all provisions of Labor Code § 226. Plaintiffs also  
18 are entitled to an award of attorneys’ fees and costs incurred in bringing this action. Lab. Code  
19 § 226(e); Cal. Code Civ. Proc. § 1021.5.

20 65. Plaintiffs and putative class members are entitled to recover civil penalties for  
21 Defendants’ unlawful failure to provide itemized wage statements pursuant to the Labor Code Private  
22 Attorneys General Act (“PAGA”), Labor Code section 2698, *et seq.* Under Labor Code section  
23 2699(g)(1), Plaintiffs are also entitled to recover costs and reasonable attorneys’ fees.

24 Wherefore, Plaintiffs pray for relief as set forth below.  
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1 limitations period preceding the filing of the Complaint and up to and including the  
2 present and until the date of compliance with the law;

3 3. For compensatory damages in amount according to proof at time of trial representing  
4 amount of unpaid compensation owed to Plaintiffs and the class members for missed  
5 meal and rest periods due and owing during the applicable limitations period preceding  
6 the filing of the Complaint and up to and including the present and until the date of  
7 compliance with the law;

8 4. For disgorgement of profits and restitution and restoration of all costs incurred and/or  
9 losses caused by the failure to provide proper meal and rest breaks and to pay all wages  
10 due and owing in violation of Business and Professions Code §§ 17200, *et seq.*;

11 5. For compensatory damages in an amount according to proof at time of trial to Plaintiffs  
12 and the class members for the failure to provide accurate, itemized wage statements  
13 during the three years preceding the filing of the Complaint and up to and including the  
14 present and until the date if compliance with the law;

15 6. For the statutory amounts provided by Labor Code § 226(e) for the three years  
16 preceding the filing of the Complaint and up to and including the present and until the  
17 date of compliance with the law;

18 7. For waiting time penalties as provided by Labor Code § 203;

19 8. For reasonable attorneys' fees and costs as allowed by Labor Code §§ 226(e) and  
20 1194(a), 2699 *et seq.* and Code of Civil Procedure § 1021.5;

21 9. For all interest on any sums as allowed by law;

22 10. For all costs of this suit as allowed by law; and

23 11. For such other and further relief as the Court may deem proper.

24  
25 Dated: April \_\_\_\_, 2010

LAW OFFICES OF ELLYN MOSCOWITZ, P.C.

26  
27 By: \_\_\_\_\_  
28 ELLYN MOSCOWITZ  
Attorney for Plaintiffs and the proposed Plaintiff Class