

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations, State of California
2 BY: ROBERT ROGINSON, SBN 185286
Chief Counsel
3 BY: DEBORAH D. GRAVES, SBN 167922
7575 Metropolitan Drive, Suite 210
4 San Diego, CA 92108
(619) 767-2023
5 (619) 767-2026 (Facsimile)

6 Attorneys for the Plaintiff Angela Bradstreet,
Labor Commissioner, State of California
7

8 EDMUND G. BROWN JR.
Attorney General of the State of California
9 MARK BRECKLER,
Senior Assistant Attorney General
10 RALPH LIGHTSTONE, SBN 57630
Supervising Deputy Attorney General
11 1300 I Street
P. O. Box 944255
12 Sacramento, CA 94244-2550
Telephone: (916) 322-5556
13 Fax: (916) 323-327-8192

14 Attorneys for the people of the State of California

15 SUPERIOR COURT OF CALIFORNIA

16 COUNTY OF LOS ANGELES

17	ANGELA BRADSTREET, LABOR	)	Case No.
	COMMISSIONER, STATE OF CALIFORNIA)	
18	DEPARTMENT OF INDUSTRIAL RELATIONS,	)	COMPLAINT FOR DAMAGES FOR
	DIVISION OF LABOR STANDARDS	)	UNPAID WAGES, UNPAID OVER-
19	ENFORCEMENT; and PEOPLE OF	)	TIME WAGES, AND PENALTIES
	THE STATE OF CALIFORNIA,	)	RESTITUTION, INJUNCTIVE RELIEF,
20	ex rel. EDMUND G. BROWN JR.,	)	AND OTHER EQUITABLE RELIEF
	Attorney General of the State of California,)	
21)	
	Plaintiffs,	)	(Pursuant to Labor Code §§204, 206,
22		)	1197, 1197.1, 510, 1198, 558, 201, 202,
		)	203, 226, 212, 226.7 and 512 and
23	vs.	)	Bus. & Prof. Code §17200 et seq.)
)	
24	EXCELL CLEANING AND BUILDING)	
	SERVICES, INC. a Delaware Corporation;)	
25	MO RESTAURANT CLEANING OF	)	[NO FEE, PER LABOR CODE
	CALIFORNIA, INC., a California	)	SECTIONS 101, 101.5, 211]
26	Corporation; and DOES 1 through 100, inclusive,)	
)	
27	Defendants.	)	Unlimited Jurisdiction - Amount in
		)	Controversy Exceeds \$25,000.00
28)	

1 Plaintiff Angela Bradstreet, Labor Commissioner of the State of California, Department of
2 Industrial Relations, Division of Labor Standards Enforcement, (herein referred to as “the Labor
3 Commissioner”) and, Plaintiff, the People of the State of California, ex rel. Edmund G. Brown Jr.,
4 Attorney General of the State of California, allege as follows:

5 GENERAL ALLEGATIONS

6 1. Plaintiff Angela Bradstreet is the Labor Commissioner of the State of California, Chief
7 of the Division of Labor Standards Enforcement (hereinafter the “DLSE”), a division of the Department
8 of Industrial Relations, and as such is authorized to bring this action pursuant to California Labor Code
9 Sections 95(a), 96.7, 98.3, 217, 1193.6 and 1195.5, and pursuant to the power vested in DLSE to enforce
10 any violation of the laws under the California Labor Code, Industrial Welfare Commission Orders, or
11 regulations promulgated under DLSE’s jurisdiction.

12 2. Plaintiff Edmund G. Brown Jr. is the Attorney General of the State of California and is
13 the chief law officer of the State. (Cal. Const., art. V, § 13.) The Attorney General is empowered by the
14 California Constitution to take whatever action is necessary to ensure that the laws of the State are
15 uniformly and adequately enforced. The Attorney General is statutorily authorized to bring actions in
16 the name of the People of the State of California to enforce California's statutes governing unfair
17 competition. (Bus. & Prof. Code, § 17204 et seq.)

18 3. Defendant Excell Cleaning and Building Services, Inc. (hereinafter “Excell”) is and, at
19 all relevant times herein, was a Delaware corporation authorized to do business under the laws of the
20 State of California and doing business within the State of California, including, but not limited to, Los
21 Angeles, San Diego and Orange Counties. At all times relevant herein, Excell was subject to the Labor
22 Code of the State of California and to the Orders of the Industrial Welfare Commission (“IWC”)
23 promulgated by the Commission pursuant to and by virtue of the authority vested in it by Sections 1171
24 through 1204 of the Labor Code and Article 14, Section 1 of the Constitution of the State of California.

25 4. Defendant MO Restaurant Cleaning of California, Inc. (hereinafter “MO Restaurant
26 Cleaning”) is and, at all relevant times herein, was a California corporation doing business within the
27 State of California, including, but not limited to, Los Angeles, San Diego and Orange Counties.
28 Defendant MO Restaurant Cleaning is currently a suspended corporation and is not currently authorized

1 to do business under the laws of the State of California. At all times relevant herein, MO Restaurant
2 was subject to the Labor Code of the State of California and to the Orders of the Industrial Welfare
3 Commission (“IWC”) promulgated by the Commission pursuant to and by virtue of the authority vested
4 in it by Sections 1171 through 1204 of the Labor Code and Article 14, Section 1 of the Constitution of
5 the State of California.

6 5. At all times relevant herein, there were in full force and effect Orders of the Industrial
7 Welfare Commission covering various occupations in which defendants Excell and MO Restaurant
8 Cleaning’s employees were employed, including but not limited to IWC Order No. 5-2001 covering
9 the “Public Housekeeping Industry.” The IWC Orders are codified at Title 8, California Code of
10 Regulations, Section 11010, et seq.

11 6. Plaintiffs are informed and believe and thereon allege that MO Restaurant Cleaning is
12 a subsidiary or predecessor in interest to defendant Excell. In the alternative, plaintiffs allege that if
13 MO Restaurant Cleaning is not a subsidiary or predecessor in interest to defendant Excell, that Excell
14 and MO Restaurant Cleaning are an integrated enterprise in that there is an interrelation of operations
15 between Excell and MO Restaurant Cleaning, there is common management between Excell and MO
16 Restaurant Cleaning, there is centralized control of labor relations between Excell and MO Restaurant
17 Cleaning, and there is common ownership or financial control between Excell and MO Restaurant
18 Cleaning.

19 7. Plaintiffs are informed and believe, and thereon allege that if MO Restaurant Cleaning
20 is not a subsidiary or predecessor in interest to defendant Excell or if Excell and MO Restaurant
21 Cleaning are not an integrated enterprise, that Excell and MO Restaurant Cleaning have acted as joint
22 employers with respect to the janitors because defendants have:

- 23 (a) jointly exercised meaningful control over the work performed by the janitors;
- 24 (b) jointly exercised meaningful control over the janitors’ wages, hours and working
25 conditions, including the quantity, quality standards, speed, scheduling, and operative
26 details of the tasks the janitors’ performed;
- 27 (c) jointly required the janitors perform work which is an integral part of defendants’
28 businesses, and

1 (d) jointly exercised control over the janitors in that the janitors, as a matter of economic
2 reality, are dependent upon defendants Does 11 through 20, who share the power to set
3 the janitors' wages and determine their working conditions, and who jointly reap profits
4 from the underpayment of their wages and noncompliance with other statutory
5 provisions governing their employment, and for other related reasons.

6 8. Plaintiffs are ignorant of the true names and capacities of Does 1 through 100, inclusive,
7 and for that reason sue said defendants by such fictitious names. Leave of court will be requested to
8 amend this complaint to show their true names and capacities when they have been ascertained.

9 9. Plaintiffs are informed, believe and thereon allege that defendants Does 1 through 100
10 were in some manner responsible for the acts and injuries complained of herein, and were at all times
11 mentioned herein employees, agents, partners, and/or representatives of defendants Excell and/or MO
12 Restaurant Cleaning and were at all times acting within the course and scope of such agency, service,
13 employment, partnership and/or joint venture.

14 10. Plaintiffs are informed, believe and thereon allege that if defendants Does 1 through 100
15 were not employees, agents, partners, and/or representatives acting within the course of their
16 relationship with defendants Excell and/or MO Restaurant Cleaning, said defendants were acting in their
17 independent capacity as individual defendants.

18 11. Plaintiffs are informed and believe, and thereon allege that between December 2003 and
19 the present, defendants Excell, MO Restaurant Cleaning and related entities and Does 1 through 10,
20 entered into contractual relationships with various and Doe defendants 11 through 20, to provide
21 janitorial services to said defendants Does 11 through 20.

22 12. At all times relevant herein, defendants Excell, MO Restaurant Cleaning and related
23 entities and Does 1 through 10, engaged various workers and janitors to work for defendants Does 11
24 through 20 within California, including but not limited to the counties of Los Angeles, San Diego and
25 Orange.

26 13. At all times relevant herein, the employment of the aforementioned janitors and
27 employees were subject to the provisions of the California Labor Code and to the IWC's Wage Orders,
28 including but not limited Wage Order 5-2001.

1 14. Plaintiffs are informed and believe and thereon allege that defendants, and each of them,
2 including but not limited to defendants Does 11 through 20, at all times relevant to this complaint, have
3 acted as joint employers with respect to the janitors because defendants have:

- 4 (a) jointly exercised meaningful control over the work performed by the janitors;
5 (b) jointly exercised meaningful control over the janitors' wages, hours and working
6 conditions, including the quantity, quality standards, speed, scheduling, and operative
7 details of the tasks the janitors' performed;
8 (c) jointly required the janitors perform work which is an integral part of defendants'
9 businesses, and
10 (d) jointly exercised control over the janitors in that the janitors, as a matter of economic
11 reality, are dependent upon defendants Does 11 through 20, who share the power to set
12 the janitors' wages and determine their working conditions, and who jointly reap profits
13 from the underpayment of their wages and noncompliance with other statutory
14 provisions governing their employment, and for other related reasons.

15 DEFENDANTS' UNLAWFUL POLICIES AND PRACTICES

16 15. Plaintiffs are informed and believe and thereon allege that between December 2003 and
17 the present, defendant Excell, MO Restaurant Cleaning and related entities and Does 1 through 10
18 employed janitors to provide janitorial services to defendants Does 11 through 20.

19 16. Plaintiffs are informed and believe and thereon allege that at all relevant times,
20 defendants failed to pay the janitors wages to which they were entitled to under the California Labor
21 Code and applicable regulations, including the failure to pay minimum wage and overtime payments
22 where required, failure to provide rest and meal periods or one hour's wages in lieu thereof, and failure
23 to provide accurate itemized wage statements.

24 17. Plaintiffs are informed and believe and thereon allege that between December 2003 and
25 the present, defendants implemented a scheme to evade responsibility for the janitors' wages and
26 benefits to which they are lawfully entitled to under the California Labor Code and applicable
27 regulations by classifying the janitors as independent contractors. Plaintiffs are further informed and
28 believe and thereon allege that the defendants' misclassification of the janitors as independent

1 contractors was done to evade defendants' obligation to make required payments of payroll taxes, social
2 security contributions, Medicare contributions and other legal obligations associated with the
3 employment of labor.

4 18. Plaintiffs are informed and believe, and thereon allege that between December 2003 and
5 the present, defendants required the janitors to start work around 11:30 p.m. - 12:00 a.m. and would
6 require the janitors to work until 8:30 a.m - 9:00 a.m. or longer. The janitors were typically paid a flat
7 rate, generally \$50.00 per day, without regard to the amount of hours actually worked, and routinely
8 worked seven days per week. This payment scheme resulted in a daily wage less than the legal
9 minimum wage and failed to compensate the janitors for daily overtime and double-time to which they
10 were entitled.

11 19. Labor Code section 226 requires defendants to provide employees an accurate itemized
12 statement showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of
13 piece units and rates if applicable, (4) all deductions, (5) net wages earned, (6) the inclusive date of the
14 period for which the employee is paid, (7) the name of the employee and his or her social security
15 number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly
16 rates in effect and the corresponding number of hours worked. Plaintiffs are informed and believe, and
17 thereon allege that between December 2003 and the present, defendants failed to make appropriate wage
18 deductions and failed provide the janitors with the required itemized wage statements.

19 20. Plaintiffs are informed and believe and thereon allege that between December 2003 and
20 the present, janitors employed by defendants were not allowed to take their rest periods and were not
21 provided their meal periods as required by California law.

22 21. Plaintiffs are informed and believe and thereon allege that between December 2003 and
23 the present, defendants failed to pay certain janitors their final wages after the janitors ceased working
24 for defendant Excell, MO Restaurant Cleaning and related entities and Does 1 through 10, and
25 defendants Does 11 through 20.

26 22. Plaintiffs are informed and believe and thereon allege that between December 2003 and
27 the present, defendants tendered to certain janitors, checks for wages which were returned for
28 insufficient funds.

1 FIRST CAUSE OF ACTION

2 (Failure to Pay Wages; Violation of Labor Code § 204)

3 23. Plaintiffs incorporate herein by reference paragraphs 1 through 22 as though fully set
4 forth herein.

5 24. Labor Code section 204 provides in part that “all wages, ..., earned by any person in any
6 employment are due and payable twice during each calendar month, on days designated in advance by
7 the employer as the regular paydays.”

8 25. Plaintiffs are informed and believe, and thereon allege that the janitors who worked in
9 California for defendants from December 2003 through the present were not paid all earned wages,
10 including overtime and/or double-time, on regularly established paydays.

11 26. In violation of Labor Code section 204, defendants knowingly and willfully refused to
12 perform their obligations to compensate their employees for all wages earned from December 2003
13 through the present.

14 27. Pursuant to Labor Code section 210, plaintiff Angela Bradstreet is entitled to recover a
15 penalty of \$100.00 for the initial failure to timely pay each employee all of the wages earned, and
16 \$200.00 for each subsequent failure to pay each employee all of the wages earned; in addition, pursuant
17 to section 210, for each subsequent failure to pay in compliance with Labor Code section 204, plaintiff
18 Angela Bradstreet is entitled to recover an additional amount equal to 25% of the unlawfully withheld
19 wages.

20 28. As a direct and proximate result of defendants’ conduct in violation of Labor Code
21 section 204 as alleged above, defendants’ employees have suffered, and continue to suffer, losses
22 related to the use and enjoyment of wages and lost interest on such wages all to their damage in amounts
23 according according to proof at trial.

24 SECOND CAUSE OF ACTION

25 (Failure to Pay Minimum Wages; Violation of Labor Code § 1197)

26 29. Plaintiffs incorporate herein by reference paragraphs 1 through 22 and 24 through 28 as
27 though fully set forth herein.

28 ///

30. Labor Code section 1197 provides that “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

31. Plaintiffs are informed and believe, and thereon allege that as a result of defendants routine and systematic practice of paying janitors a fixed sum of \$50.00 per day, numerous employees of defendants who worked in California for defendants from December 2003 through the present were not paid for all of their hours and therefore did not receive minimum wage for all hours worked required by California Labor Code section 1197.

32. As a direct and proximate result of defendants' conduct in violation of Labor Code section 1197, the above-described employees of defendants have suffered, and continue to suffer, losses related to the use and enjoyment of wages and lost interest on such wages all to their damage in amounts according according to proof at trial.

33. As a direct and proximate result of defendants' conduct in violation of Labor Code section 1197, plaintiff Angela Bradstreet is entitled to recover liquidated damages pursuant to Labor Code §1194.2, in an amount equal to the unpaid minimum wages according according to proof at trial.

THIRD CAUSE OF ACTION

(Failure to Pay Minimum Wages - Penalties Pursuant to Labor Code §1197.1)

34. Plaintiffs incorporate herein by reference paragraphs 1 through 22, 24 through 28 and 30 through 33 as though fully set forth herein.

35. Labor Code section 1197.1 provides for a civil penalty to be assessed against any employer or other person acting on behalf of an employer who fails to pay a wage less than the minimum fixed by law.

36. At all times relevant herein, defendants routine and systematic practice of paying janitors a fixed sum of \$50.00 per day resulted in a failure to pay employees wages at the minimum fixed by law.

37. As a result of defendants failure to pay minimum wage, plaintiff Angela Bradstreet is entitled to recover a penalty of \$100.00 for the initial violation for each underpaid employee for each pay period for which each employee was underpaid and \$250 for each subsequent violation for each underpaid employee for each pay period for which each employee was underpaid. The total amount of

1 penalties that plaintiff Angela Bradstreet is entitled to recover is in excess of \$100,000.00 or such
2 greater amount as may be established according to proof at trial.

3 **FOURTH CAUSE OF ACTION**

4 (Failure to Pay Overtime; Violation of Labor Code §§510 and 1198)

5 38. Plaintiffs incorporate herein by reference paragraphs 1 through 22, 24 through 28, 30
6 through 33 and 35 through 37 as though fully set forth herein.

7 39. Plaintiffs are informed, believe and thereon allege that at all times herein mentioned,
8 defendants, employed workers in the capacity of janitors, or in like capacities performing the functions
9 and duties associated with the janitorial and cleaning industry.

10 40. At all times herein mentioned, the employment of the aforementioned janitors by
11 defendants, were subject to the provisions of the California Labor Code and to Wage Order 5-2001.

12 41. At all times material hereto, Wage Order 5-2001 required defendants to pay the
13 aforementioned employees overtime compensation at prescribed hourly overtime rates for all hours
14 worked in excess of the regular hours of work specified by law.

15 42. At all times relevant herein, defendants routinely and systematically failed to properly
16 record accurate time records for each employee showing when each employee began and ended each
17 work period and routinely and systematically paid janitors a fixed sum per day regardless of the hours
18 worked. By failing to properly record hours and paying a fixed sum per day regardless of hours worked,
19 defendants routinely and systematically failed to pay its employees wages for all of their overtime hours
20 as required by the laws of the State of California.

21 43. Plaintiffs are informed and believe and thereon allege that during the period December
22 2003 through the present, defendants' employees earned and were entitled to statutorily required
23 overtime wages in amounts ranging from a few dollars to \$50,000.00.

24 44. Labor Code sections 510, 1198 and Section 3 of Wage Order 5-2001 make it unlawful
25 under the laws of the State of California to pay employees for overtime work at less than the applicable
26 overtime rate.

27 ///

28 ///

45. As a direct and proximate result of defendants' conduct in violation of Labor Code sections 510 and 1198, the above-described employees of defendants have suffered, and continue to suffer, losses related to the use and enjoyment of wages and lost interest on such wages all to their damage in amounts according according to proof at trial.

FIFTH CAUSE OF ACTION

(Penalties for Failure to Pay Overtime - Labor Code section 558)

46. Plaintiffs incorporate herein by reference paragraphs 1 through 22, 24 through 28, 30 through 33, 35 through 37, and 39 through 45 as though fully set forth herein.

47. Labor Code section 558 provides for a civil penalty to be assessed against any employer or other person acting on behalf of an employer who fails to compensate employees at the statutory overtime rate for any work in excess of eight hours in one day or any work in excess of 40 hours in any workweek or who fails to compensate employees at the statutory double time rates for any work in excess of twelve hours in one day or any work in excess of 8 hours on the seventh day of a workweek.

48. Between December 2003 and continuing through the present, defendants routinely and systematically failed to properly record accurate time records for each employee showing when each employee began and ended each work period and routinely and systematically paid as set sum regardless of the hours worked. By failing to properly record hours and paying a fixed sum per day regardless of hours worked, defendants routinely and systematically failed to compensate employees at the statutory overtime rate for any work in excess of eight hours in one day or any work in excess of 40 hours in any workweek and/or failed to compensate employees at the statutory double time rates for any work in excess of twelve hours in one day or any work in excess of 8 hours on the seventh day of a workweek as required by Labor Code section 510 and Section 3 of Wage Order 5-2001.

49. Pursuant to Labor Code section 558, plaintiff Angela Bradstreet is entitled to recover a penalty of \$50.00 for the initial failure to compensate employees at the statutory overtime rate for any work in excess of eight hours in one day or any work in excess of 40 hours in any workweek and/or failure to compensate employees at the statutory double time rates for any work in excess of twelve hours in one day or any work in excess of 8 hours on the seventh day of a workweek in addition to any underpaid wages; and \$100.00 for each subsequent failure to compensate employees at the statutory

1 overtime rate for any work in excess of eight hours in one day or any work in excess of 40 hours in any
2 workweek and/or failure to compensate employees at the statutory double time rates for any work in
3 excess of twelve hours in one day or any work in excess of 8 hours on the seventh day of a workweek
4 in addition to any underpaid wages.

5 50. As a proximate result of defendants' failure to pay overtime and/or double time wages
6 as alleged above, plaintiff Angela Bradstreet is entitled to recover from defendants penalties pursuant
7 to section 558 in excess of \$100,000.00 or such greater amount as may be established according to proof
8 at trial.

9 **SIXTH CAUSE OF ACTION**

10 (Failure to Pay all Wages at Time of Discharge in Violations of Labor Code sections 201 and 202
11 and Penalties - Labor Code section 203)

12 51. Plaintiffs incorporate herein by reference paragraphs 1 through 22, 24 through 28, 30
13 through 33, 35 through 37, 39 through 45, and 47 through 50 as though fully set forth herein.

14 52. Labor Code section 201 provides "If an employer discharges an employee, the wages
15 earned and unpaid at the time of discharge are due and payable immediately."

16 53. Labor Code section 202 provides "If an employee not having a written contract for a
17 definite period quits his or her employment, his or her wages shall become due and payable not later
18 than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention
19 to quit, in which case the employee is entitled to his or her wages at the time of quitting."

20 54. Between December 2003 and the present, defendants terminated numerous employees
21 who, during the tenure of their employment, were not paid all wages earned by virtue of defendants'
22 systematic and routine practice of compensating employees for hours less than actually worked.
23 Defendants failed and refused, and continue to fail and refuse to pay the earned wages due and owing
24 to their employees.

25 ///

26 ///

27 ///

28 ///

55. Between December 2003 and the present, numerous employees of defendants quit their employment and who, during the tenure of their employment, were not paid all wages earned by virtue of defendants' systematic and routine practice of compensating employees for hours less than actually worked. Defendants failed and refused, and continue to fail and refuse to pay the earned wages due and owing to their employees.

56. Between December 2003 and the present, defendants terminated numerous employees and failed and refused, and continue to fail and refuse to pay the final wages due and owing to the terminated employees.

57. Between December 2003 and the present, numerous employees of defendants quit their employment and defendants failed and refused, and continue to fail and refuse to pay the final wages due and owing to the quitting employees.

58. Defendants knowingly and willfully violated the laws, regulations and orders governing the wages of employees as described in the causes of action above.

59. Pursuant to Labor Code §203, plaintiff Angela Bradstreet is entitled to recover a penalty equivalent to the wages of each employee from the due date at the rate of each employee's daily rate of pay multiplied by 30 days.

SEVENTH CAUSE OF ACTION

(Penalties For Failure to Provide an Accurate Itemized Statement -

Labor Code sections 226 and 226.3)

60. Plaintiffs incorporate herein by reference paragraphs 1 through 22, 24 through 28, 30 through 33, 35 through 37, 39 through 45, 47 through 50 and 52 through 59 as though fully set forth herein.

61. Labor Code section 226 requires defendants to provide employees an accurate itemized statement showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece units and rates if applicable, (4) all deductions, (5) net wages earned, (6) the inclusive date of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect and the corresponding number of hours worked.

62. Plaintiffs allege that defendants violated Labor Code section 226 by failing to provide an itemized statement with their wages.

63. Labor Code section 226.3 provides that any employer who violates subdivision (a) of Section 226 or who fails to keep the records required in subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of \$250 per employee per violation.

64. Pursuant to Labor Code §226.3, plaintiff Angela Bradstreet is entitled to recover from defendants, and each of them, penalties in excess of \$300,000.00 such greater amount as may be established according to proof at trial.

EIGHTH CAUSE OF ACTION

(Wages For Failure to Provide Rest & Meal Periods - Labor Code section 226.7)

65. Plaintiffs incorporate herein by reference paragraphs 1 through 22, 24 through 28, 30 through 33, 35 through 37, 39 through 45, 47 through 50, 52 through 59 and 61 through 64 as though fully set forth herein.

66. Labor Code sections 226.7 and 512, and the IWC Wage Order 5-2001, ¶12(B) requires defendants to provide employees all meal and rest periods specified in the applicable Wage Order. These laws and regulations further entitle employees to be paid one additional hour of pay per day at their regular rate of compensation for each day of denied rest period and/or meal period during the relevant statutory period.

67. Wage Order 5-2001 provides, in part, “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable, shall be in the middle of each work period. The authorized meal period time shall be based on the total hours worked daily at the rate of ten (10) minutes rest time per four (4) hours or major fraction thereof.... Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.” Wage Order 5-2001, ¶12(A).

68. Wage Order 5-2001 further provides that “No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period maybe waived by mutual consent of the employer and employee... An employer may not employ an employee

1 for a work period of more than ten (10) hours per day without providing the employee with a second
2 meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours,
3 the second meal period may be waived by mutual consent of the employer and the employee only if the
4 first meal period was not waived... Unless the employee is relieved of all duty during a 30 minute meal
5 period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked. An
6 ‘on duty’ meal period shall be permitted only when the nature of the work prevents an employee from
7 being relieved of all duty and when by written agreement between the parties an on-the-job paid meal
8 period is agreed to.” Wage Order 5-2001, ¶11(A)-(C).

9 69. Plaintiffs are informed and believe and thereon allege that none of the employees who
10 worked for defendants between December 2003 and the present signed or executed written agreements
11 with any of the defendants to take “on-duty” meal periods within the meaning of Wage Order 5-2001,
12 ¶11(C).

13 70. Plaintiffs allege that beginning at each employees’ term of employment and continuing
14 to each employees’ termination, certain employees were denied their meal and/or rest periods as alleged
15 in paragraph 20 above. As such, plaintiff Angela Bradstreet is entitled to recover from defendants
16 damages equal to each employees applicable hourly rate of pay times the total number of days worked
17 during which each employee was not authorized or permitted to take rest periods and damages equal to
18 each employees applicable hourly rate of pay times the total number of days worked during which each
19 employee was not provided meal periods.

20 **NINTH CAUSE OF ACTION**

21 (Violation of Labor Code § 212)

22 71. Plaintiffs incorporate herein by reference paragraphs 1 through 22, 24 through 28, 30
23 through 33, 35 through 37, 39 through 45, 47 through 50 and 52 through 59, 61 through 64 and 66
24 through 70 as though fully set forth herein.

25 72. Labor Code section 212 provides that no employer shall issue in payment of wages due
26 any order, check, draft, or note where such instrument is protested or dishonored.

27 ///

28 ///

1 73. In violation of Labor Code section 212, defendants knowingly and willfully refused to
2 perform their obligation to compensate certain janitors with instruments negotiable and payable in cash
3 for all wages earned by tendering to certain janitors checks for wages which were returned for
4 insufficient funds.

5 74. As a direct and proximate result of defendant's conduct in violation of Labor Code
6 section 212, defendants' employees have suffered, and continue to suffer, losses related to the use and
7 enjoyment of wages and lost interest on such wages all to their damage in amounts according according
8 to proof at trial.

9 75. As a result of defendants failure to pay minimum wage, plaintiff Angela Bradstreet is
10 entitled to recover a penalty of \$100.00 for the initial violation for each failure to pay each employee
11 pursuant to section 212, \$250 for each subsequent violation for each failure to pay each employee
12 pursuant to section 212, plus 25% of the amount unlawfully withheld, in an amount as may be
13 established according to proof at trial.

14 **TENTH CAUSE OF ACTION**

15 (Unlawful, Unfair, or Fraudulent Competition - Business and Professions

16 Code sections 17200 et seq. - Against all Defendants)

17 76. The People reallege and incorporate by reference paragraphs 1 through 22, 24 through
18 28, 30 through 33, 35 through 37, 39 through 45 , 47 through 50, 52 through 59, 61 through 64, 66
19 through 70 and 72 through 75 of this complaint as if set fully herein.

20 77. Defendants have violated and continue to violate Business & Professions Code, section
21 17200, et seq. by engaging in acts of unfair competition referred to above including, but not limited to,
22 the following:

- 23 (a) failure to pay their employees all earned wages, including overtime and/or
24 double-time on regularly scheduled paydays in violation of Labor Code section
25 204.

26 ////

27 ////

28 ////

- 1 (b) defendants' payment to employees of less than the state required minimum wage
2 in violation of Labor Code section 1197, and applicable Industrial Welfare
3 Commission Orders, including Industrial Welfare Commission Wage Order No.
4 5-2001, subdivision 4;
- 5 (c) failure to pay employees overtime pay as required by Labor Code sections 510
6 and 1198, and applicable Industrial Welfare Commission Orders, including but
7 not limited to Industrial Welfare Commission Wage Order No. 5-2001,
8 subdivision 3;
- 9 (d) failure to pay employees all wages earned and owing at the time of their
10 separation from employment as required by Labor Code sections 201 and 202;
- 11 (e) failure to provide employees with an itemized written statement reflecting their
12 gross wages, the number of hours the employee worked, piece-rate earnings, the
13 applicable piece rate, all deductions taken, net wage earned, the inclusive dates
14 of the pay period, the name of the employee and his or her social security
15 number, and the hourly rate in effect during the pay period, as required by Labor
16 Code section 226;
- 17 (f) requiring employees to work during rest periods and meal breaks in violation of
18 Labor Code section 226.7 and applicable Industrial Welfare Commission Orders
19 including but not limited to Industrial Welfare Commission Wage Order No. 5-
20 2001, subdivisions 11(A) -(C) and 12;
- 21 (g) failure to compensate certain employees by tendering checks for wages which
22 were returned for insufficient funds in violation of Labor Code section 212.

23 **WHEREFORE**, Plaintiffs pray for relief from Defendants as follows:

24 **AS FOR THE FIRST CAUSE OF ACTION**

- 25 1. For unpaid wages in the amount excess of \$700,000.00 or such greater amount as may
26 established according to proof at trial;
- 27 2. For attorney's fees pursuant to Labor Code section 1193.6;

28 ///

3. For penalties pursuant to Labor Code section 210 in the amount as may be established according to proof at trial;
4. For an award of interest, including prejudgment interest, at the legal rate;
5. For costs of suit;

AS FOR THE SECOND CAUSE OF ACTION

1. For unpaid minimum wages in the amount excess of \$500,000.00 or such greater amount as may be established according to proof at trial;
2. For liquidated damages pursuant to Labor Code §1194.2, in an amount equal to the unpaid minimum wages according to proof at trial;
3. For an award of interest, including prejudgment interest, at the legal rate;
4. For costs of suit;
5. For attorney's fees pursuant to Labor Code section 1193.6;

AS FOR THE THIRD CAUSE OF ACTION

1. For civil penalties pursuant to Labor Code §1197.1 in an amount to be established according to proof at trial;
2. For an award of interest, including prejudgment interest, at the legal rate;
3. For costs of suit;

AS FOR THE FOURTH CAUSE OF ACTION

1. For unpaid overtime wages in the amount excess of \$700,000.00 or such greater amount as may be established according to proof at trial;
2. For attorney's fees pursuant to Labor Code section 1193.6;
3. For civil penalties pursuant to Labor Code §1197.1 in an amount to be established according to proof at trial;
4. For an award of interest, including prejudgment interest, at the legal rate;
5. For costs of suit;

////

////

////

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AS FOR THE FIFTH CAUSE OF ACTION

1. For civil penalties pursuant to Labor Code §558 in an amount to be established according to proof at trial;
2. For an award of interest, including prejudgment interest, at the legal rate;
3. For costs of suit;

AS FOR THE SIXTH CAUSE OF ACTION

1. For statutory penalties pursuant to Labor Code section 203 in the amount as may be established according to proof at trial;

AS FOR THE SEVENTH CAUSE OF ACTION

1. For statutory penalties pursuant to Labor Code section 226.3 in the amount as may be established according to proof at trial;

AS FOR THE EIGHTH CAUSE OF ACTION

1. For unpaid wages pursuant to Labor Code §227.7 as may established according to proof at trial;
2. For an award of interest, including prejudgment interest, at the legal rate;
3. For costs of suit;

ON THE NINTH CAUSE OF ACTION

1. For compensatory damages including the wages due, conceded and stilling owing;
2. For an award of interest, including prejudgment interest, at the legal rate;
3. For penalties pursuant to Labor Code section 225.5(b) in the amount as may be established according to proof at trial.

AS FOR THE TENTH CAUSE OF ACTION

- 1 Pursuant to Business and Professions Code section 17203, that defendants, their successors, agents, representatives, employees and all persons acting in concert with defendants be enjoined from committing acts of unfair competition as alleged in this complaint;

///
///

Pursuant to Business and Professions Code section 17203, that defendants make full restitution to employees of defendants to restore all monies owing the said employees acquired by defendants as a result of the violations of Business and Professions Code section 17200 et seq. alleged in complaint;

Pursuant to Business and Professions Code section 17206, that the Court assess a civil penalty of two thousand five hundred dollars (\$2,500) against Defendants and each of them for each violation of Business and Professions Code section 17200 et seq., as proved at trial;

The People recover its costs of suit; and

Such other and further relief as the Court deems appropriate and just.

ON ALL CAUSES OF ACTION

1. For such other and further relief as the Court deems just and proper.

DATED: _____

DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations
State of California

By:

DEBORAH D. GRAVES
Attorney for the State Labor Commissioner,
Division of Labor Standards Enforcement

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of the State of California
MARK BRECKLER
Senior Assistant Attorney General

By:

RALPH LIGHTSTONE,
Supervising Deputy Attorney General

NOTE: Code of Civil Procedure § 446 provides that a Complaint filed by a State Agency need not be verified, but that the Answer thereto must be verified.