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Attorneys for Plaintiffs Derrious Browning and Darrell Love

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Derrious Browning, an individual, and Darrell  
Love, an individual, on behalf of themselves and  
all others similarly situated,

Plaintiffs,

vs.

McCarthy Building Companies, Inc., a Missouri  
corporation, and Does 1 through 10,

Defendants.

Case No.

**CLASS ACTION**

**Complaint for:**

- 1. Failure to Pay Compensation Due for Hours Worked**
- 2. Failure to Pay Wages Timely upon Termination**
- 3. Failure to Indemnify Business Expenses**
- 4. Violation of Cal. Business & Professions Code Section 17203**

**Demand for Jury Trial**

Plaintiffs Derrious Browning and Darrell Love (collectively "Plaintiffs") allege:

**JURISDICTION**

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- 2
- 3 1. Plaintiffs are California citizens. Defendant McCarthy Building Companies, Inc. (“McCarthy”)
- 4 is an entity organized under the laws of a state other than California and has its principal places
- 5 of business in states other than California. The matter in controversy exceeds, exclusive of
- 6 interest and costs, the sum specified by 28 U.S.C. § 1332. This Court has jurisdiction under 25
- 7 U.S.C. § 1332(a)(1).
- 8 2. Defendants are subject to the personal jurisdiction of this Court because they committed their
- 9 wrongful acts in California.

10 **VENUE**

- 11 3. Venue is proper in the Northern District of California under 28 U.S.C. Section 1391 because a
- 12 substantial part of the events giving rise to the claims asserted occurred in this judicial district.

13 **INTRADISTRICT ASSIGNMENT**

- 14
- 15 4. This matter is properly assigned to the San Jose Division of this District pursuant to Civil Local
- 16 Rule 3-2(c) because Defendants employ numerous hourly non-exempt employees at locations in
- 17 this District who were subjected to the illegal practices alleged herein.

18 **PARTIES**

- 19 5. Plaintiffs were primarily employed in Monterey County by Defendants as non-exempt general
- 20 laborers (“GLs”).
- 21 6. Defendant McCarthy is a Missouri corporation whose headquarters is located at 1341 North
- 22 Brock Hill Road, St. Louis, MO 63124.
- 23 7. McCarthy was involved in the construction of various industrial projects, including the
- 24 California Flats Solar Project (“Project”). Such activities fell within the usual course of its
- 25 business.
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- 1 8. Plaintiff Derrious Browning worked directly for McCarthy at the Project from in or around  
2 September 2016 until in or around April 2016 when he was terminated by layoff.
- 3 9. Plaintiff Darrel Love worked directly for McCarthy at the Project from in or around July 2016  
4 until in or around November 2016 when he was terminated by layoff.
- 5 10. McCarthy acted as an employer/co-employer and/or joint employer of Plaintiffs and the class  
6 members. McCarthy is the “engineer, procure, construct” contractor and general contractor for  
7 the Project. Among other things, McCarthy:
- 8 a. controlled the Project site;
- 9 b. defined and/or managed the construction on the Project, including but not limited to  
10 design, work flow and scheduling;
- 11 c. created, defined and/or managed the work-related agreements related to the Project;
- 12 d. created, defined and/or managed training for workers on the Project;
- 13 e. created, defined and/or managed policies and procedures for workers on the Project,  
14 including but not limited to environmental, safety and transportation rules;
- 15 f. created, defined and/or managed the wages of workers on the Project;
- 16 g. created, defined and/or managed the hours for workers on the Project;
- 17 h. created, defined and/or managed the working conditions of the Project;
- 18 i. controlled the access to and the land and roads at the Project;
- 19 j. operated the mandatory on site, badge and security process/procedure/system for the  
20 Project;
- 21 k. conducted at least part of the orientation process for Plaintiffs and class members;
- 22 l. conducted meetings, including but not limited to safety meetings and other work-related  
23 meetings at which Plaintiffs and class members were required to be present and at which  
24 rules and regulations at the Project were outlined and/or reiterated.
- 25 m. maintained vehicles and/or equipment on the Project;
- 26 n. maintained the work quality control and quality assurance for the Project;
- 27  
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- o. maintained supervisory personnel on the Project;
- p. monitored and policed the job site rules, security and ingress and egress of the Project; and/or
- q. had the right and exercised the right to discipline, suspend and terminate employees of any subcontractor on the Project.

11. Plaintiffs do not presently know the true names and capacities of the defendants named as Does 1 through 10 and therefore sue such defendants by these fictitious names. Plaintiffs believe that the Doe Defendants are persons or entities who are involved in the acts set forth below, either as independent contractors, suppliers, agents, servants or employees of the known defendants, or through entering into a conspiracy and agreement with the known Defendants to perform these acts, for financial gain and profit, in violation of Plaintiffs' and class members' rights. Plaintiffs will request leave of Court to amend this Complaint to set forth their true names, identities and capacities when Plaintiffs ascertain them.

12. Each of the Defendants has been or is the principal, officer, director, agent, employee, representative and/or co-conspirator of each of the other defendants and in such capacity or capacities participated in the acts or conduct alleged herein and incurred liability therefor. At an unknown time, some of the Defendants conspired with the other Defendants to commit the wrongful acts described herein. These wrongful acts were committed in furtherance of such conspiracy. Defendants aided and abetted each other in committing the wrongful acts alleged herein. Each of the Defendants acted for personal gain or in furtherance of their own financial advantage in effecting the acts alleged herein.

13. The named Defendants and the Doe defendants are hereinafter referred to collectively as "Defendants."

**CLASS ACTION ALLEGATIONS**

14. Plaintiffs bring the causes of action for themselves on behalf of a class and sub-class initially defined as follows:

1                    **Non-exempt Employee Class**

2                    All non-exempt employees of any of the Defendants or of any of the contractors or  
3                    subcontractors of any of the Defendants who worked at the California Flats Solar Project  
4                    within the period beginning four years prior to the filing of this action through the date of  
5                    class certification.

6                    **Termination Pay Sub-Class**

7                    All members of the Non-exempt Employee Class whose employment terminated at any  
8                    time within the period three years prior to the filing of this action through the date of  
9                    judgment.

10                   15.        The term “class members” includes the Plaintiffs and all class members.

11                   16.        During all or a portion of the class period, Plaintiffs and class members were employed by  
12                   Defendants in California.

13                   17.        **Numerosity.** The number of class members is so numerous that joinder of all members is  
14                   impractical. The names and addresses of the class members are identifiable through documents  
15                   maintained by the Defendants, and the class members may be notified of the pendency of this  
16                   action by published and/or mailed notice. Plaintiffs believe there are more than 100 class  
17                   members.

18                   18.        **Existence and Predominance of Common Questions of Law and Fact.** Common questions of  
19                   law and fact exist as to all class members. These questions predominate over the questions  
20                   affecting only individual members. These common legal and factual questions include, among  
21                   other things:

- 22                   a.        Whether Defendant McCarthy is the employer of the class members.
- 23                   b.        Whether Defendants paid Plaintiffs and class members for all hours worked as required  
24                   by California law;
- 25                   c.        Whether Defendants willfully failed to timely pay all wages due to Plaintiffs and class  
26                   members upon the termination of their employment;
- 27                   d.        Whether Defendants’ conduct in failing to pay all wages due Plaintiffs and class  
28                   members was willful or reckless;

- 1 e. Whether Defendants failed to indemnify Plaintiffs and class members for all business  
2 expenses for which Defendants were responsible;
- 3 f. Whether Defendants engaged in unfair competition in violation of California Business &  
4 Professions Code Section 17200, *et seq.*; and,
- 5 g. The appropriate amount of damages, restitution, or monetary penalties resulting from  
6 Defendants' violations of California law.

7 19. **Typicality.** Plaintiffs' class claims are typical of the claims of the class members. Plaintiffs and  
8 all class members sustained injuries and damages arising out of Defendants' common course of  
9 conduct in violation of the law as alleged herein. Plaintiffs are entitled to the same relief under  
10 the class action causes of action as the class members.

11 20. **Adequacy.** Plaintiffs will adequately and fairly protect the interest of the class members.  
12 Plaintiffs were employed by the Defendants at times during the Class Period and are adequate  
13 representatives for the class members because Plaintiffs have no interest adverse to the interests  
14 of the class members and Plaintiffs have retained legal counsel with substantial experience in  
15 civil litigation, employment law and class action litigation. Plaintiffs and Plaintiffs' counsel will  
16 fairly and adequately protect the interests of the class members.

17 21. **Superiority.** A class action is superior to other available means of fair and efficient adjudication  
18 of the claims of the class members. Joinder of all class members is impractical. Class action  
19 treatment will allow numerous similarly situated persons to prosecute their common claims in a  
20 single forum, simultaneously, efficiently, and without the unnecessary duplication of effort and  
21 expense that numerous individual actions would cause to such plaintiffs or to the court system.  
22 Further, the damages of many class members may be relatively small, and the burden and  
23 expenses of individual litigation would make it difficult or impossible for individual members of  
24 the class to seek and obtain relief, while a class action will serve an important public interest.  
25 Furthermore, questions of law and fact common to the class members predominate over  
26 questions affecting only individual members, and a class action is superior to other available  
27  
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1 methods for fair and efficient adjudication of the controversy. Individual litigation would present  
2 the potential for inconsistent or contradictory judgments. By contrast, the class action device will  
3 result in substantial benefits to the litigants and the Court by allowing the Court to resolve  
4 numerous individual claims based upon a single set of proof in one case.

5 **Claim for Relief No. 1**  
6 **Failure to Pay Wages for Hours Worked**  
7 **(Against All Defendants)**

8 22. Plaintiffs reallege the preceding paragraphs.

9 23. Labor Code Section 1197 in relevant part provides:

10 The minimum wage for employees fixed by the commission is the minimum wage to be  
11 paid to employees, and the payment of a less wage than the minimum so fixed is  
12 unlawful.

13 24. Paragraph 4 of the applicable Wage Order provides in relevant part:

14 (A) Every employer shall pay to each employee wages not less than nine dollars (\$9.00)  
15 per hour for all hours worked, effective July 1, 2014, and not less than ten dollars  
16 (\$10.00) per hour for all hours worked, effective January 1, 2016.

17 (B) Every employer shall pay to each employee, on the established payday for the period  
18 involved, not less than the applicable minimum wage for all hours worked in the payroll  
19 period, whether the remuneration is measured by time, piece, commission, or otherwise.

20 25. Defendants failed to pay Plaintiffs and class members for all hours worked.

21 26. Paragraph 5(A) of the applicable Wage Order (No. 16) provides:

22 (A) All employer-mandated travel that occurs after the first location where the  
23 employee's presence is required by the employer shall be compensated at the employee's  
24 regular rate of pay or, if applicable, the premium rate that may be required by the  
25 provisions of Labor Code Section 510 and Section 3, Hours and Days of Work, above.

26 27. Plaintiffs and other class members were subject to wrongfully unpaid off-the-clock work time  
27 before their scheduled start times and after their scheduled stop times but were only paid for the  
28 time between their scheduled start and stop times.

29 28. For example, the security gate ("Security Gate Entrance") of the Project was located about a  
30 quarter of a mile or so from the intersection of Highway 46 and Turkey Flats Road. It was the  
31 only way that Plaintiffs and class members could gain access to the Project ("Solar Site").

1 Defendants required Plaintiffs and other class members to arrive at the Security Gate Entrance  
2 controlled by Defendants, to wait in vehicle lines for Defendants' biologists to approve the road  
3 for travel, then wait in a vehicle line to have their badges swiped ("badge in") by a person or  
4 persons employed or controlled by Defendants. Plaintiffs and other class members were then  
5 required to travel approximately 10 or more miles along a route designated by and strictly  
6 controlled by Defendants, at speed limits and subject to job site rules designated by Defendants,  
7 using non-public roads to reach parking lots from whence they road in company buggies to  
8 arrive at designated locations ("Installation Sites") throughout the Solar Site by a specific time  
9 designated by Defendants.

10  
11 29. The times recorded by Defendants as class members' start times were their scheduled times and  
12 reflected the time at which Defendants expected class members to be at company meetings or at  
13 their designated Installation Sites. The start times therefore did not reflect the actual time  
14 Plaintiffs and other class members were under Defendants' control. Specifically, the start time  
15 failed to reflect Plaintiffs and other class members' arrival at Defendants' Security Gate  
16 Entrance, their time waiting in lines to get through that gate, the time of the strictly controlled  
17 drive to their assigned parking lot or the time of controlled travel from the parking lot to the  
18 morning meeting location or Installation Sites.

19 30. Similarly, at the end of the day, the stop times recorded by Defendants were Plaintiffs and other  
20 class members' scheduled stop times and did not reflect the actual time at which Plaintiffs and  
21 other class members were no longer under Defendants' control. These times did not accurately  
22 reflect the actual amount of time it took Plaintiffs and other class members to travel from their  
23 Installation Sites to the parking lot or from the parking lot to the Security Gate Entrance, after  
24 which they were no longer under Defendant's control.

25 31. The drive time between the Security Gate Entrance and the parking lot changes somewhat from  
26 day to day due to a large variety of potential delays along the road but on average, it took  
27 Plaintiffs and class members 40 or more minutes each way. The drive times in buggies between  
28



1 the Parking lot and meeting locations or Installation Sites varied more significantly based on the  
2 location at which crews of workers were stationed on a given day. In general, the buggy rides  
3 took 15 or more minutes each way.

4 32. Under California law, “hours worked” is the time during which an employee is subject to the  
5 control of an employer and includes all the time the employee is suffered or permitted to work,  
6 whether or not required to do so. From the time, in the morning, that Plaintiffs and class  
7 members were compelled to wait in lines to be badged through at the Security Gate Entrance  
8 until they were badged out through the Security Gate Entrance at the end of their workday, they  
9 were under Defendants’ control and were restricted by Defendants’ rules, processes, procedures  
10 and supervision.

11 33. Defendants controlled Plaintiffs and class members during the time they were compelled to wait  
12 in lines and during the mandated travel time before and after their scheduled shifts.

13 34. Plaintiffs and class members were entitled to be paid for all hours worked for Defendants,  
14 including, but not limited to, time waiting outside of the Security Gate Entrance, travel time  
15 between the Security Gate Entrance and the parking lot, travel time between the parking lot and  
16 the Installation Sites, badging time, and travel time to meetings and/or Installation Sites in the  
17 mornings.

18 35. In addition, Plaintiffs and class members were told that they were required to stay on the job site  
19 during the entire workday from the beginning of the workday until the end of the workday. They  
20 were told that it would be a violation of the job site rules if they reached the Security Gate  
21 Entrance too early at the end of the workday and that they could be suspended or terminated if  
22 they violated that rule. They were told that they were required to eat their lunches at or near their  
23 daily Installation Sites.

24 36. Defendants failed to pay Plaintiffs and class members for the time that they were required to  
25 remain on the jobsite during their meal breaks. They also failed to pay Plaintiffs and class  
26 members for the time worked when their meal breaks were interrupted.

1 37. In violation of Section 1197 and Paragraph 4 of the applicable Wage Order, Defendants did not  
2 pay class members the wages due them for all hours worked.

3 38. Labor Code Section 1194.2 in relevant part provides:

4 In any action under Section 1193.6 or Section 1194 to recover wages because of the  
5 payment of a wage less than the minimum wage fixed by an order of the commission, an  
6 employee shall be entitled to recover liquidated damages in an amount equal to the wages  
7 unlawfully unpaid and interest thereon. Nothing in this subdivision shall be construed to  
authorize the recovery of liquidated damages for failure to pay overtime compensation.

8 39. Plaintiffs and class members are entitled to liquidated damages pursuant to Labor Code Section  
9 1194.2.

10 40. Plaintiffs and class members worked over eight hours in a day and/or more than 40 hours in a  
11 week and/or seven or more consecutive days. Defendants failed to correctly compensate  
12 Plaintiffs and class members for all overtime worked at the correct rates in violation of  
13 California Labor Code Section 510 and Paragraph 3 of the applicable Wage Order.

14 41. Plaintiffs have incurred and are entitled to attorney's fees, costs and interest.

15 **Claim for Relief No. 2**  
16 **Failure to Pay Waiting Time Wages Pursuant to Labor Code Section 203**  
17 **(Against All Defendants)**

17 42. Plaintiffs reallege the preceding paragraphs.

18 43. Labor Code Section 201 in relevant part provides:

19 (a) If an employer discharges an employee, the wages earned and unpaid at the time of  
20 discharge are due and payable immediately. . . .

21 44. Labor Code Section 202 in relevant part provides:

22 (a) If an employee not having a written contract for a definite period quits his or her  
23 employment, his or her wages shall become due and payable not later than 72 hours  
24 thereafter, unless the employee has given 72 hours previous notice of his or her intention  
to quit, in which case the employee is entitled to his or her wages at the time of quitting...

25 45. Labor Code Section 203 provides in relevant part:

26 (a) If an employer willfully fails to pay, without abatement or reduction, in accordance  
27 with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is  
28 discharged or who quits, the wages of the employee shall continue as a penalty from the

1 due date thereof at the same rate until paid or until an action therefor is commenced; but  
2 the wages shall not continue for more than 30 days. . .

3 (b) Suit may be filed for these penalties at any time before the expiration of the statute of  
4 limitations on an action for the wages from which the penalties arise.

4 46. The employment of Plaintiffs and certain class members with Defendants terminated.

5 47. When the employment of Plaintiffs and certain class members terminated, Defendants violated  
6 Labor Code Sections 201 or 202 by willfully failing to pay the wages earned and unpaid that  
7 were due them within the time required by Sections 201 or 202.

8 48. Labor Code Section 218.5 provides in relevant part:

9 (a) In any action brought for the nonpayment of wages, fringe benefits, or health and  
10 welfare or pension fund contributions, the court shall award reasonable attorney's fees  
11 and costs to the prevailing party if any party to the action requests attorney's fees and  
12 costs upon the initiation of the action. . . .

12 49. Plaintiffs have incurred attorney's fees and costs in pursuing this claim.

13 **Claim for Relief No. 3**  
14 **Violation of Labor Code Section 2802**  
15 **(Against All Defendants)**

15 50. Plaintiffs reallege the preceding paragraphs.

16 51. Labor Code Section 2802 in relevant part provides:

17 (a) An employer shall indemnify his or her employee for all necessary expenditures or  
18 losses incurred by the employee in direct consequence of the discharge of his or her  
19 duties, or of his or her obedience to the directions of the employer, even though unlawful,  
20 unless the employee, at the time of obeying the directions, believed them to be unlawful.

21 (b) All awards made by a court or by the Division of Labor Standards Enforcement for  
22 reimbursement of necessary expenditures under this section shall carry interest at the  
23 same rate as judgments in civil actions. Interest shall accrue from the date on which the  
24 employee incurred the necessary expenditure or loss.

25 (c) For purposes of this section, the term "necessary expenditures or losses" shall include  
26 all reasonable costs, including, but not limited to, attorney's fees incurred by the  
27 employee enforcing the rights granted by this section...

28 52. In violation of Labor Code Section 2802, Defendants required Plaintiffs and class members to  
use their personal vehicles for on-site, employer-controlled, travel, but failed to reimburse them  
for all such mileage.

1 53. As a proximate result of Defendants' wrongful actions alleged above, Plaintiffs and the class  
2 members have been damaged.

3 54. Plaintiffs have incurred attorney's fees and costs in pursuing this claim.

4 **Claim for Relief No. 4**  
5 **Violation of California Business and Professions Code Section 17200, et seq.**  
6 **(Against All Defendants)**

7 55. Plaintiffs reallege the preceding paragraphs.

8 56. Business & Professions Code Section 17200 provides:

9 As used in this chapter, unfair competition shall mean and include any *unlawful, unfair*  
10 or fraudulent business act or practice and unfair, deceptive, untrue or misleading  
advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of  
Part 3 of Division 7 of the Business and Professions Code.) (Emphasis added.)

11 57. Defendants' violations of the Labor Code and Wage Order provisions set forth above constitute  
12 unlawful and/or unfair business acts or practices.

13 58. Business & Professions Code Section 17203 provides:

14 Any person who engages, has engaged, or proposes to engage in unfair competition may  
15 be enjoined in any court of competent jurisdiction. The court may make such orders or  
16 judgments, including the appointment of a receiver, as may be necessary to prevent the  
17 use or employment by any person of any practice which constitutes unfair competition, as  
18 defined in this chapter, or as may be necessary to restore to any person in interest any  
money or property, real or personal, which may have been acquired by means of such  
unfair competition.

19 59. Defendants have been unjustly enriched because of Defendants' unlawful and/or unfair business  
20 acts and/or practices.

21 60. Plaintiffs seek restitution of money and/or property by which Defendants were unjustly enriched  
22 at the expense of Plaintiffs and the class members.

23 61. Plaintiffs also seek a declaration that the above-described business practices are unfair, unlawful  
24 and/or fraudulent and injunctive relief restraining Defendants, and each of them, from engaging  
25 in any of the above-described unfair, unlawful and/or fraudulent business practices in the future.  
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1 62. Plaintiffs and the class members have no plain, speedy, and/or adequate remedy at law to redress  
2 the injuries that they have suffered because of Defendants' unfair, unlawful and/or fraudulent  
3 business practices.

4 63. If Defendants are not enjoined from the conduct alleged herein, they will continue to violate their  
5 legal obligations.

6 64. Plaintiffs are entitled to an award of attorneys' fees pursuant to California Code of Civil  
7 Procedure Section 1021.5.


8 WHEREFORE, Plaintiffs demand a jury trial and requests that judgment be entered against all  
9 Defendants as follows:

- 10 1. Certification of this action as a class action and the appointment of Plaintiffs as the  
11 representatives of the Classes and Plaintiffs' counsel as Lead Counsel for the Class;
- 12 2. Damages for unpaid wages;
- 13 3. Liquidated damages;
- 14 4. Compensatory damages according to proof;
- 15 5. Waiting time penalties due pursuant to Labor Code Section 203;
- 16 6. Restitution pursuant to Business & Professions Code Sections 17200, *et seq.*;
- 17 7. Prejudgment interest;
- 18 8. Reasonable attorneys' fees;
- 19 9. Costs as allowed by law;
- 20 10. A declaratory judgment that the practices complained of herein are unlawful under the Labor  
21 Code and/or the Unfair Competition Law and injunctive relief requiring termination or  
22 modification of the unlawful practices alleged;
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1 11. Such other relief as this Court shall deem just and proper.

2 Dated: September 25, 2018

THE DION-KINDEM LAW FIRM

3  
4 BY:   
5 \_\_\_\_\_  
6 PETER R. DION-KINDEM, P.C.  
7 PETER R. DION-KINDEM  
8 Attorney for Plaintiffs  
9 Derrious Browning and Darrell Love  
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CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Derrious Browning, an individual, and Darrell Love, an individual, on behalf of themselves and all others similarly situated

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Peter R. Dion-Kindem, P.C. 2945 Townsgate Road, Suite 200 Westlake Village, CA 91361 818-883-4900

DEFENDANTS

McCarthy Building Companies, Inc., a Missouri corporation, and Does 1 through 10

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) St. Louis County

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332

Brief description of cause: Wage and Hour

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE Beth Labson Freeman

DOCKET NUMBER 5:17-cv-03778-BLF

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 09/25/2018

SIGNATURE OF ATTORNEY OF RECORD

/s/ Peter R. Dion-Kindem

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

**Authority For Civil Cover Sheet.** The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
  - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.



# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Ex-California Flats Solar Project Workers Allege McCarthy Building Companies Owe Unpaid Wages](#)

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