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7 FERGUSON ENTERPRISES, INC. and  
WOLSELEY INVESTMENTS, INC.  
8

9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11

12 RAYMOND CONNER; on behalf of  
13 himself and all others similarly  
situated, and as an "aggrieved  
14 employee" on behalf of other  
"aggrieved employees" under the Labor  
Code Private Attorneys General Act of  
15 2004,

16 Plaintiff,

17 vs.

18 FERGUSON ENTERPRISES, INC., a  
Virginia corporation; WOLSELEY  
19 INVESTMENTS, INC., a Virginia  
corporation; and DOES 1 through 50,  
20 inclusive,

21 Defendants.  
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CASE NO. 2:18-CV-00504

**NOTICE OF REMOVAL OF CIVIL ACTION**

(Los Angeles County Superior Court  
Case No. BC685654)

1 TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT  
2 COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, PLAINTIFF  
3 RAYMOND CONNER, AND TO HIS ATTORNEYS OF RECORD DAVID G.  
4 SPIVAK, CAROLINE TAHMASSIAN, THE SPIVAK LAW FIRM, WALTER  
5 HAINES, AND UNITED EMPLOYEES LAW GROUP:

6 PLEASE TAKE NOTICE THAT Defendants FERGUSON ENTERPRISES,  
7 INC. (“Ferguson”) and WOLSELEY INVESTMENTS, INC. (“Wolseley  
8 Investments,” together with Ferguson, “Defendants”) hereby remove this action  
9 from the Superior Court of the State of California, County of Los Angeles, to the  
10 United States District Court for the Central District of California. Defendants  
11 remove this action pursuant to 28 U.S.C. sections 1332(a), 1441(b), and 1446(b) as  
12 amended by the Federal Courts Jurisdiction and Venue Clarification Act of 2011,  
13 Pub. L. No. 112-63, 125 Stat. 758 (2011), for the following reasons:

14 1. On December 4, 2017, Plaintiff Raymond Conner (“Plaintiff”) filed a  
15 Complaint in the Superior Court of the State of California for the County of Los  
16 Angeles (“Superior Court”), entitled *RAYMOND CONNER; on behalf of himself*  
17 *and all others similarly situated, Plaintiff, vs. FERGUSON ENTERPRISES, INC., a*  
18 *Virginia corporation; WOLSELEY INVESTMENTS, INC., a Virginia corporation;*  
19 *and DOES 1 through 50, inclusive, Defendants*, designated as Case No. BC685654.  
20 The Complaint alleges eight causes of action: (1) failure to pay all wages for all  
21 hours worked at the correct rates of pay in violation of California Labor Code  
22 sections 510, 1194, 1197, and 1198; (2) failure to provide meal and rest periods in  
23 violation of California Labor Code sections 226.7, 512, and 1198; (3) failure to  
24 provide accurate written wage statements in violation of California Labor Code  
25 section 226(a); (4) failure to timely pay all final wages in violation of California  
26 Labor Code sections 201-203; (5) unfair competition in violation of California  
27 Business & Professions Code section 17200 et seq.; (6) retaliation in violation of  
28 California Labor Code section 98.6; (7) retaliation in violation of California Labor

1 Code section 1102.5; and (8) wrongful termination in violation of public policy.  
2 True and correct copies of the Summons, Complaint, Civil Case Cover Sheet, and  
3 the Civil Case Cover Sheet Addendum and Statement of Location are attached  
4 hereto as Exhibit "A."

5 2. On December 18, 2017, Plaintiff filed a First Amended Complaint  
6 ("FAC") in the Superior Court, entitled *RAYMOND CONNER; on behalf of himself*  
7 *and all others similarly situated, and as an "aggrieved employee" on behalf of*  
8 *other "aggrieved employees" under the Labor Code Private Attorneys General Act*  
9 *2004, Plaintiff, vs. FERGUSON ENTERPRISES, INC., a Virginia corporation;*  
10 *WOLSELEY INVESTMENTS, INC., a Virginia corporation; and DOES 1 through*  
11 *50, inclusive, Defendants*, designated as Case No. BC685654. The FAC alleges  
12 nine causes of action: (1) failure to pay all wages for all hours worked at the correct  
13 rates of pay in violation of California Labor Code sections 510, 1194, 1197, and  
14 1198; (2) failure to provide meal and rest periods in violation of California Labor  
15 Code sections 226.7, 512, and 1198; (3) failure to provide accurate written wage  
16 statements in violation of California Labor Code section 226(a); (4) failure to  
17 timely pay all final wages in violation of California Labor Code sections 201-203;  
18 (5) unfair competition in violation of California Business & Professions Code  
19 section 17200 et seq.; (6) retaliation in violation of California Labor Code section  
20 98.6; (7) retaliation in violation of California Labor Code section 1102.5; (8)  
21 wrongful termination in violation of public policy, and (9) civil penalties pursuant  
22 to Labor Code sections 2698, et seq. A true and correct copy of the Summons on  
23 the FAC and the FAC is attached hereto as Exhibit "B."

24 3. A copy of the Summons on the FAC, the FAC, and the Complaint  
25 were served on Ferguson and Wolseley Investments by delivery to their respective  
26 agent for service of process on December 20, 2017. See Declaration of Chris A.  
27 Jalian ("Jalian Decl.") ¶ 2, attached hereto as Exhibit "C."  
28

1           4.     The Complaint and the FAC are the only pleadings served on  
2 Defendants setting forth the claims for relief against Defendants upon which this  
3 action may be removed. *Id.*

4           5.     Defendants Does 1 through 100 are unnamed and unknown, and  
5 therefore have not been served with the Complaint. *See* FAC ¶ 10.

6           6.     On December 28, 2018, Plaintiff served on Defendants his Proofs of  
7 Service of Summons on Ferguson and Wolseley Investments. Jalian Decl. ¶ 3. A  
8 true and correct copy of the Proof of Service of Summons is attached hereto as  
9 Exhibit “D.”

10          7.     On January 16, 2018, the Superior Court of the State of California in  
11 and for the County of Los Angeles issued an Initial Case Management Order.  
12 Defendants have not yet been served with the Initial Case Management Order, nor  
13 is the Order available online. *See* Jalian Decl. ¶ 4.

14          8.     Defendants filed their Answer to Plaintiff’s Complaint on January 18,  
15 2018. *See* Jalian Decl. ¶ 5. A true and correct copy of Defendants’ Answer is  
16 attached hereto as Exhibit “E.”

17          9.     The Summons on the First Amended Complaint, Complaint, First  
18 Amended Complaint, Proof of Service of Summons, and Answer to the Complaint  
19 constitute all process, pleadings, and orders served on or by Defendants in this  
20 action.

21          10.    In accordance with 28 U.S.C. § 1446(d), the undersigned counsel  
22 certifies that a copy of this Notice of Removal and all supporting papers will be  
23 promptly served on Plaintiff’s counsel and filed with the Clerk of the Los Angeles  
24 County Superior Court. Jalian Decl. ¶ 6. True and correct copies of the Notice to  
25 Adverse Party of Removal of Civil Action and the Notice to Superior Court of  
26 Removal of Civil Action are attached hereto as Exhibits “F” and “G,” respectively;  
27 Therefore, all procedural requirements under 28 U.S.C. § 1446 have been satisfied.  
28



1 headquarters is the actual center of direction, control, and coordination.” *Id.* at  
2 1192.

3 (b) Ferguson is now, and was at the time this action was  
4 commenced, a citizen of the Commonwealth of Virginia within the meaning of  
5 28 U.S.C. § 1332(c)(1), because it is now and was at all material times incorporated  
6 under the laws of Virginia. *See* Declaration of William Brundage (“Brundage  
7 Decl.”) ¶ 4, attached hereto as Exhibit “H.” Similarly, on and before the date this  
8 action was commenced, Ferguson’s corporate headquarters, the place where the  
9 majority of its corporate books and records are located, and where the majority of  
10 its executive and administration functions (including, but not limited to, operations,  
11 corporate finance, accounting, human resources, payroll, marketing, legal, and  
12 information systems) are and have been performed is Newport News, Virginia. *Id.*  
13 at ¶ 5. Further, Ferguson’s corporate officers (including but not limited to its chief  
14 executive officer, chief operating officer, chief financial officer, general counsel,  
15 corporate secretary, and treasurer) work and have worked out of its Newport News  
16 headquarters, and Ferguson’s corporate activities have been directed, controlled,  
17 and coordinated from there at all relevant times. *Id.* at ¶ 6. Thus, under the “nerve  
18 center” test, Ferguson is a citizen of the Commonwealth of Virginia.

19 (c) Wolseley Investments is now, and was at the time this action  
20 was commenced, a citizen of the Commonwealth of Virginia within the meaning of  
21 28 U.S.C. § 1332(c)(1), because it is now and was at all material times incorporated  
22 under the laws of Virginia. Brundage Decl. ¶ 10. Further, Wolseley Investments  
23 currently has and, at all relevant times, had its corporate headquarters and principal  
24 place of business in Newport News, Virginia. *Id.* at ¶ 11. The Virginia  
25 headquarters is and has been the place where the majority of Wolseley Investments’  
26 corporate books and records are located and where the majority of its executive and  
27 administrative functions (including, but not limited to, operations, corporate  
28 finance, accounting, human resources, payroll, marketing, legal, and information

1 systems) are and have been performed. *Id.* Last, Wolseley Investments’ corporate  
2 officers (including but not limited to its chief executive officer, chief financial  
3 officer, and corporate secretary) work and have worked out of the Newport News  
4 headquarters, and Wolseley Investments’ corporate activities have been directed,  
5 controlled, and coordinated from there at all relevant times. *Id.* at ¶ 12.  
6 Accordingly, under the “nerve center” test, Wolseley is a citizen of the  
7 Commonwealth of Virginia.

8 (d) For purposes of determining diversity of citizenship, an  
9 individual is deemed a citizen of the state in which he or she is domiciled. *Kanter*  
10 *v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001) (“The natural person’s  
11 state citizenship is . . . determined by her state of domicile[.]”). A plaintiff’s place  
12 of residency is evidence of domicile absent affirmative allegations to the contrary.  
13 *See District of Columbia v. Murphy*, 314 U.S. 441, 455 (1941) (“The place where a  
14 man lives is properly taken to be his domicile until facts adduced establish the  
15 contrary.”); *Smith v. Simmons*, 2008 U.S. Dist. LEXIS 21162, \*22 (E.D. Cal. 2008)  
16 (noting that “maintaining a place of residence provides a ‘prima facie’ case of  
17 domicile”).

18 (e) Plaintiff is now, and was at all material times, a citizen of the  
19 State of California within the meaning of 28 U.S.C. section 1332(a). *See* FAC ¶ 7  
20 (“Plaintiff is a resident of Bakersfield, California.”).

21 (f) Ferguson and Wolseley Investments are the only defendants  
22 named in this action and the presence of Doe defendants has no bearing on diversity  
23 with respect to removal. *See Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 690-91  
24 (9th Cir. 1998) (“[D]istrict court was correct in only considering the domicile of the  
25 named defendants.”).

1 (g) The Court may not decline to exercise jurisdiction over the  
2 action because neither Ferguson nor Wolseley Investments are citizens of the state  
3 in which the action was filed. *See* Brundage Decl. ¶ 5-13.<sup>1</sup>

4 (h) Thus, this civil action lies between “citizens of different states”  
5 and complete diversity of citizenship exists for purposes of removal under  
6 28 U.S.C. section 1332(a).

7 **THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000**

8 16. Without admitting that Plaintiff and/or the purported class could  
9 recover *any* damages, Plaintiff’s amount in controversy in this action, in which  
10 Plaintiff asserts a maximum liability period of four years, exceeds \$75,000,  
11 exclusive of interest and costs, based on the following:

12 (a) To determine the amount in controversy for purposes of  
13 removal, “the sum claimed by the plaintiff controls if the claim is apparently made  
14 in good faith.” *Lewis v. Verizon Commc ’ns, Inc.*, 627 F.3d 395, 399 (9th Cir. 2010)  
15 (quoting *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938)).  
16 In this context, Courts “must assume that the allegations of the complaint are true  
17 and that a jury will return a verdict for the plaintiff on all claims made in the  
18 complaint.” *Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F.  
19 Supp. 2d 993, 1001 (C.D. Cal. 2002) (citation, internal quotation marks and  
20 alterations omitted). Therefore, the ultimate inquiry is what amount is placed “in  
21 controversy” by the Complaint. *Lewis*, 627 F.3d at 401; *see also Rippee v. Boston*  
22 *Mkt. Corp.*, 408 F. Supp. 2d 982, 986 (S.D. Cal. 2005) (“It’s not a question as to  
23 what you would owe. It’s a question as to what is in controversy.”).

24  
25  
26 <sup>1</sup> Plaintiff alleges “based on information and belief” that Ferguson and Wolseley  
27 Investments are each citizens of California (FAC ¶¶ 8-9), but this is not sufficient to  
28 rebut Defendants’ evidence. *Strotek Corp. v. Air Transport Ass’n. of America*, 300  
F.3d 1129, 1132 (2002) (“Certainly a plaintiff can decide whom to sue, but  
jurisdictional facts, not fiction even if truly believed, are dispositive...actual  
citizenship controls—not the plaintiff’s mistaken allegations.”).



1 (b) Where the existence of diversity jurisdiction depends on the  
2 amount in controversy, “the district court may consider whether it is ‘facially  
3 apparent’ from the complaint that the jurisdictional amount is in controversy.”  
4 *Singer v. State Farm Mut. Auto Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997). If the  
5 complaint is silent as to the amount of damages claimed, “the court may consider  
6 facts in the removal petition and may ‘require the parties to submit summary-  
7 judgment-type evidence relevant to the amount in controversy at the time of  
8 removal.’” *Id.* (citation omitted). In such situations, “the removing defendant bears  
9 the burden of establishing, by a preponderance of the evidence” the amount in  
10 controversy. *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir.  
11 1996). Thus, when the allegations in a complaint do not establish the amount in  
12 controversy, a removing defendant can do so by “provid[ing] evidence establishing  
13 that it is ‘more likely than not’ that the amount in controversy exceeds” the  
14 jurisdictional minimum. *Id.*; *see also Dart Cherokee Basin Operating Co., LLC v.*  
15 *Owens*, 135 S. Ct. 547, 554 (2014) (“[A] defendant’s notice of removal need  
16 include only a plausible allegation that the amount in controversy exceeds the  
17 jurisdictional threshold.”); *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 699  
18 (9th Cir. 2007) (“[W]here it is unclear or ambiguous from the face of a state-court  
19 complaint whether the requisite amount in controversy is pled . . . we apply a  
20 preponderance of the evidence standard.”)

21 (c) In this case, the Complaint – though stating that more than  
22 \$25,000 is at issue to meet the State Court’s jurisdictional requirement (FAC ¶ 3) –  
23 is silent, or, at a minimum, unclear and ambiguous, as to the total amount in  
24 controversy. Therefore, the preponderance of the evidence standard applies to  
25 determine whether the action satisfies the District Court’s minimum jurisdictional  
26 requirements. As detailed below, although Ferguson denies Plaintiff is entitled to  
27 any recovery, his allegations and prayers for relief place more than \$75,000 in  
28 controversy.

(d) Plaintiff pleads nine causes of action, including individual claims for retaliation pursuant to California Labor Code sections 98.6 and 1102.5—for which he seeks back wages, interest, punitive damages, and penalties—and individual and class-wide wage and hour claims.<sup>2</sup> Defendants need only demonstrate that the named Plaintiff exceeds the amount in controversy. *See Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 549 (2005) (holding jurisdiction is appropriate where “the other elements of jurisdiction are present and at least one named plaintiff in the action satisfies the amount-in-controversy requirement”). Here, the amounts placed in controversy by at least five of Plaintiff’s individual claims alone exceeds the jurisdictional limit for this Court, as follows:

<b>Plaintiff’s Individual Alleged Claims<sup>3</sup></b>	<b>Amount</b>
Retaliation (Labor Code section 98.6)	\$39,131.00
Retaliation (Labor Code section 1102.5)	\$10,000.00
Punitive Damages	\$25,001.00
Failure to Provide Meal and Rest Periods	\$ 6,952.40
Failure to Provide Accurate Wage Statements	\$ 1,150.00
Failure to Timely Pay All Final Wages	\$ 5,140.80
<b>Total Minimum Amount in Controversy</b>	<b>\$87,375.20</b>

(e) The foregoing amounts are calculated as follows:

(i) Retaliation (Labor Code section 98.6). Plaintiff alleges that Ferguson terminated him for objecting to conduct that violated the California Labor Code, in violation of California Labor Code section 98.6. *See* FAC ¶ 75.

<sup>2</sup> Although Plaintiff pleads class claims on behalf of a putative class encompassing all of Defendants’ California non-exempt employees, Defendants are not moving to remove this matter under the Class Action Fairness Act, 28 U.S.C. section 1332(d), because Plaintiff’s individual claims exceed the jurisdictional amount-in-controversy requirement for removal under 28 U.S.C. section 1332(a).

<sup>3</sup> Plaintiff also alleges a cause of action for unpaid minimum wages. *See* FAC ¶¶ 23-35. However, Plaintiff’s minimum wage claim lacks sufficient specificity for Defendants to reasonably identify the potential amount in controversy.

1 Plaintiff claims that he is entitled to “reinstatement and reimbursement for lost  
2 wages and work benefits in addition to \$10,000.” *See* FAC ¶ 76.

3 Plaintiff’s rate of pay at the time of his termination was \$21.42 an hour, and  
4 Plaintiff was terminated on May 22, 2017. FAC ¶ 7; Brundage Decl. ¶¶ 20-21. As  
5 of the filing of this Notice, approximately 34 weeks have elapsed since Plaintiff  
6 was terminated. At \$21.42 per hour for forty hours per week (excluding overtime  
7 which Plaintiff frequently worked), Plaintiff’s backpay equals approximately  
8 \$29,131. In addition, Plaintiff seeks a statutory penalty of \$10,000, *see* FAC ¶ 76,  
9 equaling a total minimum amount in controversy for this claim of **\$39,131.00**.

10 (ii) Retaliation (Labor Code section 1102.5). Plaintiff also  
11 alleges that he was terminated in violation of California Labor Code section 1102.5,  
12 because Ferguson terminated him for objecting to conduct that violated the  
13 California Labor Code. *See* FAC ¶ 80. He alleges that he therefore is entitled to  
14 “actual damages and \$10,000 for Defendants’ violation.” *See* FAC ¶ 81.  
15 Therefore, the additional amount in controversy based on the statutory penalty  
16 (excluding the back pay counted above) for this claim is at least **\$10,000**.

17 (iii) Punitive Damages. Plaintiff seeks judgment against  
18 Defendants for “[p]unitive damages in a sum in excess of the jurisdictional  
19 minimum of the Superior Court.” *See* FAC ¶ 85.G. Because the jurisdictional  
20 minimum in California state court is \$25,000, the amount of punitive damages that  
21 Plaintiff has placed in controversy is at least **\$25,001**.

22 (iv) Meal and Rest Premiums. In his Complaint, Plaintiff  
23 alleges that Defendants “intentionally and improperly failed to provide all timely  
24 and uninterrupted rest breaks and/or meal periods to Plaintiff and the class as  
25 required by law.” *See* FAC ¶ 45. Labor Code section 226.7 states, “If an employer  
26 fails to provide an employee a meal or rest . . . period . . . the employer shall pay the  
27 employee one additional hour of pay at the employee’s regular rate of  
28 compensation for each workday that the meal or rest . . . period is not provided.”

1 Cal. Lab. Code § 226.7(c). Accordingly, Plaintiff seeks at least one additional hour  
2 of pay for each workday in which he was not provided one or more meal or rest  
3 periods. *See* FAC ¶ 48.

4 Plaintiff defines the covered period in this action as “beginning four years  
5 prior to the filing this action,” *i.e.*, December 4, 2013. FAC ¶ 15. *See also* Cal.  
6 Bus. & Prof. Code § 17208; *Cortez v. Purolator Air Filtration Prods. Co.*, 23 Cal.  
7 4th 163, 177-179 (2000) (actions for unpaid wages pursuant to the UCL are subject  
8 to a four-year statute of limitations); FAC ¶¶ 69-72. Plaintiff alleges he was hired  
9 in May 2011, and was terminated on May 22, 2017. FAC ¶ 7; *See* Brundage Decl.  
10 ¶¶ 20-21. Therefore, during the period covered by the lawsuit, December 4, 2013  
11 through Plaintiff’s termination on May 22, 2017, Plaintiff was employed for 182  
12 workweeks.

13 During the four-year statute of limitations period, Plaintiff earned seven  
14 different wage rates, ranging from \$16.00 to \$21.45. *See* Brundage Decl. ¶¶ 19, 22.  
15 Plaintiff’s average hourly rate during the four-year statute of limitations period was  
16 \$19.10.

17 For the purposes of this calculation only, Ferguson conservatively assumes  
18 that during each of the 182 workweeks Plaintiff worked, he was not provided one  
19 meal period and one rest period, resulting in 182 meal period premiums and 182  
20 rest period premiums (*i.e.*, a total of 364 one-hour premium payments).  
21 Multiplying Plaintiff’s average rate of pay during the four-year statute of limitations  
22 period, \$19.10, times 364 break premiums, equals an amount in controversy of at  
23 least **\$6,952.40**.

24 (v) Wage Statement Penalties. In his Complaint, Plaintiff  
25 alleges that as a result of Ferguson’s unpaid meal and rest break premiums,  
26 Ferguson failed to provide him accurate itemized wage statements. *See* FAC ¶ 51-  
27 58. Accordingly, Plaintiff seeks statutory damages under Labor Code section 226,  
28 as well as costs and reasonable attorneys’ fees. *See* FAC ¶ 58 (seeking \$50 for the

1 initial pay period in which a violation occurred and \$100 for each subsequent  
2 violation).

3 The statute of limitations for wage statement penalties claims is one year.  
4 Cal. Civ. Proc. Code § 340(a); *Elliot v. Spherion Pac. Work, LLC*, 572 F. Supp. 2d  
5 1169, 1179 (C.D. Cal. 2008) (one year statute of limitations in California Code of  
6 Civil Procedure section 340(a) applies when a plaintiff seeks penalties under  
7 section 226(e)). Therefore, the relevant statutory period for this claim begins  
8 December 4, 2016.

9 Plaintiff was paid on a biweekly basis. Between December 4, 2016 and May  
10 22, 2017, Plaintiff's termination date, Ferguson provided Plaintiff with twelve wage  
11 statements. *See* Brundage Decl. ¶ 23.

12 According to Plaintiff's allegations, he seeks \$50 for his first of twelve wage  
13 statement violations, and \$100 for the eleven wage statements thereafter, *i.e.*, a total  
14 of \$1,150.00 that he has placed in controversy in his wage statement claim.

15 (vi) Waiting Time Penalties. In his Complaint, Plaintiff  
16 alleges that because Ferguson failed to pay him all wages due when he was  
17 terminated, he is entitled to waiting time penalties of 30 days additional wages  
18 under Labor Code section 203. *See* FAC ¶¶ 63-66.

19 Plaintiff's rate of pay at the time of his termination was \$21.42 per hour.  
20 Brundage Decl. ¶ 21. Assuming 30 days of penalties with eight hours of work per  
21 day, Plaintiff seeks at least **\$5,140.80** in waiting time penalties.

22 (f) Taking the sum of the amount placed in controversy by (1)  
23 Plaintiff's retaliation claims; (2) Plaintiff's punitive damages claim; (3) Plaintiff's  
24 meal and rest break premiums claim; (4) Plaintiff's wage statements claim; and (5)  
25 Plaintiff's waiting time penalties claim, the total amount Plaintiff's Complaint  
26 places in controversy is at least **\$87,375.20**. Notably, this total does not take into  
27 account Plaintiff's claims for attorneys' fees under the California Labor Code. *See*,  
28 *e.g.* FAC ¶¶ 35, 58, 72, 85.C., 95.M. Because attorneys' fees are properly included

1 in the amount in controversy calculation, the actual amount in controversy is likely  
2 substantially more than the conservative estimate that Ferguson has advanced in  
3 this Notice. *See Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (1998)  
4 (“[W]here an underlying statute authorizes an award of attorneys’ fees, either with  
5 mandatory or discretionary language, such fees may be included in the amount in  
6 controversy.”).

7 Ferguson’s calculated total is also exclusive of Plaintiff’s individual claims  
8 for alleged unpaid minimum wages, alleged off-the-clock work, and alleged unpaid  
9 overtime. However, the total amount placed in controversy for all of Plaintiff’s  
10 claims exceeds \$75,000.

11 **SUPPLEMENTAL JURISDICTION OVER CLASS CLAIMS**

12 17. As detailed above, based on Defendants’ calculations Plaintiff satisfies  
13 the minimum \$75,000 amount in controversy required for this Court to have  
14 original jurisdiction over his claims. Defendants need only establish that a single  
15 Plaintiff in this case satisfies the minimum amount in controversy for all claims to  
16 be subject to this Court’s original jurisdiction. *See Exxon Mobil Corp.*, 545 U.S.  
17 at 558-59. Accordingly, this Court has original jurisdiction over the class claims.

18 18. Wherefore, Ferguson removes the above-entitled action now pending  
19 in the Superior Court of the State of California for the County of Los Angeles to  
20 this Court.

21  
22 DATED: January 19, 2018

PAUL HASTINGS LLP  
LESLIE L. ABBOTT  
CHRIS A. JALIAN

23  
24  
25 By:   
26 \_\_\_\_\_  
CHRIS A. JALIAN

27 Attorneys for Defendants  
28 FERGUSON ENTERPRISES, INC. and  
WOLSELEY INVESTMENTS, INC.

**EXHIBIT A**

SUM-100

**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT: FERGUSON ENTERPRISES, INC.,** a Virginia  
**(AVISO AL DEMANDADO):** corporation; **WOLSELEY INVESTMENTS, INC.,** a  
Virginia corporation; and **DOES 1 through 50,** inclusive,

**YOU ARE BEING SUED BY PLAINTIFF: RAYMOND CONNER,** on behalf of  
**(LO ESTÁ DEMANDANDO EL DEMANDANTE):** himself and all others similarly  
situated.

FOR COURT USE ONLY  
(SÓLO PARA USO DE LA CORTE)

**FILED**

Superior Court of California  
County of Los Angeles

DEC 04 2017

Sherri R. Carter, Executive Officer/Clerk  
By Ricardo Perez Deputy  
Ricardo Perez

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.**

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
*(El nombre y dirección de la corte es):*  
Superior Court of California, County of Los Angeles  
111 North Hill Street  
Los Angeles, California 90012

CASE NUMBER  
*(Número del Caso)* **BC685654**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: David G. Spivak, Esq.  
*(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):*  
THE SPIVAK LAW FIRM  
16530 Ventura Blvd., Suite 312, Encino, CA 91436

DATE: **DEC 04 2017** **SHERRI R. CARTER** Clerk, by Ricardo Perez Deputy  
*(Fecha)* *(Secretario)* *(Adjunto)* 818-382-3086

*(For proof of service of this summons, use Proof of Service of Summons (form POS-010).  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).*



12/07/2017

**NOTICE TO THE PERSON SERVED:** You are served

- as an individual defendant.
- as the person sued under the fictitious name of *(specify)*:
- on behalf of *(specify)*:  
under:  CCP 418.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other *(specify)*:
- by personal delivery on *(date)*:

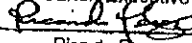


1 DAVID G. SPIVAK (SBN 179684)  
 david@spivaklaw.com  
 2 THE SPIVAK LAW FIRM  
 16530 Ventura Blvd., Ste. 312  
 3 Encino, CA 91436  
 Telephone (818) 582-3086  
 4 Facsimile (818) 582-2561

5 Attorney for Plaintiff,  
 6 RAYMOND CONNER, and all others similarly situated  
 7 (Additional Counsel on Following Page)

**FILED**  
 Superior Court of California  
 County of Los Angeles

DEC 04 2017

Sherri R. Carter, Executive Officer/Clerk  
 By  Deputy  
 Ricardo Perez

8  
 9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
 10 **FOR THE COUNTY OF LOS ANGELES**  
 11 **(UNLIMITED JURISDICTION)**

12 RAYMOND CONNER, on behalf of himself  
 and all others similarly situated,

Case No.: **BC 685654**  
**INDIVIDUAL AND CLASS ACTION**

13 *Plaintiff(s),*

**COMPLAINT FOR:**

14 vs.

1. Failure to Pay All Wages for All Hours Worked at the Correct Rates of Pay (Lab. Code, §§ 510, 1194, 1197, 1198);
2. Failure to Provide Meal and Rest Periods (Lab. Code, §§ 226.7, 512, 1198);
3. Failure to Provide Accurate Written Wage Statements (Lab. Code, § 226(a));
4. Failure to Timely Pay All Final Wages (Lab. Code, §§ 201-203);
5. Unfair Competition (Bus. & Prof. Code, § 17200 et seq.);
6. Retaliation (Lab. Code, § 98.6);
7. Retaliation (Lab. Code, § 1102.5); and
8. Wrongful Termination in Violation of Public Policy.

15  
 16 FERGUSON ENTERPRISES, INC., a Virginia  
 corporation; WOLSELEY INVESTMENTS,  
 17 INC., a Virginia corporation; and DOES 1  
 18 through 50, inclusive,

19 *Defendant(s).*

**JURY TRIAL DEMANDED**

12/07/2017



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*Conner v. Ferguson Enterprises, Inc., et al.*

Class Action Complaint

16:47:37 2017-12-01

Doc# 1 Page# 2 - Doc ID = 1720037271 - Doc Type = OTHER

CITY/CASE: BC685654  
LEA/DEF#:

RECEIPT #: CCH521665012  
DATE PAID: 12/05/17 10:36 AM  
PAYMENT: \$435.00 310  
RECEIVED:  
CHECK: \$0.00  
CASH: \$0.00  
CHANGE: \$0.00  
CARD: \$435.00

D322 Han William  
F. Highberger

CITY/CASE: BC685654  
LEA/DEF#:

RECEIPT #: CCH521665013  
DATE PAID: 12/05/17 10:44 AM  
PAYMENT: \$1,000.00 310  
RECEIVED:  
CHECK: \$0.00  
CASH: \$0.00  
CHANGE: \$0.00  
CARD: \$1,000.00

12/05/17  
10:36 AM  
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10:44 AM

12/07/2017

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**ADDITIONAL ATTORNEY FOR PLAINTIFF**

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whaines@uelglaw.com  
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Facsimile: (562) 256-1006

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1 Plaintiff, RAYMOND CONNER (hereafter "Plaintiff"), on behalf of himself and all  
2 others similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class action based on alleged violations of the California  
5 Labor Code, Industrial Welfare Commission Order No. 7-2001 (hereafter "the Wage Order"),  
6 and the Business and Professions Code against Defendants FERGUSON ENTERPRISES, INC.,  
7 WOLSELEY INVESTMENTS, INC., and Does 1-50, inclusive (collectively "Defendants").

8 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to  
9 him and other similarly situated current and former non-exempt hourly employees in California  
10 for unpaid wages and other related relief. These claims are based on Defendants' alleged  
11 failures to: (1) pay all wages for all hours worked at the correct rates of pay, including, but not  
12 limited to, overtime hours, (2) provide all meal and rest periods, (3) provide accurate written  
13 wage statements, (4) timely pay final wages upon termination of employment, (5) fairly  
14 compete. Defendants are also liable to Plaintiff for retaliation and wrongful termination.  
15 Accordingly, Plaintiff now seeks to recover unpaid wages, compensatory damages, penalties,  
16 and related relief through this class action.

17 **JURISDICTION AND VENUE**

18 3. This Court has subject matter jurisdiction because the aggregate claims of  
19 Plaintiff and class members, inclusive of all relief, place more than \$25,000 in controversy.

20 4. There is no basis for federal question subject matter jurisdiction in this case.  
21 Specifically, Plaintiff asserts claims on behalf of himself and class members that solely arise  
22 under California law rather than federal law.

23 5. There is also no basis for federal diversity jurisdiction in this case.

24 6. Venue is proper in Los Angeles County pursuant to California Code of Civil  
25 Procedure sections 395(a) and 395.5 in that liability arose in Los Angeles County because at  
26 least some of the transactions that are the subject matter of this Complaint occurred therein  
27 and/or because each defendant is found, maintains offices, transacts business, and/or has an  
28 agent therein.

**PARTIES**

7. Plaintiff is a resident of Bakersfield, California. In or about May of 2011,  
Defendants hired Plaintiff as a counter representative for its store located on 1161 East Artesia

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1 Blvd., Carson, California 90746. Over the course of his employment, Defendants promoted  
2 Plaintiff to inside sales representative and counter manager. Defendants compensated each  
3 position on a biweekly basis at an hourly rate of pay. Defendants terminated Plaintiff's  
4 employment on or about May 22, 2017.

5 8. Defendant FERGUSON ENTERPRISES, INC. is a corporation organized under  
6 the laws Virginia and also a citizen of California based on Plaintiff's information and belief.

7 9. Defendant WOLSELEY INVESTMENTS, INC. is a corporation organized  
8 under the laws of Virginia and also a citizen of California based on Plaintiff's information and  
9 belief.

10 10. Plaintiff is ignorant of the true names, capacities, relationships, and extents of  
11 participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but  
12 is informed and believes and thereon alleges that said defendants are legally responsible for the  
13 wrongful conduct alleged herein and therefore sues these defendants by such fictitious names.  
14 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE  
15 defendants when ascertained.

16 11. Plaintiff is informed and believes and thereon alleges that, at all relevant times  
17 herein, all Defendants were the agents, employees and/or servants, masters or employers of the  
18 remaining defendants, and in doing the things hereinafter alleged, were acting within the course  
19 and scope of such agency or employment, and with the approval and ratification of each of the  
20 other Defendants.

21 12. At all relevant times, in perpetrating the acts and omissions alleged herein,  
22 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a  
23 lack of a practice which resulted in Defendants not paying Plaintiff and the other members of  
24 the below-described class in accordance with applicable California labor laws as alleged herein.

25 13. Plaintiff is informed and believes and thereon alleges that each and every one of  
26 the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants,  
27 each acting as agents and/or employees, and/or under the direction and control of each of the  
28 other defendants, and that said acts and failures to act were within the course and scope of said  
29 agency, employment and/or direction and control.

**CLASS ACTION ALLEGATIONS**

14. This action has been brought and may be maintained as a class action pursuant to

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1 California Code of Civil Procedure section 382 because there is a well-defined community of  
2 interest among the persons who comprise the readily ascertainable class defined below and  
3 because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as  
4 a class action.

5 15. **Class Definition:** The class is defined as follows: All individuals Defendants  
6 employed in California as non-exempt hourly employees at any time during the period  
7 beginning four years prior to the filing of this action and ending on the date that final judgment  
8 is entered in this action, including, but not limited to, counter representatives, inside sales  
9 representatives, and counter managers.

10 16. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the  
11 right to amend or modify the class definition with greater specificity, by further division into  
12 subclasses and/or by limitation to particular issues.

13 17. **Numerosity:** The class members are so numerous that the individual joinder of  
14 each individual class member is impractical. While Plaintiff does not currently know the exact  
15 number of class members, Plaintiff is informed and believes that the actual number exceeds the  
16 minimum required for numerosity under California law.

17 18. **Commonality and Predominance:** Common questions of law and fact exist as  
18 to all class members and predominate over any questions which affect only individual class  
19 members. These questions include, but are not limited to:

20 A. Whether Defendants failed to pay all wages earned to class members for  
21 all hours worked at the correct rates of pay, including, but not limited to, overtime hours?

22 B. Whether Defendants failed to provide the class with all meal and rest  
23 periods as required by the Wage Order?

24 C. Whether Defendants failed to pay the class one hour's pay for each  
25 workday in which it failed to provide them with one or more timely rest breaks?

26 D. Whether Defendants failed to pay Plaintiff and the class one hour's pay  
27 for each workday in which it failed to provide them with one or more meal periods?

28 E. Whether Defendants failed to pay Plaintiff and the class at 1 1/2 times their  
regular rate of pay when they worked in excess of 8 hours in a workday and/or over 40 hours in  
a week?

F. Whether Defendants knowingly and intentionally failed to provide the

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class with accurate wage statements?

G. Whether Defendants willfully failed to provide the class with timely final wages?

H. Whether Defendants engaged in unfair competition within the meaning of Business and Professions Code section 17200, et seq., with respect to the class?

19. Typicality: Plaintiff's claims are typical of the other class members' claims. Plaintiff is informed and believes and thereon alleges that Defendants have a policy, practice or a lack of a policy which resulted in Defendants failing to comply with the California Labor Code and the Business and Professions Code as alleged herein.

20. Adequacy of Class Representative: Plaintiff is an adequate class representative in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent class members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of class members. Plaintiff will fairly and adequately represent and protect the interests of class members.

21. Adequacy of Class Counsel: Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent class members, are experienced in wage and hour class action litigation and are dedicated to vigorously prosecuting this action on behalf of Plaintiff and absent class members.

22. Superiority: A class action is vastly superior to other available means for fair and efficient adjudication of class members' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. In addition, the monetary amounts due to many individual class members are likely to be relatively small and would thus make it difficult, if not impossible, for individual class members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting class members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

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**FIRST CAUSE OF ACTION**

**FAILURE TO PAY FOR ALL HOURS WORKED AT THE CORRECT RATES OF PAY**

(Lab. Code, §§ 510, 1194, 1197, 1198)

(By Plaintiff and the Class against Defendants)

23. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

24. At all relevant times, Plaintiff and the class have been non-exempt employees of Defendants and entitled to the benefits and protections of the California Labor Code sections 510, 1194, 1197, and 1198 and the Wage Order.

25. Section 2 of the applicable Wage Order defines "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

26. In relevant part, Section 3 of the applicable Wage Order states,

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7<sup>th</sup>) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

27. Section 4 of the applicable Wage Order requires an employer to pay non-exempt

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1 employees at least the minimum wage set forth therein for all hours worked, which consist of all  
2 hours that an employer has actual or constructive knowledge that employees are working.

3 28. In relevant part, Labor Code section 510 states,

4 Any work in excess of eight hours in one workday and any work in excess of 40 hours in  
5 any one workweek and the first eight hours worked on the seventh day of work in any  
6 one workweek shall be compensated at the rate of no less than one and one-half times  
7 the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall  
8 be compensated at the rate of no less than twice the regular rate of pay for an employee.  
9 In addition, any work in excess of eight hours on any seventh day of a workweek shall  
10 be compensated at the rate of no less than twice the regular rate of pay of an employee.

11 29. Labor Code section 1197 makes it unlawful for an employer to pay an employee  
12 less than the minimum wage required under the applicable Wage Order for all hours worked  
13 during a payroll period.

14 30. Labor Code section 1198 makes it unlawful for an employer to employ an  
15 employee under conditions that violate the Wage Order.

16 31. With respect to off-the-clock work, the FLSA regulations, which are  
17 encompassed within California's definition of hours worked, provide:

18 [I]t is the duty of management to exercise its control and see that the work is not  
19 performed if it does not want it to be performed. It cannot sit back and accept the  
20 benefits without compensating for them. The mere promulgation of a rule against such  
21 work is not enough. Management has the power to enforce the rule and must make every  
22 effort to do so.

23 (29 C.F.R. § 785.13; see also *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585 [ruling  
24 that employers must compensate non-exempt employees for "off-the-clock" work if the  
25 employers knew or should have known that the employees were working those hours].)

26 32. At all relevant times during the applicable limitations period, Defendants failed  
27 to compensate Plaintiff and the class for all hours worked, including, but not limited to, the  
28 work they performed during their off-the-clock meal periods and overtime hours accrued while  
working off the clock.

33. Plaintiff is informed and believes that, at all relevant times, Defendants have  
applied centrally devised policies and practices to him and the class members with respect to  
working conditions and compensation arrangements.

12/01/2017



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34. As a result of Defendants' unlawful conduct, Plaintiff and the other class members have suffered damages in an amount, subject to proof, to the extent they were not paid the full amount of wages earned during each pay period during the applicable limitations period.

35. Pursuant to Labor Code section 1194, Plaintiff, on behalf of himself and the other class members, seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts subject to proof.

**SECOND CAUSE OF ACTION**

**FAILURE TO PROVIDE MEAL AND REST PERIODS**

**(Lab. Code §§ 226.7, 512, 1198)**

**(By Plaintiff and the Class against Defendants)**

36. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

37. At all relevant times during the applicable limitations period, Plaintiff and the class have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code sections 226.7, 512, and 1198 and the Wage Order.

38. Labor Code section 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

39. In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

40. In relevant part, section 11 of the Wage Order states:

///

12/20/2017



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**Meal Periods**

(A) 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 may be waived by mutual consent of the employer and the employee.

(D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

41. In relevant part, section 12 of the Wage Order states:

**Rest Periods**

(A) 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 rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

42. In addition, Labor Code section 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

12/07/2017



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1 43. Pursuant to the Labor Code and the Wage Order, Plaintiff and the class were  
2 entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or  
3 more hours.

4 44. Pursuant to the Wage Order, Plaintiff and the class were entitled to net rest  
5 periods of at least 10 minutes for each four-hour period of work or major fraction thereof.

6 45. Defendants have intentionally and improperly failed to provide all timely and  
7 uninterrupted rest breaks and/or meal periods to Plaintiff and the class as required by law.  
8 Additionally, Plaintiff's managers instructed him and the class to clock out and continue  
9 working, including help with customers, during their meal periods. Defendants required an  
10 employee/class member to staff the counter at all times and did not have sufficient employees to  
11 cover the employees at the counter in order for them to take rest breaks and meal periods.  
12 Further, Defendants' managers alter time records of Plaintiff and the class to show periods  
13 clocked out for meals even when they did not take a meal break. Defendants failed to pay class  
14 members premium wages at their regular rates of pay on workdays it failed to provide them  
15 with required rest and meal periods.

16 46. Plaintiff is informed and believes and thereon alleges that, at relevant times  
17 within the applicable limitations period, Defendants have maintained a policy, practice, or a  
18 lack of a policy which resulted in Defendants failing to provide Plaintiff and the class: meal  
19 periods, rest periods, and premium wages for all workdays they failed to provide Plaintiff and  
20 the class a meal or rest period.

21 47. As a result of Defendants' unlawful conduct, Plaintiff and the class have suffered  
22 damages in amounts subject to proof to the extent they were not paid premium wages owed for  
23 all workdays Defendants failed to provide a meal or rest period to them.

24 48. By reason of the above, Plaintiff and the class are entitled to premium wages for  
25 workdays in which one or more meal or rest period was not provided to them pursuant to  
26 California Labor Code section 226.7.

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**THIRD CAUSE OF ACTION**

**FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

**(Lab. Code, § 226)**

**(By Plaintiff and the Class against Defendants)**

49. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

50. At all relevant times during the applicable limitations period, Plaintiff and the class have been employees of Defendants and entitled to the benefits and protections of California Labor Code section 226.

51. Pursuant to California Labor Code section 226, subdivision (a), Plaintiff and the class were entitled to receive, semimonthly or at the time of each payment of wages, an accurate itemized statement showing:

- A. Gross wages earned,
- B. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of section 515 or any applicable order of the Industrial Welfare Commission,
- C. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- D. All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- E. Net wages earned,
- F. The inclusive dates of the period for which the employee is paid,
- G. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- H. The name and address of the legal entity that is the employer, and
- I. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

52. Pursuant to California Labor Code section 226, subdivision (e), an employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or \$50 for the initial pay

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1 period in which a violation occurs and \$100 per employee for each violation in a subsequent  
2 pay period, not to exceed an aggregate penalty of \$4,000, and is entitled to an award of costs  
3 and reasonable attorneys' fees.

4 53. Pursuant to California Labor Code section 226, subdivision (e), an employee is  
5 deemed to suffer injury if the employer fails to provide a wage statement. Also, an employee is  
6 deemed to suffer injury if the employer fails to provide accurate and complete information as  
7 required by California Labor Code section 226, subdivision (a) and the employee cannot  
8 "promptly and easily determine" from the wage statement alone one or more of the following:

9 A. The amount of the gross wages or net wages paid to the employee during  
10 the pay period or any of the other information required to be provided on the itemized wage  
11 statement pursuant to California Labor Code section 226, subdivision (a);

12 B. Which deductions the employer made from gross wages to determine the  
13 net wages paid to the employee during the pay period;

14 C. The name and address of the employer and, if the employer is a farm  
15 labor contractor, as defined in subdivision (b) of section 1682 of the California Labor Code, the  
16 name and address of the legal entity that secured the services of the employer during the pay  
17 period; and

18 D. The name of the employee and only the last four digits of his or her social  
19 security number or an employee identification number other than a social security number.

20 54. "Promptly and easily determine," as stated in California Labor Code section 226,  
21 subdivision (e), means a reasonable person would be able to readily ascertain the information  
22 without reference to other documents or information.

23 55. As a result of the violations stated above, Defendants failed to provide Plaintiff  
24 and the class with itemized written wage statements that accurately stated all wages earned,  
25 including minimum, overtime, doubletime, premium wages, and all hours worked.

26 56. Defendants' failure to provide Plaintiff and the class with accurate wage  
27 statements was knowing and intentional. Defendants had the ability to provide Plaintiff and the  
28 class with accurate wage statements but intentionally provided wage statements that Defendants  
knew were not accurate. Defendants altered Plaintiff and the class' time records to avoid paying  
them premium wages and overtime hours.

57. As a result of being provided with inaccurate wage statements by Defendants,

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1 Plaintiff and the class have suffered injury. Their legal rights to receive accurate wage  
 2 statements were violated and they were misled about the amount of wages they had actually  
 3 earned and were owed. In addition, the absence of accurate information on their wage  
 4 statements prevented immediate challenges to Defendants' unlawful pay practices, has required  
 5 discovery and mathematical computations to determine the amounts of wages owed, has caused  
 6 difficulty and expense in attempting to reconstruct time and pay records, and/or has led to the  
 7 submission of inaccurate information about wages to state and federal government agencies.  
 8 Further, Plaintiff and the class were not able to ascertain from the wage statements whether  
 9 Defendants complied with their obligations under California Labor Code section 226,  
 10 subdivision (a).

11 58. Pursuant to California Labor Code section 226, subdivision (e), Plaintiff and the  
 12 class are entitled to recover the greater of actual damages, or penalties of \$50 for the initial pay  
 13 period in which a violation of California Labor Code section 226, subdivision (a) occurred and  
 14 \$100 for each violation of California Labor Code section 226, subdivision (a) in a subsequent  
 15 pay period, not to exceed an aggregate penalty of \$4,000, and are also entitled to an award of  
 16 costs and reasonable attorneys' fees.

**FOURTH CAUSE OF ACTION**

**WAITING TIME PENALTIES**

**(Lab. Code, §§ 201-203)**

**(By Plaintiff and the Class against Defendants)**

19 59. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

20 60. At all relevant times during the applicable limitations period, Plaintiff and the  
 21 class have been non-exempt employees of Defendants and entitled to the benefits and  
 22 protections of California Labor Code sections 201 to 203 and the Wage Order.

23 61. Labor Code section 201 provides that all earned and unpaid wages of an  
 24 employee who is discharged are due and payable immediately at the time of discharge.

25 62. Labor Code section 202 provides that all earned and unpaid wages of an  
 26 employee who quits after providing at least 72-hours notice before quitting are due and payable  
 27 at the time of quitting and that all earned and unpaid wages of an employee who quits without  
 28 providing at least 72-hours notice before quitting are due and payable within 72 hours.

63. By failing to pay all wages to Plaintiff and the class, including minimum,

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1 overtime, doubletime, and premium wages, Defendants failed to timely pay them all earned and  
2 unpaid wages in violation of Labor Code section 201 or 202.

3 64. Labor Code section 203 provides that the wages of an employee continue on a  
4 daily basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned  
5 and unpaid wages to the employee in accordance with Labor Code section 201 or 202.

6 65. Plaintiff is informed and believes that Defendants' failure to timely pay Plaintiff  
7 and the class all of their earned and unpaid wages have been willful in that, at all relevant times,  
8 Defendants have deliberately maintained policies and practices that violate the requirements of  
9 the Labor Code and the Wage Order even though, at all relevant times, they have had the ability  
10 to comply with those legal requirements. Defendants altered Plaintiff and the class' time records  
11 to avoid paying them premium wages and overtime hours. Plaintiff complained to Defendants'  
12 manager about their violations, yet Defendants ignored his complaints.

13 66. Pursuant to Labor Code section 203, Plaintiff seeks waiting time penalties on  
14 behalf of himself and the class in amounts subject to proof not to exceed 30 days of waiting  
15 time penalties.

16 **FIFTH CAUSE OF ACTION**

17 **UNFAIR COMPETITION**

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

19 **(By Plaintiff and the Class against Defendants)**

20 67. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

21 68. At all relevant times during the applicable limitations period, Plaintiff and the  
22 class have been employees of Defendants and entitled to the benefits and protections of the  
23 Business and Professions Code section 17200 et seq.

24 69. The unlawful conduct of Defendants alleged herein amounts to and constitutes  
25 unfair competition within the meaning of California Business & Professions Code section  
26 17200 et seq. Due to their unfair and unlawful business practices alleged herein, Defendants  
27 have unfairly gained a competitive advantage over other comparable companies doing business  
28 in California that comply with their legal obligations to compensate employees for all earned  
wages and provide them with all meal and rest periods according to California law.

70. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the  
class have suffered injuries in fact and lost money or property. Plaintiff and the class were

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1 deprived of minimum wages, overtime wages, doubletime wages, premium wages for all  
2 workdays a meal or rest period was not provided, and unpaid wages resulting from not being  
3 provided with accurate wage statements.

4 71. Pursuant to California Business & Professions Code section 17203, Plaintiff and  
5 the class are entitled to restitution of all monies rightfully belonging to them that Defendants did  
6 not pay them or otherwise retained by means of their unlawful and unfair business practices.

7 72. Plaintiff and the class are entitled to reasonable attorneys' fees in connection  
8 with their unfair competition claims pursuant to California Code of Civil Procedure section  
9 1021.5, the substantial benefit doctrine, and/or the common fund doctrine.

10 **SIXTH CAUSE OF ACTION**

11 **RETALIATION**

12 **(Lab. Code § 98.6)**

13 **(By Plaintiff individually against all Defendants)**

14 73. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

15 74. According to Labor Code section 98.6, subdivision (a), a person shall not  
16 discharge an employee because the employee has filed a bona fide complaint or claim relating  
17 to his or her rights that are under the jurisdiction of the Labor Commissioner, made a written or  
18 oral complaint that he or she is owed unpaid wages, or because of the exercise of any right  
19 afforded him or her.

20 75. Defendants terminated Plaintiff for objecting to conduct that violated the  
21 California Labor Code, namely his April 2017 verbal complaint to a manager that he was not  
22 receiving meal and rest periods, and for his April 2017 verbal complaint that he made to Human  
23 Resources that Defendants' managers changed their employees' time entries in the timekeeping  
24 database to falsely reflect that they received their meal periods before the end of the fifth hour  
25 of their work shift. This is a clear violation of California Labor Code § 98.6(a).

26 76. Pursuant to Labor Code sections 98.6(b), Plaintiff is entitled to reinstatement and  
27 reimbursement for lost wages and work benefits in addition to \$10,000 for Defendants'  
28 violation.

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**SEVENTH CAUSE OF ACTION**

**RETALIATION**

**(Lab. Code § 1102.5)**

**(By Plaintiff individually against all Defendants)**

77. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

78. According to Labor Code section 1102.5, subdivision (b),  
An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, ... to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.

79. According to Labor Code section 1102.5, subdivision (c), an employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation.

80. Defendants terminated Plaintiff for objecting to conduct that violated the California Labor Code by terminating him for his complaint that Defendants required him and other class members to work without timely rest and meal periods, and that Defendants changed Plaintiff and class members' log times to misrepresent that their meal periods were taken in compliance with the California Labor Code. This is a violation of California Labor Code § 1102.5.

81. Pursuant to Labor Code sections 1102.5(f) and 1105, Plaintiff is entitled to actual damages and \$10,000 for Defendants' violation.

**EIGHTH CAUSE OF ACTION**

**WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

**(By Plaintiff individually against all Defendants)**

82. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

83. The state and federal statutes and case law recited below embody fundamental,

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1 substantial, and well-established public policies of the United States and State of California. By  
2 the above-described misconduct, Defendants violated these fundamental, substantial, and well-  
3 established public policies:

4 A. Pursuant to Labor Code §§ 6300 and 6400, *et seq.*, employers are  
5 required to provide their employees with safe and healthful working conditions and place of  
6 employment.

7 B. Section 2 of the Wage Order defines "hours worked" as which an  
8 employee is subject to the control of an employer, and includes employee is suffered or  
9 permitted to work, whether or not required to do so."

10 C. Section 4 of the applicable Wage Order requires an employer to pay  
11 nonexempt employees at least the minimum wage set forth therein for all hours worked, which  
12 consist of all hours that an employer has actual or constructive knowledge that employees are  
13 working.

14 D. Pursuant to California Labor Code § 512 and Wage Order § 11,  
15 employers are required to provide their hourly, non-exempt employees with an uninterrupted  
16 thirty (30) minute meal period for every five hours worked.

17 E. Pursuant to the Wage Order § 12, employers are required to provide their  
18 hourly, non-exempt employees with net rest periods of at least ten (10) minutes for each four (4)  
19 hour work period, or major portion thereof during any given workday. "the time during all the  
20 time the required to pay meal period and

21 F. Pursuant to California Labor code section 226.7, employers owe their  
22 hourly, non-exempt employees one (1) additional hour of wages for each rest and/or meal  
23 period not provided in accordance with the Wage Order and Labor Code.

24 G. In relevant part, California Labor Code § 510 states,  
25  
26 Any work in excess of eight hours in one workday and any work in  
27 excess of 40 hours in any one workweek and the first eight hours worked  
28 on the seventh day of work in any one workweek shall be compensated at  
the rate of no less than one and one-half times the regular rate of pay for  
an employee. Any work in excess of 12 hours in one day shall be  
compensated at the rate of no less than twice the regular rate of pay for an

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employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

H. Labor Code section 1194 invalidates any agreement between an employer and an employee to work for less than the minimum or overtime wage required under the applicable Wage Orders.

I. Labor Code section 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Orders for all hours worked during a payroll period.

J. Labor Code section 1198 makes it unlawful for an employer to employ an employee under conditions that violate the applicable Wage Order.

K. According to Labor Code section 98.6, subdivision (a), a person shall not discharge an employee because the employee has made a written or oral complaint that he or she is owed unpaid wages or because of the exercise of any right afforded him or her.

L. According to Labor Code section 1102.5, subdivision (b), an employer shall not retaliate against an employee for disclosing information to a person with authority over the employee who has the authority to correct the violation if the employee has reasonable cause to believe that the information "discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation."

M. According to Labor Code section 1102.5, subdivision (c), an employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation.

N. Pursuant to Labor Code section 226(a), employees are entitled to receive, semimonthly or at the time of each payment of wages, an accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable hourly rates in effect during the pay period; and d) the corresponding number of hours worked at each hourly rate by the employee.

O. Labor Code sections 201 to 204 require that employers timely pay their

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- 1 E. Prejudgment interest pursuant to Code of Civil Procedure section 998 and
- 2 Civil Code § 3287(a);
- 3 F. Costs of suit;
- 4 G. Punitive damages in a sum in excess of the jurisdictional minimum of the
- 5 Superior Court;
- 6 H. Back pay for Plaintiff;
- 7 I. Front pay for Plaintiff; and
- 8 J. Such other and further relief as the court deems proper.

**PRAYER FOR RELIEF**

10 86. WHEREFORE, Plaintiff, on behalf of himself and the class, prays for relief and  
11 judgment against Defendants as follows:

- 12 A. An order that the action be certified as a class action with respect to
- 13 Plaintiff's claims for violations of California law;
- 14 B. An order that Plaintiff be appointed class representative;
- 15 C. An order that counsel for Plaintiff be appointed class counsel;
- 16 D. Unpaid wages;
- 17 E. Liquidated damages;
- 18 F. Statutory penalties;
- 19 G. Declaratory relief;
- 20 H. Actual damages;
- 21 I. Restitution;
- 22 J. Pre-judgment interest;
- 23 K. Costs of suit;
- 24 L. Reasonable attorney's fees; and
- 25 M. Such other relief as the Court deems just and proper.

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12/19/2017



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**DEMAND FOR JURY TRIAL**

Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM



Dated: November 29, 2017

By

DAVID SPIVAK, Attorney for Plaintiff,  
RAYMOND CONNER, and all others similarly situated

12/07/2017



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To: LA Superior Court Page 3 of 30

2017-12-02 00:24:38 (GMT)

13103177511 From: David Spivak

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address). <b>David G. Spivak, Esq.</b> SBN: 179684 <b>THE SPIVAK LAW FIRM</b> 16530 Ventura Blvd., Suite 312, Encino, CA 91436 TELEPHONE NO.: 818-582-3086 FAX NO.: 818-582-2561		FOR COURT USE ONLY  <b>FILED</b> Superior Court of California County of Los Angeles  <b>DEC 04 2017</b>  Sherri B. Carter, Executive Officer/Clerk By: <u>Ricardo Perez</u> Deputy
ATTORNEY FOR (Name) <b>Raymond Conner</b> SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: 111 North Hill Street CITY AND ZIP CODE: Los Angeles, 90012 BRANCH NAME: Stanley Mosk Courthouse		
CASE NAME: <b>RAYMOND CONNER v. FERGUSON ENTERPRISES, INC., et al.</b>		CASE NUMBER: <b>BC685654</b>
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (47)
<b>Other P/DP/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/DP/WD (23)	<b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26)	<b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20)
<b>Non-P/DP/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (06) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/DP/WD tort (35)	<b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38)	<b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42)
<b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	<b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)

2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input checked="" type="checkbox"/> Large number of witnesses
b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence	f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a.  monetary b.  nonmonetary; declaratory or injunctive relief c.  punitive

4. Number of causes of action (specify): eight (8)

5. This case  is  is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: November 29 2017  
 David G. Spivak, Esq. (TYPE OR PRINT NAME)  (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

12/07/2017

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CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Table with 3 columns: Auto Tort, Contract, and Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403). Includes categories like Asbestos, Contract Breach, Real Property, and Miscellaneous Civil Complaint.

12/07/2017

SHORT TITLE CONNER v. FERGUSON ENTERPRISES, INC., et al.	CASE NUMBER <b>BC685654</b>
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**CIVIL CASE COVER SHEET ADDENDUM AND  
STATEMENT OF LOCATION  
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to Local Rule 2.3 in all new civil case filings in the Los Angeles Superior Court.

**Step 1:** After completing the Civil Case Cover Sheet (Judicial Council form CM-010), find the exact case type in Column A that corresponds to the case type indicated in the Civil Case Cover Sheet.

**Step 2:** In Column B, check the box for the type of action that best describes the nature of the case.

**Step 3:** In Column C, circle the number which explains the reason for the court filing location you have chosen.

**Applicable Reasons for Choosing Court Filing Location (Column C)**

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>1. Class actions must be filed in the Stanley Mosk Courthouse, Central District.</li> <li>2. Permissive filing in central district.</li> <li>3. Location where cause of action arose.</li> <li>4. Mandatory personal injury filing in North District.</li> <li>5. Location where performance required or defendant resides.</li> <li>6. Location of property or permanently garaged vehicle.</li> </ul> | <ul style="list-style-type: none"> <li>7. Location where petitioner resides.</li> <li>8. Location wherein defendant/respondent functions wholly.</li> <li>9. Location where one or more of the parties reside.</li> <li>10. Location of Labor Commissioner Office.</li> <li>11. Mandatory filing location (Hub Cases – unlawful detainer, limited non-collection, limited collection, or personal injury).</li> </ul> |
|--|---|

12/07/2017

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1, 4, 11
	Uninsured Motorist (45)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death - Uninsured Motorist	1, 4, 11
Other Personal Injury/Property Damage/Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	1, 11 1, 11
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1, 4, 11
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1, 4, 11 1, 4, 11
	Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1, 4, 11
		<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1, 4, 11
<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress <input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death		1, 4, 11 1, 4, 11	

SHORT TITLE: CONNER V. FERGUSON ENTERPRISES, INC., et al.		CASE NUMBER
A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Non-Personal Injury/Property Damage/Wrongful Death Tort	Business Tort (07) <input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1, 2, 3
	Civil Rights (08) <input type="checkbox"/> A6005 Civil Rights/Discrimination	1, 2, 3
	Defamation (13) <input type="checkbox"/> A6010 Defamation (slander/libel)	1, 2, 3
	Fraud (16) <input type="checkbox"/> A6013 Fraud (no contract)	1, 2, 3
	Professional Negligence (25) <input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1, 2, 3 1, 2, 3
	Other (35) <input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	1, 2, 3
Employment	Wrongful Termination (36) <input type="checkbox"/> A6037 Wrongful Termination	1, 2, 3
	Other Employment (15) <input checked="" type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1, 2, 3 10
Contract	Breach of Contract/Warranty (06) (not insurance) <input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2, 5 2, 5 1, 2, 5 1, 2, 5
	Collections (09) <input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case <input type="checkbox"/> A6034 Collections Case-Purchased Debt (Charged Off Consumer Debt Purchased on or after January 1, 2014)	5, 5, 11 5, 11 5, 6, 11
	Insurance Coverage (18) <input type="checkbox"/> A6015 Insurance Coverage (not complex)	1, 2, 5, 8
	Other Contract (37) <input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute (not breach/insurance/fraud/negligence)	1, 2, 3, 5 1, 2, 3, 5 1, 2, 3, 8, 9
	Eminent Domain/Inverse Condemnation (14) <input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2, 8
	Wrongful Eviction (33) <input type="checkbox"/> A6023 Wrongful Eviction Case	2, 6
Real Property	Other Real Property (26) <input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2, 6 2, 6 2, 6
	Unlawful Detainer-Commercial (31) <input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	6, 11
	Unlawful Detainer-Residential (32) <input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	6, 11
Unlawful Detainer- Post-Foreclosure (34) <input type="checkbox"/> A6020F Unlawful Detainer-Post-Foreclosure	2, 6, 11	
Unlawful Detainer-Drugs (38) <input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2, 6, 11	

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LACIV 108 (Rev 2/16)  
LASC Approved 03-04

**CIVIL CASE COVER SHEET ADDENDUM  
AND STATEMENT OF LOCATION**

Local Rule 2.3  
Page 2 of 4

16:47:37 2017-12-01

SHORT TITLE: CONNER V. PERGUSON ENTERPRISES, INC., et al.		CASE NUMBER
A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Asset Forfeiture (06)	<input type="checkbox"/> A5106 Asset Forfeiture Case	2, 3, 6
Petition re Arbitration (11)	<input type="checkbox"/> A5115 Petition to Compel/Confirm/Vacate Arbitration	2, 5
Writ of Mandate (02)	<input type="checkbox"/> A5161 Writ - Administrative Mandamus	2, 8
	<input type="checkbox"/> A5152 Writ - Mandamus on Limited Court Case Matter	2
	<input type="checkbox"/> A5153 Writ - Other Limited Court Case Review	2
Other Judicial Review (38)	<input type="checkbox"/> A5150 Other Writ/Judicial Review	2, 8
Antitrust/Trade Regulation (03)	<input type="checkbox"/> A5003 Antitrust/Trade Regulation	1, 2, 8
Construction Defect (10)	<input type="checkbox"/> A5007 Construction Defect	1, 2, 3
Claims Involving Mass Tort (40)	<input type="checkbox"/> A5006 Claims Involving Mass Tort	1, 2, 8
Securities Litigation (28)	<input type="checkbox"/> A5035 Securities Litigation Case	1, 2, 8
Toxic Tort Environmental (30)	<input type="checkbox"/> A5036 Toxic Tort/Environmental	1, 2, 3, 8
Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A5014 Insurance Coverage/Subrogation (complex case only)	1, 2, 5, 8
Enforcement of Judgment (20)	<input type="checkbox"/> A5141 Sister State Judgment	2, 5, 11
	<input type="checkbox"/> A5160 Abstract of Judgment	2, 6
	<input type="checkbox"/> A5107 Confession of Judgment (non-domestic relations)	2, 9
	<input type="checkbox"/> A5140 Administrative Agency Award (not unpaid taxes)	2, 8
	<input type="checkbox"/> A5114 Petition/Certificate for Entry of Judgment on Unpaid Tax	2, 8
<input type="checkbox"/> A5112 Other Enforcement of Judgment Case	2, 8, 9	
RICO (27)	<input type="checkbox"/> A5033 Racketeering (RICO) Case	1, 2, 8
Miscellaneous Civil Complaints (42)	<input type="checkbox"/> A5030 Declaratory Relief Only	1, 2, 8
	<input type="checkbox"/> A5040 Injunctive Relief Only (not domestic/harassment)	2, 8
	<input type="checkbox"/> A5011 Other Commercial Complaint Case (non-tort/non-complex)	1, 2, 8
	<input type="checkbox"/> A5000 Other Civil Complaint (non-tort/non-complex)	1, 2, 8
Partnership/Corporation Governance (21)	<input type="checkbox"/> A5113 Partnership and Corporate Governance Case	2, 8
Miscellaneous Civil Petitions (43)	<input type="checkbox"/> A5121 Civil Harassment	2, 3, 9
	<input type="checkbox"/> A5123 Workplace Harassment	2, 3, 9
	<input type="checkbox"/> A5124 Elder/Dependent Adult Abuse Case	2, 3, 9
	<input type="checkbox"/> A5190 Election Contest	2
	<input type="checkbox"/> A5110 Petition for Change of Name/Change of Gender	2, 7
	<input type="checkbox"/> A5170 Petition for Relief from Late Claim Law	2, 3, 8
<input type="checkbox"/> A5100 Other Civil Petition	2, 9	

11/20/17

SHORT TITLE: CONNER v. FERCOUSON ENTERPRISES, INC., et al.	CASE NUMBER
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**Step 4: Statement of Reason and Address:** Check the appropriate boxes for the numbers shown under Column C for the type of action that you have selected. Enter the address which is the basis for the filing location, including zip code. (No address required for class action cases).

REASON: <input checked="" type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10. <input type="checkbox"/> 11.		ADDRESS: 1161 East Artesia Blvd.	
CITY: Carson	STATE: CA	ZIP CODE: 90746	

**Step 5: Certification of Assignment:** I certify that this case is properly filed in the Central District of the Superior Court of California, County of Los Angeles [Code Civ. Proc., §392 et seq., and Local Rule 2.3(a)(1)(E)].

Dated: November 29, 2017

  
 (SIGNATURE OF ATTORNEY FILING PARTY)

**PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:**

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet, Judicial Council form CM-010.
4. Civil Case Cover Sheet Addendum and Statement of Location form, LACIV 109, LASC Approved 03-04 (Rev. 02/18).
5. Payment in full of the filing fee, unless there is court order for waiver, partial or scheduled payments.
6. A signed order appointing the Guardian ad Litem, Judicial Council form CIV-010, if the plaintiff or petitioner is a minor under 18 years of age will be required by Court in order to issue a summons.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

12/07/2017

**EXHIBIT B**

322

SUM-100

**SUMMONS on First Amended Complaint  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT: FERGUSON ENTERPRISES, INC.,** a Virginia (AVISO AL DEMANDADO); **WOLSELEY INVESTMENTS, INC.,** a Virginia corporation; and **DOES 1 through 50, inclusive,**

**YOU ARE BEING SUED BY PLAINTIFF: RAYMOND CONNER,** on behalf of (LO ESTÁ DEMANDANDO EL DEMANDANTE); himself and all others similarly situated, and as an "aggrieved employee" on behalf of other "aggrieved employees" under the Labor Code Private Attorneys General Act of 2004,

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**FILED**

Superior Court of California  
County of Los Angeles

**DEC 18 2017**

Sherri R. Carter, Executive Officer/Clerk  
By Maria D. Aguirre, Deputy

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o al colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es):  
Superior Court of California, County of Los Angeles  
600 South Commonwealth Ave.  
Los Angeles, California 90005

CASE NUMBER: BC685654  
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: David Spivak, Esq.  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

THE SPIVAK LAW FIRM  
16530 Ventura Blvd., Suite 312, Encino, CA 91436

SHERRI R. CARTER  
Clerk, by  
(Secretario)

818-582-3086

DATE: 12-18-17  
(Fecha)

Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

Maria D. Aguirre



**NOTICE TO THE PERSON SERVED:** You are served

- 1.  as an individual defendant.
- 2.  as the person sued under the fictitious name of (specify):

3.  on behalf of (specify):

- under:  CCP 416.10 (corporation)  CCP 416.60 (minor)
- CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)
- other (specify):

4.  by personal delivery on (date):

VIA FAX

1 DAVID G. SPIVAK (SBN 179684)  
david@spivaklaw.com  
2 CAROLINE TAHMASSIAN (SBN 285680)  
caroline@spivaklaw.com  
3 THE SPIVAK LAW FIRM  
4 16530 Ventura Blvd., Ste. 312  
Encino, CA 91436  
5 Telephone (818) 582-3086  
Facsimile (818) 582-2561

6 Attorney for Plaintiff,  
7 RAYMOND CONNER, and all others similarly situated  
8 (Additional Counsel on Following Page)

u  
**FILED**  
Superior Court of California  
County of Los Angeles

DEC 18 2017

Sherri R. Carter, Executive Officer/Clerk  
By Maria Aguirre, Deputy

9  
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **FOR THE COUNTY OF LOS ANGELES**  
12 **(UNLIMITED JURISDICTION)**

13 RAYMOND CONNER, on behalf of himself  
14 and all others similarly situated, and as an  
15 "aggrieved employee" on behalf of other  
"aggrieved employees" under the Labor Code  
Private Attorneys General Act of 2004,

16  
17 *Plaintiff(s),*

18 vs.

19 FERGUSON ENTERPRISES, INC., a Virginia  
20 corporation; WOLSELEY INVESTMENTS,  
INC., a Virginia corporation; and DOES 1  
21 through 50, inclusive,

22 *Defendant(s).*  
23  
24  
25  
26


Case No.: BC685654

**INDIVIDUAL AND CLASS ACTION**

**FIRST AMENDED COMPLAINT FOR:**

1. Failure to Pay All Wages for All Hours Worked at the Correct Rates of Pay (Lab. Code, §§ 510, 1194, 1197, 1198);
2. Failure to Provide Meal and Rest Periods (Lab. Code, §§ 226.7, 512, 1198);
3. Failure to Provide Accurate Written Wage Statements (Lab. Code, § 226(a));
4. Failure to Timely Pay All Final Wages (Lab. Code, §§ 201-203);
5. Unfair Competition (Bus. & Prof. Code, § 17200 et seq.);
6. Retaliation (Lab. Code, § 98.6);
7. Retaliation (Lab. Code, § 1102.5);
8. Wrongful Termination in Violation of Public Policy; and
9. Civil Penalties (Lab. Code §§ 2698, et seq.).

**JURY TRIAL DEMANDED**

27  
28  
  
**SPIVAK LAW**  
Employee Rights Attorneys  
16530 Ventura Blvd., Ste. 312  
Encino, CA 91436  
(818) 582-3086 Tel  
(818) 582-2561 Fax  
SpivakLaw.com

1  
*Conner v. Ferguson Enterprises, Inc., et al.*

First Amended Complaint



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ADDITIONAL ATTORNEY FOR PLAINTIFF

WALTER HAINES (SBN 71075)  
whaines@uelglaw.com  
UNITED EMPLOYEES LAW GROUP  
5500 Bolsa Ave., Suite 201  
Huntington Beach, CA 92649  
Telephone: (562) 256-1047  
Facsimile: (562) 256-1006



**SPIVAK LAW**

Employee Rights Attorneys  
16530 Ventura Blvd., Ste. 312  
Encino, CA 91436  
(818) 582-3086 Tel  
(818) 582-2561 Fax  
SpivakLaw.com

1 Plaintiff, RAYMOND CONNER (hereafter "Plaintiff"), on behalf of himself and all  
2 others similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class action based on alleged violations of the California  
5 Labor Code, Industrial Welfare Commission Order No. 7-2001 (hereafter "the Wage Order"),  
6 and the Business and Professions Code against Defendants FERGUSON ENTERPRISES, INC.,  
7 WOLSELEY INVESTMENTS, INC., and Does 1-50, inclusive (collectively "Defendants").

8 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to  
9 him and other similarly situated current and former non-exempt hourly employees in California  
10 for unpaid wages and other related relief. These claims are based on Defendants' alleged  
11 failures to: (1) pay all wages for all hours worked at the correct rates of pay, including, but not  
12 limited to, overtime hours, (2) provide all meal and rest periods, (3) provide accurate written  
13 wage statements, (4) timely pay final wages upon termination of employment, (5) fairly  
14 compete. Defendants are also liable to Plaintiff for retaliation and wrongful termination.  
15 Accordingly, Plaintiff now seeks to recover unpaid wages, compensatory damages, penalties,  
16 and related relief through this class action.

17 **JURISDICTION AND VENUE**

18 3. This Court has subject matter jurisdiction because the aggregate claims of  
19 Plaintiff and class members, inclusive of all relief, place more than \$25,000 in controversy.

20 4. There is no basis for federal question subject matter jurisdiction in this case.  
21 Specifically, Plaintiff asserts claims on behalf of himself and class members that solely arise  
22 under California law rather than federal law.

23 5. There is also no basis for federal diversity jurisdiction in this case.

24 6. Venue is proper in Los Angeles County pursuant to California Code of Civil  
25 Procedure sections 395(a) and 395.5 in that liability arose in Los Angeles County because at  
26 least some of the transactions that are the subject matter of this Complaint occurred therein  
27 and/or because each defendant is found, maintains offices, transacts business, and/or has an  
28 agent therein.

**PARTIES**

7. Plaintiff is a resident of Bakersfield, California. In or about May of 2011,  
Defendants hired Plaintiff as a counter representative for its store located on 1161 East Artesia



**SPIVAK LAW**

Employee Rights Attorneys  
16530 Ventura Blvd., Ste. 312  
Encino, CA 91436  
(818) 582-3086 Tel  
(818) 582-2561 Fax  
SpivakLaw.com

1 Blvd., Carson, California 90746. Over the course of his employment, Defendants promoted  
2 Plaintiff to inside sales representative and counter manager. Defendants compensated each  
3 position on a biweekly basis at an hourly rate of pay. Defendants terminated Plaintiff's  
4 employment on or about May 22, 2017. At all relevant times, Plaintiff was an "employee"  
5 within the meaning of Title 8 California Code of Regulations Section 11070 and an "aggrieved  
6 employee" within the meaning of Labor Code Section 2699(c).

7 8. Defendant FERGUSON ENTERPRISES, INC. is a corporation organized under  
8 the laws Virginia and also a citizen of California based on Plaintiff's information and belief.

9 9. Defendant WOLSELEY INVESTMENTS, INC. is a corporation organized  
10 under the laws of Virginia and also a citizen of California based on Plaintiff's information and  
11 belief.

12 10. Plaintiff is ignorant of the true names, capacities, relationships, and extents of  
13 participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but  
14 is informed and believes and thereon alleges that said defendants are legally responsible for the  
15 wrongful conduct alleged herein and therefore sues these defendants by such fictitious names.  
16 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE  
17 defendants when ascertained.

18 11. Plaintiff is informed and believes and thereon alleges that, at all relevant times  
19 herein, all Defendants were the agents, employees and/or servants, masters or employers of the  
20 remaining defendants, and in doing the things hereinafter alleged, were acting within the course  
21 and scope of such agency or employment, and with the approval and ratification of each of the  
22 other Defendants.

23 12. At all relevant times, in perpetrating the acts and omissions alleged herein,  
24 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a  
25 lack of a practice which resulted in Defendants not paying Plaintiff and the other members of  
26 the below-described class in accordance with applicable California labor laws as alleged herein.

27 13. Plaintiff is informed and believes and thereon alleges that each and every one of  
28 the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants,  
each acting as agents and/or employees, and/or under the direction and control of each of the  
other defendants, and that said acts and failures to act were within the course and scope of said  
agency, employment and/or direction and control.



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**CLASS ACTION ALLEGATIONS**

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2 14. This action has been brought and may be maintained as a class action pursuant to  
3 California Code of Civil Procedure section 382 because there is a well-defined community of  
4 interest among the persons who comprise the readily ascertainable class defined below and  
5 because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as  
6 a class action.

7 15. **Class Definition:** The class is defined as follows: All individuals Defendants  
8 employed in California as non-exempt hourly employees at any time during the period  
9 beginning four years prior to the filing of this action and ending on the date that final judgment  
10 is entered in this action, including, but not limited to, counter representatives, inside sales  
11 representatives, and counter managers.

12 16. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the  
13 right to amend or modify the class definition with greater specificity, by further division into  
14 subclasses and/or by limitation to particular issues.

15 17. **Numerosity:** The class members are so numerous that the individual joinder of  
16 each individual class member is impractical. While Plaintiff does not currently know the exact  
17 number of class members, Plaintiff is informed and believes that the actual number exceeds the  
18 minimum required for numerosity under California law.

19 18. **Commonality and Predominance:** Common questions of law and fact exist as  
20 to all class members and predominate over any questions which affect only individual class  
21 members. These questions include, but are not limited to:


22 A. Whether Defendants failed to pay all wages earned to class members for  
23 all hours worked at the correct rates of pay, including, but not limited to, overtime hours?

24 B. Whether Defendants failed to provide the class with all meal and rest  
25 periods as required by the Wage Order?

26 C. Whether Defendants failed to pay the class one hour's pay for each  
27 workday in which it failed to provide them with one or more timely rest breaks?

28 D. Whether Defendants failed to pay Plaintiff and the class one hour's pay  
for each workday in which it failed to provide them with one or more meal periods?

E. Whether Defendants failed to pay Plaintiff and the class at 1 1/2 times their  
regular rate of pay when they worked in excess of 8 hours in a workday and/or over 40 hours in



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a week?

F. Whether Defendants knowingly and intentionally failed to provide the class with accurate wage statements?

G. Whether Defendants willfully failed to provide the class with timely final wages?

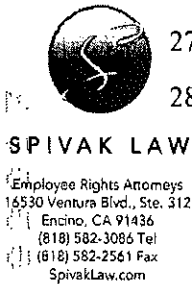
H. Whether Defendants engaged in unfair competition within the meaning of Business and Professions Code section 17200, et seq., with respect to the class?

19. **Typicality:** Plaintiff's claims are typical of the other class members' claims. Plaintiff is informed and believes and thereon alleges that Defendants have a policy, practice or a lack of a policy which resulted in Defendants failing to comply with the California Labor Code and the Business and Professions Code as alleged herein.

20. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent class members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of class members. Plaintiff will fairly and adequately represent and protect the interests of class members.

21. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent class members, are experienced in wage and hour class action litigation and are dedicated to vigorously prosecuting this action on behalf of Plaintiff and absent class members.

22. **Superiority:** A class action is vastly superior to other available means for fair and efficient adjudication of class members' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. In addition, the monetary amounts due to many individual class members are likely to be relatively small and would thus make it difficult, if not impossible, for individual class members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting class members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.



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**FIRST CAUSE OF ACTION**  
**FAILURE TO PAY FOR ALL HOURS WORKED AT THE CORRECT RATES OF**  
**PAY**

(Lab. Code, §§ 510, 1194, 1197, 1198)

(By Plaintiff and the Class against Defendants)

23. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

24. At all relevant times, Plaintiff and the class have been non-exempt employees of Defendants and entitled to the benefits and protections of the California Labor Code sections 510, 1194, 1197, and 1198 and the Wage Order.

25. Section 2 of the applicable Wage Order defines "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

26. In relevant part, Section 3 of the applicable Wage Order states,

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

27. Section 4 of the applicable Wage Order requires an employer to pay non-exempt



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1 employees at least the minimum wage set forth therein for all hours worked, which consist of all  
2 hours that an employer has actual or constructive knowledge that employees are working.

3 28. In relevant part, Labor Code section 510 states,

4 Any work in excess of eight hours in one workday and any work in excess of 40 hours in  
5 any one workweek and the first eight hours worked on the seventh day of work in any  
6 one workweek shall be compensated at the rate of no less than one and one-half times  
7 the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall  
8 be compensated at the rate of no less than twice the regular rate of pay for an employee.  
9 In addition, any work in excess of eight hours on any seventh day of a workweek shall  
10 be compensated at the rate of no less than twice the regular rate of pay of an employee.

11 29. Labor Code section 1197 makes it unlawful for an employer to pay an employee  
12 less than the minimum wage required under the applicable Wage Order for all hours worked  
13 during a payroll period.

14 30. Labor Code section 1198 makes it unlawful for an employer to employ an  
15 employee under conditions that violate the Wage Order.

16 31. With respect to off-the-clock work, the FLSA regulations, which are  
17 encompassed within California's definition of hours worked, provide:

18 [I]t is the duty of management to exercise its control and see that the work is not  
19 performed if it does not want it to be performed. It cannot sit back and accept the  
20 benefits without compensating for them. The mere promulgation of a rule against such  
21 work is not enough. Management has the power to enforce the rule and must make every  
22 effort to do so.

23 (29 C.F.R. § 785.13; see also *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585 [ruling  
24 that employers must compensate non-exempt employees for "off-the-clock" work if the  
25 employers knew or should have known that the employees were working those hours].)

26 32. At all relevant times during the applicable limitations period, Defendants failed  
27 to compensate Plaintiff and the class for all hours worked, including, but not limited to, the  
28 work they performed during their off-the-clock meal periods and overtime hours accrued while  
working off the clock.

33. Plaintiff is informed and believes that, at all relevant times, Defendants have  
applied centrally devised policies and practices to him and the class members with respect to  
working conditions and compensation arrangements.



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1 34. As a result of Defendants' unlawful conduct, Plaintiff and the other class  
2 members have suffered damages in an amount, subject to proof, to the extent they were not paid  
3 the full amount of wages earned during each pay period during the applicable limitations period.

4 35. Pursuant to Labor Code section 1194, Plaintiff, on behalf of himself and the  
5 other class members, seeks to recover unpaid wages, liquidated damages in amounts equal to  
6 the amounts of unpaid wages, interest thereon, and awards of reasonable costs and attorneys'  
7 fees, all in amounts subject to proof.

8 **SECOND CAUSE OF ACTION**

9 **FAILURE TO PROVIDE MEAL AND REST PERIODS**

10 **(Lab. Code §§ 226.7, 512, 1198)**

11 **(By Plaintiff and the Class against Defendants)**

12 36. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

13 37. At all relevant times during the applicable limitations period, Plaintiff and the  
14 class have been non-exempt employees of Defendants and entitled to the benefits and  
15 protections of California Labor Code sections 226.7, 512, and 1198 and the Wage Order.

16 38. Labor Code section 1198 states:

17 The maximum hours of work and the standard conditions of labor fixed by the  
18 commission shall be the maximum hours of work and the standard conditions of labor  
19 for employees. The employment of any employee for longer hours than those fixed by  
20 the order or under conditions of labor prohibited by the order is unlawful.

21 39. In relevant part, Labor Code section 512 states:

22 An employer may not employ an employee for a work period of more than five hours  
23 per day without providing the employee with a meal period of not less than 30 minutes,  
24 except that if the total work period per day of the employee is no more than six hours,  
25 the meal period may be waived by mutual consent of both the employer and employee.  
26 An employer may not employ an employee for a work period of more than 10 hours per  
27 day without providing the employee with a second meal period of not less than 30  
28 minutes, except that if the total hours worked is no more than 12 hours, the second meal  
period may be waived by mutual consent of the employer and the employee only if the  
first meal period was not waived.

39. In relevant part, section 11 of the Wage Order states:

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**Meal Periods**

(A) 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 may be waived by mutual consent of the employer and the employee.

(D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

41. In relevant part, section 12 of the Wage Order states:

**Rest Periods**

(A) 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 rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

42. In addition, Labor Code section 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.



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1 43. Pursuant to the Labor Code and the Wage Order, Plaintiff and the class were  
2 entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or  
3 more hours.

4 44. Pursuant to the Wage Order, Plaintiff and the class were entitled to net rest  
5 periods of at least 10 minutes for each four-hour period of work or major fraction thereof.

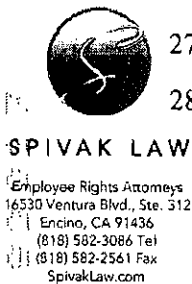
6 45. Defendants have intentionally and improperly failed to provide all timely and  
7 uninterrupted rest breaks and/or meal periods to Plaintiff and the class as required by law.  
8 Additionally, Plaintiff's managers instructed him and the class to clock out and continue  
9 working, including help with customers, during their meal periods. Defendants required an  
10 employee/class member to staff the counter at all times and did not have sufficient employees to  
11 cover the employees at the counter in order for them to take rest breaks and meal periods.  
12 Further, Defendants' managers alter time records of Plaintiff and the class to show periods  
13 clocked out for meals even when they did not take a meal break. Defendants failed to pay class  
14 members premium wages at their regular rates of pay on workdays it failed to provide them  
15 with required rest and meal periods.

16 46. Plaintiff is informed and believes and thereon alleges that, at relevant times  
17 within the applicable limitations period, Defendants have maintained a policy, practice, or a  
18 lack of a policy which resulted in Defendants failing to provide Plaintiff and the class: meal  
19 periods, rest periods, and premium wages for all workdays they failed to provide Plaintiff and  
20 the class a meal or rest period.

21 47. As a result of Defendants' unlawful conduct, Plaintiff and the class have suffered  
22 damages in amounts subject to proof to the extent they were not paid premium wages owed for  
23 all workdays Defendants failed to provide a meal or rest period to them.

24 48. By reason of the above, Plaintiff and the class are entitled to premium wages for  
25 workdays in which one or more meal or rest period was not provided to them pursuant to  
26 California Labor Code section 226.7.

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**THIRD CAUSE OF ACTION**

**FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

**(Lab. Code, § 226)**

**(By Plaintiff and the Class against Defendants)**

49. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

50. At all relevant times during the applicable limitations period, Plaintiff and the class have been employees of Defendants and entitled to the benefits and protections of California Labor Code section 226.

51. Pursuant to California Labor Code section 226, subdivision (a), Plaintiff and the class were entitled to receive, semimonthly or at the time of each payment of wages, an accurate itemized statement showing:

- A. Gross wages earned,
- B. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of section 515 or any applicable order of the Industrial Welfare Commission,
- C. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- D. All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- E. Net wages earned,
- F. The inclusive dates of the period for which the employee is paid,
- G. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- H. The name and address of the legal entity that is the employer, and
- I. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

52. Pursuant to California Labor Code section 226, subdivision (e), an employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or \$50 for the initial pay



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1 period in which a violation occurs and \$100 per employee for each violation in a subsequent  
2 pay period, not to exceed an aggregate penalty of \$4,000, and is entitled to an award of costs  
3 and reasonable attorneys' fees.

4 53. Pursuant to California Labor Code section 226, subdivision (e), an employee is  
5 deemed to suffer injury if the employer fails to provide a wage statement. Also, an employee is  
6 deemed to suffer injury if the employer fails to provide accurate and complete information as  
7 required by California Labor Code section 226, subdivision (a) and the employee cannot  
8 "promptly and easily determine" from the wage statement alone one or more of the following:

9 A. The amount of the gross wages or net wages paid to the employee during  
10 the pay period or any of the other information required to be provided on the itemized wage  
11 statement pursuant to California Labor Code section 226, subdivision (a);

12 B. Which deductions the employer made from gross wages to determine the  
13 net wages paid to the employee during the pay period;

14 C. The name and address of the employer and, if the employer is a farm  
15 labor contractor, as defined in subdivision (b) of section 1682 of the California Labor Code, the  
16 name and address of the legal entity that secured the services of the employer during the pay  
17 period; and

18 D. The name of the employee and only the last four digits of his or her social  
19 security number or an employee identification number other than a social security number.

20 54. "Promptly and easily determine," as stated in California Labor Code section 226,  
21 subdivision (e), means a reasonable person would be able to readily ascertain the information  
22 without reference to other documents or information.

23 55. As a result of the violations stated above, Defendants failed to provide Plaintiff  
24 and the class with itemized written wage statements that accurately stated all wages earned,  
25 including minimum, overtime, doubletime, premium wages, and all hours worked.

26 56. Defendants' failure to provide Plaintiff and the class with accurate wage  
27 statements was knowing and intentional. Defendants had the ability to provide Plaintiff and the  
28 class with accurate wage statements but intentionally provided wage statements that Defendants  
knew were not accurate. Defendants altered Plaintiff and the class' time records to avoid paying  
them premium wages and overtime hours.

57. As a result of being provided with inaccurate wage statements by Defendants,



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1 Plaintiff and the class have suffered injury. Their legal rights to receive accurate wage  
2 statements were violated and they were misled about the amount of wages they had actually  
3 earned and were owed. In addition, the absence of accurate information on their wage  
4 statements: prevented immediate challenges to Defendants' unlawful pay practices, has required  
5 discovery and mathematical computations to determine the amounts of wages owed, has caused  
6 difficulty and expense in attempting to reconstruct time and pay records, and/or has led to the  
7 submission of inaccurate information about wages to state and federal government agencies.  
8 Further, Plaintiff and the class were not able to ascertain from the wage statements whether  
9 Defendants complied with their obligations under California Labor Code section 226,  
subdivision (a).

10 58. Pursuant to California Labor Code section 226, subdivision (e), Plaintiff and the  
11 class are entitled to recover the greater of actual damages, or penalties of \$50 for the initial pay  
12 period in which a violation of California Labor Code section 226, subdivision (a) occurred and  
13 \$100 for each violation of California Labor Code section 226, subdivision (a) in a subsequent  
14 pay period, not to exceed an aggregate penalty of \$4,000, and are also entitled to an award of  
costs and reasonable attorneys' fees.

15 **FOURTH CAUSE OF ACTION**

16 **WAITING TIME PENALTIES**

17 **(Lab. Code, §§ 201-203)**

18 **(By Plaintiff and the Class against Defendants)**

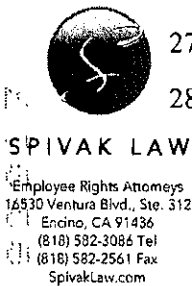
19 59. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

20 60. At all relevant times during the applicable limitations period, Plaintiff and the  
21 class have been non-exempt employees of Defendants and entitled to the benefits and  
22 protections of California Labor Code sections 201 to 203 and the Wage Order.

23 61. Labor Code section 201 provides that all earned and unpaid wages of an  
24 employee who is discharged are due and payable immediately at the time of discharge.

25 62. Labor Code section 202 provides that all earned and unpaid wages of an  
26 employee who quits after providing at least 72-hours notice before quitting are due and payable  
27 at the time of quitting and that all earned and unpaid wages of an employee who quits without  
providing at least 72-hours notice before quitting are due and payable within 72 hours.

28 63. By failing to pay all wages to Plaintiff and the class, including minimum,



1 overtime, doubletime, and premium wages, Defendants failed to timely pay them all earned and  
2 unpaid wages in violation of Labor Code section 201 or 202.

3 64. Labor Code section 203 provides that the wages of an employee continue on a  
4 daily basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned  
5 and unpaid wages to the employee in accordance with Labor Code section 201 or 202.

6 65. Plaintiff is informed and believes that Defendants' failure to timely pay Plaintiff  
7 and the class all of their earned and unpaid wages have been willful in that, at all relevant times,  
8 Defendants have deliberately maintained policies and practices that violate the requirements of  
9 the Labor Code and the Wage Order even though, at all relevant times, they have had the ability  
10 to comply with those legal requirements. Defendants altered Plaintiff and the class' time records  
11 to avoid paying them premium wages and overtime hours. Plaintiff complained to Defendants'  
12 manager about their violations, yet Defendants ignored his complaints.

13 66. Pursuant to Labor Code section 203, Plaintiff seeks waiting time penalties on  
14 behalf of himself and the class in amounts subject to proof not to exceed 30 days of waiting  
15 time penalties.

16 **FIFTH CAUSE OF ACTION**

17 **UNFAIR COMPETITION**

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

19 **(By Plaintiff and the Class against Defendants)**

20 67. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

21 68. At all relevant times during the applicable limitations period, Plaintiff and the  
22 class have been employees of Defendants and entitled to the benefits and protections of the  
23 Business and Professions Code section 17200 et seq.

24 69. The unlawful conduct of Defendants alleged herein amounts to and constitutes  
25 unfair competition within the meaning of California Business & Professions Code section  
26 17200 et seq. Due to their unfair and unlawful business practices alleged herein, Defendants  
27 have unfairly gained a competitive advantage over other comparable companies doing business  
28 in California that comply with their legal obligations to compensate employees for all earned  
wages and provide them with all meal and rest periods according to California law.

70. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the  
class have suffered injuries in fact and lost money or property. Plaintiff and the class were



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1 deprived of minimum wages, overtime wages, doubletime wages, premium wages for all  
2 workdays a meal or rest period was not provided, and unpaid wages resulting from not being  
3 provided with accurate wage statements.

4 71. Pursuant to California Business & Professions Code section 17203, Plaintiff and  
5 the class are entitled to restitution of all monies rightfully belonging to them that Defendants did  
6 not pay them or otherwise retained by means of their unlawful and unfair business practices.

7 72. Plaintiff and the class are entitled to reasonable attorneys' fees in connection  
8 with their unfair competition claims pursuant to California Code of Civil Procedure section  
9 1021.5, the substantial benefit doctrine, and/or the common fund doctrine.

10 **SIXTH CAUSE OF ACTION**

11 **RETALIATION**

12 **(Lab. Code § 98.6)**

13 **(By Plaintiff individually against all Defendants)**

14 73. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

15 74. According to Labor Code section 98.6, subdivision (a), a person shall not  
16 discharge an employee because the employee has filed a bona fide complaint or claim relating  
17 to his or her rights that are under the jurisdiction of the Labor Commissioner, made a written or  
18 oral complaint that he or she is owed unpaid wages, or because of the exercise of any right  
19 afforded him or her.

20 75. Defendants terminated Plaintiff for objecting to conduct that violated the  
21 California Labor Code, namely his April 2017 verbal complaint to a manager that he was not  
22 receiving meal and rest periods, and for his April 2017 verbal complaint that he made to Human  
23 Resources that Defendants' managers changed their employees' time entries in the timekeeping  
24 database to falsely reflect that they received their meal periods before the end of the fifth hour  
25 of their work shift. This is a clear violation of California Labor Code § 98.6(a).

26 76. Pursuant to Labor Code sections 98.6(b), Plaintiff is entitled to reinstatement and  
27 reimbursement for lost wages and work benefits in addition to \$10,000 for Defendants'  
28 violation.

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**SEVENTH CAUSE OF ACTION**

**RETALIATION**

**(Lab. Code § 1102.5)**

**(By Plaintiff individually against all Defendants)**

77. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

78. According to Labor Code section 1102.5, subdivision (b),  
An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, ... to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.

79. According to Labor Code section 1102.5, subdivision (c), an employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation.

80. Defendants terminated Plaintiff for objecting to conduct that violated the California Labor Code by terminating him for his complaint that Defendants required him and other class members to work without timely rest and meal periods, and that Defendants changed Plaintiff and class members' log times to misrepresent that their meal periods were taken in compliance with the California Labor Code. This is a violation of California Labor Code § 1102.5.

81. Pursuant to Labor Code sections 1102.5(f) and 1105, Plaintiff is entitled to actual damages and \$10,000 for Defendants' violation.

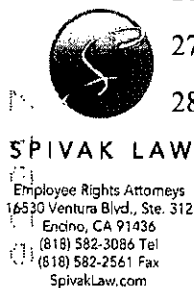
**EIGHTH CAUSE OF ACTION**

**WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

**(By Plaintiff individually against all Defendants)**

82. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

83. The state and federal statutes and case law recited below embody fundamental,





1 substantial, and well-established public policies of the United States and State of California. By  
2 the above-described misconduct, Defendants violated these fundamental, substantial, and well-  
3 established public policies:

4 A. Pursuant to Labor Code §§ 6300 and 6400, *et seq.*, employers are  
5 required to provide their employees with safe and healthful working conditions and place of  
6 employment.

7 B. Section 2 of the Wage Order defines "hours worked" as which an  
8 employee is subject to the control of an employer, and includes employee is suffered or  
9 permitted to work, whether or not required to do so."

10 C. Section 4 of the applicable Wage Order requires an employer to pay  
11 nonexempt employees at least the minimum wage set forth therein for all hours worked, which  
12 consist of all hours that an employer has actual or constructive knowledge that employees are  
13 working.

14 D. Pursuant to California Labor Code § 512 and Wage Order § 11,  
15 employers are required to provide their hourly, non-exempt employees with an uninterrupted  
16 thirty (30) minute meal period for every five hours worked.

17 E. Pursuant to the Wage Order § 12, employers are required to provide their  
18 hourly, non-exempt employees with net rest periods of at least ten (10) minutes for each four (4)  
19 hour work period, or major portion thereof during any given workday. "the time during all the  
20 time the required to pay meal period and

21 F. Pursuant to California Labor code section 226.7, employers owe their  
22 hourly, non-exempt employees one (1) additional hour of wages for each rest and/or meal  
23 period not provided in accordance with the Wage Order and Labor Code.

24 G. In relevant part, California Labor Code § 510 states,  
25  
26 Any work in excess of eight hours in one workday and any work in  
27 excess of 40 hours in any one workweek and the first eight hours worked  
28 on the seventh day of work in any one workweek shall be compensated at  
the rate of no less than one and one-half times the regular rate of pay for  
an employee. Any work in excess of 12 hours in one day shall be  
compensated at the rate of no less than twice the regular rate of pay for an



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employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

H. Labor Code section 1194 invalidates any agreement between an employer and an employee to work for less than the minimum or overtime wage required under the applicable Wage Orders.

I. Labor Code section 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Orders for all hours worked during a payroll period.

J. Labor Code section 1198 makes it unlawful for an employer to employ an employee under conditions that violate the applicable Wage Order.

K. According to Labor Code section 98.6, subdivision (a), a person shall not discharge an employee because the employee has made a written or oral complaint that he or she is owed unpaid wages or because of the exercise of any right afforded him or her.

L. According to Labor Code section 1102.5, subdivision (b), an employer shall not retaliate against an employee for disclosing information to a person with authority over the employee who has the authority to correct the violation if the employee has reasonable cause to believe that the information "discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation."

M. According to Labor Code section 1102.5, subdivision (c), an employer may not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation.

N. Pursuant to Labor Code section 226(a), employees are entitled to receive, semimonthly or at the time of each payment of wages, an accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable hourly rates in effect during the pay period; and d) the corresponding number of hours worked at each hourly rate by the employee.

O. Labor Code sections 201 to 204 require that employers timely pay their



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1 employees all earned wages during their employment and at the time such employment ends.

2 P. An employee has a cause of action for wrongful discharge in violation of  
3 public policy when he or she is terminated for refusing to violate a state or federal law. See  
4 *Green v. Ralee Eng. Co.* (1998) 19 Cal.4th 66, 87-88 (78 Cal.Rptr.2d 16); see also *Grant-*  
5 *Burton v. Covenant Care, Inc.* (2002) 99 Cal.App.4th 1361, 1372 (122 Cal.Rptr.2d 204).

6 Q. The prompt payment of earned wages to an employee is a fundamental  
7 public policy. See *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1147  
8 (37 Cal.Rptr.2d 718).

9 R. In *Franklin v. Monadnock Co.* (2007) 151 Cal.App.4th 252, 260, the  
10 court stated, "An employer may not discharge an at will employee for a reason that violates  
11 fundamental public policy. This exception is enforced through tort law by permitting the  
12 discharged employee to assert against the employer a cause of action for wrongful discharge in  
13 violation of fundamental public policy."

14 84. Defendants terminated Plaintiff's employment for his complaint that Defendants  
15 changed his and other class members' log times to misrepresent that their meal periods were  
16 taken in compliance with the California Labor Code, and that Defendants failed to provide him  
17 and the class timely meal and rest periods.

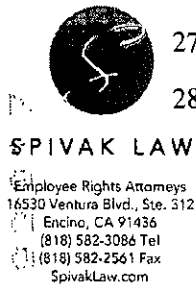
18 85. WHEREFORE, Plaintiff seeks judgment against Defendants, and each of them,  
19 for:

20 A. All actual, consequential and incidental financial losses, including but not  
21 limited to loss of earnings, according to proof, together with prejudgment interest pursuant to  
22 Civil Code section 3287 and/or 3288;

23 B. General damages in a sum in excess of the jurisdictional minimum of the  
24 Superior Court, including compensatory damages for emotional distress and humiliation;

25 C. Attorneys' fees pursuant to Code of Civil Procedure section 1021.5, or  
26 any other provision allowed by law or any other provision allowed by law;

27 D. Expert witness fees pursuant to Code of Civil Procedure section 998, or  
28 any other provision allowed by law;



- 1 E. Prejudgment interest pursuant to Code of Civil Procedure section 998 and
- 2 Civil Code § 3287(a);
- 3 F. Costs of suit;
- 4 G. Punitive damages in a sum in excess of the jurisdictional minimum of the
- 5 Superior Court;
- 6 H. Back pay for Plaintiff;
- 7 I. Front pay for Plaintiff; and
- 8 J. Such other and further relief as the court deems proper.

**NINTH CAUSE OF ACTION**

**CIVIL PENALTIES**

**(By Plaintiff and the Class against all Defendants)**

86. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

87. Labor Code § 204 states

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.



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(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

88. Defendants paid wages to employees on regular intervals. Defendants failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the aggrieved employees on such intervals for all wages earned and all hours worked.

89. During the applicable time period, Defendants violated California Labor Code §§ 98.6, 201, 202, 203, 204, 212, 221, 226, 226.7, 510, 512, 1102.5, 1194, 1197, and 1198.

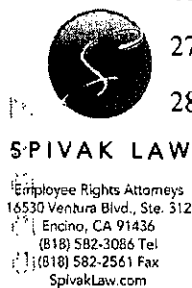
90. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

91. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 212, 221, 226, 226.7, 510, 512, 1194, 1197, and 1198 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount unlawfully withheld from each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code §§ 212 and 221, one hundred dollars (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars (\$200.00) for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalty amounts established by California Labor Code § 225.5).

C. For violations of California Labor Code § 226(a), two hundred fifty dollars (\$250.00) for each aggrieved employee for initial violation and one thousand dollars (\$1,000.00) for each aggrieved employee for each subsequent violation (penalty amounts established by California Labor Code § 226.3).



1 D. For violations of California Labor Code §§ 510 and 512, fifty dollars  
2 (\$50.00) for each aggrieved employee for initial violation and one hundred dollars (\$100.00) for  
3 each aggrieved employee for each subsequent violation, per pay period in addition to an amount  
4 sufficient to recover underpaid wages (penalty amounts established by California Labor Code §  
5 558).

6 E. For violations of California Labor Code § 1197, one hundred dollars  
7 (\$100.00) for each aggrieved employee for each initial and intentional violation and two  
8 hundred fifty dollars (\$250.00) for each aggrieved employee for each subsequent violation, per  
9 pay period (regardless of whether the initial violations were intentionally committed), in  
10 addition to an amount sufficient to recover unpaid wages (penalty amounts established by  
11 California Labor Code § 1197.1).

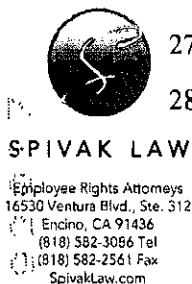
12 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,  
13 and 1198, one hundred dollars (\$100.00) for each aggrieved employee per pay period for each  
14 initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period  
15 for each subsequent violation (penalty amounts established by California Labor Code §  
16 2699(f)(2)).

17 92. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff individually is  
18 entitled to recover civil penalties for each of the Defendants' violations of California Labor  
19 Code §§ 98.6 and 1102.5 during the applicable limitations period in the following amounts:

20 A. For violations of California Labor Code § 98.6, an amount not to exceed  
21 \$10,000 for each violation by Defendants of California Labor Code § 98.6(a), as well as  
22 attorney's fees and costs under Labor Code § 2699(g) (penalty amounts established by  
23 California Labor Code § 98.6(b)(3)).

24 B. For violations of California Labor Code § 1102.5, an amount not to  
25 exceed \$10,000 for each violation by Defendants of California Labor Code § 1102.5(c), as well  
26 as attorney's fees and costs under Labor Code § 2699(g) (penalty amounts established by  
27 California Labor Code § 1102.5(f)).

28 93. Plaintiff has complied with the procedures for bringing suit specified in



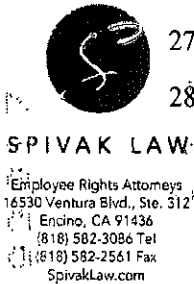
1 California Labor Code § 2699.3. By letter dated October 12, 2017, Plaintiff filed written notice  
2 online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice  
3 by certified mail to Defendants of the specific provisions of the California Labor Code alleged  
4 to have been violated, including the facts and theories to support the alleged violations. Plaintiff  
5 accompanied his LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to  
6 take action in response within 65 calendar days of the date of Plaintiff’s notice, but Plaintiff  
7 anticipates that the LWDA will provide written notice to Plaintiff informing him that it does not  
8 intend to investigate these allegations.

9 94. Pursuant to California Labor Code § 2699(g), Plaintiff and the aggrieved  
10 employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in  
11 connection with their claims for civil penalties.

12 **PRAYER FOR RELIEF**

13 95. WHEREFORE, Plaintiff, on behalf of himself and the class, prays for relief and  
14 judgment against Defendants as follows:

- 15 A. An order that the action be certified as a class action with respect to
- 16 Plaintiff’s claims for violations of California law;
- 17 B. An order that Plaintiff be appointed class representative;
- 18 C. An order that counsel for Plaintiff be appointed class counsel;
- 19 D. Unpaid wages;
- 20 E. Liquidated damages;
- 21 F. Statutory penalties;
- 22 G. Civil penalties;
- 23 H. Declaratory relief;
- 24 I. Actual damages;
- 25 J. Restitution;
- 26 K. Pre-judgment interest;
- 27 L. Costs of suit;
- 28 M. Reasonable attorney’s fees; and



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N. Such other relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

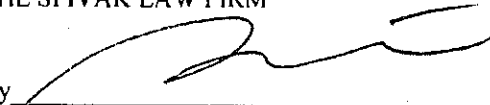
Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: December 18, 2017

By



DAVID SPIVAK  
CAROLINE TAHMASSIAN  
Attorneys for Plaintiff, RAYMOND CONNER,  
and all others similarly situated



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**EXHIBIT C**

1 LESLIE L. ABBOTT (SB# 155597)  
leslieabbott@paulhastings.com  
2 CHRIS A. JALIAN (SB# 295564)  
chrisjalian@paulhastings.com  
3 PAUL HASTINGS LLP  
515 South Flower Street, Twenty-Fifth Floor  
4 Los Angeles, CA 90071-2228  
Telephone: 1(213) 683-6000  
5 Facsimile: 1(213) 627-0705

6 Attorneys for Defendants  
7 FERGUSON ENTERPRISES, INC. and  
WOLSELEY INVESTMENTS, INC.

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

RAYMOND CONNER; on behalf of  
himself and all others similarly  
situated, and as an "aggrieved  
employee" on behalf of other  
"aggrieved employees" under the Labor  
Code Private Attorneys General Act of  
2004,

Plaintiff,

vs.

FERGUSON ENTERPRISES, INC., a  
Virginia corporation; WOLSELEY  
INVESTMENTS, INC., a Virginia  
corporation; and and DOES 1 through  
50, inclusive,

Defendants.

CASE NO. 2:18-CV-00504

**DECLARATION OF CHRIS A.  
JALIAN IN SUPPORT OF  
FERGUSON'S NOTICE OF  
REMOVAL OF CIVIL ACTION**

(Los Angeles County Superior Court  
Case No. BC685654)

1 **DECLARATION OF CHRIS A. JALIAN**

2  
3 I, Chris A. Jalian, declare as follows:

4 1. I am an attorney licensed by the Bar of the State of California,  
5 and I am admitted to practice before this Court. I am an associate with the law firm  
6 of Paul Hastings LLP, counsel of record for Defendants Ferguson Enterprises, Inc.  
7 (“Ferguson”) and Wolseley Invesmtnets Inc. (“Wolseley Investments,” together  
8 with Ferguson, “Defendants”), and I am one of the attorneys responsible for the  
9 defense of this action. I have personal knowledge of the facts set forth in this  
10 Declaration, and if called to testify under oath, could and would testify competently  
11 thereto.

12 2. Plaintiff Raymond Conner (“Plaintiff”) served Ferguson and  
13 Wolseley Investments, through their respective registered agents for service, via  
14 personal service, his Individual and Class Action Complaint (“Complaint”) and  
15 First Amended Complaint (“FAC”) on December 20, 2017, filed in the Superior  
16 Court of the State of California in and for the County of Los Angeles entitled:  
17 *“RAYMOND CONNER; on behalf of himself and all others similarly situated, and*  
18 *as an “aggrieved employee” on behalf of other “aggrieved employees” under the*  
19 *Labor Code Private Attorneys General Act of 2004, Plaintiff, vs. FERGUSON*  
20 *ENTERPRISES, INC., a Virginia corporation; WOLSELEY INVESTMENTS, INC.,*  
21 *a Virginia corporation; and DOES 1 through 50, inclusive, Defendants,”*  
22 designated as Case No. BC685654.

23 3. On December 28, 2017, Plaintiff served his Proofs of Service on  
24 Ferguson Enterprises, Inc. and Wolseley Investments, Inc., of all documents listed  
25 in paragraph 2 above.

26 4. On January 16, 2018, the Superior Court of the State of  
27 California in and for the County of Los Angeles issued an Initial Case Management  
28

1 Order. Defendants have not yet been served with the Initial Case Management  
2 Order, nor is the Order available online.

3 5. On January 18, 2018, prior to filing its Removal, Defendants  
4 filed their Answer in the Superior Court of California in and for the County of Los  
5 Angeles.

6 6. Notice of this removal is being given both to the adverse parties  
7 and to the State Court pursuant to 28 U.S.C. section 1446(d). Proof of service of  
8 the Notice to Adverse Party of Removal and the Notice to Superior Court of  
9 Removal to Federal Court will be filed with this Court shortly after the Superior  
10 Court filing and service upon the adverse parties are accomplished.

11

12 I declare under penalty of perjury under the laws of the State of California  
13 and the United States of America that the foregoing is true and correct.

14

15 Executed this 19th day of January, 2018, in Los Angeles, California.

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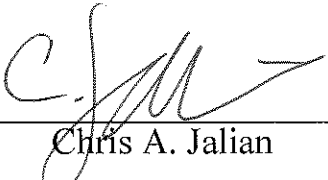
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Chris A. Jalian

**EXHIBIT D**

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): David Spivak, 179684 The Spivak Law Firm 16530 Ventura Blvd., Suite 312 Encino, CA 91436 TELEPHONE NO.: (818)582-3039 ATTORNEY FOR (Name): Plaintiff	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Superior Court of California, Los Angeles County 600 S. Commonwealth Avenue Los Angeles, CA 90005-4001	
PLAINTIFF/PETITIONER: Raymond Conner DEFENDANT/RESPONDENT: Ferguson Enterprises, Inc., et al.	CASE NUMBER: <b>BC685654</b>
<p style="text-align: center;"><b>PROOF OF SERVICE OF SUMMONS</b></p>	Ref. No. or File No.: Conner/Ferguson

1. At the time of service I was a citizen of the United States, at least 18 years of age and not a party to this action. **BY FAX**  
 2. I served copies of: Summons on First Amended Complaint; First Amended Complaint, Summons; Civil Case Cover Sheet; Civil Case Cover Sheet Addendum and Statement of Location; Complaint; Notice of Case Assignment; Voluntary Efficient Litigation Stipulations; ADR Information Packet

3. a. Party served: **FERGUSON ENTERPRISES, INC.,** a Virginia corporation  
 b. Person Served: **Liliana Gomez- CORPORATE CREATIONS NETWORK INC. - Person Authorized to Accept Service of Process**

4. Address where the party was served: 1430 Truxton Avenue, Fl 5  
 Bakersfield, CA 93301

5. I served the party  
 a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): 12/20/2017 (2) at (time): 4:20PM

6. The "Notice to the Person Served" (on the summons) was completed as follows:

d. on behalf of:

**FERGUSON ENTERPRISES, INC.,** a Virginia corporation  
 under: CCP 416.10 (corporation)

7. Person who served papers  
 a. Name: Caleb Barger  
 b. Address: One Legal - 194-Marin  
 504 Redwood Blvd #223  
 Novato, CA 94947  
 c. Telephone: 415-491-0806  
 d. The fee for service was: \$ 99.90  
 e. I am:  
 (3) registered California process server.  
 (i) Employee or independent contractor.  
 (ii) Registration No.: 715  
 (iii) County: Kern

8. I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.  
 Date: 12/27/2017

Caleb Barger  
 (NAME OF PERSON WHO SERVED PAPERS)

  
 (SIGNATURE)

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PROOF OF SERVICE

State of California,  
County of Los Angeles

1. I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. My business address is 16530 Ventura Blvd., Suite 312, Encino, California 91436.

2. I am familiar with the practice of The Spivak Law Firm, for collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On Thursday, December 28, 2017, I served the foregoing document described as **PROOF OF SERVICE OF SUMMONS DEFENDANT FERGUSON ENTERPRISES, INC.** on interested parties by placing a true and correct copy thereof enclosed in a sealed envelope, with postage fully prepaid, addressed as follows:


<b>FERGUSON ENTERPRISES, INC.</b>	<b>WOLSELEY INVESTMENTS, INC.</b>
c/o Corporate Creations Network Inc.	c/o Corporate Creations Network Inc.
Agent for Service of Process	Agent for Service of Process
1430 Truxton Avenue, Fl. 5	1430 Truxton Avenue, Fl. 5
Bakersfield, CA 93301	Bakersfield, CA 93301

XXXX (BY MAIL) I caused such an envelope to be mailed by placing it for collection and mailing, in the course of ordinary business practice, with other correspondence of The Spivak Law Firm, 16530 Ventura Blvd., Suite 312, Encino, California 91436.

EXECUTED on Thursday, December 28, 2017, at Encino, California.

XXXX (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

\_\_\_\_ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

  
BRECK OYAMA

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): David Spivak, 179684 The Spivak Law Firm 16530 Ventura Blvd., Suite 312 Encino, CA 91436 TELEPHONE NO.: (818)582-3039 ATTORNEY FOR (Name): Plaintiff	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Superior Court of California, Los Angeles County 600 S. Commonwealth Avenue Los Angeles, CA 90005-4001	
PLAINTIFF/PETITIONER: Raymond Conner DEFENDANT/RESPONDENT: Ferguson Enterprises, Inc., et al.	CASE NUMBER: BC685654
PROOF OF SERVICE OF SUMMONS	Ref. No. or File No.: Conner/Ferguson

1. At the time of service I was a citizen of the United States, at least 18 years of age and not a party to this action. **BY FAX**
2. I served copies of: Summons on First Amended Complaint; First Amended Complaint, Summons; Civil Case Cover Sheet; Civil Case Cover Sheet Addendum and Statement of Location; Complaint; Notice of Case Assignment; Voluntary Efficient Litigation Stipulations; ADR Information
3. a. Party served: WOLSELEY INVESTMENTS, INC., a Virginia corporation  
 b. Person Served: Liliana Gomez- CORPORATE CREATIONS NETWORK INC. - Person Authorized to Accept Service of Process  
 1430 Truxton Ave, Fl 5  
 BAKERSFIELD, CA 93301
4. Address where the party was served: 1430 Truxton Ave, Fl 5  
 BAKERSFIELD, CA 93301
5. I served the party  
 a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): 12/20/2017 (2) at (time): 4:20PM
6. The "Notice to the Person Served" (on the summons) was completed as follows:

d. on behalf of:

WOLSELEY INVESTMENTS, INC., a Virginia corporation  
 under: CCP 416.10 (corporation)

7. Person who served papers
  - a. Name: Caleb Barger
  - b. Address: One Legal - 184-Marin  
 504 Redwood Blvd #223  
 Novato, CA 94947
  - c. Telephone: 415-491-0608
  - d. The fee for service was: \$ 69.90
  - e. I am:
    - (3) registered California process server.
      - (i) Employee or independent contractor.
      - (ii) Registration No.: 715
      - (iii) County: Kern

8. I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.  
 Date: 12/28/2017

Caleb Barger

(NAME OF PERSON WHO SERVED PAPERS)



(SIGNATURE)

Form Adopted for Mandatory Use  
 Judicial Council of California POS-010  
 [Rev. Jan 1, 2007]

PROOF OF SERVICE OF SUMMONS

Code of Civil Procedure, § 417.10

OL# 11597747



PROOF OF SERVICE

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State of California,  
County of Los Angeles

1. I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. My business address is 16530 Ventura Blvd., Suite 312, Encino, California 91436.

2. I am familiar with the practice of The Spivak Law Firm, for collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On Thursday, December 28, 2017, I served the foregoing document described as **PROOF OF SERVICE OF SUMMONS DEFENDANT WOLSELEY INVESTMENTS, INC.** on interested parties by placing a true and correct copy thereof enclosed in a sealed envelope, with postage fully prepaid, addressed as follows:

**FERGUSON ENTERPRISES, INC.**  
c/o Corporate Creations Network Inc.  
Agent for Service of Process  
1430 Truxton Avenue, Fl. 5  
Bakersfield, CA 93301

**WOLSELEY INVESTMENTS, INC.**  
c/o Corporate Creations Network Inc.  
Agent for Service of Process  
1430 Truxton Avenue, Fl. 5  
Bakersfield, CA 93301

XXXX (BY MAIL) I caused such an envelope to be mailed by placing it for collection and mailing, in the course of ordinary business practice, with other correspondence of The Spivak Law Firm, 16530 Ventura Blvd., Suite 312, Encino, California 91436.

EXECUTED on Thursday, December 28, 2017, at Encino, California.

XXXX (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

\_\_\_\_ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



\_\_\_\_\_  
BRECK OYAMA

**EXHIBIT E**

1 LESLIE L. ABBOTT (SB# 155597)  
leslieabbott@paulhastings.com  
2 CHRIS A. JALIAN (SB# 295564)  
chrisjalian@paulhastings.com  
3 PAUL HASTINGS LLP  
515 South Flower Street  
4 Twenty-Fifth Floor  
Los Angeles, CA 90071-2228  
5 Telephone: 1(213) 683-6000  
Facsimile: 1(213) 627-0705

CONFORMED COPY  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

JAN 18 2018

Sherri R. Carter, Executive Officer/Clerk  
By: Maria Aguirre, Deputy

6 Attorneys for Defendants  
7 FERGUSON ENTERPRISES, INC. and  
WOLSELEY INVESTMENTS, INC.  
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF LOS ANGELES

11  
12 RAYMOND CONNER; individually, and on  
behalf of other members of the general public  
13 similarly situated,

14 Plaintiff,

15 vs.

16 FERGUSON ENTERPRISES, INC., a Virginia  
corporation; WOLSELEY INVESTMENTS,  
17 INC., a Virginia corporation; and DOES 1  
through 50, inclusive,

18 Defendants.  
19

CASE NO. BC685654

**DEFENDANTS' ANSWER TO  
PLAINTIFF'S UNVERIFIED CLASS  
ACTION COMPLAINT**

Dept: D322

Judge: Hon. William F. Highberger

Complaint Filed: December 4, 2017

1 TO PLAINTIFF RAYMOND CONNER, AND TO HIS ATTORNEYS OF RECORD,  
2 DAVID SPIVAK, AND THE SPIVAK LAW FIRM:

3  
4 Defendants Ferguson Enterprises, Inc. ("Ferguson") and Wolseley Investments Inc.  
5 ("Wolseley," together with Ferguson "Defendants"), for themselves alone and no other  
6 defendants, hereby answer the unverified Individual and Class Action Complaint ("Complaint")  
7 of Plaintiff Raymond Conner ("Plaintiff") as follows:

8  
9 1. Pursuant to Section 431.30(d) of the California Code of Civil Procedure,  
10 Defendants denies, generally and specifically, each and every allegation in Plaintiff's Complaint.

11  
12 2. Defendants further deny, generally and specifically, that Plaintiff is entitled to the  
13 relief requested, or that Plaintiff has been or will be damaged in any sum, or at all, by reason of  
14 any act or omission on the part of Defendants, or any of Defendants' past or present agents,  
15 representatives, or employees.

16  
17 Without admitting any facts alleged by Plaintiff, Defendants also plead the following  
18 separate and affirmative defenses to the Complaint:

19  
20 AFFIRMATIVE DEFENSES

21 FIRST SEPARATE AND AFFIRMATIVE DEFENSE

22 1. The Complaint, and each purported claim contained therein, is barred to the extent  
23 that Plaintiff, or any one or more of the putative class members, and/or any alleged aggrieved  
24 employee purportedly represented, or to be represented, in this action has agreed to submit any or  
25 all of the claims alleged in the Complaint to binding arbitration, and therefore prosecution of this  
26 action should be dismissed or stayed pending completion of the arbitration.

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SECOND SEPARATE AND AFFIRMATIVE DEFENSE

2. The Complaint, and each of its causes of action, fails to state facts sufficient to constitute a cause of action.

THIRD SEPARATE AND AFFIRMATIVE DEFENSE

3. The Complaint, and each of its causes of action, is barred in whole or in part by all applicable statutes of limitation, including but not limited to California Code of Civil Procedure sections 338, 335.1 and 340, Business and Professions Code section 17208, and California Labor Code sections 200, *et seq.*

FOURTH SEPARATE AND AFFIRMATIVE DEFENSE

4. The Complaint, and each of its causes of action, is barred by the doctrine of laches.

FIFTH SEPARATE AND AFFIRMATIVE DEFENSE

5. The Complaint, and each of its causes of action, is barred by the doctrine of unclean hands.

SIXTH SEPARATE AND AFFIRMATIVE DEFENSE

6. Plaintiff, and the group of persons he purports to represent, the existence of which is expressly denied, have waived the right, if any, to pursue the claims in the Complaint, and each purported claim contained therein, by reason of his own actions and course of conduct.

SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

7. Plaintiff, and the group of persons he purports to represent, the existence of which is expressly denied, are estopped from pursuing the Complaint, and each of its causes of action, by reason of Plaintiff's own actions and course of conduct.

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EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE

8. The Complaint is barred to the extent that Plaintiff lacks standing to raise some or all of the claims of the purported class on whose behalf Plaintiff purports to proceed, the existence of which is expressly denied.

NINTH SEPARATE AND AFFIRMATIVE DEFENSE

9. Defendants are not liable for liquidated damages because any payment of a wage less than the minimum wage was not willful within the meaning of California Labor Code section 1194.2; rather, Defendants acted in the good-faith belief that Defendants' acts or omissions were lawful.

TENTH SEPARATE AND AFFIRMATIVE DEFENSE

10. The Complaint, and each purported claim contained therein, is barred to the extent that Plaintiff, or any one or more of the putative class members, are covered by any settlement agreement and/or release covering any claims alleged in this action.

ELEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

11. Plaintiff lacks standing to pursue the Complaint, and each purported claim contained therein, against Wolseley because Wolseley never employed Plaintiff.

TWELFTH SEPARATE AND AFFIRMATIVE DEFENSE

12. The second cause of action for failure to provide meal and rest periods fails to the extent that meal and/or rest periods were waived by Plaintiff or any of the members of the putative group of persons Plaintiff purports to represent, the existence of which is expressly denied.



1                                    EIGHTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

2            18.     The seventh cause of action is barred because Plaintiff did not timely exhaust the  
3 administrative remedies, and/or otherwise failed to comply with the statutory prerequisites to the  
4 bringing of this action, pursuant to California Labor Code section 1102.5.

5  
6                                    NINETEENTH SEPARATE AND AFFIRMATIVE DEFENSE

7            19.     Defendants did not commit the acts or omissions as stated in the Complaint for  
8 discriminatory or retaliatory motives, but even assuming that they did, such acts or omissions  
9 would have been taken in any event for legitimate, non-discriminatory, non-retaliatory, non-  
10 pretextual reasons.

11  
12                                   TWENTIETH SEPARATE AND AFFIRMATIVE DEFENSE

13            20.     Plaintiff's purported claim for whistleblower retaliation is barred because Plaintiff  
14 did not have reasonable cause to believe that any information upon which he bases his purported  
15 causes of action discloses a violation of or noncompliance with any federal, state or local statute,  
16 rule or regulation.

17  
18                                   TWENTY-FIRST SEPARATE AND AFFIRMATIVE DEFENSE

19            21.     The eighth cause of action fails because the conduct complained of does not  
20 implicate any fundamental public policy.

21  
22                                   TWENTY-SECOND SEPARATE AND AFFIRMATIVE DEFENSE

23            22.     Plaintiff is barred from, and has waived, any recovery for any alleged physical or  
24 emotional injury or distress, to the extent that Plaintiff has failed to pursue and exhaust his  
25 remedies, if any, under the California Workers' Compensation Act. Cal. Lab. Code §§ 3600, *et*  
26 *seq.*



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TWENTY-THIRD SEPARATE AND AFFIRMATIVE DEFENSE

23. The Complaint, and each and every purported cause of action therein, is barred by the doctrine of unjust enrichment. Any and all damages sought by Plaintiff will unjustly enrich Plaintiff and contravene the principles of equity.

TWENTY-FOURTH SEPARATE AND AFFIRMATIVE DEFENSE

24. The Complaint, and each of its causes of action, is barred by Plaintiff's failure to mitigate or make reasonable efforts to mitigate alleged damages.

TWENTY-FIFTH SEPARATE AND AFFIRMATIVE DEFENSE

25. Plaintiff is not entitled to any statutory or civil penalties because there is a good-faith dispute as to whether there was an obligation to pay any wages that may be found to be due.

TWENTY-SIXTH SEPARATE AND AFFIRMATIVE DEFENSE

26. Plaintiff is not entitled to recover any punitive damages, and any allegations in support of a claim for punitive damages should be stricken, because California's laws regarding the acts and omissions alleged are too vague to permit the imposition of punitive damages, and because any award of punitive damages in this action would violate Defendant's constitutional rights under the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution, and the excessive fines and cruel and unusual punishment clauses of the Eighth Amendment to the United States Constitution, as well as other provisions of the United States Constitution and the California Constitution.

TWENTY-SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

27. Plaintiff is not entitled to recover any punitive or exemplary damages and any allegations with respect thereto should be stricken because:

(a) Plaintiff has failed to plead facts sufficient to support allegations of oppression, fraud and/or malice. Cal. Civ. Code § 3294(a);

1 (b) Plaintiff has failed to plead facts sufficient to support allegations of gross  
2 or reckless disregard for the rights of Plaintiff and the alleged class or that Defendants were  
3 motivated by evil motive or intent; and

4 (c) Neither Defendants nor any of their officers, directors or managing agents  
5 committed any alleged oppressive, fraudulent or malicious act, authorized or ratified such an act,  
6 or had advance knowledge of the unfitness, if any, of any employee or employees who allegedly  
7 committed such an act, or employed any such employee or employees with a conscious disregard  
8 of the rights or safety of others. Cal. Civ. Code § 3294(b).

9  
10 WHEREFORE, Defendants pray for judgment as follows:

- 11 1. That Plaintiff take nothing by reason of his Complaint, that the Complaint be
- 12 dismissed in its entirety with prejudice, and that judgment be entered for Defendant;s
- 13 2. That Defendants be awarded its reasonable costs and attorneys' fees; and
- 14 3. That Defendants be awarded such other and further relief as the Court deems just
- 15 and proper.

16  
17 DATED: January 17, 2018

PAUL HASTINGS LLP  
LESLIE L. ABBOTT  
CHRIS A. JALIAN

18  
19  
20 By: 

CHRIS A. JALIAN

21  
22 Attorneys for Defendants  
FERGUSON ENTERPRISES, INC. and  
23 WOLSELEY INVESTMENTS, INC.  
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**PROOF OF SERVICE**

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 515 South Flower Street, 25th Floor, Los Angeles, California 90071-2228.

On January 18, 2018, I served a copy of the within document(s):

**DEFENDANTS' ANSWER TO PLAINTIFF'S UNVERIFIED CLASS ACTION COMPLAINT**

interested parties by placing a true and correct copy thereof in a sealed envelope(s) addressed as follows:

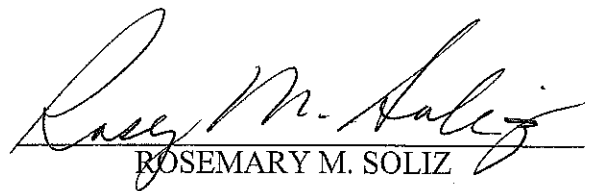
**VIA U.S. MAIL:**

I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice such sealed envelope(s) would be deposited with the U.S. postal service on January 18, 2018, with postage thereon fully prepaid, at Los Angeles, California.

David G. Spivak  
The Spivak Law Firm  
16530 Ventura Blvd., Suite 312  
Encino, CA 91436

I declare under penalty of perjury under the laws of the United States that the above is true and correct.

Executed on January 18, 2018, at Los Angeles, California.

  
ROSEMARY M. SOLIZ

**EXHIBIT F**

1 LESLIE L. ABBOTT (SB# 155597)  
leslieabbott@paulhastings.com  
2 CHRIS A. JALIAN (SB# 295564)  
chrisjalian@paulhastings.com  
3 PAUL HASTINGS LLP  
515 South Flower Street, Twenty-Fifth Floor  
4 Los Angeles, CA 90071-2228  
Telephone: 1(213) 683-6000  
5 Facsimile: 1(213) 627-0705

6 Attorneys for Defendants  
FERGUSON ENTERPRISES, INC. and  
7 WOLSELEY INVESTMENTS, INC.

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF LOS ANGELES

12 RAYMOND CONNER; on behalf of himself  
and all others similarly situated, and as an  
13 "aggrieved employee" on behalf of other  
"aggrieved employees" under the Labor Code  
14 Private Attorneys General Act of 2004,

15 Plaintiff,

16 vs.

17 FERGUSON ENTERPRISES, INC., a  
Virginia corporation; WOLSELEY  
18 INVESTMENTS, INC., a Virginia  
corporation; and DOES 1 through 50,  
19 inclusive,

20 Defendants.  
21  
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CASE NO. BC685654

**NOTICE TO ADVERSE PARTIES OF  
REMOVAL OF CIVIL ACTION**

Dept: D322  
Judge: Hon. William F. Highberger

Complaint Filed: December 4, 2017

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TO PLAINTIFF RAYMOND CONNER, AND TO HIS ATTORNEYS OF RECORD,  
DAVID SPIVAK, CAROLINE TAHMASSIAN, THE SPIVAK LAW FIRM, WALTER  
HAINES, AND UNITED EMPLOYEES LAW GROUP:

PLEASE TAKE NOTICE THAT a Notice of Removal of this action was filed in the  
United States District Court for the Central District of California on January 19, 2018. A copy of  
the Notice of Removal is attached to this Notice as Exhibit "A" and is served and filed herewith.

The filing of said Notice of Removal effects the removal of the above-entitled action from  
this Court.

DATED: January 19, 2018

PAUL HASTINGS LLP  
LESLIE L. ABBOTT  
CHRIS A. JALIAN

By:   
CHRIS A. JALIAN

Attorneys for Defendants  
FERGUSON ENTERPRISES, INC. and  
WOLSELEY INVESTMENTS, INC.

**EXHIBIT G**

1 LESLIE L. ABBOTT (SB# 155597)  
leslieabbott@paulhastings.com  
2 CHRIS A. JALIAN (SB# 295564)  
chrisjalian@paulhastings.com  
3 PAUL HASTINGS LLP  
515 South Flower Street  
4 Twenty-Fifth Floor  
Los Angeles, CA 90071-2228  
5 Telephone: 1(213) 683-6000  
Facsimile: 1(213) 627-0705  
6

7 Attorneys for Defendants  
FERGUSON ENTERPRISES, INC. and  
WOLSELEY INVESTMENTS, INC.  
8

9  
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF LOS ANGELES

12 RAYMOND CONNER; on behalf of himself  
13 and all others similarly situated, and as an  
"aggrieved employee" on behalf of other  
14 "aggrieved employees" under the Labor Code  
Private Attorneys General Act of 2004,  
15

16 Plaintiff,

17 vs.

18 FERGUSON ENTERPRISES, INC., a  
Virginia corporation; WOLSELEY  
INVESTMENTS, INC., a Virginia  
19 corporation; and DOES 1 through 50,  
inclusive,  
20

21 Defendants.

CASE NO. BC685654

**NOTICE TO SUPERIOR COURT OF  
REMOVAL OF CIVIL ACTION**

Dept: D322  
Judge: Hon. William F. Highberger

Complaint Filed: December 4, 2017



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TO THE CLERK OF THE SUPERIOR COURT FOR THE COUNTY OF LOS ANGELES:

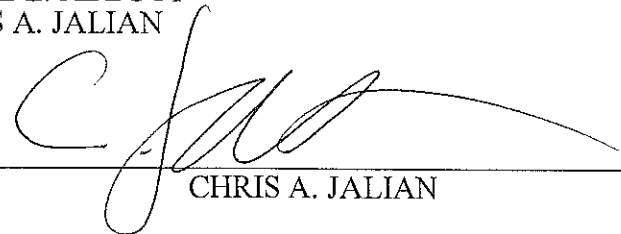
Attached hereto as Exhibit "A" is a true and correct copy of the Notice of Removal of Civil Action ("Notice of Removal") to the United States District Court, the original of which was filed with the United States District Court for the Central District of California on January 19, 2018.

The filing of said Notice of Removal effects the removal of the above-entitled action from this Court.

DATED: January 19, 2018

PAUL HASTINGS LLP  
LESLIE L. ABBOTT  
CHRIS A. JALIAN

By: \_\_\_\_\_



CHRIS A. JALIAN

Attorneys for Defendants  
FERGUSON ENTERPRISES, INC. and  
WOLSELEY INVESTMENTS, INC.

**EXHIBIT H**

1 LESLIE L. ABBOTT (SB# 155597)  
leslieabbott@paulhastings.com  
2 CHRIS A. JALIAN (SB# 295564)  
chrisjalian@paulhastings.com  
3 PAUL HASTINGS LLP  
515 South Flower Street  
4 Twenty-Fifth Floor  
Los Angeles, CA 90071-2228  
5 Telephone: 1(213) 683-6000  
Facsimile: 1(213) 627-0705  
6

7 Attorneys for Defendants  
FERGUSON ENTERPRISES, INC. and  
WOLSELEY INVESTMENTS, INC.  
8

9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11

12 RAYMOND CONNER; on behalf of  
himself and all others similarly  
13 situated, and as an "aggrieved  
employee" on behalf of other  
14 "aggrieved employees" under the Labor  
Code Private Attorneys General Act of  
15 2004,

16 Plaintiff,

17 vs.

18 FERGUSON ENTERPRISES, INC., a  
Virginia corporation; WOLSELEY  
19 INVESTMENTS, INC., a Virginia  
corporation; and DOES 1 through 50,  
20 inclusive,

21 Defendants.  
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CASE NO. 2:18-CV-00504

**DECLARATION OF WILLIAM  
BRUNDAGE IN SUPPORT OF  
FERGUSON'S NOTICE OF  
REMOVAL OF CIVIL ACTION**

(Los Angeles County Superior Court  
Case No. BC685654)

**DECLARATION OF WILLIAM BRUNDAGE**

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I, William Brundage, declare as follows:

1. I am employed by Ferguson Enterprises, Inc. (“Ferguson”) and Wolseley Investments, Inc. (“Wolseley Investments”) as the Chief Financial Officer. Both Ferguson and Wolseley Investments are subsidiaries of Ferguson plc.

2. I make this Declaration based on my own personal knowledge, except where based on my review of records or other information kept in the normal course of business. If called upon as a witness in this action, I could and would competently testify as to the matters set forth herein.

3. Based on my position with Ferguson and Wolseley Investments, I am knowledgeable about their respective corporate structures, operations, records, and recordkeeping practices.

4. Ferguson is now and was at the time that this action was commenced a corporation organized and existing under the laws of the Commonwealth of Virginia.

5. Ferguson currently has and, at all relevant times, had its corporate headquarters and principal place of business in Newport News, Virginia. The Virginia headquarters is and has been the place where the majority of Ferguson’s corporate books and records are located and where the majority of its executive and administrative functions (including, but not limited to, operations, corporate finance, accounting, human resources, payroll, marketing, legal, and information systems) are and have been performed.

6. Ferguson’s corporate officers (including but not limited to its chief executive officer, chief operating officer, chief financial officer, general counsel, corporate secretary, and treasurer) work and have worked out of the Newport News headquarters, and Ferguson’s corporate activities have been directed, controlled, and coordinated from there at all relevant times.

1           7.     Ferguson holds itself out to the public as maintaining its corporate  
2 headquarters in the Commonwealth of Virginia.

3           8.     Ferguson prepares its federal income taxes in the Commonwealth of  
4 Virginia.

5           9.     From December 4, 2013 through January 17, 2018 (the “Statutory  
6 Period”), Ferguson has not been incorporated in California and has not had its  
7 headquarters, executive offices, or officers based in California. It has never  
8 maintained a principal place of business in California.

9           10.    Wolseley Investments is now and was at the time that this action was  
10 commenced a corporation organized under the laws of the Commonwealth of  
11 Virginia with its principal place of business in Virginia.

12           11.    Wolseley Investments currently has and, at all relevant times, had its  
13 corporate headquarters and principal place of business in Newport News, Virginia.  
14 The Virginia headquarters is and has been the place where the majority of Wolseley  
15 Investments’ corporate books and records are located and where the majority of its  
16 executive and administrative functions (including, but not limited to, operations,  
17 corporate finance, accounting, human resources, payroll, marketing, legal, and  
18 information systems) are and have been performed.

19           12.    Wolseley Investments’ corporate officers (including but not limited to  
20 its chief executive officer, chief financial officer, and corporate secretary) work  
21 and have worked out of the Newport News headquarters, and Wolseley  
22 Investments’ corporate activities have been directed, controlled, and coordinated  
23 from there at all relevant times.

24           13.    Wolseley Investments never directly employed Raymond Connor.

25           14.    By virtue of my position with Ferguson, I am knowledgeable about  
26 Ferguson’s human resources and payroll databases, which contain data showing,  
27 *inter alia*, Mr. Connor’s position, dates of employment, hours worked, and  
28 compensation for the last four years. These data are entered into and maintained in

1 the databases in the ordinary course of business and are relied upon by Ferguson in  
 2 performing a variety of human resource and payroll functions.

3 15. In connection with making this Declaration, I requested data from the  
 4 human resources and payroll databases noted in Paragraph 14. My conclusions in  
 5 Paragraphs 16 through 22 are based on that data.

6 16. From December 4, 2013 to May 22, 2017, Ferguson employed Mr.  
 7 Connor in non-exempt hourly position in California.

8 17. Based on the last known address identified in Ferguson’s databases,  
 9 Mr. Connor is a resident of California.

10 18. During his employment at Ferguson in the Statutory Period, Mr.  
 11 Connor earned the following hourly wage rates:

Rate	Pay Period End Date
\$16.00	December 6, 2013
\$16.04	March 14, 2014
\$18.11	May 9, 2014
\$18.47	August 1, 2014
\$18.93	July 31, 2015
\$21.00	May 20, 2016
\$21.45	July 29, 2016

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 20 19. During the Statutory Period, Mr. Connor worked 182 workweeks at  
 21 Ferguson.

22 20. Mr. Connor’s employment at Ferguson terminated on or about May  
 23 22, 2017.

24 21. Mr. Connor’s rate of pay at Ferguson at the time of his termination  
 25 was \$21.42 per hour.

26 22. Ferguson paid Mr. Connor on a biweekly basis and provided him a  
 27 wage statement in conjunction with each paycheck. Based on my review of Mr.  
 28

1 Connor's payroll and Human Resources data, it appears that Ferguson provided Mr.  
2 Connor with a total of 12 wage statements during the period December 4, 2016  
3 through May 22, 2017.

4

5 I declare under penalty of perjury under the laws of the State of California,  
6 the Commonwealth of Virginia and the United States of America that the foregoing  
7 is true and correct.

8

9 Executed this 18th day of January, 2018 in Newport News, Virginia.

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WILLIAM BRUNDAGE

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit: Ferguson Enterprises, Wolseley Investments Break Wage and Hour Laws](#)

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