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10 Attorneys for Plaintiffs and the Plaintiff Class
11 Individually and on behalf of all others similarly situated

12 **UNITED STATES DISTRICT COURT**
13 **EASTERN DISTRICT OF CALIFORNIA**

14 RAMSES GUTIERREZ, et al.
15 individually and on behalf of all
16 others similarly situated,

17 Plaintiffs,

18 v.

19 CARTER BROTHERS SECURITY
20 SERVICES, LLC,
21 AT&T DIGITAL LIFE, INC.,
22 PACIFIC BELL TELEPHONE COMPANY
23 DBA AT&T DATACOMM, INC.,
24 AT&T CORP.
25 and DOES 1 through 10, inclusive,

26 Defendants.

CASE NO.: 2:14-CV-00351-MCE-CKD

CLASS / COLLECTIVE ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES, INJUNCTIVE RELIEF,
RESTITUTION AND CIVIL
PENALTIES**

1. Unpaid Overtime Wages (Lab. Code, §§ 510, 558);
2. Failure to Timely Pay Wages Due at Termination (Lab. Code, § 201-203);
3. Violation of Labor Code § 2753
4. Failure to Give Meal and Rest Periods (Lab. Code §§ 226.7, 512);
5. Failure to Contract for Sufficient Funds to Comply with Labor Laws (Lab. Code § 2810);
6. Failure to Pay Minimum Wage (Lab. Code §§ 1194, 1197, 1197.1);
7. Failure to Pay for Necessary Expenditures (Lab. Code § 2802);
8. Conversion;
9. Violation of the Unfair Competition Law (Bus. & Prof. Code, §§ 17200, et. seq.);
10. Labor Code Private Attorneys General Act (Lab. Code, § 2699);
11. Injunctive and Declaratory Relief.
12. Violation of the FLSA (29 U.S.C. § 201)

DEMAND FOR JURY TRIAL

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1 Individual and representative Plaintiffs RAMSES GUTIERREZ, JONATHAN JACOB,
2 TOUSSAINT CHIVARS, JOSHUA ESPIRITU, PATRICK WILLIAMS, SAM PREEG,
3 RICARDO SAPASAP, ARMANDO TORRES, KEONDRE MASTERS, GIANFRANCO UY,
4 CHRISTOPHER ADDO; ALAN OSORIO, KEITH POLEE, EARL GRAY and ZACHARY
5 FINER (collectively “Plaintiffs”), on behalf of themselves individually and all others similarly
6 situated, demanding a trial by jury, complain and plead upon information and belief against
7 Defendants CARTER BROTHERS SECURITY SERVICES, LLC (“Carter Bros.”) and AT&T
8 DIGITAL LIFE, INC., PACIFIC BELL TELEPHONE COMPANY DBA AT&T
9 DATACOMM, INC., and AT&T CORP. (collectively “AT&T”) and DOES 1 through 10,
10 inclusive:

11 **INTRODUCTION**

12 1. This is a collective action under the Fair Labor Standards Act (“FLSA,” 29
13 U.S.C. § 216(b)), a class action under Federal Rules of Civil Procedure, Rule 23, and a
14 representative action under the California Labor Code Private Attorneys General Act (“PAGA,”
15 Cal. Lab. Code, § 2699 et seq.), brought by Plaintiffs for themselves and on behalf of all other
16 similarly situated and aggrieved employees. The acts complained of occurred within the last four
17 (4) years preceding filing the Complaint.

18 2. Plaintiffs are current and former employees of Defendants Carter Bros. and
19 AT&T (collectively the “Defendant Employers”) who installed AT&T Digital Life security
20 systems in customer homes and businesses and who were misclassified as independent
21 contractors by the Defendant Employers to evade compliance with federal and state laws.
22 Plaintiffs seek certification of a national “FLSA Class” collective action for recovery of wages,
23 liquidated damages, penalties, costs, and attorney’s fees under the FLSA. Plaintiffs also seek
24 certification of a “California Class” for themselves and on behalf of similarly situated aggrieved
25 employees who worked in California and are entitled to the protections and remedies of
26 California law including damages under California Labor Code sections 201 through 203, 206,
27 226.7, 510, 512, 550 through 552, 558, 1194, 1197, 1197.1, 2750.5, 2802, 2810, plus interest,
28 attorney’s fees and costs under California Labor Code sections 1194, 2802, 2810 and 3336.

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1 Plaintiffs sue for themselves and on behalf of the California Class for monetary recovery,
2 declaratory and for injunctive relief for violations of California’s Unfair Competition Law
3 (“UCL,” Bus. & Prof. Code § 17200 et seq.) including full restitution and disgorgement of all
4 compensation retained by the Defendant Employers as a result of their unlawful, fraudulent, and
5 unfair business practices in California. Plaintiffs also sue for themselves and on behalf of
6 similarly situated aggrieved employees who worked in California under the California Labor
7 Code Private Attorneys General Act (“PAGA,” Lab. Code, § 2699 et seq.). Plaintiffs seek for
8 themselves and on behalf of similarly situated aggrieved employees who worked in California
9 exemplary damages under California Civil Code section 3294. Plaintiffs request injunctive and
10 declaratory relief including rescission of the so-called “Independent Contractor Agreements”
11 with the Defendant Employers on grounds of mistake, fraud, constructive fraud, duress, undue
12 influence, illegality, unconscionability and prejudice to the public interest.

13 **JURISDICTION AND VENUE**

14 3. The Complaint filed February 4, 2014, was originally brought under diversity
15 jurisdiction (28 U.S.C. § 1332(c)(1)). This Court has original federal question jurisdiction under
16 28 U.S.C. section 1331 of this First Amended Complaint because of the additional claims arising
17 under the FLSA, 29 U.S.C. section 201. This Court has personal jurisdiction in that each
18 defendant maintains an office, transacts business, has an agent, and/or is found in the State of
19 California, and is within the jurisdiction of this Court for purposes of service of process. Venue
20 is proper as the subject matter of this litigation and many of the alleged facts, conduct, and
21 statutory violations alleged occurred or otherwise transpired in the Eastern District of California,
22 the number of plaintiffs residing in California is substantially greater than the aggregate of
23 members of the class in any other single state, and the defendants are subject to personal
24 jurisdiction in California.

25 **THE PARTIES**

26 4. Plaintiffs are adults employed or formerly employed by the Defendant Employers
27 to install AT&T Digital Life security systems in customer homes and businesses and who were
28 misclassified as independent contractors by the Defendant Employers within the four (4) years

1 preceding filing the Complaint in this action. Plaintiffs and other similarly situated workers
2 employed by the Defendant Employers in California, Colorado, Illinois, Maryland,
3 Massachusetts, Ohio, Pennsylvania, Texas, Washington D.C., and elsewhere throughout the
4 United States are referred to collectively as the “FLSA Class.” A subset of Plaintiffs and
5 similarly situated workers employed or formerly employed by the Defendant Employers within
6 the State of California are referred to as the “California Class.” Similarly situated aggrieved
7 employees in both the FLSA Class and the California Class are collectively referred to in this
8 First Amended Complaint as “Class Members.”

9 5. Defendant CARTER BROTHER SECURITY SERVICES, LLC is a Florida
10 Limited Liability Company, with its principal place of business located in Atlanta, Georgia, and
11 doing business in the greater Sacramento, California area. Carter Bros. is listed by the California
12 Contractors State License Board as a C10 Electrical Contractor, with license number 890931.
13 Carter Bros.’s California Contractors License expired on February 28, 2013, and since then
14 Carter Bros. has operated in California without a valid contractor’s license. Carter Bros. is a
15 “person” as defined by California Labor Code section 18, and by California Business and
16 Professions Code section 17201. Carter Bros. is an “employer” within the meaning of the FLSA
17 as an enterprise engaged in interstate commerce and/or the production of goods for commerce
18 within the meaning of the FLSA and has had a gross volume of sales in excess of \$500,000, and
19 as defined by both the California Labor Code and the California Industrial Welfare
20 Commission’s (IWC) orders regulating wages, hours, and working conditions.

21 6. Defendant AT&T Digital Life, Inc. is a New York Corporation with its principal
22 place of business in Atlanta, Georgia, and doing business throughout California. AT&T is a
23 “person” as defined by California Labor Code section 18, and by California Business and
24 Professions Code section 17201. AT&T is an “employer” within the meaning of the FLSA as an
25 enterprise engaged in interstate commerce and/or the production of goods for commerce within
26 the meaning of the FLSA and has had a gross volume of sales in excess of \$500,000, and as
27 defined by both the California Labor Code and the California Industrial Welfare Commission’s
28 (IWC) orders regulating wages, hours, and working conditions in that AT&T employed and/or

1 exercised control over wages, hours, and working conditions of Plaintiffs and all others similarly
2 situated as those terms are defined in 29 C.F.R. section 791.2, the IWC and the California
3 Supreme Court in *Martinez v. Combs* (2010) 49 Cal.4th 35. AT&T Digital Life, Inc., is licensed
4 with the California Department of Consumer Affairs as an Alarm Company Operator. AT&T
5 Digital Life contracted with Carter Bros. for the services of Plaintiffs and the Class Members.

6 7. Defendant Pacific Bell Telephone Company dba AT&T DataComm, Inc., is a
7 Delaware Corporation with its principal place of business in San Antonio, Texas, and doing
8 business throughout California. AT&T is a “person” as defined by California Labor Code
9 section 18, and by California Business and Professions Code section 17201. AT&T is an
10 “employer” within the meaning of the FLSA as an enterprise engaged in interstate commerce
11 and/or the production of goods for commerce within the meaning of the FLSA and has had a
12 gross volume of sales in excess of \$500,000, and as defined by both the California Labor Code
13 and the California Industrial Welfare Commission’s (IWC) orders regulating wages, hours, and
14 working conditions in that AT&T employed and/or exercised control over wages, hours, and
15 working conditions of Plaintiffs and all others similarly situated as those terms are defined in 29
16 C.F.R. section 791.2, the IWC and the California Supreme Court in *Martinez v. Combs* (2010)
17 49 Cal.4th 35. Pacific Bell Telephone Company dba AT&T DataComm, Inc., is licensed with the
18 California Contractors State License Board as a Low Voltage Systems Contractor, Electrical
19 Contractor, General Building Contractor and General Engineering Contractor. Plaintiffs
20 provided services in California under AT&T’s licenses.

21 8. Defendant AT&T CORP. is a New York Corporation with its principal place of
22 business in Bedminster, New Jersey, and doing business throughout California. AT&T is a
23 “person” as defined by California Labor Code section 18, and by California Business and
24 Professions Code section 17201. AT&T is an “employer” within the meaning of the FLSA as an
25 enterprise engaged in interstate commerce and/or the production of goods for commerce within
26 the meaning of the FLSA and has had a gross volume of sales in excess of \$500,000, and as
27 defined by both the California Labor Code and the California Industrial Welfare Commission’s
28 (IWC) orders regulating wages, hours, and working conditions in that AT&T employed and/or

1 exercised control over wages, hours, and working conditions of Plaintiffs and all others similarly
2 situated as those terms are defined in 29 C.F.R. section 791.2, the IWC and the California
3 Supreme Court in *Martinez v. Combs* (2010) 49 Cal.4th 35. AT&T Corp. is the parent company
4 of Defendants AT&T Digital Life, Inc. and Pacific Bell Telephone Company dba AT&T
5 DataComm, Inc.

6 9. Within the last four years, the Defendant Employers were the employers and/or
7 joint employers of Plaintiffs and class members within the meaning of the FLSA (29 C.F.R. §
8 791.2), California Labor Code, and Division 2, and the applicable California IWC occupational
9 Wage Order(s) in that the Defendant Employers employed and/or exercised control over wages,
10 hours, and working conditions of Plaintiffs and all others similarly situated, suffered or permitted
11 the work of Plaintiffs and others similarly situated, and considering the total employment
12 situation and economic realities of the employment relationship. The Defendant Employers were
13 responsible for compliance with the FLSA, California Labor Code and applicable IWC Wage
14 Order(s).

15 10. In addition to the Defendant Employers named above, Plaintiffs sue fictitiously
16 DOES 1 through 10, because their names, capacities, status, or facts showing them to be liable
17 are not presently known. Plaintiffs will amend this Complaint to show their true names and
18 capacities, with appropriate charging language, when such information has been ascertained.
19 Plaintiffs are informed and believe and thereupon allege that each of the DOE Defendants is
20 responsible in some manner for the occurrences alleged and that Plaintiffs' and Class Members'
21 damages as alleged are proximately caused by such occurrences.

22 **AGENCY, JOINT VENTURE, ALTER EGO**

23 11. At all times mentioned in the causes of action into which this paragraph is
24 incorporated by reference, on information and belief, every defendant was the principal, partner,
25 agent, servant, employee, co-conspirator, co-employer, and/or alter ego of the remaining
26 defendants. In doing the things alleged in the causes of action into which this paragraph is
27 incorporated by reference, every defendant was acting within the course and scope of this
28 agency, partnership, servant, employment, conspiracy and/or alter/ego and was acting with the

1 consent, permission, knowledge and/or authorization of the remaining defendants. All actions of
2 every defendant alleged in the causes of action into which this paragraph is incorporated by
3 reference were ratified and approved by the officers or managing agents of the remaining
4 defendants.

5 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

6 12. On February 4, 2014, Plaintiffs, through the undersigned attorneys, mailed via
7 certified mail with return receipt, to Carter Bros. and AT&T and the Labor and Workforce
8 Development Agency (LWDA), a notice of California Labor Code violations and intention to
9 seek civil penalties under the California Labor Code Private Attorneys General Act. (“PAGA,”
10 Lab. Code, § 2699, et seq.)

11 13. LWDA’s March 4, 2014 notice of intent not to investigate was received on March
12 7, 2014. Defendants have given no notice of cure of these alleged violations as described under
13 Labor Code section 2699.3(c)(2)(A).

14 **FLSA COLLECTIVE ACTION ALLEGATIONS**

15 14. Plaintiffs intend to move for certification of a nationwide FLSA collective action.
16 The FLSA Class is composed of approximately three hundred (300) current and former
17 employees of the Defendant Employers in at least nine states within the United States, defined as
18 follows, and which comprises the “FLSA Class”:

19 All persons employed by the Defendant Employers to install
20 security systems in customer homes and businesses under
21 independent contractor agreements by the Defendant Employers
22 within the four (4) years preceding filing the Complaint in this
action and who did not receive full compensation under the Fair
Labor Standards Act.

23 15. The “FLSA Class Period” is designated as the time from three (3) years
24 immediately preceding filing the Complaint, through the conclusion of trial on all issues
25 presented, based upon the allegation that the violations of the FLSA, as described more fully
26 herein, have been ongoing throughout that time.

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CALIFORNIA CLASS ACTION ALLEGATIONS

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2 16. Plaintiffs also intend to move for certification of a “California Class,” under
3 Federal Rules of Civil Procedure, Rule 23, consisting of a subset of the FLSA Class of
4 approximately seventy (70) California employees having additional remedies under California
5 state law. The “California Class” is defined as follows:

6 All persons employed by the Defendant Employers to install
7 security systems in customer homes and businesses under
8 independent contractor agreements by the Defendant Employers
9 within the four (4) years preceding filing the Complaint in this
10 action and who did not receive full compensation under the
11 California Labor Code and applicable regulations of the California
12 Industrial Welfare Commission.

13 17. The “California Class Period” is designated as the time from four (4) years
14 immediately preceding filing the Complaint, through conclusion of trial on all issues presented,
15 based upon the allegation that the violations of the California Labor Code and the UCL, as
16 described more fully herein, have been ongoing throughout that time:

17 18. Plaintiffs reserve the right under Federal Rules of Civil Procedure, Rule 23, to
18 amend or modify these class descriptions with greater specificity or division into subclasses or
19 limitation to particular issues.

20 19. During the FLSA Class Period and the California Class Period, the Defendant
21 Employers had a consistent policy and practice with respect to Plaintiffs and similarly situated
22 aggrieved workers of:

23 a. Willfully misclassifying employees as independent contractors thereby
24 denying them rights and benefits under the FLSA, California Labor Code and applicable
25 IWC regulations with regard to wages, hours, and conditions of employment;

26 b. Willfully failing to pay overtime wages for hours worked over forty (40)
27 per 7-day workweek in violation of the FLSA and California Labor Code section 510;

28 c. Willfully failing to pay members of the California Class overtime and
double-time wages for hours worked over eight (8) hours per day or twelve (12) hours
per day, respectively, and in violation of California Labor Code section 510;

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1 d. Willfully failing and/or refusing to provide uncompensated mandated
2 meal periods and compensated rest breaks in violation of California Labor Code sections
3 226.7 and 512 and willfully deducting pay from employees while requiring them to work
4 through uncompensated meal periods in violation of the FLSA, the California Labor
5 Code, and IWC regulations;

6 e. Willfully failing to pay compensation (including unpaid minimum wages
7 and/or overtime) due and owing to employees in a prompt and timely manner upon
8 termination or resignation in violation of the FLSA and California Labor Code sections
9 201 through 203;

10 f. Willfully requiring employees as a precondition of employment to sign
11 illegal, voidable, unenforceable and unconscionable “Independent Contractor
12 Agreements;”

13 g. Willfully failing to pay minimum, regular or overtime wages for hours
14 worked while driving AT&T vehicles to their first job assignment of the workday and
15 returning from the last assignment of the workday, and while participating in required
16 training courses, in violation of the FLSA, and the California Labor Code;

17 h. Willfully requiring employees to buy their own tools, cell phones, cell
18 phone service plans, and equipment necessary for the job without reimbursement or
19 indemnification;

20 i. Willfully entering into agreements for construction related contracting
21 services without sufficient funds to allow the contractor to comply with all applicable
22 local, state, and federal labor laws or regulations;

23 j. Willfully withholding and converting employees’ wages for their own use;

24 k. Willfully engaging, suffering and permitting the work of employees and
25 exercising control over the wages, hours, and/or working conditions of employees, under
26 illegal Independent Contractor Agreements;

27 l. Willfully failing to prevent the unlawful labor conditions despite having
28 the power to do so;

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1 m. Willfully engaging in the illegal underground economy with a pattern and
2 practice of violating local, state and federal employment and labor regulations to that, for
3 example: employees who were laid off were not eligible for unemployment benefits;
4 employees who were injured on the job were not eligible for workers compensation
5 benefits to receive medical treatment for industrial injuries; employees did not have
6 appropriate state and federal taxes withheld from their paychecks so that employees
7 suffer massive year-end tax liabilities; employees who were disabled did not have access
8 to California State Disability Insurance (SDI); and employees did not accrue Social
9 Security credits during their employment by the Defendant Employers; and

10 n. Fraudulently promising workers they would be “converted” from “1099
11 contractors” to “W-2 employees” after a brief introductory period of employment.

12 20. The Defendant Employers’ policy and practice of willfully misclassifying
13 Plaintiffs and similarly situated employees as independent contractors in order to evade and
14 violate California and federal laws, as described herein, serve as predicate acts for application of
15 the UCL.

16 21. This action has been brought and may properly be maintained as a class action
17 under Federal Rules of Civil Procedure, Rule 23 because there is a well-defined community of
18 interest in the litigation and the proposed class is easily ascertainable:

19 a. Numerosity: A class action is the only available method for the fair and
20 efficient adjudication of this controversy. The members of the class are so
21 numerous that joinder of all members is impractical, if not impossible;
22 Plaintiffs are informed and believe, and on that basis allege, that the total
23 number of the class members is approximately three hundred (300) but
could be greater. Membership in the class will be determined based on
analysis of the Defendant Employers’ employee records, independent
contractor agreements, and payroll records, and other records that the
Defendant Employers maintain.

24 b. Commonality: Plaintiffs and the class members share a community of
25 interests, as there are several common questions and issues of fact and law
26 which predominate over any questions and issues solely affecting
individual members. A class action is superior to other methods for a fair
and efficient adjudication of the controversy. These common questions
include, but are not limited to:

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- i. Whether the Defendant Employers willfully misclassified class members as independent contractors rather than employees;
- ii. Whether the Defendant Employers violated the FLSA, California Labor Code section 510 and applicable IWC Wage Order(s) by failing to pay overtime compensation to FLSA Class members who worked over 40 hours per week and/or California Class Members who worked over 8 hours per day;
- iii. Whether the Defendant Employers violated the FLSA by deducting pay from class members' while requiring them to work through meal periods in violation of the FLSA, and violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Order(s) by failing to give California Class members meal periods and rest breaks;
- iv. Whether the Defendant Employers violated the FLSA, California Labor Code sections 201 through 203 and the applicable IWC Wage Order(s) by willfully failing to pay compensation to class members (including unpaid minimum wages and/or overtime) in a prompt and timely manner upon termination of employment;
- v. Whether the Defendant Employers failed to pay minimum, regular or overtime wages to class members for hours worked while driving to their first job assignment of the workday and returning from the last assignment of the workday,
- vi. Whether the Defendant Employers failed to pay minimum, regular or overtime wages to class members while participating in required training courses;
- vii. Whether the Defendant Employers required class members to buy their own tools, cell phones, cell phone service plans, and equipment necessary for the job without reimbursement or indemnification;
- viii. Whether the Defendant Employers violated California Labor Code section 2810 with respect to the California Class by failing to contract for sufficient funds to comply with California law;
- ix. Whether the Defendant Employers converted class members' wages for their own use;
- x. Whether the Defendant Employers engaged in unfair, unlawful and/or fraudulent business practices with respect to the California Class in violation of the UCL by a consistent policy and practice of violating minimum wage, overtime, and timely wage payment, provisions of California's wage and hour laws;

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- xi. Whether the Defendant Employers required employees to sign illegal Independent Contractor Agreements to evade paying minimum wage, overtime, and timely wages to class members, and otherwise avoid compliance with federal and state laws; and
- xii. Whether the illegal, voidable and unconscionable Independent Contractor Agreements should be rescinded and declared void and unenforceable.

- c. Typicality: Plaintiffs’ claims are typical of the claims of the employees of the proposed class. Plaintiffs, and all members of the class, sustained injuries and damages arising out of and caused by Defendants’ conduct, in violation of the FLSA and the California Class also sustained injuries and damages arising out Defendants’ violations of California law as alleged.
- d. Superiority of Class Action: Since the damages suffered by individual class members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each worker is likely to render individual actions impractical. Should separate actions be brought by each individual employee, the resulting multiplicity of lawsuits would cause undue hardship and expense for the courts and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings, which might be dispositive of the interests of other employees who are not parties to those adjudications and/or may substantively impede their ability to adequately protect their interests. Plaintiffs are informed and believe, and based thereon allege, that the Defendant Employers, in committing the FLSA violations, Labor Code violations, unfair business practices, and conversion alleged regarding the class members have acted and refused to act on grounds applicable to all claims, making injunctive and monetary relief appropriate for all class members.
- e. Adequacy of Representation: Plaintiffs in this class action are adequate representatives of other similarly situated employees and the class members as a whole in that Plaintiffs’ claims are typical of those of the class and Plaintiffs have the same interests as the class members. Plaintiffs are committed to vigorous prosecution, and have retained competent counsel experienced in wage and hour litigation and representative actions of this nature. Plaintiffs are not subject to any individual defenses unique or distinct from those conceivably applicable to the class. Plaintiffs anticipate no management difficulties.

COMMON FACTUAL ALLEGATIONS

22. At all relevant times, Carter Bros. and AT&T had one or more agreement(s) or contract(s) whereby Carter Bros. hired, trained and supplied labor and construction related services employees to AT&T in California, Colorado, Illinois, Maryland, Massachusetts, Ohio,

1 Pennsylvania, Texas, Washington D.C., and elsewhere throughout the United States, for
2 AT&T's Digital Life home security system installation and monitoring business.

3 23. As part of this agreement or contract, the Defendant Employers jointly employed
4 and trained security services technicians and/or equivalently positioned employees, like
5 Plaintiffs and Class Members, to render security system installation and technical-related
6 services under the direct supervision and control of the Defendant Employers.

7 24. The Defendant Employers entered into this agreement knowing the contract or
8 agreement between them did not include funds sufficient to comply with all applicable local,
9 state, and federal laws or regulations governing the labor or services to be provided.

10 25. The Defendant Employers were required to obtain licenses to perform these
11 services in California, creating a rebuttable presumption under Labor Code section 2750.5 that
12 the California Class members were employees of the Defendant Employers, and not independent
13 contractors.

14 26. However, as a precondition to employment, the Defendant Employers required
15 Plaintiffs and Class Members to sign an "Independent Contractor Agreement," misclassifying
16 Plaintiffs and Class Members as Independent Contractors rather than employees, and permeated
17 with illegal, unconscionable, void and voidable terms. These terms include but are not limited to:

18 a. Willful misclassification of Class Members as independent contractors
19 rather than employees for the purposes of avoiding and evading numerous federal laws
20 and state, wage and hour laws, Workers Compensation laws, Family and Medical Leave
21 Act and California Family Rights Act requirements, Affordable Care Act requirements,
22 Unemployment Insurance payments, State Disability Insurance ("SDI") payments, Social
23 Security Insurance ("SSI") contributions, Medicare contributions, and numerous other
24 state and federal laws, taxes and requirements.

25 b. Excluding Class Members from overtime wages for hours worked in
26 excess of forty (40) hours per week in violation of the FLSA, California Labor Codes and
27 applicable IWC wage orders;

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1 c. “Exclusivity” and “Non-Solicitation; Non-Competition” terms that are
2 onerous and unreasonable, lack adequate legal consideration, are illegal restraints on
3 trade under California Business and Professions Code section 16600, and directly
4 contradict the purported independent contractor status conferred by the Agreement;

5 d. “Indemnification” term requiring Class Members to indemnify the
6 company for all claims, even those arising out of the employees’ course and scope of
7 employment in violation of California Labor Code section 2802;

8 e. “Resolution of Disputes” term requiring employees to waive substantive
9 rights under the FLSA and the California Labor Code, to pay substantial costs to remedy
10 violations of the FLSA and the California Labor Code, and designed to evade the illegal
11 nature of the agreement;

12 f. “Governing Law” term attempts to avoid the FLSA, California Labor
13 Codes and IWC Wage Orders by applying Georgia law to employment contracts
14 executed and fully performed outside of Georgia.

15 27. To induce employees to sign these illegal independent contractor agreements, the
16 Defendant Employers fraudulently promised Class Members they would be “converted” from
17 “1099 contractors” to “W-2 employees” after a short introductory period of employment, which
18 promise was never kept.

19 28. During their employment with the Defendant Employers, Class Members
20 performed security system installation and technical related services, the type of which the
21 Defendant Employers are in the regular business of providing.

22 29. Class Members did not set, determine, or follow their own work schedules, but
23 instead were given their work schedule by the Defendant Employers who dispatched Class
24 Members to work sites. Class Members had no control over setting appointments and work
25 schedules and were expected to abide by the schedules given to them by the Defendant
26 Employers.

27 30. Class Members were required to drive vehicles owned and provided by AT&T,
28 displaying the AT&T branding, trademarks, and logos, from home to all dispatched

1 appointments. Class Members were not allowed to make personal stops, conduct personal
2 business or errands, or carry passengers while driving the AT&T vehicles.

3 31. Class Members had no ownership or investment in their own business and were
4 told they would be provided tools and consumables by the Defendant Employers to use during
5 technical appointments. Class Members often were not provided with promised tools and
6 supplies, and were required to buy their own tools, cell phones, cell phone service plans, and
7 supplies at their own expense without reimbursement or indemnity.

8 32. Class Members were required to wear uniforms bearing AT&T logos and
9 emblems identifying them as employees of the Defendant Employers.

10 33. Class Members were expressly forbidden by their independent contractor
11 agreements from engaging in any outside work or activities of any kind with competing
12 employers both during and after the term of the independent contract agreements regardless of
13 how long they worked for the Defendant Employers.

14 34. Class Members had little or no previous specific or specialized training in
15 security system installation or services. The Defendant Employers provided a two-week initial
16 training session. Class Members were required to participate in on-going training sessions,
17 meetings, demonstration, direction, and on-the-job training in the methods, processes,
18 procedures, techniques, means and manner of carrying out the work required to be performed in
19 a specific proscribed manner.

20 35. Class Members' work was regularly overseen, supervised, and directed by the
21 Defendant Employers.

22 36. Class Members were guaranteed by their Contracts wages for a minimum forty
23 hours per week, whether they worked forty hours per week or less, but were never paid for a full
24 forty hour week without having worked a full forty hour week.

25 37. Class Members were paid by the hour and not by the job.

26 38. Class Members' Agreements contained a one-year term duration of employment.

27 39. Class Members were regularly required to work over eight (8) hours and twelve
28 (12) hours per day and forty (40) hours per week, and/or work on a seventh consecutive day, but

1 were never paid over-time or double-time wages.

2 40. Class Members were regularly denied mandated meal and rest periods.

3 41. Class Members were denied minimum, regular and/or overtime wages for travel
4 time in the AT&T vehicles while being dispatched to their first job assignment of the day and
5 returning from the last assignment of the day, and while participating in required training
6 courses.

7 42. Class Members were denied terminal wages due and owing within 72 hours of an
8 employee's voluntary termination and/or immediately upon involuntary termination of
9 employment.

10 43. Class Members frequently were not paid wages conceded due and owing at the
11 time of termination of employment.

12 44. After terminating the employment of Class Members, Defendant Employers
13 mailed letters to Class Members in January 2014 designed to prevent them from obtaining
14 employment elsewhere by informing them, in pertinent part, "Employment with a competitor
15 requires the express written permission of Carter Brothers Security Services, LLC. [¶] You are
16 hereby notified that if you are in violation of your Executed Independent Contractor Agreement,
17 we may seek legal action."

18 **FIRST CAUSE OF ACTION**

19 **Unpaid Overtime Wages**

20 **California Labor Code §§ 510, 558**

21 **(By Plaintiffs and the California Class Against All Defendants)**

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

24 46. Plaintiffs and the California Class members were governed by the wage and
25 overtime requirements of Labor Code section 510 and the applicable IWC Wage Order number
26 4-2001, for the Professional, Technical, Clerical, Mechanical and Similar Occupations. Wage
27 Order 4 requires employees must be paid overtime of one and one-half times the employee's
28 regular rate of pay for all hours worked over eight (8) hours up to and including twelve (12)
hours in any workday and over 40 hours in one work week, and for the first eight (8) hours

1 worked on the seventh consecutive day of work in a workweek, and double the employee's
2 regular rate of pay for all hours worked over twelve (12) hours in any workday.

3 47. During the last four years, the Defendant Employers systematically denied
4 Plaintiffs and the California Class members overtime compensation for hours worked over eight
5 (8) and twelve (12) in one day and over forty (40) hours in one work week.

6 48. Plaintiffs and the California Class members are entitled to recover the unpaid
7 balance of the full amount of the overtime wages, including interest thereon, penalties under
8 Labor Code section 558 in the amount of fifty dollars (\$50) per initial violation per underpaid
9 employee per pay period, and one hundred dollars (\$100) for each subsequent violation per
10 employee per pay period, reasonable attorney's fees, and costs of suit, under California Labor
11 Code section 1194.

12 49. As a proximate result of the aforementioned violations, Plaintiffs and the
13 California Class members have been damaged in an amount according to proof at the time of
14 trial, but in an amount in excess of the minimum jurisdiction of this Court.

15 WHEREFORE, Plaintiffs pray for relief as set forth below.

16 **SECOND CAUSE OF ACTION**
17 **Willful Failure to Timely Pay Wages When Due at Termination**
18 **California Labor Code §§ 201 – 203**
19 **(By Plaintiffs and the California Class Against All Defendants)**

20 50. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1
21 through 49 above as though fully set forth herein.

22 51. Labor Code sections 201 and 202 requires the Defendant Employers to pay
23 employees all wages due immediately upon involuntary discharge or layoff of an employee, and
24 within 72 hours of an employee's voluntary termination of employment. Labor Code section 203
25 provides that if an employer willfully fails to timely pay such wages the employer must, as a
26 penalty, continue to pay the employee's wages until the back wages are paid in full or an action
27 is commenced. The penalty cannot exceed 30 days of wages.

28 52. Plaintiffs and California Class members were routinely required to wait longer
than the statutory maximum for final paychecks. Plaintiffs and California Class members are

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1 entitled to compensation for unpaid minimum, regular and overtime wages, but to date have not
2 received such compensation.

3 53. More than three (3) days have passed since Plaintiffs and California Class
4 members have left Defendants' employ. Plaintiffs and California Class members have not
5 absented themselves or made themselves unavailable for payment of such unpaid sums.

6 54. As a consequence of the Defendant Employers' willful conduct in not paying
7 wages owed at the time of separation from employment, Plaintiffs and California Class members
8 are entitled to up to thirty (30) days wages as a penalty under Labor Code section 203, together
9 with interest thereon and attorney's fees and costs.

10 55. As a proximate result of the aforementioned violations, Plaintiffs and California
11 Class members have been damaged in an amount according to proof at the time of trial, but in an
12 amount in excess of the minimum jurisdiction of this Court.

13 WHEREFORE, Plaintiffs pray for relief as set forth below.

14 **THIRD CAUSE OF ACTION**
15 **Violation of Labor Code § 2753**

16 **(By Plaintiffs and the California Class Against Doe Defendants 1-5)**

17 56. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1
18 through 55 above as though fully set forth herein.

19 57. Labor Code section 2753 provides that a person who, for money or other valuable
20 consideration, knowingly advises an employer to treat an individual as an independent contractor
21 to avoid employee status for that individual shall be jointly and severally liable with the
22 employer if the individual is found not to be an independent contractor. This section does not
23 apply to a person who provides this advice to his or her employer or is an attorney authorized to
24 practice law in California or another Unities States jurisdiction who provides legal advice the
25 course of the practice of law.

26 58. Plaintiffs allege that Doe Defendants 1 through 5 are persons who, for money or
27 other valuable consideration, knowingly advised the Defendant Employers to treat California
28 Class members as independent contractors to avoid employee status.

59. Plaintiffs further allege that Doe Defendants 1 through 5 are not employees of the

1 Defendant Employers and are not attorneys in California or another Unites States jurisdiction
2 who provided legal advice in the course of the practice of law. Doe Defendants 1 through 5 shall
3 be treated as jointly and severally liable with the Defendant Employers.

4 60. Plaintiffs will amend this Complaint to show the true names and capacities of Doe
5 Defendants 1 through 5, when such information has been ascertained.

6 61. WHEREFORE, Plaintiffs pray for relief as set forth below.

7 **FOURTH CAUSE OF ACTION**
8 **Willful Failure to Give Mandated Meal and Rest Periods**
9 **California Labor Code §§ 226.7, 512**
10 **(By Plaintiffs and the California Class Against all Defendants)**

11 62. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1
12 through 61 above as though fully set forth herein.

13 63. Labor Code section 226.7 mandates that no employer shall require any employee
14 to work during any meal or rest period mandated by an applicable order of the IWC.

15 64. Labor Code section 512 requires that an employer may not employ an employee
16 for a work period of over five hours per day without providing the employee with a meal period
17 of not less than 30 minutes, except that if the total period per day of the employee is not over six
18 hours, the meal period may be waived by mutual consent of both the employer and employee.
19 An employer may not employ an employee for a work period of over 10 hours per day without
20 providing the employee with a second meal period of not less than 30 minutes, except that if the
21 total hours worked is only twelve (12) hours, the second meal period may be waived by mutual
22 consent of the employer and the employee only if the first meal period was not waived.

23 65. IWC Wage Order number 4-2001(11)(A), requires that unless an employee is
24 relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on
25 duty” meal period and counted as time worked. An “on duty” meal period shall be permitted
26 only when the nature of the work prevents an employee from being relieved of all duty and when
27 by written agreement between the parties an on-the-job paid meal period is agreed to.

28 66. IWC Wage Order number 4-2001(12)(A), requires every employer to authorize
and permit all employees to take rest periods at a rate of ten (10) minutes per four (4) hours

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1 worked, with no deduction from wages.

2 67. Labor Code section 226.7 and IWC Wage Order number 4-2001 (11)(B) and
3 (12)(B), require that if the employer fails to provide an employee a meal period or rest period in
4 accordance with an applicable order of the IWC, the employer shall pay the employee one
5 additional hour of pay at the employee's regular rate of compensation for each work day that the
6 meal or rest period is not provided.

7 68. During the last four years, the Defendant Employers frequently denied Plaintiffs
8 and California Class members mandated meal and/or rest periods during the workday by over-
9 booking the employees' appointments requiring Plaintiffs and California Class members to work
10 through their meal and rest periods, and then requiring the employees to deduct a 30 minute meal
11 period from their time sheet.

12 69. As a consequence of Defendants' willful conduct in not providing mandated meal
13 and rest periods, and requiring employees to work during meal periods without written
14 agreement and without pay, Plaintiffs and California Class members are entitled one additional
15 hour of pay at the employee's regular rate of compensation for each work day that the meal or
16 rest period was not provided under Labor Code section 226.7.

17 70. As a result of these violations, Plaintiffs and California Class members have been
18 damaged in an amount according to proof, but over the minimum jurisdiction of this Court.

19 WHEREFORE, Plaintiffs pray for relief as set forth below.

20 **FIFTH CAUSE**

21 **Willful Failure to Contract for Sufficient Funds to Comply with Labor Laws**
22 **California Labor Code § 2810**
23 **(By Plaintiffs and the California Class Against All Defendants)**

24 71. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1
25 through 70 above as though fully set forth herein.

26 72. The Defendant Employers entered into a contract or agreement for electrical
27 contracting services and at all times knew or had reason to know that the contract or agreement
28 did not include sufficient funds to allow the contractor to comply with all applicable local, state
and federal laws or regulations governing the labor or services to be provided.

1 73. As a result of these violations, Plaintiffs and California Class members have been
2 damaged in an amount according to proof, but over the minimum jurisdiction of this Court.

3 WHEREFORE, Plaintiffs pray for relief as set forth below.

4 **SIXTH CAUSE OF ACTION**
5 **Willful Failure to Pay Minimum Wage**
6 **California Labor Code §§ 1194,1197,1197.1**
7 **(By Plaintiffs and the California Class Against All Defendants)**

8 74. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1
9 through 73 above as though fully set forth herein.

10 75. Labor Code section 1197 provides that payment of less than the minimum wage
11 to employees is unlawful. The Defendant Employers' California employees are governed by the
12 Industrial Welfare Commission's Minimum Wage Order, MW-2007, establishing an \$8.00 per
13 hour minimum wage beginning January 1, 2008.

14 76. California law requires that employees be compensated for all time during which
15 an employee is subject to the control of an employer. The Defendant Employers frequently
16 willfully failed and refused to pay Plaintiffs and California Class members any minimum,
17 regular, or over-time wages while being required to drive company vehicles from the employees'
18 assigned work locations to the first dispatched assignment of the day, and from the last
19 assignment of the day back to the employees' assigned work location.

20 77. Plaintiffs and California Class members were required to drive vehicles owned
21 and provided by AT&T from home to all dispatched appointments. Plaintiffs and California
22 Class members were expressly forbidden from making personal stops while driving the AT&T
23 vehicles, to use the trucks for personal errands, and from carrying passengers in their assigned
24 vehicle, as well other requirements and restrictions. While driving the Defendant Employers'
25 vehicles to dispatched assignments, Plaintiffs and California Class members were under the
26 control of the Defendant Employers but were not compensated for this time.

27 78. The Defendant Employers willfully failed and refused to pay Plaintiffs and
28 California Class members any minimum, regular, or over-time wages while being required to
participate in mobile learning ("MLearning") training sessions. Plaintiffs and California Class

1 members were told they had to participate in MLearning “on your own time,” but would be
2 “incentivized” to complete 116 required Carter Bros. MLearning courses at a piece rate of four
3 dollars (\$4) per course and three (3) AT&T required MLearning courses at a piece rate of \$25
4 per course. Plaintiffs and California Class members were never paid the promised piece rate or
5 any minimum, regular, or over-time wages while participating in the 119 MLearning courses.

6 79. As a consequence of the Defendant Employers’ willful conduct in not paying
7 minimum, regular or over-time wages, Plaintiffs and California Class members are entitled to
8 recover the unpaid balance of the full amount of the minimum wage or overtime compensation,
9 including interest thereon, reasonable attorney’s fees, and costs of suit, under Labor Code
10 section 1194. Plaintiffs and California Class members are also entitled to recover civil penalties
11 against the Defendant Employers for \$100 per initial violation per underpaid employee per
12 underpaid pay period, and \$250 for each subsequent violation for each underpaid employee per
13 underpaid pay period, under Labor Code section 1197.1.

14 80. As a proximate result of the aforementioned violations, Plaintiffs and California
15 Class members have been damaged in an amount according to proof at the time of trial, but in an
16 amount in excess of the minimum jurisdiction of this Court.

17 WHEREFORE, Plaintiffs pray for relief as set forth below.

18
19 **SEVENTH CAUSE OF ACTION**
20 **Failure to Pay for Necessary Expenditures**
21 **California Labor Code §2802**
22 **(By Plaintiffs the California Class Against All Defendants)**

23 81. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1
24 through 80 above as though fully set forth herein.

25 82. At all relevant times herein, the Defendant Employers owed a legal duty the
26 California Class Members, to provide or indemnify for all necessary expenditures or losses
27 incurred by the employee in direct consequence of the discharge of his or her duties, including
28 the purchase of tools, cell phones, cell phone service plans, or equipment required by the
employer or necessary to the performance of a job.

83. The Defendant Employers willfully failed and refused to reimburse or indemnify

1 the California Class Members for the purchase of tools, cell phones, cell phone service plans,
2 and/or equipment, required by the Defendant Employers and/or necessary to the performance of
3 the job.

4 84. As a consequence of the Defendant Employers' willful conduct in not providing
5 or reimbursing the California Class Members for the purchase of required tools, cell phones, cell
6 phone service plans and/or equipment, California Class Members are entitled to recover the full
7 amount paid for tools, cell phones, and/or equipment required, including interest thereon,
8 reasonable attorney's fees, and costs of suit, under Labor Code section 2802.

9 85. As a proximate result of the aforementioned violations, California Class Members
10 have been damaged in an amount according to proof at the time of trial, but in an amount in
11 excess of the minimum jurisdiction of this Court.

12 WHEREFORE, Plaintiffs pray for relief as set forth below.

13 **EIGHTH CAUSE OF ACTION**
14 **Conversion**

15 **(By Plaintiffs and Class Members Against All Defendants)**

16 86. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1
17 through 85 above as though fully set forth herein.

18 87. At all relevant times, the Defendant Employers owed a legal duty to its
19 employees, including Plaintiffs and Class Members, to properly compensate them with at least
20 minimum wages and/or overtime wages for all hours worked. The Defendant Employers
21 knowingly and intentionally failed and refused to pay Plaintiffs and Class Members wages they
22 were owed, withholding these sums and converting them to Defendants' own use. Plaintiffs and
23 Class Members had the right to own and had the legal right to hold, possess and dispose of
24 wages withheld by the Defendant Employers. Plaintiffs and Class Members gained the right to
25 hold, possess, and dispose of the overtime wages withheld while working in the service of the
26 Defendant Employers during the last four years.

27 88. At all relevant times herein, the Defendant Employers owed a legal duty to its
28 employees, to make timely payment of terminal wages. The Defendant Employers knowingly,
intentionally, and willfully failed to make timely payment of terminal wages to Plaintiffs and

1 Class Members, withholding these sums and converting them to Defendants' own use. Plaintiffs
2 and Class Members had the right to own and had the legal right to hold, possess and dispose of,
3 the wages not timely paid by the Defendant Employers upon termination. Plaintiffs and Class
4 Members gained the right to hold, possess, and dispose of the wages not timely paid while
5 working in the service of the Defendant Employers.

6 89. In doing the acts and things alleged, the Defendant Employers knowingly,
7 willfully, and unlawfully interfered with Plaintiffs' and Class Members' rights to wages earned,
8 and to own, possess and/or control disposition of these sums. In doing the acts and things
9 alleged, Defendants knowingly, unlawfully and intentionally took, appropriated, and converted
10 the property (wages) of Plaintiffs and Class Members for Defendants' own use, purposes, and
11 benefits. When the conversion took place, Class Members were entitled to such property. This
12 conversion was oppressive, malicious and fraudulent, and the Defendant Employers' legal
13 obligation to pay these wages was concealed by the Defendant Employers from Plaintiffs and
14 Class Members, and each of them. The Defendant Employers knew that Plaintiffs and Class
15 Members were entitled to the unpaid wages described hereinabove and knowingly refused
16 payment to Plaintiffs and Class Members, instead using the money they had to pay to Plaintiffs
17 and Class Members for Defendant Employers' own purposes and benefits.

18 90. The exact wages unlawfully converted by the Defendant Employers from
19 Plaintiffs and Class Members, and each of them, can be made certain. The specific identifiable
20 sum of money Plaintiffs and Class Members are entitled to vary per employee and will be
21 established in an amount according to proof and over the minimum jurisdiction of this Court.

22 91. The Defendant Employers have regularly and consistently maintained policies
23 and procedures that dictated and mandated that Plaintiffs and Class Members were not properly
24 paid minimum, regular and overtime wages. The Defendant Employers have regularly and
25 consistently maintained policies and procedures that dictated and mandated that Plaintiffs and
26 Class Members were not timely paid all wages due and owing upon termination of employment.
27 The Defendant Employers implemented and carried out the policies and procedures as alleged to
28 deprive Plaintiffs and Class Members of their right to payment of minimum, regular wages,

1 overtime wages, and timely payment of wages upon termination, such that the Defendant
2 Employers converted said sums for their own uses, as alleged.

3 92. Plaintiffs and Class Members carried out their tasks, duties and responsibilities
4 for the Defendant Employers in a similar fashion as alleged. The Defendant Employers have
5 taken sums owed to Class Members and converted the same to their own use and benefit.

6 93. Plaintiffs and Class Members have been injured by this conversion by reliance on
7 the Defendant Employers' obligation to comply with the FLSA, California Labor Code and the
8 applicable IWC Wage Order(s) requiring the Defendant Employers properly pay minimum,
9 regular and overtime wages and wages upon termination in a timely fashion. Plaintiffs and Class
10 Members are entitled to all money converted by the Defendant Employers with interest thereon,
11 and any and all profits, whether direct or indirect, which the Defendant Employers acquired by
12 its unlawful conversion. The Defendant Employers' actions constituting conversion were
13 oppressive, malicious and fraudulent and were concealed by the Defendant Employers from
14 Plaintiffs and Class Members as hereinabove alleged. Plaintiffs and Class Members have been
15 injured by the Defendant Employers' oppressive, malicious, intentional and fraudulent actions,
16 entitling Class Members to punitive and exemplary damages.

17 WHEREFORE, Plaintiffs prays for judgment as set forth below.

18
19 **NINTH CAUSE OF ACTION**

20 **Unfair Competition Law**

21 **Business & Professions Code § 17200 et seq.**

22 **(By Plaintiffs and the California Class Against All Defendants)**

23 94. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1
24 through 93 above as though fully set forth herein.

25 95. The Unfair Competition Law ("UCL"), Business and Professions Code section
26 17200 et seq., defines unfair competition to include any unlawful, unfair, or fraudulent business
27 act or practice. The UCL borrows violations from other statutes, and authorizes any person who
28 has suffered injury and who has lost money or property because of such unfair practices to sue
for relief under the statute. The UCL also provides that a court may enjoin acts of unfair

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1 competition, issue declaratory and other equitable relief, and order restitution of money or
2 property acquired with unfair competition.

3 96. Defendants, and each of them, have engaged in unfair business practices in
4 California by practicing, employing and utilizing the employment practices outlined in
5 paragraphs 1 through 89, inclusive. Beginning on an exact date unknown to Plaintiffs, but at
6 least since year 2010 and continuing to the present day, the Defendant Employers have violated
7 numerous state and federal laws and regulations governing wages, hours, and conditions of
8 employment.

9 97. As described hereinabove, which allegations are realleged and incorporated by
10 reference as though fully set forth, Defendants have committed the tort of conversion against
11 their employees, including Plaintiffs and California Class members.

12 98. DOE Defendants 1 though 5 have violated Labor Code section 2753 by
13 knowingly advising the Defendant Employers to treat Plaintiffs and California Class members as
14 independent contractors to avoid employee status for Plaintiffs and California Class members, in
15 exchange for money or other valuable consideration. This violation serves as an additional
16 predicate act under the UCL.

17 99. The Employer Defendants violated Labor Code section 226.8, by engaging in a
18 pattern and practice of willfully misclassifying Plaintiffs and California Class members as
19 independent contractors. This violation serves as an additional predicate act under the UCL.

20 100. Defendants fraudulently promised Plaintiffs and California Class members they
21 would be “converted” from “1099 contractors” to “W-2 employees” after a brief introductory
22 period of employment with no other change in job duties in order to induce Plaintiffs and
23 California Class members to sign the independent contractor agreements.

24 101. Defendants’ violations of these laws serve as unlawful predicate acts, and have
25 resulted in economic harm and injury to all Plaintiffs and California Class members for Business
26 and Professions Code section 17200, and remedies are provided under Business and Professions
27 Code section 17203.

28 102. Plaintiffs are informed and believe and on that basis allege that, the Defendant

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1 Employers have engaged in unlawful, deceptive, and unfair business practices prohibited by the
2 UCL, including those set forth, depriving Plaintiffs and California Class members individually
3 and as representatives of other members of the general public the minimum working condition
4 standards due to them under California labor laws. Because of the Defendant Employers'
5 unlawful, deceptive, and unfair business practices, they have gained an unfair competitive
6 advantage over other law abiding employers in the industry within California.

7 103. Plaintiffs and California Class members are entitled to an injunction and other
8 equitable relief against such unlawful practices to prevent future damage, for which there is no
9 adequate remedy at law, and to avoid a multiplicity of lawsuits.

10 104. The illegal conduct alleged is continuing, and there are no indications Defendants
11 will not continue such activity into the future. Plaintiffs and California Class members allege that
12 if Defendants are not enjoined from the conduct set forth in this Complaint, they will continue to
13 fail to provide to employees minimum working condition standards due to them under California
14 labor laws to the detriment and damage of its employees while gaining an unfair competitive
15 advantage over law abiding employers in the same industry within California.

16 105. As a direct and proximate result of the aforementioned acts, Defendants have
17 received and continue to hold ill-gotten gains belonging to Plaintiffs and California Class
18 members, in that Defendants have profited in that amount from their unlawful practices.

19 106. Business and Professions Code section 17203 provides that the Court may restore
20 to any person in interest any money or property which may have been acquired with such unfair
21 competition. Plaintiffs and California Class members are entitled to restitution under Business
22 and Professions Code sections 17203 and 17208 for all wages unlawfully withheld from them
23 during the four years prior to filing this Complaint. Plaintiffs will, upon leave of the Court,
24 amend this Complaint to state such amounts when they become ascertained.

25 107. California Class Members success will enforce important rights affecting the
26 public interest, and in that regard, Plaintiffs sue for themselves and other employees in
27 California similarly situated. Plaintiffs seek and are entitled to unpaid minimum, regular,
28 overtime, and terminal wages, penalties, injunctive relief, and any other remedy owing to

1 Plaintiffs and other aggrieved employees.

2 108. To prevent Defendants from profiting and benefiting from wrongful and illegal
3 acts, an order requiring Defendants to disgorge all of the profits and gains they have reaped
4 through their unlawful and unfair business practices is appropriate and necessary.

5 WHEREFORE, Plaintiffs pray for judgment as set forth below.

6 **TENTH CAUSE OF ACTION**
7 **Labor Code Private Attorneys General Act (“PAGA,” Lab. Code § 2699 et seq.)**
8 **(By Plaintiffs and the California Class Against All Defendants)**

9 109. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1
10 through 108 above as though fully set forth herein.

11 110. Under Labor Code section 2699(a), the Labor Code Private Attorneys General
12 Act (“PAGA,” Lab. Code, § 2699 et seq.) authorizes Plaintiffs to bring this civil action on their
13 own behalf and for other current and former employees in California to recover civil penalties
14 otherwise collected for violations of the Labor Code by the LWDA or its departments, divisions,
15 commissions, boards, agencies, or employees. For all provisions of the Labor Code where a civil
16 penalty is not expressly provided, there is established under the PAGA at Labor Code section
17 2699(f) a civil penalty of one-hundred dollars (\$100) for each aggrieved employee per pay
18 period for the initial violation hereinabove alleged and two hundred dollars (\$200) for each
19 aggrieved employee in California per pay period for each subsequent violation hereinabove
20 alleged.

21 WHEREFORE, Plaintiffs pray for judgment as set forth below.

22 **ELEVENTH CAUSE OF ACTION**
23 **Declaratory Relief, Rescission, and Injunctive Relief**
24 **(By Plaintiffs and Class Members Against All Defendants)**

25 111. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1
26 through 110 above as though fully set forth herein.

27 112. An actual, present and justiciable controversy has arisen and now exists between
28 all Plaintiffs and Class Members on the one hand, and the Defendant Employers on the other
hand, concerning their respective rights and duties in that Plaintiffs contend that the Agreements
they were required to sign as a precondition to employment were permeated with illegal and

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1 unconscionable terms (collectively referred to as the “Illegal Terms”), including but not limited
2 to:

3 a. Willfully misclassifying Plaintiffs and Class Members as independent
4 contractors rather than employees ;

5 b. Willfully excluding Plaintiffs and Class Members from over-time wages
6 for hours worked in excess of eighth (8) hours or twelve (12) hours per day and forty (40)
7 hours per week in violation of the FLSA, California Labor Codes and applicable IWC
8 wage orders;

9 c. “Exclusivity” and “Non-Solicitation; Non-Competition” terms are onerous
10 and unreasonable, lack adequate legal consideration, are illegal restraints on trade under
11 California Business and Professions Code section 16600, and directly contradict the
12 purported independent contractor status purportedly conferred by the agreements;

13 d. “Indemnification” term requires Plaintiffs and California Class members
14 to indemnify the company for all claims, even those arising out of the employees’ course
15 and scope of employment in violation of California Labor Code section 2802;

16 e. “Resolution of Disputes” term requiring employees to waive substantive
17 rights under the FLSA and the California Labor Code, to pay substantial costs to remedy
18 violations of the FLSA and the California Labor Code, and designed to evade the illegal
19 nature of the Agreements;

20 f. “Governing Law” term attempts to avoid FLSA, California Labor Codes
21 and IWC Wage Orders by applying Georgia law to employment contracts executed and
22 fully performed outside of Georgia.

23 113. A true and correct copy of the Agreement signed by Plaintiff Gianfranco Uy is
24 attached to this Complaint as **Exhibit A** and is a representative example of the Agreements
25 signed by all Plaintiffs and Class Members.

26 114. Plaintiffs and Class Members’ consent to the Illegal Terms and the Agreements
27 was given by mistake, and/or through duress, fraud, constructive fraud, and/or undue influence
28 and enforcement of the Agreements would be unconscionable.

1 115. Enforcement of the Agreements and the Illegal Terms would be prejudicial to the
2 public interest.

3 116. The Agreements and Illegal Terms should be rescinded based on statutory
4 provisions providing for rescission.

5 117. Plaintiffs desire a judicial determination that the Illegal Terms and any other
6 illegal or unconscionable terms in the Agreements are invalid and unenforceable.

7 118. Plaintiffs desire a judicial determination and declaration that the Agreements are
8 therefore rescinded in their entirety.

9 119. Plaintiffs desire an injunction prohibiting Defendants from enforcing the
10 Agreements.

11 WHEREFORE, Plaintiffs prays for judgment as set forth below.

12 **TWELFTH CAUSE OF ACTION**
13 **Violations of the Fair Labor Standards Act (29 U.S.C. §201 *et seq.*)**
14 **(By Plaintiffs and Class Members Against All Defendants)**

15 120. Plaintiffs reallege and incorporate by reference the allegations of paragraphs 1
16 through 119 above as though fully set forth herein.

17 121. At all times relevant hereto, the Defendant Employers violated the FLSA, and
18 continue to violate the FLSA, by willfully and systematically failing to pay Plaintiffs and Class
19 Members premium or over-time wages for hours worked in excess of forty (40) in one work
20 week.

21 122. At all times relevant hereto, the Defendant Employers violated the FLSA, and
22 continue to violate the FLSA, by willfully failing to pay Plaintiffs and Class Members any
23 regular, minimum, or overtime wages for all hours under the control of the Defendant
24 Employers, including but not limited to hours spent while being required to drive company
25 vehicles from the employees' assigned work locations to the first dispatched assignment of the
26 day, and from the last assignment of the day back to the employees' assigned work location,
27 during mandatory daily "roll call" conference calls, for time spent participating in Mlearning
28 training sessions, and for unlawful lunch time deductions for "off-the-clock" working lunch
periods as required by the Defendant Employers, among others.

1 123. At all relevant times hereto, the Defendant Employers violated the FLSA, and
2 continue to violate the FLSA, by willfully failing to pay Plaintiffs and Class Members minimum
3 wages in that the Defendant Employers required Plaintiffs and Class Members to incur costs of
4 doing business, including but not limited to requiring Plaintiffs and Class Members to purchase
5 and supply their own tools of the trade, consumable supplies, cell phones and cell phone plans,
6 without reimbursement by the Defendant Employers, thereby reducing Plaintiffs and Class
7 Members wages below regular, overtime and minimum wages due.

8 124. At all relevant times hereto, the Defendant Employers violated the FLSA, and
9 continue to violate the FLSA, by willfully failing to pay Plaintiffs and Class Members on their
10 regularly scheduled payday following involuntary termination of employment.

11 125. As a proximate result of the aforementioned violations, Plaintiffs and Class
12 Members have been damaged in an amount according to proof at the time of trial, but in an
13 amount in excess of the minimum jurisdiction of this Court.

14 WHEREFORE, Plaintiffs prays for judgment as set forth below.

15 **PRAYER FOR RELIEF**

16 Plaintiffs pray for relief:

17 **As to all causes of action:**

- 18 1. For compensatory damages to Plaintiffs and Class Members;
- 19 2. For prejudgment interest on all sums awarded to the extent permitted by law;
- 20 3. For such other and further relief as the Court may deem proper;

21 **As to the First Cause of Action Unpaid Overtime Wages:**

- 22 4. For an award of all unpaid overtime wages due to Plaintiffs and California Class
23 members under the California Labor Code;
- 24 5. For an award of penalties under Labor Code section 558 in the amount of fifty
25 dollars (\$50) per initial violation per underpaid employee per pay period, and one hundred
26 dollars (\$100) for each subsequent violation per employee per pay period;

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6. For an award of interest at ten percent per annum on the unpaid overtime wages under Labor Code section 1194;

7. For an award of reasonable attorney’s fees and costs of suit under Labor Code section 1194;

As to the Second Cause of Action for Willful Failure to Timely Pay Wages When Due at Termination:

8. For an award of all unpaid terminal wages due to Plaintiffs and California Class members under the California Labor Code;

9. For an award of waiting time penalties of thirty (30) days wages per employee under Labor Code section 203;

10. For an award of interest at ten percent per annum on the unpaid terminal wages under Labor Code section 1194;

11. For an award of reasonable attorney’s fees and costs of suit under Labor Code section 1194;

As to the Third Cause of Action for Violation of Labor Code § 2753:

12. That this court order that Doe Defendants 1 through 5 shall be jointly and severally liable with the Defendant Employers as to Plaintiffs and the California Class;

As to the Fourth Cause of Action for Failure to Give Mandated Meal and Rest Breaks:

13. For an award of one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period was not provided, under Labor Code section 226.7, to each Plaintiff and California Class member;

As to the Fifth Cause of Action for Failure to Contract for Sufficient Funds to Comply with Labor Laws:

14. For the greater of either compensatory damages or \$250 per employee for each initial violation and \$1,000 per employee for each subsequent violation, under Labor Code section 2810, to each Plaintiff and California Class member;

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1 15. For an award of costs and reasonable attorney's fees under Labor Code section
2 2810;

3 **As to the Sixth Cause of Action for Failure to Pay Minimum Wages:**

4 16. For an award of all unpaid minimum wages and/or piece rate wages due to
5 Plaintiffs and California Class members;

6 17. For an award of civil penalties in the amount of \$100 per initial violation per
7 underpaid employee per underpaid pay period, and \$250 for each subsequent violation for each
8 underpaid employee per underpaid pay period, under Labor Code section 1197.1, as to each
9 Plaintiff and California Class member;

10 18. For an award of interest at ten percent per annum on the unpaid undisputed wages
11 under Labor Code section 1194, as to each Plaintiff and California Class member;

12 19. For an award of reasonable attorney's fees and costs of suit under Labor Code
13 section 1194;

14 **As to the Seventh Cause of Action for Failure to Pay for Necessary Expenditures:**

15 20. For compensatory damages;

16 21. For an award of interest at a rate of ten percent per annum on the unreimbursed
17 necessary expenditures;

18 22. For an award of reasonable attorney's fees and costs of suit under Labor Code
19 section 2802;

20 **As to the Eighth Cause of Action for Conversion:**

21 23. For compensatory damages;

22 24. For an award of damages to Plaintiffs and Class Members for their time and
23 money expended in pursuit of the return of their property, including reasonable attorney's fees,
24 under Civil Code section 3336;

25 25. For an award of exemplary damages under Civil Code section 3294, as to
26 Plaintiffs and the California Class;

27 **As to the Ninth Cause of Action for Unfair Competition:**

28 26. For a judicial determination that the Illegal Terms in the Agreements violate the

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1 UCL and have resulted in economic harm and injury to all Plaintiffs and the California Class;

2 27. For an order requiring the Defendant Employers to pay restitution to Plaintiffs
3 and California Class members due to the Defendant Employers' unlawful activities, under
4 Business and Professions Code section 17203;

5 28. For an order requiring the Defendant Employers to disgorge profits related to the
6 unlawful nonpayment of Workers Compensation insurance premiums, Affordable Care Act
7 requirements, Unemployment Insurance payments, SDI payments, SSI contributions, Medicare
8 contributions, federal and state payroll tax payments, and numerous other state and federal laws,
9 taxes and requirements;

10 29. For an order declaring the Defendant Employers' employment practices as
11 described above are unlawful and requiring the Defendant Employers to cease and desist from
12 unlawful activities in violation of California Business and Professions Code section 17200;

13 30. For an award of interest, reasonable attorney's fees and costs of suit under
14 California Code of Civil Procedure section 1021.5.

15 31. For any further equitable relief in favor of Plaintiffs and the California Class the
16 Court deems just and proper;

17 **As to the Tenth Cause of Action under the PAGA:**

18 32. For civil penalties as provided under Labor Code section 2699(f), to be
19 distributed 75 percent to the LWDA (for enforcement of labor laws and education of employers
20 and employees about their rights and responsibilities under the Labor Code) and 25 percent to
21 Plaintiffs and California Class members;

22 33. For an award of reasonable attorney's fees and costs, including expert witnesses,
23 under Labor Code section 2699(g)(1);

24 **As to the Eleventh Cause of Action for Injunctive and Declaratory Relief:**

25 34. That the Court enter judgment according to the declaratory and injunctive relief
26 sought;

27 35. For an award of costs of suit;

28 36. For an award of exemplary damages under Civil Code section 3294;

1 37. For any further equitable relief in favor of Plaintiffs and Class Members the Court
2 deems just and proper.

3 **As to the Twelfth Cause of Action for Violations of the FLSA:**

4 38. For compensatory damages;

5 39. For liquidated damages available under the FLSA;

6 40. For an award of reasonable attorney’s fees and costs, including expert witnesses,
7 under the FLSA;

8 41. For any further equitable relief in favor of Plaintiffs and Class Members the Court
9 deems just and proper.

10 DATED: March 10, 2014

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11 By: /s/ Joseph W. Rose
12 JOSEPH W. ROSE
13 LISA L. BRADNER
14 Attorneys for Plaintiffs and
15 Class Members

16 **DEMAND FOR JURY TRIAL**

17 Plaintiffs RAMSES GUTIERREZ, JONATHAN JACOB, TOUSSAINT CHIVARS,
18 JOSHUA ESPIRITU, PATRICK WILLIAMS, SAM PREEG, RICARDO SAPASAP,
19 ARMANDO TORRES, KEONDRE MASTERS, GIANFRANCO UY, CHRISTOPHER ADDO;
20 ALAN OSORIO, KEITH POLEE, EARL GRAY and ZACHARY FINER for themselves and all
21 others similarly situated aggrieved employees demand a trial by jury.

22 DATED: March 10, 2014

ROSE LAW
A PROFESSIONAL CORPORATION

23 By: /s/ Joseph W. Rose
24 JOSEPH W. ROSE
25 LISA L. BRADNER
26 Attorneys for Plaintiffs and
27 Class Members
28

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