

1 **BLUMENTHAL & NORDREHAUG**
Norman B. Blumenthal (State Bar #068687)
2 Kyle R. Nordrehaug (State Bar #205975)
Aparajit Bhowmik (State Bar #248066)
3 2255 Calle Clara
La Jolla, CA 92037
4 Telephone: (858)551-1223
Facsimile: (858) 551-1232

5 **UNITED EMPLOYEES LAW GROUP**
6 Walter Haines, Esq. (CSB #71075)
65 Pine Ave, #312
7 Long Beach, CA 90802
Telephone: (562) 256-1047
8 Facsimile: (562) 256-1006
Attorneys for Plaintiffs

9
10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 RAMON BARCIA; RANDALL LEWIS; on
13 behalf of themselves, and on behalf of all
persons similarly situated,

14 Plaintiff,

15 vs.

16 CONTAIN-A-WAY INC., a California
17 corporation, doing business as NEXCYCLE
and 20/20 RECYCLE CENTERS,

18 Defendants.

CASE No. 07 CV 0938 IEG (JMA)

**FIRST AMENDED COMPLAINT FOR
DAMAGES, RESTITUTION, AND
INJUNCTIVE RELIEF:**

(1) FAILURE TO PAY EARNED
WAGES AND OVERTIME
COMPENSATION IN VIOLATION OF
CAL. LAB. CODE §§ 204, 210, 218, 510,
1194 AND 1198;

(2) FAILURE TO PROVIDE REST
PERIODS IN VIOLATION OF CAL. LAB.
CODE §§ 226.7 AND 512;

(3) FAILURE TO PROVIDE ACCURATE
ITEMIZED STATEMENTS IN VIOLATION
OF LABOR CODE § 226;

(4) UNFAIR COMPETITION IN
VIOLATION OF CAL. BUS. & PROF.
CODE § 17200 *et seq.*;

(5) CLAIM FOR BENEFITS DUE,
DECLARATORY RELIEF AND
EQUITABLE RELIEF UNDER ERISA
PLAN [29 U.S.C. § 1132]; and,

(6) VIOLATION OF FAIR LABOR
STANDARDS ACT [29 U.S.C. § 216]

(7) LABOR CODE PRIVATE
ATTORNEY GENERAL ACT [Labor Code
§ 2698]

DEMAND FOR A JURY TRIAL

Filed in accordance with the Court's Order of
April 1, 2008

INTRODUCTION

1
2 1. This class action is brought by RAMON BARCIA and RANDALL LEWIS
3 individually and on behalf of all present and former employees employed by DEFENDANTS in
4 California during the Class Period (hereinafter “PLAINTIFFS”). The DEFENDANTS are
5 CONTAIN-A-WAY INC., a California corporations, doing business as NEXCYCLE and 20/20
6 RECYCLE CENTERS (hereinafter collectively referred to as “DEFENDANTS”). DEFENDANTS
7 systematically failed to pay PLAINTIFFS for the actual numbers of hours worked, regular and
8 overtime, during the Class Period. These employees were unlawfully paid wages based solely upon
9 the hours the recycling site was open to the public, without regard to the fact that all floaters and site
10 attendants were required to work before site opening to prepare the site and after site closing to
11 close down the site and complete the paperwork and inventory work of the DEFENDANTS.
12 DEFENDANTS have systematically refused to pay this class of employees for the substantial
13 amount of hours worked after site closing, including but not limited to overtime hours. In addition,
14 when acting in the role of the ERISA plan fiduciary administrator for DEFENDANTS’ ERISA
15 plan(s), DEFENDANTS failed to provide employees with the required benefits and breached their
16 responsibilities, obligations and duties owed by DEFENDANTS under the ERISA plan(s), so as to
17 wrongfully prohibit PLAINTIFFS and other similarly situated persons, as site attendant and/or
18 floater employees, from participating in the DEFENDANTS’ ERISA plan(s) and receiving the
19 benefits for which they were eligible under the DEFENDANTS’ ERISA plan(s). All allegations in
20 this Complaint are based upon information and belief except for those allegations which pertain to
21 the PLAINTIFFS named herein and their counsels. Each allegation in this Complaint either has
22 evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further
23 investigation and discovery. PLAINTIFFS seek an injunction enjoining such conduct by
24 DEFENDANTS in the future, relief for the named PLAINTIFFS and all other class members who
25 have been economically injured by DEFENDANTS’ past conduct, and all other appropriate
26 equitable relief.

27 ///

28 ///

1 **JURISDICTION AND VENUE**

2 2. This Court has jurisdiction over this action pursuant to 29 U.S.C. § 1132(e) and 29
3 U.S.C. §216(b). The action is brought as a class action pursuant to Federal Rules of Civil
4 Procedure, §23. The named PLAINTIFFS bring this action on their own behalf, and on behalf of all
5 persons within the Class as hereinafter defined.

6 3. Venue is proper in this Court because the DEFENDANTS have and at all relevant
7 times maintained offices in San Diego County, California and committed wrongful conduct against
8 members of the class in San Diego County, California.

9
10 **CLASS DEFINITION**

11 4. The CLASS consists of all persons employed by DEFENDANTS during the Class
12 Period as a site attendant or floater for one or more of DEFENDANTS’ recycling sites in California
13 and who were not paid wages for hours worked and/or were denied benefits by DEFENDANTS (the
14 “CLASS”). The Class Period is defined as the period commencing on the date that is within four
15 years prior to the filing of this complaint and through the class period cutoff date (the “Class
16 Period”). To the extent equitable tolling operates to toll claims by the CLASS against
17 DEFENDANTS, the Class Period should be adjusted accordingly.

18 5. DEFENDANTS, as a matter of a uniform corporate policy, practice and procedure,
19 and in violation of the applicable California Labor Code (“Labor Code”) and Industrial Welfare
20 Commission (“IWC”) Wage Order Requirements, unlawfully, intentionally and knowingly failed to
21 pay employees for all hours worked, including overtime hours, and instead paid such employees
22 based solely upon the hours the site was open to the public, without regard to the fact that
23 employees were required to work to prepare the site before the site opened for the public and also to
24 remain at the site to complete work after the recycling site closed to the public. Further,
25 DEFENDANTS altered time records for these employees and otherwise failed to pay employees for
26 hours worked by the employees.

27 6. DEFENDANTS maintain records from which the Court can ascertain and identify
28 each of DEFENDANTS’ employees who as CLASS members have systematically not been paid for

1 the hours worked by the employee, as a matter of DEFENDANTS' corporate policy, practices and
2 procedures.

3
4 **CLASS ALLEGATIONS**

5 7. PLAINTIFF RAMON BARCIA was, at all material times mentioned herein, an
6 individual who resided in California and worked for DEFENDANTS as a floater during the Class
7 Period. His employment with CONTAINER-A-WAY, doing business as NEXCYCLE and 20/20
8 RECYCLE CENTERS, in California, began August 11, 2005 and continued to May 2007. Mr.
9 Barcia was paid hourly at a regular rate of between \$10 and \$11.25 per hour. Using this hourly rate,
10 DEFENDANTS paid Mr. Barcia not based upon the actual number of hours worked, but instead
11 solely on the basis of fictional hours manufactured by the Defendant, irrespective of the fact that Mr.
12 Barcia, like all other floaters and site attendants, was uniformly required to work at a site before
13 opening and after closing. One example of this practice by the DEFENDANTS occurred when a
14 supervisor came to Mr. Barcia's house where the supervisor altered and forged time-card of the
15 employees. As a result of the DEFENDANTS' practice, Mr. Barcia was not paid for all hours
16 worked as required by California law, including but not limited to overtime hours. Mr. Barcia
17 suffered an economic injury as the result the DEFENDANTS' failure to pay him for all hours
18 worked. DEFENDANTS also failed to provide Mr. Barcia with all statutorily required meal and
19 rest period breaks during the Class Period. Mr. Barcia was an employee of DEEFNDANTS eligible
20 to participate in and receive benefits from DEFENDANTS' ERISA plan, but was denied
21 participation in DEFENDANTS' benefit plans as a matter of uniform corporate policy and practice
22 to refuse benefits to eligible site attendant and floater employees.

23 8. PLAINTIFF RANDALL LEWIS was, at all material times mentioned herein, an
24 individual who resided in California who worked for DEFENDANTS during the Class Period. His
25 employment with CONTAINER-A-WAY, doing business as NEXCYCLE and 20/20 RECYCLE
26 CENTERS, as a recycling site attendant operated by DEFENDANTS in California, began in July of
27 the 2006 and ended on March 28, 2007. Mr. Lewis was paid hourly at a regular hourly rate of \$9.00
28 per hour. Using this agreed regular rate, DEFENDANTS paid Mr. Lewis, not based upon the actual

1 number of hours worked by Mr. Lewis, but instead solely on the basis of the hours the recycling site
2 was open to the public, irrespective of the fact that Mr. Lewis, like all other site attendants, was
3 uniformly required to work at his site after closing. As a result of the DEFENDANTS’ practice, Mr.
4 Lewis was not paid for all hours worked as required by California law, including but not limited to
5 overtime hours. Mr. Lewis suffered an economic injury as the result the DEFENDANTS’ failure to
6 pay him for all hours worked at his regular rate of pay. DEFENDANTS also failed to provide Mr.
7 Lewis with all statutorily required meal and rest period breaks during the Class Period. Mr. Lewis
8 was an employee of DEEFNDANTS eligible to participate in and receive benefits from
9 DEFENDANTS’ ERISA plan, but was denied participation in DEFENDANTS’ benefit plans as a
10 matter of uniform corporate policy and practice to refuse benefits to eligible site attendant and
11 floater employees. More than five hundred (500) persons have suffered the same economic injury
12 as PLAINTIFFS during the Class Period as a result of DEFENDANTS systematic and uniform
13 unlawful business practice.

14 9. The California Legislature has commanded that “all wages... ..earned by any person
15 in any employment are due and payable twice during each calendar month, on days designated in
16 advance by the employer as the regular paydays”, and further that “[a]ny work in excess of eight
17 hours in one workday and any work in excess of 40 hours in any one workweek...shall be
18 compensated at the rate of no less than one and one-half times the regular rate of pay for an
19 employee.” (Lab. Code §204 and §510(a).) The Industrial Welfare Commission (IWC), however,
20 is statutorily authorized to “establish exemptions from the requirement that an overtime rate of
21 compensation be paid... ..for executive, administrative, and professional employees, provided [inter
22 alia] that the employee is primarily engaged in duties that meet the test of the exemption, [and]
23 customarily and regularly exercises discretion and independent judgment in performing those
24 duties...” (Lab. Code §510(a).) None of the PLAINTIFFS or the members of the CLASS qualify
25 for exemption from the above requirements.

26 10. This Class Action meets the statutory prerequisites for the maintenance of a Class
27 Action as set forth in the Federal Rules of Civil Procedure, rule 23, in that:

28 (a) The persons who comprise the CLASS are so numerous that the joinder of all

1 such persons is impracticable and the disposition of their claims as a class will benefit the parties
2 and the Court;

3 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues that
4 are raised in this Complaint are common to the CLASS and will apply uniformly to every member
5 of the CLASS;

6 (c) The claims of the representative PLAINTIFFS are typical of the claims of
7 each member of the CLASS. PLAINTIFFS, like all other members of the CLASS, were
8 systematically not paid wages, including overtime wages, for hours worked before site opening and
9 after the recycling site was closed to the public, arising from DEFENDANTS' uniform practice and
10 violations of the laws of California. PLAINTIFFS and the members of the CLASS were and are
11 similarly or identically harmed by the same unlawful, deceptive, unfair and pervasive pattern of
12 misconduct engaged in by DEFENDANTS' policy and practice of paying employees based solely
13 upon the hours the site was open to the public, and not for the actual hours worked by employees,
14 including but not limited to overtime hours (i.e. in excess of eight (8) hours in one workday and/or
15 in excess of forty (40) hours per workweek). Further, PLAINTIFFS, like all other members of the
16 CLASS, were uniformly denied participation in DEFENDANTS' benefits in contravention of the
17 terms of the benefit plans and in violation of the DEFENDANTS' responsibilities, obligations and
18 duties as the plan administrator.

19 (d) The representative PLAINTIFFS will fairly and adequately represent and
20 protect the interest of the CLASS, and has retained counsel who are competent and experienced in
21 Class Action litigation. There are no material conflicts between the claims of the representative
22 PLAINTIFFS and the members of the CLASS that would make class certification inappropriate.
23 Counsel for the CLASS will vigorously assert the claims of all Class Members.

24 11. In addition to meeting the statutory prerequisites to a Class Action, this action is
25 properly maintained as a Class Action pursuant to the Federal Rules of Civil Procedure, rule 23(b),
26 in that:

27 (a) Without class certification and determination of declaratory, injunctive,
28

1 statutory and other legal questions within the class format, prosecution of separate actions by
2 individual members of the CLASS will create the risk of:

3 1) Inconsistent or varying adjudications with respect to individual
4 members of the CLASS which would establish incompatible standards of conduct for the parties
5 opposing the CLASS; or,

6 2) Adjudication with respect to individual members of the CLASS which
7 would as a practical matter be dispositive of interests of the other members not party to the
8 adjudication or substantially impair or impede their ability to protect their interests.

9 (b) The parties opposing the CLASS have acted on grounds generally applicable
10 to the CLASS, making appropriate class-wide relief with respect to the CLASS as a whole in that
11 the Defendants systematically failed to pay employees based upon the actual number of hours
12 worked and failed to accurately record the hours worked by site attendant and floater employees;

13 (c) Common questions of law and fact exist as to the members of the CLASS and
14 predominate over any question affecting only individual members, and a Class Action is superior to
15 other available methods for the fair and efficient adjudication of the controversy, including
16 consideration of:

17 1) The interests of the members of the CLASS in individually
18 controlling the prosecution or defense of separate actions;

19 2) The extent and nature of any litigation concerning the controversy
20 already commenced by or against members of the CLASS;

21 3) The desirability or undesirability of concentrating the litigation of the
22 claims in the particular forum; and,

23 4) The difficulties likely to be encountered in the management of a Class
24 Action.

25 12. This Court should permit this action to be maintained as a Class Action pursuant to
26 the Federal Rules of Civil Procedure, rule 23, because:

27 (a) The questions of law and fact common to the CLASS predominate over any
28

1 question affecting only individual members;

2 (b) A Class Action is superior to any other available method for the fair and
3 efficient adjudication of the claims of the members of the CLASS;

4 (c) The members of the CLASS are so numerous that it is impractical to bring all
5 members of the CLASS before the Court;

6 (d) PLAINTIFF, and the other CLASS members, will not be able to obtain
7 effective and economic legal redress unless the action is maintained as a Class Action;

8 (e) There is a community of interest in obtaining appropriate legal and equitable
9 relief for the common law and statutory violations and other improprieties, and in obtaining
10 adequate compensation for the damages and injuries which DEFENDANTS' conduct has inflicted
11 upon the CLASS;

12 (f) There is a community of interest in ensuring that the combined assets and
13 available insurance of DEFENDANTS are sufficient to adequately compensate the members of the
14 CLASS for the injuries sustained;

15 (g) DEFENDANTS have acted or refused to act on grounds generally applicable
16 to the CLASS, thereby making final class-wide relief appropriate with respect to the CLASS as a
17 whole; and

18 (h) The members of the CLASS are readily ascertainable from the business records
19 of DEFENDANTS. The CLASS consists of all persons employed by DEFENDANTS during the
20 Class Period as a site attendant or floater for one or more of DEFENDANTS' recycling sites in
21 California and who were not paid wages for hours worked and/or were denied benefits by
22 DEFENDANTS (the "CLASS"). To the extent equitable tolling operates to toll claims by the
23 CLASS against Defendants, the Class period should be adjusted accordingly. To the extent that, due
24 to the DEFENDANTS' violation of Cal. Labor Code § 226(a) and Cal. Code of Regulations, Title 8,
25 § 11040(7), DEFENDANTS have failed to maintain accurate records required by statute, the
26 consequences for such failure should fall on the DEFENDANTS, not the employees, and
27 DEFENDANTS are therefore estopped, as a matter of law, to contest the evidence as to the actual
28 hours worked by employees.

1 **DEFENDANTS**

2 13. Defendant CONTAINER-A-WAY, at all times during the Class Period was a
3 California Corporation with its principal place of business in the State of California. CONTAINER-
4 A-WAY operates recycling sites throughout California, including but not limited to sites in San
5 Diego, Redlands, and Fairfield, California. CONTAINER-A-WAY operates these recycling sites
6 using its corporate name, or under the fictitious business names NEXCYCLE and/or 20/20
7 RECYCLE CENTERS, and therefore, collectively, these businesses are jointly referred to herein as
8 CONTAINER-A-WAY or DEFENDANTS. CONTAINER-A-WAY was the employer of
9 PLAINTIFFS and is or was the current and/or former employer of the putative CLASS members
10 during the Class Period. CONTAINER-A-WAY systematically, failed to pay wages due for hours
11 worked at the recycling sites to PLAINTIFFS and the other members of the CLASS as a matter of
12 corporate policy, practice and procedure.

13
14 **THE CONDUCT**

15 14. PLAINTIFF RAMON BARCIA was hired by defendant CONTAINER-A-WAY on
16 or about August 11, 2005 as a floater employee for CONTAINER-A-WAY's recycling sites in
17 Monterey and Santa Cruz counties, California. As a floater, his job duties are to attend various
18 recycling sites where needed in Monterey and Santa Cruz counties, and perform the same duties as a
19 site attendant employee. Floaters also spend time delivering supplies and picking up paperwork.
20 None of these duties are "exempt" and floaters, just like site attendants, are not exempt and are paid
21 hourly by DEFENDANTS. Just like a site attendant, Mr. Barcia was required to open the recycling
22 center at 10:00 a.m. and keep the recycling center open to the public until 4:30 p.m. In addition, as
23 a floater for DEFENDANTS, Mr. Barcia was required, before site opening, to prepare the site for
24 business, and, after site closing, to continue working by completing DEFENDANTS' paperwork
25 and handling the recycled materials for storage and transport. Also, as a floater, Mr. Barcia was
26 required to spend time driving and making phone calls for the DEFENDANTS for which time he
27 was not compensated. As part of the job duties of PLAINTIFFS, DEFENDANTS uniformly
28 required employees to perform these activities before the employee can leave the site and after the

1 site is closed to the public. As a result, Mr. Barcia has been forced to work before a site opening
2 and at the site after closing at 4:30 p.m., often until 6:00 p.m., however, DEFENDANTS
3 systematically failed, and continue to refuse, to fully compensate Mr. Barcia for the hours worked
4 after site closing (4:30 p.m.). DEFENDANTS are aware of the additional work, but as a matter of
5 corporate practice and policy, instead record Mr. Barcia's hours worked based solely upon the time
6 the site is open to the public (10:00 a.m. to 4:30 a.m.), and systematically disregarded the actual
7 hours worked by Mr. Barcia. DEFENDANTS' practice and policy therefore requires Mr. Barcia to
8 work hours each day without compensation in violation of California law. Further, if Mr. Barcia's
9 hours worked were correctly recorded and paid by DEFENDANTS, many of the additional hours
10 worked by Mr. Barcia would have to be paid at the overtime wage required by Cal. Labor Code §
11 510. Mr. Barcia was eligible to receive benefits under the DEFENDANTS' ERISA plan, however,
12 DEFENDANTS uniform corporate policy and practice was to refuse participation to eligible site
13 attendant and floater employees. Finally, Mr. Barcia did not always receive the required break for
14 lunch and Mr. Barcia was not provided with the statutorily required rest period breaks during the
15 class period based upon his actual hours worked.

16 15. Mr. Barcia attempted to accurately record the actual hours worked, however, he
17 learned that representatives changed employee time records to reflect only the hours the site was
18 open to the public, and not the actual hours worked by Mr. Barcia. Mr. Barcia had complained
19 about the fabrication of the hours and the underpayment of wages due to his supervisor, but such
20 complaint was ignored and the underpayment was not remedied.

21 16. The relevant facts regarding the employment and payment of wages to PLAINTIFF
22 RANDALL LEWIS are nearly identical to the circumstances of Mr. Barcia. PLAINTIFF
23 RANDALL LEWIS was hired by defendant CONTAINER-A-WAY on or about July of 2006 as a
24 site attendant employee for one of the CONTAINER-A-WAY recycling sites in California, where
25 his job duties are to attend the recycling center and pay customers for the recyclable aluminum cans,
26 plastic bottles and glass that are returned by the customer. Mr. Lewis was required to open the
27 recycling center at 10:00 a.m. and keep the recycling center open to the public until 4:30 p.m. In
28 addition, as a recycling site attendant for DEFENDANTS, Mr. Lewis was required, before site

1 opening, to prepare the site for business, and, after site closing, to continue working by completing
2 DEFENDANTS' paperwork and handling the recycled materials for storage and transport. As part
3 of the job duties for PLAINTIFFS and all other site attendants, DEFENDANTS require employees
4 to perform these activities before the employee can leave and after the site is closed to the public.
5 As a result, Mr. Lewis has been forced to continue working at the site after closing at 4:30 p.m.,
6 often until 8:30 p.m., however, DEFENDANTS systematically failed, and continue to refuse, to
7 compensate Mr. Lewis for the hours worked after site closing (4:30 p.m.). DEFENDANTS are
8 aware of the additional work, but as a matter of corporate practice and policy, instead record Mr.
9 Lewis's hours worked based solely upon the time the recycling site is open to the public (10:00 a.m.
10 to 4:30 a.m.), and systematically disregarded the actual hours worked by Mr. Lewis.
11 DEFENDANTS' practice and policy therefore requires Mr. Lewis to work additional hours each day
12 without compensation in violation of California law. Further, if Mr. Lewis's hours worked were
13 correctly recorded and paid by DEFENDANTS, many of the additional hours worked by Mr. Lewis
14 would have to be paid at the overtime wage required by Cal. Labor Code § 512. Mr. Lewis was
15 eligible to receive benefits under the DEFENDANTS' ERISA plan, however, DEFENDANTS
16 uniform corporate policy and practice was to refuse participation to eligible site attendant and
17 floater employees and incorrectly inform such employees that they were not eligible for benefits
18 contrary to the terms of the plans. Finally, Mr. Lewis did not always receive a break for lunch and
19 Mr. Lewis was not provided with the statutorily required rest period breaks during the class period
20 based upon his actual hours worked.

21 17. DEFENDANTS systematically recorded hours worked and thereupon paid wages to
22 the PLAINTIFFS and all other members of the CLASS, using this same unlawful practice and
23 policy of recording time based solely upon the time the site was open to the public and without
24 regard to the hours actually worked by employees. Consequently, PLAINTIFFS and the other
25 members of the CLASS were uniformly and systematically denied payment for wages and
26 compensation for hours worked and denied overtime wages for hours worked in excess of eight
27 hours per day and/or forty hours per week during the class period. In addition, DEFENDANTS,
28 acting in their role as the ERISA plan fiduciary, failed to comply with the terms of the

1 DEFENDANTS' plan(s) and systematically violated the DEFENDANTS' responsibilities,
2 obligations and duties as plan administrator for the purpose of denying all site attendant and floaters
3 participation in and benefits under the DEFENDANTS' ERISA plan. DEFENDANTS were
4 informed of the wrongful recording of hours worked, but refused and failed to correct such
5 recording of hours. Under the terms of the plans, all site attendant and floater employees are and/or
6 were eligible to participate and receive benefits under the DEFENDANTS' ERISA plan(s).

7 18. Accordingly, and despite the fact that PLAINTIFFS, and the other members of the
8 CLASS, worked after the recycling center closed to the public, in excess of 8 hours a day and 40
9 hours per week they did not receive wages for all hours worked, did not receive overtime
10 compensation, were refused benefits for which they were eligible, and as a result, all suffered the
11 same form of economic injury.

12 19. In addition, under Cal. Lab. Code §§ 226.7 and 512, based upon the actual hours
13 worked by the employees, PLAINTIFFS and the other members of the CLASS, were required to be
14 provided with at least two (2) rest period breaks each workday. DEFENDANTS failed to provide
15 PLAINTIFFS and all other members of the CLASS with these statutorily required meal and rest
16 period breaks during the Class Period which has caused additional economic injuries to
17 PLAINTIFFS and other members of the CLASS.

18 20. Finally, DEFENDANTS engaged in a policy and practice of threatening and/or
19 terminating employees who complained about the DEFENDANTS' violations of the California
20 Labor Code or who requested to be paid for all hours worked. Further, DEFENDANTS threaten to,
21 and in fact do, retaliate against employees who refuse to participate in activities that violate
22 California law, including but not limited to, inaccurate reporting of hours worked and the fraudulent
23 alteration of time records and employee information. For example, Candy Dotson, a regional
24 manager of Defendants, went to all of the sites she manages and instituted DEFENDANTS' policy
25 and practice of threatening and/or terminating employees who complained about the
26 DEFENDANTS' violations of the California Labor Code by informing employees that they would
27 be terminated if they reported Labor Code violations, sought to enforce their rights under the Labor
28 Code, and/or disclosed their knowledge of Labor Code violations by the DEFENDANTS.

1 **FIRST CAUSE OF ACTION**

2 **For Failure To Pay Earned Wages and Overtime Compensation**

3 **[Cal. Lab. Code §§ 204, 210, 218, 510, 1194 and 1198]**

4 **(By PLAINTIFFS and the CLASS and Against all Defendants)**

5 21. PLAINTIFFS, and the other members of the CLASS, reallege and incorporate by this
6 reference, as though fully set forth herein, paragraphs 1 through 20 of this Complaint.

7 22. Cal. Lab. Code § 204 requires employers to pay employees for all hours worked as
8 follows: “all wages... ..earned by any person in any employment are due and payable twice during
9 each calendar month, on days designated in advance by the employer as the regular paydays.” Cal.
10 Lab. Code § 510 further provides that employees in California shall not be employed more than
11 eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional
12 compensation beyond their regular wages in amounts specified by law.

13 23. Cal. Lab. Code § 218 and §1194 establishes an employee’s right to recover unpaid
14 wages overtime compensation, interest thereon, together with the costs of suit, and attorneys fees.
15 Cal. Lab. Code § 1198 states that the employment of an employee for longer hours than those fixed
16 by the Industrial Welfare Commission is unlawful.

17 24. As set forth herein, DEFENDANTS’ policy and practice was to intentionally and
18 uniformly deny payment to site attendant and floater employees for all hours worked, and further
19 failed to pay overtime compensation for hours worked in excess of eight hours in a day and/or forty
20 hours in a workweek. This was done in an illegal attempt to avoid payment of earned wages,
21 overtime compensation and other benefits in violation of the Cal. Lab. Code and Industrial Welfare
22 Commission requirements.

23 25. The Industrial Welfare Commission, ICW Wage Order No. 4, and Labor Code §515,
24 set forth the requirements which must be complied with to classify an employee as exempt from
25 applicable labor laws. For an employee to be exempt from these rules as a bona fide “executive,”
26 all the following criteria must be met and DEFENDANTS have the burden of proving that:

27 (a) The employee’s primary duty must be management of the enterprise, or of a
28 customarily recognized department or subdivision; and,

1 (b) The employee must customarily and regularly direct the work of at least two
2 (2) or more other employees; and,

3 (c) The employee must have the authority to hire and fire, or to command
4 particularly serious attention to his or his recommendations on such actions affecting other
5 employees; and,

6 (d) The employee must customarily and regularly exercise discretion and
7 independent judgment; and,

8 (e) The employee must be primarily engaged in duties which meet the test of
9 exemption.

10 No member of the CLASS was or is an executive because they all fail to meet the requirements of
11 being an exempt “executive” within the meaning of Order No. 4.

12 26. The Industrial Welfare Commission, ICW Wage Order No. 4, and Labor Code §515,
13 set forth the requirements which must be complied with to classify an employee as exempt from
14 applicable labor laws. For an employee to be exempt from these rules as a bona fide
15 “administrator,” all the following criteria must be met and DEFENDANTS have the burden of
16 proving that:

17 (a) The employee must perform office or non-manual work directly related to
18 management policies or general business operation of the employer; and,

19 (b) The employee must customarily and regularly exercise discretion and
20 independent judgment; and,

21 (c) The employee must regularly and directly assist a proprietor or an exempt
22 administrator; or,

23 (d) The employee must perform, under only general supervision, work requiring
24 special training, experience, or knowledge, or,

25 (e) The employee must execute special assignments and tasks under only general
26 supervision; and,

27 (f) The employee must be primarily engaged in duties which meet the test of
28 exemption.

1 No member of the CLASS was or is an administrator because they all fail to meet the requirements
2 for being an exempt “administrator” under Order No. 4.

3 27. The Industrial Welfare Commission, ICW Wage Order No. 4, and Labor Code §515,
4 set forth the requirements which must be complied with to classify an employee as exempt from
5 applicable labor laws. For an employee to be exempt from these rules as a bona fide “professional,”
6 all the following criteria must be met and DEFENDANTS have the burden of proving that:

7 (a) The employee is primarily engaged in an occupation commonly recognized as
8 a learned or artistic profession. For the purposes of this subsection, “learned or artistic profession”
9 means an employee who is primarily engaged in the performance of:

10 1) Work requiring knowledge of an advanced type in a field or science or
11 learning customarily acquired by a prolonged course of specialized intellectual instruction and
12 study, as distinguished from a general academic education and from an apprenticeship, and from
13 training in the performance of routine mental, manual, or physical processes, or work that is an
14 essential part or necessarily incident to any of the above work; or,

15 2) Work that is original and creative in character in a recognized field of
16 artistic endeavor, and the result of which depends primarily on the invention, imagination or talent
17 of the employee or work that is an essential part of or incident to any of the above work; and,

18 3) Whose work is predominately intellectual and varied in character (as
19 opposed to routine mental, manual, mechanical, or physical work) and is of such character cannot be
20 standardized in relation to a given period of time.

21 (b) The employee must customarily and regularly exercise discretion and
22 independent judgment; and.

23 (c) The employee earns a monthly salary equivalent to no less than two (2) times
24 the state minimum wage for full-time employment.

25 PLAINTIFFS and all members of the CLASS were uniformly paid less than two times the
26 minimum wage during the Class Period. No member of the CLASS was or is a professional
27 because they all fail to meet the requirements of being an exempt “professional” within the meaning
28 of Order No. 4.

1 28. PLAINTIFFS, and other members of the CLASS, do not fit the definition of an
2 exempt executive, administrative, or professional employee because:

3 (a) They did not work as executives or administrators; and,

4 (b) The professional exemption articulated in Wage Order No. 4, section
5 (1)(A)(3)(h) and Labor Code § 515, do not apply to PLAINTIFFS, or to the other members of the
6 CLASS, because they did not meet all the applicable requirements to work under any of the
7 exemptions.

8 29. During the class period, the PLAINTIFFS, and other members of the CLASS,
9 worked more hours than they were paid for, constituting a failure to pay all earned wages.

10 30. During the Class Period, the PLAINTIFFS, and other members of the CLASS,
11 worked more that eight hours in a workday, and/or more than forty hours in a work week.

12 31. At all times relevant times, DEFENDANTS failed to pay PLAINTIFFS, and other
13 members of the CLASS, wages for the hours they have worked as required by Cal. Lab. Code §204
14 and § 218, and overtime compensation for the hours they have worked in excess of the maximum
15 hours permissible by law as required by Cal. Lab. Code §§ 510 and 1198, even though
16 PLAINTIFFS, and the other members of the CLASS, were regularly required to work, and did in
17 fact work, hours after the site closed and before the site opened, which further included overtime
18 hours.

19 32. By virtue of DEFENDANTS' unlawful failure to pay additional compensation to the
20 PLAINTIFFS, and the other members of the CLASS, for the hours actually worked, the
21 PLAINTIFFS, and the other members of the CLASS, have suffered, and will continue to suffer, an
22 economic injury in amounts which are presently unknown to them and which will be ascertained
23 according to proof at trial.

24 33. DEFENDANTS knew or should have known that PLAINTIFFS, and the other
25 members of the CLASS, performed hours of work before opening and after the closing of the site to
26 the public. DEFENDANTS systematically elected, either through intentional malfeasance or gross
27 nonfeasance, not to pay them for their labor as a matter of uniform corporate policy, practice and
28 procedure.

1 based upon the hours worked by DEFENDANTS' recycling site attendant and floater employees.

2 40. At all times relevant hereto, the PLAINTIFFS, and other members of the CLASS,
3 have worked more than four hours in a workday. At all times relevant hereto, DEFENDANTS
4 failed to provide meal and rest periods as required by Cal. Lab. Code §§ 226.7 and 512.

5 41. By virtue of DEFENDANTS' unlawful failure to provide rest periods to them,
6 PLAINTIFFS, and other members of the CLASS, have suffered, and will continue to suffer,
7 damages in the amounts which are presently unknown to them, but which will be ascertained and
8 established according to proof at trial.

9 42. PLAINTIFFS are informed and believe, and based upon that information and belief
10 alleges, that DEFENDANTS know or should have known that the PLAINTIFFS, and the other
11 members of the CLASS, were entitled to rest periods but purposely elected not to provide these
12 mandated periods.

13 43. PLAINTIFFS, and the other members of the CLASS, are entitled to seek and recover
14 reasonable attorneys' fees and costs pursuant to Cal. Lab. Code §§ 226.7 and 512.

15 44. In performing the acts and practices herein alleged in violation of the labor laws, the
16 DEFENDANTS acted and continue to act intentionally, oppressively, and maliciously toward the
17 PLAINTIFFS, and toward the other members of the CLASS, with a conscious and utter disregard of
18 their rights, or the consequences to them, and with the despicable intent of depriving them of their
19 property and legal rights and otherwise causing them injury in order to increase corporate profits at
20 the expense of PLAINTIFFS and the other members of the CLASS.

21
22 **THIRD CAUSE OF ACTION**

23 **For Failure to Provide Accurate Itemized Statements**

24 **[Cal. Lab. Code § 226]**

25 **(By PLAINTIFFS and the CLASS and against All Defendants)**

26 45. PLAINTIFF, and the other members of the CLASS, reallege and incorporate by this
27 reference, as though fully set forth herein, paragraphs 1 through 44 of this Complaint.

28 46. Cal. Labor Code § 226 provides that an employer must furnish employees with "an

1 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by
2 the employee, (3) the number of piece rate units earned and any applicable piece rate if the
3 employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on
4 written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6)
5 the inclusive dates of the period for which the employee is paid, (7) the name of the employee and
6 his or her social security number, except that by January 1, 2008, only the last four digits of his or
7 her social security number or an employee identification number other than a social security number
8 may be shown on the itemized statement, (8) the name and address of the legal entity that is the
9 employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding
10 number of hours worked at each hourly rate by the employee.”

11 47. At all times relevant herein, DEFENDANTS violated Labor Code § 226, in that
12 DEFENDANTS failed to properly and accurately itemize the number of hours worked by
13 PLAINTIFFS, and the other members of the CLASS at the effective regular rates of pay and the
14 effective overtime rates of pay.

15 48. DEFENDANTS knowingly and intentionally failed to comply with Labor Code §
16 226, causing damages to PLAINTIFFS, and the other members of the CLASS. These damages
17 include, but are not limited to, unpaid wages for hours actually worked, the costs expended
18 calculating the true hours worked and the amount of employment taxes which were not properly
19 paid to state and federal tax authorities, plus reasonable attorney’s fees and costs pursuant to Labor
20 Code § 226(g).

21 **FOURTH CAUSE OF ACTION**

22 **For Unlawful Business Practices**

23 **[Cal. Bus. And Prof. Code § 17200 et seq.]**

24 **(By PLAINTIFFS and the CLASS and against All Defendants)**

25 49. PLAINTIFFS, and the other members of the CLASS, reallege and incorporate by this
26 reference, as though fully set forth herein, paragraphs 1 through 48 of this Complaint.

27 50. DEFENDANTS are “persons” as that term is defined under Cal. Bus. & Prof. Code §
28

17021.

1
2 51. Cal. Bus. & Prof. Code § 17200 defines unfair competition as any unlawful, unfair,
3 or fraudulent business act or practice. Section 17200 applies to violations of labor laws and in the
4 employment context.

5 52. At all times relevant hereto, by and through the conduct described herein,
6 DEFENDANTS have engaged in unfair and unlawful practices by failing to pay PLAINTIFFS, and
7 the other members of the CLASS, wages due, and have failed to provide rest breaks, pursuant to the
8 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
9 Bus. and Prof. Code § 17200 et seq., and have thereby deprived PLAINTIFF, and the other members
10 of the CLASS, of fundamental rights and privileges and caused them economic injury as herein
11 alleged. DEFENDANTS engaged in unfair competition by withholding compensation for hours
12 worked. DEFENDANTS further engaged in unfair and unlawful business practices by failing to
13 keep accurate information and time records and failing to accurately itemize the total hours worked
14 by DEFENDANTS' employees, in violation of California law. As herein alleged, DEFENDANTS'
15 conduct was unlawful in that, with respect to all California employees, DEFENDANTS uniformly
16 violated California law and regulations, including but not limited to Labor Code §201, §202, §216,
17 §204, §218, §226, §226.7, §510, §512, §1102.5, §1174, §1175, §1198, and 8 C.C.R. § 11040(7).
18 DEFENDANTS' conduct also violated federal law.

19 53. By and through the unfair and unlawful business practices described herein,
20 Defendants have obtained valuable property, money, and services from the PLAINTIFFS, and the
21 other members of the CLASS, and has deprived them of valuable rights and benefits guaranteed by
22 law and contract, all to their detriment and to the benefit of DEFENDANTS so as to allow
23 DEFENDANTS to unfairly compete against competitors who comply with the law.

24 54. All the acts described herein as violations of, among other things, the Cal. Lab. Code
25 and Industrial Welfare Commission Wage Order, are unlawful and in violation of public policy; and
26 in addition are immoral, unethical, oppressive, and unscrupulous, and Thereby constitute unfair and
27 unlawful business practices in violation of Cal. Bus. & Prof. Code § 17200 et seq.

28 55. PLAINTIFFS, and the other members of the CLASS, are entitled to, and do, seek

1 such relief as may be necessary to restore to them the money and property which DEFENDANTS
2 have acquired, or of which PLAINTIFFS, and other members of the CLASS, have been deprived, by
3 means of the above described unfair and unlawful business practices.

4 56. PLAINTIFFS, and the other members of the CLASS, are further entitled to, and do,
5 seek a declaration that the above described business practices are unfair and unlawful and that
6 injunctive relief should be issued enjoining DEFENDANTS from engaging in any of these unfair
7 and unlawful business practices in the future.

8 57. PLAINTIFFS, and the other members of the CLASS, have no plan, speedy, and/or
9 adequate remedy at law that will end the unfair and unlawful business practices of DEFENDANTS.
10 As a result of the unfair and unlawful business practices described above, PLAINTIFFS, and the
11 other members of the CLASS, have suffered and will continue to suffer irreparable harm unless
12 DEFENDANTS are restrained from continuing to engage in these unfair and unlawful business
13 practices. In addition, DEFENDANTS should be required to disgorge the unpaid moneys to
14 PLAINTIFFS, and the other members of the CLASS.

15
16 **FIFTH CAUSE OF ACTION**

17 **For Declaratory, Equitable, and/or Appropriate Relief**

18 **Under an ERISA Plan**

19 **[29 U.S.C. 1132]**

20 **(By PLAINTIFFS and the CLASS and against All Defendants)**

21 58. PLAINTIFFS, and the other members of the CLASS, reallege and incorporate by this
22 reference, as though fully set forth herein, paragraphs 1 through 57 of this Complaint.

23 59. PLAINTIFFS and the other members of the CLASS were eligible for benefits under
24 the DEFENDANTS' ERISA plan(s) pursuant to the terms of the ERISA plan(s).

25 60. An actual controversy exists between PLAINTIFFS and the CLASS, on the one
26 hand, and DEFENDANTS, as the fiduciary for the ERISA plan, on the other, with respect to the
27 responsibilities, obligations, and duties of DEFENDANTS to determine and disclose participation
28 and eligibility under the DEFENDANTS' ERISA plan(s) for site attendant and floater employees.

1 PLAINTIFFS, on behalf of themselves and on behalf of the CLASS, contend that site attendant and
2 floater employees are and/or were eligible to receive benefits under the ERISA plan(s), yet
3 DEFENDANTS, acting as the plan fiduciary, systematically and uniformly denies participation in
4 the ERISA plan and benefits to such employees contrary to the terms of the plans. DEFENDANTS'
5 written and verbal statements to site attendant and floater employees misrepresented both the terms
6 of the plans and these employees eligibility to participate in the plans and thereby deprived these
7 employees their rights under the plans. The DEFENDANTS employee handbook uniformly and
8 systematically informed employees that site attendant and floater employees are not entitled to
9 participate in plans or otherwise receive benefits. DEFENDANTS' conduct, as the ERISA plan
10 fiduciary, is arbitrary, capricious, in bad faith and malicious, and further violates the terms of the
11 plans and violates the DEFENDANTS' responsibilities, obligations and duties as plan
12 administrator. DEFENDANT knew that based upon their conduct and representations that these
13 employees were not adequately informed of their rights and intended that employees would be
14 confused as to their rights so as to deprive the employees of the benefits as to which they were
15 entitled under the terms of the plans.

16 61. PLAINTIFFS, on behalf of themselves and on behalf of the CLASS, request a
17 judicial declaration of the rights of the parties pursuant to the terms of the ERISA plan, and further
18 requests a judicial declaration that DEFENDANTS are required to disclose and comply with the
19 terms of the plans for purposes of determining participation in and/or eligibility for the ERISA plan.
20 To date, Defendant has failed to adequately inform site attendant and floater employees about
21 Defendants' benefit plans and the terms thereof.

22 62. PLAINTIFFS, on behalf of themselves and on behalf of the CLASS, seek injunctive
23 relief requiring the plan fiduciary to correct ERISA plan participation and all other equitable relief
24 available to PLAINTIFFS and the CLASS, pursuant to 29 U.S.C. § 1132(a)(3). All site attendant
25 and floater employees of DEFENDANTS are beneficiaries under the express terms of the
26 DEFENDANTS' benefit plans. PLAINTIFFS, on behalf of themselves and on behalf of the
27 CLASS, seek appropriate relief as a result of the violations of DEFENDANTS' responsibilities,
28 obligations and duties as plan administrator, pursuant to 29 U.S.C. § 1132(a)(2). PLAINTIFFS, on

1 behalf of themselves and on behalf of the CLASS, seek to recover benefits due to them under the
2 terms of DEFENDANTS' plans and to clarify and enforce their rights under the terms of
3 DEFENDANTS' plans, pursuant to 29 U.S.C. § 1132(a)(1). PLAINTIFFS and the other members
4 of the CLASS could not have sought relief from the plan administrator, who was the
5 DEFENDANT, because DEFENDANT uniformly failed to disclose the terms of the plan and
6 always took the position that site attendant and floater employees were not eligible to benefits under
7 the terms of the plans. The DEFENDANTS' employee handbook also stated to each site attendant
8 and floater employee that they were not eligible for benefits.

9 63. 29 U.S.C. § 1132(g) entitles a plaintiff who prevails in obtaining any of the above
10 relief to an award of reasonable attorneys' fees and costs under the remedial purposes and policies
11 of ERISA. As a result of the conduct of DEFENDANTS, as ERISA plan fiduciary, PLAINTIFFS
12 have been forced to retain and in fact retained legal counsel and have necessarily incurred attorneys'
13 fees and costs in prosecuting this claim and action. PLAINTIFFS request an award of all attorneys'
14 fees and costs, including a multiplier enhancement of the lodestar fee, according to law in an
15 amount to be determined.

16 64. Further, to the extent that DEFENDANTS, as the ERISA plan fiduciary, are found to
17 have violated any provision of ERISA, PLAINTIFFS seek all appropriate and available relief for
18 such violations.

19
20 **SIXTH CAUSE OF ACTION**

21 **For Violation of the Fair Labor Standards Act**

22 **[29 U.S.C. § 201 et seq.]**

23 **(Against All Defendants)**

24 64. PLAINTIFFS, and the other members of the CLASS, reallege and incorporate by this
25 reference, as though fully set forth herein, paragraphs 1 through 63 of this Complaint.

26 65. The Fair Labor Standards Act, 29 U.S.C. §201, et seq., states that an employee must
27 be compensated for all hours worked, including all straight time compensation and overtime
28 compensation. 29 C.F.R. §778.223 and 29 C.F.R. §778.315. This Court has concurrent jurisdiction

1 over claims involving the Fair Labor Standards Act pursuant to 29 U.S.C. § 216.

2 66. PLAINTIFFS and the CLASS were all paid by DEFENDANTS on an hourly basis at
3 a regular and agreed hourly rate. PLAINTIFFS and the CLASS worked more than 40 hours per
4 week, but were not paid compensation for all hours worked, including overtime hours.
5 PLAINTIFFS and the CLASS were not “exempt” from the requirements of the Fair Labor Standards
6 Act.

7 67. DEFENDANTS violated the Fair Labor Standards Act by failing to pay hourly
8 employees for all hours worked, including overtime hours, as alleged herein above.

9
10 **SEVENTH CAUSE OF ACTION**

11 **Labor Code Private Attorneys General Act**

12 **[Cal. Labor Code § 2698]**

13 **(Against Defendant Contain-A-Way, Inc., dba Nexcycle)**

14 68. PLAINTIFFS, and the other members of the CLASS, reallege and incorporate by this
15 reference, as though fully set forth herein, paragraphs 1 through 67 of this Complaint.

16 69. On January 23, 2008, Plaintiff gave written notice by certified mail to the Labor and
17 Workforce Development Agency and the employer of the specific provisions of this code alleged to
18 have been violated as required by Labor Code § 2699.3. No notice of an intent to investigate or not
19 investigate was provided by the agency within 33 calendar days of the postmark date of the notice.
20 As a result, pursuant to Section 2699.3, Plaintiff may now commence a civil action pursuant to
21 Section 2699.

22 70. The policies, acts and practices heretofore described were and are an unlawful
23 business act or practice because CONTAIN-A-WAY, INC.’s failure to pay wages, failure to provide
24 rest and meal period breaks, failure to pay wages and compensation for work without rest and meal
25 period breaks and failure to provide accurate wage statements and maintain accurate time records
26 for PLAINTIFFS and the other members of the CLASS violates applicable Labor Code sections and
27 gives rise to statutory penalties as a result of such conduct, including but not limited to penalties as
28 provided by Labor Code §§ 221, 226, 226.7, 558, 1174 and 1194, applicable Industrial Welfare

1 Commission Wage Orders. PLAINTIFFS, as aggrieved employees, hereby seeks recovery of civil
2 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 on behalf of
3 himself and other current and former employees of CONTAIN-A-WAY, INC., dba NEXCYCLE,
4 against whom one or more of the violations of the Labor Code was committed.
5

6
7 **PRAYER**

8 WHEREFOR, PLAINTIFFS, on behalf of themselves and the similarly situated CLASS of
9 employees, pray for judgment against each Defendant, jointly and severally, as follows:
10

11 **1. ON THE FIRST CAUSE OF ACTION**

12 A) For compensatory damages, including lost wages, commissions, bonuses, and other
13 losses, during the period commencing on the date that is four years prior to the date of the filing of
14 this Complaint, according to proof;

15 B) For general damages, according to proof;

16 C) For punitive damages, according to proof;

17 D) For an award of interest, including prejudgment interest at the legal rate;

18 E) For statutory damages, including reasonable attorneys' fees and cost of suit.
19

20 **2. ON THE SECOND CAUSE OF ACTION**

21 A) One hour of pay for each workday in which a rest period break was not provided for
22 each four hours of work during the period commencing on the date that is within four years prior to
23 the filing of this Complaint;

24 B) For punitive damages, according to proof;

25 C) For an award of interest, including prejudgment interest at the legal rate;

26 D) For attorneys' fees and costs.
27
28

1 **3. ON THE THIRD CAUSE OF ACTION**

2 A) For wages, statutory damages and/or penalties as authorized by law for each violation
3 of Labor Code § 226, in an amount according to proof at the time of trial;

4 B) For general damages, according to proof;

5 C) For punitive damages, according to proof;

6 D) For other injunctive relief;

7 E) For an award of interest, including prejudgment interest at the legal rate;

8 F) For statutory damages, including reasonable attorneys' fees and cost of suit.

9
10 **4. ON THE FOURTH CAUSE OF ACTION**

11 A) For restitution and restitutionary disgorgement;

12 B) For injunctive relief ordering the continuing unfair business acts and practices to
13 cease, or as the Court otherwise deems just and proper;

14 C) For other injunctive relief ordering DEFENDANTS to notify the CLASS that they
15 have not been paid the proper amounts required in accordance with California law.

16
17 **5. ON THE FIFTH CAUSE OF ACTION**

18 A) For a judicial declaration of the rights of the parties, violations of ERISA and
19 clarifications of benefits owed;

20 B) For injunctive relief requiring the ERISA plan fiduciary to record the actual number
21 of hours worked for purposes of the ERISA plan and to require the ERISA plan fiduciary to correct
22 and compile the appropriate wage and hour records.

23 C) For all equitable relief allowable under 29 U.S.C. § 1132(a)(3), including any
24 applicable interest thereon.

25 D) For all appropriate relief pursuant to 29 U.S.C. § 1132(a)(2), including any
26 applicable interest thereon.

27 E) For attorneys' fees and costs.

28

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

6. ON THE SIXTH CAUSE OF ACTION

- A) For restitution, damages, unpaid compensation and/or liquidated damages.
- B) For attorneys' fees and costs.

7. ON THE SEVENTH CAUSE OF ACTION

- A) For recovery of penalties as provided by the Labor Code Private Attorneys General Act of 2004.
- B) Reasonable attorneys' fees pursuant to statute, including but not limited to the Labor Code Private Attorneys General Act of 2004.

8. ON ALL CAUSES OF ACTION

- A) For an order certifying that this action may be maintained as a class action against the DEFENDANTS and which also appoints PLAINTIFFS and their counsel to represent the CLASS and directs that notice be given to the members of the CLASS; and,
- B) For such other and further relief as the Court deems just and proper.

Dated: April 14, 2008

BLUMENTHAL & NORDREHAUG

By: s/Norman B. Blumenthal
Norman B. Blumenthal
Attorneys for Plaintiffs

UNITED EMPLOYEES LAW GROUP
Walter Haines, Esq.
65 Pine Ave, #312
Long Beach, CA 90802
Telephone: (562) 256-1047

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

DEMAND FOR JURY TRIAL

PLAINTIFFS demand jury trial on issues triable to a jury.

Dated: April 14, 2008

BLUMENTHAL & NORDREHAUG

By: s/Norman B. Blumenthal
Norman B. Blumenthal
Attorneys for Plaintiffs

UNITED EMPLOYEES LAW GROUP
Walter Haines, Esq.
65 Pine Ave, #312
Long Beach, CA 90802
Telephone: (562) 256-1047
Facsimile: (562) 256-1006

G:\D\NBB\Lewis v. Nexcycle\p-Complaint-Federal-AMD-filed.wpd