

1 David W. Sanford, DC Bar No. 457933 (*Pro Hac Vice*)

2 Felicia M. Medina, CA Bar No. 255804

3 Kyle Chadwick, DC Bar No. 453003 (*Pro Hac Vice*)

4 **SANFORD, WITTELS & HEISLER, LLP**

5 1666 Connecticut Ave., NW, Suite 310

6 Washington, D.C. 20009

7 Telephone: (202) 742-7777

8 Facsimile: (202) 742-7776

9 Steven L. Wittels, NY Bar No. 2004635 (*Pro Hac Vice*)

10 Jeremy Heisler, NY Bar No. 1653484 (*Pro Hac Vice*)

11 Janette Wipper, DC Bar No. 467313 (*Pro Hac Vice*)

12 **SANFORD, WITTELS & HEISLER, LLP**

13 1350 Avenue of the Americas, Suite 3100

14 New York, NY 10019

15 Telephone: (646) 723-2947

16 Facsimile: (646) 723-2948

17 Edward D. Chapin, CA Bar No. 053287

18 Jill M. Sullivan, CA Bar No. 185757

19 **OF COUNSEL**

20 **SANFORD, WITTELS & HEISLER, LLP**

21 550 West "C" Street, Suite 2000

22 San Diego, CA 92101

23 Telephone: (619) 241-4810

24 Facsimile: (619) 955-5318

25 Michael Ram, CA Bar No. 104805

26 Karl Olson, CA Bar No. 104760

27 **OF COUNSEL**

28 **SANFORD, WITTELS & HEISLER, LLP**

639 Front Street, Fourth Floor

San Francisco, CA 94111

Telephone: (415) 433-4949

Facsimile: (415) 433-7311

Marc Litton, CA Bar No. 119985

OF COUNSEL

SANFORD, WITTELS & HEISLER, LLP

100 Montgomery Street, Suite 1600

San Francisco, CA 94104

Telephone: (415) 391-6900

Facsimile: (415) 391-6901

Attorneys for the Plaintiffs and the Plaintiff Classes

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ERIC STILLER AND JOSEPH MORO, on)
behalf of themselves individually and all)
others similarly situated,)

Plaintiffs,)

vs.)

COSTCO WHOLESALE CORPORATION)
and DOES 1 through 25, inclusive,)

Defendants.)

Case No.: 3:09-cv-02473-H (BGS)

**FOURTH AMENDED CLASS AND
COLLECTIVE ACTION COMPLAINT**

1 **I. OVERVIEW OF DEFENDANTS’ LABOR AND TORT VIOLATIONS**

2 1. This class and collective action lawsuit seeks to redress a wrongful scheme by
3 Defendants Costco Wholesale Corporation and Does 1-25 (“Costco” individually and
4 “Defendants” collectively), to deny their hourly warehouse employees earned wages for all
5 hours worked “off-the-clock” in violation of the Fair Labor Standards Act (“FLSA”) and
6 California wage and hour laws.

7 2. Plaintiffs Eric Stiller (“FLSA Class Plaintiff” or “FLSA Class”) and Joseph
8 Moro (“California Class Plaintiff” or “California Class”), bring this action on behalf of
9 themselves individually and on behalf of similarly situated hourly, non-exempt employees
10 employed in Costco warehouses in California and/or throughout the United States to seek
11 redress for unpaid wages and overtime earned “off-the-clock” under the FLSA and/or
12 California’s wage and hour laws.

13 3. Defendants’ wrongful acts against Plaintiffs arose from Defendants’ failure to
14 pay hourly employees all wages earned and due for hours worked “off-the-clock,” including
15 their failure to pay straight-time and overtime wages. Defendants accomplish their wage and
16 hour violations through systematic policies and/or practices, which include requiring hourly,
17 non-exempt employees to remain locked inside Costco warehouses without pay or the freedom
18 to leave the premises after their shifts.

19 4. For at least seven years prior to the filing of this Complaint, Defendants have
20 willfully committed widespread violations of the FLSA and California wage and hour laws.
21 Plaintiffs and the Class have suffered common financial harm as Defendants have violated and
22 continue to violate the: (1) FLSA, 29 U.S.C. § 207; (2) California Labor Code §§ 204, 510,
23 1194; (3) Unfair Competition Law (“UCL”) codified in California Business and Professions
24 Code §§ 17200–17210; and (4) California Industrial Welfare Commission Occupational Wage
25 Order 7-2001, 8 Cal. Code of Reg. § 11040 (hereinafter “Wage Order 7-2001”).

26 **II. JURISDICTION**

27 5. This Court has subject matter jurisdiction over the **FLSA Class Plaintiff’s**
28 action pursuant to 28 U.S.C. § 1331 because the action arises under a federal statute, 29 U.S.C.

1 § 216(b).

2 6. This Court has jurisdiction over the **California Class Plaintiff's** state law
3 claims under the California Labor Code and the UCL pursuant to 28 U.S.C. § 1367.
4 Additionally, this Court has jurisdiction over these claims pursuant to 28 U.S.C. § 1332. The
5 parties are diverse with regards to citizenship and the amount in controversy exceeds
6 \$75,000.00.

7 7. Venue lies in the Southern District of California pursuant to 28 U.S.C. §§
8 1391(b)(1) and (2) because Defendants maintain offices there and a substantial part of the
9 events giving rise to this action occurred there.

10 **III. THE PARTIES**

11 8. **Plaintiff Eric Stiller** ("Plaintiff Stiller") was employed from 2000 to
12 November 2006 as a full-time Merchandiser and from November 2006 to November 2008 as a
13 full-time Closing Cashier in Costco's Warehouse Number 124, 1755 Hacienda Drive, Vista,
14 California.

15 9. **Plaintiff Joseph Moro** is currently employed part-time as a Front End Assistant
16 in Costco's Warehouse Number 690, 27220 Heather Ridge Road, Laguna Niguel, California.
17 Plaintiff Moro was initially hired part-time and has also worked in maintenance during his
18 employment with Costco.

19 10. **Defendant Costco Wholesale Corporation** is a corporation formed under the
20 laws of the State of Delaware with its principal offices in Issaquah, Washington. Costco is
21 registered to do business in the State of California and does business in San Diego County and
22 throughout California. Costco has approximately 100 stores located in the State of California.
23 On information and belief, Costco has gross sales of over \$500,000 a year and uses goods
24 produced in interstate commerce.

25 11. Plaintiffs allege on information and belief that at all relevant times **Defendants**
26 **Does 1 through 25**, inclusive, were the agents, employees, representatives, partners, control
27 persons, and related or affiliated entities of Defendant Costco, whose acts or practices caused or
28 assisted in the wrongdoing and damages alleged herein.

1 12. Plaintiffs are informed and believe, and thereon allege, that each of the
2 Defendants designated herein as **Defendants Does 1 through 25**, inclusive, is in some manner
3 responsible for the events and happenings herein referred to, and caused or contributed to the
4 damages to Plaintiffs and the Class members as herein alleged. Plaintiffs may amend this
5 Complaint to allege such true names and capacities when the same are ascertained.

6 13. At all relevant times, Defendants are and were legally responsible for all of the
7 unlawful conduct, policies, practices, acts, and omissions as described in each and all of the
8 paragraphs of this Complaint as the employers of Plaintiffs and the Class members. Further,
9 Defendants are responsible for each of the unlawful acts or omissions complained of herein
10 under the doctrine of *respondeat superior*. The conduct of Defendants' managers and
11 supervisors was at all relevant times undertaken as employees of Defendants, acting within the
12 scope of their employment or authority in all of the unlawful activities described in each and all
13 of the paragraphs of this Complaint.

14 **IV. FACTUAL ALLEGATIONS**

15 14. During their employment with Defendants, Plaintiffs and other hourly, non-
16 exempt employees were regularly forced, against their will, to remain locked inside of
17 Warehouse Numbers 44, 124, 412, 416, 452, 462, 679, 690, 694, 775 and other warehouses
18 throughout California and the United States, after clocking out at the end of closing shifts.
19 During this unpaid lock-in time, Plaintiffs' supervisors — Defendant Costco's Supervisors and
20 Managers — performed closing activities, such as removing jewelry from cases and emptying
21 cash registers. Defendants refused to pay Plaintiffs and other hourly, non-exempt employees
22 for this time.

23 15. Throughout the Class Period, Defendants systematically refused to allow
24 employees to clock back in during the waiting time because they did not want to compensate
25 employees for the time spent working while waiting for Costco's managers or supervisors.

26 16. As a direct result of Defendants' unlawful conduct, Defendants have violated
27 numerous sections of the FLSA, including §§ 207 and 211(c), which entitle employees to be
28 paid overtime compensation at one-and-a-half times their regular rate of pay for all hours

1 worked over forty (40) in one workweek; and the California Labor Code, including California
2 Labor Code §§ 204, 510, and 1194 and Wage Order 7-2001, which entitle employees to be
3 paid: (i) their regular hourly rate when due for all hours worked; (ii) overtime compensation at
4 one-and-a-half times their regular rate of pay for all hours worked over eight (8) hours in one
5 workday and under and including twelve (12) hours one workday; (iii) overtime compensation
6 at two times their regular rate of pay for all hours worked over twelve (12) hours in one
7 workday; and (iv) overtime compensation at one-and-a-half times their regular rate of pay for
8 all hours worked over forty (40) in one workweek.

9 17. Defendants have also violated the UCL by committing the actions described
10 herein.

11 **V. COLLECTIVE ACTION AND CLASS ALLEGATIONS**

12 **FLSA Class Collective Action Allegations**

13 18. Claims under the FLSA for damages are brought by the FLSA Class Plaintiff on
14 behalf of himself and all other similarly situated persons pursuant to the collective action
15 provisions of 29 U.S.C. § 216(b).

16 19. The FLSA Class Plaintiff seeks to represent a FLSA Class consisting of all
17 persons who worked for Costco Wholesale Corporation in the United States as full-time,
18 hourly, non-exempt employees who were subject to Costco's closing lockdown procedures
19 between April 8, 2007 and October 1, 2009.

20 20. The proposed FLSA Class members are similarly situated in that they have been
21 subjected to uniform practices by Defendants which violated the FLSA in that they failed to
22 compensate employees for hours worked in excess of forty hours in a workweek, at the rate of
23 one and a-half times their regular rate of pay.

24 **California Class Rule 23 Class Allegations**

25 21. The California Class claims for relief are brought pursuant to Fed. R. Civ. P. 23,
26 or in the alternative, pursuant to California Code of Civil Procedure § 382.

27 22. The California Class Plaintiff seeks to represent a class consisting of all persons
28 who worked for Costco Wholesale Corporation in California as hourly, non-exempt, non-union

1 employees who were subject to Costco’s closing lockdown procedures between May 15, 2005
2 and October 1, 2009.

3 **Rule 23(a)**

4 23. The California Class is sufficiently numerous, since it is estimated to include
5 approximately several hundred or more Costco employees geographically dispersed, the joinder
6 of whom in one action is impracticable, and the disposition of whose claims in a class action
7 will provide substantial benefits to both the parties and the Court.

8 24. There are common questions of law and fact involved affecting the parties to be
9 represented. The questions of law and fact common to the California Class members
10 predominate over questions that may affect individual California Class members, including but
11 not limited to the following:

- 12 (a) Whether Defendants failed to fully pay hourly, non-exempt, non-union
13 employees all wages due for all hours worked in violation of California Labor
14 Code §§ 204, 1194 and California Business and Professions Code §§ 17200–
15 17210;
- 16 (b) Whether Defendants failed to fully pay hourly, non-exempt, non-union
17 employees all overtime wages earned in violation of California Labor Code
18 §§ 510, 1194 and California Business and Professions Code §§ 17200–17210;
- 19 (c) Whether Defendants’ conduct is “unlawful,” “unfair,” or “fraudulent” under the
20 California Business and Professions Code §§ 17200–17210;
- 21 (d) Whether the systematic acts and practices of Defendants as alleged herein
22 violated, *inter alia*, applicable provisions of the California Labor Code,
23 including but not limited to, §§ 204, 510, 1194, and applicable Industrial
24 Welfare Commission Orders, and California Business & Professions Code §
25 17200–17210.

26 25. The California Class Plaintiff is asserting claims that are typical of the claims of
27 the California Class. The California Class Plaintiff was subjected to Costco’s systematic
28 policies and practices that kept employees locked inside Costco warehouses without proper

1 compensation. California Class Plaintiff Joseph Moro has been and remains a part-time, non-
2 exempt, non-union employee of Costco.

3 26. The California Class Plaintiff will fairly and adequately represent and protect
4 the interests of the California Class in that he has no disabling conflicts of interest that would
5 be antagonistic to those of the other members of the California Class. The California Class
6 Plaintiff has retained counsel who are competent and experienced in the prosecution of class
7 action wage and hour violations.

8 27. Because the California Class Plaintiff and the members of the California Class
9 have all similarly suffered irreparable harm and damages as a result of Defendants' unlawful
10 and wrongful conduct, including but not limited to Defendants' systematic failure to pay
11 compensation for time they required employees to remain on Costco company premises and,
12 failure to pay regular or overtime wages, class treatment is especially appropriate. Absent this
13 action, Defendants' unlawful conduct will continue unremedied and uncorrected.

14 **Rule 23(b)(3)**

15 28. Common questions of law and fact, as identified above, predominate over any
16 pertinent questions involving only individual California Class members.

17 29. A class action is superior to other methods of adjudicating California Class
18 members' claims because:

19 (a) Common issues of law and fact, as identified above, substantially diminish the
20 interest of California Class members in individually controlling the prosecution
21 of separate actions;

22 (b) A class action can be managed with efficiency and without undue difficulty
23 because Defendants' violations complained of herein have impacted the
24 California Class members uniformly; and

25 (d) Individual damages to any one class member may be relatively small, making
26 the expense of individual litigation prohibitive or impractical for the California
27 Class members.

28

1 30. The California Class Plaintiff is seeking: (1) monetary damages for Defendants’
2 violations of California wage and hour laws under the California Labor Code, unfair
3 competition laws under the California Business and Professions Code; and
4 (2) declaratory/equitable relief, on behalf of himself and all other similarly persons pursuant to
5 Rule 23 of the Federal Rules of Civil Procedure.

6 **Cal. R. Civ. P. Rule 382**

7 31. The California Class claims for relief are alternatively brought by the California
8 Class pursuant to Cal. R. Civ. P. 382.

9 32. The California Class Plaintiffs seek to represent a class consisting of all persons
10 who are or were employed by Defendants as part-time hourly, non-exempt, non-union,
11 employees in Costco warehouses throughout California at any time since at least May 2005 to
12 October 1, 2009.

13 33. The California Class is sufficiently ascertainable, since it encompasses
14 potentially hundreds of current and former part-time hourly, non-exempt, non-union employees
15 of Defendants in Costco warehouses throughout California at any time since at least May 2005
16 to October 1, 2009; and can be readily identified and more fully defined by Defendants’
17 personnel, payroll, and security data.

18 34. The California Class readily meets the “community of interest” requirement, as
19 there are predominant questions of law and fact, the class representatives have claims or
20 defenses typical of the class, and the class representatives adequately represent the class.

21 35. There are questions of law and fact common to the California Class members
22 that predominate over questions that may affect individual California Class members, including
23 but not limited to the following:

- 24 (a) Whether Defendants failed to fully pay hourly, non-exempt, non-union
25 employees all wages due for all hours worked in violation of California Labor
26 Code §§ 204, 1194 and California Business and Professions Code §§ 17200–
27 17210;

- 1 (b) Whether Defendants failed to fully pay hourly, non-exempt, non-union
- 2 employees all overtime wages earned in violation of California Labor Code
- 3 §§ 510, 1194 and California Business and Professions Code §§ 17200–17210;
- 4 (c) Whether Defendants’ conduct is “unlawful,” “unfair,” or “fraudulent” under the
- 5 California Business and Professions Code §§ 17200–17210;
- 6 (d) Whether Defendants are liable to the class; and
- 7 (e) Whether the systematic acts and practices of Defendants as alleged herein
- 8 violated, *inter alia*, applicable provisions of the California Labor Code,
- 9 including but not limited to, §§ 204, 510, 1194, and applicable Industrial
- 10 Welfare Commission Orders, and California Business & Professions Code §
- 11 17200–17210.

12 36. The California Class Plaintiff is asserting claims that are typical of the claims of

13 the California Class members. The California Class Plaintiffs were not properly compensated

14 for the extra time they spend at night in Costco’s warehouses during the lock-in procedures.

15 37. The California Class Plaintiff will fairly and adequately represent and protect

16 the interests of the California Class in that he has no disabling conflicts of interest that would

17 be antagonistic to those of the other members of the California Class. The California Class

18 Plaintiff has retained counsel who are competent and experienced in the prosecution of class

19 action wage and hour violations.

20 38. The California Class Plaintiff is seeking: (1) monetary damages for Defendants’

21 violations of California wage and hour laws under the California Labor Code, unfair

22 competition laws under the California Business and Professions Code; and

23 (2) declaratory/equitable relief, on behalf of himself and all other similarly persons pursuant to

24 Section 382 of the California Code of Civil Procedure.

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FIRST CAUSE OF ACTION

**FLSA OVERTIME VIOLATION
FOR FAILURE TO PAY REQUIRED OVERTIME WAGES
(FLSA - 29 U.S.C. § 207, 211(c), & 255(a))**

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4 39. The FLSA Class Plaintiff repeats and realleges each and every allegation set
5 forth in all of the foregoing paragraphs as if fully set forth herein.

6 40. During all relevant periods, Defendants regularly required the FLSA Class
7 Plaintiff and all other similarly situated employees to work in excess of forty hours per week.

8 41. During all relevant periods, the FLSA required that all work performed by an
9 employee in excess of forty hours in any work-week be compensated at one and one-half times
10 the employee's regular rate of pay.

11 42. Defendants failed to compensate the FLSA Class Plaintiff and all other similarly
12 situated employees for overtime hours they worked in excess of forty hours in any workweek,
13 at one and one-half times their regular rate of pay.

14 43. As a result, Defendants failed to pay the FLSA Class Plaintiff and all other
15 similarly situated employees earned overtime wages in violation of 29 U.S.C. § 207. The
16 FLSA Class Plaintiff and all other similarly situated employees are entitled to recover their
17 unpaid overtime compensation and liquidated damages arising therefrom.

18 44. During all relevant periods, the FLSA required that all work performed by an
19 employee in excess of forty hours in any work-week be compensated at one and one-half times
20 the employee's regular rate of pay.

21 45. Defendants' failure to pay the FLSA Class Plaintiff and all other similarly
22 situated employees overtime premiums was willful within the meaning of 29 U.S.C. § 255(a).

23 46. During all relevant periods, Defendants willfully, regularly and repeatedly failed
24 to make, keep, and preserve accurate time records of all overtime hours worked in violation of
25 29 U.S.C. § 211(c).

26 47. The FLSA Class Plaintiff and all other similarly situated employees are
27 therefore entitled to the applicable relief requested below.
28

SECOND CAUSE OF ACTION

**UNLAWFUL FAILURE TO PAY ALL WAGES EARNED AND DUE FOR ALL HOURS WORKED
(CALIFORNIA LABOR CODE §204 and WAGE ORDER NO. 7-2001)**

48. The California Class Plaintiff repeats and realleges each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

49. During all relevant periods, Defendants required the California Class Plaintiff and the California Class members to remain on company premises working “off-the-clock” without compensation.

50. During all relevant periods, the California Labor Code requires that employers fully and timely pay employees all wages earned and due for all hours worked. By requiring employees to remain inside the Costco warehouses to perform “off-the-clock” work integral and essential to their employment without compensation, Defendants knowingly and willfully failed to fully and timely pay the California Class Plaintiff and the California Class members their regular straight-time wage rate for all hours worked. The California Class Plaintiff and the California Class members are entitled to recover their unpaid compensation and liquidated damages arising therefrom.

51. The California Class Plaintiff and the California Class members are therefore entitled to the relief requested below.

THIRD CAUSE OF ACTION

**UNLAWFUL FAILURE TO PAY REQUIRED OVERTIME WAGES
(CALIFORNIA LABOR CODE §§ 510, 1194; WAGE ORDER NO. 7-2001)**

52. The California Class Plaintiff repeats and realleges each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

53. During all relevant periods, Defendants required the California Class Plaintiff and the California Class members to work shifts in excess of eight hours per day and/or to work in excess of forty hours per week.

1 54. During all relevant periods, both the California Labor Code and the pertinent
2 wage orders required that all work performed by an employee in excess of eight hours in any
3 workday, on the seventh day of work in any workweek, or in excess of forty hours in any
4 workweek be compensated at one and one-half times the employee's regular rate of pay.

5 55. Defendants failed to compensate the California Class Plaintiff and the California
6 Class members for overtime hours they worked in excess of eight hours in any workday, or in
7 excess of forty hours in any workweek, at one and one-half times their regular rates of pay.

8 56. As a result, Defendants failed to pay the California Class Plaintiff and the
9 California Class members earned overtime wages. The California Class Plaintiff and the
10 California Class members are entitled to recover their unpaid overtime compensation and
11 liquidated damages arising therefrom.

12 57. The California Class Plaintiff and the other members of the California Class are
13 therefore entitled to the applicable relief requested below.

14 **FOURTH CAUSE OF ACTION**

15 **UNFAIR COMPETITION**
16 **(CALIFORNIA BUS. & PROF. CODE §§ 17200-17208)**
17

18 58. The California Class Plaintiff repeats and realleges each and every allegation
19 contained in the foregoing paragraphs as if fully set forth herein.

20 59. Defendants' failure to pay wages due, as alleged above, constitutes unlawful
21 and/or unfair and/or fraudulent activity prohibited by California Business and Professions Code
22 § 17200.

23 60. As a result of Defendants' unlawful and/or unfair and/or fraudulent acts, Costco
24 has reaped and continues to reap unfair benefits and illegal profits at the expense of the
25 California Class Plaintiff and the California Class members. Defendants should be enjoined
26 from this activity and made to disgorge these ill-gotten gains and restore to the California Class
27 Plaintiff and the California Class members the wrongfully withheld wages, to provide the
28

1 California Class members restitution for the withholding, and for delay in receiving the
2 compensation and overtime wages due, pursuant to Business and Professions Code § 17203.

3 61. Accordingly, the California Class Plaintiff and the California Class members
4 respectfully request that the Court award judgment and relief in their favor to provide
5 restitution and other types of applicable relief requested below.

6 **VI. DEMAND FOR JURY TRIAL**

7 62. Plaintiffs and the Class members hereby demand a jury trial on all issues of fact
8 or law so triable.

9 **VII. PRAYER FOR RELIEF**

10 63. WHEREFORE, Plaintiffs on behalf of themselves and the Class members they
11 seek to represent in this action request the following relief:

12 A. That the Court determine that this action may be maintained as a class action
13 and nation-wide collective action and a state-wide class action;

14 B. That the Court find that Defendants have violated the overtime provisions of the
15 FLSA § 207 as to Plaintiff Eric Stiller and the FLSA Class;

16 C. That the Court find that Defendants have violated the overtime provisions of
17 California Labor Code §§ 510 and 1194 and Wage Order 7-2001 as to Plaintiff Joseph Moro
18 and the California Class;

19 D. That the Court find that Defendants have violated Business and Professions
20 Code §§ 17200–17210 by failing to pay their hourly, non-exempt, non-union, employees
21 earned wages and overtime compensation;

22 E. That the Court find that Defendants’ violations as described have been willful;

23 F. That the Court award to Plaintiffs and the Classes damages of not less than
24 \$50,000,000.00 for the amount of unpaid compensation and unpaid overtime compensation,
25 including interest thereon;

26 G. That the Court award to Plaintiffs and the Classes liquidated damages for
27 Defendants’ failure to pay overtime compensation;

28

1 H. That the Court issue a declaratory judgment finding that Defendants have
2 violated Plaintiffs' rights as alleged herein;

3 I. That Defendants be ordered and enjoined to pay restitution to Plaintiffs and the
4 Classes due to Defendants' unlawful and/or unfair activities, pursuant to Business and
5 Professions Code §§ 17200-05;

6 J. That Defendants further be enjoined to cease and desist from unlawful and/or
7 unfair activities in violation of Business and Professions Code § 17200, pursuant to § 17203;

8 K. That Plaintiffs and the Class be awarded reasonable attorneys' fees and costs
9 pursuant to FLSA, 29 U.S.C. § 216(b), California Labor Code § 1194, California Code of Civil
10 Procedure § 1021.5 and/or other applicable law; and

11 L. That the Court award such other and further relief as this Court may deem just
12 and appropriate.

13
14 DATED: November 16, 2010

Respectfully submitted,

15 s/ David W. Sanford

16 David W. Sanford, DC Bar No. 457933
17 Felicia M. Medina, CA Bar No. 255804
18 Kyle Chadwick, DC Bar No. 453003
19 **SANFORD, WITTELS & HEISLER, LLP**
20 1666 Connecticut Ave., NW, Suite 310
Washington, DC 20009
Telephone: (202) 742-7780
Facsimile: (202) 742-7776

21 Steven Wittels, NY Bar No. 2004635
22 Jeremy Heisler, NY Bar No. 1653484
23 Janette Wipper, DC Bar No. 467313
24 **SANFORD, WITTELS & HEISLER, LLP**
25 1350 Avenue of the Americas, Suite 3100
New York, NY 10019
Telephone: (646) 723-2947
Facsimile: (646) 723-2948

26 Edward D. Chapin, CA Bar No. 053287
27 Jill M. Sullivan, CA Bar No. 185757
28 **OF COUNSEL**
SANFORD, WITTELS & HEISLER, LLP

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2
3
4
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550 West "C" Street, Suite 2000
San Diego, CA 92101
Tel: (619) 241-4810
Fax: (619) 955-5318

Michael Ram, CA Bar No. 104805
Karl Olson, CA Bar No. 104760
OF COUNSEL
SANFORD, WITTELS & HEISLER, LLP
639 Front Street, Fourth Floor
San Francisco, CA 94111
Telephone: (415) 433-4949
Facsimile: (415) 433-7311

Marc Litton, CA Bar No. 119985
SANFORD, WITTELS & HEISLER, LLP
100 Montgomery Street, Suite 1600
San Francisco, CA 94104
Telephone: (415) 391-6900
Facsimile: (415) 391-6901

*Attorneys for the Plaintiffs and the Plaintiff
Classes*