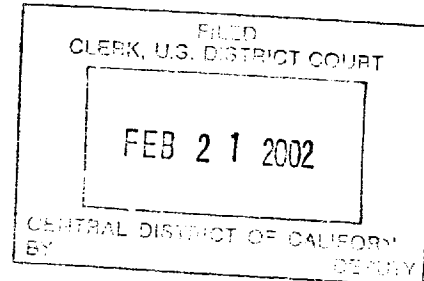


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12 UNITED STATES DISTRICT COURT
13 IN AND FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 JUAN FLORES, HIPOLITO SOTO, OSCAR
15 ÁVILA, GUADALUPE FLORES, ARMANDO
JIMÉNEZ, MARÍA TOÑA OREA, ISABEL
16 MIRANDA, ÁNGEL RODRÍGUEZ, on behalf
of themselves and all others similarly situated,
17 and SERVICE EMPLOYEES
INTERNATIONAL UNION, AFL-CIO,

18 Plaintiffs,

19 v.

20
21 ALBERTSON'S, INC., a Delaware corporation,
RALPH'S, a Delaware corporation; THE VONS
22 COMPANIES, INC. and dba PAVILIONS, a
Michigan corporation, ENCOMPASS
23 SERVICES CORPORATION, a Texas
corporation, BUILDING ONE SERVICE
24 SOLUTIONS, INC., a Virginia corporation;
SAFEWAY INC., a Delaware corporation; and
25 DOES 1-300,

26 Defendants.

CASE NO. CASE 01-00515 CM (Shx)

FIRST AMENDED COMPLAINT FOR
INJUNCTIVE RELIEF AND DAMAGES

- (1) CLASS ACTION FOR VIOLATION
OF THE FAIR LABOR
STANDARDS ACT AND
CALIFORNIA LABOR CODE;
BREACH OF CONTRACTS;
NEGLIGENCE PER SE;
NEGLIGENT SUPERVISION
AND/OR TRAINING; NEGLIGENT
HIRING OR RETENTION; AND
FRAUD
- (2) REPRESENTATIVE CLAIM AND
CLASS ACTION FOR UNFAIR
AND UNLAWFUL BUSINESS
PRACTICES IN VIOLATION OF
BUSINESS & PROFESSIONS
CODE § 17200, *ET SEQ.*

27 DEMAND FOR JURY TRIAL

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27

28

1 On behalf of themselves, all others similarly situated, and the general public, plaintiffs
2 allege as follows:

3 **GENERAL ALLEGATIONS**

4 **INTRODUCTION**

5 1. Supermarkets Formerly Employed Janitors Directly and Paid them Lawful Wages. In
6 the past, the defendant corporations that own and operate supermarkets in California employed
7 janitors directly and paid them lawful wages. Janitors worked under the supervision of night
8 managers, cleaning, polishing, and waxing floors, shelves, windows, and checkout stands.
9 Covered by wage and hour statutes and union contracts, janitors received overtime compensation,
10 workers' compensation coverage, paid break time, and other benefits and protections required by
11 law.

12 2. The Scheme To Violate Wage And Hour Laws. Beginning in approximately 1994
13 and continuing through to the present, defendants implemented a scheme to evade responsibility
14 for janitors' wages and job benefits by pretending to hire janitors indirectly through a contractor
15 while retaining control over the work the janitors perform. Defendant supermarket chains
16 conspired with and entered into contractual relationships with defendant Encompass Staffing
17 Services, Inc., its subsidiary or predecessor in interest, Building One Service Solutions, Inc.,
18 related entities and Does 1-2 (collectively, "Encompass"), ostensibly to obtain "janitorial
19 services." In turn, defendant Encompass conspired with recruiters, Does 3-10, who, acting as
20 defendants' agents and co-conspirators, engaged the plaintiffs to work for defendant supermarket
21 chains. In compensating the plaintiff janitors and in order to effectuate their scheme to deny
22 plaintiffs the wages and benefits to which they are lawfully entitled under § 16 the Fair Labor
23 Standards Act of 1938 ("FLSA"), 29 U.S.C. § 216, and various sections of the California Labor
24 Code, all defendants have acted and continue to act unlawfully by treating plaintiff janitors as
25 mere independent contractors. The resulting misclassification of plaintiffs as non-employees and
26 the failure to pay overtime and other wages to which they are entitled by law, are challenged in
27 this lawsuit.

28 ///

1 3. Defendants Control Plaintiffs' Wages, Hours and Working Conditions. Defendant
2 supermarket chains have reaped millions of dollars in annual labor cost savings through their
3 scheme to misclassify plaintiffs as non-employees, while surrendering none of their power as
4 employers over the janitors or the work they perform, retaining effective control over plaintiffs'
5 wages, hours and working conditions, and continuing plaintiffs' economic dependency.
6 Specifically, defendant supermarket chains exercise substantial control, supervision and direction
7 over plaintiff janitors, including but not limited to the following: their night managers supervise
8 the janitors during their shifts, directing and controlling the plaintiff janitors as they clean, polish,
9 and wax floors, shelves, windows, and checkout stands; at the end of the janitors' shifts,
10 defendant supermarkets' day managers inspect, evaluate, and approve the janitors' work. At all
11 times, the shift, sequence, method, and means by which plaintiffs clean the premises is dictated,
12 supervised, and approved by defendant supermarket chains.

13 Plaintiffs are informed and believe and thereon allege that defendant Encompass has held
14 and continues to hold plaintiffs out as its employees in contracting with defendant supermarket
15 chains, reaping a substantial benefit from the representation that it can provide a steady, trained
16 workforce to the defendant supermarket chains and others.

17 4. Defendants Pay Janitors Less than the Law Requires. Under this illegal scheme,
18 defendants have paid and continue to pay plaintiffs far less than required under the FLSA and the
19 California Labor Code, depriving plaintiffs of overtime compensation, paid breaks, and other
20 wages to which they are entitled, while forcing them to work up to seven days a week, frequently
21 for months on end, without a day off. In violation of state law, defendants and their agents pay
22 the janitors in cash or personal check, without deductions for payroll taxes or social security, and
23 do not provide coverage or pay premiums for workers' compensation insurance.

24 5. Class Action and Private Attorney General Action Aspects of the Lawsuit. This
25 lawsuit has two parts. First, it is a class action suit by janitors who work for defendant
26 supermarket chains throughout California for violations of the FLSA and the California Labor
27 Code. Second, it is a public interest private attorney general action under Business & Professions
28 Code § 17200, *et seq.* by the named plaintiff janitors and the Service Employees International

1 Union, AFL-CIO (“SEIU”) for relief from defendants’ unfair, unlawful, and fraudulent business
2 practices.

3 6. Relief Requested. On behalf of themselves, those similarly situated, and the general
4 public, plaintiffs bring this action against four supermarket chains, Albertson’s, Vons, Ralph’s,
5 and Safeway, and against Encompass and Does 1-10. The lawsuit seeks injunctive and other
6 equitable relief, economic and statutory damages and penalties, including liquidated damages,
7 prejudgment interest, punitive damages, costs and attorneys’ fees, and other appropriate relief for
8 defendants’ violations of § 16 the FLSA, 29 U.S.C. § 216, various sections of the California
9 Labor Code, and other unfair, unlawful and fraudulent conduct in violation of the Business &
10 Professions Code § 17200, *et seq.*

11
12 **JURISDICTION**

13 7. The Court has original subject matter jurisdiction over this action pursuant to 28
14 U.S.C. §§ 1331 because plaintiffs’ claims arise under a federal statute, specifically, the FLSA, 29
15 U.S.C. §§ 201, *et seq.* Section 216(b) of the FLSA also confers jurisdiction over this action. The
16 Court has supplemental jurisdiction over plaintiffs’ state law claims pursuant to 28 U.S.C.
17 § 1367(a).

18
19 **VENUE**

20 8. Venue is proper in the Central District of California pursuant to 28 U.S.C. § 1391(b)
21 because all of the acts, events and omissions giving rise to the action occurred in this District.

22
23 **PARTIES**

24
25 **A. PLAINTIFFS**

26
27 9. The Class Representatives. Plaintiffs Juan Flores, Hipolito Soto, Oscar Ávila,
28 Armando Jiménez, María Toña Orea, Isabel Miranda, and Ángel Rodríguez are residents of Los

1 Angeles County. Guadalupe Flores is a resident of Orange County. These plaintiffs ("Class
2 Representatives") seek to represent a class consisting of hundreds of janitors, currently or
3 formerly employed by, or in the future to be employed by, one or more of the defendants, to clean
4 supermarkets, including those owned and operated by the defendant supermarket chains. Each of
5 the Class Representatives worked for one or more of the defendant supermarket chains and/or
6 their co-employer, Encompass. At material times, the Class Representatives, or some of them,
7 have been and/or continue to be employed within the jurisdiction of the Court.

8 10. SEIU. Plaintiff SEIU, an unincorporated association headquartered in Washington,
9 D.C., is the largest labor union in the United States, with 1.4 million members, including over
10 400,000 in the State of California. SEIU represents over 100,000 janitors nationwide and has
11 been a strong advocate for the rights of low-wage, immigrant workers since its founding as a
12 union of janitors in 1921. In recent years, SEIU has attempted to call attention to abuses in the
13 commercial cleaning industry through its "Justice for Janitors" campaign. SEIU has a strong
14 interest in seeing that all workers, including janitors, are paid in accordance with minimum wage
15 and overtime laws in that the failure to do so artificially depresses the wage market and directly
16 impacts on SEIU's ability to negotiate appropriate wages and benefits for its members, including
17 janitors. SEIU has standing pursuant to Business & Professions Code §17204 to sue on behalf of
18 the general public for defendants' unfair and unlawful business practices. It claims no direct or
19 cognizable injury to itself. SEIU asks the Court to hold the defendant supermarket chains
20 responsible both for their own illegal conduct, and for the illegal conduct of defendant
21 Encompass, the building services company the supermarket chains utilize to supply labor. SEIU
22 also seeks to compel all of the defendants to take corrective action and to pay restitution and/or
23 disgorgement of profits of the funds they derive from the systematic degradation and
24 impoverishment of supermarket janitors and their families.

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27 ///

28 ///

1 **B. DEFENDANTS**

2
3 11. Albertson's. Defendant Albertson's, Inc. is a Delaware corporation with its
4 principal place of business in California. At all relevant times, Albertson's committed unlawful
5 acts alleged in this Complaint in Los Angeles County. Albertson's, one of the nation's largest
6 food and drug retailers, reported sales of \$18.2 billion for the first half of this year and operating
7 profit during the same period of \$900 million.

8 12. Ralph's. Defendant Ralph's Grocery Company is a Delaware corporation with its
9 principal place of business in California. At all relevant times Ralph's committed unlawful acts
10 alleged in this Complaint in Los Angeles County. Ralph's is owned by The Kroger Company,
11 the largest retail chain in the grocery industry, with \$24 billion in annual sales and earnings of
12 \$1.76 billion for the first half of 2000.

13 13. Vons and Safeway. Defendant The Vons Companies, Inc. is a Michigan corporation
14 with its principal place of business in California, where it does business as Vons and Pavilions.
15 At all relevant times Vons committed unlawful acts alleged in this Complaint in Los Angeles
16 County. Vons is one of the largest food and drug retailers in North America, with over \$28
17 billion in annual sales and \$8 billion in annual gross profit. Since approximately April 1997,
18 Vons has been and continues to be a wholly-owned subsidiary of Defendant Safeway Inc., a
19 Delaware corporation.

20 14. Encompass. Defendant Encompass Staffing Services, Inc. is a Texas corporation,
21 and its subsidiary or predecessor-in-interest, Building One Service Solutions, Inc., is or was a
22 Virginia corporation. At all relevant times, Encompass and Building One did and continue to do
23 business in California and committed unlawful acts alleged in this Complaint in Los Angeles
24 County.

25 15. Doe Allegations. Plaintiffs are ignorant of the true names and capacities of
26 defendants sued in this Complaint as DOES 1 through 10, inclusive, and therefore sue these
27 defendants by such fictitious names and capacities. Plaintiffs will amend this complaint to allege
28 their true names and capacities when learned. Plaintiffs allege that each of the defendants named

1 as DOES was in some manner responsible for the acts and omissions alleged in this Complaint.
2 Plaintiffs will ask leave of this Court to amend the complaint to allege such responsibility when
3 same shall have been ascertained. Plaintiffs are further informed and believe and on that basis
4 allege that at all times relevant, each of the fictitiously-named defendants was an agent or
5 employee who has acted within the course and scope of that agency or employment and/or a co-
6 conspirator of one or more of the named defendants. Plaintiffs are further informed and believe,
7 and on that basis allege, that each of the fictitiously-named defendants aided and assisted the
8 named defendants in committing the wrongful acts alleged in this Complaint, and that plaintiffs'
9 damages were legally caused by each such defendant.

10 16. Agency and Co-Conspirator Allegations. Plaintiffs are informed and believe, and on
11 that basis allege, that at all material times, each defendant was acting as an agent and/or co-
12 conspirator of each and every other defendant. Plaintiffs are informed and believe and thereon
13 allege that, beginning in or before 1994, each defendant entered into a conspiracy and agreement
14 with the other defendants and/or subsequently joined said conspiracy and ratified the prior acts
15 and conduct of the defendants who had previously entered into said conspiracy. Plaintiffs are
16 currently unaware of when each defendant joined said conspiracy, but allege that all defendants
17 have knowingly, maliciously, and wilfully entered into said conspiracy which continues to this
18 day. The purposes of said ongoing conspiracy include, but are not limited to, unlawfully treating
19 the plaintiff janitors as independent contractors, misclassifying them as non-employees, failing to
20 pay plaintiffs' overtime and other wages and benefits required by law, and concealing their
21 illegal practices through the fraudulent scheme described above, through repeated
22 misrepresentations about and concealment of the employment status of the plaintiff janitors, and
23 through other means. All of defendants' acts and failures to act were perpetrated in furtherance
24 of said ongoing conspiracy. By engaging in the conduct and omissions alleged in this Complaint,
25 each and every defendant was acting within the course and scope of its agency, and with the
26 authorization of each of the remaining defendants.

27 17. Notice to Defendants that Their Labor Practices are Unlawful. Plaintiffs are
28 informed and believe and thereon allege that defendants, and each of them, have been notified

1 that their labor practices violate state law by representatives of the State Department of Industrial
2 Relations, Division of Labor Standards Enforcement (“DLSE”), the State Employment
3 Development Department (“EDD”), the United States Department of Labor (“DOL”), the Los
4 Angeles City Attorneys’ Office, and other concerned governmental agencies, as well as
5 representatives of organized labor. Further, since at least July 2, 2000, when the Los Angeles
6 *Times* published an article exposing various of the illegal practices alleged in this Complaint,
7 each of the defendants has had notice of the illegal conduct. By continuing to provide for
8 janitorial services at supermarkets in the manner alleged in this Complaint, each defendant has
9 ratified and/or authorized the illegal conduct of each of the other defendants.

10 18. Statute of Limitations is Tolled.

11 a. Statute Tolled by Defendants’ Conspiracy to Conceal and Misrepresent.

12 As major supermarket chains and providers of janitorial services to such chains, defendants, and
13 each of them, have had and continue to have both the means of obtaining and actual possession
14 of superior knowledge and special information with regard to the facts relevant to a
15 determination of each plaintiff worker’s employment status. This superior knowledge and
16 special information includes, but is not limited to, the history of the supermarket chains’
17 employment of janitors in their stores, the representations of defendant Encompass that it would
18 provide trained “employees” to clean the stores, the course of negotiations between and among
19 defendants in entering into contracts for janitorial services in the stores of defendant supermarket
20 chains, the nature of the contractual relationship between and among the defendants, the
21 investigations and findings of various governmental agencies concerning plaintiffs’ employment
22 status, the employment status and identity of the employer of the on-site managers and the
23 recruiters who provide pay, direction, and/or supervision to the plaintiff janitors, the employment
24 status and treatment of janitors in other stores owned by defendant supermarket chains and/or at
25 other stores where defendant Encompass has provided janitorial services, and other facts relevant
26 to a determination of each plaintiff janitor’s employment status. As a result of defendants’
27 position to obtain superior knowledge and their actual possession of such knowledge, each
28 defendant has gained an unconscionable advantage over members of the plaintiff class, who

1 have been and continue to be ignorant of some of the facts relevant to their employment status
2 and who have not been and are not in a position to become informed about such facts.

3 Despite their superior knowledge and special information, defendants have failed to
4 inform members of the plaintiff class of their true status as employees. Further, as employers,
5 defendants were under a statutory obligation to make appropriate payroll deductions, and provide
6 plaintiffs with an accounting of their hours, deductions, and net pay with each paycheck.
7 Defendants' unlawful scheme to pay plaintiffs as though they were independent contractors
8 complies with none of these requirements and constitutes repeated and continuing false
9 representations that plaintiffs are independent contractors who are not entitled to the legal
10 protections and benefits available to employees under California law. Defendants made these
11 misrepresentations with knowledge of their falsity and with the intent to induce members of the
12 plaintiff class to rely on those representations and refrain from asserting their employment rights
13 in any legal forum available to them. Defendants concealed and failed to inform plaintiffs of
14 their true status as employees for the same unlawful purpose.

15 Because of defendants' ongoing conspiracy to violate the wage and hour laws and to
16 conceal their unlawful practices, the applicable statute of limitations on plaintiffs' claims has
17 been and continues to be tolled through the date on when each class member learned or learns of
18 defendants' illegal practices and/or policies which have operated to cause injury and violate each
19 class member's rights as employees.

20 b. Statute Tolled by Filing of Administrative Claims.

21 On or about December 29, 1999, María Toña Orea filed an administrative claim for back
22 wages with the DLSE. On or about January 20, 2000, Juan Flores and Armando Jiménez filed
23 claims for back wages with the DLSE. On or about March 2 and 30, 2000, Oscar Ávila,
24 Guadalupe Flores, Isabel Miranda, and Ángel Rodríguez filed claims for back wages with the
25 DLSE. On or about May 8, 2000, Hipolito Soto filed a claim for back wages with the DLSE. On
26 or about August 21, 2000, Ángel Rodríguez filed a second claim for back wages with the DLSE.
27 Plaintiffs are informed and believe and thereon allege that other members of the class have also
28 filed administrative claims for back wages with the DLSE. Plaintiffs' administrative claims have

1 tolled and continue to toll the statute of limitations on each and every claim asserted herein, on
2 behalf of the named plaintiffs and all others similarly situated.

3
4 **CLASS ALLEGATIONS**

5
6 19. Proposed Class and Nature Of The Class Claims. The individual plaintiffs, as class
7 representatives, bring this action for damages and declaratory and/or injunctive relief on their
8 own behalf and on behalf of a class comprised of all persons who have worked and/or will work
9 as janitors in California for one or more of the defendants at some time from at least 1994 to the
10 present, and who were denied and/or will be denied overtime pay and/or were otherwise not
11 provided the wages, benefits or protections to which they are entitled by law.

12 20. Numerosity. The size of the class makes a class action both necessary and efficient.
13 The class consists of approximately 600 janitors currently employed at supermarkets owned and
14 operated by Albertson's, Ralph's, Vons and Safeway throughout California, and an indefinite
15 number of former janitors who worked at, or future janitors who will work at, one or more of
16 these supermarkets, or who worked for Encompass at supermarkets not owned or operated by the
17 defendant supermarket chains. Members of the class are ascertainable but so numerous that
18 joinder is impracticable. The class includes future class members whose joinder is inherently
19 impossible.

20 21. Common Questions Of Law And Fact. This case poses common questions of law
21 and fact affecting the rights of all class members, including but not limited to:

- 22 (a) Plaintiff janitors' status as employees, not independent contractors;
23 (b) Defendants' status as joint employers of the janitors;
24 (c) Whether Albertson's, Ralph's, Vons and Safeway knew, should have
25 known about and/or ratified the widespread violations of wage, hour and
26 other labor laws suffered by janitors working in their supermarkets;
27 (d) The status of Encompass as the agent of Albertson's, Ralph's, and Vons
28 for the purpose of securing labor, and the legal consequences of that

1 agency;

2 (e) Whether Albertson's, Ralph's, Vons and Safeway conspired with
3 Encompass in an effort to bypass defendants' obligations to the plaintiff
4 class;

5 (f) What relief is necessary to remedy defendants' unfair and unlawful
6 conduct as herein alleged; and

7 (g) Other questions of law and fact.

8 22. Typicality: The claims of the individual plaintiff janitors are typical of the claims of
9 the class as a whole. The illegal wage practices that have operated to deny plaintiff janitors
10 overtime wages and other compensation, benefits, and protections required by law are typical of
11 the illegal wage practices that have and will continue to operate to deny other class members
12 lawful compensation.

13 23. Adequacy Of Class Representation. The individual plaintiff janitors can adequately
14 and fairly represent the interests of the class as defined above, because their individual interests
15 are consistent with, not antagonistic to, the interests of the class.

16 24. Adequacy Of Counsel For The Class. Counsel for plaintiff janitors possess the
17 requisite resources and ability to prosecute this case as a class action and are experienced labor
18 and employment attorneys who have successfully litigated other cases involving similar issues.

19 25. Propriety of Class Action Mechanism. Defendants have implemented a scheme
20 which is generally applicable to the plaintiff class, making it appropriate to issue final injunctive
21 relief and corresponding declaratory relief with respect to the class as a whole. Class
22 certification is also appropriate because the common questions of law and fact predominate over
23 any questions affecting only individual members of the class. Further, the prosecution of
24 separate actions against defendants by individual class members would create a risk of
25 inconsistent or varying adjudications which would establish incompatible standards of conduct
26 for defendants. For all these and other reasons, a class action is superior to other available
27 methods for the fair and efficient adjudication of the controversy set forth in this Complaint.
28

ALLEGATIONS OF CLASS REPRESENTATIVES

1
2
3 26. Oscar Ávila (Vons and Pavilions). Plaintiff Ávila worked as a janitor, cleaning
4 Vons and Pavilions supermarkets from approximately January 1998 to February 2000. At all
5 relevant times, Ávila has been misclassified as an “independent contractor” or non-employee,
6 rather than his true status as employee. Throughout his employment, Ávila was not paid the
7 wages to which he was entitled by law and suffered related violations of the FLSA and the
8 California Labor Code, including failure to receive overtime payments, paid break times, and
9 accurate itemized wage statements. He received only lump sum payments for his work. At
10 relevant times, defendants Vons and Pavilions channeled Ávila ’s wages through defendant
11 Encompass and/or Encompass’s “independent subcontractor recruiter(s),” all of which acted as
12 Vons and Pavilions’ agent, co-employer, and/or co-conspirator in wrongfully compensating
13 Ávila. In the alternative, defendant Encompass channeled Ávila ’s wages through “independent
14 subcontractor recruiter(s),” which acted as Encompass’s agent, co-employer, and/or co-
15 conspirator in wrongfully compensating Ávila. In addition, Ávila was not paid all wages owed to
16 him at the time of his termination, entitling him and all those similarly situated to recover waiting
17 time penalties equal to thirty days’ pay pursuant to Labor Code § 203.

18 27. Guadalupe Flores (Albertson’s). Plaintiff Flores has worked as a janitor cleaning
19 Albertson’s supermarkets from approximately early 1997 through late 1997. At all relevant
20 times, Flores has been misclassified as an “independent contractor” or non-employee, rather than
21 his true status as employee. Throughout his employment, Flores was not paid the wages to which
22 he was entitled to under the FLSA and the California Labor Code, including failure to receive
23 overtime payments, paid break times, and accurate itemized wage statements. He received only
24 lump sum payments for his work. At relevant times, defendant Albertson’s channeled Flores’s
25 wages through defendant Encompass and/or Encompass’s “independent subcontractor
26 recruiter(s),” all of which acted as Albertson’s agent, co-employer, and/or co-conspirator in
27 wrongfully compensating Flores. In the alternative, defendant Encompass channeled Flores’s
28 wages through “independent subcontractor recruiter(s),” which acted as Encompass’s agent, co-

1 employer, and/or co-conspirator in wrongfully compensating Flores. In addition, Flores was not
2 paid all wages owed to him at the time of his termination, entitling him and all those similarly
3 situated to waiting time penalties equal to thirty days' pay pursuant to Labor Code § 203.

4 28. Armando Jiménez (Vons, Albertsons). Plaintiff Jiménez worked as a janitor cleaning
5 Vons and Albertson's supermarkets from approximately 1993 to approximately December 1999.
6 At all relevant times, Jiménez has been misclassified as an "independent contractor" or non-
7 employee, rather than his true status as employee. Throughout his employment, Jiménez was not
8 paid the wages to which he was entitled under the FLSA and the California Labor Code,
9 including failure to receive overtime payments, paid break times, and accurate itemized wage
10 statements. He received only lump sum payments for his work. At relevant times, defendants
11 Albertson's and Vons channeled Jiménez's wages through defendant Encompass and/or
12 Encompass's "independent subcontractor recruiter(s)," all of which acted as Albertson's and
13 Vons's agent, co-employer, and/or co-conspirator in wrongfully compensating Jiménez. In the
14 alternative, defendant Encompass channeled Jiménez's wages through "independent
15 subcontractor recruiter(s)," which acted as Encompass's agent, co-employer, and/or co-
16 conspirator in wrongfully compensating Jiménez. In addition, Jiménez was not paid all wages
17 owed to him at the time of his termination, entitling him and all those similarly situated to
18 waiting time penalties equal to thirty days' pay pursuant to Labor Code § 203.

19 29. María Toña Orea (Ralph's). Plaintiff Orea was employed to clean Ralph's
20 supermarkets from August 1999 until December 1999. At all relevant times, Orea has been
21 misclassified as an "independent contractor" or non-employee, rather than her true status as
22 employee. Throughout her employment, Orea was not paid the wages to which she was entitled
23 under the FLSA and the California Labor Code, including failure to receive overtime payments,
24 paid break time, and accurate itemized wage statements. She received only lump sum payments
25 for her work. At all relevant times, defendant Ralph's channeled Orea's wages through
26 defendant Encompass and/or Encompass's "independent subcontractor recruiter(s)," all of which
27 acted as Ralph's agent, co-employer, and/or co-conspirator in wrongfully compensating Orea. In
28 the alternative, defendant Encompass channeled Orea's wages through "independent

1 subcontractor recruiter(s),” which acted as Encompass’s agent, co-employer, and/or co-
2 conspirator in wrongfully compensating Orea. In addition, Orea was not paid all wages owed to
3 her at the time of her termination, entitling her and all those similarly situated to waiting time
4 penalties equal to thirty days’ pay pursuant to Labor Code § 203.

5 30. Isabel Miranda (Vons, Pavilions). Plaintiff Miranda was employed to clean Vons and
6 Pavilions supermarkets from approximately August 1999 until approximately March 2000. At
7 all relevant times, Miranda has been misclassified as an “independent contractor” or non-
8 employee, rather than his true status as employee. Throughout his employment, Miranda was not
9 paid the wages to which he was entitled under the FLSA and the California Labor Code,
10 including failure to receive overtime payments, paid break time, and accurate itemized wage
11 statements. He received only lump sum payments for his work. At relevant times, defendants
12 Vons and Pavilions channeled Miranda’s wages through defendant Encompass and/or
13 Encompass’s “independent subcontractor recruiter(s),” all of which acted as Vons and Pavilions’
14 agent, co-employer, and/or co-conspirator in wrongfully compensating Miranda. In the
15 alternative, defendant Encompass channeled Miranda’s wages through “independent
16 subcontractor recruiter(s),” which acted as Encompass’s agent, co-employer, and/or co-
17 conspirator in wrongfully compensating Miranda. In addition, Miranda was not paid all wages
18 owed to him at the time of his termination, entitling him and all those similarly situated to
19 waiting time penalties equal to thirty days’ pay pursuant to Labor Code § 203.

20 31. Angel Rodríguez (Vons, Ralphs). Plaintiff Rodríguez was employed to clean Vons
21 and Ralphs supermarkets from approximately August 1999 until approximately March 2000, and
22 from May, 2000, to the present. At all relevant times, Rodríguez has been misclassified as an
23 “independent contractor” or non-employee, rather than his true status as employee. Throughout
24 his employment, Rodríguez was not paid the wages to which he was entitled under the FLSA
25 and the California Labor Code, including failure to receive overtime payments, paid break time,
26 and accurate itemized wage statements. He received only lump sum payments for his work. At
27 relevant times, defendant Vons and/or Ralph’s channeled Rodríguez’s wages through defendant
28 Encompass and/or Encompass’s “independent subcontractor recruiter(s),” all of which acted as

1 Vons's and/or Ralph's agent, co-employer, and/or co-conspirator in wrongfully compensating
2 Rodríguez. In the alternative, defendant Encompass channeled Rodríguez's wages through
3 "independent subcontractor recruiter(s)," which acted as Encompass's agent, co-employer, and/or
4 co-conspirator in wrongfully compensating Rodríguez. In addition, Rodríguez was not paid all
5 wages owed to him at the time of his termination, entitling him and all those similarly situated to
6 recover waiting time penalties equal to thirty days' pay pursuant to Labor Code § 203.

7 32. Hipolito Soto (Vons). Plaintiff Soto worked as a janitor, cleaning Vons
8 supermarkets from prior to April 1999 to November 1999 and from March 2000 to the present.
9 At all relevant times, Soto has been misclassified as an "independent contractor" or non-
10 employee, rather than his true status as employee. Throughout his employment, Soto was not
11 paid the wages to which he was entitled under the FLSA and the California Labor Code,
12 including failure to receive overtime payments, paid break times, and accurate itemized wage
13 statements. He received only lump sum payments for his work. At least since April, 1999,
14 defendant Vons channeled Soto's wages through defendant Encompass and/or Encompass's
15 "independent subcontractor recruiter(s)," all of which acted as Vons's agent, co-employer, and/or
16 co-conspirator in wrongfully compensating Soto. In the alternative, defendant Encompass
17 channeled Soto's wages through "independent subcontractor recruiter(s)," which acted as
18 Encompass's agent, co-employer, and/or co-conspirator in wrongfully compensating Soto. In
19 addition, Soto was not paid all wages owed to him at the time of his termination, entitling him
20 and all those similarly situated to recover waiting time penalties equal to thirty days' pay
21 pursuant to Labor Code § 203.

22 33. Juan Flores (Vons and Ralphs). Plaintiff Flores worked as a janitor, cleaning Vons
23 and Ralph's supermarkets from approximately December 1997 to March 2000 and from October
24 2000 to the present. At all relevant times, Flores has been misclassified as an "independent
25 contractor" or non-employee, rather than his true status as employee. Throughout his
26 employment, Flores was not paid the wages to which he was entitled under the FLSA and the
27 California Labor Code, including failure to receive overtime payments, paid break times, and
28 accurate itemized wage statements. He received only lump sum payments for his work. Since

1 October 1999, defendant Ralph's and Vons channeled Flores's wages through defendant
2 Encompass and/or Encompass's "independent subcontractor recruiter(s)," all of which acted as
3 Ralph's and Vons' agent, co-employer, and/or co-conspirator in wrongfully compensating Flores.
4 In the alternative, defendant Encompass channeled Flores's wages through "independent
5 subcontractor recruiter(s)," which acted as Encompass's agent, co-employer, and/or co-
6 conspirator in wrongfully compensating Flores. In addition, Flores was not paid all wages owed
7 to him at the time of his termination, entitling him and all those similarly situated to recover
8 waiting time penalties equal to thirty days' pay pursuant to Labor Code § 203.

9
10 **CONDUCT RELATED TO THE CLASS OF JANITORS**

11 34. Similar Conduct Toward Janitors By Albertson's, Ralph's, Vons and Safeway.

12 Albertson's, Ralph's, Vons and Safeway, and each of them, have acted and continue to act in a
13 similar fashion with respect to members of the plaintiff class by, among other things,

- 14 (a) misclassifying janitors as independent contractors and non-employees;
- 15 (b) effectively controlling the wages and working conditions of the janitors;
- 16 (c) assigning, overseeing, and controlling the operative details of the janitors' work;
- 17 (d) employing personnel at the supermarkets to review, inspect, oversee, and direct
18 the tasks janitors perform;
- 19 (e) failing to provide janitors the wages, benefits and protections required by the
20 FLSA and the California Labor Code, including but not limited to overtime
21 compensation, paid break times, and failing to allow them the required unpaid
22 lunch time;
- 23 (f) negligently, recklessly, or intentionally permitting janitors to perform labor on
24 their premises and under their supervision without compensation as required by
25 the FLSA and the California Labor Code, including but not limited to overtime
26 compensation and paid break times;
- 27 (g) failing to provide janitors with accurate itemized wage statements as required by
28 Labor Code § 226;

- 1 (h) failing to ensure that Encompass provided janitors with accurate itemized wage
2 statements as required by Labor Code § 226;
- 3 (i) failing to pay terminated janitors the wages owed to them;
- 4 (j) failing to ensure that Encompass paid terminated janitors the wages owed to them;
- 5 (k) committing these and other unfair, unlawful, and fraudulent business practices in
6 violation of Business & Professions Code § 17200, *et seq.* as alleged in this
7 Complaint, which affected all members of the class in a similar manner.

8 35. Similar Conduct Toward Janitors By Encompass. Encompass has acted and continue
9 to act in a similar fashion with respect to members of the plaintiff class of janitors by, among
10 other things,

- 11 (a) effectively controlling the wages and working conditions of janitors;
- 12 (b) misclassifying janitors as independent contractors and non-employees;
- 13 (c) failing to provide janitors the wages, benefits, and protections required by the
14 FLSA and California Labor Code;
- 15 (d) failing to provide paid break times and unpaid lunch times as required by law;
- 16 (e) negligently, recklessly, or intentionally permitting janitors to perform labor in the
17 supermarkets belonging to defendant supermarket chains and others without
18 compensation as required by the FLSA and California Labor Code;
- 19 (f) failing to provide janitors with accurate itemized wage statements as required by
20 Labor Code § 226;
- 21 (g) failing to pay terminated janitors the wages owed to them, thus entitling them to
22 waiting time penalties of an additional thirty days' pay pursuant to Labor Code §
23 203;
- 24 (h) obtaining contracts by submitting low bids based on its practice of failing to pay
25 wages in accordance with the law;
- 26 (i) committing these and other unfair, unlawful and fraudulent business practices in
27 violation of Business & Professions Code § 17200, *et seq.* As alleged in this
28 Complaint, which affected all members of the class in a similar manner.

1 **CAUSES OF ACTION**

2
3 **FIRST CLAIM FOR RELIEF**

4 **FAILURE TO PAY OVERTIME COMPENSATION AND OTHER WAGES**

5 **REQUIRED BY THE FAIR LABOR STANDARDS ACT**

6 **[BY THE PLAINTIFF CLASS AGAINST ALL DEFENDANTS]**

7
8 36. Plaintiffs reallege and incorporate by reference the allegations contained in
9 paragraphs 1 through 35 above.

10 37. Plaintiffs' Entitlement to Sue Under FLSA. Sections 6 and 7 of the FLSA, 29 U.S.C.
11 §§ 206 and 207, establish the right of all persons who are "suffered or permitted to work" to be
12 paid minimum wage for all hours worked and overtime pay at one and one-half times the
13 person's regular rate for all hours worked in excess of forty hours per week. Section 16(b) of the
14 FLSA, 29 U.S.C. § 216(b), entitles such persons to recover all unpaid wages plus interest, an
15 equivalent amount as liquidated damages, and reasonable attorneys' fees and costs. At all times
16 relevant to this action, defendants, and each of them, failed and refused to pay plaintiffs
17 minimum wage for all hours works and the overtime premiums required by the FLSA, to
18 plaintiffs' damage in amounts to be proven at trial. Plaintiffs Juan Flores, Hipolito Soto, Oscar
19 Ávila, Guadalupe Flores, Armando Jiménez, María Toña Orea, Isabel Miranda, Ángel Rodríguez
20 consent to be parties to this action pursuant to FLSA § 256.

21 38. Defendants' Committed Willful Violation of FLSA. Defendants' failure to provide
22 compensation for all hours worked by plaintiffs with the knowledge, consent, and expectation of
23 defendants' supervisors and other managing agents constitutes a deliberate and willful violation
24 of the FLSA.

25 39. Plaintiff Janitors' Status As Employees. The term "employee" is defined in the
26 FLSA as "any individual employed by an employer." 29 U.S.C. § 203(e)(1). An "employer" is
27 defined extremely broadly as "any person acting directly or indirectly in the interest of an
28 employer in relation to an employee." *Id.* § 203(d). The verb "employ" is defined expansively to

1 mean “suffer or permit to work.” *Id.* § 203(g). All members of the class are or were employees
2 of Encompass and/or each is and/or was an employee of Albertson’s, Ralph’s, and/or Vons, for
3 which he or she performed services within these definitions. At all material times, defendants
4 have acted as plaintiff janitors’ “employers” and are or were “employing” them within the
5 meaning of the FLSA and under principles of common law.

6 40. Defendants’ Status As Joint Employers. As plaintiff janitors’ joint employers, under
7 common law and statutory definitions, defendants are all jointly and severally liable for the
8 plaintiff janitors’ back pay, liquidated damages, and other relief under the FLSA.

9 41. Defendants’ Conduct As Joint Employers. Plaintiffs are informed and believe, and
10 on that basis allege, that defendants, and each of them, at all times material to this Complaint,
11 have acted as joint employers with respect to the class of janitors because defendants have

- 12 (a) jointly exercised meaningful control over the work performed by plaintiff janitors;
- 13 (b) jointly exercised meaningful control over plaintiff janitors’ wages, hours and
14 working conditions, including the quantity, quality standards, speed, scheduling,
15 and operative details of the tasks plaintiff janitors performed;
- 16 (c) jointly required that plaintiff janitors perform work which is an integral part of
17 defendants’ businesses, and
- 18 (d) jointly exercised control over the plaintiff janitors in that members of the class, as
19 a matter of economic reality, are dependent upon defendants Albertson’s, Ralph’s,
20 Vons and Safeway as well as defendants Encompass, who share the power to set
21 plaintiff janitors’ wages and determine their working conditions, and who jointly
22 reap profits from the underpayment of their wages and noncompliance with other
23 statutory provisions governing their employment, and for other related reasons.

24 42. Defendant Supermarket Chains Effectively Control Employment of the Janitors and
25 Know or Should Know that Members of the Class Have Been and Continue to Be Routinely
26 Underpaid for Their Labor. Defendants Albertson’s, Ralph’s, Vons and Safeway effectively
27 control the wages, hours and working conditions of the members of the class in the following
28 manner:

- 1 (a) As a practical matter, the only commodity defendant Encompass sells to
2 defendants Albertson's, Ralph's, Vons and Safeway is the labor performed by
3 members of the plaintiff class. Since plaintiff janitors receive no health and
4 welfare benefits, medical insurance, pension, paid vacation, sick or bereavement
5 leave in connection with their employment, nearly all of the overhead of
6 Encompass goes to pay plaintiff janitors' wages. The remainder of the monies
7 paid by defendants Albertson's, Ralph's, Vons and Safeway to secure plaintiff
8 janitors' labor is retained by defendant Encompass as profit.
- 9 (b) Defendants Albertson's, Ralph's, Vons and Safeway know, or in the exercise of
10 reasonable diligence should know, the precise number of man-hours required to
11 clean their stores. Plaintiffs are informed and believe and on that basis allege that
12 Albertson's, Ralph's, Vons and Safeway acquired such knowledge through, *inter*
13 *alia*, recording and compensating the time formerly spent by their own direct
14 employees on tasks identical to those now performed by the members of the class,
15 conducting time-motion studies of the labor time required to clean their stores,
16 and/or performing calculations according to industry standards which establish the
17 labor time required to clean their stores on a per square-foot or per location basis.
18 Additionally, the agents, employees and managers of defendants Albertson's,
19 Ralph's, Vons and Safeway' are present and observe the man-hours required to
20 clean the stores.
- 21 (c) Defendants Albertson's, Ralph's, Vons and Safeway thus know the man-hours
22 required to clean their stores, their staffing levels, the hours worked by janitors on
23 their premises, the total contract price for janitors' labor, and the fact that the
24 contract price available to pay plaintiff janitors' wages is reduced by the profit
25 margin of defendant Encompass and any small amount of overhead expenses it
26 may incur. Defendants Albertson's, Ralph's, Vons and Safeway are presumed to
27 know the law, including but not limited to the overtime premiums required for
28 excess hours. At all relevant times herein they have been on inquiry or actual

1 notice that members of the class were and are routinely underpaid for their labor.
2 In knowing or reckless disregard of these facts, Albertson's, Ralph's, Vons and
3 Safeway have negotiated and/or continue to negotiate service agreements
4 ("Service Agreements") with Encompass which set prices so low that they are
5 insufficient to provide the plaintiff janitors with the overtime wages and other
6 wages and benefits required by law.

7 (d) Individual plaintiff janitors and the members of the class they seek to represent are
8 directly supervised by managers, supervisors and/or foremen employed by
9 defendants Albertson's, Ralph's, Vons and Safeway, who determine what tasks
10 class members are to perform, the location, manner, means, schedule and speed
11 they are to do their work, and the cleaning implements and chemicals they are to
12 use.

13 43. Defendants' Violation Of Wage And Hour Laws. At relevant times throughout
14 plaintiffs' employment, defendants, and each of them, failed to conform their conduct to the
15 requirements of the law. This unlawful conduct included, but was not limited to, misclassifying
16 plaintiffs as independent contractors and non-employees, and, as a consequence, failing to pay
17 plaintiffs overtime compensation worked as required by the FLSA.

18 44. Members of the Class Suffered Economic Damages. By virtue of defendants'
19 unlawful failure and refusal to pay plaintiff janitors overtime wages and other wages and benefits
20 to which they are entitled, plaintiff janitors have lost wages due to them in amounts to be proven
21 at trial. Defendants are liable to the members of the class as joint employers for class members'
22 unpaid wages and liquidated damages under FLSA § 216(b), attorneys' fees and costs.

23 ///

24 ///

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28 ///

1 **SECOND CLAIM FOR RELIEF**

2 **FAILURE TO PAY OVERTIME COMPENSATION AND OTHER WAGES**
3 **REQUIRED BY THE LABOR CODE AND IWC WAGE ORDER**

4 **[BY THE PLAINTIFF CLASS AGAINST ALL DEFENDANTS]**

5 45. Plaintiffs reallege and incorporate by reference the allegations contained in
6 paragraphs 1 through 44 above.

7 46. Plaintiff Janitors' Status As Employees. The term "employee" is defined in Labor
8 Code § 350 as "every person. . . rendering actual service in any business for an employer." The
9 term "employing" includes "hiring, or in any way contracting for the services of an employee."
10 The term "employee" is defined in § 2 of the applicable California Industrial Wage Commission
11 ("IWC") Wage Orders as a person who is "engage[ed], suffer[ed], or permit[ted] to work" by an
12 employer. All members of the class are or were employees of Encompass and/or each is and/or
13 was an employee of Albertson's, Ralph's, and/or Vons, for which he or she performed services
14 within these definitions. At all material times, defendants have acted as plaintiff janitors'
15 "employers" and are or were "employing" them under common law principles and within the
16 meaning of applicable IWC Wage Orders and Labor Code §§ 350 and 2650(b).

17 47. Defendants' Status as Employers Section 2 of the applicable IWC Wage Orders
18 defines "employer" as any person who "directly or indirectly, or through an agent or any other
19 person, employee or exercises control over the wages, hours, or working conditions of any
20 person." Labor Code § 350 defines "employing" as "hiring, or in any way contracting for the
21 services of an employee." Defendants, and each of them, meet these definitions with respect to
22 those employees who performed services for them.

23 48. Defendants' Status As Joint Employers. As plaintiff janitors' joint employers, under
24 common law and statutory definitions, defendants are all jointly and severally liable for the
25 plaintiff janitors' back pay and other economic damages under principles of common law and by
26 statute, including but not limited to Labor Code § 1194 and 1194.2 and Civil Code § 1430 and
27 1431.

28 ///

1 49. Defendants' Conduct As Joint Employers. Plaintiffs are informed and believe, and
2 on that basis allege, that defendants, and each of them, at all times material to this Complaint,
3 have acted as joint employers with respect to the class of janitors because defendants have

- 4 (a) jointly exercised meaningful control over the work performed by plaintiff janitors;
5 (b) jointly exercised meaningful control over plaintiff janitors' wages, hours and
6 working conditions, including the quantity, quality standards, speed, scheduling,
7 and operative details of the tasks plaintiff janitors performed;
8 (c) jointly required that plaintiff janitors perform work which is an integral part of
9 defendants' businesses, and
10 (d) jointly exercised control over the plaintiff janitors in that members of the class, as
11 a matter of economic reality, are dependent upon defendants Albertson's, Ralph's,
12 Vons and Safeway as well as defendant Encompass, who share the power to set
13 plaintiff janitors' wages and determine their working conditions, and who jointly
14 reap profits from the underpayment of their wages and noncompliance with other
15 statutory provisions governing their employment, and for other related reasons.

16 50. Defendants Jointly and Severally Liable. As plaintiff janitors' joint employers,
17 defendants are jointly and severally liable for plaintiffs' unpaid wages and for other damages and
18 statutory penalties as alleged in this Complaint.

19 51. Defendant Supermarket Chains Effectively Control Employment of the Janitors and
20 Know or Should Know that Members of the Class Have Been and Continue to Be Routinely
21 Underpaid for Their Labor. Defendants Albertson's, Ralph's, Vons and Safeway effectively
22 control the wages, hours and working conditions of the members of the class in the following
23 manner:

- 24 (a) As a practical matter, the only commodity defendant Encompass sells to
25 defendants Albertson's, Ralph's, Vons and Safeway is the labor performed by
26 members of the plaintiff class. Since plaintiff janitors receive no health and
27 welfare benefits, medical insurance, pension, paid vacation, sick or bereavement
28 leave in connection with their employment, nearly all of the overhead of

1 Encompass goes to pay plaintiff janitors' wages. The remainder of the monies
2 paid by defendants Albertson's, Ralph's, Vons and Safeway to secure plaintiff
3 janitors' labor is retained by defendant Encompass as profit.

4 (b) Defendants Albertson's, Ralph's, Vons and Safeway know, or in the exercise of
5 reasonable diligence should know, the precise number of man-hours required to
6 clean their stores. Plaintiffs are informed and believe and on that basis allege that
7 Albertson's, Ralph's, Vons and Safeway acquired such knowledge through, *inter*
8 *alia*, recording and compensating the time formerly spent by their own direct
9 employees on tasks identical to those now performed by the members of the class,
10 conducting time-motion studies of the labor time required to clean their stores,
11 and/or performing calculations according to industry standards which establish the
12 labor time required to clean their stores on a per square-foot or per location basis.
13 Additionally, the agents, employees and managers of defendants Albertson's,
14 Ralph's, Vons and Safeway' are present and observe the man-hours required to
15 clean the stores.

16 (c) Defendants Albertson's, Ralph's, Vons and Safeway thus know the man-hours
17 required to clean their stores, their staffing levels, the hours worked by janitors on
18 their premises, the total contract price for janitors' labor, and the fact that the
19 contract price available to pay plaintiff janitors' wages is reduced by the profit
20 margin of defendant Encompass and any small amount of overhead expenses it
21 may incur. Defendants Albertson's, Ralph's, Vons and Safeway are presumed to
22 know the law, including but not limited to the overtime premiums required for
23 excess hours. At all relevant times herein they have been on inquiry or actual
24 notice that members of the class were and are routinely underpaid for their labor.
25 In knowing or reckless disregard of these facts, Albertson's, Ralph's, Vons and
26 Safeway have negotiated and/or continue to negotiate Service Agreements with
27 Encompass which set prices so low that they are insufficient to provide the
28 plaintiff janitors with the overtime wages and other wages and benefits required

1 by law.

2 (d) Individual plaintiff janitors and the members of the class they seek to represent are
3 directly supervised by managers, supervisors and/or foremen employed by
4 defendants Albertson's, Ralph's, Vons and Safeway, who determine what tasks
5 class members are to perform, the location, manner, means, schedule, and speed
6 they are to do their work, and the cleaning implements and chemicals they are to
7 use.

8 52. Janitors Are Entitled to Overtime Compensation. Labor Code §§ 1198 and 2675 and
9 applicable IWC Wage Orders provide that employees in the janitorial industry shall not be
10 required to work hours in excess of a prescribed maximum unless they receive additional
11 compensation beyond their regular wages in amounts specified by law. Prior to January 1, 1998
12 and after January 1, 2000, the IWC Wage Orders required employers to pay: (a) one and one-half
13 times an employee's hourly wage for all hours worked beyond eight in one day or beyond forty in
14 any workweek; and (b) twice an employee's regular rate for all hours worked in excess of twelve
15 hours per day and for all hours worked in excess of eight on the seventh consecutive day of work
16 in any workweek. In addition, from January 1, 2001 to the present, the Wage Order requires the
17 payment of one hours' wages for each break time not provided. From January 1, 1998 until
18 December 31, 1999, the IWC Wage Order required employers to pay time-and-one half an
19 employee's hourly wage for all hours worked beyond forty in any workweek. Plaintiff janitors
20 have not been paid in accordance with the IWC Wage Orders.

21 53. Defendants' Violation Of Wage And Hour Laws. At relevant times throughout
22 plaintiffs' employment, defendants, and each of them, failed to conform their conduct to the
23 requirements of the law. This unlawful conduct included, but was not limited to, misclassifying
24 plaintiffs as independent contractors and non-employees, and, as a consequence, failing to pay
25 plaintiffs overtime compensation worked as required by the Labor Code and applicable IWC
26 Wage Orders, failing to provide paid break times and unpaid lunch times, failing to provide
27 accurate itemized wage statements as required by Labor Code § 226, failing to pay wages on
28 termination as required by Labor Code § 203; and failing to pay other wages and benefits

1 required by law.

2 54. Janitors Are Entitled to Statutory Damages and Other Remedies. Labor Code
3 §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid overtime
4 compensation as required by § 1198 may recover the unpaid balance of the full amount of such
5 wages, together with attorneys' fees and costs of suit. Labor Code § 203 provides that if an
6 employer willfully fails to pay any wages of an employee who is discharged or who quits, the
7 wages of the employee shall continue as a penalty from the due date thereof at the same rate until
8 paid, not to exceed thirty days. On an after January 1, 2000, the applicable IWC Wage order
9 requires the payment of one hour's pay for each required break time not taken by an employee.
10 Plaintiffs are entitled to these, and other, wages, damages, and penalties according to proof.

11 55. Members of the Class Suffered Economic Damages. By virtue of defendants'
12 unlawful failure and refusal to pay plaintiff janitors wages to which they are entitled under the
13 Labor Code and IWC Wage Order, plaintiff janitors have been damaged in amounts to be proven
14 at trial. Defendants are liable to the members of the class as joint employers for class members'
15 unpaid wages and for statutory penalties as alleged in this Complaint.

16
17 **THIRD CLAIM FOR RELIEF**

18 **BREACH OF WRITTEN CONTRACT**

19 **[BY PLAINTIFF CLASS AGAINST ENCOMPASS]**

20
21 56. Plaintiffs reallege and incorporate by reference the allegations contained in
22 paragraphs 1 through 55 above.

23 57. Defendants are Parties to Service Agreements. Plaintiff janitors are informed and
24 believe and on that basis allege that defendants Albertson's, Ralph's, Vons and Encompass are
25 parties to written Service Agreements pursuant to which Encompass recruits members of the
26 class to work for the supermarket chains, and pays plaintiffs' wages on their behalf.

27 58. Service Agreements Expressly Require Encompass to Comply with the FLSA and the
28 Labor Code. Plaintiff janitors are informed and believe and thereon allege that each of the

1 Service Agreements between Encompass and the supermarket chains expressly provide that
2 Encompass shall obey all applicable laws, including but not limited to the FLSA and California
3 Labor Code.

4 59. Encompass Has An Implied Contractual Obligation To Obey Wage And Hour Laws.

5 Plaintiff janitors are informed and believe and on that basis allege that each of the Service
6 Agreements incorporate the implied requirement that defendants Encompass comply with all
7 applicable laws, including but not limited to the FLSA and California Labor Code. Defendants
8 Encompass have an implied duty under the Service Agreements to pay members of the class in
9 accordance with the law and the implication of such a duty is necessary in order to make the
10 contracts reasonable. Because the Service Agreements call for the provision of labor, their
11 subject matter invokes the strong public policies in favor of minimum labor standards, ensuring
12 that employees are not required or permitted to work under substandard and unlawful conditions,
13 and protecting employers who comply with the law from those who attempt to gain competitive
14 advantage at the expense of their workers by failing to comply with minimum labor standards.
15 The Service Agreements must be interpreted in light of these policies.

16 60. Members of the Plaintiff Class are Third-Party Beneficiaries of the Service
17 Agreements. Plaintiff janitors are informed and believe that they are intended third-party
18 beneficiaries of the express or implied requirement in the Service Agreements that Encompass
19 comply with all applicable laws, including but not limited to the FLSA and California Labor
20 Code.

21 61. Defendant Encompass Breached the Service Contracts. Defendants Encompass have
22 breached the Service Agreements through conduct described herein, including but not limited to:

- 23 (a) failing to pay members of the class the wages required by law, including but not
24 limited to overtime compensation, and/or other wages and benefits required by
25 law;
- 26 (b) failing to provide members of the class with paid break times, unpaid lunch
27 periods, and accurate itemized wage statements as required by Labor Code § 226;
28 and

1 (c) failing to pay terminated members of the class the wages to which they were
2 entitled at the time of their termination, and other violations as alleged in this
3 Complaint or to be proven at trial.

4 62. Plaintiffs Are Entitled To Contract Damages. Plaintiff janitors are entitled to
5 damages for the breaches by Encompass of the Service Agreements for which pecuniary
6 compensation alone will afford adequate and complete relief, including the requirement that
7 Encompass pay plaintiffs' unpaid wages.

8
9 **FOURTH CLAIM FOR RELIEF**

10 **NEGLIGENCE PER SE**

11 **[BY THE CLASS AGAINST ALL DEFENDANTS]**

12
13 63. Plaintiff janitors reallege and incorporate by reference the allegations contained in
14 paragraphs 1 through 62 above as though fully set forth.

15 64. Defendants' Knowledge Of Illegal Conduct. The cleaning and maintenance services
16 provided to Albertson's, Ralph's, Vons by the members of the class have been and continue to be
17 performed under conditions which have violated and continue to violate the FLSA, the California
18 Labor Code, and the IWC Wage Orders as alleged in this Complaint. All defendants have known
19 or reasonably should have known of these egregious, widespread, systematic and ongoing
20 violations, yet have done nothing to investigate, remedy, or report them to the appropriate
21 authorities.

22 65. Defendants' Statutory Violations. The overtime and other provisions of the FLSA
23 and California Labor Code and applicable IWC Orders were enacted to protect workers from
24 economic and personal injuries caused by poverty-level wages, unduly long hours, and other
25 substandard working conditions. The acts and omissions of defendants as alleged in this
26 Complaint were and are a substantial factor contributing to the illegal and substandard working
27 conditions under which plaintiff janitors have labored.

28 66. Defendants' Negligence Per Se. Plaintiff janitors are, and at all times were, among

1 the class of persons that the FLSA, the California Labor Code, and the IWC Orders were
2 designed to protect. Plaintiffs' injuries are of the type that the foregoing statutes and regulations
3 are intended to prevent. Plaintiff janitors are within the class of persons for whose protection the
4 foregoing statutes and regulations were adopted. Defendants' violations of the foregoing statutes
5 and regulations constituted negligence per se and created, under Evidence Code § 669, a
6 presumption of negligence.

7 67. Plaintiffs Have Suffered Damages. As a direct and proximate result of defendants'
8 acts and omissions as alleged in this Complaint, plaintiff janitors have suffered and continue to
9 suffer economic damages, in an amount, nature, and degree to be proven at trial. Defendants'
10 conduct as described in this Complaint was malicious, fraudulent and/or oppressive, and done
11 with a conscious disregard for the rights of the plaintiff class and for the deleterious
12 consequences of the defendants' actions. Each defendant authorized, condoned and/or ratified
13 the unlawful conduct of all the other defendants named in this action and of their agents and
14 employees. Consequently, the plaintiff class is entitled to an award of punitive damages.

15
16 **FIFTH CLAIM FOR RELIEF**

17 **NEGLIGENT TRAINING AND/OR SUPERVISION**

18 **[BY PLAINTIFF CLASS AGAINST ALBERTSON'S, RALPH'S AND VONS]**

19
20 68. Plaintiffs reallege and incorporate by reference the allegations contained in
21 paragraphs 1 through 67 above.

22 69. Responsibility of Albertson's, Ralph's, Vons and Safeway for Conduct of
23 Encompass. Labor Code § 350 defines "Agent" as "every person other than the employer having
24 the authority to hire or discharge any employee or to supervise, direct, or control the acts of
25 employees." Plaintiff janitors are informed and believe and on that basis allege that, when
26 engaging in the wrongful conduct alleged in this Complaint, Encompass and its recruiters were
27 acting as the agents of Albertson's, Ralph's, Vons and Safeway.

28 70. Duty of Care. As owners and operators of supermarkets throughout California,

1 Albertson's, Ralph's, Vons and Safeway, and each of them, owe a duty under the common law
2 and under state statutory law to exercise due care in the ownership and operation of their
3 supermarkets to avoid foreseeable injury to others. As employers of plaintiff janitors, all
4 defendants, and each of them, owe a duty of care under the common law and under state statutes
5 to exercise due care as employers to avoid foreseeable injury to their employees, by complying
6 with all applicable wage and hour laws.

7 71. Defendants' Knowledge of Practices and Authority Over Conduct of Encompass.

8 Albertson's, Ralph's, Vons and Safeway have the authority to supervise, prohibit, control, and/or
9 regulate Encompass so as to prevent these acts and omissions from occurring. Albertson's,
10 Ralph's, Vons and Safeway, and each of them, have known or reasonably should have known
11 that Encompass has been and is engaging in the wrongful conduct alleged in this Complaint, and
12 that this conduct directly results in injury to the class. Albertson's, Ralph's, Vons and Safeway
13 know, or reasonably should know, that Encompass was and is employing workers in violation of
14 the wage, hour, and safety requirements set by law for their protection.

15 72. Defendants' Ratification Of Encompass's Conduct. Albertson's, Ralph's, Vons and

16 Safeway have known or, in the exercise of reasonable diligence, should have known that, unless
17 they took steps to protect the plaintiff janitors and properly to supervise, prohibit, control, and/or
18 regulate the conduct of Encompass, Encompass would perceive its acts and omissions as being
19 ratified and condoned.

20 73. Defendants' Failure To Exercise Due Care Caused Plaintiff Janitors' Damages.

21 Albertson's, Ralph's, Vons and Safeway, and each of them, breached their duty of care as owners
22 and operators of supermarkets and employers by negligently, wilfully and/or recklessly failing to
23 provide their agents, managers and/or employees and Encompass with adequate training,
24 guidance, supervision, and/or other direction about how to comply with the wage, hour, and
25 safety requirements set by law for the protection of the plaintiff class. Encompass breached its
26 duty of care as an employer by negligently, wilfully and/or recklessly failing to provide its agents,
27 managers, and/or employees with adequate training, guidance, supervision, and/or other direction
28 about how to comply with the wage, hour, and safety requirements set by law for the protection

1 of the plaintiff class. As a direct result of the negligent acts and omissions of defendants, and
2 each of them, plaintiff janitors have suffered and continued to suffer economic losses, in amounts
3 to be proven at trial. Defendants' conduct as described in this Complaint was malicious,
4 fraudulent and/or oppressive, and done with a conscious disregard for the rights of the plaintiff
5 class and for the deleterious consequences of the defendants' actions. Each defendant authorized,
6 condoned and/or ratified the unlawful conduct of all the other defendants named in this action
7 and of their agents, managers, and/or employees. Consequently, the plaintiff class is entitled to
8 an award of punitive damages.

9
10 **SIXTH CLAIM FOR RELIEF**

11 **NEGLIGENT HIRING AND RETENTION**

12 **[BY PLAINTIFF CLASS AGAINST ALL DEFENDANTS]**

13
14 74. Plaintiffs reallege and incorporate by reference the allegations contained in
15 paragraphs 1 through 73 as though fully set forth.

16 75. Hiring for Services. Plaintiffs are informed and believe, and on that basis allege, that
17 Albertson's, Ralph's, Vons and Safeway, and each of them, selected, hired, retained, contracted,
18 and renewed contracts with Encompass for cleaning and maintenance work to be performed by
19 the members of the plaintiff class. Plaintiffs are informed and believe, and on that basis allege,
20 that Encompass selected, hired, retained, contracted, and renewed contracts with Does 3-10 for
21 recruitment and/or employment of the members of the plaintiff class to provide janitorial
22 services.

23 76. Defendants Failed To Exercise Due Care. At and after the time that the supermarket
24 defendants selected, hired, retained and contracted and/or renewed contracts with Encompass, the
25 supermarket defendants knew or reasonably should have known that Encompass did and would
26 continue to violate plaintiffs' rights and that, as a direct and legal result of those violations,
27 plaintiffs would suffer injuries as alleged in this Complaint. As a result, Albertson's, Ralph's,
28 Vons and Safeway, and each of them, failed to exercise reasonable care in selecting, hiring,

1 retaining, contracting and/or renewing contracts with Encompass. At and after the time that
2 Encompass selected, hired, retained and contracted and/or renewed contracts with Does 3-10,
3 Encompass knew or reasonably should have known that Does 3-10 did and would continue to
4 violate the plaintiff janitors' rights and that, as a direct and legal result of those violations, the
5 plaintiffs would suffer injuries as alleged in this Complaint. As a result, Encompass failed to
6 exercise reasonable care in selecting, hiring, retaining, contracting and/or renewing contracts
7 with Does 3-10.

8 77. Defendants' Failure To Exercise Due Care Caused Plaintiffs' Injuries. As a direct
9 and legal result of defendants' negligent selection, hiring, retention, contracting and contract
10 renewals, as described above, members of the class have suffered and continue to suffer
11 economic damages, in amounts to be proven at trial. Defendants' conduct as described in this
12 Complaint was malicious, fraudulent and/or oppressive, and done with a conscious disregard for
13 the rights of the plaintiff class and for the deleterious consequences of the defendants' actions.
14 Each defendant authorized, condoned and/or ratified the unlawful conduct of all the other
15 defendants named in this action and of their agents and employees. Consequently, the plaintiff
16 class is entitled to an award of punitive damages.

17
18 **SEVENTH CLAIM FOR RELIEF**

19 **FRAUD**

20 **[BY PLAINTIFF CLASS AGAINST ALL DEFENDANTS]**

21
22 78. Plaintiffs reallege and incorporate by reference the allegations contained in
23 paragraphs 1 through 77 as though fully set forth.

24 79. Defendants' Superior Knowledge Regarding Employment Status of Plaintiff Class.
25 As major supermarket chains, providers of janitorial services to such chains, and/or co-
26 conspirators, agents or employees of the other defendants, each of the defendants has had and
27 continues to have both the means of obtaining and actual possession of superior knowledge and
28 special information with regard to the facts relevant to a determination of each plaintiffs'

1 employment status. The superior knowledge and special information possessed by defendants
2 includes, but is not limited to, the history of the supermarket chains' employment of janitors in
3 their stores, the representations of defendant Encompass that it would provide trained
4 "employees" to clean the stores, the course of negotiations between and among defendants in
5 entering into contracts for janitorial services in the stores of defendant supermarket chains, the
6 nature of the contractual relationship between and among the defendants, the investigations and
7 findings of various governmental agencies concerning plaintiffs' employment status, the
8 employment status and/or identity of the employer of the on-site managers and/or the
9 "independent subcontractor recruiters" who provide pay, direction, and/or supervision to the
10 plaintiff janitors, the employment status and/or treatment of janitors in other stores owned by
11 defendant supermarket chains and/or at other stores where defendant Encompass has provided
12 janitorial services, and other facts relevant to a determination of each plaintiff janitor's
13 employment status. As a result of defendants' position to obtain superior knowledge and their
14 actual possession of such knowledge, each defendant has gained an unconscionable advantage
15 over members of the plaintiff class, who have been and/or continue to be ignorant of facts
16 relevant to their employment status and who have not been and/or are not in a position to become
17 informed about such facts.

18 80. Fraudulent Representations to Plaintiff Class. Despite their superior knowledge and
19 special information, defendants, and each of them, falsely represented to plaintiffs that they were
20 mere independent contractors who are not entitled to the legal protections and benefits available
21 to employees under Federal and State law. Such representations were made by defendants with
22 knowledge of their falsity, with the intent to induce members of the plaintiff class to rely on those
23 representations, and for the purpose of preventing plaintiffs from asserting their employment
24 rights in any legal forum available to them. Because of the defendants' position of superior
25 access to relevant knowledge and information about the employment status of the plaintiff class,
26 plaintiffs justifiably relied upon defendants' false representations to their detriment.

27 81. Damages to the Plaintiff Class. As a direct and proximate result of defendants'
28 conduct as alleged in this Complaint, each plaintiff has lost wages and other benefits in amounts

1 to be proven at trial. Further, the unlawful conduct of defendants, and each of them, as alleged in
2 this Complaint, was and continues to be malicious, fraudulent, despicable, and/or oppressive in
3 that defendants, and each of them, acted with full knowledge of the consequences to the plaintiff
4 class as alleged in this Complaint, with the intent to violate the statutory and other employment
5 rights of the plaintiff class, and/or with a willful, conscious, wanton, and reckless disregard for
6 the plaintiff's rights and for the deleterious consequences and cruel and unjust hardship resulting
7 to plaintiffs. Consequently, the plaintiff class is entitled to exemplary and punitive damages in
8 an amount to be proven at trial.

9
10 **EIGHTH CLAIM FOR RELIEF**

11 **UNFAIR BUSINESS PRACTICES**

12 **[BY ALL PLAINTIFFS AGAINST ALL DEFENDANTS]**

13 **[UNFAIR BUSINESS PRACTICES ALLEGATIONS]**

14
15 82. Plaintiffs reallege and incorporate by reference the allegations contained in
16 paragraphs 1 through 81 above.

17 83. This Is a Representative Private Attorney General Action and Class Action for Unfair
18 Business Practices. SEIU, on its own behalf and on behalf of the general public, and the Class
19 Representatives, on behalf of themselves, the plaintiff class and the general public, bring this
20 claim pursuant to Business & Professions Code § 17200, *et seq.* The conduct of all defendants as
21 alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to plaintiffs,
22 the general public, and the plaintiff class. Plaintiffs seek to enforce important rights affecting the
23 public interest within the meaning of Code of Civil Procedure § 1021.5.

24 84. Standing. Plaintiffs are "persons" within the meaning of Business & Professions
25 Code § 17204, and therefore have standing to bring this claim for injunctive relief, restitution,
26 and other appropriate equitable relief.

27 85. Statutory Authority. Business & Professions Code § 17200, *et seq.* prohibits
28 unlawful, unfair and fraudulent business practices.

1 86. Wage And Hour Laws Express Fundamental Public Policies. The prompt payment
2 of overtime pay and other legally required wages and benefits is a fundamental public policy of
3 this State. Section 2 of the FLSA, 29 U.S.C. § 202 sets forth the Congressional finding that “the
4 existence . . . of labor conditions detrimental to the maintenance of the minimum standard of
5 living necessary for health, efficiency, and general well-being of workers . . . constitutes an unfair
6 method of competition in commerce” and that the purpose of the FLSA is “to correct and as
7 rapidly as practicable to eliminate the[se] conditions.” Labor Code § 90.5(a) articulates the
8 public policies of this State to enforce minimum labor standards vigorously, to ensure that
9 employees are not required or permitted to work under substandard and unlawful conditions, and
10 to protect law-abiding employers and their employees from competitors who lower their costs by
11 failing to comply with minimum labor standards.

12 87. Defendants Have Violated Statutes And Public Policies. Through the conduct
13 alleged in this Complaint, defendants, and each of them, have acted contrary to these public
14 policies, have violated specific provisions of the FLSA and California Labor Code, and have
15 engaged in other unlawful and unfair business practices in violation of Business & Professions
16 Code §§ 17200, *et seq.*, depriving plaintiff janitors, all persons similarly situated, and all
17 interested persons of rights, benefits, and privileges guaranteed to all employees under law.

18 88. Business Practices Of Albertson’s, Ralph’s, Vons and Safeway. At all relevant
19 times, Albertson’s, Ralph’s, Vons and Safeway have committed unfair and unlawful business
20 practices within the meaning of Business & Professions Code § 17200, *et seq.* by engaging in
21 conduct which includes, but is not limited to the following:

- 22 (a) misclassifying janitors as independent contractors and non-employees;
- 23 (b) failing to pay janitors who work in their supermarkets the wages required by,
24 including but not limited to overtime compensation and paid break times, in
25 violation of FLSA §§ 6 and 7, Labor Code §§ 1194, 1197, and applicable IWC
26 wage orders, and other wages and benefits;
- 27 (c) failing to pay wages due on termination in violation of Labor Code § 201 and 203;
- 28 (d) paying a wage lower than required by state law in violation of Labor Code § 216,

1 which makes it a misdemeanor for any person, agent, manager, or superintendent
2 to wilfully refuse to pay wages due on demand, or falsely deny the amount or
3 validity thereof, or that the same is due, with intent to secure for himself, his
4 employer, or other person, any discount upon such indebtedness, or with intent to
5 annoy, harass, oppress, hinder, delay or defraud the person to whom such
6 indebtedness is due;

7 (e) failing to provide accurate wage statements at the time of payment, in violation of
8 Labor Code § 226;

9 (f) failing to ensure that Encompass paid janitors who work in their supermarkets the
10 wages required by law, including but not limited to minimum wage, overtime
11 compensation, and paid break times;

12 (g) failing to ensure that Encompass provided janitors who work in their
13 supermarkets with accurate itemized wage statements as required by Labor Code
14 § 226;

15 (h) failing to ensure that Encompass paid terminated janitors who work in their
16 supermarkets the wages owed to them;

17 (i) misrepresenting and concealing the employment status of members of the plaintiff
18 class; and

19 (j) knowingly contracting for maintenance services at prices too low to permit
20 compliance with minimum labor standards and thus depriving plaintiffs with the
21 wages, benefits and protections to which they were entitled by law.

22 89. Unfair Business Practices Of Encompass. Encompass has committed unfair and
23 unlawful business practices within the meaning of Business & Professions Code § 17200, *et seq.*
24 by engaging in conduct which includes, but is not limited to the following:

25 (a) misclassifying plaintiff janitors as independent contractors and non-employees;

26 (b) failing to pay members of the class the wages required by law, including but not
27 limited to overtime compensation, and paid break times in violation of FLSA §§ 6
28 and 7, Labor Code §§ 1194, 1197 and applicable IWC wage orders, and other

- 1 wages and benefits;
- 2 (c) failing to pay wages due on termination in violation of Labor Code § 201 and 203;
- 3 (d) paying a wage lower than required by state law in violation of Labor Code § 216,
- 4 which makes it a misdemeanor for any person, agent, manager, or superintendent
- 5 to wilfully refuse to pay wages due on demand, or falsely deny the amount or
- 6 validity thereof, or that the same is due, with intent to secure for himself, his
- 7 employer, or other person, any discount upon such indebtedness, or with intent to
- 8 annoy, harass, oppress, hinder, delay or defraud the person to whom such
- 9 indebtedness is due;
- 10 (e) failing to provide accurate wage statements at the time of payment, in violation of
- 11 Labor Code § 226;
- 12 (f) failing to pay terminated members of the class the wages owed to them;
- 13 (g) obtaining contracts by submitting low bids based on the practice of failing to pay
- 14 wages in accordance with the law;
- 15 (h) misrepresenting and concealing the employment status of members of the plaintiff
- 16 class; and
- 17 (i) knowingly contracting for maintenance services at prices too low to permit
- 18 compliance with minimum labor standards and thus depriving plaintiffs with the
- 19 wages, benefits and protections to which they were entitled by law.

20 90. Reservation Of Further Claims Of Violations. Plaintiffs reserve the right to identify

21 additional unfair and unlawful practices by defendants as further investigation and discovery

22 warrants.

23 91. Defendants' Illegal Profits At The Expense Of Members Of The Class. As a direct

24 result of the unfair, unlawful, unscrupulous, conspiratorial, and anti-competitive conduct alleged

25 in this Complaint, defendants, and each of them, have acted contrary to law and contrary to

26 public policy and have thus engaged in unlawful and unfair business practices in violation of

27 Business & Professions Code § 17200, *et seq.* Defendants have engaged in such conduct for

28 their own economic self-interest, to increase their profits and market shares. Through their unfair

1 business practices alleged herein, defendants have received and retained and continue to receive
2 and retain funds that rightfully belong to members of the class and have produced further profits
3 with those funds. As a result, defendants have been unjustly enriched and have achieved an
4 unfair competitive advantage over their legitimate business competitors at the expense of the
5 impoverished class members and the public at large. Plaintiffs SEIU and the plaintiff class are
6 entitled to and do seek all relief as may be necessary to restore to the members of the class all
7 money and property which defendants have acquired, or of which the class has been deprived, by
8 means of the defendants' unfair and unlawful business practices, and to disgorge the profits the
9 defendants have obtained through those practices.

10 92. Injunctive Relief Is Necessary. Injunctive relief pursuant to Business and
11 Professions Code § 17203 is necessary to prevent defendants from continuing to engage in unfair
12 business practices as alleged in this Complaint. Defendants, and each of them, and/or persons
13 acting in concert with them, have done, are now doing, and will continue to do or cause to be
14 done, the illegal acts alleged in this Complaint, unless restrained and enjoined by this Court.
15 Unless the relief prayed for below is granted, a multiplicity of actions will result. Plaintiffs have
16 no plain, speedy, or adequate remedy at law, for reasons which include but are not limited to the
17 following: (a) it is difficult to measure the amount of monetary damages that would compensate
18 plaintiffs for defendants' wrongful acts; and (b) in any event, pecuniary compensation alone
19 would not afford adequate and complete relief. The continuing violation of law, by defendants,
20 will cause great and irreparable damage to plaintiffs and others similarly situated unless
21 defendants are immediately restrained from committing further illegal acts.

22 93. Restitution and Disgorgement Are Necessary. Business and Professions Code
23 § 17203 provides that the Court may restore to an aggrieved party any money or property
24 acquired by means of unlawful and unfair business practices. Plaintiffs seek restitution of all
25 unpaid wages owing to the members of the class, according to proof, as well as disgorgement of
26 all profits which defendants have enjoyed as a result of their unfair business practices.

27 ///

28 ///

1 **NINTH CLAIM FOR RELIEF**

2 **UNFAIR AND UNLAWFUL BUSINESS PRACTICES**

3 **[BY ALL PLAINTIFFS AGAINST ALBERTSON'S, Ralph's, Vons and Safeway]**

4
5 94. Plaintiffs incorporate by reference paragraphs 1 through 93 above as though fully set
6 forth.

7 95. Liability Of Albertson's, Ralph's, Vons and Safeway for Systematic Violation of
8 Wage and Hour Laws. In addition to their liability under Business & Professions Code § 17200,
9 *et seq.* as set forth above, Albertson's, Ralph's, Vons and Safeway are independently liable under
10 the Business & Professions Code because they knowingly, deliberately, and unfairly developed
11 and maintained in effect a scheme of labor contracting that depends for its profitability and
12 competitive advantage upon the systematic underpayment of workers in violation of minimum
13 wage and overtime laws. The specific acts, omissions, and other conduct upon which this
14 independent liability for unfair business practices is predicated include the following:

15 (a) Defendants' Analysis of Labor Costs. Plaintiffs are informed and believe and on
16 that basis allege that Albertson's, Ralph's, Vons and Safeway have conducted cost
17 analyses, including time-motion and/or other studies of the physical movements
18 workers make in performing various tasks associated with supermarket
19 maintenance, in order to calculate the labor time necessary to complete each task,
20 to determine the price that would have to be paid per square foot, or per location,
21 sufficient to insure payment of minimum wage and overtime wages to the
22 workers.

23 (b) Defendants' Knowledge of Man-Hours. Albertson's, Ralph's, Vons and Safeway
24 know, or in the exercise of reasonable diligence should know, the precise number
25 of man-hours required to clean their stores. In addition to time-motion studies,
26 plaintiffs are informed and believe and thereon allege that Albertson's, Ralph's,
27 Vons and Safeway acquired such knowledge through, *inter alia*, recording and
28 compensating the time formerly spent by their own direct employees on tasks

1 identical to those now performed by the members of the class, performing
2 calculations according to industry standards which establish the labor time
3 required to clean their stores on a per square-foot or per location basis,
4 observation by on-site personnel, and other means.

5 (c) Defendants' Knowledge That Janitors Are Not Being Paid Lawful Wages.

6 Albertson's, Ralph's, Vons and Safeway thus know the man-hours required to
7 clean their stores, their staffing levels, the hours worked by janitors on their
8 premises, the total contract price they for janitors' labor, and the fact that the
9 contract price available to pay plaintiffs' wages is reduced by Encompass's profit
10 margin and any overhead expenses it incurs. Albertson's, Ralph's, Vons and
11 Safeway are presumed to know the law, including the overtime premiums
12 required for excess hours. At all relevant times herein they have been on inquiry
13 and/or actual notice that members of the class were and are routinely underpaid
14 for their labor.

15 (d) Defendants' Knowledge That Service Agreements Do Not Provide for Payment of

16 Lawful Wages. Based upon these analyses and/or knowledge, Albertson's,
17 Ralph's, Vons and Safeway know or should know that the labor provided through
18 the Service Agreements could not be performed at the prices being paid without
19 the routine underpayment of the plaintiff class.

20 (e) Defendants' Willful Contracting for Wage and Hour Violations. Albertson's,

21 Ralph's, Vons and Safeway have continued to do business with Encompass
22 despite their knowledge of its routine violations of the rights of the members of
23 the class to overtime wages and/or other wages and benefits required by law.

24 (f) Defendants Have Actual Notice That Janitors Were Not Paid Overtime Wages

25 and/or Other Wages and Benefits Required by Law. Albertson's, Ralph, and
26 Vons know or should know of the routine violations of wage and hour laws
27 perpetrated on the members of the plaintiff class by Encompass. Plaintiffs are
28 informed and believe and thereon allege that defendants have been notified of

1 such violations by representatives of the DLSE, EDD, DOL, the Los Angeles City
2 Attorneys' Office, and other concerned governmental agencies, as well as
3 representatives of organized labor. Defendants have also been made aware of the
4 ongoing violations through a recent front-page article in the Los Angeles *Times*.
5 Despite this knowledge, defendant supermarket chains have failed and/or refused,
6 and continue to fail and/or refuse, to investigate or remedy the wage, benefits
7 and/or overtime violations of Encompass, or to insist that Encompass comply with
8 the law.

9 (g) Defendants' Have Concealed Their Wage And Hour Violations. Albertson's,
10 Ralph's, Vons and Safeway have concealed and/or failed to report to appropriate
11 enforcement authorities evidence concerning violations of the FLSA Labor Code
12 committed by Encompass of which they are and were aware, including overtime
13 violations and secret payment of wages lower than required by law. These
14 violations are misdemeanors under Labor Code §§ 225 and 1199.

15 96. Defendants' Unjust Enrichment. As a direct result of the unfair, unlawful,
16 unscrupulous and anti-competitive conduct alleged in this Complaint, Albertson's, Ralph's, Vons
17 and Safeway, and each of them, have acted contrary to law and public policies and have thus
18 engaged in unlawful and unfair business practices in violation of Business & Professions Code §
19 17200, *et seq.* Albertson's, Ralph's, Vons and Safeway have engaged in this conduct for their
20 own economic self-interest, thereby increasing their profits and market shares. As a result,
21 Albertson's, Ralph's, Vons and Safeway have been unjustly enriched and have achieved an
22 unfair competitive advantage over their legitimate business competitors at the expense of the
23 impoverished members of the class and the public at large.

24 97. Defendants' Wrongful Retention Of Funds Belonging To Members Of The Class.
25 Albertson's, Ralph's, Vons and Safeway have received and retained and continue to receive and
26 retain funds that rightfully belong to members of the class. Plaintiffs SEIU and Class
27 Representatives are entitled to and do seek such relief as may be necessary to restore to the
28 members of the class all money and property which Albertson's, Ralph's, Vons and Safeway

1 have acquired, or of which the members of the class have been deprived, by means of
2 Albertson's, Ralph's, Vons and Safeway' unfair and unlawful business practices.

3 98. Injunctive Relief Is Necessary. Injunctive relief pursuant to Business and Professions
4 Code § 17203 is necessary to prevent Albertson's, Ralph's, Vons and Safeway from continuing
5 to engage in unfair business practices as alleged in this Complaint. Albertson's, Ralph's, Vons
6 and Safeway and each of them, and persons acting in concert with them, have done, are now
7 doing, and will continue to do or cause to be done, the illegal acts alleged in this Complaint
8 unless restrained and enjoined by this Court. Unless the relief prayed for below is granted, a
9 multiplicity of actions will result. Plaintiffs have no plain, speedy, or adequate remedy at law,
10 for a number of reasons which include but are not limited to the following: (a) it is difficult to
11 measure the amount of monetary damages that would compensate plaintiffs for defendants'
12 wrongful acts; and (b) in any event, pecuniary compensation alone would not afford adequate and
13 complete relief. The acts alleged in this Complaint will cause great and irreparable damage to
14 plaintiffs and others similarly-situated unless defendants are immediately restrained from
15 committing further illegal acts.

16 99. Disgorgement and Restitution Are Necessary. Business & Professions Code
17 § 17203 provides that the Court may restore to an aggrieved party any money or property
18 acquired by means of unlawful and unfair business practices. Plaintiffs seek disgorgement and
19 restitution of all profits resulting from Albertson's, Ralph's, Vons and Safeway' unlawful and
20 unfair business practices as alleged in this Complaint; and restitution of all unpaid wages owing
21 to the plaintiff class, according to proof.

22
23 **PRAYER FOR RELIEF**

24 WHEREFORE, plaintiffs respectfully pray that this Court award relief, on all causes of
25 action, as follows:

- 26 1. An order certifying this case as a class action;
27 2. Unpaid minimum wages and overtime premiums, according to proof;
28 3. Liquidated damages due to plaintiffs pursuant to FLSA § 216(b) and Labor Code

1 § 1194.2(a);

2 4. Statutory penalties, according to proof;

3 5. Preliminary and permanent injunctions prohibiting defendants from further
4 violating the California Labor Code and requiring the establishment of appropriate
5 and effective means to prevent future violations;

6 6. Preliminary and permanent injunctions pursuant to Business & Professions Code
7 § 17203, enjoining and restraining defendants from continuing the unlawful and
8 unfair business practices set forth above and requiring the establishment of
9 appropriate and effective means to prevent future violations;

10 7. Declaratory and/or injunctive relief placing the plaintiff class in the status of
11 employees of some or all of the defendants;

12 8. Restitution of wages and benefits due and disgorgement and restitution of all
13 profits acquired by means of any unfair business practice, according to proof;

14 9. Punitive damages in an amount to be proved at trial for all causes of actions in
15 which such damages are recoverable;

16 10. Interest accrued on damages and penalties pursuant to Civil Code § 3287;

17 11. Specific performance by Encompass and/or Does 1-10 of the duty to obey the
18 FLSA and Labor Code with respect to members of the class;

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

- 1 12. Reasonable attorneys' fees and costs;
2 13. Such other and further relief as the Court deems just and proper.
3

4 Dated: February 20, 2002

MEXICAN AMERICAN LEGAL
DEFENSE AND EDUCATIONAL FUND

HADSELL & STORMER, INC.

LAW OFFICE OF MARVIN KRAKOW

BAHAN & HEROLD

LAW OFFICE OF ROBERT D. NEWMAN

TRABER & VOORHEES

10
11 By 

DELLA BAHAN

Attorneys for Class Representatives
Juan Flores, Hipolito Soto, Oscar Avila, Guadalupe
Flores, Armando Jiménez, María Toña Orea, Isabel
Miranda, Ángel Rodríguez, and the Class

14
15 SERVICE EMPLOYEES INTERNATIONAL
UNION, AFL-CIO

16 By 

ANDREW STROM

Attorneys for Plaintiff Service Employees
International Union, AFL-CIO

17
18
19 **DEMAND FOR JURY TRIAL**

20 Plaintiffs hereby request a jury trial on all issues so triable.

21 Dated: February 20, 2002

22 BAHAN & HEROLD

23 By 

DELLA BAHAN

Attorneys for Class Representatives and the Class

24
25 SERVICE EMPLOYEES INTERNATIONAL
UNION, AFL-CIO

26 By 

ANDREW STROM

Attorneys for Plaintiff Service Employees
International Union, AFL-CIO
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 128 N. Fair Oaks Avenue, Pasadena, California 91103.

On February 21, 2002, I served the foregoing document described as FIRST AMENDED COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES; DEMAND FOR JURY TRIAL on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Marie D. DiSante
Dave Carothers
Kendra D. Cheves
Carlton, DiSante & Freudenberger LLP
2600 Michelson Drive
Suite 800
Irvine, CA 92612

Michael S. Kun
Michelle R. Walker
Jackson, Lewis, Schnitzler & Krupman
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Suite 2500
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Catherine A. Conway
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Remy Kessler
Thelen, Reid & Priest
333 S. Grand Ave., Suite 3400
Los Angeles, CA 90071

(By Mail)

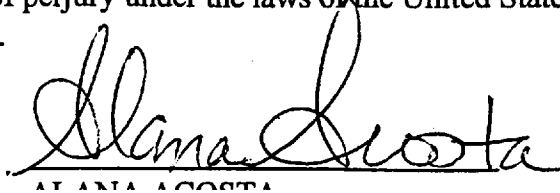
I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice I place all envelopes to be mailed in a location in my office specifically designated for mail. The mail then would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Pasadena, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on February 21, 2002.

(Personal Service)

I caused such envelope to be delivered by hand to the offices of the addressee. Executed on February 21, 2002.

(Federal Court) I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.


DIANA ACOSTA