

1 JOHN T. MULLAN (SBN: 221149)
 CHAYA M. MANDELBAUM (SBN: 239084)
 2 MICHELLE G. LEE (SBN: 266167)
 ERIN M. PULASKI (SBN: 270998)
 3 RUDY, EXELROD, ZIEFF & LOWE, L.L.P.
 351 California Street, Suite 700
 4 San Francisco, CA 94104
 Telephone: (415) 434-9800
 5 Facsimile: (415) 434-0513
 Email: jtm@rezlaw.com
 6 Email: cmm@rezlaw.com
 Email: mgl@rezlaw.com
 7 Email: emp@rezlaw.com

8 JAY T. JAMBECK (SBN: 226018)
 MANDY G. LEIGH (SBN: 225748)
 9 ELIZABETH PACHECO (SBN: 246258)
 LEIGH LAW GROUP
 10 870 Market Street, Suite 1157
 San Francisco, CA 94102
 11 Telephone: (415) 399-9155
 Facsimile: (415) 795-3733
 12 Email: jjambeck@leighlawgroup.com
 Email: mleigh@leighlawgroup.com
 13 Email: epacheco@leighlawgroup.com

14 Attorneys for Plaintiffs JOSEPH VIERRA
 and KEVIN WOODRUFF,
 15 and all others similarly situated

16 UNITED STATES DISTRICT COURT
 17 NORTHERN DISTRICT OF CALIFORNIA
 18 SAN FRANCISCO DIVISION

19 JOSEPH VIERRA and KEVIN WOODRUFF, Case No.
 20 on behalf of themselves and classes of those
 similarly situated,

21 Plaintiffs,

22 vs.

23 TIMEC COMPANY, INC. dba TRANSFIELD
 24 SERVICES, a corporation,
 25 Defendant.

CLASS ACTION COMPLAINT FOR:

1. Unpaid Minimum Wages (Cal. Lab. Code § 1194);
2. Unpaid Overtime Wages (Cal. Lab. Code § 510);
3. Itemized Wage Statement Violations (Cal. Lab. Code § 226);
4. Waiting Time Penalties (Cal. Lab. Code §§ 201, 202, 203);
5. Private Attorneys General Act Penalties (Cal. Lab. Code § 2699); and
6. Violation of California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*;

26 / JURY TRIAL REQUESTED

1 Plaintiffs JOSEPH VIERRA, and KEVIN WOODRUFF (“Named Plaintiffs”), by and
2 through their attorneys, on behalf of themselves and classes of those similarly situated, and the
3 general public, hereby complain against Defendant TIMEC COMPANY, INC. dba
4 TRANSFIELD SERVICES (hereinafter referred to as “Defendant” or “Timec”), a corporation
5 doing business in California, as follows:

6 **JURISDICTION AND VENUE**

7 1. This Court has original jurisdiction over the first through sixth claims for relief
8 under the Class Action Fairness Act, 28 U.S.C. § 1332(d), because those claims involve class
9 actions in which: (1) there are 100 or more members in each of the proposed classes; (2) at least
10 some members in each of the proposed classes have a different citizenship from Defendant; and
11 (3) the claims of the proposed class members in each of the proposed classes exceed \$5,000,000
12 in the aggregate. This Court also has diversity jurisdiction over this action under 28 U.S.C.
13 § 1332(a).

14 2. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C.
15 §§ 2201 and 2202.

16 3. The Northern District of California has personal jurisdiction over this matter
17 because Defendant is doing business here, in this District, and because many of the acts
18 complained of herein occurred in this District and gave rise to the claims alleged.

19 4. Venue is proper in the Northern District of California pursuant to 28 U.S.C.
20 § 1391(b) and (c) because Defendant may be found in this District and because a substantial part
21 of the events giving rise to the claims presented in this Complaint occurred in this District.

22 5. Pursuant to N.D. Cal. Local Rule 3-2(c) and (d), intra-district assignment to the
23 San Francisco Division is proper.

24 **SUMMARY OF CLAIMS**

25 6. Named Plaintiffs are current and former Timec employees who worked in
26 unskilled maintenance positions for Timec at various oil and gas refineries throughout California.

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1 were required by Timec to arrive at their assigned refinery early in the morning prior to their shift
2 start time, to “badge in,” to wait for and then take a bus or other transportation to the specific
3 location of the refinery site where they would be working that day, to get dressed into their safety
4 uniforms, including coveralls, hard-hats and safety gauges, and then to sign in to start getting
5 paid for the day.

6 16. During the time period that Vierra and Woodruff worked for Timec, Field
7 Employees, including Vierra and Woodruff, were not paid for the time they were required to be
8 present between badging in and signing in for the day, which on average amounted to between 30
9 minutes to one hour per day.

10 17. On information and belief, Timec’s employment practice of failing to pay Timec
11 Field Employees for the time between badging in and signing in applies uniformly at all of
12 Timec’s operations in California and nationwide.

13 **CALIFORNIA CLASS ACTION ALLEGATIONS**

14 18. Plaintiffs Vierra and Woodruff re-allege and incorporate by reference herein all
15 allegations previously made in Paragraphs 1 through 17, above.

16 19. The Plaintiffs bring the First, Second, Third, Fifth, and Sixth causes of action
17 under the California Labor Code and the UCL for Defendant’s violations of California’s wage
18 and hour laws on behalf of the following proposed class, the members of which have all been
19 damaged by Defendant’s above-described conduct, and who are referred to herein as the
20 “California Class:”

21 All persons who worked for Defendant at a refinery in California in
22 the four years prior to the filing of the initial Complaint, up through
23 the certification of this action, as Safety Attendants, Laborers or
24 General Helpers (the “California Class”).

25 20. Plaintiff Vierra brings the Fourth Cause of Action under California’s wage and
26 hour laws on behalf of the following proposed sub-class, the members of which have all been
27 damaged by Defendant’s above-described conduct, and who are referred to herein as the
28 “California Subclass:”:

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1 All members of the California Class who have separated from
2 employment with Timec within the statute of limitations period
3 applicable to claims under Section 203 of the California Labor
4 Code. (California Subclass).

5 21. The proposed California Class and Subclass are brought, and may properly be
6 maintained, as class actions under Fed. R. Civ. P. 23(a), (b)(2), and (b)(3) and/or as a
7 representative action pursuant to California Business & Professions Code Section 17200, which
8 must comply with the same class action certification requirements as Fed. R. Civ. P. 23(a), (b)(2),
9 and (b)(3). Pursuant to those requirements, the California Class and the California Subclass are
10 so numerous that joinder of all members is impracticable. Common questions of law and fact
11 exist as to all members of the California Class and Subclass that predominate over any questions
12 affecting individual members, including:

- 13 a. Whether Defendant violated California Labor Code §§ 510 & 1194 and the
14 California Business & Professions Code Section 17200 by failing to pay
15 regular wages and/or premium compensation to the California Class
16 members who worked in excess of forty (40) hours per week, and/or eight
17 (8) hours a day and/or twelve (12) hours per day;
- 18 b. Whether Defendant violated California Labor Code § 226 and the
19 California Business & Professions Code Section 17200 by failing to keep
20 accurate records of employees' hours worked, and by failing to provide
21 accurate semi-monthly itemized statements to California Class members of
22 total hours worked by each and all applicable hourly rates in effect during
23 the relevant pay period(s);
- 24 c. Whether Defendant violated California Labor Code §§ 201-203 by failing
25 to provide all wages earned and due at the time of termination to California
26 Subclass members; and
- 27 d. The proper measure of damages sustained by members of the California
28 Class and the California Subclass, and the restitution owed to them.

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1 Paragraphs 1 through 25 above as if fully set forth herein.

2 27. Throughout the Class Period, Section 1197 of the Labor Code has required
3 employers such as Defendant to pay minimum wages to their employees, such as Plaintiffs Vierra
4 and Woodruff and all California Class members, at or above the rate fixed by the Wage Order for
5 all hours worked. Between January 1, 2008 and July 1, 2014, the minimum wage in California
6 was \$8.00 per hour. As of July 1, 2014, the minimum wage in California has been \$9.00 per
7 hour.

8 28. As detailed above, Plaintiffs Vierra and Woodruff and all California Class
9 members have been required, suffered, or permitted to work hours, and have worked hours,
10 during the period covered by this action for which they have not been paid the required minimum
11 wage.

12 29. Plaintiffs allege that as a result of Defendant's policy and practice of not paying
13 for all time actually worked, and the other policies and practices alleged above, Defendant has
14 failed to pay Plaintiffs Vierra and Woodruff and all California Class members the applicable
15 minimum wage for all their hours worked each week.

16 30. Defendant's failure to pay the minimum wage to Plaintiffs Vierra and Woodruff
17 and all California Class members as required by law permits a civil action to recover the unpaid
18 balance of the minimum that they were required to be paid, as well as interest thereon, reasonable
19 attorney's fees, costs of suit, and liquidated damages, under California Labor Code sections
20 218.6, 1194, and 1194.2.

21 **SECOND CAUSE OF ACTION**

22 **(Failure To Pay Overtime Wages, Cal. Labor Code §§ 510, 1194)**

23 31. Plaintiffs Vierra and Woodruff, on behalf of themselves and all members of the
24 California Class, re-allege and incorporate by reference all allegations previously made in
25 Paragraphs 1 through 30 above as if fully set forth herein.

26 32. As detailed above, Defendant had a policy and practice of not paying Plaintiffs
27 Vierra and Woodruff and all California Class members for all overtime hours worked. Further,
28 during all time periods relevant to this Complaint, Defendant required Plaintiffs Vierra and

1 Woodruff and all California Class members to work in excess of eight (8) hours in a single day,
2 and/or in excess of twelve (12) hours in a single day, and/or in excess of forty (40) hours in a
3 single week.

4 33. Plaintiffs Vierra and Woodruff and all California Class members did in fact
5 routinely work in excess of eight (8) hours in a single day, and/or in excess of twelve (12) hours
6 in a single day, and/or in excess of forty (40) hours in a single week.

7 34. It is unlawful for an employer to fail to compensate non-exempt employees at a
8 rate of not less than the California statutory minimum wage rate for each hour worked up to forty
9 (40) hours in a work week or eight hours in a work day, or to engage, suffer, or permit an
10 employee to work in excess of eight (8) hours per workday, twelve (12) hours per workday, or
11 forty (40) hours per workweek without paying premium wages as required by California law.
12 Cal. Lab. Code §§ 510, 1194. California Labor Code § 1194 entitles an employee to recover in a
13 civil action the unpaid balance of minimum wages and overtime compensation, including
14 interest, attorney's fees, and costs.

15 35. As a direct and proximate result of Defendant's unlawful conduct, as set forth
16 herein, Plaintiffs Vierra and Woodruff and the members of the proposed California Class have
17 sustained damages in the form of unpaid overtime wages in an amount to be established at trial,
18 and are further entitled to pre-judgment interest, recovery of the costs of suit, and reasonable
19 attorney's fees.

20 **THIRD CAUSE OF ACTION**

21 **(Inaccurate Wage Statements, Cal. Labor Code §§ 226, 1174)**

22 36. Plaintiffs Vierra and Woodruff, on behalf of themselves and all members of the
23 California Class, re-allege and incorporate by reference all allegations previously made in
24 Paragraphs 1 through 35 above as if fully set forth herein.

25 37. Defendant knowingly and intentionally failed to provide timely, accurate itemized
26 wage statements to Plaintiffs Vierra and Woodruff and the California Class members in
27 accordance with California Labor Code Section 226. Such failure caused injury to Plaintiffs
28 Vierra and Woodruff and all California Class Members.

1 38. Defendant also knowingly and intentionally failed to maintain records of hours
2 worked by Plaintiffs Vierra and Woodruff and all California Class members in accordance with
3 California Labor Code Section 1174(d). Such failure caused injury to Plaintiffs Vierra and
4 Woodruff and all California Class members by, among other things, not being paid all wages due,
5 not knowing how many hours he or she worked, and being required to file this action to recover
6 their wages and determine the amount of hours worked and wages due.

7 39. Plaintiffs Vierra and Woodruff and all California Class members are entitled to,
8 and do hereby seek, injunctive relief requiring Defendant to comply with Labor Code Sections
9 226(a) and 1174(d); and the greater of all actual damages or fifty dollars (\$50.00) for the initial
10 pay period in which a violation occurs and one-hundred dollars (\$100.00) per employee for each
11 violation in each subsequent pay period, pursuant to Labor Code Section 226(e).

12 **FOURTH CAUSE OF ACTION**

13 **(Waiting Time Penalties, Cal. Labor Code §§ 201-203, Brought by Plaintiff Vierra, on**
14 **Behalf of Himself and a Subclass of the California Class)**

15 40. Plaintiff Vierra, on behalf of himself and a Subclass of the California Class, re-
16 alleges and incorporates by reference all allegations previously made in Paragraphs 1 through 39
17 above as if fully set forth herein.

18 41. Under California Labor Code § 201, if an employer discharges an employee, all
19 wages earned and unpaid at the time of the discharge are due and payable immediately. Under
20 California Labor Code § 202, if an employee quits, all wages are due and payable not later than
21 72 hours thereafter (or immediately at the time of quitting if the employee has given 72 hours
22 previous notice of the intention to quit).

23 42. Defendant willfully failed to pay, within the time constraints imposed by Labor
24 Code §§ 201 and 202, all overtime compensation due to the Plaintiff Vierra and California Class
25 members whose employment has terminated.

26 43. As a direct and proximate result of Defendant’s unlawful conduct, as set forth
27 herein, Plaintiff Vierra and the subclass comprised of terminated members of the California Class
28 have sustained damages, including loss of earnings, in an amount to be established at trial.

1 44. As penalties for these violations, Plaintiff Vierra and the subclass comprised of
2 terminated members of the California Class are entitled to and seek to recover up to thirty (30)
3 days of their wages at their regular rates, as provided by California Labor Code § 203.

4 **FIFTH CAUSE OF ACTION**

5 **(Private Attorneys General Act, Labor Code § 2699)**

6 45. Plaintiffs Vierra and Woodruff, on behalf of themselves and all members of the
7 California Class, re-allege and incorporate by reference all allegations previously made in
8 Paragraphs 1 through 44 above as if fully set forth herein.

9 46. Under the Private Attorneys General Act of 2006, Labor Code §§ 2698-2699.5, an
10 aggrieved employee, on behalf of himself or herself and other current or former employees, may
11 recover penalties under any provision of the Labor Code that provides for civil penalties. These
12 penalties are in addition to any other relief available under the Labor Code.

13 47. As set forth above, Defendant has committed numerous violations for which the
14 Labor Code provides for penalties, including violations of §§ 201, 202, 203, 226.7, 510, 1174,
15 1194 and 1194.2.

16 48. The Plaintiffs have provided written notice by certified mail to the Labor &
17 Workforce Development Agency (“LWDA”) and to Defendant of the legal claims and theories of
18 this case contemporaneous with the filing of this complaint. After receiving notification from the
19 LWDA that it does not intend to investigate the alleged violations, or after thirty-three days of the
20 postmark date of giving notice to the LWDA if no response has been received from the LWDA,
21 Plaintiffs will seek leave to amend this complaint to allege exhaustion of administrative remedies
22 as required by Labor Code Section 2699.3.

23 49. As a direct result of Defendant’s conduct as described, Plaintiffs are entitled to
24 recover, on their own behalf and on behalf of others similarly situated, the maximum civil
25 penalties permitted by the Private Attorneys General Act from Defendant for all violations of
26 Labor Code §§ 201, 202, 203, 226.7, 510, 1174, 1194 and 1194.2, as well as reasonable
27 attorney’s fees and costs.

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SIXTH CAUSE OF ACTION

(California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 et seq.)

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3 50. Plaintiffs Vierra and Woodruff, on behalf of themselves and all members of the
4 California Class, re-allege and incorporate by reference all allegations previously made in
5 Paragraphs 1 through 49 above as if fully set forth herein.

6 51. California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200,
7 *et seq.*, prohibits acts of unfair competition, which include, but are not limited to, any unlawful
8 business practice or act.

9 52. The policies, acts and practices described herein were and are an unlawful
10 business act or practice because Defendant’s failure to pay minimum wage and overtime, failure
11 to pay all wages due upon termination of employment, and failure to provide accurate wage
12 statements violate the California Labor Code, including, but not limited to, Sections 201, 202,
13 203, 226.7, 510, and 1194, applicable Wage Orders of the IWC, and other provisions of
14 California common and/or statutory law. These violations were and are willful. Each of these
15 violations constitutes an independent and separate violation of the UCL.

16 53. The unfair competition prohibited by Section 17200 also prohibits unfair business
17 practices or acts.

18 54. The policies, acts or practices described herein were, and are, unfair business acts
19 or practices because any justifications for Defendant’s unlawful and unfair conduct were, and are,
20 vastly outweighed by the harm such conduct caused to Plaintiffs Vierra and Woodruff and all
21 California Class members.

22 55. The unlawful and unfair business practices and acts of Timec, described above,
23 have injured Plaintiffs Vierra and Woodruff and the California Class members in that they were
24 wrongfully denied the payment of earned regular and overtime wages.

25 56. Plaintiffs Vierra and Woodruff, on behalf of themselves and all California Class
26 members, seek recovery of attorney’s fees and costs of this action to be paid by Timec, as
27 provided by California Labor Code § 1194 and California Code of Civil Procedure § 1021.5.

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1 57. Plaintiffs Vierra and Woodruff, on behalf of themselves and all California Class
2 members, seek restitution in the amount of the respective unpaid wages earned and due at a rate
3 of not less than one and one-half times the regular rate of pay for work performed in excess of
4 forty hours in a workweek, or eight hours in a day, and double the regular rate of pay for work
5 performed in excess of twelve hours per day.

6 **PRAYER FOR RELIEF AND DEMAND FOR JURY TRIAL**

7 WHEREFORE, Plaintiffs Vierra and Woodruff, on behalf of themselves and all members
8 of the California Class and Subclass, pray for judgment and the following specific relief against
9 Timec as follows:

- 10 1. Certification of this action as a class action on behalf of the proposed Class and
11 Subclass;
- 12 2. Designation of Plaintiffs Vierra and Woodruff as Representatives of the Class, and
13 designation of Plaintiff Vierra as Representative of the Subclass;
- 14 3. A declaratory judgment that the practices complained of herein are unlawful under
15 the California Labor Code and California Unfair Competition Law, Cal. Bus. & Prof. Code
16 §§ 17200 *et seq.*, and a declaration that:
 - 17 a. Defendant is found to have violated Cal. Labor Code § 201;
 - 18 b. Defendant is found to have violated Cal. Labor Code § 202;
 - 19 c. Defendant is found to have violated Cal. Labor Code § 203;
 - 20 d. Defendant is found to have violated Cal. Labor Code § 226.7;
 - 21 e. Defendant is found to have violated Cal. Labor Code § 510;
 - 22 f. Defendant is found to have violated Cal. Labor Code § 1174;
 - 23 g. Defendant is found to have violated Cal. Labor Code § 1194; and,
 - 24 h. Defendant is found to have violated applicable IWC Wage Orders.
- 25 4. An award of damages, according to proof, to be paid by Defendant;
- 26 5. Penalties and liquidated damages available under applicable law, including Cal.
27 Labor Code 203, 226.7, 1194.2 and 2699;

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JURY DEMAND

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2 Named Plaintiffs hereby demand a jury trial on all causes of action and claims with
3 respect to which they have a right to jury trial.

4 DATED: September 10, 2014

RUDY, EXELROD, ZIEFF & LOWE, LLP

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6 By: /s/ John T. Mullan

7 JOHN T. MULLAN
8 RUDY, EXELROD, ZIEFF & LOWE, LLP
9 351 California Street, Suite 700
10 San Francisco, CA 94104
11 Telephone: (415) 434-9800
12 Facsimile: (415) 434-0513

13 Jay T. Jambeck
14 Mandy G. Leigh
15 Elizabeth Pacheco
16 LEIGH LAW GROUP
17 870 Market Street, Suite 1157
18 San Francisco, CA 94102
19 Telephone: (415) 399-9155
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