

LAW OFFICES OF THOMAS W. FALVEY

Thomas W. Falvey (SBN 65744)

Michael H. Boyamian (SBN 256107)

Armand R. Kizirian (SBN 293992)

550 North Brand Boulevard, Suite 1500

Glendale, California 91203-1922

Telephone: 818.547.5200

Facsimile: 818.500.9307

E-mail(s): thomaswfalvey@gmail.com

mike.falveylaw@gmail.com

armand.falveylaw@gmail.com

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

NOV 3 2015

BY


JASMIN CASILLAS, DEPUTY

LAW OFFICES OF SASOON SARDARIAN

Sasoon Sardarian (SBN 235088)

George K. Jawlakian (SBN 296692)

140 South Lake Avenue, Suite 351

Pasadena, California 91101

Telephone: 626.421.6571

Facsimile: 626.421.6702

E-mail(s): SS@sardarianlaw.com

GJ@sardarianlaw.com

Attorneys for Plaintiff KIRKLAND OARD and
On Behalf Of All Others Similarly Situated

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

KIRKLAND OARD, on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

DAILY PRESS, LLC, a California
corporation; LOCAL MEDIA GROUP,
INC., a Delaware corporation; and
DOES 1 through 10, inclusive,

Defendants.

CASE NO. CIVDS1516106

CLASS ACTION COMPLAINT FOR:

1. FAILURE TO PAY MINIMUM WAGES FOR ALL HOURS WORKED
2. FAILURE TO PAY WAGES AT THE AGREED RATE
3. FAILURE TO PAY OVERTIME COMPENSATION
4. FAILURE TO PROVIDE AND PAY FOR MEAL PERIODS
5. FAILURE TO PROVIDE AND PAY FOR REST PERIODS
6. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
7. FAILURE TO REIMBURSE FOR REASONABLE BUSINESS EXPENSES
8. UNLAWFUL WITHHOLDING OF WAGES DUE
9. VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW

DEMAND FOR JURY TRIAL

BY FAX

1 Plaintiff KIRKLAND OARD, on behalf of himself and all others similarly situated, hereby
2 files this Complaint against Defendants DAILY PRESS, LLC., a California corporation, LOCAL
3 MEDIA GROUP, INC., a Delaware corporation, and DOES 1 through 10 (hereinafter collectively,
4 "Defendants" or "Daily Press"). Plaintiff is informed and believes and on the basis of that
5 information and belief alleges as follows:

6 INTRODUCTION

7 1. This matter is brought as a class action pursuant to California Code of Civil
8 Procedure § 382, on behalf of Plaintiff and all others similarly situated Newspaper Carrier
9 employees currently and formerly employed by Defendants to recover unpaid wages and penalties
10 for Defendants' violations of the California Labor Code and applicable California Wage Orders.
11 Newspaper Carriers, who perform substantial work in preparing, assembling, and distributing
12 Defendants' newspapers to its subscribers, are improperly and unlawfully categorized as
13 independent contractors when they, in economic reality, are employees (hereinafter referred to as
14 "Newspaper Carriers" or "Plaintiff Class Members"). Class-wide relief which results from this
15 improper categorization is set forth hereafter.

16 2. Defendants are estopped from asserting the statute of limitations as a defense because
17 the Newspaper Carriers were prevented from discovering the facts concerning Defendants'
18 violations of the California Labor Code and Wage Order, described above, because of the intentional
19 concealment of those facts by Defendants.

20 3. Plaintiff, on behalf of himself and the putative class, seeks relief for Defendants'
21 unlawful employment policies, practices and procedures, which have resulted in the failure of
22 Defendants to pay Plaintiff and members of the Plaintiff Class all wages due to them, including,
23 failing to pay minimum wages for all hours worked (Labor Code §§ 1182.12, 1194, 1194.2, 1197);
24 failing to pay in accordance with the designated wage scale (Labor Code §§ 221, 223.); breaching
25 the duty to provide off-duty meal periods (Labor Code §§ 226.7, 512, 516); failing to pay for
26 overtime hours worked (Labor Code §§ 204, 223, 510, 1194, 1198); failing to provide rest and meal
27 periods (Labor Code §§ 226.7, 512, 516); failing to timely furnish accurate, itemized wage
28 statements (Labor Code § 226.); failing to reimburse all expenses and losses incurred by them in

1 discharging their duties (Labor Code § 2802); unlawfully deducting from the wages earned and due
2 from Plaintiff and the Plaintiff Class (Labor Code § 221), and for violations of the California Unfair
3 Competition Law (Bus. & Prof. Code § 17200, *et seq.*).

4 4. In this action Plaintiff, on behalf of himself and the members of the Plaintiff Class
5 seeks general, liquidated, and punitive damages; injunctive relief, restitution, and other equitable
6 relief, and reasonable attorneys' fees and costs from Defendants.

7 5. The acts complained of herein have occurred, are presently occurring, and are
8 expected to continue occurring, within the time period from four (4) years preceding the filing of the
9 original Complaint herein, up to and through the time of trial for this matter (hereinafter, the
10 "Relevant Time Period").

11 PARTIES

12 ***Plaintiff Kirkland Oard***

13 6. Plaintiff Kirkland Oard is an individual over the age of eighteen (18) and is now
14 and/or at all relevant times mentioned in this Complaint was a resident and domiciliary of the State
15 of California. Throughout the Relevant Time Period, Mr. Oard has worked for Defendants as a
16 Newspaper Carrier out of Defendants' warehouse facility in Victorville, California.

17 ***Defendants Daily Press, LLC, and Local Media Group, Inc.***

18 7. Defendants are newspaper Defendants of general circulation operating primarily in
19 the county of San Bernardino area of Southern California. Upon information and belief, Daily Press,
20 LLC owns and operates The Daily Press in Victorville, California and the Desert Dispatch in
21 Barstow, California. During the Relevant Time Period, Defendants employed numerous individuals
22 to distribute copies of their newspaper and other products to Defendants' subscribers. Local Media
23 Group, Inc. is the entity appearing on documents resembling Plaintiff's supposed wage statements.

24 ***Defendants Does 1 through 10, Inclusive***

25 8. DOES 1 through 10 inclusive are now and/or at all times mentioned in this Complaint
26 were, licensed to do business and/or actually doing business in the State of California. Plaintiff does
27 not know the true names or capacities, whether individual, partner, or corporate, of DOES 1 through
28 10, inclusive and for that reason, DOES 1 through 10 are sued under such fictitious names pursuant

1 to California Code of Civil Procedure, section 474. Plaintiff will seek leave of court to amend this
2 Complaint to allege such names and capacities as soon as they are ascertained. DOES 1 through 5
3 are believed to be business entities who were also co-employers of the Plaintiff and the Plaintiff
4 Class herein.

5 ***All Defendants***

6 9. Plaintiff is informed and believes and based thereon alleges that at all times herein
7 mentioned, all Defendants, and each of them, were and are the agents, servants, employees, joint
8 venturers, and/or partners of each of the other Defendants, and were, at all such times, acting within
9 the course and scope of said employment and/or agency; furthermore, that each and every Defendant
10 herein, while acting as a high corporate officer, director and/or managing agent, principal and/or
11 employer, expressly directed, consented to, approved, affirmed and ratified each and every action
12 taken by the other co-Defendants, as herein alleged and was responsible in whole or in part for the
13 matters referred to herein.

14 10. Plaintiff is informed and believes and based thereon alleges that at all times herein
15 mentioned, all Defendants, and each of them, were and are the agents, servants, employees, joint
16 venturers, and/or partners of each of the other Defendants, and were, at all such times, acting within
17 the course and scope of said employment and/or agency; furthermore, that each and every Defendant
18 herein, while acting as a high corporate officer, director and/or managing agent, principal and/or
19 employer, expressly directed, consented to, approved, affirmed and ratified each and every action
20 taken by the other co-Defendants, as herein alleged and was responsible in whole or in part for the
21 matters referred to herein.

22 11. Plaintiff is informed and believes and based thereon alleges that at all times herein
23 mentioned, Defendants, and each of them, proximately caused Plaintiff, all others similarly situated
24 and the general public to be subjected to the unlawful practices, wrongs, complaints, injuries
25 and/or damages alleged in this Complaint.

26 12. Plaintiff is informed and believes and based thereon alleges that Defendants, and each
27 of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in
28 a joint venture, partnership and common enterprise, and were acting within the course and scope of,

1 and in pursuit of said joint venture, partnership and common enterprise and, as such were co-
2 employers of the Plaintiff and the Plaintiff Class herein.

3 13. Plaintiff is informed and believes and based thereon alleges that Defendants, and each
4 of them, at all times mentioned in this Complaint, concurred with, contributed to, approved of, aided
5 and abetted, condoned and/or otherwise ratified, the various acts and omissions of each and every
6 one of the other Defendants in proximately causing the injuries and/or damages alleged in this
7 Complaint.

8 JURISDICTION AND VENUE

9 14. The California Superior Court has jurisdiction in the matter because the claims
10 exceed the jurisdictional minimum of this court and Plaintiff and Defendants are both residents of
11 the State of California. Further, the issues herein are based on California Statutes and law including
12 the California Labor Code and the California Unfair Competition Law.

13 15. Venue is proper in the County of San Bernardino because Defendants transact
14 substantial business in this County, Plaintiff's claims arose in this County and because Defendants
15 maintain and operate a distribution warehouse location in Victorville, California in the County of
16 San Bernardino where Plaintiff and others similarly situated worked in performing services for
17 Defendants.

18 FACTUAL ALLEGATIONS

19 16. Defendants are a newspaper company of general circulation operating primarily in the
20 county of San Bernardino area of Southern California. Most customers of Defendants' business
21 receive home delivery of newspapers on a daily basis which are printed and distributed under the
22 auspices of the Daily Press doing business as the Desert Dispatch or The Daily Press.

23 17. Defendants organize the distribution of their newspapers that they write and publish
24 by maintaining common distribution facilities located in San Bernardino County and elsewhere.
25 Newspaper Carriers, including Mr. Oard, perform significant work on sites owned and controlled by
26 the Defendants, including but not limited to folding and providing inserts, sections, pre-prints,
27 samples, bags, and supplements as well as other products provided by Daily Press at warehouses and
28 common distribution facilities owned by Defendants. Newspaper Carriers, including Mr. Oard, are

1 then instructed by Defendants to deliver and distribute the Defendants' newspapers to their
2 subscribers.

3 18. Defendants exercise and have exercised complete control over the Newspaper
4 Carriers' performance of their duties. Defendants utilize a turn-by-turn guide to direct Newspaper
5 Carriers, including Mr. Oard, on exactly how and when to deliver newspapers. Defendants review,
6 supervise, and respond to complaints. Sometimes they do so by taking action against the carriers,
7 through a computer system that monitors the behavior, timing, and manner of delivery of
8 newspapers which may lead to illegal deductions from Newspaper Carriers' payment schedule.

9 19. Defendants commit further illegal deductions for customer complaints, for rubber
10 bands and bags required by Defendants as necessary for the performance of Newspaper Carriers'
11 duties, and for supposed "loss" of excess newspapers.

12 20. The Defendants also penalize Newspaper Carriers for customer complaints by
13 terminating employment relationships of Newspaper Carriers.

14 21. Defendants also collect monetary tips from customers intended for the delivery
15 service Newspaper Carriers provide, yet Defendants do not distribute it to Newspaper Carriers or
16 withhold a portion of the full amount.

17 22. Other than using their personal vehicles, there is a lack of investment in independent
18 equipment by the Newspaper Carriers, including that of Mr. Oard. A relatively low degree of skill is
19 required to perform duties. Newspaper Carriers, including Mr. Oard, perform an integral part of the
20 operation of Defendants' writing, printing, and distribution of newspapers.

21 23. The economic realities of Class Members' relationship with Defendants establishes
22 that Class Members, under conventional, legal, and economic tests, are now and have been
23 employees of Defendants and not independent contractors.

24 24. Because Newspaper Carriers are employees, not independent contractors, numerous
25 California Labor Code violations have occurred or are occurring on an ongoing basis, including
26 failure to provide overtime, meal breaks, rest breaks, proper payroll withholding treatment, and the
27 other protections of Labor Code § 2802 and Labor Code § 221, all of which they are entitled to as
28 valid, non-exempt employees under California law.

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

CLASS ALLEGATIONS

25. Plaintiff incorporates by reference the allegations set forth above.

26. Plaintiff brings this action as a class action California Code of Civil Procedure § 382 on behalf of himself and all others similarly situated. The class which Plaintiff seeks to represent is composed of and defines as follows:

a. Plaintiff Class: All of Defendants' California-based carriers who performed newspaper delivery services for Defendants and their subscribers during the Relevant Time Period.

27. Numerosity: Plaintiff is informed and believes and based thereon alleges that class is so numerous that the individual joinder of all members is impracticable. While the exact number and identification of class members are unknown to Plaintiff at this time and can only be ascertained through appropriate discovery directed to Defendants, Plaintiff is informed and believes that the class includes at least forty members.

28. Questions of Law and Fact Common to the Class: Plaintiff is informed and believes and based thereon alleges that common questions of law and fact exist as to all members of the class which predominate over any questions affecting only individual members of the class. These common legal and factual questions, which do not vary from class member to class member, and which may be determined without reference to the individual circumstances of any class member, include, but are not limited to, the following:

- a. Whether Defendants require each member of the Plaintiff Class to execute a pre-printed document captioned "Independent Contractor Distribution Agreement";
- b. Whether Defendants required, encouraged, suffered, or permitted Plaintiff and the members of the Plaintiff Class to perform a significant percentage of their duties at a warehouse prior to distribution, including handling Defendants-provided inserts, samples, sections, and other products provided by the Defendants;
- c. Whether Defendants train and instruct on how to deliver the newspapers including directions by a turn-by-turn guide. Presently this guide actually directs Newspaper Carriers on exactly how to execute their duties including driving directions;

- d. Whether Defendants review, supervise, punish complaints through a computer system or some other method or equipment that monitors the behavior and the time and manner of delivery of the newspapers;
- e. Whether Defendants deduct or withhold money from Newspaper Carriers for customer complaints, rubber bands, bags, and/or "loss" of excess newspapers;
- f. Whether Plaintiff and Newspaper Carriers do not enjoy any profit upside in connection with their duties and collectively have periodic deductions from their payment schedule;
- g. Whether the relationship between Newspaper Carriers, including Plaintiff, and the Defendants is relatively permanent with many members of the Plaintiff Class working between three to ten years;
- h. Whether the delivery of newspapers by a newspaper of general circulation is a critical and integral part of the business;
- i. Whether the monetary tips intended for Newspaper Carriers and provided by Defendants' customers to Defendants is actually and fully given to class members;
- j. Whether the degree of skill is relatively low;
- k. Whether or not Newspaper Carriers are properly categorized as independent contractors;
- l. Whether all benefits and protections of the California Labor Code apply to Plaintiff when properly characterized as a non-exempt employee;
- m. Whether each Newspaper Carrier is entitled to the remedial relief in the form of compensation for violations of the Labor Code as set forth hereinafter;
- n. Whether the Newspaper Carriers are entitled to damages, penalties, interest, and attorneys' fees and costs, as provided by the Labor Code and Wage 1-2001;
- o. Whether the Newspaper Carriers are entitled to injunctive relief to enjoin further violations of the Labor Code and Wage Order 1-2001.
- p. Whether Plaintiff and the members of the Plaintiff Class are entitled to overtime compensation;

1. q. Whether Defendants failed to pay overtime compensation to Plaintiff and the
2 members of the Plaintiff Class ;
- 3 r. Whether Plaintiff and the members of the Plaintiff Class are entitled to meal and rest
4 periods;
- 5 s. Whether Defendants had a policy and practice of failing to provide, and/or
6 compensate Plaintiff and the members of the Plaintiff Class for meal and rest breaks;
- 7 t. Whether Defendants' policy and practice of not providing, and/or compensating
8 Plaintiff and the members of the Plaintiff Class for meal and rest breaks violated
9 California wage and hour law;
- 10 u. Whether Defendants unlawfully and/or willfully failed to provide Plaintiff and the
11 members of the Plaintiff Class with true and proper wage statements upon payment
12 of wages, in violation of Labor Code section 226;
- 13 v. Whether Defendants' conduct as alleged herein violates the Unfair Business Practices
14 Act of California, Bus. & Prof. Code § 17200, *et seq.*

15 29. Typicality: Plaintiff is informed and believes and based thereon alleges that the
16 claims of the named Plaintiff are typical of the claims of the members of the Plaintiff Class. Plaintiff
17 and the members of the Plaintiff Class performed identical duties for Defendants and were mis-
18 classified as independent contractors rather than properly classified as employees. As such, Plaintiff
19 and all members of the Plaintiff Class sustained losses, injuries and damages arising from
20 Defendants' common policies, practices, procedures, protocols, routines, and rules which were
21 applied to other members of the Plaintiff Class as well as Plaintiff. Plaintiff seeks recovery for the
22 same type of losses, injuries, and damages as were suffered by other members of the Plaintiff Class.

23 30. Adequacy of Representation: Plaintiff is informed and believes and based thereon
24 alleges that Plaintiff is an adequate representative of the class because he is a member of the Plaintiff
25 Class and his interests do not conflict with the interests of the members he seeks to represent.
26 Plaintiff has retained competent counsel, experienced in the prosecution of complex class actions,
27 and together Plaintiff and his counsel intend to prosecute this action vigorously for the benefit of the
28 class. The interests of the class members will fairly and adequately be protected by Plaintiff and his

1 attorneys.

2 31. Superiority: Plaintiff is informed and believes and based thereon alleges that class
3 action is superior to other available methods for the fair and efficient adjudication of this litigation
4 since individual litigation of the claims of all class members is impracticable. It would be unduly
5 burdensome to the courts if these matters were to proceed on an individual basis, because this would
6 potentially result in hundreds of individual, repetitive lawsuits. Individual litigation presents the
7 potential for inconsistent or contradictory judgments, and the prospect of a "race to the courthouse,"
8 and an inequitable allocation of recovery among those with equally meritorious claims. By contrast,
9 the class action device presents far fewer management difficulties and provides the benefit of a
10 single adjudication, economics of scale, and comprehensive supervision by a single court.

11 32. The various claims asserted in this action are additionally or alternatively certifiable
12 under the provisions of the California Code of Civil Procedure Section 382 because:

- 13 a. The prosecution of separate actions by hundreds of individual class members would
14 create a risk of varying adjudications with respect to individual class members, thus
15 establishing incompatible standards of conduct for Defendants, and
16 b. The prosecution of separate actions by individual class members would also create
17 the risk of adjudications with respect to them that, as a practical matter, would be
18 dispositive of the interest of the other class members who are not a party to such
19 adjudications and would substantially impair or impede the ability of such non-party
20 class members to protect their interests.

21 **FIRST CAUSE OF ACTION**

22 **FAILURE TO PAY MINIMUM WAGES FOR ALL HOURS WORKED**

23 **(On Behalf of Plaintiff and the Plaintiff Class Against All Defendants)**

24 33. Plaintiff incorporates by reference the allegations set forth above.

25 34. Labor Code Section 1194 provides that an employee receiving less than the legal
26 minimum wage is entitled to recover in a civil action the unpaid balance of the full amount of this
27 minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and
28 costs of suit.

1 35. Pursuant to Labor Code Section 1197, payment of less than the minimum wage fixed
2 by the Labor Commission is unlawful.

3 36. Wage Order No. 1-2001 states, "(A) Every employer shall pay to each employee
4 wages not less than nine dollars (\$9.00) per hour for all hours worked, effective July 1, 2014, and not
5 less than ten dollars (\$10.00) per hour for all hours worked, effective January 1, 2016, except:
6 LEARNERS. Employees during their first 160 hours of employment in occupations, in which they
7 have no previous similar or related experience, may be paid not less than 85 percent of the minimum
8 wage rounded to the nearest nickel. (B) Every employer shall pay to each employee, on the
9 established payday for the period involved, not less than the applicable minimum wage for all hours
10 worked in the payroll period, whether the remuneration is measured by time, piece, commission, or
11 otherwise."

12 37. Pursuant to Labor Code Section 1198, it is unlawful to employ persons for longer
13 than the hours set by the Industrial Welfare Commission, or under conditions prohibited by the
14 applicable Wage Orders, including but not limited to, failing to keep records of and failing to
15 correctly report hours worked.

16 38. Labor Code Section 1174 requires that every person employing labor in this accurate
17 state shall keep (1) a record showing the names and addresses of all employees employed and the
18 ages of all minors; (2) at a central location in the state or at the plants or establishments at which
19 employees are employed, payroll records showing the hours worked daily by and the wages paid to,
20 and the number of piece-rate units earned by and any applicable piece rate paid to, employees
21 employed at the respective plants or establishments; (3) such records in accordance with rules
22 established for this purpose by the commission, but in any case, on file for not less than three years.
23 This statute also prevents an employer from prohibiting an employee from maintaining a personal
24 record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned. Defendants have
25 willfully failed to keep the records required by Section 1174.

26 39. Throughout the Relevant Time Period, Defendants' hourly compensation scheme
27 purported to compensate Plaintiff and the other members of the Plaintiff Class for all hours worked.
28 In reality, Defendants suffered or permitted Plaintiff and the other members of the Plaintiff Class to

1 work portions of their day without compensation, while subject to Defendants' control, which
2 resulted in the Plaintiff and the members of the Plaintiff Class earning less than the legal minimum
3 wage in the State of California.

4 40. At all times relevant hereto, Defendants have willfully failed to keep the records
5 required by Section 1174. By failing to maintain adequate time records as required by Labor Code
6 section 1174(d) and IWC Wage Order, number 9, section 7(A), Defendants have made it difficult to
7 calculate the minimum wage compensation due Plaintiff and the other members of the Plaintiff
8 Class.

9 41. Defendants owe Plaintiff, and the other members of the Plaintiff Class, minimum
10 wages and liquidated damages pursuant to Labor Code sections 1182.12, 1194, 1194.2 and 1197,
11 IWC Wage Order, number 9, section 4 due in amounts to be determined at trial during the three
12 (3) years prior to the filing of the initial Complaint in this action.

13 42. Plaintiff and the other members of the Plaintiff Class request payment of unpaid
14 minimum wages due in amounts to be determined at trial, interest, attorneys' fees and costs, against
15 Defendants in a sum as provided by the Labor Code and/or other statutes.

16 43. Plaintiff and the members of the Plaintiff Class also request relief as described below.

17 **SECOND CAUSE OF ACTION**

18 **FAILURE TO PAY WAGES AT THE AGREED RATE**

19 **(On Behalf of Plaintiff and the Plaintiff Class Against All Defendants)**

20 44. Plaintiff incorporates by reference the allegations set forth above.

21 45. Labor Code Section 223 provides, "Where any statute or contract requires an
22 employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage
23 while purporting to pay the wage designated by statute or contract."

24 46. Throughout the Relevant Time Period, Defendants' compensation scheme purported
25 to compensate Plaintiff and the other members of the Plaintiff Class for all hours worked. In reality,
26 Defendants suffered or permitted Plaintiff and the other members of the Plaintiff Class to work
27 portions of their day without compensation, while subject to Defendants' control, which resulted in
28 the Plaintiff and the members of the Plaintiff Class earning less than the designated rate.

1 47. Also throughout the Relevant Time Period, Defendants paid less than the agreed upon
2 compensation owed to Plaintiff and the other members of the putative class, while purporting to pay
3 the designated wage scale. As a result, Defendants' conduct violates Labor Code Section 223.

4 48. Defendants owed and still owe Plaintiff and the other members of the Plaintiff Class
5 wages at the designated rate pursuant to the Labor Code in amounts to be determined at trial for the
6 hours worked during the relevant time period.

7 49. Plaintiff and the other members of the Plaintiff Class request payment of unpaid
8 wages at the designated rate in amounts to be determined at trial, plus interest, attorneys' fees and
9 costs, against Defendants in a sum as provided by the Labor Code and/or other statutes.

10 50. Plaintiff and the members of the Plaintiff Class also request relief as described below.

11 **THIRD CAUSE OF ACTION**

12 **FAILURE TO PAY OVERTIME COMPENSATION**

13 **(On Behalf of Plaintiff and the Plaintiff Class Against All Defendants)**

14 51. Plaintiff incorporates by reference the allegations set forth above.

15 52. Labor Code Section 1194 provides that an employee receiving less than the legal
16 overtime compensation is entitled to recover in a civil action the unpaid balance of the full amount
17 of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's
18 fees, and costs of suit.

19 53. Labor Code Section 510(a) states: "Any work in excess of eight hours in one workday
20 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the
21 seventh day of work in any one workweek shall be compensated at the rate of no less than one and
22 one-half times the regular rate of pay for an employee." Labor Code Section 510(a) further states:
23 "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice
24 the regular rate of pay for an employee." Labor Code Section 510(a) further states: "[A]ny work in
25 excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less
26 than twice the regular rate of pay of an employee."

27 54. Throughout the Relevant Time Period, Wage Order No. 1-2001 provided for payment
28 of overtime wages equal to one and one-half (1-1/2) times an employee's regular rate of pay for all

1 hours worked over eight (8) hours per day and/or forty (40) hours in a workweek, and/or for
2 payment of overtime wages equal to double the employee's regular rate of pay for all hours worked
3 in excess of twelve (12) hours in any workday and/or for all hours worked in excess of eight (8)
4 hours on the seventh (7th) day of work in any one workweek.

5 55. Plaintiff and the members of the Plaintiff Class do not satisfy any of the exemptions
6 from the overtime requirements of the Labor Code, or the Wage Order.

7 56. Throughout the Relevant Time Period, Defendants failed to pay Plaintiff and
8 members of the Plaintiff Class overtime wages based upon all hours worked, based on Defendants'
9 uniform policies, practices and procedures.

10 57. Defendants' pattern, practice and uniform administration of corporate policy
11 regarding illegal employee compensation as described herein is unlawful and creates an entitlement,
12 pursuant to Labor Code Section 1194(a), to recovery by Plaintiff and members of the Plaintiff Class,
13 in a civil action, for the unpaid balance of the full amount of the straight time compensation and
14 overtime premiums owing, including interest thereon, reasonable attorneys' fees, and costs of suit.

15 58. Pursuant to Labor Code Section 1194(a) and California Civil Code Section 3287(b),
16 Plaintiff and the members of the Plaintiff Class seek recovery of pre-judgment interest on all
17 amounts recovered herein.

18 59. Pursuant to Labor Code Section 1194, Plaintiff and members of the Plaintiff Class
19 request that the Court award reasonable attorneys' fees and costs incurred by them in this action.

20 60. Plaintiff and the members of the Plaintiff Class also request relief as described below.

21 **FOURTH CAUSE OF ACTION**

22 **FAILURE TO PROVIDE AND PAY FOR MEAL PERIODS**

23 **(On Behalf of Plaintiff and the Plaintiff Class Against All Defendants)**

24 61. Plaintiff incorporates by reference the allegations set forth above.

25 62. Labor Code Section 226.7(a) provides that "No employer shall require any employee
26 to work during any meal or rest period mandated by an applicable order of the Industrial Welfare
27 Commission."

28 ////

1 63. Labor Code Section 512 provides that "An employer may not employ an employee
2 for a work period of more than five hours per day without providing the employee with a meal
3 period of not less than 30 minutes, except that if the total work period per day of the employee is no
4 more than six hours, the meal period may be waived by mutual consent of both the employer and
5 employee."

6 64. Labor Code Section 512 further provides that "An employer may not employ an
7 employee for a work period of more than 10 hours per day without providing the employee with a
8 second meal period of not less than 30 minutes, except that if the total hours worked is no more than
9 12 hours, the second meal period may be waived by mutual consent of the employer and the
10 employee only if the first meal period was not waived."

11 65. Labor Code Section 516 provides that the Industrial Welfare Commission may adopt
12 or amend working condition orders with respect to meal periods for any workers in California
13 consistent with the health and welfare of those workers.

14 66. Section 11(C) of Wage Order No. 1-2001 provides that "Unless the employee is
15 relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty"
16 meal period and counted as time worked. An "on duty" meal period shall be permitted only when
17 the nature of the work prevents an employee from being relieved of all duty and when by written
18 agreement between the parties an on-the-job paid meal period is agreed to."

19 67. Section 11(D) of Wage Order No. 1-2001 provides that "If an employer fails to
20 provide an employee a meal period in accordance with the applicable provisions of this order, the
21 employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation
22 for each workday that the meal period is not provided."

23 68. Throughout the Relevant Time Period Plaintiff and the members of the Plaintiff Class
24 consistently worked over five (5) hours per work period, and therefore, were entitled to a meal
25 period of not less than thirty (30) minutes prior to exceeding five (5) hours of employment.

26 69. Throughout the Relevant Time Period Plaintiff and the members of the Plaintiff Class
27 consistently worked over ten (10) hours per work period, and therefore, were entitled to a second
28 meal period of not less than thirty (30) minutes.

70. Throughout the Relevant Time Period Plaintiff and the members of the Plaintiff Class did not waive their meal periods, by mutual consent with Defendants or otherwise.

71. Throughout the Relevant Time Period Plaintiff and the members of the Plaintiff Class did not enter into any written agreement with Defendants agreeing to an on-the-job paid meal period.

72. The Defendants implemented a uniform policy and procedure in which Plaintiff and members of the Plaintiff Class were not provided required meal periods.

73. Defendants failed to comply with the required meal periods established by Labor Code Section 226.7, Labor Code Section 512, Labor Code Section 516 and the applicable Wage Order.

74. Pursuant to Section 11 of Wage Order No. 1-2001, and Labor Code Section 226.7(b) (which requires, in the event that “an employer fails to provide an employee a meal or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided”), Plaintiff and members of the Plaintiff Class are entitled to damages in an amount equal to one (1) hour of wages per missed meal period, in a sum to be proven at trial.

75. Pursuant to Labor Code Section 1194(a), Civil Code Section 3287(b), Plaintiff and members of the Plaintiff Class seek recovery of pre-judgment interest on all amounts recovered herein.

76. Pursuant to Labor Code Section 1194, the members of the Plaintiff Class request that the Court award reasonable attorneys' fees and costs incurred by them in this action.

77. Plaintiff and the members of the Plaintiff Class also request relief as described below.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE AND PAY FOR REST BREAKS

(On Behalf of Plaintiff and the Plaintiff Class Against All Defendants)

78. Plaintiff incorporates by reference the allegations set forth above.

///

///

1 79. Labor Code Section 226.7(a) provides that "No employer shall require any employee
2 to work during any meal or rest period mandated by an applicable order of the Industrial Welfare
3 Commission."

4 80. Labor Code Section 516 provides that the Industrial Welfare Commission may adopt
5 or amend working condition orders with respect to rest periods for any workers in California
6 consistent with the health and welfare of those workers.

7 81. IWC Wage Order, number 1-2001, section 12 required employers to authorize,
8 permit, and provide a ten (10) minute paid rest for each three and a half (3-1/2) hours of work,
9 during which employees are relieved of all duty.

10 82. At all times relevant hereto, Labor Code Section 226.7(b) and IWC Wage Order,
11 number 1-2001, section 12 required employers to pay one hour of additional pay at the regular rate
12 of compensation for each employee and each workday that a proper rest period is not provided.

13 83. Throughout the Relevant Time Period, Defendant implemented a uniform policy and
14 procedure in which Plaintiff and members of the Plaintiff Class were not provided required rest
15 periods.

16 84. As a result, throughout the Relevant Time Period, Defendants regularly:

- 17 a. Failed to provide paid rest periods of ten (10) minutes during which Plaintiff and
18 the members of the Plaintiff Class were relieved of all duty for each three-and-a-
19 half (3-1/2) hours of work;
20 b. Failed to compensate Plaintiff and the members of the Plaintiff Class for break time
21 when breaks were taken; and
22 c. Failed to pay Plaintiff and the members of the Plaintiff Class one (1) hour of pay at
23 their regular rate of compensation for each workday that a rest period was not
24 permitted.

25 85. Plaintiff and the members of the Plaintiff Class also request relief as described below.

26 ///
27 ///
28 ///
29 ///
30 ///
31 ///
32 ///
33 ///
34 ///
35 ///
36 ///
37 ///
38 ///
39 ///
40 ///
41 ///
42 ///
43 ///
44 ///
45 ///
46 ///
47 ///
48 ///
49 ///
50 ///
51 ///
52 ///
53 ///
54 ///
55 ///
56 ///
57 ///
58 ///
59 ///
60 ///
61 ///
62 ///
63 ///
64 ///
65 ///
66 ///
67 ///
68 ///
69 ///
70 ///
71 ///
72 ///
73 ///
74 ///
75 ///
76 ///
77 ///
78 ///
79 ///
80 ///
81 ///
82 ///
83 ///
84 ///
85 ///
86 ///
87 ///
88 ///
89 ///
90 ///
91 ///
92 ///
93 ///
94 ///
95 ///
96 ///
97 ///
98 ///
99 ///
100 ///
101 ///
102 ///
103 ///
104 ///
105 ///
106 ///
107 ///
108 ///
109 ///
110 ///
111 ///
112 ///
113 ///
114 ///
115 ///
116 ///
117 ///
118 ///
119 ///
120 ///
121 ///
122 ///
123 ///
124 ///
125 ///
126 ///
127 ///
128 ///
129 ///
130 ///
131 ///
132 ///
133 ///
134 ///
135 ///
136 ///
137 ///
138 ///
139 ///
140 ///
141 ///
142 ///
143 ///
144 ///
145 ///
146 ///
147 ///
148 ///
149 ///
150 ///
151 ///
152 ///
153 ///
154 ///
155 ///
156 ///
157 ///
158 ///
159 ///
160 ///
161 ///
162 ///
163 ///
164 ///
165 ///
166 ///
167 ///
168 ///
169 ///
170 ///
171 ///
172 ///
173 ///
174 ///
175 ///
176 ///
177 ///
178 ///
179 ///
180 ///
181 ///
182 ///
183 ///
184 ///
185 ///
186 ///
187 ///
188 ///
189 ///
190 ///
191 ///
192 ///
193 ///
194 ///
195 ///
196 ///
197 ///
198 ///
199 ///
200 ///
201 ///
202 ///
203 ///
204 ///
205 ///
206 ///
207 ///
208 ///
209 ///
210 ///
211 ///
212 ///
213 ///
214 ///
215 ///
216 ///
217 ///
218 ///
219 ///
220 ///
221 ///
222 ///
223 ///
224 ///
225 ///
226 ///
227 ///
228 ///
229 ///
230 ///
231 ///
232 ///
233 ///
234 ///
235 ///
236 ///
237 ///
238 ///
239 ///
240 ///
241 ///
242 ///
243 ///
244 ///
245 ///
246 ///
247 ///
248 ///
249 ///
250 ///
251 ///
252 ///
253 ///
254 ///
255 ///
256 ///
257 ///
258 ///
259 ///
260 ///
261 ///
262 ///
263 ///
264 ///
265 ///
266 ///
267 ///
268 ///
269 ///
270 ///
271 ///
272 ///
273 ///
274 ///
275 ///
276 ///
277 ///
278 ///
279 ///
280 ///
281 ///
282 ///
283 ///
284 ///
285 ///
286 ///
287 ///
288 ///
289 ///
290 ///
291 ///
292 ///
293 ///
294 ///
295 ///
296 ///
297 ///
298 ///
299 ///
300 ///
301 ///
302 ///
303 ///
304 ///
305 ///
306 ///
307 ///
308 ///
309 ///
310 ///
311 ///
312 ///
313 ///
314 ///
315 ///
316 ///
317 ///
318 ///
319 ///
320 ///
321 ///
322 ///
323 ///
324 ///
325 ///
326 ///
327 ///
328 ///
329 ///
330 ///
331 ///
332 ///
333 ///
334 ///
335 ///
336 ///
337 ///
338 ///
339 ///
340 ///
341 ///
342 ///
343 ///
344 ///
345 ///
346 ///
347 ///
348 ///
349 ///
350 ///
351 ///
352 ///
353 ///
354 ///
355 ///
356 ///
357 ///
358 ///
359 ///
360 ///
361 ///
362 ///
363 ///
364 ///
365 ///
366 ///
367 ///
368 ///
369 ///
370 ///
371 ///
372 ///
373 ///
374 ///
375 ///
376 ///
377 ///
378 ///
379 ///
380 ///
381 ///
382 ///
383 ///
384 ///
385 ///
386 ///
387 ///
388 ///
389 ///
390 ///
391 ///
392 ///
393 ///
394 ///
395 ///
396 ///
397 ///
398 ///
399 ///
400 ///
401 ///
402 ///
403 ///
404 ///
405 ///
406 ///
407 ///
408 ///
409 ///
410 ///
411 ///
412 ///
413 ///
414 ///
415 ///
416 ///
417 ///
418 ///
419 ///
420 ///
421 ///
422 ///
423 ///
424 ///
425 ///
426 ///
427 ///
428 ///
429 ///
430 ///
431 ///
432 ///
433 ///
434 ///
435 ///
436 ///
437 ///
438 ///
439 ///
440 ///
441 ///
442 ///
443 ///
444 ///
445 ///
446 ///
447 ///
448 ///
449 ///
450 ///
451 ///
452 ///
453 ///
454 ///
455 ///
456 ///
457 ///
458 ///
459 ///
460 ///
461 ///
462 ///
463 ///
464 ///
465 ///
466 ///
467 ///
468 ///
469 ///
470 ///
471 ///
472 ///
473 ///
474 ///
475 ///
476 ///
477 ///
478 ///
479 ///
480 ///
481 ///
482 ///
483 ///
484 ///
485 ///
486 ///
487 ///
488 ///
489 ///
490 ///
491 ///
492 ///
493 ///
494 ///
495 ///
496 ///
497 ///
498 ///
499 ///
500 ///
501 ///
502 ///
503 ///
504 ///
505 ///
506 ///
507 ///
508 ///
509 ///
510 ///
511 ///
512 ///
513 ///
514 ///
515 ///
516 ///
517 ///
518 ///
519 ///
520 ///
521 ///
522 ///
523 ///
524 ///
525 ///
526 ///
527 ///
528 ///
529 ///
530 ///
531 ///
532 ///
533 ///
534 ///
535 ///
536 ///
537 ///
538 ///
539 ///
540 ///
541 ///
542 ///
543 ///
544 ///
545 ///
546 ///
547 ///
548 ///
549 ///
550 ///
551 ///
552 ///
553 ///
554 ///
555 ///
556 ///
557 ///
558 ///
559 ///
560 ///
561 ///
562 ///
563 ///
564 ///
565 ///
566 ///
567 ///
568 ///
569 ///
570 ///
571 ///
572 ///
573 ///
574 ///
575 ///
576 ///
577 ///
578 ///
579 ///
580 ///
581 ///
582 ///
583 ///
584 ///
585 ///
586 ///
587 ///
588 ///
589 ///
590 ///
591 ///
592 ///
593 ///
594 ///
595 ///
596 ///
597 ///
598 ///
599 ///
600 ///
601 ///
602 ///
603 ///
604 ///
605 ///
606 ///
607 ///
608 ///
609 ///
610 ///
611 ///
612 ///
613 ///
614 ///
615 ///
616 ///
617 ///
618 ///
619 ///
620 ///
621 ///
622 ///
623 ///
624 ///
625 ///
626 ///
627 ///
628 ///
629 ///
630 ///
631 ///
632 ///
633 ///
634 ///
635 ///
636 ///
637 ///
638 ///
639 ///
640 ///
641 ///
642 ///
643 ///
644 ///
645 ///
646 ///
647 ///
648 ///
649 ///
650 ///
651 ///
652 ///
653 ///
654 ///
655 ///
656 ///
657 ///
658 ///
659 ///
660 ///
661 ///
662 ///
663 ///
664 ///
665 ///
666 ///
667 ///
668 ///
669 ///
670 ///
671 ///
672 ///
673 ///
674 ///
675 ///
676 ///
677 ///
678 ///
679 ///
680 ///
681 ///
682 ///
683 ///
684 ///
685 ///
686 ///
687 ///
688 ///
689 ///
690 ///
691 ///
692 ///
693 ///
694 ///
695 ///
696 ///
697 ///
698 ///
699 ///
700 ///
701 ///
702 ///
703 ///
704 ///
705 ///
706 ///
707 ///
708 ///
709 ///
710 ///
711 ///
712 ///
713 ///
714 ///
715 ///
716 ///
717 ///
718 ///
719 ///
720 ///
721 ///
722 ///
723 ///
724 ///
725 ///
726 ///
727 ///
728 ///
729 ///
730 ///
731 ///
732 ///
733 ///
734 ///
735 ///
736 ///
737 ///
738 ///
739 ///
740 ///
741 ///
742 ///
743 ///
744 ///
745 ///
746 ///
747 ///
748 ///
749 ///
750 ///
751 ///
752 ///
753 ///
754 ///
755 ///
756 ///
757 ///
758 ///
759 ///
760 ///
761 ///
762 ///
763 ///
764 ///
765 ///
766 ///
767 ///
768 ///
769 ///
770 ///
771 ///
772 ///
773 ///
774 ///
775 ///
776 ///
777 ///
778 ///
779 ///
780 ///
781 ///
782 ///
783 ///
784 ///
785 ///
786 ///
787 ///
788 ///
789 ///
790 ///
791 ///
792 ///
793 ///
794 ///
795 ///
796 ///
797 ///
798 ///
799 ///
800 ///
801 ///
802 ///
803 ///
804 ///
805 ///
806 ///
807 ///
808 ///
809 ///
810 ///
811 ///
812 ///
813 ///
814 ///
815 ///
816 ///
817 ///
818 ///
819 ///
820 ///
821 ///
822 ///
823 ///
824 ///
825 ///
826 ///
827 ///
828 ///
829 ///
830 ///
831 ///
832 ///
833 ///
834 ///
835 ///
836 ///
837 ///
838 ///
839 ///
840 ///
841 ///
842 ///
843 ///
844 ///
845 ///
846 ///
847 ///
848 ///
849 ///
850 ///
851 ///
852 ///
853 ///
854 ///
855 ///
856 ///
857 ///
858 ///
859 ///
860 ///
861 ///
862 ///
863 ///
864 ///
865 ///
866 ///
867 ///
868 ///
869 ///
870 ///
871 ///
872 ///
873 ///
874 ///
875 ///
876 ///
877 ///
878 ///
879 ///
880 ///
881 ///
882 ///
883 ///
884 ///
885 ///
886 ///
887 ///
888 ///
889 ///
890 ///
891 ///
892 ///
893 ///
894 ///
895 ///
896 ///
897 ///
898 ///
899 ///
900 ///
901 ///
902 ///
903 ///
904 ///
905 ///
906 ///
907 ///
908 ///
909 ///
910 ///
911 ///
912 ///
913 ///
914 ///
915 ///
916 ///
917 ///
918 ///
919 ///
920 ///
921 ///
922 ///
923 ///
924 ///
925 ///
926 ///
927 ///
928 ///
929 ///
930 ///
931 ///
932 ///
933 ///
934 ///
935 ///
936 ///
937 ///
938 ///
939 ///
940 ///
941 ///
942 ///
943 ///
944 ///
945 ///
946 ///
947 ///
948 ///
949 ///
950 ///
951 ///
952 ///
953 ///
954 ///
955 ///
956 ///
957 ///
958 ///
959 ///
960 ///
961 ///
962 ///
963 ///
964 ///
965 ///
966 ///
967 ///
968 ///
969 ///
970 ///
971 ///
972 ///
973 ///
974 ///
975 ///
976 ///
977 ///
978 ///
979 ///
980 ///
981 ///
982 ///
983 ///
984 ///
985 ///
986 ///
987 ///
988 ///
989 ///
990 ///
991 ///
992 ///
993 ///
994 ///
995 ///
996 ///
997 ///
998 ///
999 ///
1000 ///
1001 ///
1002 ///
1003 ///
1004 ///
1005 ///
1006 ///
1007 ///
1008 ///
1009 ///
1010 ///
1011 ///
1012 ///
1013 ///
1014 ///
1015 ///
1016 ///
1017 ///
1018 ///
1019 ///
1020 ///
1021 ///
1022 ///
1023 ///
1024 ///
1025 ///
1026 ///
1027 ///
1028 ///
1029 ///
1030 ///
1031 ///
1032 ///
1033 ///
1034 ///
1035 ///
1036 ///
1037 ///
1038 ///
1039 ///
1040 ///
1041 ///
1042 ///
1043 ///
1044 ///
1045 ///
1046 ///
1047 ///
1048 ///
1049 ///
1050 ///
1051 ///
1052 ///
1053 ///
1054 ///
1055 ///
1056 ///
1057 ///
1058 ///
1059 ///
1060 ///
1061 ///
1062 ///
1063 ///
1064 ///
1065 ///
1066 ///
1067 ///
1068 ///
1069 ///
1070 ///
1071 ///
1072 ///
1073 ///
1074 ///
1075 ///
1076 ///
1077 ///
1078 ///
1079 ///
1080 ///
1081 ///
1082 ///
1083 ///
1084 ///
1085 ///
1086 ///
1087 ///
1088 ///
1089 ///
1090 ///
1091 ///
1092 ///
1093 ///
1094 ///
1095 ///
1096 ///
1097 ///
1098 ///
1099 ///
1100 ///
1101 ///
1102 ///
1103 ///
1104 ///
1105 ///
1106 ///
1107 ///
1108 ///
1109 ///
1110 ///
1111 ///
1112 ///
1113 ///
1114 ///
1115 ///
1116 ///
1117 ///
1118 ///
1119 ///
1120 ///
1121 ///
1122 ///
1123 ///
1124 ///
1125 ///
1126 ///
1127 ///
1128 ///
1129 ///
1130 ///
1131 ///
1132 ///
1133 ///
1134 ///
1135 ///
1136 ///
1137 ///
1138 ///
1139 ///
1140 ///
1141 ///
1142 ///
1143 ///
1144 ///
1145 ///
1146 ///
1147 ///
1148 ///
1149 ///
1150 ///
1151 ///
1152 ///
1153 ///
1154 ///
1155 ///
1156 ///
1157 ///
1158 ///
1159 ///
1160 ///
1161 ///
1162 ///
1163 ///
1164 ///
1165 ///
1166 ///
1167 ///
1168 ///
1169 ///
1170 ///
1171 ///
1172 ///
1173 ///
1174 ///
1175 ///
1176 ///
1177 ///
1178 ///
1179 ///
1180 ///
1181 ///
1182 ///
1183 ///
1184 ///
1185 ///
1186 ///
1187 ///
1188 ///
1189 ///
1190 ///
1191 ///
1192 ///
1193 ///
1194 ///
1195 ///
1196 ///
1197 ///
1198 ///
1199 ///
1200 ///
1201 ///
1202 ///
1203 ///
1204 ///
1205 ///
1206 ///
1207 ///
1208 ///
1209 ///
1210 ///
1211 ///
1212 ///
1213 ///
1214 ///
1215 ///
1216 ///
1217 ///
1218 ///
1219 ///
1220 ///
1221 ///
1222 ///
1223 ///
1224 ///
1225 ///
1226 ///
1227 ///
1228 ///
1229 ///
1230 ///
1231 ///
1232 ///
1233 ///
1234 ///
1235 ///
1236 ///
1237 ///
1238 ///
1239 ///
1240 ///
1241 ///
1242 ///
1243 ///
1244 ///
1245 ///
1246 ///
1247 ///
1248 ///
1249 ///
1250 ///
1251 ///
1252 ///
1253 ///
1254 ///
1255 ///
1256 ///
1257 ///
1258 ///
1259 ///
1260 ///
1261 ///
1262 ///
1263 ///
1264 ///
1265 ///
1266 ///
1267 ///
1268 ///
1269 ///
1270 ///
1271 ///
1272 ///
1273 ///
1274 ///
1275 ///
1276 ///
1277 ///
1278 ///
1279 ///
1280 ///
1281 ///
1282 ///
1283 ///
1284 ///
1285 ///
1286 ///
1287 ///
1288 ///

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

(On Behalf of Plaintiff and the Plaintiff Class Against All Defendants)

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

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

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

18
19
20
21
22
23
24
25
26
27
28

23
24
25
26
27
28

- 25
26
27
28

1 91. Pursuant to Labor Code Section 226(g), Plaintiff and members of the Plaintiff Class
2 are entitled to an award of costs and reasonable attorneys' fees.

3 92. Plaintiff and the members of the Plaintiff Class also request relief as described below.

4 **SEVENTH CAUSE OF ACTION**

5 **FAILURE TO REIMBURSE FOR REASONABLE BUSINESS EXPENSES**

6 **(On Behalf of Plaintiff and the Plaintiff Class Against All Defendants)**

7 93. Plaintiff incorporates by reference the allegations set forth above.

8 94. California Labor Code Section 2802(a) provides in pertinent part:

9 An employer shall indemnify his or her employee for all
10 necessary expenditures or losses incurred by the employee in
11 direct consequence of the discharge of his or her duties, or of his
12 or her obedience to the directions of the employer, even though
13 unlawful, unless the employee, at the time of obeying the
14 directions, believed them to be unlawful.

15 Wage Order 1-2001, Section 8, provides that "No employer shall make any deduction
16 from the wage or require any reimbursement from an employee for any cash shortage, breakage,
17 or loss of equipment, unless it can be shown that the shortage, breakage, or loss is caused by a
18 dishonest or willful act, or by the gross negligence of the employee."

19 95. During the relevant Time Period Plaintiff and the Plaintiff Class incurred necessary
20 expenditures and losses in direct consequence of the discharge of their employment duties and their
21 obedience to the directions of Defendant, as follows:

22 (a) Plaintiff and Newspaper Carriers were required by Defendants to provide their
23 own vehicles in order to deliver Defendants' newspapers, and in connection with
24 provision of their own vehicles and the delivery of Defendants' newspapers,
25 Plaintiff and Class Members necessarily incurred expenditures for gasoline,
26 maintenance, and insurance. As well, they incurred losses associated with wear
27 and tear to their vehicles. On information and belief, none of these expenditures
28 or losses were reimbursed by Defendants to Plaintiff and Class Members.

1 (b) Defendants routinely made deductions from Plaintiff's and Plaintiff Class
2 Members' wages for each alleged complaint it received from its customers for,
3 among other things, poor service, damaged papers, wet papers, and allegedly
4 undelivered papers. Plaintiff, for example, was charged \$3.00 per complaint.
5 Even though most, if not all, of these complained-of damages and losses were
6 beyond the employee's control, or due to the simple negligence of the employee,
7 Defendants nevertheless wrongfully and willfully made deductions from the
8 Plaintiff's and Class Members' wages. Defendants made said deductions as part
9 of a wrongful attempt to make Plaintiff and members of the Plaintiff Class
10 insurers of the Defendants' merchandise, which purpose is prohibited by
11 California law. Said deductions were made by Defendants as part of a deliberate
12 subterfuge that was designed, constructed, implemented and administered to
13 circumvent the clear prohibitions of California case law and IWC Wage Order 1-
14 2001 (8 C.C.R. §11010).

15 (c) Defendants routinely required Plaintiff and members of the Plaintiff Class to pay
16 for rubber bands to tie the newspapers for delivery. Defendants also required
17 Plaintiff and members of the Plaintiff Class to purchase plastic bags used to hold
18 newspapers together and to protect the newspapers in inclement weather.
19 Defendants routinely made deductions for the rubber bands and plastic bags from
20 the wages of Plaintiff and Class Members in contravention of IWC Wage Order
21 No. 1-2001 §9(B) (8 C.C.R. §11010).

22 (d) Defendants routinely provided Plaintiff and members of the Plaintiff Class with
23 newspapers in excess of the number that was needed to complete their respective
24 delivery routes, and then Defendants routinely made deductions from the
25 Plaintiff's and members of the Plaintiff Class' wages for each and every extra
26 newspaper. These deductions were made even though the extra newspapers were
27 given to Plaintiff and Newspaper Carriers by Defendants as a result of its own
28 mistake. These deductions were made regardless of whether Plaintiff and

1 members of the Plaintiff Class returned the extra newspapers to Defendants.
2 Defendants made said deductions as part of a wrongful attempt to make Plaintiff
3 and Newspaper Carriers insurers of the Defendants' merchandise, which purpose
4 is prohibited by California law. Said deductions were made by Defendants as part
5 of a deliberate subterfuge that was designed, constructed, implemented and
6 administered to circumvent the clear prohibitions of California case law and IWC
7 Wage Order 1-2001 (8 C.C.R. §11010), which provides that no employer shall
8 make any deduction from the wages of an employee for any loss of or damage to
9 equipment, unless it can be shown that the loss or damage was caused by a
10 dishonest or willful act, or by the gross negligence, of the employee.

11 96. Plaintiff is informed and believes that pursuant to California Code §2802 and Wage
12 Order 1-2001, Section 8, Plaintiff and members of the Plaintiff Class are entitled to recover their
13 unreimbursed expenditures and losses, interest, and attorneys' fees and costs, in amounts to be
14 proven at the time of trial. Further, with regard to all deductions described herein, which are all
15 violative of IWC Wage Order 1-2001, Plaintiff and members of the Plaintiff Class are entitled to
16 recover penalties of \$100 for the initial violation and \$200 for each subsequent violation for every
17 pay period in which Defendants made said illegal deductions from the wages of Plaintiff and the
18 Plaintiff Class.

19 EIGHTH CAUSE OF ACTION

20 UNLAWFUL WITHHOLDING OF WAGES DUE

21 (On Behalf of Plaintiff and the Plaintiff Class Against All Defendants)

22 97. Plaintiff incorporates by reference the allegations set forth above.

23 98. The illegal deductions charged by Defendants against the wages of the Plaintiff and
24 Newspaper Carriers, as described in the Seventh Cause of Action, supra, constituted a device utilized
25 by Defendant to pay Plaintiff and members of Plaintiff Class less than their stated wages. Those
26 illegal deductions include: (1) deductions made for customer complaints about alleged damages not
27 caused by a dishonest or willful act or by the gross negligence of Plaintiff and Newspaper Carriers;
28 (2) deductions made for rubber bands and bags, among other things, required by the Defendants as

1 necessary to the performance of the Plaintiff's and Newspaper Carriers' duties; (3) deductions made
2 for the cost of workers compensation insurance; (4) failure by Defendants to direct all or some of the
3 earned tips Plaintiff and members of the Plaintiff Class receive from Defendants' subscribers; (5)
4 deductions made for "loss" of excess newspapers, which loss was not caused by a dishonest or
5 willful act or by the gross negligence of Plaintiff and members of the Plaintiff Class.

6 99. Said illegal deductions amounted to an unlawful withholding of wages due to Plaintiff
7 and Newspaper Carriers and constituted a violation of Labor Code § 221 by Defendants. As a
8 proximate result of the unlawful acts of Defendants, Plaintiff and members of the Plaintiff Class
9 have been damaged in an amount according to proof at the time of trial. Plaintiff and members of
10 the Plaintiff Class are entitled to recover penalties of \$100 for the initial violation and \$200 for each
11 subsequent violation for every pay period in which Defendants made said illegal withholdings from
12 the wages of Plaintiff and members of the Plaintiff Class. Under Labor Code §218.5, Plaintiff and
13 members from the Plaintiff Class are further entitled to recover their attorneys' fees and costs, in an
14 amount to be proven at the time of trial.

15 **NINTH CAUSE OF ACTION**

16 **VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW**

17 **(On Behalf of Plaintiff and the Plaintiff Class Against All Defendants)**

18 100. Plaintiff incorporates by reference the allegations set forth above.

19 101. Within the four years prior to the filing of the initial Complaint in this case,
20 Defendants, and each of them, committed acts of unfair competition as defined by California
21 Business and Professions Code section 17200, *et. seq.*, by engaging in the following unlawful, unfair
22 and fraudulent business acts and practices in the State of California, among others:

- 23 a. Misclassifying Newspaper Carriers as independent contractors and its unlawful
24 failure to pay minimum, regular and overtime wages;
- 25 b. Requiring, encouraging, suffering, and/or permitting Plaintiff and the members of the
26 Plaintiff Class to perform certain work-related duties without compensation equal to
27 at least the California minimum wage;
- 28 c. Requiring, encouraging, suffering, and/or permitting Plaintiff and the members of the

1 Plaintiff Class to perform certain work-related duties without compensation at the
2 designated rate;

- 3 d. Failing to pay Plaintiff and the members of the Plaintiff Class overtime
4 compensation to which they were entitled;
- 5 e. Failing to provide and/or compensate Plaintiff and the members of the Plaintiff Class
6 for meal and rest periods;
- 7 f. Unlawfully and/or willfully failing to provide Plaintiff and the members of the
8 Plaintiff Class with true and proper wage statements upon payment of wages, in
9 violation of Labor Code section 226;
- 10 g. Unlawfully and/or willfully deducting wages from Plaintiff and members of the
11 Plaintiff Class for alleged customer complaints, "loss" of excess newspapers, among
12 other things;
- 13 h. Failing to reimburse Plaintiff and the members of the Plaintiff Class for reasonably
14 incurred business expenses.

15 102. As a direct and proximate result of Defendants' unlawful, unfair, and/or fraudulent
16 acts and practices described herein, Defendants have received and continue to hold ill-gotten gains
17 belonging to Plaintiff and the other members of the Plaintiff Class. As a direct and proximate result
18 of Defendants' unlawful business practices, Plaintiff and the other members of the Plaintiff Class
19 have suffered economic injuries including, but not limited to, loss of wage compensation and
20 compensation for missed meal and rest periods.

21 103. Through Defendants' use of such unlawful, unfair, and/or fraudulent acts and
22 practices, Defendants have gained an unfair advantage over Defendants' competitors.

23 104. Plaintiff and the other members of the Plaintiff Class seek full restitution on account
24 of the economic injuries they have suffered, along with disgorgement of ill-gotten gains from
25 Defendants as necessary and according to proof, to restore any and all monies withheld, acquired
26 and/or converted by Defendants by means of the unlawful, unfair and fraudulent business practices
27 complained of herein.

28 ////

105. Plaintiff and the other members of the Plaintiff Class seek appointment of a receiver, as necessary, to oversee said restitution, including all wages earned and unpaid, including interest thereon.

106. Further, if Defendants are not enjoined from engaging of the unlawful, unfair and fraudulent conduct described above, Defendants will continue unabated in their conduct, which will result in continued irreparable injury to members of the public, including, but not limited to the other members of the Plaintiff Class who currently work for Defendants, and for which there is no adequate remedy at law. Thus, Plaintiff and the other members of the Plaintiff Class request that the Court issue a preliminary and permanent injunction prohibiting Defendants from engaging in the foregoing conduct.

107. Plaintiff and the members of the Plaintiff Class also request relief as described below.

PRAYER FOR RELIEF

Wherefore, Plaintiff, on behalf of himself and on behalf of the members of the Plaintiff Class, prays for judgment against Defendants as follows:

- a. For an order certifying the Plaintiff Class herein, appointing the named Plaintiff as the class representative of all others similarly situated and appointing counsel for the named Plaintiff as counsel for members of the class;
- b. An order awarding Plaintiff and the members of the Plaintiff Class all wages owed, all meal and rest break premiums owed, plus all penalties and compensatory damages in an amount according to proof with interest thereon;
- c. For reimbursement of work related expenses (Lab. Code § 2802);
- d. For economic and/or special damages, and/or liquidated damages in an amount according to proof with interest thereon;
- e. Civil penalties, according to proof;
- f. An order requiring imposition of a constructive trust and/or disgorgement of Defendants' ill-gotten gains to pay restitution to the Plaintiff and the members of the Plaintiff Class and to restore to the Plaintiff and the members of the Plaintiff Class all funds acquired by means of any act or practice declared by this Court to be

1 an unlawful, fraudulent or unfair business act or practice, a violation of laws,
2 statutes or regulations, or constituting unfair competition;

3 g. Pre-judgment and post-judgment interest;

4 h. For an award of attorneys' fees and costs incurred in the investigation, filing and
5 prosecution of this action pursuant to Code of Civil Procedure Section 1021.5,
6 Business and Profession Code Section 17200, *et seq.*, Labor Code section 1194,
7 and any other applicable provision of law;

8 i. The Plaintiff and Plaintiff Class reserve the right to any benefits to which they
9 may be entitled to under law and a finding of employment status without
10 reservation; and

11 j. Such other and further relief as the Court may deem necessary or appropriate.

12 DATED: November 2, 2015

LAW OFFICES OF THOMAS W. FALVEY
LAW OFFICES OF SASOON SARDARIAN

13
14 By: 

15 Michael H. Boyamian

16 Attorneys for Plaintiff and the Plaintiff Class

17 **DEMAND FOR JURY TRIAL**

18 Plaintiff demands a jury trial on all issues so triable.

19 DATED: November 2, 2015

LAW OFFICES OF THOMAS W. FALVEY
LAW OFFICES OF SASOON SARDARIAN

20
21 By: 

22 Michael H. Boyamian

23 Attorneys for Plaintiff and the Plaintiff Class
24
25
26
27
28