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CENTRAL DISTRICT OF CALIF.
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17
18 **UNITED STATES DISTRICT COURT**
19 **CENTRAL DISTRICT OF CALIFORNIA**

20 MASOUMEH HADJAVI, EDWARD
KAY, BUULINH CHAO, NARVELL
21 HARRIS, and JOHN HOANG, on
22 behalf of themselves, all others
similarly situated and the general
23 public,

24 Plaintiffs,

25 v.

26 CVS PHARMACY, INC.; CVS RX
SERVICES, INC.; and DOES 1 thru
27 50, inclusive,

28 Defendants.

CASE NO. CV 10-4886-SJO(RCx)

Judge: Hon. S. James Otero

**FIRST AMENDED CLASS
ACTION COMPLAINT FOR
DAMAGES AND INJUNCTIVE
RELIEF**

DEMAND FOR JURY TRIAL

1 **GENERAL ALLEGATIONS**

2 Plaintiffs Masoumeh Hadjavi (hereinafter “Hadjavi”), Edward Kay
3 (hereinafter “Kay”), Buulinh Chao (hereinafter “Chao”), Narvell Harris (hereinafter
4 “Harris”), and John Hoang (hereinafter “Hoang,” and collectively with Hadjavi,
5 Kay, Chao and Harris, “Plaintiffs”), file this Complaint for Damages for violations
6 of California’s wage and hour laws on behalf of themselves, all others similarly
7 situated and on behalf of the general public against Defendants CVS Pharmacy, Inc.
8 and CVS RX Services, Inc. (hereinafter, collectively “CVS”) and Does 1-50. In
9 addition, Plaintiffs Hadjavi and Kay file this Complaint for Damages for retaliation
10 in violation of the California Whistleblower Protection Act (hereinafter “LC
11 1102.5”) and Wrongful Termination in Violation of Public Policy against CVS and
12 Does 1-50, inclusive, and allege the following:

13 **INTRODUCTION**

14 1. This is a class action, under Rule 23 of the Federal Rules of Civil
15 Procedure, seeking damages for failure to pay a minimum wage, unpaid wages,
16 failure to pay overtime, failure to provide all required meal and rest breaks,
17 inaccurate itemized wage statements, and injunctive relief and restitution of all
18 benefits Defendants have enjoyed from their failure to pay all wages owed and
19 other violations of the California Labor code under Business and Professions Code
20 sections 17200, *et seq.* Plaintiffs seeks these damages and penalties on behalf of
21 themselves and all other persons who are or have been employed by Defendants
22 from four years prior to the filing of this complaint to the present, or from a
23 previous date of class certification for classes matching those named herein,
24 whichever is later.

25 2. Defendant CVS RX Services, Inc. is a New York corporation engaged
26 in the business of providing pharmacy services throughout the State of California.
27 Defendant CVS Pharmacy, Inc. is a Rhode Island corporation engaged in the same
28 business and is the parent corporation of Defendant CVS RX Services, Inc.,

1 exercising full control over Defendant CVS RX Services, Inc. The Defendants,
2 collectively, have absorbed multiple major drug stores present in California,
3 including Sav-On in 2006 and Longs in 2009.

4 3. The "Class Period" is designated as the time period beginning four
5 years prior to the filing of this Complaint through the trial date based upon the
6 allegation that the violations of California's wage and hour laws and Unfair
7 Competition Law, as described more fully below, have been ongoing since at least
8 four years prior to the date of this Complaint. During the Class Period, Defendants
9 engaged in an unlawful policy and/or practice of: (1) not paying overtime for
10 employees working more than eight hours in a single workday and/or forty hours in
11 a single work week; (2) failing to pay wages for all hours worked, regardless of
12 whether those wages were earned at an overtime or straight time rate; (3) failing to
13 provide all meal and rest breaks as required; (4) failing to provide accurate itemized
14 wage statements; and (5) failing to keep accurate payroll records as required by
15 law.

16 4. Defendants have treated all persons employed in California in such a
17 way as to violate California's laws governing prompt payment of wages owed.
18 Plaintiffs assert that Defendants have knowingly and with conscious disregard of
19 the law refused to pay the Class Members all wages owed for work performed and
20 due. Class Members are owed their back pay, plus interest and/or premiums and
21 penalties under the Labor Code and Business and Professions Code section 17203
22 to compensate Class Members for the delay in receiving wages due.

23 5. Defendants, by and through their actions, have engaged in unfair
24 competition requiring restitution to persons affected.

25 **JURISDICTION AND VENUE**

26 6. This Court has subject matter jurisdiction over Plaintiffs' claims
27 pursuant to 27 U.S.C. § 1332, as amended by the Class Action Fairness Act of
28 2005, because (a) one or more Defendants are not a citizen of the State of

1 California, but do conduct business in good standing within the State of California
2 on a regular basis; (b) Plaintiffs are citizens of California; (c) the proposed class
3 members number at least 100; and (d) the amount in controversy exceeds
4 \$5,000,000.00, exclusive of interest and costs.

5 7. This Court has personal jurisdiction over Defendants because
6 Defendants have caused injuries in the County of Los Angeles and State of
7 California through their acts, and by their violation of the California Labor Code,
8 California state common law, California Business & Professions Code sections
9 17200, *et seq.*

10 8. Venue is proper in this District pursuant to 28 U.S.C. § 1391 (b) in that
11 the unlawful actions challenged herein occurred in the Central District.

12 **THE PARTIES**

13 9. Plaintiff Hadjavi was an employee, employed as a “Pharmacist Team
14 Leader,” of Defendants for approximately 4 years, since the acquisition of Sav-On
15 Drug by CVS.

16 10. Plaintiff Kay was employed for approximately 8 months as a “Staff
17 Pharmacist”, approximately 2 months as a “Graduate Pharmacist Intern,” and
18 approximately 3 years as a “Pharmacist Intern.”

19 11. Plaintiff Chao was an employee Defendants, employed as a pharmacist
20 in Los Angeles County until approximately November of 2009.

21 12. Plaintiff Harris was an employee Defendants, employed as a
22 “Pharmacist Team Leader” in Los Angeles County until approximately October of
23 2009.

24 13. Plaintiff Hoang was an employee Defendants, employed as a
25 pharmacist in Los Angeles County until approximately October of 2009.

26 14. The true names and capacities, whether individual, corporate,
27 associate, or otherwise, of Defendants sued herein as Does 1 through 50, inclusive,
28 are currently unknown to Plaintiffs, who therefore sue Defendants by such fictitious

1 names under California Code of Civil Procedure section 474. Plaintiffs are
2 informed and believe, and based thereon allege, that each of the Defendants
3 designated herein as a Doe is legally responsible in some manner for the unlawful
4 acts referred to herein. Plaintiffs will seek leave of court to amend this Complaint
5 to reflect the true names and capacities of the Defendants designated hereinafter as
6 Does when such identities become known.

7 15. Plaintiffs are informed and believe, and based thereon allege, that each
8 Defendant acted in all respects pertinent to this action as the agent of the other
9 Defendants, carried out a joint scheme, business plan or policy in all respects
10 pertinent hereto, and the acts of each Defendant are legally attributable to the other
11 Defendants.

12 16. Plaintiffs are informed and believe, and thereon allege, that each and
13 all of the acts and omissions alleged herein were performed by, and/or attributable
14 to, all Defendants, each acting as agents and/or employees, and/or under the
15 direction and control of each of the other Defendants, and that said acts and failures
16 to act were within the course and scope of said agency, employment and/or
17 direction and control. Plaintiffs are informed and believe, and thereon allege, that
18 at all times material hereto Defendants were and are the agents of each other.

19 **FACTUAL ALLEGATIONS**

20 17. Plaintiff Hadjavi is a highly experienced pharmacist who worked for
21 Defendants as a "Pharmacist Team Leader" during their second entry into the
22 California market, after their acquisition of Sav-On Drug. Plaintiff Kay worked for
23 Defendants as both an intern and as a licensed staff pharmacist over the past 4
24 years.

25 18. All Plaintiffs were hired for their education and experience, and were
26 properly classified as non-exempt employees.

27 19. In or about December of 2009, Plaintiff Hadjavi filled a double
28 verified prescription for a controlled substance after verifying the correct amount of

1 medication with the patient's doctor. The patient demanded significantly more
2 pills, raising the suspicions of Plaintiff Hadjavi, who refused to fill the prescription
3 under her authority as a pharmacist and after direct consultation with the patient's
4 doctor. Plaintiff Hadjavi was pressured by her district manager to fill the
5 prescription, in violation of various state and federal laws, but refused. Plaintiff
6 Kay was then pressured, as a junior pharmacist, to fill the prescription, by the same
7 manager and refused, citing Plaintiff Hadjavi's previous verification of the
8 prescription. Plaintiff Kay was then suspended in retaliation for his refusal to break
9 the law and put his license at risk and remained so until Plaintiff Hadjavi protested
10 over his treatment.

11 20. After this incident, Plaintiffs Hadjavi and Kay were targeted for
12 retaliation by their district manager.

13 21. Knowing that Pharmacists and Pharmacist Interns regularly worked
14 "off the clock" without pay, the district manager instigated an investigation of
15 Plaintiffs Hadjavi and Kay in order to target them for firing.

16 22. When asked, Plaintiffs Hadjavi and Kay stated that they indeed
17 worked "off the clock" in order to complete all the tasks required of them by their
18 employer, and that this was a common practice throughout the store, district and
19 company. This was already known by the Defendants. Plaintiffs also rarely, if ever
20 took meal or rest breaks, as they were provided no relief at work. These conditions
21 are rampant throughout the pharmacies of the Defendants.

22 23. Plaintiffs and other Class Members should be classified as "non-
23 exempt" employees. They are not engaged primarily in exempt duties nor do they
24 perform work which requires the exercise of discretion and independent judgment
25 as contemplated by the Wage Orders. Plaintiffs and other Class Members should
26 not be classified as "independent contractors" exempt from the Wage Orders
27 because they typically did have the degree of independence and control over their
28 time and direction required of independent contractors. Plaintiffs and other Class

1 Members should not be classified as inside or outside salespersons exempt from
2 any part of the Wage Order because, typically, no wages come from commission.
3 Defendants concede this point by already paying and classifying all pharmacists
4 and pharmacist interns as “non-exempt.”

5 **CLASS ACTION ALLEGATIONS**

6 24. Plaintiffs bring this action on behalf of themselves individually and all
7 others similarly situated, as a class action pursuant to Rule 23 of the Federal Rules
8 of Civil Procedure, subparagraphs (a), (b)(2), and (b)(3). Plaintiffs seek to
9 represent three subclasses (hereinafter “PLAINTIFF CLASSES”). The subclass
10 that Plaintiffs Hadjavi and Harris seek to represent (Subclass One) is composed of
11 and defined as follows:

12 All persons who are employed or have been employed by
13 Defendants in the State of California as non-exempt
14 “Pharmacist Team Leader” or “Pharmacist-in-Charge,” as
15 defined by law, or any employee with the same job duties
16 during the Class Period.

17 The subclass that Plaintiff Kay seeks to represent individually (Subclass Two) is
18 composed of and defined as follows:

19 All persons who are employed or have been employed by
20 Defendants in the State of California as a non-exempt
21 “Pharmacist Intern” or “Graduate Pharmacist Intern” or
22 any employee with the same job duties during the Class
23 Period.

24 The subclass that all Plaintiffs seek to represent jointly (Subclass Three) is
25 composed of and defined as follows:

26 All persons who are employed or have been employed by
27 Defendants in the State of California as a non-exempt
28 “Staff Pharmacist” or any employee with the same job
duties during the Class Period.

29 25. The members of the class are so numerous that joinder of all members
30 would be unfeasible and not practicable. The membership of the entire class is
31 unknown to PLAINTIFFS at this time; however, it is estimated that the entire class
32 is greater than 100 individuals, but the identity of such membership is readily

1 ascertainable via inspection of the personnel records and other documents
2 maintained by DEFENDANTS.

3 26. There are common questions of law and fact as to the class which
4 predominate over questions affecting only individual members including, without,
5 limitation:

6 A. Whether Defendants violated Wage Order Number 7-2001,
7 section 5 and Labor Code section 1197 and 1194 by failing to
8 provide at least a minimum wage to members of the
9 PLAINTIFF CLASSES for all hours worked;

10 B. Whether Defendants violated Wage Order Number 7-2001,
11 section 3 and Labor Code sections 510 and 1194 by failing to
12 pay overtime compensation to members of the PLAINTIFF
13 CLASSES who worked and should have been entitled to such
14 compensation under California law;

15 C. Whether Defendants violated Wage Order Number 7-2001,
16 sections 11 and 12 and Labor Code sections 226.7 and 512 by
17 permitting, encouraging, and/or requiring members of the
18 PLAINTIFF CLASSES to work without meal breaks and by
19 requiring members of the PLAINTIFF CLASSES to work
20 without rest breaks for shifts in which either or both were
21 required under law;

22 D. Whether Defendants violated Labor Code section 226 by failing
23 to provide accurate itemized wage statements for all members of
24 the PLAINTIFF CLASSES;

25 E. Whether Defendants violated Labor Code section 226 by failing
26 to keep payroll records as required for a minimum of three
27 years;

28

1 F. Whether Defendants violated Business and Professions Code
2 sections 17200, *et seq.* by violating the labor laws and
3 regulations noted herein; and

4 G. The effect upon and the extent of damages suffered by the
5 PLAINTIFF CLASSES and the appropriate amount of
6 compensation.

7 27. The claims of PLAINTIFFS pled as class action claims are typical of
8 the claims of all members of the class as they arise out of the same course of
9 conduct and are predicated on the same violation(s) of the law. PLAINTIFFS, as
10 representative parties, will fairly and adequately protect the interests of the class by
11 vigorously pursuing this suit through their attorneys who are skilled and
12 experienced in handling matters of this type.

13 28. The nature of this action and the nature of the laws available to the
14 PLAINTIFF CLASSES make use of the class action format a particularly efficient
15 and appropriate procedure to afford relief to the PLAINTIFF CLASSES. Further,
16 this case involves a corporate employer and a large number of individual employees
17 possessing claims with common issues of law and fact. If each employee were
18 required to file an individual lawsuit, the corporate defendants would necessarily
19 gain an unconscionable advantage since they would be able to exploit and
20 overwhelm the limited resources of each individual plaintiff with their vastly
21 superior financial and legal resources. Requiring each class member to pursue an
22 individual remedy would also discourage the assertion of lawful claims by
23 employees who would be disinclined to pursue an action against their present
24 and/or former employer for an appreciable and justifiable fear of retaliation and
25 permanent damage to their careers at present and/or subsequent employment. Proof
26 of a common business practice or factual pattern, which the named plaintiffs
27 experienced, is representative of the classes mentioned herein and will establish the
28 right of each of the members of the classes to recovery on the claims alleged herein.

1 29. The prosecution of separate actions by the individual class members,
2 even if possible, would create: (a) a substantial risk of inconvenient or varying
3 verdicts or adjudications with respect to the individual class members against the
4 defendants herein; and/or (b) legal determinations with respect to individual class
5 members which would, as a practical matter, be dispositive of the other class
6 members not parties to the adjudications or which would substantially impair or
7 impede the ability of class members to protect their interests. Further, the claims of
8 the individual members of the class are not sufficiently large to warrant vigorous
9 individual prosecution considering all of the concomitant costs and expenses
10 attending thereto. PLAINTIFFS are also unaware of any difficulties that are likely
11 to be encountered in the management of this action that would preclude its
12 maintenance as a class action.

13 **COUNT ONE**

14 **Violation of the California Whistleblower Protection Act**

15 **Labor Code Section 1102.5(b) & (c)**

16 **(Plaintiffs Hadjavi and Kay, individually v. Defendants)**

17 30. As a separate and distinct cause of action, Plaintiffs Hadjavi and Kay
18 complain and reallege all the allegations contained in this Complaint, and
19 incorporate them by reference into this cause of action as though fully set forth
20 herein, excepting those allegations which are inconsistent with this cause of action.
21 Plaintiffs Hadjavi and Kay bring this cause of action individually against all
22 Defendants.

23 31. At all times applicable to this complaint, Defendants were engaged in
24 business in the State of California and subject to the laws thereof.

25 32. Plaintiffs Hadjavi and Kay suffered adverse employment actions, up to
26 and including termination by Defendants for engaging in activity protected by the
27 California Whistleblower Protection Act. More specifically, Plaintiffs Hadjavi and
28 Kay were terminated from their employment for refusing to violate the law by

1 dispensing a prescription in excess of what was prescribed by a licensed physician
2 and for reporting and protesting the illegal wage and hour practices and working
3 conditions of Defendants.

4 33. As a proximate result of Defendants' willful, knowing, and intentional
5 violation(s) of Labor Code Section 1102.5(b) and (c), Plaintiffs Hadjavi and Kay
6 have sustained and continue to sustain substantial losses in earnings and other
7 employment benefits.

8 34. As a proximate result of Defendants' willful, knowing, and intentional
9 violation(s) of Labor Code Section 1102.5, Plaintiffs Hadjavi and Kay have
10 suffered and continue to suffer humiliation, emotional distress, and mental and
11 physical pain and anguish, all to their damage in a sum according to proof.

12 35. Plaintiffs Hadjavi and Kay are informed and believe and thereon allege
13 that the aforesaid acts directed toward them were carried out with a conscious
14 disregard of their right to be free from such illegal behavior, such as to constitute
15 oppression, fraud, or malice pursuant to California Civil Code section 3294
16 entitling Plaintiffs Hadjavi and Kay to punitive damages in an amount appropriate
17 to punish and set an example of Defendants.

18 36. Plaintiffs Hadjavi and Kay have incurred and continue to incur legal
19 expenses and attorney fees. Plaintiffs are presently unaware of the precise amount
20 of these expenses and fees and pray leave of court to amend this complaint when
21 the amounts are more fully known.

22 37. WHEREFORE, Plaintiffs request relief as hereafter provided.

23 **COUNT TWO**

24 **Wrongful Termination in Violation of Public Policy**
25 **(Plaintiffs Hadjavi and Kay, individually v. Defendants)**

26 38. As a separate and distinct cause of action, Plaintiffs Hadjavi and Kay
27 complain and reallege all the allegations contained in this Complaint, and
28 incorporate them by reference into this cause of action as though fully set forth

1 herein, excepting those allegations which are inconsistent with this cause of action.
2 Plaintiffs bring this cause of action against all Defendants.

3 39. At all times mentioned in this Complaint, Labor Code section 1102.5
4 was in effect. This provision requires Defendant to refrain from termination of any
5 employee because of reports of illegal working conditions, including violation of
6 California’s wage and hour laws, as well as refusal to break state and federal drug
7 control laws.

8 40. Defendants violated the public policy of the State of California by
9 wrongfully terminating Plaintiffs Hadjavi and Kay in violation of, among other
10 things, Labor Code Section 1102.5(b), when they terminated Plaintiffs.

11 41. As a proximate result of Defendants’ willful, knowing, and intentional
12 actions against Plaintiffs, Plaintiffs Hadjavi and Kay have sustained and continue to
13 sustain substantial losses in earnings and other employment benefits.

14 42. As a proximate result of Defendants’ willful, knowing, and intentional
15 actions against Plaintiffs, Plaintiffs Hadjavi and Kay have suffered and continue to
16 suffer humiliation, emotional distress, and mental and physical pain and anguish, all
17 to their damage in a sum according to proof.

18 43. Plaintiffs Hadjavi and Kay have incurred and continue to incur legal
19 expenses and attorney fees. Plaintiffs are presently unaware of the precise amount
20 of these expenses and fees and pray leave of court to amend this complaint when
21 the amounts are more fully known.

22 44. WHEREFORE, Plaintiffs request relief as hereafter provided.

23 **COUNT THREE**

24 **Failure to Pay at Least a Minimum Wage and Related Penalties**

25 **Labor Code Sections 1194 & 1197**

26 **(All Plaintiffs, individually and on behalf of Subclasses 1-3 v. Defendants)**

27 45. As a separate and distinct cause of action, Plaintiffs complain and
28 reallege all the allegations contained in this Complaint, and incorporate them by

1 reference into this cause of action as though fully set forth herein, excepting those
2 allegations which are inconsistent with this cause of action. This cause of action is
3 brought against all Defendants.

4 46. Plaintiffs bring this action to recover unpaid wages, individually and
5 on behalf of others similarly situated.

6 47. The Defendants' conduct described in this Complaint violates, among
7 other things, I.W.C. Wage Order 7-2001 section 4 and Labor Code section 1197 in
8 failing to provide at least a minimum wage for all hours worked.

9 48. Defendants failed to pay Plaintiffs and Class Members wages for work
10 each performed in direct violation of I.W.C. Wage Order 7-2001 section 4 and
11 Labor Code section 1197. As of this date, Plaintiffs and Class Members are still
12 owed wages for which they have not been paid. Defendants knew or should have
13 known that Plaintiffs deserved to be paid at least a minimum wage for all work
14 performed. Defendants, however, have created a policy and/or practice of refusing
15 to honor their obligations and pay Plaintiffs and Class Members for all time
16 worked.

17 49. Labor Code section 1194 provides for a private right of action to
18 recover wages when not paid at least a minimum wage. Plaintiffs, on behalf of
19 themselves and the Subclasses state this Cause of Action pursuant to this provision.
20 Therefore, Plaintiffs and Class Members are entitled to recover the unpaid balance
21 of all wages Defendants owe Plaintiffs and Class Members, plus interest on that
22 amount, and reasonable attorney fees and costs of this suit pursuant to Labor Code
23 section 1194. Plaintiffs and Class Members are also entitled to penalties and/or
24 liquidated damages pursuant to statute.

25 50. WHEREFORE, Plaintiffs request relief as hereafter provided.

26 **COUNT FOUR**

27 **Unpaid Overtime Wages and Related Penalties**

28 **Labor Code Sections 510, 1194, 1198**

1 **(All Plaintiffs, individually and on behalf of Subclasses 1-3 v. Defendants)**

2 51. As a separate and distinct cause of action, Plaintiffs complain and
3 reallege all the allegations contained in this Complaint, and incorporate them by
4 reference into this cause of action as though fully set forth herein, excepting those
5 allegations which are inconsistent with this cause of action. This cause of action is
6 brought against all Defendants.

7 52. Plaintiff brings this action to recover, on behalf of themselves and
8 others similarly situated, unpaid overtime compensation.

9 53. The Defendants' conduct described in this Complaint violates, among
10 other things, Labor Code section 510 and also the provisions of Labor Code section
11 1198 which provides that it is unlawful to employ persons for hours longer than
12 those set by the California Wage Orders without premium overtime pay.

13 54. Defendants failed to pay Plaintiffs premium overtime pay despite
14 Plaintiffs earning such overtime wages. Defendants knew or should have known
15 that Plaintiffs deserved overtime premium pay instead of straight time pay as
16 Plaintiffs did not meet any of the tests for being an independent contractor or an
17 exempt employee.

18 55. Labor Code section 510, which applies to Plaintiffs' employment by
19 Defendants, provides that employees employed for more than 8 hours in a workday
20 and/or 40 hours in a workweek, are entitled to premium overtime pay for such
21 hours. Defendants have failed to pay Plaintiffs and all other Class Members
22 premium overtime pay as required. Therefore, Plaintiffs and all other Class
23 Members are entitled to recover the unpaid balance of overtime compensation
24 Defendants owe Plaintiffs and all other Class Members, plus interest on that
25 amount, and reasonable attorney fees and costs of this suit pursuant to Labor Code
26 section 1194. Plaintiffs and all other Class Members are also entitled to penalties
27 and/or liquidated damages pursuant to statute.

28 56. WHEREFORE, Plaintiffs request relief as hereafter provided.

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COUNT FIVE

Violation of Labor Code Sections 226.7 & 512

(All Plaintiffs, individually and on behalf of Subclasses 1-3 v. Defendants)

57. As a separate and distinct cause of action, Plaintiffs complain and reallege all the allegations contained in the Complaint, and incorporate them by reference into this cause of action as though fully set forth herein, excepting those allegations which are inconsistent with this cause of action. This cause of action is brought against all Defendants.

58. Labor Code sections 512 and applicable I.W.C. Wage Order 5-2001 provide that each employee is entitled to appropriate meal and rest breaks for any and all work days of more than four hours in duration.

59. Defendants violated or caused to be violated these Labor Code section 512 and Wage Order 5-2001 by requiring Plaintiffs and other similarly situated employees to work without a rest break during work days lasting more than four hours and requiring, permitting, or encouraging employees to work without a meal break during work days lasting more than five hours. Defendants, despite the ability to do so, provided inadequate staffing levels so as to prevent Plaintiffs and others similarly situated from taking their meal and rest breaks., thus failing to make available meal and rest breaks for Plaintiffs and Class Members. Nothing in the nature of the employment of Plaintiffs or others similarly situated made taking meal and rest breaks impossible.

60. Accordingly, Defendants are liable to Plaintiffs and Class Members for premium pay as defined by Labor Code section 226.7 of one hour of wages for each meal or rest break violation for each work day.

61. WHEREFORE, Plaintiffs request relief as hereafter provided.

COUNT SIX

Failure to Provide Accurate Itemized Wage Statements

Labor Code Section 226

1 **(All Plaintiffs, individually and on behalf of Subclasses 1-3 v. Defendants)**

2 62. As a separate and distinct cause of action, Plaintiffs complain and
3 reallege all the allegations contained in this Complaint, and incorporate them by
4 reference into this cause of action as though fully set forth herein, excepting those
5 allegations which are inconsistent with this cause of action. This cause of action is
6 brought against all Defendants.

7 63. Labor Code section 226 requires all employers to provide accurate
8 itemized wage statements to each employee for wages earned during that pay
9 period.

10 64. Defendants failed to provide accurate itemized wage statements to
11 Plaintiffs and Class Members for each pay period where wages were earned due to
12 the violations of the California Labor Code alleged herein and resulting wages,
13 premiums, and penalties owed.

14 65. Defendants are liable to Plaintiffs and Class Members for all damages
15 pursuant to Labor Code section 226(e), as well as costs and reasonable attorneys'
16 fees pursuant to Labor Code section 226.

17 66. Plaintiffs and Class Members are further entitled to injunctive relief to
18 ensure compliance with Labor Code section 226 and to an award of costs and
19 reasonable attorneys' fees, all pursuant to Labor Code section 226.

20 67. WHEREFORE, Plaintiffs request relief as hereafter provided.

21 **COUNT SEVEN**

22 **Failure to Maintain Payroll Records**

23 **Labor Code Section 226**

24 **(All Plaintiffs, individually and on behalf of Subclasses 1-3 v. Defendants)**

25 68. As a separate and distinct cause of action, Plaintiffs complain and
26 reallege all the allegations contained in this Complaint, and incorporate them by
27 reference into this cause of action as though fully set forth herein, excepting those
28

1 allegations which are inconsistent with this cause of action. This cause of action is
2 brought against all Defendants.

3 69. Labor Code section 226 requires an employer to maintain all payroll
4 records, including the number of hours worked in the itemized wage statements of
5 all employees, for at least three years.

6 70. Defendants have failed to produce and have alleged that they cannot
7 produce these records of Plaintiffs and Class Members because they are not in the
8 possession of these records as required by law.

9 71. Defendants are liable to Plaintiffs and Class Members for all damages
10 pursuant to Labor Code section 226(e), as well as costs and reasonable attorneys'
11 fees pursuant to Labor Code section 226.

12 72. Plaintiffs and Class Members are further entitled to injunctive relief to
13 ensure compliance with Labor Code section 226 and to an award of costs and
14 reasonable attorneys' fees, all pursuant to Labor Code section 226.

15 73. WHEREFORE, Plaintiffs request relief as hereafter provided.

16 **COUNT EIGHT**

17 **Violation of Unfair Competition Law**

18 **Business & Professions Code Sections 17200, *et seq.***

19 **(All Plaintiffs, individually and on behalf of Subclasses 1-3 v. Defendants)**

20 74. As a separate and distinct cause of action, Plaintiffs complain and
21 reallege all the allegations contained in this Complaint, and incorporate them by
22 reference into this cause of action as though fully set forth herein, excepting those
23 allegations which are inconsistent with this cause of action. Plaintiffs bring this
24 cause of action against all Defendants

25 75. The Unfair Competition Law, Business & Professions Code sections
26 17200 *et seq.*, defines unfair competition to include any "unfair," "unlawful" or
27 "deceptive" business practice, and provides for injunctive and restitutionary relief
28 for violations.

1 76. Defendants have committed numerous unfair, unlawful, or deceptive
2 business practices including but not limited to: (1) failing to provide their non-
3 exempt employees at least a minimum wage for all hours worked as required under
4 California's laws and regulations; (2) permitting, encouraging, and/or requiring
5 their non-exempt employees to work in excess of eight hours per day and in excess
6 of forty hours per week without paying them overtime compensation as required by
7 California's laws and regulations; (3) willfully failing to pay compensation owing
8 (including unpaid wages and overtime) in a prompt and timely manner to its non-
9 exempt employees as required by law at least twice per each calendar month;
10 (4) willfully failing to pay compensation owing (including unpaid wages and
11 overtime) in a prompt and timely manner to former employees upon termination or
12 resignation; and (5) failure to pay withholding taxes on all wages earned by persons
13 unlawfully denied overtime including federal income tax, Social Security
14 withholding, and Medicare withholding.

15 77. The actions of Defendants detailed herein against Plaintiffs and Class
16 Members constitute unfair, unlawful and deceptive business practices, and further,
17 constitute actions for which restitutionary relief is available.

18 78. As a proximate result of Defendants' actions, Plaintiffs have suffered
19 injury in fact and lost money or property.

20 79. Plaintiffs are informed and believe that Defendants continue to engage
21 in the practices described herein and are continuing and will continue to benefit
22 financially from these unlawful and unfair practices unless enjoined by this court
23 from doing so.

24 80. Under Business and Professions Code sections 17200, *et seq.*, Plaintiff
25 and other current and former aggrieved employees of Defendants are entitled to
26 restitution of all funds, which lawfully should have been paid as wages and/or
27 overtime to any and all current or former employees and wrongfully withheld by
28 Defendants, for the last four years, together with interest thereon.

1 81. Under Business and Professions Code sections 17200, *et seq.*,
2 Plaintiffs and other current and former aggrieved employees of Defendants are
3 entitled to restitution of all funds which should have been paid as premium wages,
4 civil penalties, or other penalties to any and all current or former employees for the
5 last four years, as well as costs and reasonable attorneys fees pursuant to statute.

6 82. Under Business and Professions Code sections 17200, *et seq.*,
7 Defendants should be enjoined from any and all unfair, unlawful and deceptive
8 business practices as these practices are harmful to the general public.

9 83. WHEREFORE, Plaintiffs request relief as hereafter provided.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs pray for relief and judgment against all
12 Defendants, jointly and severally, as follows:

13 **As to Counts One and Two:**

14 A. For restitution of all monies due Plaintiffs including back pay, front
15 pay, lost employment benefits and other compensation, and other special damages
16 according to proof;

17 B. For general damages to compensate Plaintiffs for their past, present,
18 and future emotional distress, pain and suffering, and loss of pleasure and
19 enjoyment of life;

20 C. For punitive damages as allowed by law;

21 D. For all applicable civil penalties as allowed by law;

22 E. For all applicable injunctive relief as allowed by law;

23 F. For an award of interest, including prejudgment interest, at the legal
24 rate;

25 G. For an award of attorney fees as allowed by law;

26 H. For costs of suit incurred; and

27 I. For such other and further relief as this Court deems appropriate.

28 **As to Counts Three to Eight:**

1 A. For an order determining that this action may be maintained as a class
2 action;

3 B. For an order appointing Plaintiffs as the representatives of each
4 respective Subclass as indicated and defined herein;

5 C. For an order appointing counsel for Plaintiffs as Class counsel;

6 D. For an order finding that Defendants had unlawfully failed to pay
7 Plaintiffs and Members of each Subclass a minimum wage for all hours worked as
8 required by statute and applicable Wage Order;

9 E. For all applicable damages, wages, premium pay, civil penalties, and
10 restitution available to Plaintiffs and each Class Member pursuant to Labor Code
11 section 1194 for Defendants' failure to provide a minimum wage for all hours
12 worked;

13 F. For an order finding that Defendants had unlawfully failed to pay
14 Plaintiffs and Members of each Subclass overtime premium pay for worked
15 performed greater than eight hours in a single day or forty hours in a work week as
16 required by statute and applicable Wage Order;

17 G. For all applicable damages, wages, premium pay, civil penalties, and
18 restitution available to Plaintiffs and each Class Member for Defendants' failure to
19 provide overtime wages;

20 H. For an order finding that Defendants unlawfully failed to provide
21 Plaintiffs and Members of each Subclass all required rest breaks and failed to
22 ensure that Plaintiffs and Members of each Subclass took a lawful meal break for
23 all shifts wherein required;

24 I. For all applicable damages, civil penalties, and restitution available to
25 Plaintiffs and other Class Members pursuant to Labor Code section 226.7;

26 J. For an order finding that Defendants unlawfully failed to provide
27 Plaintiffs and Class Members correct itemized statements for each applicable pay
28 period in violation of Labor Code section 226;

1 K. For all applicable damages, civil penalties, and restitution available to
2 Plaintiffs and other Class Members pursuant to Labor Code section 226;

3 L. For an order permanently enjoining Defendants from providing
4 inaccurate itemized wage statements or from failing entirely to provide itemized
5 wage statements for its employees for each pay period;

6 M. For an order finding that Defendants failed to maintain accurate
7 payroll records for Plaintiffs and other Class Members for at least three years in
8 violation of Labor Code section 226;

9 N. That the Court award interests, costs, and attorneys' fees to Plaintiffs
10 and all Class Members related to this Cause of Action and pursuant to Labor Code
11 section 226;

12 O. That the Court permanently enjoin Defendants from failing to
13 maintain accurate payroll records for all for its employees for each pay period for at
14 least three years;

15 P. For an order finding that Defendants, and each of them, violated
16 California's Unfair Competition Law, Business and Professions Code sections
17 17200, *et seq.*;

18 Q. For an award to Plaintiffs and all Class Members of all actual,
19 consequential, and incidental damages subject to proof at trial, including but not
20 limited to the amount of wages illegally withheld, all damages for wages not
21 promptly paid, penalties pursuant to statute, and all premium pay, civil penalties,
22 and other penalties owed to Plaintiffs and the Class;

23 R. For an award to Plaintiffs and all Class Members of interest on all
24 monies owed from the day such money was due to Plaintiffs and all Class
25 Members;

26 S. For an order requiring Defendants to pay restitution to Plaintiffs and
27 all Class Members due to Defendants' unlawful and/or unfair activities pursuant to
28 Business and Professions Code sections 17200, *et seq.*;

1 T. For permanent injunctive relief requiring Defendants to cease and
2 desist from all unlawful and/or unfair activities pursuant to Business and
3 Professions Code sections 17200, *et seq.*;

4 U. As to Counts Three through Seven, for an order awarding the costs and
5 fees of this action, including prejudgment interest, costs, and attorneys fees to
6 Plaintiffs and all Class Members related to this Cause of Action and pursuant to
7 Labor Code sections 206 and 1194; and

8 V. For such other and further relief as this Court may deem appropriate.

9 Dated: October 25, 2010 Respectfully submitted,

10 SCHONBRUN, DESIMONE, SEPLOW,
11 HARRIS, HOFFMAN & HARRISON LLP

12 
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28 Attorneys for Plaintiffs and Proposed Classes

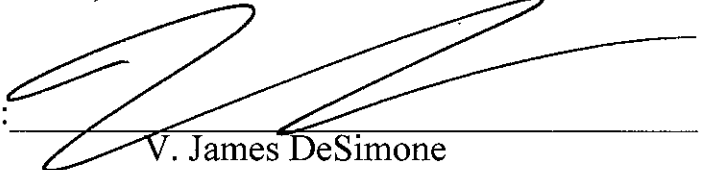
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DEMAND FOR JURY TRIAL

PLAINTIFFS and members of the PLAINTIFF CLASSES hereby demand a trial by jury on all issues so triable.

Dated: October 25, 2010 Respectfully submitted,

SCHONBRUN, DESIMONE, SEFLOW,
HARRIS, HOFFMAN & HARRISON LLP

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am a resident of the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 723 Ocean Front Walk, Venice, California 90291.

On **October 25, 2010**, I served the foregoing document described as:

FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF AND DEMAND FOR JURY TRIAL

on all interested parties in this action. By placing the ___ original or a X true copy thereof enclosed in sealed envelope addressed as follows:

Douglas R. Hart
Jennifer B. Zargarof
SIDLEY AUSTIN LLP
555 West Fifth Street
Los Angeles, California 90013

X **[BY MAIL]** I caused such envelope to be deposited in the mail at Venice, California. The envelope was mailed with postage thereof fully prepaid.

___ **[BY PERSONAL SERVICE]** I caused such envelope to be delivered by hand to the addressee(s).

___ **[FEDERAL EXPRESS]** I caused such envelope to be delivered via federal express at Venice, California.

___ **[BY FAX]** I transmitted the above document to the above facsimile.

___ **[STATE]** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

X **[FEDERAL]** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



William J. Clifton