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17 Attorneys for Plaintiff HARRIETTE TAPIA
18 on behalf of herself and all others similarly situated,

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 FOR THE COUNTY OF LOS ANGELES

21 HARRIETTE TAPIA, an individual, on
22 behalf of herself and all others similarly
23 situated,

24 Plaintiff,

25 vs.

26 THE CLARKS COMPANIES, N.A.;
27 CLARKS COMPANIES, NORTH
28 AMERICA; C. & J. CLARK RETAIL, INC.;
C. & J. CLARK AMERICA, INC.; THE
CLARKS COMPANIES FOUNDATION;
and DOES 1 through 25, inclusive,

Defendants.

CONFORMED COPY
ORIGINAL FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

APR 03 2012

John A. Clarke, Executive Officer/Clerk
BY Shaurya Wesley, Deputy

Case No.

BC 482183

[CLASS ACTION]

COMPLAINT FOR:

1. UNPAID WAGES (LABOR CODE §§ 216 and 1194);
2. FAILURE TO PAY MINIMUM WAGE (LABOR CODE §1194 et seq.);
3. FAILURE TO PAY OVERTIME COMPENSATION (LABOR CODE §§ 510 and 1194);
4. FAILURE TO PROVIDE MEAL & REST PERIODS (LABOR CODE § 226.7 and 512);
6. FAILURE TO FURNISH ACCURATE WAGE AND HOUR STATEMENTS (LABOR CODE § 226);
7. WAITING TIME PENALTIES (LABOR CODE §§ 201-203);
8. COMMON LAW CONVERSION;

1 _____)
2) **9. UNFAIR COMPETITION**
3) **(BUSINESS AND PROFESSIONS**
4) **CODE § 17200, et seq.); and**
JURY TRIAL DEMANDED

5 Plaintiff Harriette Tapia (“Plaintiff”), on behalf of herself and all others similarly situated,
6 alleges as follows:

7 **GENERAL ALLEGATIONS**

8 1. This is a proposed class action brought against Defendants THE CLARKS
9 COMPANIES, N.A.; CLARKS COMPANIES, NORTH AMERICA; C. & J. CLARK RETAIL,
10 INC.; C. & J. CLARK AMERICA, INC.; THE CLARKS COMPANIES FOUNDATION and
11 DOES 1 through 25, inclusive (collectively, “Defendants” or “Clarks”), on behalf of Plaintiff and
12 all other individuals who were employed as Store Managers for Defendants in California, at any
13 time during the four years preceding the filing of this action, and continuing while this action is
14 pending (“Class Period”), and who were denied the benefits and protections required under the
15 California Labor Code and other statutes and regulations applicable to employees in the State of
16 California (collectively, “Managers”).

- 17 2. During the Class Period, Defendants:
- 18 a. failed to pay wages for all hours worked by the Managers;
 - 19 b. failed to pay minimum wages due to the Managers;
 - 20 c. failed to pay overtime wages due to the Managers;
 - 21 d. failed to make available meal and rest periods to the Managers;
 - 22 e. failed to provide the Managers with timely and accurate wage and hour
23 statements;
 - 24 f. failed to pay the Managers compensation in a timely manner upon their
25 termination or resignation;
 - 26 g. failed to maintain complete and accurate payroll records for the Managers;
 - 27 h. wrongfully withheld wages and compensation due to the Managers; and

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1 i. committed unfair business practices in an effort to increase profits and to gain an
2 unfair business advantage at the expense of the Managers and the public.

3 3. The foregoing acts and other acts by Defendants - committed throughout California and
4 Los Angeles County - violated numerous provisions of California law, including California
5 Labor Code §§ 201, 202, 203, 204, 216, 226, 226.7, 510, 512, 1194, and 1194.2 and the
6 applicable Wage Orders issued by California's Industrial Welfare Commission (collectively,
7 "Employment Laws and Regulations"), Business & Professions Code §§ 17200 *et seq.*, and
8 violated Plaintiff's rights and the rights of the Managers.

9 **JURISDICTION AND VENUE**

10 4. Venue is proper in this Judicial District and the County of Los Angeles because work was
11 performed by Plaintiff and other members of the Class for Defendants in the County of Los
12 Angeles, California, and Defendants' legal obligations to pay minimum wages, overtime wages,
13 to provide meal and rest periods, and to provide accurate wage statements to Plaintiff and other
14 members of the proposed Class according to the Employment Laws and Regulations arose and
15 were breached in the County of Los Angeles.

16 5. The California Superior Court has jurisdiction in this matter because Plaintiff Harriette
17 Tapia is a resident of California and performed work for Defendants in Los Angeles County, and
18 Defendants are qualified to do business in California or have sufficient minimum contacts with
19 California as a result of regularly conducting business in the state. Further, no federal question is
20 at issue as the claims are based solely upon California law.

21 **THE PARTIES**

22 6. Plaintiff Harriette Tapia is, and at all relevant times was, a competent adult residing in
23 California. Ms. Tapia brings suit on behalf of herself and all similarly situated individuals
24 pursuant to California Code of Civil Procedure § 382, and California Business & Professions
25 Code §§ 17200, *et seq.* Ms. Tapia worked for Clarks as a Manager in Los Angeles County,
26 California from approximately August 2009 until December 2011.

27 7. Defendant Clarks is, and at all relevant times was, a company which conducts business
28 throughout the State of California, including in Los Angeles County. Defendants have engaged

1 in unlawful employment practices addressed in this complaint throughout California and in Los
2 Angeles County.

3 8. Plaintiff is informed and believes and based thereon alleges that Clarks uniformly applies
4 its labor staffing guidelines and compensation policies to all of its Managers.

5 9. Plaintiff is currently unaware of the true names and capacities of the defendants sued in
6 this action by the fictitious names DOES 1 through 25, inclusive, and therefore sues those
7 defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names
8 and capacities of such fictitiously named defendants when they are ascertained. Plaintiff is
9 informed and believes and based thereon states that the persons sued herein as DOES are in some
10 manner responsible for the conduct, injuries and damages herein alleged.

11 10. Plaintiff is informed and believes and based thereon alleges that each defendant sued in
12 this action, including each defendant sued by the fictitious names DOES 1 through 25, inclusive,
13 is responsible in some manner for the occurrences, controversies and damages alleged below.

14 11. Plaintiff is informed and believes and based thereon alleges that DOES 1 through 25,
15 inclusive, were the agents, servants and/or employees of Defendants and, in doing the things
16 hereinafter alleged and at all times, were acting within the scope of their authority as such agents,
17 servants and employees, and with the permission and consent of Defendants.

18 12. Plaintiff is informed and believes and based thereon alleges that Defendants ratified,
19 authorized, and consented to each and all of the acts and conduct of each other as alleged herein.
20 Each of the defendants was the agent and/or employee of the others, and the conduct of each
21 defendant herein alleged was authorized and/or ratified by the others. The conduct of Clarks was
22 carried on by and through its authorized agents, including owners, officers, directors, managers
23 and supervisors.

24 **FACTS: INDIVIDUAL CLAIMS**

25 13. Plaintiff was employed by Defendants as a Manager in Los Angeles County, California
26 within the last four years preceding the filing of this action.

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1 14. During the time Plaintiff was employed by Defendants, Defendants failed and refused to
2 pay Plaintiff for all hours worked (“off-the-clock” work) in violation of the Employment Laws
3 and Regulations.

4 15. Defendants misclassified Plaintiff as exempt and failed to pay Plaintiff overtime premium
5 pay in accordance with the Employment Laws and Regulations.

6 16. During Plaintiff’s employment with Defendants, Plaintiff was regularly required to work
7 more than eight hours per day and more than forty hours per workweek. Defendants regularly
8 failed and refused to fully compensate Plaintiff for the overtime hours worked.

9 17. During Plaintiff’s employment with Defendants, Defendants impeded, discouraged, and
10 dissuaded Plaintiff from taking rest periods during work shifts over four hours, from taking 30-
11 minute, uninterrupted meal periods during work shifts over five hours, and from taking
12 additional 30-minute, uninterrupted meal periods during work shifts over ten hours, in violation
13 of the Employment Laws and Regulations.

14 18. During Plaintiff’s employment with Defendants, Defendants failed and refused to provide
15 Plaintiff with timely and accurate wage and hour statements in violation of the Employment
16 Laws and Regulations.

17 19. During Plaintiff’s employment with Defendants, Defendants wrongfully withheld from
18 Plaintiff and failed to pay wages and other compensation due for all hours worked, for overtime
19 work, and as otherwise required per Employment Laws and Regulations.

20 20. Plaintiff seeks restitution and disgorgement of all sums wrongfully obtained by
21 Defendants through unfair business practices in violation of California’s Business & Professions
22 Code §§ 17200, *et seq.* (Unfair Competition Laws) to prevent Defendants from benefitting from
23 their violations of law and/or unfair acts. Such sums recovered under the Unfair Competition
24 Laws are equitable in nature and are not to be considered damages.

25 21. Plaintiff is also entitled to costs, attorneys’ fees, interest and penalties as provided for by
26 law, including by the California Labor Code, the California Business & Professions Code, and
27 California Code of Civil Procedure § 1021.5.

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1 22. To the extent that any Manager, including Plaintiff, entered into any arbitration agreement
2 with any Defendant, such agreement is void and unenforceable. Any such agreement was one of
3 adhesion, executed under duress, lacked consideration and mutuality, and is otherwise void under
4 both California Labor Code § 229 and the California Supreme Court case of *Armendariz v.*
5 *Foundation Health Psychare Services, Inc.* (2000) 24 Cal.4th 83.

6 **FACTS: CLASS CLAIMS**

7 23. All current and former Managers who were employed in California during the Class
8 Period, including Plaintiff, are proposed class members (henceforth, "Proposed Class
9 Members").

10 24. The Managers' duties and activities during their respective working hours and each shift
11 are known to and directed by Defendants, and are set and controlled by Defendants.

12 25. During the Class Period, Defendants have routinely failed and refused to compensate
13 Managers for all wages earned ("off-the-clock" work).

14 26. During the Class Periods, Defendants misclassified Managers as exempt and failed to pay
15 Managers overtime premium pay in accordance with the Employment Laws and Regulations.

16 27. During the Class Period, Managers have been required to work more than eight hours per
17 day and more than forty hours per workweek. Defendants have routinely failed and refused to
18 compensate Managers for all of the overtime premium pay wages they earned.

19 28. During the Class Period, Defendants impeded, discouraged, and dissuaded Managers
20 from taking rest periods during work shifts over four hours, from taking 30-minute, uninterrupted
21 meal periods during work shifts over five hours, and from taking additional 30-minute,
22 uninterrupted meal periods during work shifts over ten hours, in violation of the Employment
23 Laws and Regulations.

24 29. During the Class Period, Defendants have failed and refused to provide Managers with
25 timely and accurate wage and hour statements.

26 30. During the Class Period, Defendants have failed and refused to pay accrued wages and
27 other compensation earned and due immediately to Managers who were terminated, and

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1 Defendants have failed and refused to pay accrued wages and other compensation earned and due
2 within seventy-two hours to Managers who ended their employment.

3 31. During the Class Period, Defendants have failed and refused to maintain complete and
4 accurate payroll records for Managers showing gross hours earned, total hours worked, all
5 deductions made, net wages earned, the name and address of the legal entity employing the
6 Managers, and all applicable hourly rates in effect during each pay period and the corresponding
7 number of hours worked at each hourly rate.

8 32. During the Class Period, Defendants have wrongfully withheld and failed to pay
9 Managers wages and other compensation earned and due them for all hours worked, for overtime
10 premium pay, and as otherwise required pursuant to the Employment Laws and Regulations.

11 33. Defendants' conduct violated the Employment Laws and Regulations. Defendants'
12 systematic acts and practices also violated, *inter alia*, California Business & Professions Code §§
13 17200, *et seq.*

14 34. Plaintiff also seeks payment of overtime premium pay and other compensation, all
15 benefits required pursuant to the Employment Laws and Regulations, plus penalties and interest,
16 owed to Managers.

17 35. The duties and business activities of the Proposed Class Members were essentially the
18 same as the duties and activities of the Plaintiff described above. At all times during the Class
19 Period, all of the Proposed Class Members were employed in the same or similar job as Plaintiff
20 (as Managers) and were paid in the same manner and under the same standard employment
21 procedures and practices as Plaintiff.

22 36. During the Class Period, Defendants were fully aware that Plaintiff and the Proposed
23 Class Members were performing "off-the-clock" unpaid work and not being paid overtime
24 premium pay in violation of the provisions of the Labor Code.

25 37. Defendants' violations of the Employment Laws and Regulations were repeated, willful
26 and intentional.

27 38. Plaintiff and the Proposed Class Members have been damaged by Defendants' conduct.

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1 39. While the exact number of Proposed Class Members is unknown to Plaintiff at the
2 present time, based on information and belief, there are more than 40 such persons. A class
3 action is the most efficient mechanism for resolution of the claims of the Proposed Class
4 Members.

5 40. In addition, a class action is superior to other available methods for the fair and efficient
6 adjudication of this controversy because the damages suffered by individual Proposed Class
7 Members may be relatively small, and the expense and burden of individual litigation would
8 make it impossible for such Proposed Class Members individually to redress the wrongs done to
9 them. Moreover, because of the similarity of the Proposed Class Members' claims, individual
10 actions would present the risk of inconsistent adjudications subjecting the Defendants to
11 incompatible standards of conduct.

12 41. Plaintiff is currently unaware of the identities of all the Proposed Class Members.
13 Accordingly, Defendants should be required to provide to Plaintiff a list of all persons employed
14 as Managers in California beginning four years prior to the filing of this Complaint until the
15 present, stating their last known addresses and telephone numbers, so that Plaintiff may give such
16 Proposed Class Members notice of the pendency of this action and an opportunity to make an
17 informed decision about whether to participate in it.

18 42. The proposed Class that Plaintiff seeks to represent is defined as follows:

19 All Store Managers who are or have been employed by Defendants in the State of
20 California at any time during the four years prior to the commencement of this suit.

21 43. There is a well-defined community of interest in the litigation and the proposed Class is
22 easily ascertainable:

23 a. Numerosity: While the precise number of Proposed Class Members has not been
24 determined at this time, Plaintiff is informed and believes that Defendants have employed in
25 excess of 40 persons as Managers in California during the proposed Class Period.

26 b. Commonality: There are questions of law and fact common to Plaintiff and the
27 Class that predominate over any questions affecting only individual Proposed Class Members.
28 These common questions of law and fact include, without limitation:

1 i. Whether Defendants violated the Employment Laws and Regulations by
2 failing to compensate Plaintiff and the Proposed Class Members for all
3 hours worked; and

4 ii. Whether Defendants violated the Employment Laws and Regulations by
5 not fully compensating Plaintiff and the Proposed Class Members by
6 failing to pay overtime premium pay for overtime hours worked.

7 c. Typicality: Plaintiff's claims are typical of the claims of the proposed Class.
8 Plaintiff and all Proposed Class Members sustained injuries and damages arising out of and
9 caused by Defendants' common course of conduct in violation of law as alleged herein.

10 d. Adequacy of Representation: Plaintiff is a member of the proposed Class and will
11 fairly and adequately represent and protect the interests of the Proposed Class Members.
12 Counsel who represent Plaintiff are competent and experienced in litigating large wage and hour
13 and other employment class actions.

14 e. Superiority of Class Action: A class action is superior to other available means
15 for the fair and efficient adjudication of this controversy. Questions of law and fact common to
16 the proposed Class predominate over any questions affecting only individual Proposed Class
17 Members. Each proposed Class Member has been damaged and is entitled to recovery by reason
18 of Defendants' illegal policies and/or practices of failing to pay full and correct wages, including
19 the minimum wage and overtime premium wages, as required by law. An opt-out class action
20 will allow those similarly situated persons to litigate their claims in the manner that is most
21 efficient and economical for the parties and the judicial system.

22 **FIRST CAUSE OF ACTION**

23 **(Failure to Pay Compensation For All Hours Worked - By Plaintiff Individually and on** 24 **Behalf of All Proposed Class Members: Labor Code §§ 216 and 1194)**

25 44. As a separate and distinct cause of action, Plaintiff complains and realleges all of the
26 allegations contained in this complaint, and incorporates them by reference into this cause of
27 action as though fully set forth herein, excepting those allegations which are inconsistent with
28 this cause of action.

1 45. Plaintiff brings this action to recover unpaid compensation for all hours worked.

2 46. Defendants' conduct described in this Complaint violates, among other things, Labor
3 Code §§ 204, 216, 510 and 1194 and the IWC Wage Orders.

4 47. Defendants failed to pay Plaintiff and the Proposed Class Members for all of the actual
5 hours worked. Defendants knew or should have known that Plaintiff and the Proposed Class
6 Members were working these hours.

7 48. As a result of Defendants' unlawful acts, Plaintiff and the Proposed Class Members have
8 been deprived of compensation in an amount according to proof at the time of trial, and are
9 entitled to recovery of such amounts, plus interest thereon, liquidated damages pursuant to Labor
10 Code § 1194.2, and attorneys' fees and costs, pursuant to Labor Code § 1194, in an amount
11 according to proof at the time of trial. Plaintiff and the Proposed Class Members are also entitled
12 to additional penalties and/or liquidated damages pursuant to statute.

13 **SECOND CAUSE OF ACTION**

14 **(Failure to Pay Minimum Wages- By Plaintiff Individually and on Behalf of All Proposed**
15 **Class Members: Labor Code § 1194)**

16 49. As a separate and distinct cause of action, Plaintiff complains and realleges all of the
17 allegations contained in this complaint, and incorporates them by reference into this cause of
18 action as though fully set forth herein, excepting those allegations which are inconsistent with
19 this cause of action.

20 50. At all relevant times, the IWC Wage Orders contained in Title 8 of the California Code of
21 Regulations (Wage Orders) applied to Plaintiff in her capacity as an employee of Defendants.
22 The Wage Orders and California law provided, among other things, that Plaintiff must receive
23 minimum wage earnings for all hours worked.

24 51. During the Class Period, Defendants have routinely failed to pay Proposed Class
25 Members, including Plaintiff, the minimum wage required by the Employment Laws and
26 Regulations for all hours worked.

27 52. The Proposed Class Members, including Plaintiff, have been deprived of their rightfully
28 earned minimum wages as a direct and proximate result of Defendants' policies and practices

1 and Defendants' failure and refusal to pay said wages for all hours worked. The Proposed Class
2 Members, including Plaintiff, are entitled to recover the past wages owed to them, under the
3 minimum wage laws, plus an additional equal amount as liquidated damages as permitted under
4 the Wage Orders and California law, plus interest thereon and attorneys' fees and costs, pursuant
5 to Labor Code § 1194, in an amount according to proof at the time of trial.

6 **THIRD CAUSE OF ACTION**

7 **(Failure to Pay Overtime Compensation - By Plaintiff Individually and on Behalf of All**
8 **Proposed Class Members: Labor Code §§ 510 and 1194)**

9 53. As a separate and distinct cause of action, Plaintiff complains and realleges all of the
10 allegations contained in this complaint, and incorporates them by reference into this cause of
11 action as though fully set forth herein, excepting those allegations which are inconsistent with
12 this cause of action.

13 54. During the Class Period, Defendants have routinely required Proposed Class Members,
14 including Plaintiff, to work over eight hours in a day and over forty hours in a workweek.

15 55. Defendants are not entitled to an overtime exemption because Plaintiff and the Proposed
16 Class Members are non-exempt employees under the Employment Laws and Regulations.

17 56. Defendants have failed and refused to pay the Proposed Class Members, including Plaintiff,
18 overtime premium compensation as required by the Employment Laws and Regulations.

19 57. The Proposed Class Members, including Plaintiff, have been deprived of their rightfully
20 earned overtime premium compensation as a direct and proximate result of Defendants' policies
21 and practices and Defendants' failure and refusal to pay that compensation.

22 58. As a result of Defendants', and each of their unlawful acts, Plaintiff and the Proposed
23 Class Members have been deprived of compensation in an amount according to proof at the time
24 of trial, and are entitled to recovery of such amounts, plus interest thereon and attorneys' fees and
25 costs, pursuant to Labor Code § 1194, in an amount according to proof at the time of trial.

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1 **FOURTH CAUSE OF ACTION**

2 **(Failure to Provide Meal and Rest Periods - By Plaintiff Individually and on Behalf of All**
3 **Proposed Class Members: California Labor Code §§ 226.7 and 512)**

4 59. As a separate and distinct cause of action, Plaintiff complains and realleges all of the
5 allegations contained in this complaint, and incorporates them by reference into this cause of
6 action as though fully set forth herein, excepting those allegations which are inconsistent with
7 this cause of action.

8 60. During the Class Period, Defendants have routinely impeded, discouraged, and dissuaded
9 Managers, including Plaintiff, from taking meal and rest periods during their work shifts, and
10 have failed to compensate Managers, including Plaintiff, for those meal and rest periods, as
11 required by California Labor Code § 226.7 and the other applicable sections of the Employment
12 Laws and Regulations.

13 61. The Managers, including Plaintiff, have been deprived of their rightfully
14 earned compensation for meal and rest periods as a direct and proximate result of Defendants'
15 policies and practices and Defendants' failure and refusal to pay that compensation. The
16 Managers, including Plaintiff, are entitled to recover such amounts pursuant to California Labor
17 Code § 226.7(b), plus interest.

18 **FIFTH CAUSE OF ACTION**

19 **(Failure to Furnish Accurate Wage and Hour Statements - By Plaintiff Individually and on**
20 **Behalf of All Proposed Class Members: Labor Code § 226)**

21 62. As a separate and distinct cause of action, Plaintiff complains and realleges all of the
22 allegations contained in this complaint, and incorporates them by reference into this cause of
23 action as though fully set forth herein, excepting those allegations which are inconsistent with
24 this cause of action.

25 63. During the Class Period, Defendants have routinely failed to provide Proposed Class
26 Members, including Plaintiff, with timely and accurate wage and hour statements showing gross
27 hours earned, total hours worked, all deductions made, net wages earned, the name and address

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1 of the legal entity employing the Proposed Class Members, and all applicable hourly rates in
2 effect during each pay period and the corresponding number of hours worked at each hourly rate.

3 64. As a consequence of Defendants' actions, Class Members are entitled to all available
4 statutory penalties, costs and reasonable attorneys' fees, including those provided in California
5 Labor Code § 226(e), as well as all other available remedies.

6 **SIXTH CAUSE OF ACTION**

7 **(For Waiting Time Penalties - By Plaintiff Individually and on Behalf of All Proposed Class**
8 **Members: Labor Code §§ 201-203)**

9 65. As a separate and distinct cause of action, Plaintiff complains and realleges all of the
10 allegations contained in this complaint, and incorporates them by reference into this cause of
11 action as though fully set forth herein, excepting those allegations which are inconsistent with
12 this cause of action.

13 66. During the Class Period, Defendants failed to pay accrued wages and other compensation
14 due immediately to each Proposed Class Member who was terminated, and failed to pay accrued
15 wages and other compensation due within seventy-two hours to each proposed Class Member,
16 including Plaintiff, who ended his or her employment.

17 67. Labor Code § 201 requires an employer who discharges an employee to pay
18 compensation due and owing to said employee immediately upon discharge. Labor Code § 203
19 provides that if an employer willfully fails to pay compensation promptly upon discharge, as
20 required by § 201, the employer is liable for waiting time penalties in the form of continued
21 compensation for up to 30 work days.

22 68. Defendants, and each of them, willfully failed and refused, and continue to willfully fail
23 and refuse, to timely pay compensation due to proposed Class Members upon termination or
24 resignation, as required by Labor Code § 201. As a result, Defendants, and each of them, are
25 liable to Plaintiff and all Proposed Class Members similarly situated for waiting time penalties,
26 together with interest thereon and attorneys' fees and costs, pursuant to California Labor Code §
27 203, as well as all other available remedies, in an amount according to proof at the time of trial.

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SEVENTH CAUSE OF ACTION

(For Conversion - By Plaintiff Individually and on Behalf of All Proposed Class Members)

69. As a separate and distinct cause of action, Plaintiff complains and realleges all of the allegations contained in this complaint, and incorporates 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.

70. Defendants have knowingly and wrongfully withheld and failed to pay Proposed Class Members' earned wages and other compensation. Such wages and compensation belong to and are the property of Plaintiff and the Proposed Class Members. The right to possess this property fully vested at the time the labor and services were provided to Defendants and, accordingly, this property belongs to Plaintiff and the Proposed Class Members, and is not the property of Defendants.

71. Defendants wrongfully and knowingly converted Proposed Class Members' property as part of an intentional and deliberate scheme to maximize their profits at the expense of the Proposed Class Members, including Plaintiff.

72. Defendants wrongfully converted the property of Plaintiff and the Proposed Class Members by:

- a. Withholding property which the Proposed Class Members, including Plaintiff, owned and had the legal right to hold, possess and dispose of, and then
- b. Taking this property and utilizing it for Defendants' own use, purpose and benefit.

73. Defendants' conversion has been done with the advance knowledge, express or implied authorization, and/or ratification of Defendants' respective corporate officers, directors and managing agents.

74. At the time the conversion took place, Proposed Class Members, including Plaintiff, were entitled to possession of this fully-vested property.

75. The Proposed Class Members, including Plaintiff, have been injured by Defendants' wrongful conversion of their property. The Proposed Class Members, including Plaintiff, are entitled to immediate possession of all property wrongfully converted by Defendants, with

1 interest, as well as any and all profits, whether direct or indirect, which Defendants' acquired by
2 their unlawful conversion of this property.

3 76. As alleged herein, Defendants' conduct was fraudulent, deceitful and despicable in that
4 Defendants' had a scheme and plan to knowingly circumvent California wage and hour laws for
5 Defendants' benefit. Defendants' conduct was despicable in that it was carried on with a willful
6 and conscious disregard of the rights of others. Defendants' conduct was oppressive in that it was
7 in conscious disregard of the rights of others. Defendants' systematic acts and practices also
8 violated, inter alia, California Business & Professions Code §§ 17200, et seq.

9 77. In committing the foregoing acts, Defendants were guilty of oppression, fraud and/or
10 malice, and, in addition to the actual damages caused thereby, the Proposed Class Members,
11 including Plaintiff, are entitled to recover damages for the sake of example and by way of
12 punishing Defendants.

13 **EIGHTH CAUSE OF ACTION**

14 **(For Unfair Competition - By Plaintiff Individually and on Behalf of All Proposed Class**
15 **Members: Business & Professions Code § 17200, et seq.)**

16 78. As a separate and distinct cause of action, Plaintiff complains and realleges all of the
17 allegations contained in this complaint, and incorporates them by reference into this cause of
18 action as though fully set forth herein, excepting those allegations which are inconsistent with
19 this cause of action.

20 79. Defendants' violations of the Employment Laws and Regulations as alleged in this
21 Complaint, include Defendants':

- 22 a. Failure and refusal to pay Proposed Class Members, including Plaintiff, wages for
23 all hours worked;
- 24 b. Failure and refusal to pay Proposed Class Members, including Plaintiff, the
25 minimum wage required by law;
- 26 c. Failure and refusal to pay Proposed Class Members, including Plaintiff, overtime
27 premium wages;

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- 1 d. Failure and refusal to provide Proposed Class Members, including Plaintiff, with
2 meal and rest periods;
- 3 e. Failure and refusal to provide Proposed Class Members, including Plaintiff, with
4 timely and accurate wage and hour statements;
- 5 f. Failure to pay Proposed Class Members, including Plaintiff, compensation in a
6 timely manner upon their termination or resignation;
- 7 g. Failure to maintain complete and accurate payroll records for Proposed Class
8 Members, including Plaintiff; and
- 9 h. Wrongful conversion of the Employee's Property belonging to the Proposed Class
10 Members, including Plaintiff,

11 all of which constitute unfair business practices in violation of the California Business &
12 Professions Code §§ 17200, *et seq.*

13 80. Defendants have avoided payment of wages, minimum wages, overtime premium wages
14 and other benefits as required by the California Labor Code, the California Code of Regulations,
15 and applicable Industrial Welfare Commission Wage Orders.

16 81. Further, Defendants have failed to record, report and pay the correct sums of assessment
17 to the State authorities under the California Labor Code and other applicable regulations.

18 82. As a result of Defendants' unfair business practices, Defendants have reaped unfair
19 benefits and illegal profits at the expense of Proposed Class Members, including Plaintiff, and
20 members of the public. Defendants should be made to disgorge their ill-gotten gains and to
21 restore them to Proposed Class Members, including Plaintiff.

22 83. Defendants' unfair business practices violate the Unfair Competition Laws and entitles
23 Plaintiff to seek preliminary and permanent injunctive relief including, but not limited to, orders
24 that Defendants account for, disgorge and restore to the Proposed Class Members, including
25 Plaintiff, the wages and other compensation unlawfully withheld from them.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff, individually and on behalf of all Proposed Class Members,
28 prays that the Court enter judgment in her favor and against Defendants as follows:

- 1 1. For an Order requiring and certifying this action as a class action;
- 2 2. For an Order appointing Plaintiff's counsel as Class counsel;
- 3 3. For compensatory damages in an amount to be ascertained at trial;
- 4 4. For restitution in an amount to be ascertained at trial;
- 5 5. For punitive and exemplary damages in an amount to be ascertained at trial;
- 6 6. For penalties as required by law;
- 7 7. For prejudgment interest at the legal rate pursuant to California Labor Code §
- 8 218.6 and other applicable sections;
- 9 8. For reasonable attorneys' fees pursuant to California Labor Code §1194 and other
- 10 applicable sections;
- 11 9. For costs of suit incurred herein;
- 12 10. For disgorgement of profits garnered as a result of Defendants' unlawful failure to
- 13 pay wages, including overtime wages, earned; and
- 14 11. For such further relief as the Court may deem appropriate.

15
16 DATED: April 3, 2012 LAW OFFICES OF THOMAS W. FALVEY

17
18
19 By: 

20 DANIEL O'NEIL-ORTIZ
21 Attorneys for Plaintiff Harriette Tapia, individually
and on behalf of all similarly situated individuals

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DEMAND FOR JURY TRIAL

Plaintiff Harriette Tapia, individually and on behalf of all similarly situated individuals,
demands jury trial of this matter.

DATED: April 3, 2012

LAW OFFICES OF THOMAS W. FALVEY

By: *Daniel O'Neil-Ortiz*

DANIEL O'NEIL-ORTIZ
Attorneys for Plaintiff Harriette Tapia, individually
and on behalf of all similarly situated individuals