

1 LAW OFFICES OF THOMAS W. FALVEY  
2 THOMAS W. FALVEY (SBN 65744)  
3 J.D. HENDERSON (SBN 235767)  
4 MICHAEL H. BOYAMIAN (SBN 256107)  
5 301 North Lake Avenue, Suite 800  
6 Pasadena, California 91101  
7 Telephone: (626) 795-0205  
8 Facsimile: (626) 795-3096

CONFORMED COPY  
OF ORIGINAL FILED  
Los Angeles Superior Court

OCT 18 2013

6 LAW OFFICES OF KELLY A. KNIGHT  
7 KELLY A. KNIGHT (SBN 246370)  
8 JAMES Y. YOON (SBN 289906)  
9 3435 Wilshire Boulevard, Ste 2470  
Los Angeles, California 90010  
Telephone: (213) 915-6750  
Facsimile: (213) 927-3600

John A. Clarke, Executive Officer/Clerk  
By SHAUNYA WESLEY, Deputy

10 Attorneys for Plaintiff Luzmarina Gutierrez,  
11 Individually and on Behalf of All Similarly Situated Individuals

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **FOR THE COUNTY OF LOS ANGELES**

14 LUZMARINA GUTIERREZ, Individually  
15 and on Behalf of All Similarly Situated  
16 Individuals,

17 Plaintiffs,

18 vs.

19 DALEY FOODS OF CUDAHY, INC.; a  
20 California corporation; and DOES 1  
through 25, Inclusive,

21 Defendants.

CASE NO.

[CLASS ACTION]

BC 524915

COMPLAINT FOR:

1. UNPAID WAGES (LABOR CODE § 1194)
2. FAILURE TO PAY MINIMUM WAGE (LABOR CODE § 1194)
3. FAILURE TO PAY OVERTIME COMPENSATION (LABOR CODE §§ 510 and 1194);
4. FAILURE TO PROVIDE MEAL AND REST PERIODS (LABOR CODE §§ 512 and 226.7);
5. FAILURE TO FURNISH ACCURATE WAGE AND HOUR STATEMENTS (LABOR CODE § 226);
6. COMMON LAW CONVERSION; and
7. UNFAIR COMPETITION (LABOR CODE §§ 17200 *et seq.*); and

JURY TRIAL DEMANDED

1 Plaintiff Luzmarina Gutierrez (“Plaintiff”), individually and on behalf of all similarly  
2 situated individuals, alleges as follows:

3 **GENERAL ALLEGATIONS**

4 1. This is a proposed class action brought against Defendant DALEY FOODS OF  
5 CUDAHY, INC. and DOES 1 through 25, inclusive (hereinafter “Defendant” or “DALEY”), on  
6 behalf of Plaintiff and all other hourly and non-exempt current and former restaurant employees  
7 employees who held the position of “Crew Member” at DALEY restaurants located in California  
8 at any time during the four years preceding the filing of this action, and continuing while this  
9 action is pending (“Class Period”), and were denied the benefits and protections required under  
10 the California Labor Code and other statutes and regulations applicable to California employees.

11 2. During the Class Period, DALEY, in conjunction with other Defendants:

- 12 a. failed to pay wages for all hours worked by the Restaurant Employees;
- 13 b. failed to pay Crew Members the legal minimum wage of \$8.00/hour;
- 14 c. failed to pay overtime wages due to Crew Members;
- 15 d. failed to provide meal and rest periods due to the Restaurant Employees;
- 16 e. failed to provide the Restaurant Employees with timely and accurate wage

17 and hour statements;

18 f. failed to pay the Restaurant Employees compensation in a timely manner  
19 upon their termination or resignation;

20 g. failed to maintain complete and accurate payroll records for the Restaurant  
21 Employees;

22 h. wrongfully withheld wages and compensation due to the Restaurant  
23 Employees; and

24 i. committed unfair business practices in an effort to increase profits and to  
25 gain an unfair business advantage at the expense of the Restaurant Employees and the public.

26 3. The foregoing acts and other acts by Defendant - committed throughout California  
27 and Los Angeles County - violated provisions of the California Labor Code, including but not  
28 limited to sections 201, 202, 203, 226, 226.7, 510, 512, 515, 551, 552, 1194, and 1198

1 (collectively, "Employment Laws"), violated the applicable Wage Orders issued by California's  
2 Industrial Welfare Commission, including Wage Orders 5-2001 during the Class Period  
3 ("Regulations"), violated California's Unfair Business Practices Act, California Business &  
4 Professions Code sections 17200 et seq., and violated Plaintiffs' rights.

5 **JURISDICTION AND VENUE**

6 4. Venue is proper in this Judicial District and the County of Los Angeles because  
7 work was performed by Plaintiff and other members of the Class for Defendant in the County of  
8 Los Angeles, California, and Defendant's obligations under the Employment Laws and  
9 Regulations to pay overtime wages, to provide meal and rest periods and accurate wage  
10 statements to Plaintiff and other members of the Class arose and were breached in the County of  
11 Los Angeles.

12 5. The California Superior Court has jurisdiction in this matter because Plaintiff  
13 Luzmarina Gutierrez is a resident of California, DALEY FOODS OF CUDAHY, INC. is a  
14 California corporation and is qualified to do business in California and regularly conducts  
15 business in California. Further, no federal question is at issue as the claims are based solely on  
16 California law.

17 **THE PARTIES**

18 6. Plaintiff Luzmarina Gutierrez is, and at all relevant times was, a competent adult  
19 residing in California. Ms. Gutierrez brings suit on behalf of herself and all similarly situated  
20 individuals pursuant to California Code of Civil Procedure section 382, and California Business &  
21 Professions Code sections 17200 et seq. Ms. Gutierrez is a currently employed at DALEY  
22 restaurants in Cudahy, California.

23 7. Defendant DALEY FOODS OF CUDAHY, INC. is, and at all relevant times was,  
24 a California corporation registered with the State of California's Secretary of State. DALEY  
25 conducts business in Los Angeles County, California. DALEY is a franchise of several  
26 McDonald's restaurants - a fast food dining restaurant. DALEY has engaged in numerous  
27 unlawful employment practices addressed in this Complaint in Los Angeles County.

28 ///



1 customers, assisting customers, and maintaining quality control. Crew Members, just like Ms.  
2 Gutierrez, are non-exempt and hourly employees of Defendant.

3 15. During Plaintiff's employment with DALEY, and continuing to date, Plaintiff and  
4 Crew Members were regularly required to work more than eight hours per day and more than forty  
5 hours per workweek. However, DALEY did not pay Plaintiff and Crew Members the overtime  
6 rate of pay for work performed beyond eight hours a day or forty hours a week.

7 16. Crew Members, including Plaintiff, were required to submit their hours worked via  
8 handwritten time sheets. These handwritten submissions were then collected and processed for  
9 pay by DALEY's store managers. Plaintiff's pay stubs reveal work performed in excess of forty  
10 hours a week but Defendant compensated her at her regular rate of pay for the overtime hours she  
11 worked, all in violation of the Employment Laws and Regulations.

12 17. In addition, because there was no time recording process in place, the work  
13 schedules for Crew Members were used to keep track of the hours worked. Consequently,  
14 Plaintiff and Crew Members, performed work before or after their scheduled hours while under  
15 the control and direction of Defendant. As a result, DALEY failed to pay Plaintiffs and Crew  
16 Members for all hours worked, in violation of the Employment Laws and Regulations. In  
17 addition, Plaintiff and Crew Members were not fully compensated for all hours worked, including  
18 overtime compensation. This "Off the Clock" work is in violation of the Employment Laws and  
19 Regulations.

20 18. Because DALEY did not pay the minimum wage and/or the overtime rate for all  
21 hours worked, DALEY also failed to provide Plaintiff and Crew Members with accurate wage  
22 statements in violation of Labor Code Section 226, *et seq.*

23 19. During the time Plaintiffs were employed, Defendants failed to provide Plaintiffs  
24 and Restaurant Employees with rest periods during work shifts over four hours. Defendants also  
25 routinely failed to provide Plaintiffs and Restaurant Employees a 30-minute meal period in which  
26 they were relieved of all duties when they worked over five hours and routinely failed to provide  
27 Plaintiffs and Restaurant Employees a second such meal period when they worked more than ten  
28 hours. These practices are in violation of the Employment Laws and Regulations.

1 20. During Plaintiffs' employment with DALEY, Defendant failed to provide Plaintiff  
2 with timely and accurate wage and hour statements showing, among other things, gross hours  
3 earned, total hours worked, all deductions made, net wages earned, accrued vacation, and all  
4 applicable hourly rates in effect during each pay period, as well as the corresponding number of  
5 hours worked at each hourly rate.

6 21. During Plaintiffs' employment with CONGREGATION, Defendants wrongfully  
7 withheld from Plaintiffs and failed to pay their wages and other compensation which was due  
8 them for all of their hours worked, for overtime work, for missed meal and rest periods, and as  
9 otherwise required pursuant to the Employment Laws and Regulations.

10 22. Plaintiffs seek restitution and disgorgement of all sums wrongfully obtained by  
11 Defendants through unfair business practices in violation of California's Business & Professions  
12 Code sections 17200, *et seq.*, to prevent the Defendants from benefitting from their violations of  
13 law and/or unfair acts. Such sums recovered under the Unfair Competition Act and Unfair  
14 Businesses Act are equitable in nature and are not to be considered damages. Plaintiffs are also  
15 entitled to costs, attorney's fees, interest and penalties as provided for by statute.

16 23. To the extent that any Class Member, including Plaintiffs, entered into any  
17 arbitration agreement with any Defendant and such agreement purports to require arbitration, such  
18 agreement is void and unenforceable. Any such agreement was one of adhesion, executed under  
19 duress, lacked consideration and mutuality, and was otherwise void under both California Labor  
20 Code section 229 and the California Supreme Court case of *Armendariz v. Foundation Health*  
21 *Psychare Services, Inc.* (2000) 24 Cal.4th 83.

22 **CLASS ACTION ALLEGATIONS**

23 24. Plaintiff brings these claims as a class action pursuant to Code of Civil Procedure §  
24 382 and Business and Professions Code §§ 17203 & 17204. Plaintiff brings this action on her  
25 own behalf and on behalf of the following class of individuals (the "Class" or "Class Members"):

26 All non-exempt Crew Members employed by, or formerly employed by,  
27 Defendant in the State of California at any time from four years prior to the date  
of the filing of this complaint, and continuing while this action is pending.

28 ///

1 25. All Crew Members, including Plaintiffs, are putative class members.

2 26. During the Class Period, Defendant failed to pay Plaintiff and all Crew Members  
3 for all hours worked, in violation of the Employment Laws and Regulations.

4 27. During the Class Period, Defendants have failed to provide Crew Members with  
5 accurate wage and hour statements showing the gross hours earned, total hours worked, net wages  
6 earned, and all applicable hourly rates in effect during each pay period and the corresponding  
7 number of hours worked at each hourly rate.

8 28. During the Class Period, Plaintiffs and Crew Members have been required to work  
9 more than eight hours per day and more than forty hours per workweek. Defendants have failed  
10 to compensate Crew Members all of the wages they are due, including overtime premium pay.

11 29. During the Class Period, Defendants have failed to provide Plaintiffs and Crew  
12 Members with meal and rest periods, and have failed to provide meal and rest period premium  
13 wages to compensate for missed meal and rest periods..

14 30. During the Class Period, Defendants have failed to pay wages and other  
15 compensation due immediately to Crew Members who were terminated, and Defendants have  
16 failed to pay wages and other compensation due within seventy-two hours to Crew Members who  
17 voluntarily ended their employment.

18 31. The proposed class is ascertainable in that its members can be identified using  
19 information contained in Defendants' payroll and personnel records.

20 32. Numerosity. The Crew Members are so numerous, conservatively estimated to  
21 include over 50 Crew Members , that joinder of each individual Restaurant employee would be  
22 impracticable, and the disposition of their claims in a class action, rather than numerous  
23 individual actions, will benefit the parties, the Court and the interests of justice.

24 33. Commonality. There is a well-defined community of interest in the questions of  
25 law and fact involved in this action, because Defendant's failure to pay Crew Members their  
26 wages or afford them the protections required under the Employment Laws and Regulations  
27 affects all Crew Members. Common questions of law and fact predominate over questions that  
28 affect only individual Crew Members, because all Crew Members were subject to uniform,

1 unlawful pay practices and policies. The predominate questions of law and fact include, but are  
2 not limited to:

3 a. Did Defendant devise a scheme and plan to circumvent California wage  
4 and hour laws?;

5 b. Was/is Defendant's conduct fraudulent and deceitful?;

6 c. Did/does Defendant's conduct violate the Employment Laws and  
7 Regulations by, among other things,

8 (i) failing to compensate Plaintiff and the Class Members for all  
9 hours worked;

10 (ii) failing to compensate Plaintiff and the Class Members at the  
11 applicable and legally-mandated minimum hourly rate;

12 (iii) failing to provide Plaintiff and the Class Members with timely and  
13 accurate wage and hour statements;

14 (iv) failing to maintain complete and accurate payroll records for  
15 Plaintiffs and the Class Members; and

16 (v) failing to provide meal and rest periods to Plaintiffs and the Class  
17 Members, or premium pay in lieu thereof?

18 d. Do/did Defendant's systematic acts and practices violate, *inter alia*,  
19 California Business & Professions Code section 17200, *et seq.*?

20 34. Typicality. Plaintiff's claims are typical of those of the other Crew Members  
21 because all Crew Members share the same or similar employment duties and activities, all are  
22 automatically classified as non-exempt employees, and all have been denied the benefits and  
23 protections of the Employment Laws and Regulations in the same manner. Since Defendant has  
24 uniformly applied the same pay practices and policies to each restaurant, Plaintiff's claims are  
25 typical of the claims of all Crew Members. Plaintiff's claims are also typical because they have  
26 suffered the same damages as those suffered by all Crew Members.

27 35. Adequacy of Representation. Plaintiff can fairly and adequately represent and  
28 protect the interests of all Crew Members because Plaintiff has no disabling conflict of interest



1 which is antagonistic to those of all other Crew Members. Plaintiff seeks no relief which is  
2 antagonistic or adverse to the other Crew Members, and the infringement of her rights and the  
3 damages she has suffered is typical of all other Crew Members. Plaintiff's counsel is competent  
4 and experienced in litigating class actions in California based on large employers' violations of  
5 the Employment Laws and Regulations.

6 36. As mentioned above, to the extent that any Crew Member entered into any  
7 arbitration agreement with any Defendant and such agreement purports to require arbitration, such  
8 agreement is void and unenforceable. Even if such agreement is deemed enforceable, however,  
9 classwide arbitration is appropriate and should be utilized to obtain classwide relief.

10 37. Superiority of Class Action. The nature of this action and the nature of laws  
11 available to Plaintiffs and the other Crew Members in the putative Class make use of the class  
12 action a particularly efficient and effective procedure because:

13 a. For many of the Crew Members, individual actions or other individual  
14 remedies would be impracticable and litigating individual actions would be too costly;

15 b. The action involves a corporate employer (DALEY) and a large number of  
16 individual employees (Plaintiffs and the other Crew Members ), many with relatively small claims  
17 and all with common issues of law and fact;

18 c. If employees are forced to bring individual lawsuits, the corporate  
19 defendant would necessarily gain an unfair advantage by the ability to exploit and overwhelm the  
20 limited resources of individual plaintiffs through superior financial and legal resources;

21 d. The costs of individual suits would likely consume the amounts recovered;

22 e. Requiring each employee to pursue an individual remedy would also  
23 discourage the assertion of lawful claims by current employees of Defendant, who would be  
24 disinclined to pursue an action against their present and/or former employer due to an appreciable  
25 and justified fear of retaliation and permanent damage to their immediate and/or future  
26 employment; and

27 ///

28 ///

1 f. The common business practices Plaintiff experienced are representative of  
2 those experienced by all Crew Members and can establish the right of all Crew Members to  
3 recover on the alleged claims.

4 **FIRST CAUSE OF ACTION**

5 **(Failure to Pay Compensation For All Hours Worked - Labor Code § 1194**

6 **By Plaintiff Individually and on Behalf of All Crew Members )**

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

11 39. Plaintiff brings this action to recover their unpaid compensation for all hours  
12 worked as defined by the applicable Industrial Welfare Commission wage order as the time during  
13 which an employee is subject to the control of an employer, and includes all the time the  
14 employee is engaged, suffered or permitted to work, whether or not required to do so.

15 40. Plaintiff is entitled to recover the unpaid balance of compensation Defendant owes  
16 Plaintiff, plus interest, associated statutory penalties, and reasonable attorney fees and costs  
17 pursuant to Labor Code section 1194.

18 **SECOND CAUSE OF ACTION**

19 **(Failure to Pay Minimum Wages - Labor Code § 1194**

20 **By Plaintiff Individually and on Behalf of All Crew Members )**

21 41. As a separate and distinct cause of action, Plaintiff complains and realleges all of  
22 the 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 this  
24 cause of action.

25 42. At all relevant times, the IWC Wage Orders applied to Plaintiff in Plaintiff's  
26 capacity as an employee of Defendant. The Wage Orders and California law provided, among  
27 other things, that Plaintiff must receive minimum wage earnings for all hours worked.

28 ///

1 43. During the Class Period, Defendant has routinely failed to pay Crew Members,  
2 including Plaintiff, the minimum wage required by the Employment Laws and Regulations for all  
3 hours worked.

4 44. Crew Members, including Plaintiff, have been deprived of their rightfully earned  
5 minimum wages as a direct and proximate result of Defendant's policies and practices and  
6 Defendant's failure and refusal to pay said wages for all hours worked. Crew Members, including  
7 Plaintiff, are entitled to recover the past wages owed to them, under the minimum wage laws, plus  
8 an additional equal amount as liquidated damages as permitted under the Wage Orders and  
9 California law, including Labor Code § 1194.2, plus interest thereon and attorneys' fees, and  
10 costs, pursuant to Labor Code § 1194, in an amount according to proof at the time of trial.

11 **THIRD CAUSE OF ACTION**

12 **(Failure to Pay Overtime Compensation - California Labor Code §§ 510 and 1194**

13 **By Plaintiff Individually and on Behalf of All Crew Members )**

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

18 46. During the Class Period, Defendant has routinely required Crew Members,  
19 including Plaintiff, to work over eight hours in a day and over forty hours in a workweek.  
20 However, Defendant has failed and refused to pay the Crew Members, including Plaintiff, the  
21 overtime compensation required by the Employment Laws and Regulations.

22 47. The Crew Members, including Plaintiff, have been deprived of their rightfully  
23 earned overtime compensation as a direct and proximate result of Defendant's policies and  
24 practices and Defendant's failure and refusal to pay that compensation. The Crew Members,  
25 including Plaintiff, are entitled to recover such amounts, plus interest, attorney's fees, and costs.

26 ///

27 ///

28 ///

1 **FOURTH CAUSE OF ACTION**

2 **(Failure to Provide Meal and Rest Periods - California Labor Code §§ 226.7 and 512**

3 **By Plaintiff Individually and on Behalf of All Crew Members )**

4 48. As a separate and distinct cause of action, Plaintiff complains and realleges all 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 this  
7 cause of action.

8 49. During the Class Period, Defendants have routinely failed to provide Crew  
9 Members, including Plaintiff, with meal and rest periods during their work shifts, and have failed  
10 to compensate these Crew Members, including Plaintiff, for those meal and rest periods, as  
11 required by California Labor Code section 226.7 and the other applicable sections of the  
12 Employment Laws and Regulations.

13 ///

14 50. Crew Members, including Plaintiff, have been deprived of their rightfully earned  
15 compensation for meal and rest periods as a direct and proximate result of Defendant's policies  
16 and practices and Defendant's failure and refusal to pay that compensation. Crew Members,  
17 including Plaintiff, are entitled to recover such amounts pursuant to California Labor Code section  
18 226.7(b), plus interest, attorney's fees, and costs.

19 **FIFTH CAUSE OF ACTION**

20 **(Failure to Accurate Furnish Wage and Hour Statements - California Labor Code § 226**

21 **By Plaintiff Individually and on Behalf of All Crew Members )**

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

26 52. Under California Labor Code § 226, Defendant was required to provide wage  
27 statements that accurately reflect all the information required under § 226. During the Class  
28 Period, Defendant has routinely failed to provide Crew Members, including Plaintiff, with timely

1 and accurate wage-and-hour statements containing all information required under Labor Code  
2 section 226, including but not limited to gross hours earned, total hours worked, net wages earned,  
3 and all applicable hours rates in effect during each pay period and the corresponding number of  
4 hours worked at each hourly rate.

5 53. Plaintiff, and the Crew Members, were harmed by, among other things, not being  
6 alerted to the fact that Defendant was violating California's wage-and-hour laws or that they were  
7 being underpaid and thereby suffered repeated violations of their rights; not having accurate  
8 documentation to allow them to make precise calculations of their wages owed or to easily prove  
9 their wage claims with certainty; being deprived of accurate wages statements despite having the  
10 legal right to receive them; all of which contributed to, furthered, and resulted in Defendant  
11 underpaying Plaintiff, and the Crew Members. Plaintiff, and the Crew Members, furthermore  
12 suffered injury as defined under Labor Code § 226(e)(2)(b).

13 54. Defendant's conduct was a substantial factor in causing Plaintiff, and the Crew  
14 Members, harm.

15 55. Defendant is liable for actual damages caused subject to proof at trial, or statutory  
16 damages under section 226(e), whichever is greater, plus interest thereon and attorney's fees and  
17 costs under California Labor Code section 226(e), plus costs, and reasonable attorney's fees, as  
18 well as all other available remedies.

19 **SIXTH CAUSE OF ACTION**

20 **(For Common Law Conversion - By Plaintiff Individually and on Behalf of All Crew**  
21 **Members )**

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

26 57. During the Class Period, Defendant has wrongfully withheld and failed to pay  
27 Crew Members, including Plaintiff, wages and other compensation due them for labor already  
28 performed. Such wages and compensation belong to Crew Members, including Plaintiff, at the

1 time the labor and services are provided to Defendant and, accordingly, such wages and  
2 compensation are the property ("Property") of Crew Members , including Plaintiff.

3 58. Defendant has knowingly and intentionally converted the Property of Crew  
4 Members, including Plaintiff, by:

5 a. Wrongfully withholding Property which the Crew Members, including  
6 Plaintiff, owned or had the right to own and had the legal right to hold, possess and dispose of,  
7 and then,

8 b. Taking the Property of the Crew Members, including Plaintiff, and utilizing  
9 such Property for Defendant's own use and benefit.

10 59. Defendant has converted the Property of the Crew Members , including Plaintiff,  
11 as part of an intentional and deliberate scheme to maximize profits at the expense of Crew  
12 Members, including Plaintiff. Defendant's conversion has been done with the advance  
13 knowledge, express or implied authorization, and/or ratification of Defendant's respective  
14 corporate officers, directors and managing agents.

15 60. At the time the conversion of the Property took place, Crew Members, including  
16 Plaintiff, were entitled to immediate possession of the Property.

17 61. The Crew Members, including Plaintiff, have been injured by Defendant's  
18 intentional conversion of their Property. The Crew Members , including Plaintiff, are entitled to  
19 all monies converted by Defendant, with interest, as well as any and all profits, whether direct or  
20 indirect, which Defendant's acquired by their unlawful conversion, and all other remedies allowed  
21 by law, including as set forth in Civil Code section 3336.

22 62. Furthermore, Defendant's conversion was fraudulent, oppressive, malicious and/or  
23 despicable, and in conscious disregard of the rights of Crew Members, including Plaintiff, who  
24 are thus entitled to punitive damages under all applicable statutory and common law, including  
25 Civil Code section 3294.

26 ///

27 ///

28 ///

1 **SEVENTH CAUSE OF ACTION**

2 **(For Unfair Competition - California Business & Professions Code § 17200 et seq.**

3 **By Plaintiff Individually and on Behalf of All Crew Members )**

4 63. As a separate and distinct cause of action, Plaintiff complains and realleges all 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 this  
7 cause of action.

8 64. Defendant's violations of the Employment Laws and Regulations as alleged in this  
9 Complaint, including but not limited to Defendant's:

10 a. Failure and refusal to pay Crew Members, including Plaintiff, wages for all  
11 hours worked;

12 b. Failure and refusal to pay Crew Members, including Plaintiff, the legal  
13 minimum wage;

14 c. Failure and refusal to pay Crew Members, including Plaintiff, overtime  
15 wages;

16 d. Failure and refusal to provide Crew Members, including Plaintiff, with  
17 meal and rest periods;

18 e. Failure and refusal to provide Crew Members, including Plaintiff, with  
19 timely and accurate wage and hour statements; and

20 f. Failure to maintain complete and accurate payroll records for Crew  
21 Members, including Plaintiff;

22 constitute unfair business practices in violation of the California Business & Professions Code  
23 section 17200 et seq.

24 65. Defendant has avoided payment of wages, overtime wages and other benefits as  
25 required by the California Labor Code, the California Code of Regulations, and applicable  
26 Industrial Welfare Commission Wage Orders.

27 66. As a result of Defendant's unfair business practices, Defendant has reaped unfair  
28 benefits and illegal profits at the expense of Crew Members, including Plaintiff, and members of

1 the public. Defendant should be made to disgorge their ill-gotten gains and to restore them to  
2 Crew Members, including Plaintiff.

3 67. Defendant's unfair business practices entitle Plaintiff to an order that Defendant  
4 accounts for, disgorges and restores to the Crew Members, including Plaintiff, the wages and  
5 other compensation unlawfully withheld from them.

6 **PRAYER FOR RELIEF**

7 **WHEREFORE**, Plaintiff, individually and on behalf of all Crew Members, prays that the  
8 Court enter judgment in her favor and against Defendant as follows:

- 9 1. For an Order requiring and certifying this action as a class action for the First  
10 through the Seventh Causes of Action;
- 11 2. For an Order appointing Plaintiff's counsel as Class Counsel;
- 12 3. For compensatory damages in an amount to be ascertained at trial;
- 13 4. For restitution in an amount to be ascertained at trial;
- 14 5. For punitive damages in an amount to be ascertained at trial;
- 15 6. For penalties as required by the applicable Wage Order or otherwise by law;
- 16 7. For prejudgment interest at the legal rate pursuant to California Labor Code section  
17 218.6 and other applicable sections;
- 18 8. For reasonable attorney's fees pursuant to California Labor Code §§ 1021.5, 1194  
19 and 2698 et seq.;
- 20 9. For cost of suit incurred herein;
- 21 10. For disgorgement of profits garnered as a result of Defendants' unlawful failure to  
22 pay overtime premium compensation and meal and rest period compensation; and  
23 ///  
24 ///  
25 ///  
26 ///  
27 ///  
28 ///



1 11. For such further relief as the Court may deem appropriate.  
2

3 DATED: October 18, 2013

LAW OFFICES OF THOMAS W. FALVEY  
LAW OFFICES OF KELLY A. KNIGHT

4  
5  
6 By: 

Michael H. Boyamian, Esq.

7 Attorneys for Plaintiff Luzmarina Gutierrez,  
8 Individually and on Behalf of All Similarly Situated  
9 Individuals  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DEMAND FOR JURY TRIAL**

Plaintiff Luzmarina Gutierrez, individually and on behalf of all similarly situated individuals, demands a jury trial of this matter.

DATED: October 18, 2013

LAW OFFICES OF THOMAS W. FALVEY  
LAW OFFICES OF KELLY A. KNIGHT

By: 

Michael H. Boyamian, Esq.  
Attorneys for Plaintiff Luzmarina Gutierrez,  
Individually and on Behalf of All Similarly Situated  
Individuals

LASC - FILINGS  
111 N. HILL STREET  
LOS ANGELES CA 90012

DATE PAID: 10/18/13 03:17 PM  
RECEIPT #: CCH465980098

CIT/CASE: BC524915  
LEA/DEF#:

PAYMENT:	\$435.00	310
RECEIVED:		
CHECK:	\$435.00	
CASH:	\$0.00	
CHANGE:	\$0.00	
CARD:	\$0.00	

LASC - FILINGS  
111 N. HILL STREET  
LOS ANGELES CA 90012

DATE PAID: 10/18/13 03:17 PM  
RECEIPT #: CCH465980099

CIT/CASE: BC524915  
LEA/DEF#:

PAYMENT:	\$1,000.00	310
RECEIVED:		
CHECK:	\$1,000.00	
CASH:	\$0.00	
CHANGE:	\$0.00	
CARD:	\$0.00	