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BY *Lavon Godfrey* DEPUTY CLERK

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8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF ALAMEDA

10 LAVON GODFREY, on behalf of herself and  
11 all others similarly situated,

12 Plaintiff,

13 v.

14 AB TRUCKING, INC., OAKLAND PORT  
15 SERVICES CORP., BILL ABOUDI and DOES  
16 1 through 20, inclusive,

16 Defendants.

) Case No. **RG08 - 379099**  
) **COMPLAINT FOR UNFAIR**  
) **BUSINESS PRACTICES AND**  
) **VIOLATIONS OF THE LABOR CODE**

) **CLASS ACTION**

18 **I. INTRODUCTION**

19 This is an action brought by Plaintiff LAVON GODFREY ("Plaintiff"), on her own behalf  
20 and on behalf of all those similarly situated, against Defendant AB TRUCKING, INC.,  
21 OAKLAND PORT SERVICES CORP., and BILL ABOUDI (collectively "Defendants") and other  
22 as yet unnamed defendants, alleging unfair business practices, violations of the California Labor  
23 Code and violations of the Port of Oakland Living Wage Ordinance (Oakland City Charter, Section  
24 728). Plaintiff seeks restitution, equitable accounting, statutory penalties, damages including  
25 declaratory and injunctive relief, attorneys' fees, and costs of suit.

26 **II. PARTIES**

27 1. Plaintiff LAVON GODFREY was at all relevant times herein employed by  
28 Defendants as a truck driver at the Port of Oakland in California. She brings this action on her own

1 behalf and on behalf of others similarly situated.

2 2. AB TRUCKING, INC. and OAKLAND PORT SERVICES CORP. are business  
3 entities doing business in California, and are each a "person" as defined in California Labor Code  
4 § 18, and California Business and Professions Code § 17201. In addition, Defendants are each an  
5 "employer" as that term is used in the California Labor Code and in the California Industrial  
6 Welfare Commission's orders regulating wages, hours, and working conditions.

7 3. Defendants AB TRUCKING, INC and OAKLAND PORT SERVICES CORP. are  
8 each incorporated in California and have corporate offices and are licensed to do business within  
9 the state.

10 4. BILL ABOUDI is believed to be the principal officer and alter-ego of both AB  
11 TRUCKING, INC. and OAKLAND PORT SERVICES CORP.

12 5. Defendants are each Port Assisted Businesses (PAB) under the Living Wage  
13 Charter Amendment of the Oakland City Charter, § 728. Defendants are believed to have contracts  
14 with the Port of Oakland which result in the employment of more than 20 person and/or receive  
15 financial assistance from the Port of no less than \$50,000.

16 6. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as  
17 DOES 1 through 20, inclusive, and therefore sue these Defendants by such fictitious names.  
18 Plaintiff will amend this complaint to allege their true names and capacities when ascertained.

19 7. At all relevant times herein, Defendants were the agents of each other and acting  
20 within the course and scope of their agency.

21 8. Venue is proper based on the location of the majority of Plaintiff's work as well as  
22 the location of the commission of the acts alleged herein. The work giving rise to this complaint  
23 was performed in various counties in California but was based out of Alameda County. The Court  
24 has jurisdiction over this action pursuant to Subsection 9 of Oakland City Charter, § 728 which  
25 allows enforcement in any superior court of the state of California. Section 9(A) states:

26 Any person claiming a violation of this Section may bring an action against  
27 the PAB in the Municipal Court or Superior Court of the State of California,  
28 as appropriate, to enforce the provisions of this Section and shall be entitled  
to all remedies available to remedy any violation of this Section, including  
but not limited to back pay, reinstatement or injunctive relief. Violations of

1 this Section are declared to irreparably harm the public and covered  
2 employees generally.

3 The relief requested is within the jurisdiction of this Court.

4 **III. FACTUAL ALLEGATIONS**

5 9. During the four years prior to the filing of this action, Defendant provided  
6 transportation of product and containers to and from the Port of Oakland to various locations  
7 within California.

8 10. Defendant engaged in:

- 9 • a pattern and practice of failing to provide meal and rest periods as required
- 10 under California law;
- 11 • a pattern and practice of failing to provide minimum compensation under the
- 12 Port of Oakland Living Wage Ordinance;
- 13 • a pattern and practice of failing to provide employees with adequate wage
- 14 statements;
- 15 • a pattern and practice of failing to pay wages for all hours worked;
- 16 • a pattern and practice of failing to keep accurate logs of driving work
- 17 performed by employees;
- 18 • a pattern and practice of failing to provide all compensation owed in a
- 19 timely manner; and
- 20 • a pattern and practice of failing to provide all compensation owed at the
- 21 termination of employment.

22 11. The wages, hours and working conditions of individuals employed in the  
23 transportation industry are regulated by Industrial Wage Commission Wage Order 9, Cal. Code  
24 Regs. tit. 8, § 11090.

25 12. IWC Wage Order 9, section 4, and Labor Code § 1194 require an employer to  
26 provide compensation for all hours worked.

27 13. Plaintiff alleges that the Defendants regularly did not pay employees for time  
28 worked.

1           14.     Under the terms of IWC Wage Order 9, section 11, employees are required to  
2 receive a ½ hour unpaid, off-duty meal period during each eight (8) hour shift. Employees  
3 working beyond ten (10) hours in a day are entitled to a second ½ hour unpaid, off-duty meal  
4 period.

5           15.     Under the terms of IWC Wage Order 9, section 12, employees are entitled to two  
6 (2) uninterrupted 10 minute rest periods during each eight (8) hour shift.

7           16.     Labor Code § 226.7 requires employers to provide employees with meal and rest  
8 periods mandated by the IWC wage orders and provides for wages of one additional hour of pay at  
9 the employee's regular rate to compensate for each day such meal and/or rest period was not  
10 provided up to a maximum of 2 additional hours of compensation per day.

11          17.     California Labor Code § 512 prescribes when meal periods must be provided. An  
12 employee is entitled to one thirty minute meal period in the first 8 hours of work and a second meal  
13 period if the employee works more than 10 hours of work. Under the terms of Labor Code § 512,  
14 an employee may consent to waiver of a meal period but may not consent to waive his second meal  
15 period if he waived the first meal period.

16          18.     The Defendants regularly failed to provide Plaintiff and others their right to the state  
17 mandated ½ hour off-duty meal period and failed to authorize uninterrupted rest periods.

18          19.     Plaintiff has not been compensated one additional hour for each day a meal and or  
19 one additional hour for each day a rest period has not been provided.

20          20.     Oakland City Charter Section 728 requires that all Port-Assisted Businesses provide  
21 compensation not less than the Oakland living wage. The current Minimum Compensation is  
22 \$11.58 without benefits and \$10.07 with benefits according Oakland Municipal code section 2.28.

23          21.     The Defendants have failed to provide at least the Oakland living wage rate for each  
24 hour worked.

25          22.     Labor Code §§ 201 and 202 require the payment of all wages due upon the  
26 termination of the employment relationship.

27          23.     The Defendants failed to provide Plaintiff and others similarly situated with their  
28 final paychecks until after the termination of the employment relationship. Defendants failed to

1 provide all wages due in the final paycheck and have failed to make such payment to date.

2 24. California Labor Code § 226 requires the employer to provide each employee with  
3 an accurate itemized wage statement showing, among other things, all hours worked and the  
4 correct hourly rate provided to the employee for those hours worked. Failure to provide this  
5 accurate statement allows the employee to collect damages, seek injunctive relief and recover  
6 penalties.

7 25. Defendants have failed to provide an accurate itemized wage statement reflecting  
8 the total hours of each category of compensation earned and the itemized wage statements fail to  
9 provide adequate information regarding the employer and the home address of the employee.

10 26. As a proximate and direct result of Defendants' actions, Plaintiff and others  
11 similarly situated have suffered damages and are entitled to penalties in an amount to be specified  
12 at trial.

13 27. As a proximate and direct result of Defendants' actions, Defendants unlawfully  
14 acquired money or property from Plaintiff and others similarly situated in an amount to be  
15 specified at trial.

#### 16 IV. CLASS ALLEGATIONS

17 28. Plaintiff realleges, and incorporates by reference, the allegations contained in  
18 paragraphs 1 through 27 above, as if fully stated herein.

19 29. Plaintiff brings this action on behalf of herself and all other current and former  
20 employees similarly situated as a class action under Code of Civil Procedure § 382. Plaintiff seeks  
21 to represent the following classes:

22 All employees and former employees of Defendants employed in California  
23 who were not paid for all hours worked in any work week in the four years  
24 prior to the filing of this lawsuit and who are entitled to all restitutionary  
relief, legal relief and attorney's fees and costs.

25 All employees and former employees of Defendants who were not provided  
26 rest breaks or meal periods as required by California in the four years prior  
to the filing of this lawsuit and who are entitled to all restitutionary relief,  
legal relief and attorney's fees and costs.

27 All employees and former employees of Defendants who have worked for  
Defendants at the Port facility for the period 4 years immediately preceding

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1 the filing of this action and who have not been paid the minimum  
2 compensation required by Oakland Charter Section 728.

3 All employees and former employees of Defendants who were not provided  
4 accurate itemized wage statements as required by California law in the year  
5 prior to the filing of this lawsuit and who are entitled to all restitutionary  
6 relief, legal relief and attorney's fees and costs.

7 All employees and former employees of Defendants who were not paid in a  
8 timely basis upon termination as required by California law in the four years  
9 prior to the filing of this lawsuit and who are entitled to all restitutionary  
10 relief, legal relief and attorney's fees and costs.

11 30. Plaintiff reserves the right under Rule 1855(b), California Rules of Court to  
12 amended or modify the class description with greater specificity or further division into sub-classes  
13 or limitation to particular issues.

14 31. This action may be properly maintained as a class action under Code of Civil  
15 Procedure § 382 because there is a well-defined community of interest in the litigation and the  
16 proposed class is easily ascertainable:

17 **A. Numerosity**

18 32. The members of the proposed class are so numerous that joinder of all the members  
19 of the class is impracticable. While the precise number of class members has not been determined  
20 at this time, Plaintiff is informed and believes that Defendants employed more than 50  
21 transportation employees during the relevant period.

22 33. Plaintiff alleges Defendants' employment records would provide information as to  
23 the number and location of all class members. Those records will furthermore disclose the amount  
24 of time worked, hours for which pay was received, and whether meal and rest periods were  
25 provided, or Plaintiff and others similarly situated will have their own reasonable estimates of such  
26 monies.

27 **B. Commonality**

28 34. There are questions of law and fact common to the class that predominate over any  
29 questions affecting only individual class members. These common questions of law and fact  
30 include, without limitation:

31 a. Whether Defendants violated Labor Code § 1194 and Industrial Welfare

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Commission Order 9-2001, Section 4, by failing to provide compensation for each hour worked;

- b. Whether Defendants violated Labor Code § 512 and IWC Wage Order 9, sections 11 and 12 by failing to provide meal and rest periods to employees;
- c. Whether Defendants violated § 226.7 of the Labor Code by failing to provide off duty meal periods and rest periods without providing employees with compensatory remunerations;
- d. Whether Defendants violated Oakland City Charter § 728 by failing to provided the living wage to employees for each hour worked;
- e. Whether Defendant violated Labor Code §§ 201 and 202 by failing to pay all wages due at the time of termination of employment;
- f. Whether Defendant violated Labor Code § 204 by failing to provide all wages due on a biweekly basis; and
- g. Whether Defendant violated Labor Code § 226 by failing to provide accurate itemized wage statements showing the applicable hourly rate for each hour worked and each category of compensation received.

**C. Typicality**

35. The claims of the named Plaintiff is typical of the claims of the proposed class. Plaintiff and all members of the proposed class sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of laws and regulations as alleged herein.

**D. Adequacy of Representation**

36. Plaintiff is an adequate representative of the proposed class in that Plaintiff has the same interests in the litigation of this case as the proposed class members. Plaintiff is committed to vigorous prosecution of this case and has retained competent counsel who is highly experienced in class action and wage and hour litigation of this nature. Plaintiff is not subject to any individual defenses different from those conceivably applicable to the Class as a whole.

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1           **E. Superiority of Class Action**

2           37.     A class action is superior to other available means for the fair and efficient  
3 adjudication of this controversy. Individual joinder of all proposed class members is not  
4 practicable, and questions of law and fact common to the class predominate over any questions  
5 affecting only individual members of the class. Each member of the class has been damaged and is  
6 entitled to recovery by reason of Defendants' illegal policies and/or practices with respect to  
7 overtime, failure to pay prevailing wages, failure to provide meal and rest periods and inadequate  
8 wage statements for the defined period.

9           38.     Class action treatment will allow those similarly situated persons to litigate their  
10 claims in the manner that is most efficient and economical for the parties and the judicial system.  
11 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this  
12 action that would preclude its maintenance as a class action.

13           39.     A class action is superior to other available methods for the fair and efficient  
14 adjudication of this controversy because individual litigation of the claims of all proposed class  
15 members is impractical. Even if every proposed class member could afford individual litigation,  
16 the court system could not. It would be unduly burdensome to the courts in which individual  
17 litigation of numerous cases would proceed. Individualized litigation would also present the  
18 potential for varying, inconsistent, or contradictory judgments and would magnify the delay and  
19 expense to all parties and to the court system resulting from multiple trials of the same complex  
20 factual issues. By contrast, the conduct of this action as a class action, with respect to some or all  
21 of the issues presented herein, presents fewer management difficulties, conserves the resources of  
22 the parties and the court system, and protects the rights of each proposed class member. Plaintiff  
23 anticipates no management difficulties in this litigation.

24           40.     Defendants has also acted, or has refused to act, in respects generally applicable to  
25 the proposed class, thereby making relief appropriate with regard to the members of the proposed  
26 class as a whole, as requested herein.

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1                                   **V. FIRST CAUSE OF ACTION (UNFAIR BUSINESS PRACTICES**  
2                                   **BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.)**

3                   41. Plaintiff realleges and incorporates paragraphs 1 through 40, inclusive, as though set  
4 forth fully herein.

5                   42. California Business and Professions Code § 17200 *et seq.* prohibits unfair  
6 competition in the form of any unlawful, unfair, deceptive, or fraudulent business practice.

7                   43. Beginning at an exact date unknown to Plaintiff, but at least since February 2004,  
8 the Defendants committed unlawful acts as defined by California Business & Professions Code §  
9 17200. The Defendants have engaged in unlawful and unfair business practices including, but not  
10 limited to, violations of:

- 11                   a. California Industrial Welfare Commission Order No. 9-2001, section 4  
12                                   (payment for all hours worked);
- 13                   b. Labor Code § 226.7 (failure to provide meal and rest periods);
- 14                   c. Labor Code § 512 (failure to provide meal periods);
- 15                   d. California Industrial Welfare Commission Order 9-2001, sections 11 and 12  
16                                   (failure to provide meal and rest periods);
- 17                   e. Labor Code § 223 (secret payment of wages less than those designated by  
18                                   statute)
- 19                   f. Oakland City Charter § 728 (living wage);
- 20                   g. Labor Code § 201 (requirement to pay all wages upon discharge);
- 21                   h. Labor Code § 202 (requirement to pay all wages to quitting employees);
- 22                   i. Labor Code § 204 (requirement of payment of wages on a bimonthly basis);  
23                                   and
- 24                   j. Labor Code § 226 (accurate itemized wage statement).

25                   44. The violation of these laws serve as unlawful predicate acts for purposes of  
26 Business & Professions Code § 17200 and remedies are provided therein under Business &  
27 Professions Code § 17203. Plaintiff has suffered direct economic injury in that she has not been  
28 paid all wages and compensation due in a timely manner.

1           45.     The acts and practices described in this Complaint constitute unlawful, unfair and  
2 fraudulent business practices, and unfair competition by the Defendant within the meaning of  
3 Business and Professions Code § 17200 *et seq.*

4           46.     Business & Professions Code § 17203 provides that the Court may restore to any  
5 person in interest any money or property which may have been acquired by means of such unfair  
6 competition and to which those person have an ownership interest. Plaintiff and other employees  
7 of Defendants are entitled to restitution pursuant to Business & Professions Codes §§ 17203 and  
8 17208 for all wages unlawfully withheld from them during the four years prior to the filing of this  
9 Complaint. Plaintiff will, upon leave of the Court, amend this Complaint to state such amounts  
10 when they become ascertained.

11           47.     Plaintiff's success in this action will enforce important rights affecting the public  
12 interest, and in that regard, Plaintiff sues on behalf of herself and other current and former  
13 employees similarly situated. Plaintiff seeks and is entitled to unpaid wages at the living wage  
14 rate, unpaid compensation for missed meal and rest periods, injunctive relief, declaratory relief,  
15 and any other remedy owing to Plaintiff.

16           48.     Injunctive and declaratory relief is necessary and appropriate to prevent the  
17 Defendants from repeating their wrongful business practices alleged above.

18           49.     To prevent the Defendants from profiting and benefiting from their wrongful and  
19 illegal acts, it is appropriate and necessary to enter an order requiring the Defendants to restore  
20 Plaintiff and others all monies that are owed.

21           50.     An actual controversy has arisen and now exists relating to the rights and duties of  
22 the Defendants and Plaintiff as to whether Defendants must pay the living wage, wages for each  
23 hour worked and compensation for missed meal and rest periods.

24           51.     Plaintiff requires a declaration by this Court that Plaintiff is entitled to be paid for  
25 all hours worked, are entitled to be paid at least the living wage rate, and be compensated for  
26 missed meal and rest periods pursuant to California Law.

27           52.     Plaintiff herein takes upon herself enforcement of these laws and lawful claims.  
28 There is a financial burden incurred in pursuing this action and it would be against the interests of

1 justice to penalize Plaintiff by forcing hereto pay attorneys' fees from the recovery in this action.  
2 Therefore, attorneys' fees are appropriate pursuant to California Code of Civil Procedure § 1021.5.

3 Wherefore, Plaintiff prays judgment as set forth below.

4 **VI. SECOND CAUSE OF ACTION (FAILURE TO PAY FOR EACH HOUR WORKED IN**  
5 **VIOLATION OF LABOR CODE §§ 1194 AND 1182.12 AND IWC WAGE ORDER NO. 9,**  
6 **SECTION 4)**

7 53. Plaintiff realigns and incorporates paragraphs 1 through 52, inclusive, as though  
8 fully set forth herein.

9 54. Labor Code § 1182.12 provides:

10 Notwithstanding any other provision of this part, on and  
11 after January 1, 2007, the minimum wage for all industries shall be  
12 not less than seven dollars and fifty cents (\$7.50) per hour, and on  
and after January 1, 2008, the minimum wage for all industries shall  
be not less than eight dollars (\$8.00) per hour.

13 55. IWC Order No. 9, section 4 provides for each employee to be paid no less than  
14 minimum wage for each hour worked and for those wage payments to be made on no less than a  
15 bi-weekly basis.

16 56. Plaintiff worked for Defendants for hours which were not compensated. Defendants  
17 regularly shorted hours on paychecks and deducted time from employee paychecks for meal  
18 periods even if such meal periods were not taken.

19 57. Labor Code § 204 requires employers to provide employees with all wages due and  
20 payable twice a month. As Defendants has failed to provide Plaintiff and others similarly situated  
21 with wages for each hour worked, Defendant has violated Labor Code § 204.

22 58. Labor Code § 210 provides for civil penalties for violations of § 204 in the amount  
23 of \$100 per initial violation per employee and for subsequent violation or any willful or intentional  
24 violation, \$200 for each per employee, plus 25% of the amount unlawfully withheld.

25 59. Plaintiff seeks to recover that civil penalty for herself and others similarly situated  
26 as provided for in Labor Code § 210 and the Wage Order. Plaintiff seeks to recover penalties for  
27 Defendants' violations on behalf of herself and all others similarly situated.

28 60. Labor Code § 1194 provides for a private right of action to recover wages for hours

1 worked but not compensated. It states, in pertinent part:

2 [A]ny employee receiving less than the legal minimum wage or the legal  
3 overtime compensation applicable to the employee is entitled to recover in a  
4 civil action the unpaid balance of the full amount of this minimum wage or  
overtime compensation, including interest thereon, reasonable attorney's  
fees, and costs of suit.

5 61. Plaintiff seeks to recover overtime compensation, attorneys' fees and costs under  
6 Labor Code § 1194.

7 62. IWC Wage Order 9-2001 section 20(A) provides for civil penalties for violations of  
8 the Wage Order which result in underpayment of wages to employees. The penalty amounts to  
9 \$50 per employee for the first violation and \$100 per employee for each subsequent pay period in  
10 which the employee is under paid.

11 63. Plaintiff seeks to recover penalties under IWC Wage Order 16, section 20 for  
12 violations of section 4.

13 64. Labor Code § 218 provides for a private right of action to recover wages under the  
14 Labor Code. Plaintiff seeks to recover unpaid wages and penalties directly under § 218.

15 65. Labor Code § 218.6 provides for interest on all dues and unpaid wages in any action  
16 brought for the nonpayment of wages. Plaintiff seeks to recover interest on all wages due.

17 66. Plaintiff seeks to recover all unpaid overtime wages, penalties, and interest due to  
18 her and all others similarly situated.

19 Wherefore, Plaintiff prays for judgment as set forth below.

20 **VII. THIRD CAUSE OF ACTION (LIVING WAGE -OAKLAND CITY CHARTER § 728)**

21 67. Plaintiff realleges and incorporates paragraphs 1 through 66, inclusive, as though set  
22 forth fully herein.

23 68. Oakland City Charter, § 728 mandates that a PAB, provide the Minimum  
24 Compensation referred to above.

25 69. Defendants have violated and continue to violate Oakland City Charter, § 728 by  
26 refusing to pay the Minimum Compensation required by Section 728 to all employees of  
27 Defendants.

28 70. Oakland City Charter § 728 (8) provides for a private right of action to enforce the

1 provisions of the Living Wage Charter amendment, and provides for all remedies available to  
2 remedy any violation of Section 728 including, but not limited to backpay, reinstatement, or  
3 injunctive relief.

4 71. Plaintiff has been damaged in that she has not been paid the Minimum  
5 Compensation at all times while employed by Defendants.

6 72. The Living Wage Charter Amendment also declares that any violation of the section  
7 constitutes irreparable harm to the public and covered employees generally. (Oakland City Charter  
8 § 728 (8).).

9 73. Plaintiff's success in this action will enforce the mandate of the people of Oakland  
10 to protect the working people at the Port as well as the public interest at large.

11 74. Injunctive relief is necessary and appropriate to prevent Defendants from a  
12 continued violation of the Living Wage Charter Amendment and to save the economic livelihoods  
13 of workers at the Port of Oakland.

14 Wherefore, Plaintiff prays for judgment as set forth below.

15 **VIII. FOURTH CAUSE OF ACTION (CALIFORNIA LABOR CODE §§ 226.7 & 512,**  
16 **IWC WAGE ORDER 9 – MEAL & REST PERIODS)**

17 75. Plaintiff realleges and incorporates paragraphs 1 through 74, inclusive, as though set  
18 forth fully herein.

19 76. Labor Code § 226.7 provides:

20 (a) No employer shall require any employee to work during any meal or rest  
21 period mandated by an applicable order the industrial Welfare Commission.

22 (b) If an employer fails to provide an employee a meal period or rest period  
23 in accordance with an applicable order of the Industrial Welfare  
24 Commission, the employer shall pay the employee one additional hour of  
25 pay at the employee's regular rate of compensation for each workday that  
26 the meal or rest period is not provided.

27 77. Labor Code § 512 provides:

28 An employer may not employ an employee for a work period of more than  
five hours per day without providing the employee with a meal period of not  
less than 30 minutes, except that if the total work period per day of the  
employee is no more than six hours, the meal period may be waived by  
mutual consent of both the employer and employee. An employer may not  
employ an employee for a work period of more than 10 hours per day  
without providing the employee with a second meal period of not less than

1 30 minutes, except that if the total hours worked is no more than 12 hours,  
2 the second meal period may be waived by mutual consent of the employer  
and employee.

3 78. IWC Wage Order 9, section 11, Meal Periods provides:

4 (A) No employer shall employ any person for a work period of more than  
5 five (5) hours without a meal period of not less than 30 minutes, except that  
6 when a work period of not more than six (6) hours will complete the day's  
work the meal period may be waived by mutual consent of the employer and  
the employee.

7 (B) An employer may not employ an employee for a work period of more  
8 than ten (10) hours per day without providing the employee with a second  
meal period of not less than 30 minutes, except that if the total hours worked  
9 is no more than 12 hours, the second meal period may be waived by mutual  
consent of the employer and the employee only if the first meal period was  
not waived.

10 (C) Unless the employee is relieved of all duty during a 30 minute meal  
11 period, the meal period shall be considered an "on duty" meal period and  
counted as time worked. An "on duty" meal period shall be permitted only  
12 when the nature of the work prevents an employee from being relieved of all  
duty and when by written agreement between the parties an on-the-job paid  
13 meal period is agreed to. The written agreement shall state that the employee  
may, in writing, revoke the agreement at any time.

14 (D) If an employer fails to provide an employee a meal period in accordance  
15 with the applicable provisions of this order, the employer shall pay the  
employee one (1) hour of pay at the employee's regular rate of  
16 compensation for each workday that the meal period is not provided.

17 79. IWC Wage Order 9, section 12, Rest Periods provides:

18 (A) Every employer shall authorize and permit all employees to take rest  
19 periods, which insofar as practicable shall be in the middle of each work  
period. The authorized rest period time shall be based on the total hours  
20 worked daily at the rate of ten (10) minutes net rest time per four (4) hours  
or major fraction thereof. However, a rest period need not be authorized for  
21 employees whose total daily work time is less than three and one-half (3 ½)  
hours. Authorized rest period time shall be counted as hours worked for  
22 which there shall be no deduction from wages.

23 (B) If an employer fails to provide an employee a rest period in accordance  
24 with the applicable provisions of this order, the employer shall pay the  
employee one (1) hour of pay at the employee's regular rate of  
compensation for each workday that the rest period is not provided.

25 80. Defendants have failed to provide Plaintiff and other employees all meal and rest  
26 periods as required by Labor Code §§ 226.7 and 512 and IWC Wage Order 9.

27 81. IWC Wage Order 9, section 11 provides for an employee to be provided with 1  
28 hour's worth of compensation at his regular rate of compensation for each day of work that a meal

1 period is not provided.

2 82. IWC Wage Order 9, section 12 provides for an employee to be provided with 1  
3 hour's worth of compensation at his regular rate of compensation for each day of work that a rest  
4 period is not provided.

5 83. Labor Code § 226.7 provides for one hour's compensation for failure to provide a  
6 meal or rest period. This is the same remedy as provided for in IWC Wage Order 9, sections 11  
7 and 12.

8 84. Plaintiff seeks the compensation owed to her and other similarly situated employees  
9 under Labor Code § 226.7 and IWC Wage Order 9, sections 11 and 12.

10 85. Labor Code § 558 provides for a civil penalty when an employer violates § 512.  
11 The initial violation is \$50 for each underpaid employee for each pay period for which the  
12 employee was underpaid in addition to an amount sufficient to recover underpaid wages.  
13 Subsequent violations are \$100 per underpaid employee per pay period.

14 86. IWC Wage Order 9-2001 section 20(A) provides for civil penalties for violations of  
15 the Wage Order which result in underpayment of wages to employees. The penalty amounts to  
16 \$50 per employee for the first violation and \$100 per employee for each subsequent pay period in  
17 which the employee is underpaid.

18 87. Plaintiff seeks the penalties available under Labor Code § 558 and IWC Wage  
19 Order 9-2001 section 20(A) on behalf of herself and those similarly situated.

20 88. Labor Code § 204 requires an employer to pay an employee all wages due on a  
21 bimonthly basis. As Plaintiff has not been paid wages for the meal and rest periods that have not  
22 been provided, this section and its enforcement mechanisms are applicable.

23 89. Labor Code § 210 provides a penalty when an employer violates § 204. The initial  
24 violation is \$100 for each failure to pay. Subsequent violations are \$200 for each failure to pay  
25 each employee, plus 25 percent of the amount unlawfully withheld.

26 90. Labor Code § 218 provides wage claimants with a private right of action to recover  
27 wages under the Labor Code. The payments owed to employees for meal and rest periods not  
28 provided are wages under Labor Code § 226.7.

1            91. Labor Code § 218.6 provides for an award of interest on all due and unpaid wages.  
2 Plaintiff seeks to recover interest on all wages due under the Section on behalf of herself and others  
3 similarly situated.

4            92. Plaintiff seeks to recover all wages due and applicable penalties on behalf of herself  
5 and others similarly situated.

6            Wherefore, Plaintiff prays for judgment as set forth herein below.

7            **IX. FIFTH CAUSE OF ACTION (PAYMENT OF WAGES AND PENALTIES**  
8            **LABOR CODE §§ 201, 202, 203)**

9            93. Plaintiff realleges and incorporates paragraphs 1 through 92, inclusive, as though  
10 fully set forth within.

11           94. Labor Code § 201 provides:

12           If an employer discharges an employee, the wages earned and unpaid at the  
13 time of discharge are due and payable immediately...

14           95. Labor Code § 202 provides:

15           If an employee not having a written contract for a definite period quits his or  
16 her employment, his or her wages shall become due and payable not later  
17 than 72 hours thereafter, unless the employee has given 72 hours previous  
18 notice of his or her intention to quit, in which case the employee is entitle to  
19 his or her wages at the time of quitting...

20           96. Defendants' have failed to pay employees discharged from their employment all  
21 wages owed immediately as provided for under § 201 of the Labor Code. Defendants' failure to  
22 pay includes, but is not limited to, failing to pay wages for each hour worked, wages at the living  
23 wage rate and compensation for missed meal and rest periods.

24           97. Defendants' have unfairly and unlawfully failed to pay employees who have quit  
25 their employment with Defendants all wages owed immediately as provided for under § 202 of the  
26 Labor Code. Defendant's failure to pay includes, but is not limited to, failing to pay wages for  
27 each hour worked, wages at the living wage rate and compensation for missed meal and rest  
28 periods.

          98. Labor Code § 203 provides for civil penalties in the amount of one days wages for  
each day of violation of §§ 201 and 202 for up to 30 days. Plaintiff seeks penalties on behalf of



1 herself and all class members who have quit or have been discharged and have failed to receive the  
2 proper payment of wages dues.

3 99. Labor Code § 218 provides for a private right of action to recover wages and  
4 penalties under the Labor Code. Plaintiff seeks to recover penalties directly under § 218.

5 100. Plaintiff seeks to recover all wages due and applicable penalties on behalf of herself  
6 and others similarly situated.

7 Wherefore, Plaintiff prays judgment as set forth herein below.

8 **X. SIXTH CAUSE OF ACTION (PAYROLL STUBS**  
9 **CALIFORNIA LABOR CODE § 226)**

10 101. Plaintiff realleges and incorporates all the allegations in paragraphs 1 through 100,  
11 inclusively, as though fully set forth herein.

12 102. Labor Code § 226(a) provides:

13 Each employer shall, semimonthly or at the time of each payment of wages,  
14 furnish each of his or her employees, either as a detachable part of the check,  
15 draft, or voucher paying the employee's wages, or separately when wages  
16 are paid by personal check or cash, an accurate itemized wage statement in  
17 writing showing (1) gross wages earned, (2) total hours worked by the  
18 employee, (3) the number of piece-rate units earned and any applicable piece  
19 rate if the employee is paid on a piece-rate basis, (4) all deductions, provided  
20 that all deductions made on written orders of the employee may be  
aggregated and shown as one item, (5) net wages earned, (6) the inclusive  
dates of the period for which the employee is paid, (7) the name of the  
employee and his or her social security number, (8) the name and address of  
the legal entity that is the employer, and (9) all applicable hourly rates in  
effect during the pay period and the corresponding number of hours worked  
at each hourly rate by the employee.

21 103. As a direct and proximate result of Defendants' failure to pay Plaintiff and other  
22 employees the wages mandated by law, none of the statements provided by Defendants to Plaintiff  
23 and other employees have accurately reflected the total number of hours worked or the correct  
24 wage rate for each hour worked and they have been denied the protections afforded to them under  
25 the law.

26 104. As a direct and proximate result of Defendants' automatic deduction of ½ hour of  
27 work for a meal period regardless of whether the meal period was taken, the total number of hours  
28 worked, as reported on the wage statements, is and has been incorrect.

1 105. Labor Code § 226(e) provides for recovery of all actual damages or fifty dollars for  
2 the initial pay period in which a violation occurs and one hundred dollars per employee for each  
3 violation in a subsequent pay period, up to an aggregate of \$4000.

4 106. Labor Code § 226.3 provides civil penalties for violations of § 226 in the amount of  
5 \$250 per initial violation and \$1000 per employee for each subsequent violation.

6 107. Plaintiff seeks to recover that civil penalty for the Treasury of the State as provided  
7 for in Labor Code § 266.3. Plaintiff seeks to recover these penalties on behalf of herself and others  
8 similarly situated.

9 108. Plaintiff also seeks injunctive relief and to recover attorneys fees and costs under  
10 Labor Code § 226(g).

11 109. Plaintiff seeks to recover all wages due and applicable penalties on behalf of herself  
12 and others similarly situated.

13 Wherefore, Plaintiff prays judgment as set forth herein below.

14 **XI. PRAYER FOR RELIEF**

15 Plaintiff prays judgment as follows:

- 16 1. For preliminary, permanent and mandatory injunctive relief prohibiting the  
17 Defendants, its officers, agents, and all those acting in concert with them, from committing in the  
18 future those violations of law herein alleged;
- 19 2. For an order determining this matter to be a class action;
- 20 3. For an order imposing all statutory and/or civil penalties provided by law;
- 21 4. For an award of damages;
- 22 5. For an award of restitution according to proof, under the Labor Code and under  
23 Business & Professions Code § 17203;
- 24 6. For an equitable accounting to identify, locate, and restore to all current and former  
25 employees the wages they are due;
- 26 7. For penalties under Labor Code §§ 203, 210, 558, 226.3, and IWC Wage Order 9-  
27 2001;
- 28 8. For costs of suit incurred herein;

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9. For an award of reasonable attorneys' fees as provided by Labor Code §§ 226(g) and 1194, Oakland City Charter § 728, Code of Civil Procedure § 1021.5, and otherwise; and For such other and further relief as this Court deems just and proper.

Dated: March 27, 2008

WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

By:   
\_\_\_\_\_  
DAVID A. ROSENFELD  
CAREN P. SENCER  
Attorneys for Plaintiff

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