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17
 18 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
 19 FOR THE COUNTY OF YOLO

20 JOHN VELASQUEZ, on behalf of himself, all
 21 others similarly situated, and the general public,

22 Plaintiff,

23 v.

24 RALEY'S, a private corporation; BEL AIR
 25 MART, a private corporation; NOB HILL
 26 GENERAL STORE, INC., a private corporation,
 27 and DOES 1-10, inclusive

28 Defendants.

Case No.

CLASS ACTION COMPLAINT

- (1) OVERTIME COMPENSATION;
- (2) OFF-DUTY MEAL PERIODS;
- (3) INCOMPLETE WAGE STATEMENTS;
- (4) INCOMPLETE PAYROLL RECORDS;
- (5) WAITING TIME PENALTIES; AND
- (6) BUS. & PROF. CODE §§ 17200-08

JURY TRIAL DEMANDED

29 Plaintiff John Velasquez alleges as follows on behalf of himself, all others similarly
 30 situated, and the general public:

I. INTRODUCTION

31 1. Plaintiff Velasquez brings claims individually and as a class action, under Civil
 32 Code § 382, on behalf of similarly situated Assistant Managers, "Second Assistant Grocery
 33 Managers," and/or "Assistant Manager Grocery" (collectively hereinafter "Assistant Managers," or
 34 "Class Members") employed by, or formerly employed, in grocery stores owned and/or operated

1 by, Defendants Raley's and its wholly-owned subsidiaries Bel Air Mart, and Nob Hill General
2 Store (collectively "RALEY'S" or "DEFENDANTS"). These Assistant Managers have worked in
3 DEFENDANTS' grocery stores throughout California. Plaintiff challenges DEFENDANTS' prior
4 policy of willfully and unlawfully misclassifying its grocery store Assistant Managers as "exempt"
5 and thereby refusing to pay them overtime compensation and provide adequate off-duty meal
6 periods as required by California law. This misclassification policy was in effect for at least four
7 years prior to the filing of this action until approximately May 2003. Even though Assistant
8 Managers in actuality spent the vast majority of their work week performing physical and menial
9 tasks, were not primarily engaged in exempt executive duties, and did not regularly and
10 customarily exercise discretion and independent judgment, DEFENDANTS knowingly allowed
11 and/or coerced them to work overtime hours without paying overtime compensation; failed to
12 provide off-duty meal periods; failed to provide overtime and meal period compensation at time of
13 termination; failed to provide itemized wage statements showing actual hours worked; and failed to
14 keep accurate time records.

15 2. Plaintiff Velasquez, on behalf of himself and other current and former Assistant
16 Managers, brings claims for unpaid overtime compensation, meal period pay, statutory penalties,
17 interest, punitive damages, and attorneys' fees and costs, under Labor Code §§ 203, 218.5, and
18 1194, and Code of Civil Procedure § 1021.5. Plaintiff Velasquez also seeks relief on behalf of the
19 class and in a representative capacity, pursuant to California Business and Professions Code §§
20 17200-17208 (also referred to herein as the "UCL"), including injunctive relief, restitution, and
21 disgorgement of all benefits RALEY'S has enjoyed from its failure to pay overtime and meal
22 period compensation, failure to provide accurate wage statements, and failure to keep daily payroll
23 records showing the actual hours worked by Assistant Managers. Both the Code of Civil
24 Procedure § 382 class action and the UCL representative action are brought on behalf of all current
25 and former Assistant Managers employed by DEFENDANTS during the period commencing
26 approximately May 1999 until May 2003" (the "Class Period"), when Raley's reclassified Plaintiff
27 and the other Assistant Managers from "exempt" to "non-exempt" employees.

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II. PARTIES

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2 3. Plaintiff resides in Shasta County, California. He worked as an Assistant Manager
3 in a Raleys store located on Hartnell Road, Redding (Shasta County, California) from
4 approximately 1990 until he retired in December 2004.

5 4. Defendant Raley's is a privately owned company, incorporated under the laws of
6 the State of California, with its corporate headquarters located in West Sacramento, California
7 (Yolo County). Defendant Raley's is primarily engaged in the retail grocery business, operating in
8 California approximately 64 stores under the Raley's name, 20 stores under the Bel Air name, and
9 25 stores under the Nob Hill name.

10 5. Defendant Bel Air Mart is a wholly owned subsidiary of Raley's. It is incorporated
11 under the laws of the State of California, with its corporate headquarters located in West
12 Sacramento, California.

13 6. Defendant Nob Hill General Store, Inc. is a wholly owned subsidiary of Raley's. It
14 is incorporated under the laws of the State of California, with its corporate headquarters located in
15 West Sacramento, California (Yolo County).

16 7. The true names and capacities, whether individual, corporate, associate, or
17 otherwise, of defendants sued herein as DOES 1 through 10, inclusive, are currently unknown to
18 Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure §
19 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
20 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to
21 herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
22 capacities of the Defendants designated hereinafter as DOES when such identities become known.
23 Hereinafter DEFENDANTS and the DOE defendants shall be referred to collectively as
24 "DEFENDANTS" and/or "RALEY'S."

25 8. Plaintiff is informed and believes, and based thereon alleges, that each defendant
26 acted in all respects pertinent to this action as the agent of the other defendants, carried out a joint
27 scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are
28 legally attributable to the other defendants.

III. STATEMENT OF FACTS

1
2 9. During the Class Period, DEFENDANTS employed Assistant Managers in over 100
3 grocery stores throughout California. DEFENDANTS required and/or knowingly permitted
4 Plaintiff to work hours considerably in excess of eight hours a day and/or 40 hours a week.
5 Plaintiff is informed and believes that it was DEFENDANTS' policy and practice to require and/or
6 knowingly permit their Assistant Managers to work overtime hours without receiving overtime
7 compensation.

8 10. During the Class Period, DEFENDANTS classified Plaintiff and its other Assistant
9 Managers in California as "exempt" employees for purposes of overtime and other wage and hour
10 requirements.

11 11. DEFENDANTS' "exempt" classification of Plaintiff and other Assistant Managers
12 during the Class Period was unlawful under Labor Code § 515 and I.W.C. wage order No. 7.
13 Plaintiff and other Assistant Managers did not, among other things: have duties and responsibilities
14 involving the management of the grocery store in which he/she was employed or of a recognized
15 department or subdivision thereof; engage in exempt duties more than half their work time;
16 customarily and regularly exercise discretion and independent judgment; determine or significantly
17 influence the hiring, firing, disciplining, or promoting of others. Instead, Plaintiff and other
18 Assistant Managers spent the vast majority of their time on the same physical and menial tasks
19 performed by their hourly subordinates, such as cashiering, receiving and unloading deliveries,
20 stocking, setting up displays, and performing janitorial tasks. The duties and responsibilities of
21 managing the grocery stores, including personnel matters such as hiring, firing and discipline, were
22 the province of the Store Directors or the management and administrative personnel that oversaw
23 the Store Directors.

24 12. As a result of DEFENDANTS misclassifying their Assistant Managers as "exempt,"
25 DEFENDANTS willfully and knowingly failed to pay premium overtime compensation to Plaintiff
26 and similarly situated Assistant Managers for hours worked over eight in a day and 40 in a week.

27 13. As a result of DEFENDANTS misclassifying their Assistant Managers as "exempt,"
28 DEFENDANTS willfully and knowingly failed to pay Plaintiff and similarly situated Assistant

1 Managers at the time of termination of employment all accrued overtime compensation.

2 14. As a result of DEFENDANTS' misclassifying their Assistant Managers as
3 "exempt," DEFENDANTS did not record Plaintiff's and similarly situated Assistant Managers'
4 actual hours they worked during the Class Period.

5 15. As a result of DEFENDANTS' misclassifying their Assistant Managers as
6 "exempt," DEFENDANTS regularly failed to provide a 30 minute off-duty meal period to Plaintiff
7 and similarly situated Assistant Managers who worked more than five hours in a day

8 16. As a result of DEFENDANTS' misclassifying their Assistant Managers as
9 "exempt," DEFENDANTS regularly failed to provide a second 30 minute meal period to Plaintiff.
10 and similarly situated Assistant Managers who worked more than 10 hours in a day.

11 17. As a result of DEFENDANTS' misclassifying their Assistant Managers as
12 "exempt," DEFENDANTS' policy and practice was to not itemize the total hours worked on wage
13 statements furnished to Assistant Managers, including Plaintiff.

14 18. As a result of DEFENDANTS' misclassifying their Assistant Managers as
15 "exempt," DEFENDANTS' policy and practice was to not keep payroll records showing the actual
16 hours worked each day Assistant Managers, including Plaintiff.

17 19. Knowing that Plaintiff and the other Assistant Managers were not exempt from
18 California's overtime and other wage and hour requirements, DEFENDANTS reclassified Plaintiff
19 and the other Assistant Managers as non-exempt in or about May 2003. However, DEFENDANTS
20 have knowingly withheld payment of overtime and meal period compensation accrued by their
21 Assistant Managers during the Class Period.

22 20. Plaintiff is informed and believes that for more than 10 years it has been the custom
23 and practice in the grocery industry to keep labor costs down by deliberately misclassifying
24 managers as exempt, requiring them to work more than eight hours in a day and more than forty
25 hours in a week but paying them no overtime for overtime hours worked. Plaintiff is further
26 informed and believes that DEFENDANTS misclassified their Assistant Managers as exempt to
27 avoid paying overtime wages to employees who worked overtime hours and spent more than half
28 their work time doing the same types of non-exempt work performed by staff that was paid hourly

1 and treated as "non-exempt."

2 21. Plaintiff is informed and believes that DEFENDANTS became aware or were
3 advised that during the last few years employees had filed Code of Civil Procedure § 382 and UCL
4 representative actions against California businesses in the grocery industry to recover overtime
5 wages, meal period pay, waiting time penalties, and interest for the unlawful practice of
6 misclassifying employees as exempt. Plaintiff is further informed and believes that
7 DEFENDANTS became aware or were advised that overtime wages, meal period pay, waiting time
8 penalties, and interest had been awarded in settlements and judgments in favor of employees who
9 had been misclassified as exempt.

10 22. Plaintiff is informed and believes that DEFENDANTS changed the classification of
11 Plaintiff and their other Assistant Managers from exempt to non-exempt on or about May 2003,
12 and deliberately concealed that fact from Plaintiff and their other Assistant Managers.

13 23. In or about July 2004, when requesting information regarding retirement,
14 DEFENDANTS informed Plaintiff for the first time that his retirement benefits had been changed
15 in a manner detrimental to him because he was no longer paid as a salaried employee.
16 DEFENDANTS concealed from Plaintiff that his status had been changed from an exempt
17 employee to a non-exempt employee, informing him only that his status had changed from an
18 employee paid on a salary basis to an employee paid on an hourly basis. Plaintiff is informed and
19 believes that DEFENDANTS continued to conceal from him and from their other Assistant
20 Managers that they had been reclassified from exempt employees to non-exempt employees.

21 24. In or about December 2004, Plaintiff became aware for the first time that he and the
22 other Assistant Managers working in DEFENDANTS' grocery stores had been reclassified from
23 exempt to non-exempt.

24 IV. CLASS ACTION ALLEGATIONS

25 25. Plaintiff brings this lawsuit as a class action pursuant to Code of Civil Procedure §
26 382 on behalf of himself and all similarly situated Assistant Managers. The class Plaintiff seeks to
27 represent is defined as:

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1 All persons who are or have been employed as Assistant Managers, "Second Assistant
2 Grocery Managers," and/or "Assistant Manager Grocery" in DEFENDANTS' Raley's, Bel
3 Air, and Nob Hill stores in the State of California during the period from four years prior to
4 the filing of this action up through approximately May 2003, when DEFENDANTS
5 reclassified their Assistant Managers from "exempt" to "non-exempt" employees.

6 The claims herein have been brought and may properly be maintained as a class action under Code
7 of Civil Procedure § 382 because there is a well-defined community of interest among class
8 members with respect to the claims asserted herein and the proposed class is easily ascertainable:

9 a. Ascertainability and Numerosity: The potential members of the class
10 as defined herein are so numerous that joinder would be impracticable. DEFENDANTS have
11 employed over 100 Assistant Managers in California during the Class Period. The names and
12 addresses of the Class Members are available from the Defendants. Notice can be provided to the
13 Class Members via first class mail using techniques and a form of notice similar to those
14 customarily used in class action lawsuits of this nature.

15 b. Commonality: There are questions of law and fact common to
16 Plaintiff and the class that predominate over any questions affecting only individual members of
17 the class. These common questions of law and fact include, without limitation:

18 i. Whether DEFENDANTS have required, encouraged, or
19 permitted Assistant Managers to work in excess of 40 hours per week and/or eight (8) hours per
20 day;

21 ii. Whether DEFENDANTS knew or should have known that its
22 Assistant Managers regularly worked over 40 hours per week and/or eight (8) hours per day;

23 iii. Whether DEFENDANTS have failed to pay Assistant
24 Managers overtime wages for time worked in excess of 40 hours per week and/or eight (8) hours
25 per day;

26 iv. What duties were specified and assigned by DEFENDANTS
27 for the Assistant Manager position;

28 v. Whether those duties specified and assigned by
DEFENDANTS to Assistant Managers were exempt duties under I.W.C. wage order No. 7;

- 1 vi. How much time Assistant Managers devoted to exempt
2 versus non-exempt duties;
- 3 vii. Whether Assistant Managers customarily and regularly
4 exercised discretion and independent judgment;
- 5 viii. Whether Assistant Managers determined or significantly
6 influenced the hiring, firing, disciplining, or promoting of others;
- 7 ix. Whether DEFENDANTS employed Assistant Managers in a
8 position subject to, and not exempt from, California's overtime pay and other wage and hour
9 requirements;
- 10 x. Whether DEFENDANTS violated I.W.C. wage order No. 7
11 and Labor Code §§ 510 and 1194 by their failure to pay Assistant Managers overtime
12 compensation;
- 13 xi. Whether DEFENDANTS' failure to pay overtime
14 compensation to Assistant Managers constituted an unlawful, unfair, and/or fraudulent business
15 practice, under Business & Professions Code § 17200 et seq.;
- 16 xii. Whether DEFENDANTS knowingly and intentionally failed
17 to provide Assistant Managers with an itemized statement showing total hours worked with each
18 payment of wages, as required by Labor Code § 226;
- 19 xiii. Whether DEFENDANTS' failure to provide an itemized
20 statement showing total hours worked with each payment of wages constituted an unlawful, unfair,
21 and/or fraudulent business practice, under Business & Professions Code § 17200 et seq.;
- 22 xiv. Whether DEFENDANTS violated Labor Code § 1174 by
23 failing to maintain documentation on the actual hours worked each day by Assistant Managers;
- 24 xv. Whether DEFENDANTS' failure to maintain documentation
25 on the actual hours worked each day by Assistant Managers constituted an unlawful, unfair, and/or
26 fraudulent business practice, under Business & Professions Code § 17200 et seq.;
- 27 xvi. Whether DEFENDANTS violated the I.W.C. wage order No.
28 7 and Labor Code §§ 226.7 and 512 by failure to provide adequate off-duty meal periods and meal

1 period compensation;

2 xvii. Whether DEFENDANTS' failure to provide adequate off-
3 duty meal periods and meal period compensation constituted an unlawful, unfair, and/or fraudulent
4 business practice, under Business & Professions Code § 17200 et seq;

5 xviii. Whether DEFENDANTS violated Labor Code §§ 201-203,
6 by failure to timely pay Assistant Managers wages due for overtime compensation at time of
7 termination of employment;

8 xix. Whether DEFENDANTS violated Labor Code §§ 201-203,
9 by failure to timely pay Assistant Managers wages due for missed meal periods at time of
10 termination of employment;

11 xx. Whether DEFENDANTS' failure to pay all compensation
12 owed at time of termination of employment constituted an unlawful, unfair, and/or fraudulent
13 business practice, under Business & Professions Code § 17200 et seq; and

14 xxi. The proper formula for calculating restitution, damages, and
15 waiting time and other statutory penalties owed to Plaintiff and the class alleged herein.

16 c. Typicality: Plaintiff's claims are typical of the claims of the class.
17 DEFENDANTS' common course of unlawful conduct has caused Plaintiff and similarly situated
18 Assistant Managers to sustain the same or similar injuries and damages caused by the same
19 practices of DEFENDANTS. Plaintiff's claims are thereby representative of and co-extensive with
20 the claims of the class.

21 d. Adequacy of Representation: Plaintiff is a member of the class, does
22 not have any conflicts of interest with other class members, and will prosecute the case vigorously
23 on behalf of the class. Counsel who represent Plaintiff are competent and experienced in litigating
24 large employment class actions, including large wage and hour class actions. Plaintiff will fairly
25 and adequately represent and protect the interests of the class members.

26 e. Superiority of Class Action: A class action is superior to other
27 available means for the fair and efficient adjudication of this controversy. Individual joinder of all
28 class members is not practicable, and questions of law and fact common to the class predominate

1 over any questions affecting only individual members of the class. Each class member has been
2 damaged and is entitled to recovery by reason of DEFENDANTS' unlawful policies and/or
3 practices described herein. Since the damages suffered by individual Class Members may be
4 relatively small, albeit significant, the expense and burden of individual litigation make it
5 impractical for most Class Members individually to seek redress for the wrongful conduct alleged.
6 Class action treatment will allow those similarly situated persons to litigate their claims in the
7 manner that is most efficient and economical for the parties and the judicial system.

8 V. DAMAGES

9 26. As a direct, foreseeable, and proximate result of DEFENDANTS' conduct, Plaintiff
10 and similarly situated Assistant Managers are owed overtime compensation plus interest, meal
11 period compensation plus interest, waiting time penalties under Labor Code § 203 in an amount that
12 exceeds \$25,000, the precise amount of which will be proved at trial.

13 VI. CAUSES OF ACTION

14 FIRST CAUSE OF ACTION 15 UNLAWFUL FAILURE TO PAY OVERTIME COMPENSATION 16 (LABOR CODE §§ 510, 1194; I.W.C. WAGE ORDER NO. 7)

17 27. The allegations of Paragraphs 1 through 26 are realleged and incorporated herein by
18 reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the above-
19 described class of similarly situated Assistant Managers:

20 28. By their failure to pay overtime compensation to Plaintiff and similarly situated
21 Assistant Managers as alleged above, DEFENDANTS violated Labor Code § 510 and the
22 provisions of the I.W.C. wage order No. 7, which require overtime compensation to non-exempt
23 employees.

24 29. By failing to keep adequate time records as required by Labor Code § 1174(d),
25 DEFENDANTS have made it difficult to calculate the overtime compensation due Plaintiff and the
26 similarly situated Assistant Managers.

27 30. As a result of DEFENDANTS' unlawful acts, Plaintiff and similarly situated
28 Assistant Managers have been deprived of overtime compensation in an amount to be determined
at trial, and are entitled to recovery of such amounts, plus interest thereon, attorneys' fees, and

1 costs, under Labor Code § 1194.

2 31. By violating Labor Code § 510, DEFENDANTS are liable for civil penalties and
3 attorneys' fees and costs under Labor Code §§ 558, 1194, and 1197.1.

4 32. Plaintiff, on behalf of himself and similarly situated Assistant Managers, requests
5 relief as described below.

6 **SECOND CAUSE OF ACTION**
7 **UNLAWFUL FAILURE TO PROVIDE ADEQUATE MEAL PERIODS**
8 **(LABOR CODE §§ 226.7, 512; I.W.C. WAGE ORDER NO. 7)**

9 33. The allegations of Paragraphs 1 through 32 are realleged and incorporated herein by
10 reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the above-
11 described class of similarly situated Assistant Managers.

12 34. Plaintiff and similarly situated Assistant Managers regularly worked in excess of
13 five (5) hours a day without being afforded at least a half-hour meal period in which they were
14 relieved of all duties, as required by Labor Code §§ 226.7 and 512, and the I.W.C. wage order No.
15 7, §11(A).

16 35. Because DEFENDANTS failed to afford proper meal periods, they are liable to
17 Plaintiffs and Class Members for one hour of additional pay at the regular rate of compensation for
18 each workday that the proper meal periods were not provided, pursuant to Labor Code § 226.7(b)
19 and I.W.C. wage order No. 7, § 11(D).

20 36. By violating Labor Code §§ 226.7 and 512, and I.W.C. wage order No. 7, § 11,
21 DEFENDANTS are also liable for civil penalties and attorneys' fees and costs under Labor Code
22 §§ 558.

23 **THIRD CAUSE OF ACTION**
24 **FAILURE TO FURNISH ACCURATE WAGE STATEMENTS**
25 **(LABOR CODE §§ 226 & 226.3)**

26 37. The allegations of Paragraphs 1 through 36 are realleged and incorporated herein
27 by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the above-
28 described class of similarly situated Assistant Managers:

38. Labor Code § 226(a) requires employers semi-monthly or at the time of each
payment of wages to furnish each employee with a statement itemizing, among other things, the

1 total hours worked by the employee. Labor Code § 226(b) provides that if an employer knowingly
2 and intentionally fails to provide a statement itemizing, among other things, the total hours worked
3 by the employee, then the employee is entitled to recover the greater of all actual damages or fifty
4 dollars (\$50) for the initial violation and one hundred dollars (\$100) for each subsequent violation,
5 up to four thousand dollars (\$4,000).

6 39. DEFENDANTS knowingly and intentionally failed to furnish Plaintiff and similarly
7 situated Assistant Managers with timely, itemized statements showing the total hours worked, as
8 required by Labor Code § 226(a). As a result, DEFENDANTS are liable to Plaintiff and similarly
9 situated Assistant Managers for the amounts provided by Labor Code § 226(b).

10 40. By violating Labor Code § 226, DEFENDANTS are also liable for civil penalties
11 and attorneys' fees and costs under Labor Code §§ 226, and 226.3.

12 41. Plaintiff, on behalf of himself and similarly situated Assistant Managers, requests
13 relief as described below.

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15 **FOURTH CAUSE OF ACTION**
16 **FAILURE TO KEEP ACCURATE PAYROLL RECORDS**
17 **(LABOR CODE §§ 1174 & 1174.5)**

18 42. The allegations of Paragraphs 1 through 41 are realleged and incorporated herein by
19 reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the above-
20 described class of similarly situated Assistant Managers:

21 43. DEFENDANTS have violated Labor Code § 1174 by willfully failing to keep
22 required payroll records showing the actual hours worked each day by Plaintiff and similarly
23 situated Assistant Managers.

24 44. By violating Labor Code § 1174, DEFENDANTS are liable for civil penalties and
25 attorneys' fees and costs under Labor Code §§ 1174.5.

26 45. Plaintiff, on behalf of himself and similarly situated Assistant Managers, requests
27 relief as described below.

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1 **FIFTH CAUSE OF ACTION**
2 **WAITING TIME PENALTIES**
3 **(LABOR CODE §§ 201 & 203)**

4 46. The allegations of Paragraphs 1 through 46 are realleged and incorporated herein by
5 reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the above-
6 described class of similarly situated Assistant Managers:

7 47. Labor Code § 201 requires an employer who discharges an employee to pay all
8 compensation due and owing to that employee immediately upon discharge.

9 48. Labor Code § 203 provides that if an employer willfully fails to pay compensation
10 promptly upon discharge, as required by § 201, then the employer is liable for waiting time
11 penalties in the form of continued compensation for up to 30 work days.

12 49. DEFENDANTS willfully failed and refused to timely pay compensation and wages,
13 including unpaid overtime pay and meal period compensation, to Plaintiff and similarly situated
14 Assistant Managers whose employment terminated. As a result, DEFENDANTS are liable to
15 Plaintiff and similarly situated Assistant Managers for waiting time penalties, together with interest
16 thereon and attorneys' fees and costs, under Labor Code §§ 203, and 256.

17 50. Plaintiff, on behalf of himself and similarly situated Assistant Managers, requests
18 relief as described below.

19 **SIXTH CAUSE OF ACTION**
20 **VIOLATIONS OF THE UCL**
21 **(BUSINESS & PROFESSIONS CODE §§ 17200-09.)**

22 51. The allegations of Paragraphs 1 through 50 are realleged and incorporated herein by
23 reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the above-
24 described class of similarly situated Assistant Managers and in a representative capacity under
25 Business and Professions Code § 17204:

26 52. Business & Professions Code § 17200 prohibits unfair competition in the form of
27 any unlawful, unfair, or fraudulent business act or practice.

28 53. Business & Professions Code § 17204 allows "any person acting for the interests of
itself, its members or the general public" to prosecute a civil action for violation of the UCL.

1 54. Beginning at an exact date unknown to Plaintiff, but at least four years prior to the
2 date DEFENDANTS reclassified Plaintiff and all similarly situated Assistant Managers,
3 DEFENDANTS committed unlawful, unfair, and/or fraudulent business acts and practices as
4 defined by Business & Professions Code § 17200, by engaging in the following:

5 a. Improperly and unlawfully classifying its Assistant Managers as
6 exempt from California overtime requirements, as referenced above, and thereby failing to pay
7 overtime compensation, as described above;

8 b. Improperly and unlawfully classifying its Assistant Managers as
9 exempt from California meal period requirements, as referenced above, and thereby failing to
10 provide adequate meal periods and/or pay meal period compensation, as described above;

11 c. Failing to pay all accrued overtime and meal period compensation to
12 Assistant Managers upon termination of their employment, in violation of Labor Code §§ 201-203,
13 as described above;

14 d. Failing to provide accurate itemized wage statements, in violation of
15 Labor Code § 226, as described above; and

16 e. Failing to maintain payroll records showing the actual hours worked
17 each day by Assistant Managers, in violation of Labor Code § 1174, as described above.

18 f. Concealing from Plaintiff and all similarly situated Assistant
19 Managers that they had been reclassified from "exempt" to "non-exempt" for the unlawful and
20 fraudulent purpose of concealing from Plaintiff and all similarly situated Assistant Managers that
21 they had claims for overtime and meal period pay, waiting time penalties, and interest against
22 DEFENDANTS that DEFENDANTS intended to defeat by operation of applicable statute of
23 limitations.

24 The violations of these laws serve as unlawful predicate acts and practices for purposes of
25 Business and Professions Code § 17200.

26 55. As a direct and proximate result of DEFENDANTS' unlawful, unfair, and/or
27 fraudulent acts and practices described herein, DEFENDANTS have received and continue to hold
28 ill-gotten gains belonging to Plaintiff and class members. DEFENDANTS have profited from its

1 unlawful, unfair, and/or fraudulent acts and practices in the amount of those unpaid overtime and
2 meal period compensation and interest accrued by Plaintiff and similarly situated Assistant
3 Managers.

4 56. Plaintiff and similarly situated Assistant Managers are entitled to restitution
5 pursuant to Business & Professions Code §§ 17203 and 17208 for all unpaid overtime and meal
6 period compensation and interest since four years prior to the date DEFENDANTS reclassified
7 Plaintiff and all similarly situated Assistant Managers from "exempt" to "non-exempt."

8 57. Plaintiff and similarly situated Assistant Managers are entitled to enforce all
9 applicable penalty provisions of the Labor Code pursuant to Business & Professions Code § 17202.

10 58. Plaintiff's success in this action will enforce important rights affecting the public
11 interest. In this regard, Plaintiff sues on behalf of the public as well as on behalf of himself and
12 others similarly situated. Plaintiff seeks and is entitled to the unpaid compensation, declaratory and
13 injunctive relief, civil penalties, and any other appropriate remedy.

14 59. Injunctive relief is necessary and appropriate to prevent DEFENDANTS from
15 continuing and repeating its unlawful, unfair and fraudulent business acts and practices alleged
16 above.

17 60. In order to prevent DEFENDANTS from profiting and benefiting from their
18 wrongful and illegal acts and continuing those acts, an order requiring DEFENDANTS to disgorge
19 all the profits and gains they have reaped and restore such profits and gains to Assistant Managers,
20 from whom they were unlawfully taken.

21 61. Plaintiff has assumed the responsibility of enforcement of the laws and lawful
22 claims specified herein. There is a financial burden incurred in pursuing this action which is in the
23 public interest. Therefore, attorneys' fees are appropriate pursuant to Code of Civil Procedure §
24 1021.5.

25 62. Plaintiff, on behalf of himself and similarly situated Assistant Managers, requests
26 relief as described below.

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1 g. Business and Professions Code §§ 17200-17208, by failing to
2 provide adequate meal periods and/or pay meal period compensation to Plaintiff and similarly
3 situated Assistant Managers;

4 h. Business and Professions Code §§ 17200-17208, by failing to
5 provide Plaintiff and similarly situated Assistant Managers with itemized statements of total hours
6 worked with each payment of wages;

7 i. Business and Professions Code §§ 17200-17208, by failing to
8 maintain payroll records of the actual hours worked each day by Plaintiff and similarly situated
9 Assistant Managers;

10 j. Business and Professions Code §§ 17200-17208, by willfully failing
11 to pay Plaintiff and similarly situated Assistant Managers overtime and meal period compensation
12 at the time of termination of employment, resulting in unpaid waiting time penalties;

13 5. A declaratory judgment that DEFENDANTS' violations as described above
14 were willful;

15 6. A declaratory judgment that the applicable statute of limitations was tolled
16 during the period that DEFENDANTS concealed the facts that would have given Plaintiff and all
17 similarly situated Assistant Managers notice that they had claims for overtime and meal period pay,
18 waiting time penalties, and interest;

19 7. For an equitable accounting to identify, locate, and restore to all current and
20 former Assistant Managers the wages that are due;

21 8. An award to Plaintiff and the Class Members of damages in the amount of
22 unpaid overtime and meal period compensation, including interest thereon, subject to proof at trial;

23 9. As to those Class Members who have left DEFENDANTS' employ, an
24 award of payments due to them as waiting time penalties, pursuant to Labor Code §203;

25 10. An order requiring DEFENDANTS to pay restitution of all amounts owed to
26 Plaintiff and similarly situated Assistant Managers for DEFENDANTS' failures to pay legally
27 required overtime and meal period, and interest thereon, in an amount according to proof, pursuant
28 to Business & Professions Code § 17203;

