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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RAYMOND ALFRED and MARVIN
BARRISH, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

PEPPERIDGE FARM, INC., a
Connecticut Corporation, and DOES 1 –
100, inclusive,

Defendants.

Case No. LA CV14-07086 JAK (RZx)

**SECOND AMENDED
COMPLAINT**

**CLASS ACTION COMPLAINT
FOR:**

- (1) FAILURE TO PAY CALIFORNIA OVERTIME COMPENSATION;**
- (2) REIMBURSEMENT FOR BUSINESS EXPENSES;**
- (3) FAILURE TO PROVIDE MEAL AND REST PERIODS;**
- (4) FAILURE TO FURNISH ACCURATE WAGE STATEMENTS;**
- (5) WAITING TIME PENALTIES;**
- (6) VIOLATIONS OF THE UNFAIR COMPETITION LAW (UCL); and**

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

- (7) CIVIL PENALTIES UNDER LABOR CODE PRIVATE ATTORNEY GENERAL ACT**

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V. STATEMENT OF FACTS

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2 11. Defendant manufactures, markets, sells, and distributes biscuit and
3 snack products throughout the United States, including in California.

4 12. Defendant sells its products to various retail stores such as grocery
5 stores, mass merchandisers, and convenience stores and relies on its Distributors to
6 deliver its products to market. Distributors deliver, stock, merchandise, promote,
7 and remove Pepperidge Farm products for stores in defined territories.

8 13. Plaintiffs and Class Members performed delivery, stocking,
9 merchandising, promotional, and removal services on behalf of Defendant in
10 California.

11 14. Upon information and belief, Defendant has employed hundreds of
12 Distributors in California during the Class Period.

13 15. In order to perform work for Defendant, Plaintiffs and similarly situated
14 Distributors signed a Pepperidge Farm “Consignment Agreement,” which detailed
15 the terms of Distributors’ work for Defendant and labels Distributors as
16 “independent businessmen.” A copy of Plaintiff Marvin Barrish’s Consignment
17 Agreement is attached to this complaint as Exhibit A and is, upon information and
18 belief, substantially similar in substance to the Consignment Agreements signed by
19 Plaintiff Alfred and the putative Class Members that Plaintiffs seek to represent.
20 While Distributors pay for the opportunity to enter into these agreements and to
21 secure an assigned distribution territory, Defendant’s unfettered right to control and
22 extensive actual control over Plaintiffs and Class Members is such that the
23 Distributors are actually employees under California law.

24 16. Defendant retained the right to terminate Distributors’ contracts at any
25 time without cause. The Consignment Agreement states, “[Defendant] shall have the
26 right in its discretion to terminate this Agreement at any time without cause upon
27 written notice to the Consignee.” Exhibit A at ¶ 24.

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1 17. Defendant also retained the right to terminate Distributors' contracts at
2 its discretion for cause. Exhibit A at ¶ 20. Defendant's "for cause" grounds for
3 termination, as stated in Distributors' consignment agreements, reserved the right for
4 Defendant to exercise extensive control over the details of Distributors' work.
5 Defendant retained the right to terminate Distributors' contracts for "failure of
6 [Distributor] to use his/her best efforts to realize the full sales potential of the
7 Territory for Consigned Products and the continuance of such failure for seven days
8 after written notice thereof from [Defendant]." Exhibit A at ¶ 20. In order to use
9 their best efforts to fully realize the sales potential of their routes, Distributors were
10 required by the terms of the Consignment Agreement to:

- 11 a. "actively solicit all retail stores in the Territory whose accounts can be
12 profitably handled;"
- 13 b. "maintain at all times an adequate and fresh supply of Consigned
14 Products in all such retail stores;"
- 15 c. "provide distribution service to all such retail stores on such days of the
16 week (including weekends), at such intervals and with such frequency as is
17 necessary to realize the full sales potential thereof and to maintain an adequate
18 fresh supply of Consigned Products therein;"
- 19 d. "make available to all such retail stores all varieties of authorized
20 Consigned Products unless it is demonstrably unprofitable to do so;"
- 21 e. "cooperate with [Defendant] in the effective utilization of [Defendant's]
22 advertising, sales promotion, and space merchandising programs and;"
- 23 f. "keep fully informed of [Defendant's] recommended policies and
24 method for increasing sales and improving distribution service." Exhibit A at
25 ¶ 4.

26 18. Distributors' contracts could also be terminated for cause for the
27 following reasons, which gave Defendant great latitude in determining how
28 Distributors carried out their duties:

1 a. the “failure of [Distributor] to maintain efficient distribution service
2 throughout the Territory in keeping the established reputation of [Defendant]
3 and the high quality of its products and the continuance of such failure for
4 seven days after written notice thereof from [Defendant];”

5 b. the “failure of [Distributor] to maintain the general appearance and
6 condition of his/her truck or other equipment or his/her own general
7 appearance or deportment or that of his/her helper or helpers, if any, in
8 accordance with standards in keeping with the established reputation of
9 [Defendant] and the high quality of its products and the continuance of such
10 failure for more than five days after written notice thereof from [Defendant];”

11 c. the “failure of [Distributor] to remain actively and personally involved
12 in the operation and management of the Distributorship....”;

13 d. “any actions, activities or practices of [Distributor] which either do, or
14 in the reasonable opinion of [Defendant] are likely to, materially damage the
15 reputation of [Defendant] and/or [Defendant’s] relations or reputation with
16 consumers, retail stores, or any other purchaser of Consigned Products.”

17 Exhibit A at ¶ 20.

18 19. Defendant employed sales managers who supervised Distributors’ work.
19 Through its sales managers and other agents, Defendant conducted regular
20 evaluations of Distributors’ sales and store performance, which included whether
21 Distributors’ stores were—in Defendant’s view—underperforming. If a
22 Distributor’s performance was deemed inadequate, Defendant retained the right to
23 send the Distributor a letter requiring that he or she remedy performance within five
24 days, or Defendant could make other arrangements to service the store and could
25 even terminate the Distributor’s contract. *See* Exhibit A at ¶ 7.

26 20. Defendant retained the right to “from time to time, establish reasonable
27 sales and/or distribution goals for Consignee and this Distributorship” and required
28 that Distributors “meet or exceed any such goals established by [Defendant].”

1 Exhibit A at ¶ 4. Defendant’s sales managers often set such goals for Distributors
2 throughout the year. Under the terms of Defendant’s Consignment Agreement,
3 failure to meet or exceed Defendant’s sales or distribution goals was “for cause”
4 grounds for termination of a Distributor’s contract. *See* Exhibit A at ¶ 20.

5 21. Defendant retained the right to exercise control over the manner and
6 means of accomplishing the delivery of its products to market through its
7 Distributors. Defendant provided Distributors with schematics, or “plan-o-grams,”
8 which depicted precisely how Distributors should display the products that they
9 delivered to stores. Defendant, not Distributors, determined the wholesale price of
10 Defendant’s product for Defendant’s clients. Defendant directed the number of
11 times that Distributors should visit their stores each week and monitored
12 Distributors’ activity through its sales managers and Defendant’s billing and
13 ticketing systems. Defendant retained the right to require that Distributors attend
14 quarterly sales meetings where sales managers informed Distributors of upcoming
15 promotions and praised Distributors with the highest sales numbers. Defendant also
16 required that its Distributors purchase a specialized hand-held computer that
17 transmitted detailed information about Distributors’ deliveries, including when these
18 deliveries occurred and to which stores.

19 22. Despite being labeled “independent businessmen,” Distributors were not
20 permitted to sell their Distributorships without prior, written approval from
21 Defendant. *See* Exhibit A at ¶ 19. Defendant required that any buyer of Plaintiffs’
22 Distributorships meet Defendant’s requirements as to “character, ability, financial
23 responsibility, business acumen, and adequate facilities.” *Id.* Defendant retained the
24 right to interview prospective buyers and require that Plaintiffs’ prospective buyers
25 submit a business plan to Defendant, which Defendant would have to approve in
26 order for a sale to take place. Defendant retained the right of first refusal for any sale
27 of all or any portion of the Distributorship.

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1 23. Several other factors relating to Distributors' work evince that an
2 employment relationship existed between Defendant and Plaintiffs. Defendant's
3 Distributors provided services that are part of the regular business of Defendant.
4 Defendant states on its website, for example, that its Distributors are "the secret to
5 Pepperidge Farm's success." Moreover, Defendant unilaterally negotiated the space
6 for its products at the stores Distributors serviced and determined promotional
7 activity at these stores. If stores did not wish to receive deliveries from Defendant's
8 Distributors, Defendant retained the right to make other arrangements with the store
9 for the delivery of its products. *See* Exhibit A at ¶ 9. Distributors routinely worked a
10 substantial number of overtime hours a week on contracts that lasted indefinitely.
11 Defendant's requirements of its Distributors made it difficult for Distributors to
12 regularly service other accounts.

13 24. Defendant has paid Plaintiffs and Class Members under a common
14 compensation plan and policy where Distributors were paid a sales commission
15 based on the items sold.

16 25. Despite Defendant's extensive right of control over Distributors' work,
17 Defendant has routinely classified Distributors as "independent contractors."

18 26. Upon information and belief, Defendant misclassified Plaintiffs and
19 similarly situated Distributors knowingly and willfully.

20 27. Defendant has caused Plaintiffs and similarly situated Class Members to
21 work hours in excess of 40 hours a week.

22 28. As a result of Defendant's misclassification of Distributors as
23 "independent contractors," Defendant has failed to pay overtime compensation to
24 Plaintiffs and similarly situated Class Members for hours worked in excess of eight
25 hours per day and/or 40 hours per week.

26 29. As a result of Defendant's misclassification of Distributors as
27 "independent contractors," Defendant has failed to indemnify Plaintiffs and similarly
28 situated Class Members for employment-related expenses, including the cost of

1 providing appropriate vehicles and vehicle expenses such as fuel, maintenance,
2 repair; the cost and maintenance of a hand-held computer and printer; the cost of
3 warehousing Defendant's products; pallet fees that Defendant charged Plaintiffs and
4 similarly situated Class Members; expenses incurred as the result of stale products
5 and inventory irregularities; and the cost of required business liability insurance.

6 30. As a result of Defendant's misclassification of Distributors as
7 "independent contractors," Defendant has unlawfully collected and withheld earned
8 wages through deducting pallet fees, the cost and maintenance of a hand-held
9 computer and printer, and charges incurred as the result of stale products and
10 inventory irregularities.

11 31. As a result of Defendant's misclassification of Distributors as
12 "independent contractors," Defendant has failed to record the actual hours worked by
13 Plaintiffs and similarly situated Class Members.

14 32. As a result of Defendant's misclassification of Distributors as
15 "independent contractors," Defendant has failed to provide a 30-minute off-duty
16 meal period to Plaintiffs and similarly situated Class Members.

17 33. As a result of Defendant's misclassification of Distributors as
18 "independent contractors," Defendant has failed to provide a second 30-minute meal
19 period to Plaintiffs and similarly situated Class Members who worked more than 10
20 hours a day.

21 34. Defendant has failed to provide a ten minute rest period per four hours
22 of work or major fraction thereof.

23 35. As a result of Defendant's misclassification of Distributors as
24 "independent contractors," Defendant has failed to itemize the total hours worked on
25 wage statements furnished to Plaintiffs and similarly situated Class Members.

26 36. Upon information and belief, as a result of Defendant's
27 misclassification of Distributors as "independent contractors," Defendant has failed
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1 to properly maintain payroll records showing the actual hours worked by Plaintiffs
2 and similarly situated Class Members.

3 37. As a result of Defendant's misclassification of Distributors as
4 "independent contractors," Defendant has willfully and knowingly failed to pay
5 Plaintiffs and similarly situated Class Members upon termination of employment, all
6 accrued compensation, including repayment of all unlawful charges, compensation
7 for missed meal and rest periods, and payment of overtime compensation.

8 38. As a result of Defendant's misclassification of Distributors as
9 "independent contractors," Defendant has unlawfully charged fees and fines to
10 Plaintiffs and similarly situated Class Members for goods and services such as
11 pallets, product inventory irregularities, and returned product from stores; and
12 equipment such as Defendant's hand-held computer and maintenance for this
13 computer.

14 VI. CLASS ACTION ALLEGATIONS

15 39. Plaintiffs bring this action on their own behalf and as a class action on
16 behalf of all persons or entities who have been employed by Defendant as
17 Distributors under Defendant's Consignment Agreements in the State of California
18 at any time within four years preceding the filing of this action.

19 40. This action is brought as a class action under the California Code of
20 Civil Procedure § 382. Class treatment is appropriate because there is a well-defined
21 community of interest in the litigation and the proposed Class is easily ascertainable.
22 This action satisfies the predominance, typicality, numerosity, superiority, and
23 adequacy of representation requirements under § 382.

24 a. Numerosity: The size of the proposed plaintiff Class makes individual
25 joinder of all members impractical. While Plaintiffs do not presently know the
26 exact number of Class Members, Plaintiffs are informed and believe, and
27 thereon allege, that as many as 500-700 current and former Distributors have
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1 been subjected to the unlawful practices alleged herein within four years
2 preceding the filing of this action.

3 b. Commonality: Common questions of law and fact exist as to all
4 members of the Plaintiff Class and predominate over any questions that affect
5 only individual members of the Class. These common questions of law and
6 fact include, without limitation:

- 7 i. Whether Defendant retained sufficient right to control Class
8 Members' work so as to render the Class Members employees under
9 California law;
- 10 ii. Whether Class Members have served Defendant as employees rather
11 than independent contractors under California law;
- 12 iii. Whether Defendant has employed Class Members in a position that
13 is subject to, and not exempt from, California's overtime pay and
14 other wage and hour requirements;
- 15 iv. Whether Defendant knew or should have known that Class Members
16 regularly worked over 40 hours per week and/or eight hours per day;
- 17 v. Whether Defendant failed to pay Class Members overtime wages for
18 time worked in excess of 40 hours per week or eight hours per day;
- 19 vi. Whether Defendant has failed to provide Class Members with
20 adequate off-duty meal periods and compensation for missed meal
21 periods in violation of California Labor Code §§ 226.7 and 512 and
22 IWC Wage Order No. 9;
- 23 vii. Whether Defendant has failed to provide Class Members with
24 adequate rest periods and compensation for missed rest periods in
25 violation of California Labor Code §§ 226.7 and IWC Wage Order
26 No. 9;
- 27 viii. Whether Defendant had a policy or practice of not paying meal and
28 rest period premiums when meal and rest periods were not provided;

- 1 ix. Whether Class Members have incurred employment-related expenses
- 2 and losses in carrying out their duties for Defendant;
- 3 x. Whether Defendant has failed to indemnify Class Members for their
- 4 necessary employment-related expenses and losses in violation of
- 5 California Labor Code § 2802 and IWC Wage Order 9;
- 6 xi. Whether Defendant’s collection and deduction of fees, including
- 7 pallet fees, fees for stale products and inventory irregularities, and
- 8 fees related to the handheld computer, violated California Labor
- 9 Code § 221 and IWC Wage Order 9;
- 10 xii. Whether Defendant has unlawfully charged Class Members fees
- 11 arising from their employment with Defendant in violation of
- 12 California Labor Code § 226.8(a)(2);
- 13 xiii. Whether Defendant has knowingly and intentionally failed to
- 14 provide Class Members with accurate and itemized wage statements
- 15 pursuant to California Labor Code § 226 and IWC Wage Order No.
- 16 9;
- 17 xiv. Whether Defendant has violated California Labor Code § 1174 and
- 18 IWC Wage Order No. 9 by failing to maintain documentation of the
- 19 actual hours that Class Members worked each day;
- 20 xv. Whether Defendant has violated California Labor Code §§ 201-203
- 21 by failing, upon termination, to timely pay Class Members wages
- 22 that were due for overtime and missed meal periods;
- 23 xvi. Whether Defendant’s misclassification of Class Members was
- 24 willful and in violation of California Labor Code § 226.8;
- 25 xvii. Whether Defendant’s failures (a) to pay Class Members for all hours
- 26 worked, (b) to pay Class Members overtime compensation, (c) to
- 27 indemnify Class Members for their necessary employment-related
- 28 expenses, (d) to provide Class Members with adequate off-duty meal

1 periods and meal period compensation, (e) to provide Class
2 Members with rest periods and rest period compensation, (f) to
3 provide Class Members with accurate itemized wage statements, (g)
4 to maintain documentation of the actual hours worked each day, (h)
5 to timely pay Class Members all wages that were due upon
6 termination, along with Defendant's collection and deduction of fees
7 and expenses from Class members' compensation and its willful
8 misclassification of Class Members as independent contractors, and
9 its charging fees and/or making deductions from Plaintiffs and Class
10 Members' compensation constitute unlawful, unfair, and/or
11 fraudulent business practices under Cal. Business & Professions
12 Code §17200, *et seq.*

13 c. Typicality: Plaintiffs' claims are typical of the claims of the Class.
14 Plaintiffs and members of the Class sustained damages arising out of
15 Defendant's aforementioned common practice of misclassifying Class
16 Members as independent contractors. Plaintiffs, like Class Members, were
17 Distributors who were classified as independent contractors under Defendant's
18 Consignment Agreement.

19 d. Adequacy of Representation: Plaintiffs are members of the Class, do
20 not have any conflicts of interest with other Class Members, and will represent
21 and protect the interests of the Class Members. Plaintiffs' counsel are
22 competent and experienced in litigating employment class actions.

23 e. Superiority: A class action is superior to other available means of
24 adjudicating this controversy. Class treatment will permit a large number of
25 similarly situated persons to prosecute their common claims in a single forum
26 simultaneously, efficiently, and without unnecessary duplication of effort and
27 expense that numerous individual claims would entail. Class treatment will
28 also avoid the risk of inconsistent or contradictory judgments.

VII. DAMAGES

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2 41. As a direct, foreseeable, and proximate result of Defendant’s conduct,
3 Plaintiffs and similarly situated Class Members are owed overtime compensation,
4 un-reimbursed necessary employment-related expenses, restitution of fees deducted
5 from compensation, meal and rest period compensation, liquidated damages, interest,
6 waiting time penalties, and available statutory penalties and damages, the precise
7 amounts of which will be proven at trial.

8
9 **VIII. FIRST CAUSE OF ACTION**
10 **FAILURE TO PAY CALIFORNIA OVERTIME COMPENSATION**
11 **(CALIFORNIA LABOR CODE §§ 510, 1194, IWC WAGE ORDER NO. 9)**
12 **(ON BEHALF OF PLAINTIFFS AND CLASS MEMBERS)**

13 42. The allegations of each of the preceding paragraphs are re-alleged and
14 incorporated herein by reference, and Plaintiffs allege as follows a claim of relief on
15 behalf of themselves and all Class Members.

16 43. During the Class Period, Plaintiffs and the Class Members worked on
17 many occasions in excess of eight hours in a workday and/or 40 hours in a work
18 week in violation of California Labor Code §§ 510, 1194 and IWC Wage Order No.
19 9, § 3, which require overtime compensation for non-exempt employees. The
20 precise number of overtime hours will be proven at trial.

21 44. Defendant’s actions were willful, in bad faith, and in knowing violation
22 of the California Labor Code.

23 45. As a direct and proximate result of Defendant’s unlawful conduct as set
24 forth herein, Plaintiffs and Class Members have sustained damages, including loss of
25 earnings for hours of overtime work, in an amount to be determined at trial.

26 Pursuant to California Labor Code § 1194(a), Plaintiffs and Class Members are
27 entitled to recover their unpaid overtime and double time compensation, including
28 interest thereon. Plaintiffs and Class Members are also entitled to recover reasonable
attorneys’ fees and costs.

1 **IX. SECOND CAUSE OF ACTION**
2 **REIMBURSEMENT FOR BUSINESS EXPENSES**
3 **(CALIFORNIA LABOR CODE § 2802 AND IWC WAGE ORDER NO. 9)**
4 **(ON BEHALF OF PLAINTIFFS AND CLASS MEMBERS)**

5 46. The allegations of each of the preceding paragraphs are re-alleged and
6 incorporated herein by reference, and Plaintiffs allege as follows a claim of relief on
7 behalf of themselves and all Class Members.

8 47. While discharging their duties for Defendant, Plaintiffs and Class
9 Members have incurred and paid work-related expenses. Such expenses include, but
10 are not limited to, the leasing or purchase of vehicles; fuel, maintenance, and other
11 vehicle operating costs; various forms of insurance; warehousing expenses for
12 storing Defendant's products; pallet fees for Defendant's shipment of pallets to
13 stores in Distributors' territories; a hand-held computer and other equipment
14 necessary to conduct their work as Distributors; and expenses incurred as the result
15 of stale products and inventory irregularities.

16 48. Defendant failed to indemnify or reimburse Plaintiffs and Class
17 Members for these expenses and losses. In failing to indemnify or reimburse
18 Plaintiffs and Class Members for necessary expenditures or losses that were incurred
19 as a direct consequence of their discharge of duties for Defendant and/or obedience
20 of Defendant's direction, Defendant violated California Labor Code § 2802.

21 49. Defendants also failed to reimburse Plaintiffs and Class Members for
22 tools and equipment necessary for the performance of their jobs, including hand-held
23 computers and maintenance fees, as required by IWC Wage Order No. 9, § 9.

24 50. Defendant's actions were willful, in bad faith, and in knowing violation
25 of the California Labor Code and applicable Wage Orders.

26 51. By unlawfully failing to reimburse Plaintiffs and Class Members for
27 necessary expenditures or losses, Defendant has caused Plaintiffs and Class
28 Members to suffer losses in an amount to be determined at trial.

52. Under California Labor Code §§ 2802 and 218.5, Defendant is also
liable to Plaintiffs and Class Members for reasonable attorney's fees.

1 **XI. FOURTH CAUSE OF ACTION**
2 **FAILURE TO PROVIDE MEAL PERIODS**
3 **(CALIFORNIA LABOR CODE §§ 226.7, 512, IWC WAGE ORDER NO. 9)**
4 **(ON BEHALF OF PLAINTIFFS AND CLASS MEMBERS)**

5 59. The allegations of each of the preceding paragraphs are re-alleged and
6 incorporated herein by reference, and Plaintiffs allege as follows a claim of relief on
7 behalf of themselves and all Class Members.

8 60. Plaintiffs and Class Members have regularly worked in excess of five
9 hours a day without being afforded at least a half-hour meal period in which they
10 were relived of all duties, as required by California Labor Code §§ 226.7 and 512
11 and IWC Wage Order No. 9, § 11.

12 61. By failing to consistently provide Plaintiffs and Class Members an
13 uninterrupted, thirty-minute meal period within the first five hours of work each day,
14 Defendant violated the California Labor Code and applicable IWC Wage Order
15 provisions.

16 62. Plaintiffs are informed and believe, and on that basis allege, that
17 Defendant has never paid the one hour of compensation as a premium payment to
18 any Class Member pursuant to California Labor Code § 226.7 for not providing
19 proper meal periods.

20 63. As a direct and proximate result of Defendant's unlawful conduct as set
21 forth herein, Plaintiffs and Class Members have sustained damages, including loss of
22 compensation resulting from missed meal periods, in an amount to be determined at
23 trial.

24 **XII. FIFTH CAUSE OF ACTION**
25 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**
26 **(CALIFORNIA LABOR CODE § 226.7 and IWC WAGE ORDER NO. 9)**
27 **(ON BEHALF OF PLAINTIFFS AND CLASS MEMBERS)**

28 64. The allegations of each of the preceding paragraphs are re-alleged and
 incorporated herein by reference, and Plaintiffs allege as follows a claim of relief on
 behalf of themselves and all Class Members.

1 65. California Labor Code § 226.7 states “no employer shall require any
2 employee to work during any meal or rest period mandated by an applicable order of
3 the Industrial Welfare Commission.”

4 66. IWC Wage Order No. 9, § 12 provides in relevant part that: “(A) Every
5 employer shall authorize and permit all employees to take rest periods, which insofar
6 as practicable shall be in the middle of each work period. The authorized rest period
7 time shall be based on the total hours worked daily at the rate of ten (10) minutes net
8 rest time per four (4) hours or major fraction thereof. However, a rest period need not
9 be authorized for employees whose total daily work time is less than three and one-
10 half (3 ½) hours. Authorized rest period time shall be counted, as hours worked, for
11 which there shall be no deduction from wages.

12 67. If an employer fails to provide an employee a rest period in accordance
13 with the applicable provisions of this order, the employer shall pay the employee one
14 (1) hour of pay at the employee’s regular rate of compensation for each work day
15 that the rest period is not provided.

16 68. Upon information and belief, Defendant did not promulgate a compliant
17 rest break policy.

18 69. Plaintiffs and Class Members have regularly worked in excess of four
19 hours a day without Defendant authorizing and permitting them to take at least a 10
20 minute paid rest period or have failed to separately pay them for the rest periods
21 taken, as required by Labor Code § 226.7 and IWC Wage Order 9.

22 70. Plaintiffs and Class Members were not paid for all hours worked, and
23 Defendant maintained no system for the recording of rest periods.

24 71. Because Defendant failed to authorize and permit proper paid rest
25 periods, they are liable to Plaintiffs and Class Members for one hour of additional
26 pay at the regular rate of compensation for each workday that the proper rest periods
27 were not authorized or permitted.

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XIII. SIXTH CAUSE OF ACTION
FAILURE TO FURNISH ACCURATE WAGE STATEMENTS
(CALIFORNIA LABOR CODE § 226 & IWC WAGE ORDER NO. 9)
(ON BEHALF OF PLAINTIFFS AND CLASS MEMBERS)

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4 72. The allegations of each of the preceding paragraphs are re-alleged and
5 incorporated herein by reference, and Plaintiffs allege as follows a claim of relief on
6 behalf of themselves and all Class Members.

7 73. Pursuant to California Labor Code § 226(a) and IWC Wage Order No.
8 9, Defendant has at all relevant times been required, semimonthly or at the time of
9 each payment of wages, to furnish Plaintiffs and Class Members accurate, itemized
10 written statements containing all the information described in § 226 and Wage Order
11 No. 9, § 7, including, but not limited to, the total hours worked by the employees.

12 74. Defendant has knowingly and intentionally failed to comply with § 226
13 by knowingly and intentionally failing to furnish Plaintiffs and Class Members with
14 accurate, itemized written statements showing their actual and total hours worked.

15 75. Defendant also failed to accurately record meal periods as detailed
16 above, to pay meal period premium wages for missed meal periods, and to report
17 those meal period premium payments on wage statements.

18 76. Under California Labor Code § 226(e), an employee suffering injury as
19 a result of knowing and intentional failure of an employer to comply with § 226(a) is
20 entitled to recover the greater of all actual damages or fifty (\$50) for the initial pay
21 period in which a violation occurs and one hundred dollars (\$100) for each violation
22 in a subsequent pay period, up to a maximum amount of \$4,000.

23 77. In addition, upon information and belief, and in violation of IWC Wage
24 Order No. 9, Defendant failed to keep the required payroll records showing the
25 actual hours worked each day by Plaintiffs and Class Members. As a direct and
26 proximate result of Defendant's actions, Plaintiffs and Class Members have suffered
27 economic harm as they have been precluded from accurately monitoring the number
28 of hours worked and thus seeking all accrued overtime pay.

1 78. As a direct and proximate result of Defendant's unlawful conduct as set
2 forth herein, Plaintiffs and Class Members have been injured by not receiving the
3 information required by California Labor Code § 226(a), not being paid their
4 overtime hours, not having records showing their total hours worked, not being able
5 to ascertain from their wage statements whether or how they have been lawfully
6 compensated for all hours worked, among other things, in an amount to be
7 determined at trial.

8 79. Plaintiffs and Class Members may recover damages and penalties
9 provided for under California Labor Code § 226(e), plus interest thereon, reasonable
10 attorneys' fees, and costs.

11 **XIV. SEVENTH CAUSE OF ACTION**
12 **WAITING TIME PENALTIES**
13 **(CALIFORNIA LABOR CODE §§ 201, 202, 203)**
14 **(ON BEHALF OF PLAINTIFFS AND CLASS MEMBERS)**

15 80. The allegations of each of the preceding paragraphs are re-alleged and
16 incorporated herein by reference, and Plaintiffs allege as follows a claim of relief on
17 behalf of themselves and all Class Members.

18 81. California Labor Code § 201 states that an employer is required to
19 provide an employee who is terminated all accrued wages and compensation at the
20 time of termination.

21 82. California Labor Code § 202 states that an employer is required to
22 provide an employee who resigns all unpaid wages within 72 hours of their
23 resignation, or upon resignation if the employee has provided at least 72 hours'
24 notice.

25 83. California Labor Code § 203 states that if an employer willfully fails to
26 pay compensation promptly upon discharge, as required by § 201 and § 202, then the
27 employer is liable for waiting time penalties equivalent to the employee's daily
28 wage, for a maximum of 30 days.

1 Labor Code §§ 226.7 and 512 and IWC Wage Order No. 9; (4) failing to provide
2 complete and accurate itemized wage statements in violation of California Labor
3 Code §§ 226 & 1174 and IWC Wage Order No. 9; (5) failing to pay Plaintiffs and
4 similarly situated former Distributor Class Members all due and unpaid overtime
5 wages upon termination in violation of California Labor Code § 203; (6) willfully
6 and unlawfully misclassifying Plaintiffs and similarly situated Class Members as
7 independent contractors in violation of California Labor Code § 226.8 & and IWC
8 Wage Order No. 9; (7) charging Plaintiffs and Class Members and/or making
9 deductions from compensation for goods, materials, services, and equipment
10 maintenance arising from their employment in violation of Labor Code § 226.8; and
11 (8) unlawfully collecting or receiving wages from Plaintiffs and Class Members in
12 violation of Labor Code § 221 and IWC Wage Order No. 9.

13 89. Defendant's knowing failure to adopt policies in accordance with and/or
14 to adhere to these laws, all of which are binding upon and burdensome to its
15 competitors, engenders an unfair competitive advantage to Defendant thereby
16 constituting an unfair business practice under California Business & Professions
17 Code §§ 17200-17208.

18 90. Plaintiffs and similarly-situated Class Members have suffered injury in
19 fact and have lost money as a direct and proximate result of Defendant's unfair
20 competition, including, but not limited to, money due to them as overtime
21 compensation, necessary expenditures or losses, unlawful fees arising from their
22 employment, compensation for missed meal periods, and waiting time penalties,
23 which money has been acquired by Defendant by means of their unfair competition
24 within the meaning of the UCL.

25 91. Pursuant to California Business & Professions Code §§ 17200 *et seq.*,
26 Plaintiffs and Class Members are entitled to (i) restitution of all wages and
27 compensation alleged herein that Defendant withheld and retained during the period
28 commencing four years preceding the filing of this action, (ii) an award of

1 reasonable attorneys' fees pursuant to Cal. Civ. Proc. Code § 1021.5 and other
2 applicable law, and (iii) costs. All remedies are cumulative pursuant to California
3 Business & Professions Code § 17205.

4 **XVI. NINTH CAUSE OF ACTION**
5 **CIVIL PENALTIES UNDER LABOR CODE PRIVATE ATTORNEY**
6 **GENERAL ACT**
7 **(CALIFORNIA LABOR CODE §2698 *ET SEQ.*)**
8 **(ON BEHALF OF PLAINTIFFS AS A REPRESENTATIVE ACTION)**

9 92. The allegations of each of the preceding paragraphs are re-alleged and
10 incorporated herein by reference, and Plaintiffs allege as follows a claim of relief on
11 behalf of themselves and all aggrieved employees.

12 93. Plaintiffs Barrish and Alfred, as aggrieved employees, bring this claim
13 under California Labor Code §§ 2698-2699 in a representative capacity on behalf of
14 current and former Distributors of Defendant subjected to the unlawful wage and
15 hour practices alleged herein.

16 94. The California Labor Code Private Attorneys General Act of 2004
17 (PAGA), California Labor Code § 2698 *et seq.*, grants California employees the right
18 to bring a civil action for the violation of any provision of the Labor Code on behalf
19 of themselves and other current or former employees in order to recover civil
20 penalties. PAGA is intended to assist in the achievement of maximum compliance
21 with state labor laws by empowering aggrieved employees to act as private attorneys
22 general in order to recover civil penalties for Labor Code violations that would
23 otherwise be prosecuted by the state. *See Arias v. Super. Ct.* (2009) 46 Cal. 4th 969,
24 980.

25 95. PAGA permits an aggrieved employee to collect the civil penalty
26 authorized by law and normally collectible by the California Labor and Workforce
27 Development Agency. To address violations for which no penalty has been
28 established, § 2699(f) creates a private right of action for aggrieved employees and a
default penalty in the amount of \$100 for each aggrieved employee per pay period

1 for the initial violation, and \$200 for each aggrieved employee per pay period for
2 each subsequent violation. *See* Cal. Lab. Code § 2699(f).

3 96. Plaintiffs Barrish and Alfred hereby seek to collect these civil penalties
4 for the above-described Labor Code violations, including:

5 97. Under California Labor Code § 558, civil penalties of fifty dollars (\$50)
6 for each Plaintiff and each aggrieved employee per pay period for the initial violation
7 of Labor Code § 558 where Plaintiffs and aggrieved employees were not paid
8 appropriate overtime premiums under Labor Code § 510, as alleged in the First
9 Cause of Action, in addition to an amount sufficient to recover underpaid wages; and
10 for each subsequent violation, one hundred dollars (\$100) for each underpaid
11 aggrieved employee for each pay period for which the employee was underpaid
12 under Labor Code § 510.

13 98. Under California Labor Code § 2699(f)(2), described above, a civil
14 penalty of one hundred dollars (\$100) for each Plaintiff and each aggrieved
15 employee per pay period for the initial violation of Labor Code § 2802, for failure to
16 indemnify employees for business expenses, and two hundred dollars (\$200) for each
17 Plaintiff and each aggrieved employee per pay period for each subsequent violation
18 of Labor Code § 2802, as alleged in Plaintiffs' Second Cause of Action.

19 99. Under California Labor Code § 2699(f)(2), a civil penalty of one
20 hundred dollars (\$100) for each Plaintiff and each aggrieved employee per pay
21 period for the initial violation of Labor Code § 226.7 for failing to provide meal
22 periods, and two hundred dollars (\$200) for each Plaintiff and each aggrieved
23 employee per pay period for each subsequent violation of Labor Code § 226.7 for
24 failing to provide meal periods, as alleged in Plaintiffs' Fourth Cause of Action.

25 100. Under California Labor Code § 226.3, which provides for civil penalties
26 for violations of California Labor Code § 226(a), a civil penalty of two hundred fifty
27 dollars (\$250) for each Plaintiff and each aggrieved employee for the first violation,
28 and one thousand dollars (\$1,000) for each Plaintiff and each aggrieved employee for

1 each subsequent violation of Labor Code § 226(a) for failure to provide timely,
2 accurate, itemized wage statements, as alleged in the Sixth Cause of Action.

3 101. Under California Labor Code § 2699(f)(2), a civil penalty of one
4 hundred dollars (\$100) for each Plaintiff and each aggrieved employee per pay
5 period for the initial violation of Labor Code §§ 201, 202, and 203 for Defendant's
6 failure to pay earned wages upon discharge, as alleged in the Seventh Cause of
7 Action, and two hundred dollars (\$200) for each Plaintiff and each aggrieved
8 employee per pay period for each subsequent violation of Labor Code §§ 201 and
9 202.

10 102. Under California Labor Code § 226.8, a civil penalty of not less than
11 five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000)
12 for each violation against each Plaintiff and each aggrieved employee, and if the
13 court finds that Defendant has engaged in a pattern or practice of violation of §
14 226.8(a), a civil penalty of not less than ten thousand dollars (\$10,000) and not more
15 than twenty-five thousand dollars (\$25,000) for each violation.

16 103. Additionally, as a result of violations under California Labor Code §
17 226.8(a), Plaintiffs request that the Court order Defendant to take certain steps to
18 notify employees and the general public of the determination that they have violated
19 § 226.8, pursuant to § 226.8(e).

20 104. California Labor Code § 2699(g) further provides that any employee
21 who prevails in an action for civil penalties is entitled to an award of reasonable
22 attorneys' fees and costs. Plaintiffs Barrish and Alfred hereby seek to recover their
23 attorneys' fees and costs under this fee and cost shifting statute.

24 105. On June 5, 2014, pursuant to California Labor Code § 2699.3, Plaintiffs
25 sent notice by certified mail to the Labor and Workforce Development Agency
26 (LWDA) and Defendant of the specific provisions of the Labor Code that have been
27 violated, including the facts and theories to support the violations. The LWDA
28 received this notice on the same day, June 5, 2014. The thirty-three day time limit

1 for the agency to respond has expired, such that Plaintiffs have exhausted their
2 administrative remedies.

3 **XVII. PRAYER FOR RELIEF**

4 106. WHEREFORE, Plaintiffs, on behalf of themselves and the above-
5 described Class of similarly situated Distributor Class Members, requests relief as
6 follows:

- 7 a. Certification of the above-described Class as a class action, pursuant to
8 California Code of Civil Procedure § 382;
- 9 b. Appointment of Plaintiffs as Class Representatives;
- 10 c. Appointment of Plaintiffs' Counsel as Class Counsel;
- 11 d. Provision of class notice to all Class Members;
- 12 e. A declaratory judgment that Defendant has knowingly and intentionally
13 violated the following provisions of law, among others:
- 14 i. California Labor Code §§ 510, 1194 *et seq.*, 1197, and IWC Wage
15 Order No. 9, by failure to pay overtime compensation to Plaintiffs
16 and Class Members;
- 17 ii. California Labor Code § 2802 & IWC Wage Order No. 9, by failure
18 to reimburse Plaintiffs and Class Members for necessary
19 expenditures or losses;
- 20 iii. California Labor Code § 221 & IWC Wage Order No. 9 by
21 unlawfully collecting and deducting wages from Plaintiffs and Class
22 Members;
- 23 iv. California Labor Code §§ 226.7 and 512, and IWC Wage Order No.
24 9 for failure to provide off-duty meal and rest periods to Plaintiffs
25 and Class Members;
- 26 v. California Labor Code §§ 201-203, by willful failure to pay all
27 wages owed at the time of termination of employment;
- 28

1 vi. California Labor Code § 226(a) and 1174, by failure to provide
2 itemized written statements semimonthly or at the time of payment
3 of wages accurately showing all the information required by
4 California law, including but not limited to total hours worked, and
5 for failure to keep accurate payroll records;

6 vii. California Business and Professions Code §§ 17200 *et seq.*, by
7 failure to pay unpaid overtime compensation due to Plaintiffs and
8 Class Members under California law, by willfully failing to pay all
9 compensation owed to Plaintiffs and Class Members upon
10 termination of employment; by willfully failing to provide legally
11 compliant wage statements to Plaintiffs and Class Members; by
12 requiring Plaintiffs and Class Members to work through their meal
13 and rest periods without paying them proper compensation; by
14 failing to reimburse Plaintiffs and Class Members for necessary
15 expenditures or losses; by willfully and knowingly misclassifying
16 Plaintiffs and Class Members as independent contractors for
17 Defendant's financial gain under Labor Code Section 226.8; and by
18 charging an Plaintiffs and Class Members fees and/or making
19 deductions from compensation in violation of Labor Code Section
20 226.8.

21 viii. A declaratory judgment that Defendant has knowingly and
22 intentionally violated California Labor Code §§ 201, 202, 203, 226,
23 226.7, 510, 512, 2802, and 226.8, all of which give rise to civil
24 penalties and other remedies under the PAGA.

25 f. A declaratory judgment that Defendant's violations as described above
26 were willful and/or knowing and intentional;

27 g. An equitable accounting to identify, locate, and restore to all current and
28 former Class Members the overtime wages due;

1 h. An award to Plaintiffs and the Class Members of damages in the amount
2 of unpaid overtime compensation, necessary business expenses, unlawful
3 collection and deductions from wages, and meal and rest period compensation,
4 including interest thereon subject to proof at trial;

5 i. An award of penalties owed, pursuant to Labor Code § 203, to Plaintiffs
6 and all Class Members who resigned or whose employment was terminated by
7 Defendant without receiving all overtime compensation owed at the time of
8 separation;

9 j. An order requiring Defendant to pay restitution of all amounts owed to
10 Plaintiffs and similarly situated Class Members for Defendant's failure to pay
11 legally required overtime pay, meal period pay, out-of-pocket employment-
12 related necessary expenditures or losses, unlawful fees, and interest thereon, in
13 an amount according to proof, pursuant to California Business & Professions
14 Code § 17203 and other applicable law;

15 k. An award to Plaintiffs and the Class Members of damages and/or
16 statutory penalties as set forth in California Labor Code § 226(e);

17 l. An award to Plaintiffs and the Class Members of premium wages for
18 meal and rest periods, according to proof;

19 m. An award to Plaintiffs of PAGA civil penalties under Labor Code §
20 2699, *et seq.*, subject to proof;

21 n. An award to Plaintiffs and the Class Members of reasonable attorneys'
22 fees and costs, pursuant to California Code of Civil Procedure § 1021.5,
23 California Labor Code §§ 226(e), 1194, 2802, 2699(g) and/or other applicable
24 law;

25 o. An award to Plaintiffs and the Class Members of such other and further
26 relief as this Court deems just and proper.

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XVIII. DEMAND FOR JURY TRIAL

107. Plaintiffs, on behalf of themselves and all others similarly situated, hereby demand a trial of their claims by jury to the extent authorized by law.

DATED: October 31, 2014

RUKIN HYLAND DORIA &
TINDALL LLP

By: /s/ Peter Rukin
PETER RUKIN
Attorney for Plaintiff