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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF LOS ANGELES

BC392872

14 JYOTI PARMAR, BISHNU SHAHANI, and )  
15 PAYAL MODI and on behalf of themselves )  
and all others similarly situated, )

16 Plaintiffs, )

17 v. )

18 ZIBA BEAUTY CENTER, INC.; and DOES )  
19 1-100, inclusive, )

20 Defendants. )  
21 )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

CASE NO.

CLASS ACTION COMPLAINT FOR:

1. FAILURE TO PAY OVERTIME  
COMPENSATION (CAL. LABOR CODE  
§§§ 510, 1194, 1194.2);

2. FAILURE TO PROVIDE MEAL AND  
REST PERIODS (CAL. LABOR CODE §§  
226.7, 512);

3. FAILURE TO FURNISH WAGE AND  
HOUR STATEMENTS (CAL. LABOR  
CODE §§ 226, 226.3);

4. WAITING TIME PENALTIES (CAL.  
LABOR CODE §§ 201-203);

5. FAILURE TO PAY MINIMUM WAGE  
(CAL. LABOR CODE §§ 1182, et seq.,  
1197, et seq.);

6. UNFAIR COMPETITION (CAL. BUS.  
& PROF. CODE § 17200, et seq.)

JURY TRIAL DEMANDED

CONFORMED COPY  
OF ORIGINAL FILED  
Los Angeles Superior Court

JUN 10 2008

John A. Clarke, Executive Officer/Clerk

BY SHAUNYA WESLEY, Deputy

1 On behalf of themselves and all others similarly situated, and on behalf of the general  
2 public, plaintiffs BISHNU SHAHANI, PAYAL MODI and JYOTI PARMAR (“Plaintiffs”),  
3 bring this action against defendants ZIBA BEAUTY CENTER, INC.; and DOES 1-100,  
4 inclusive, (collectively “Defendants”), for: earned but unpaid overtime wages, unpaid minimum  
5 wages, back wages, restitution, liquidated damages, penalties, interest, declaratory and injunctive  
6 relief, restitution, punitive damages, costs and attorneys’ fees resulting from Defendants’  
7 unlawful conduct and unfair business practices, and as grounds therefor allege:

8 **INTRODUCTION**

9 1. Plaintiffs BISHNU SHAHANI (“Shahani”), PAYAL MODI (“Modi”) and JYOTI  
10 PARMAR (“Parmar”) are former employees of Defendants who were classified as nonexempt  
11 under the Industrial Welfare Commission (“IWC”) Wage Orders.

12 2. Plaintiffs contend that Defendants failed to properly calculate and pay them and  
13 all others similarly situated legally-required overtime compensation that they earned, failed to  
14 pay the legally required minimum wage, failed to provide them with meal and rest breaks, failed  
15 to pay the compensation due to them for missed meal and rest breaks, failed to pay all wages due  
16 and owing upon the termination of employment or at any time thereafter, failed to keep accurate  
17 records and failed to meet other legal requirements, all of which violate various provisions of the  
18 Labor Code and IWC Wage Orders, with respect to their employment.

19 **PARTIES**

20 3. Plaintiffs reside in Los Angeles County, California. Each of the Plaintiffs and all  
21 members of the Plaintiff Class as defined below are, were, or will be employed by the  
22 Defendants, within the state of California during the relevant statutory period.

23 4. Plaintiffs bring their claims on behalf of a class (“Plaintiff Class”) which consists  
24 of all nonexempt current, former, and future employees employed at ZIBA BEAUTY CENTER,  
25 INC., including but not limited to those employed at Defendants’ stores located at 17832 South  
26 Pioneer Boulevard, Artesia, Los Angeles, CA 90701; 10800 West Pico Boulevard, Suite 100,  
27 Los Angeles, CA 90064; 573 Los Cerritos, Cerritos, CA 90703; 6600 Topanga Canyon  
28 Boulevard, Canoga Park, CA 91303; and 1815 Hawthorne Boulevard, Redondo Beach, CA

1 90278 during the relevant statutory period (“Class Period”). Members of the Plaintiff Class were  
2 and are not compensated in the amounts required by the Labor Code and the IWC Wage Orders  
3 promulgated pursuant thereto. Members of the Plaintiff Class were and are not paid in  
4 accordance with the overtime requirements of the Labor Code and the IWC Wage Orders  
5 promulgated thereto. Members of the Plaintiff Class were and are not paid in accordance with  
6 the minimum wage requirements of Labor Code 1182, et seq. and IWC Wage Order 2-2001.  
7 Members of the Plaintiff Class did and do not receive the meal or rest breaks, or compensation  
8 for missed breaks, to which they were and are entitled under Labor Code § 226.7 and IWC Wage  
9 Orders, including Wage Order 2-2001. Members of the Plaintiff Class who are no longer  
10 working for Defendants were not paid all of the wages due and owing upon the termination of  
11 their employment or at any time thereafter, in violation of Labor Code § 203. Defendants’ failure  
12 to pay and properly compensate the Plaintiff Class for overtime compensation, failure to properly  
13 pay the Plaintiff Class the required minimum wages, to provide them with required meal and rest  
14 breaks, or compensate them for missed breaks, keep accurate records and to pay them all of the  
15 wages due and owing upon the termination of their employment or at any time thereafter, was  
16 and is a result of unlawful policies and practices that were commonly applied to all members of  
17 the Plaintiff Class.

18 5. Plaintiffs also bring this action on behalf of themselves, the general public, and all  
19 others similarly situated pursuant to Business and Professions Code §§ 17200, *et seq.*

20 6. Plaintiffs are informed and believe and thereon allege that at all relevant times  
21 defendant ZIBA BEAUTY CENTER, INC., is a beauty center company engaged in, among other  
22 things, owning and operating beauty salons in the County of Los Angeles, State of California.  
23 The salons owned and/or operated by Defendants offer services including threading, piercing,  
24 waxing and henna artistry. On information and belief, ZIBA BEAUTY CENTER, INC. is a  
25 corporation doing business in the County of Los Angeles and organized under the laws of the  
26 State of California.

27 7. Plaintiffs are ignorant of the true names and capacities of defendants sued herein  
28 as DOES 1 through 100, inclusive, and therefore sue these defendants by such fictitious names

1 and capacities. Plaintiffs will seek leave to amend this complaint to allege the true names and  
2 capacities of said fictitiously-named defendants once they have been ascertained. Plaintiffs are  
3 informed and believe, and on that basis allege, that at all relevant times, each of the fictitiously-  
4 named defendants was an agent or employee of the named Defendants and/or was acting within  
5 the course and scope of said agency or employment at the time of the events herein alleged,  
6 and/or was acting directly or indirectly in the interest of Defendants in relation to Plaintiffs and  
7 the Plaintiff Class. Plaintiffs are further informed and believe and on that basis allege that each  
8 of the fictitiously-named defendants aided and assisted the named Defendants in committing the  
9 wrongful acts alleged herein, and that Plaintiffs' damages, as alleged herein, were proximately  
10 caused by such defendants. To the extent that the conduct and omissions alleged herein were  
11 perpetrated by one or more defendants, the remaining defendants confirmed and ratified said  
12 conduct and omissions.

13 8. Plaintiffs are informed and believe and thereupon allege that at all times material  
14 herein, each defendant named herein, including DOES 1 through 100, acted as the agent, joint  
15 venturer, representative, or alter ego of or for the other defendants, and all aided and abetted the  
16 wrongful acts of the others.

17 **FACTUAL ALLEGATIONS**

18 9. Throughout the relevant statutory period, Plaintiffs and all members of the  
19 Plaintiff Class were and are nonexempt employees of Defendants, entitled to all of the  
20 protections afforded to nonexempt employees under the Labor Code and applicable IWC Wage  
21 Orders.

22 10. At all relevant times, Defendants failed to (1) properly calculate and pay Plaintiffs  
23 and the Plaintiff Class overtime compensation as required by the Labor Code and the applicable  
24 IWC Wage Orders; (2) provide Plaintiffs and the Plaintiff Class meal and rest periods as required  
25 by the applicable IWC Wage Orders; (3) pay Plaintiffs and the Plaintiff Class compensation  
26 required by the Labor Code for missed meal and rest periods; (4) pay members of the Plaintiff  
27 Class who resigned or were terminated the wages due to them at the time they left their  
28 employment; (5) properly calculate and pay Plaintiffs and the Plaintiff class the minimum wage

1 as required by the Labor Code; (6) keep accurate records as required by law and; (7) comply with  
2 other requirements of those statutes as alleged herein.

3 11. The underpayment of wages to the Plaintiffs and the Plaintiff Class is a  
4 consequence of Defendants' unlawful compensation and labor policies and practices which were  
5 centrally devised, implemented, communicated, and applied to all members of the Plaintiff Class.  
6 These unlawful compensation practices include, but are not limited to, the following:

- 7 • Failure to properly calculate and pay legally-required overtime  
8 compensation;
- 9 • Failure to permit employees to take meal and rest breaks required by law;
- 10 • Failure to include the time employees spend working through their  
11 required breaks in the number of hours worked for compensation  
12 purposes;
- 13 • Failure to pay required compensation for missed break time pursuant to  
14 Labor Code § 226.7 and applicable IWC Wage Orders;
- 15 • Failure to pay waiting time penalties required by Labor Code § 203;
- 16 • Failure to pay legally-required minimum wage compensation;
- 17 • Failure to keep legally-required records, including but not limited to  
18 accurate records of hours worked;
- 19 • Failure to provide accurate wage statements; and
- 20 • Other violations of the Labor Code and applicable IWC Wage Orders  
21 according to proof.

22 12. As a result of Defendants' unlawful conduct, Plaintiffs and the Plaintiff Class  
23 have been and continue to be systematically deprived of the wages to which they are entitled by  
24 law, and deprived of other benefits under the Labor Code and applicable IWC Wage Orders, to  
25 the detriment of themselves, their families, and to the public at large.

26 13. On information and belief, Plaintiffs allege that at all times material herein  
27 Defendants have been and are aware of California laws requiring the proper calculation and  
28 payment of overtime compensation, the minimum wage, and laws requiring meal and rest breaks,

1 but have nevertheless engaged in widespread and flagrant violations of these laws. The majority  
2 of the time, Plaintiffs and the Plaintiff Class are not paid an hourly rate or base pay by  
3 Defendants but instead receive only a percentage commission of the work they do. On other  
4 occasions, Plaintiffs and the Plaintiff Class were paid a set daily rate. Because of these payment  
5 schemes, Plaintiffs and the Plaintiff Class never received the overtime compensation required by  
6 law and on many occasions did not receive the legally required minimum wage. Defendants also  
7 failed to compensate Plaintiffs and the Plaintiff Class in accordance with the procedures required  
8 by law and failed to maintain time records as required by law. In addition, Plaintiffs and the  
9 Plaintiff Class were not and are not provided with meal and rest breaks consistent with the Labor  
10 Code and applicable IWC Wage Orders. On information and belief, at all times material herein,  
11 Defendants have given no written instructions to management and Plaintiff Class members'  
12 immediate supervisors about complying with the laws requiring the proper calculation and  
13 payment of overtime compensation, minimum wages and meal and rest break laws, and  
14 Defendants have failed to establish any system to ensure compliance with these laws.

15 14. Defendants have also forced Plaintiffs and the Plaintiff Class to sign oppressive  
16 employment contracts that claim that Ziba has a proprietary trade secret in the threading and  
17 henna techniques utilized by the Plaintiff Class and attempted to prevent members of the Plaintiff  
18 Class from providing these services outside of Defendants' stores. Defendants have recently  
19 been forced to concede that they have no proprietary trade secrets in the traditional arts of  
20 threading or henna and that their employees may use these skills outside of Defendants' stores.

#### 21 CLASS ALLEGATIONS

22 15. Proposed Class and Nature Of The Class Claims. The individual Plaintiffs, as  
23 Class Representatives, bring this action on their own behalf and on behalf of a class comprised of  
24 all nonexempt current, former, and future employees employed at beauty centers which are  
25 owned, leased, managed, or operated by Defendants.

26 16. Numerosity. The size of the Plaintiff Class makes a class action both necessary  
27 and efficient. On information and belief, Plaintiffs estimate that the Plaintiff Class consists of at  
28 least one hundred and fifty current and former employees, and an indefinite number of future

1 employees. Members of the Plaintiff Class are ascertainable but so numerous that joinder is  
2 impracticable. The Plaintiff Class includes future class members whose joinder is inherently  
3 impossible.

4 17. Typicality. The claims of the Class Representatives are typical of the claims of  
5 the class as a whole. Each of the Class Representatives is and/or was employed by Defendants  
6 during the relevant statutory period. Each of the Class Representatives was underpaid, and  
7 continues to be underpaid, because of Defendants' unlawful employment policies and practices.  
8 The unlawful policies and practices that have operated to deny the Class Representatives wages,  
9 penalties, meal and rest periods, and other compensation, benefits, and protections required by  
10 law are typical of the unlawful practices that have and will continue to operate to deny other class  
11 members the compensation and benefits to which they are entitled.

12 18. Common Questions Of Law And Fact. This case poses common questions of law  
13 and fact affecting the rights of all class members, including but not limited to:

14 (a) Whether the following compensation policies and practices are unlawful  
15 under the Labor Code and/or IWC Wage Orders:

- 16 • Failure to properly calculate and pay legally-required overtime  
17 compensation;
- 18 • Failure to permit employees to take meal and rest breaks required by law;
- 19 • Failure to include the time employees spend working through their  
20 required breaks in the number of hours worked for compensation  
21 purposes;
- 22 • Failure to pay required compensation for missed break time pursuant to  
23 Labor Code § 226.7 and applicable IWC Wage Orders;
- 24 • Failure to pay waiting time penalties required by Labor Code § 203;
- 25 • Failure to properly pay the legally-required minimum wage;
- 26 • Failure to keep legally-required records, including but not limited to  
27 accurate records of hours worked; and
- 28 • Failure to provide accurate wage statements.

1 (b) What relief is necessary to remedy Defendants' unfair and unlawful  
2 conduct as herein alleged; and

3 (c) Other questions of law and fact.

4 19. Adequacy Of Class Representation. The Class Representatives can adequately  
5 and fairly represent the interests of the Plaintiff Class as defined above, because their individual  
6 interests are consistent with, not antagonistic to, the interests of the class.

7 20. Adequacy Of Counsel For The Class. Counsel for Plaintiffs possess the requisite  
8 resources and ability to prosecute this case as a class action and are experienced labor and  
9 employment attorneys who have successfully litigated other cases involving similar issues.

10 21. Propriety of Class Action Mechanism. Class certification is appropriate because  
11 Defendants have implemented a scheme which is generally applicable to the Plaintiff Class,  
12 making it appropriate to issue final injunctive relief and corresponding declaratory relief with  
13 respect to the class as a whole. Class certification is also appropriate because the common  
14 questions of law and fact predominate over any questions affecting only individual members of  
15 the class. Further, the prosecution of separate actions against Defendants by individual class  
16 members would create a risk of inconsistent or varying adjudications which would establish  
17 incompatible standards of conduct for Defendants. For all these and other reasons, a class action  
18 is superior to other available methods for the fair and efficient adjudication of the controversy set  
19 forth in this complaint.

20 **ALLEGATIONS OF CLASS REPRESENTATIVES**

21 22. Bishnu Shahani. Ms. Shahani worked for Defendants between approximately  
22 May 2006 and January 2008. Throughout her employment with Defendants, Ms. Shahani has  
23 been classified as a nonexempt employee. Defendants failed to pay Ms. Shahani any  
24 compensation during her two month training period and as such failed to provide her the legally  
25 required minimum wage on this and other occasions. Defendants also consistently failed to  
26 properly calculate and pay Ms. Shahani's overtime compensation, and as a result, have  
27 substantially underpaid Ms. Shani overtime compensation that she earned and to which she is  
28 due. Defendants also consistently failed to provide Ms. Shahani meal and rest breaks to which



1 she was entitled under state law, and consistently failed to pay her compensation for missed meal  
2 and rest breaks or compensation for time spent working through required breaks. Defendants  
3 also failed to keep legally-required records, including but not limited to accurate records of hours  
4 worked, and failed to provide Ms. Shahani with accurate wage statements.

5 23. Jyoti Parmar. Ms. Parmar worked for Defendants between approximately August  
6 2000 and January 2008. Throughout her employment with Defendants, Ms. Parmar has been  
7 classified as a nonexempt employee. Defendants consistently failed to properly calculate and pay  
8 Ms. Parmar's overtime compensation, and as a result, have substantially underpaid Ms. Parmar  
9 overtime compensation that she earned and to which she is due. Defendants also consistently  
10 failed to provide Ms. Parmar meal and rest breaks to which she was entitled under state law, and  
11 consistently failed to paid her compensation for missed meal and rest breaks or compensation for  
12 time spent working through required breaks. Defendants also failed to provide Ms. Parmar with  
13 the required minimum wage. Defendants also failed to keep legally-required records, including  
14 but not limited to accurate records of hours worked, and failed to provide Ms. Parmar with  
15 accurate wage statements.

16 24. Payal Modi. Ms. Modi worked for Defendants between approximately May 2005  
17 and January 2008. Throughout her employment with Defendants, Ms. Modi was classified as a  
18 nonexempt employee. Defendants consistently failed to properly calculate Ms. Modi's overtime  
19 compensation, and as a result, substantially underpaid her overtime compensation that she earned  
20 and to which she is due. Defendants also consistently failed to provide Ms. Modi meal and rest  
21 breaks to which she was entitled under state law, and did not pay her compensation for missed  
22 meal and rest breaks or compensation for time spent working through required breaks.  
23 Defendants also failed to provide Ms. Modi with the required minimum wage. Defendants also  
24 failed to keep legally-required records, including but not limited to accurate records of hours  
25 worked, and failed to provide Ms. Modi with accurate wage statements.

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1 **FIRST CAUSE OF ACTION**

2 **For Failure to Pay Overtime Compensation**

3 **by Plaintiffs Individually and on Behalf of the Plaintiff Class**

4 **(California Labor Code Sections 510, 1194, 1194.2, IWC Wage Order 2-2001)**

5 25. Plaintiffs reallege and incorporate by reference paragraphs 1 through 24,  
6 inclusive, as if fully set forth herein.

7 26. During the Class Period, Defendants routinely required Plaintiffs and the Plaintiff  
8 Class to work more than eight hours per day and more than 40 hours per workweek.  
9 Additionally, Defendants on occasion required Plaintiffs and the Plaintiff Class Members to  
10 work more than six days in seven.

11 27. At all relevant times, Defendants failed to properly calculate, substantially  
12 underpaid, and/or refused to pay Plaintiffs and the Plaintiff Class overtime compensation  
13 required by the Labor Code and applicable IWC Wage Orders. Defendants' failure to pay wages  
14 is also a violation of Labor Code § 204.

15 28. As alleged herein, Plaintiffs and the Plaintiff Class were and are not exempt from  
16 the overtime compensation requirements of the Labor Code and applicable IWC Wage Orders.

17 29. Plaintiffs and the Plaintiff Class have been deprived of their rightfully earned  
18 overtime compensation as a direct and proximate result of Defendants' failure and refusal to pay  
19 said compensation. The Class Members, including Plaintiffs, are entitled to recover such  
20 amounts, plus interest thereon, attorney's fees and costs.

21 30. In addition, pursuant to California Labor Code Section 1994.2, Plaintiffs and the  
22 Plaintiff Class are entitled to recover liquidated damages in an amount equal to the wages  
23 unlawfully unpaid and interest thereon. Moreover, Labor Code § 210 provides civil penalties for  
24 violations of § 204 in the amount of \$100 per initial violation, and for each subsequent violation  
25 or any willful or intentional violation, \$200 for each failure to pay each employee, plus 25% of  
26 the amount unlawfully withheld.

27 31. In committing the foregoing acts, Defendants acted oppressively, maliciously,  
28 fraudulently, and/or outrageously toward Plaintiffs and the Plaintiff Class, with conscious

1 disregard for their known rights and with the intention of causing, and/or willfully disregarding  
2 the probability of causing, unjust and cruel hardship to Plaintiffs and the Plaintiff Class. In so  
3 acting, Defendants intended to and did vex, injure and annoy Plaintiffs and the Plaintiff Class.  
4 Therefore, an assessment of punitive damages should be made against Defendants in an amount  
5 sufficient to punish them and to prevent them from willfully engaging in future unlawful  
6 conduct.

7 **SECOND CAUSE OF ACTION**

8 **For Failure to Provide Meal and Rest Periods**

9 **by Plaintiffs Individually and on Behalf of The Plaintiff Class**

10 **(California Labor Code Sections 226.7, 512, IWC Wage Order 2-2001)**

11 32. Plaintiffs reallege and incorporate by reference paragraphs 1 through 24,  
12 inclusive, as if fully set forth herein.

13 33. During the Class Period, Defendants routinely failed to provide the Plaintiffs and  
14 the Plaintiff Class with meal and rest periods during their work shifts, and failed to compensate  
15 them for said meal and rest periods, as required by California Labor Code sections 226.7, 512  
16 and the other applicable IWC Wage Orders.

17 34. As alleged herein, Plaintiffs and the Plaintiff Class were and are not exempt from  
18 the meal and rest period requirements of the Labor Code and applicable IWC Wage Orders.

19 35. Plaintiffs and the Plaintiff Class have been deprived of their rightfully earned  
20 compensation for meal and rest periods as a direct and proximate result of Defendants' failure  
21 and refusal to pay said compensation. Plaintiffs and the Plaintiff Class are entitled to recover  
22 such amounts pursuant to California Labor Code section 226.7(b), plus interest thereon and  
23 attorney's fees and costs.

24 36. In committing the foregoing acts, Defendants acted oppressively, maliciously,  
25 fraudulently, and/or outrageously toward Plaintiffs and the Plaintiff Class, with conscious  
26 disregard for their known rights and with the intention of causing, and/or willfully disregarding  
27 the probability of causing, unjust and cruel hardship to Plaintiffs and the Plaintiff Class. In so  
28 acting, Defendants intended to and did vex, injure and annoy Plaintiffs and the Plaintiff Class.

1 Therefore, an assessment of punitive damages should be made against Defendants in an amount  
2 sufficient to punish them and to prevent them from willfully engaging in future unlawful  
3 conduct.

4 **THIRD CAUSE OF ACTION**

5 **For Failure to Furnish Wage and Hour Statements**

6 **by Plaintiffs Individually and on Behalf of The Plaintiff Class**

7 **(California Labor Code Section 226, IWC Wage Order 2-2001)**

8 37. Plaintiffs reallege and incorporate by reference paragraphs 1 through 24,  
9 inclusive, as if fully set forth herein.

10 38. During the Class Period, Defendants failed to provide Plaintiffs and the Plaintiff  
11 Class with timely and accurate wage and hour statements showing gross wages earned, total  
12 hours worked, all deductions made, net wages earned, the name and address of the legal entity  
13 employing that Class Member, and all applicable hours rates in effect during each pay period and  
14 the corresponding number of hours worked at each hourly rate by that Class Member.

15 39. As alleged herein, Plaintiffs and the Plaintiff Class were and are not exempt from  
16 the requirement to furnish accurate wage and hour statements contained in the Labor Code.

17 40. Based on Defendants' conduct as alleged herein, Defendants are liable for  
18 damages and statutory penalties pursuant to California Labor Code section 226, and other  
19 applicable provisions of the Labor Code and applicable IWC Wage Orders.

20 41. In committing the foregoing acts, Defendants acted oppressively, maliciously,  
21 fraudulently, and/or outrageously toward Plaintiffs and the Plaintiff Class, with conscious  
22 disregard for their known rights and with the intention of causing, and/or willfully disregarding  
23 the probability of causing, unjust and cruel hardship to Plaintiffs and the Plaintiff Class. In so  
24 acting, Defendants intended to and did vex, injure and annoy Plaintiffs and the Plaintiff Class.  
25 Therefore, an assessment of punitive damages should be made against Defendants in an amount  
26 sufficient to punish them and to prevent them from willfully engaging in future unlawful  
27 conduct.

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1 **FOURTH CAUSE OF ACTION**

2 **For Waiting Time Penalties**

3 **by Plaintiffs Individually and on Behalf of The Plaintiff Class**

4 **(California Labor Code Sections 201 through 203)**

5 42. Plaintiffs reallege and incorporate by reference paragraphs 1 through 24,  
6 inclusive, as if fully set forth herein.

7 43. During the Class Period, Defendants failed to pay Plaintiffs and members of the  
8 Plaintiff Class who resigned or were terminated the wages due to them at the time they left their  
9 employment. As a result, these members of the Plaintiff Class are entitled to recover waiting  
10 time penalties equal to thirty days' pay pursuant to Labor Code § 203.

11 44. As alleged herein, Plaintiffs and the Plaintiff Class were and are not exempt from  
12 the requirement to pay waiting time penalties contained in the Labor Code.

13 45. Based on Defendants' conduct as alleged herein, Defendants are liable for  
14 damages and statutory penalties pursuant to California Labor Code section 201 and 203, and  
15 other applicable provisions of the Labor Code and applicable IWC Wage Orders.

16 46. In committing the foregoing acts, Defendants acted oppressively, maliciously,  
17 fraudulently, and/or outrageously toward Plaintiffs and the Plaintiff Class, with conscious  
18 disregard for their known rights and with the intention of causing, and/or willfully disregarding  
19 the probability of causing, unjust and cruel hardship to Plaintiffs and the Plaintiff Class. In so  
20 acting, Defendants intended to and did vex, injure and annoy Plaintiffs and the Plaintiff Class.  
21 Therefore, an assessment of punitive damages should be made against Defendants in an amount  
22 sufficient to punish them and to prevent them from willfully engaging in future unlawful  
23 conduct.

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1 **FIFTH CAUSE OF ACTION**

2 **For Failure to Pay Minimum Wages**

3 **by Plaintiffs Individually and on Behalf of The Plaintiff Class**

4 **(California Labor Code Sections 1182, et seq., 1197, et seq., IWC Wage Order 2-2001)**

5 47. Plaintiffs reallege and incorporate by reference paragraphs 1 through 24,  
6 inclusive, as if fully set forth herein.

7 48. During the Class Period, Defendants failed to pay Plaintiffs and members of the  
8 Plaintiff Class the minimum wages as required by Labor Code sections 1182.11 and 1182.12.  
9 Defendants' failure to pay wages is also a violation of Labor Code § 204.

10 49. As alleged herein, Plaintiffs and the Plaintiff Class were and are not exempt from  
11 the requirement to pay the minimum wage contained in the Labor Code.

12 50. Based on Defendants' conduct as alleged herein, Defendants are liable for  
13 damages and statutory penalties pursuant to California Labor Code section 1197.1 and other  
14 applicable provisions of the Labor Code and applicable IWC Wage Orders. Moreover, Labor  
15 Code § 210 provides civil penalties for violations of § 204 in the amount of \$100 per initial  
16 violation, and for each subsequent violation or any willful or intentional violation, \$200 for each  
17 failure to pay each employee, plus 25% of the amount unlawfully withheld.

18 51. In committing the foregoing acts, Defendants acted oppressively, maliciously,  
19 fraudulently, and/or outrageously toward Plaintiffs and the Plaintiff Class, with conscious  
20 disregard for their known rights and with the intention of causing, and/or willfully disregarding  
21 the probability of causing, unjust and cruel hardship to Plaintiffs and the Plaintiff Class. In so  
22 acting, Defendants intended to and did vex, injure and annoy Plaintiffs and the Plaintiff Class.  
23 Therefore, an assessment of punitive damages should be made against Defendants in an amount  
24 sufficient to punish them and to prevent them from willfully engaging in future unlawful  
25 conduct.

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1 **SIXTH CAUSE OF ACTION**

2 **For Unfair Competition**

3 **by Plaintiffs Individually on behalf of The Plaintiff Class Members and the Public**

4 **(California Business & Professions Code Section 17200, *et seq.*)**

5 52. Plaintiffs reallege and incorporate by reference paragraphs 1 through 24,  
6 inclusive, as if fully set forth herein.

7 53. This claim is brought by the Plaintiffs on behalf of themselves, the Plaintiff Class,  
8 and the general public, pursuant to Business and Professions Code §§ 17200, *et seq.* Defendants'  
9 conduct as alleged herein has been, and continues to be, an unfair, unlawful, and fraudulent  
10 business practice which has been and continues to be deleterious to Plaintiffs and to those  
11 similarly situated and to the general public. Business and Professions Code §§ 17200, *et seq.*  
12 prohibits unlawful, unfair, and fraudulent business practices. Plaintiffs seek to enforce important  
13 rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

14 54. Plaintiffs are "persons" within the meaning of Business and Professions Code  
15 § 17204, with standing to bring this suit for injunctive relief, restitution, disgorgement, and other  
16 appropriate equitable relief on behalf of all similarly-situated employees and on behalf of the  
17 general public.

18 55. Labor Code § 90.5(a) sets forth the public policy of this State to enforce minimum  
19 labor standards vigorously, to ensure that employees are not required or permitted to work under  
20 substandard and unlawful conditions, and to protect employers who comply with the law from  
21 those who attempt to gain a competitive advantage by failing to comply with minimum labor  
22 standards.

23 56. Through the conduct alleged herein, Defendants have acted contrary to these  
24 public policies, have violated specific provisions of the Labor Code, and have engaged in other  
25 unlawful and unfair business practices in violation of Business and Professions Code §§ 17200,  
26 *et seq.*, depriving the Plaintiffs, members of the Plaintiff Class, and other interested persons of  
27 rights, benefits, and privileges guaranteed to all employees in California.

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1           57.    At all times relevant to this action, Defendants have committed unfair and  
2 unlawful business practices within the meaning of Business & Professions Code §§ 17200, *et*  
3 *seq.* by engaging in conduct which includes, but is not limited to, failing to properly calculate and  
4 pay legally-required overtime compensation, failing to provide meal and rest breaks, failing to  
5 pay compensation for missed break time, failing to pay for time spent working through required  
6 breaks, failing to pay minimum wage, and failing to pay waiting time penalties as required by  
7 law.

8           58.    As a direct and proximate result of these unfair business practices, Defendants  
9 have received and continue to receive funds that rightfully belong to Plaintiffs.

10          59.    Plaintiffs are entitled to, and hereby seek such relief as may be necessary to  
11 restore to them the funds of which Plaintiffs have been deprived, by means of Defendants'  
12 unlawful and unfair business practices.

13          60.    Pursuant to Business and Professions Code § 17203, injunctive relief is necessary  
14 to prevent Defendants from continuing to engage in unfair business practices as alleged herein.  
15 Defendants, and persons acting in concert with them, have done, are now doing, and will  
16 continue to do or cause to be done, the above-described unlawful acts unless restrained and  
17 enjoined by this Court. Unless the relief prayed for below is granted, a multiplicity of actions  
18 will result. Plaintiffs have no plain, speedy, or adequate remedy at law, in that it is difficult to  
19 measure the amount of monetary damages that would compensate Plaintiffs or the general public  
20 for Defendants' wrongful acts. Further, pecuniary compensation alone would not afford  
21 adequate and complete relief. The above-described acts will cause great and irreparable damage  
22 to Plaintiffs and the general public if injunctive relief is not granted.

23                                                            **PRAYER FOR RELIEF**

24           WHEREFORE, Plaintiffs respectfully pray that this Court award relief as follows:

- 25           1.    An order certifying this case as a class action;
- 26           2.    Unpaid wages, and statutory penalties, according to proof;
- 27           3.    Liquidated damages pursuant to California Labor Code § 1194.2(a);

28    ///



- 1 4. Preliminary and permanent injunctions enjoining and restraining Defendants from
- 2 continuing the unfair and unlawful business practices set forth above and
- 3 requiring the establishment of appropriate and effective means to prevent future
- 4 violations;
- 5 5. Restitution of all unpaid wages and benefits due as a result of Defendants'
- 6 unlawful and unfair business practices, according to proof;
- 7 6. Declaratory relief;
- 8 7. Reasonable attorneys' fees and costs;
- 9 8. Interest accrued on damages and penalties pursuant to Labor Code § 218.6 and
- 10 Civil Code § 3287;
- 11 9. Punitive damages; and
- 12 10. Such other and further relief as the Court deems just and proper.

13 **JURY TRIAL DEMAND**

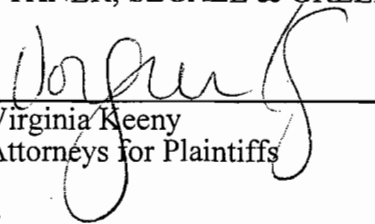
14 Plaintiffs hereby demand a jury trial on all issues so triable.

15  
16 DATED: June 18, 2008

Respectfully submitted,

HADSELL STORMER KEENY  
RICHARDSON & RENICK, LLP

ROTHNER, SEGALL & GREENSTONE

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20 By   
21 Virginia Keeny  
22 Attorneys for Plaintiffs  
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