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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

JAN 11 2017

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By: Shaunya Bolden, Deputy

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11 individually and on behalf of all others similarly situated

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 FOR THE COUNTY OF LOS ANGELES

14 MARTE WHITTEN, individually and on  
behalf of all others similarly situated,

15 Plaintiff,

16 vs.

17 RITE AID CORPORATION; a Delaware  
corporation; 660 THRIFTY PAYLESS,  
18 INC., d/b/a RITE AID, a corporation;  
THRIFTY PAYLESS, INC., a California  
19 limited liability company; and DOES 1  
through 25, inclusive,

20 Defendants.  
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CASE NO.:

BC 646398

[CLASS ACTION]

COMPLAINT FOR:

1. UNPAID WAGES (LABOR CODE §§ 216 and 1194);
2. FAILURE TO PAY MINIMUM WAGE (LABOR CODE §1194 *et seq.*);
3. FAILURE TO PAY OVERTIME COMPENSATION (LABOR CODE §510)
4. FAILURE TO PROVIDE MEAL PERIODS (LABOR CODE § 226.7 and 512)
5. FAILURE TO FURNISH ACCURATE WAGE AND HOUR STATEMENTS (LABOR CODE § 226);
6. WAITING TIME PENALTIES (LABOR CODE §§ 201-203); and
7. UNFAIR COMPETITION (BUSINESS AND PROFESSIONS CODE § 17200, *et seq.*)

JURY TRIAL DEMANDED

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

3 **GENERAL ALLEGATIONS**

4 1. This is a proposed class action brought against Defendants RITE AID  
5 CORPORATION, a Delaware limited liability, 660 THRIFTY PAYLESS, INC. d/b/a RITE AID,  
6 a corproation, THRIFTY PAYLESS, INC., a California limited liability company, collectively  
7 doing business as RITE AID, and DOES 1 through 25, inclusive (collectively, “Defendants”,  
8 “Rite Aid” or “Company”), on behalf of Plaintiff and all other individuals who were or are  
9 employed as non-exempt, hourly employees at Defendants’ distribution warehouses in California  
10 (collectively, “Warehouse Employees”), at any time during the four years preceding the filing of  
11 this action, and continuing while this action is pending (“Class Period”), and who were denied  
12 the benefits and protections required under the Labor Code and other statutes and regulations  
13 applicable to employees in the State of California.

14 2. During the Class Period, Defendants:

- 15 a. failed to pay wages for all hours worked, including for hours worked in  
16 excess of eight hours a day or forty hours a week, by the Warehouse  
17 Employees;
- 18 b. failed to pay minimum wages due to the Warehouse Employees;
- 19 c. failed to pay overtime compensation due to the Warehouse Employees  
20 who worked on the seventh consecutive day;
- 21 d. failed to provide the Warehouse Employees with timely and accurate  
22 wage and hour statements;
- 23 e. failed to pay the Warehouse Employees compensation in a timely manner  
24 upon their termination or resignation;
- 25 f. failed to maintain complete and accurate payroll records for the  
26 Warehouse Employees;
- 27 g. wrongfully withheld wages and compensation due to the Warehouse  
28 Employees; and

1 h. committed unfair business practices in an effort to increase profits and to  
2 gain an unfair business advantage at the expense of the Warehouse  
3 Employees and the public;

4 3. The foregoing acts and other acts by Defendants - committed throughout  
5 California and Los Angeles County - violated numerous provisions of California law, including  
6 Labor Code §§ 201, 202, 203, 204, 210, 216, 225.5, 226, 226.3, 226.7, 510, 512, 558, 1174,  
7 1174.5, 1194, 1194.2, 1197, 1197.1, 1199, 2802, and 2698 *et seq.* and the applicable Wage  
8 Orders issued by the Industrial Welfare Commission, (collectively, "Employment Laws and  
9 Regulations"), Business & Professions Code §§ 17200 *et seq.*, and violated Plaintiff's rights and  
10 the rights of the Warehouse Employees.

#### 11 JURISDICTION AND VENUE

12 4. This Court has jurisdiction over all causes of action herein pursuant to the  
13 California Constitution, Article VI, § 10, Code of Civil Procedure § 410.10 and Business and  
14 Professions Code § 17203.

15 5. Venue is proper in this Court under Code of Civil Procedure §§ 395 and 395.5  
16 because Defendants operate in this County, Plaintiff Marte Whitten resides in and/or worked in  
17 this county and the injuries that are the subject of this lawsuit arose in this county.

#### 18 THE PARTIES

19 6. Plaintiff Marte Whitten was employed by Defendants as a non-exempt, hourly  
20 warehouse employee within the last year, and was assigned to Defendants' Warehouse located in  
21 Lancaster, California. Plaintiff resided in and performed duties in the County of Los Angeles  
22 during the last year preceding the filing of this action.

23 7. Defendants RITE AID CORPORATION ("Rite Aid"), 660 THRIFTY PAYLESS,  
24 INC. d/b/a RITE AID ("660 Thrifty"), and THRIFTY PAYLESS, INC. ("Thrifty") are, and at all  
25 relevant times were, corporations conducting business in the State of California, including the  
26 County of Los Angeles, as "Rite Aid." Upon information and belief, the Company operates two  
27 distribution warehouse locations in California: Lancaster and Woodland. Plaintiff is informed  
28 and believes, and based upon such information and belief, alleges that Rite Aid exercised control

1 over the operations of 660 Thrifty and Thrifty, from its resources and management.

2 8. The degree of control exercised by Rite Aid over 660 Thrifty and Thrifty is  
3 enough to reasonably deem 660 Thrifty and Thrifty as agents of Rite Aid under traditional agency  
4 principles. 660 Thrifty and Thrifty can legitimately be described as only a means through which  
5 Rite Aid acts and conducts its global business. Defendants Rite Aid, 660 Thrifty and Thrifty  
6 have such a unity of interest and ownership that the separate personalities do not in reality exist  
7 and that the corporate structure is just a shield for the alter ego of each other. Plaintiff therefore  
8 is informed and believes and thereupon alleges Rite Aid, 660 Thrifty and Thrifty, and each of  
9 them, were his employer under California law, that Defendants herein did acts consistent with the  
10 existence of an employer-employee relationship with Plaintiff and that 660 Thrifty and Thrifty  
11 was owned, controlled, directly or indirectly, by Rite Aid.

12 9. Plaintiff is currently unaware of the true names and capacities of the defendants  
13 sued in this action by the fictitious names DOES 1 through 25, inclusive, and therefore sue those  
14 defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names  
15 and capacities of such fictitiously named defendants when they are ascertained. Plaintiff is  
16 informed and believe and based thereon state that the persons sued herein as DOES are in some  
17 manner responsible for the conduct, injuries and damages herein alleged.

18 10. Plaintiff is informed and believe and based thereon allege that each defendant  
19 sued in this action, including each defendant sued by the fictitious names DOES 1 through 25,  
20 inclusive, is responsible in some manner for the occurrences, controversies and damages alleged  
21 below.

22 11. Plaintiff is informed and believe and based thereon allege that DOES 1 through  
23 25, inclusive, were the agents, servants and/or employees of Defendants and, in doing the things  
24 hereinafter alleged and at all times, were acting within the scope of their authority as such agents,  
25 servants and employees, and with the permission and consent of Defendants.

26 12. Plaintiff is informed and believes and based thereon alleges that Defendants  
27 ratified, authorized, and consented to each and all of the acts and conduct of each other as alleged  
28 herein. Each of the defendants was the agent and/or employee of the others, and the conduct of

1 each defendant herein alleged was authorized and/or ratified by the others. The conduct of the  
2 Company was carried on by and through its authorized agents, including owners, officers,  
3 directors, managers and supervisors.

4 **FACTS**

5 13. Plaintiff is an individual who was a resident of the County of Los Angeles, during  
6 the four years preceding the filing of this action. Plaintiff was employed by Defendant as a non-  
7 exempt, hourly warehouse employee in Los Angeles County within the last four years preceding  
8 the filing of this action.

9 14. During Plaintiff's employment with Defendants, the Company implemented a  
10 security/loss prevention measure that requires all Warehouse Employees to have their bags,  
11 jackets, and other personal items checked by a Rite-Aid security personnel prior to entering and  
12 leaving the facility for all shifts and breaks. Rite-Aid routinely fails to give Warehouse  
13 Employees, including Plaintiff, their legally required duty-free rest and meal periods and full pay  
14 by requiring them to remain in the warehouse for a substantial period of time off the clock to  
15 engage in Rite-Aid's theft prevention program.

16 15. Warehouse Employees, including Plaintiff, were required to undergo a mandatory  
17 bag check and security inspection upon entering the warehouse and then walking a considerable  
18 distance to their department before clocking-in to work for their shift. Similarly, Warehouse  
19 Employees, including Plaintiff, would clock out in their respective department, would walk and  
20 travel towards the warehouse exit where they would wait to have a turn in having their bags,  
21 clothing, and other items checked by a Rite-Aid employee. This was all done off-the-clock and  
22 in violation of the Employment Laws and Regulations. Accordingly, Defendants failed to pay  
23 Plaintiff and Warehouse Employees for all hours worked.

24 16. Warehouse Employees, including Plaintiff, are and were not compensated for the  
25 time spent waiting to be released from Defendants' warehouses. When Class Members,  
26 including Plaintiff, wait for and undergo the bag and security inspection, they are under the  
27 control of their employer and must be compensated for that time. *See Morillion v. Royal Packing*  
28 *Co.*, 22 Cal.4th 575 (2000).

1 17. Warehouse Employees, like Plaintiff, are also regularly instructed by Defendants  
2 to take meal and rest breaks at specific times that did not comply with the requirements of  
3 *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004 (2012). Upon information and belief,  
4 Defendants' timekeeping system utilized a "grace period" mechanism allowing Warehouse  
5 Employees to punch in and out for supposed meal breaks after their scheduled times.

6 18. Accordingly, Defendants failed to pay Plaintiff and Warehouse Employees for all  
7 hours worked.

8 19. During Plaintiff's employment with Defendants, Defendants failed and refused to  
9 provide Plaintiff with timely and accurate wage and hour statements in violation of the  
10 Employment Laws and Regulations.

11 20. During Plaintiff's employment with Defendants, Defendants wrongfully withheld  
12 from Plaintiff and failed to pay wages and other compensation due for all hours worked, and as  
13 otherwise required per Employment Laws and Regulations.

14 21. To the extent that any Warehouse Employee, including Plaintiff, entered into any  
15 arbitration agreement with any Defendant, such agreement is void and unenforceable. Any such  
16 agreement was one of adhesion, executed under duress, lacked consideration and mutuality, and  
17 is otherwise void under both Labor Code § 229 and the California Supreme Court case of  
18 *Armendariz v. Foundation Health Psychare Services, Inc.* (2000) 24 Cal.4th 83.

19 **CLASS ACTION ALLEGATIONS**

20 22. All current and former Warehouse Employees who were employed by Defendants  
21 in California during the Class Period, including Plaintiff, are proposed class members  
22 (henceforth, "Class Members").

23 23. The Warehouse Employees' duties and activities during their respective working  
24 hours and each shift are known to and directed by Defendants, and are set and controlled by  
25 Defendants.

26 24. During the Class Period, Defendants have routinely failed to provide Warehouse  
27 Employees with legally compliant and mandated meal and rest breaks.

28 25. During the Class Period, the Company refused to compensate Warehouse

1 Employees for all wages earned (“off-the-clock” work) and for all hours worked including time  
2 during which Warehouse Employees were subject to Defendants’ control and were suffered or  
3 permitted to work for the Company. The Company failed and refused to pay Warehouse  
4 Employees for all hours worked, including but not limited to time worked before and after the  
5 official start and end times of their shifts.

6 26. During the Class Period, Defendants have failed and refused to provide  
7 Warehouse Employees with timely and accurate wage and hour statements.

8 27. During the Class Period, Defendants have failed and refused to pay accrued wages  
9 and other compensation earned and due immediately to Warehouse Employees who were  
10 terminated, and Defendants have failed and refused to pay accrued wages and other  
11 compensation earned and due within seventy-two hours to Warehouse Employees who ended  
12 their employment.

13 28. During the Class Period, Defendants have failed and refused to maintain complete  
14 and accurate payroll records for Warehouse Employees showing gross hours earned, total hours  
15 worked, all deductions made, net wages earned, and all applicable hourly rates in effect during  
16 each pay period and the corresponding number of hours worked at each hourly rate.

17 29. During the Class Period, Defendants have wrongfully withheld and failed to pay  
18 Warehouse Employees wages and other compensation earned and due them for all hours worked  
19 and as otherwise required pursuant to the Employment Laws and Regulations.

20 30. Defendants’ conduct violated the Employment Laws and Regulations. Defendants’  
21 systematic acts and practices also violated, *inter alia*, Business & Professions Code §§ 17200, *et*  
22 *seq.*

23 31. Plaintiff also seeks of all other compensation and all benefits required pursuant to  
24 the Employment Laws and Regulations, plus penalties and interest, owed to Warehouse  
25 Employees.

26 32. The duties and business activities of the Class Members were essentially the same  
27 as the duties and activities of the Plaintiff described above. At all times during the Class Period,  
28 all of the Class Members were employed in the same or similar job as Plaintiff (as a non-exempt,

1 hourly Warehouse employee) and were paid in the same manner and under the same standard  
2 employment procedures and practices as Plaintiff.

3 33. During the Class Period, Defendants were fully aware that Plaintiff and the Class  
4 Members were performing "off-the-clock" unpaid work and not being paid for all hours worked in  
5 violation of the provisions of the Labor Code.

6 34. Defendants' violations of the Employment Laws and Regulations were repeated,  
7 willful and intentional.

8 35. Plaintiff and the Class Members have been damaged by Defendants' conduct.

9 36. While the exact number of Class Members is unknown to Plaintiff at the present  
10 time, based on information and belief, there are more than 40 such persons. A class action is the  
11 most efficient mechanism for resolution of the claims of the Class Members.

12 37. In addition, a class action is superior to other available methods for the fair and  
13 efficient adjudication of this controversy because the damages suffered by individual Class  
14 Members may be relatively small, and the expense and burden of individual litigation would make  
15 it impossible for such Class Members individually to redress the wrongs done to them. Moreover,  
16 because of the similarity of the Class Members' claims, individual actions would present the risk  
17 of inconsistent adjudications subjecting the Defendants to incompatible standards of conduct.

18 38. Plaintiff is currently unaware of the identities of all the Class Members.  
19 Accordingly, Defendants should be required to provide to Plaintiff a list of all persons employed  
20 as Warehouse Employees (and similarly situated individuals who held titles involving the service  
21 and repair of vehicles) in California beginning four years prior to the filing of this Complaint until  
22 the present, stating their last known addresses and telephone numbers, so that Plaintiff may give  
23 such Class Members notice of the pendency of this action and an opportunity to make an informed  
24 decision about whether to participate in it.

25 39. The proposed Class that Plaintiff seeks to represent is defined as follows:

26 All Warehouse Employees who are or have been employed by Defendants in the State of  
27 California at any time during the four years prior to the commencement of this suit and  
28 continuing while this Action is pending.



1           40.    There is a well-defined community of interest in the litigation and the proposed  
2 Class is easily ascertainable:

3           a.    Numerosity: While the precise number of Class Members has not been  
4 determined at this time, Plaintiff is informed and believes that Defendants have employed in  
5 excess of 40 persons as Warehouse Employees in California during the proposed Class Period.

6           b.    Commonality: There are questions of law and fact common to Plaintiff and  
7 the Class that predominate over any questions affecting only individual Class Members. These  
8 common questions of law and fact include, without limitation:

- 9                   i.    Whether Defendants failed to compensate Plaintiff and the Class  
10                   Members for all hours worked;
- 11                   ii.   Whether Defendants did not have any formal policies or procedures  
12                   in place applicable to Plaintiff and Class Members relating to meal  
13                   periods;
- 14                   iii.   Whether Defendants' theft prevention program failed to pay  
15                   Plaintiff and the Class Members for all hours worked including  
16                   overtime premium pay by requiring Class Members to engage in pre  
17                   and post shift activities without wages.
- 18                   iv.   Whether Defendants regularly instructed Class Members to take  
19                   meal and rest breaks at specific times that did not comply with the  
20                   requirements of *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th  
21                   1004 (2012);
- 22                   v.   Whether Defendants' "grace period" practice, policy, and procedure  
23                   allowing Warehouse Employees to punch in and out for supposed  
24                   meal and rest breaks before and after their scheduled times complies  
25                   with the relevant Employment Laws and Regulations;
- 26                   iv.   Whether Defendants failed to pay Plaintiff and the Class Members  
27                   the required minimum wage for every hour where work was  
28                   performed;

- 1 v. Whether Defendants failed to provide Plaintiff and the Class  
2 Members with accurate itemized statements;  
3 vi. Whether Defendants failed to provide meal breaks for  
4 Plaintiff and the Class Members;  
5 vii. Whether Defendants owe Plaintiff and the Class Members waiting  
6 time penalties pursuant to Labor Code §203;  
7 viii. Whether Defendants engaged in unfair business practices under  
8 Business and Professions Code §17200;  
9 ix. The effect upon and the extent of damages suffered by Plaintiff and  
10 the Class Members and the appropriate amount of compensation.

11 c. Typicality: Plaintiff's claims are typical of the claims of the proposed  
12 Class. Plaintiff and all Class Members sustained injuries and damages arising out of and caused  
13 by Defendants' common course of conduct in violation of law as alleged herein.

14 d. Adequacy of Representation: Plaintiff are members of the proposed Class  
15 and will fairly and adequately represent and protect the interests of the Class Members. Counsel  
16 who represent Plaintiff are competent and experienced in litigating large wage and hour and other  
17 employment class actions.

18 e. Superiority of Class Action: A class action is superior to other available  
19 means for the fair and efficient adjudication of this controversy. Questions of law and fact  
20 common to the proposed Class predominate over any questions affecting only individual Class  
21 Members. Each proposed Class Member has been damaged and is entitled to recovery by reason  
22 of Defendants' illegal policies and/or practices of failing to pay full and correct wages, including  
23 the minimum wage and overtime premium wages, as required by law. A class action will allow  
24 those similarly situated persons to litigate their claims in the manner that is most efficient and  
25 economical for the parties and the judicial system.

26 ///  
27 ///  
28 ///

1 **FIRST CAUSE OF ACTION**

2 **(Failure to Pay Compensation For All Hours Worked - Labor Code §§ 216 and 1194**  
3 **By Plaintiff Individually and on Behalf of All Class Members)**

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

8 42. Plaintiff brings this action to recover unpaid compensation for all hours worked,  
9 including for work over eight hours in a day and over forty hours in a workweek.

10 43. Defendants' conduct described in this Complaint violates, among other things,  
11 Labor Code §§ 204, 216, 218, 218.5, 218.6, 510, 1194, and 1198 and the IWC Wage Orders.

12 44. Defendants failed to pay Plaintiff and the Class Members for all of the actual hours  
13 worked, including for work over eight hours in a day and over forty hours in a workweek.  
14 Defendants knew or should have known that Plaintiff and the Class Members were working these  
15 hours.

16 45. Plaintiff and the Class Members are also entitled to penalties pursuant to Paragraph  
17 No. 20 of the applicable IWC Wage Order which provides, in addition to any other civil penalties  
18 provided by law, any employer or any other person acting on behalf of the employer who violates,  
19 or causes *to be* violated, the provisions of the IWC Wage Order, shall be subject to a civil penalty  
20 of \$50.00 (for initial violations) or \$100.00 (for subsequent violations) for each underpaid  
21 employee for each pay period during which the employee was underpaid in addition to the amount  
22 which is sufficient to recover unpaid wages.

23 46. As a result of Defendants' unlawful acts, Plaintiff and the Class Members have  
24 been deprived of compensation in an amount according to proof at the time of trial, and are  
25 entitled to recovery of such amounts, plus interest thereon, liquidated damages pursuant to Labor  
26 Code § 1194.2, and attorneys' fees and costs, pursuant to Labor Code §§ 1194 and 2698, in an  
27 amount according to proof at the time of trial. Plaintiff and the Class Members are also entitled to  
28 additional penalties and/or liquidated damages pursuant to statute.

1 **SECOND CAUSE OF ACTION**

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

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

4 47. As a separate and distinct cause of action, Plaintiff complains and realleges all of  
5 the allegations contained in this complaint, and incorporate them by reference into this cause of  
6 action as though fully set forth herein, excepting those allegations which are inconsistent with this  
7 cause of action.

8 48. At all relevant times, the IWC Wage Orders contained in Title 8 of the Code of  
9 Regulations (“Wage Orders”) applied to Plaintiff in Plaintiff’s capacity as employees of  
10 Defendants. The Wage Orders and California law provided, among other things, that Plaintiff  
11 must receive minimum wage earnings for all hours worked.

12 49. During the Class Period, Defendants have routinely failed to pay Class Members,  
13 including Plaintiff, the minimum wage required by the Employment Laws and Regulations for all  
14 hours worked.

15 50. The Class Members, including Plaintiff, have been deprived of their rightfully  
16 earned minimum wages as a direct and proximate result of Defendants’ policies and practices and  
17 Defendants’ failure and refusal to pay said wages for all hours worked. The Class Members,  
18 including Plaintiff, are entitled to recover the past wages owed to them, under the minimum wage  
19 laws, plus an additional equal amount as liquidated damages as permitted under the Wage Orders  
20 and California law, plus interest thereon and attorneys’ fees and costs pursuant to Labor Code §§  
21 1194 and 2698, in an amount according to proof at the time of trial.

22 **THIRD CAUSE OF ACTION**

23 **(Failure to Pay Overtime Compensation - By Plaintiffs Individually and on Behalf of All**

24 **Warehouse Workers: California Labor Code §§ 510 and 1194)**

25 51. As a separate and distinct cause of action, Plaintiffs complain and reallege all the  
26 allegations contained in this complaint, and incorporate them by reference into this cause of action  
27 as though fully set forth herein, excepting those allegations which are inconsistent with this cause  
28 of action.



1 **FIFTH CAUSE OF ACTION**

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

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

4 57. As a separate and distinct cause of action, Plaintiff complains and realleges all of  
5 the allegations contained in this complaint, and incorporate them by reference into this cause of  
6 action as though fully set forth herein, excepting those allegations which are inconsistent with this  
7 cause of action.

8 58. During the Class Period, Defendants have routinely failed to provide Class  
9 Members, including Plaintiff, with timely and accurate wage and hour statements showing gross  
10 hours earned, total hours worked, all deductions made, net wages earned, and all applicable hourly  
11 rates in effect during each pay period and the corresponding number of hours worked at each  
12 hourly rate.

13 59. As a consequence of Defendants' actions, Class Members are entitled to all  
14 available statutory penalties, costs and reasonable attorneys' fees, including those provided in  
15 Labor Code § 226(e), as well as all other available remedies.

16 **SIXTH CAUSE OF ACTION**

17 **(For Waiting Time Penalties - Labor Code §§ 201-203**

18 **By Plaintiff Individually and on Behalf of All Class Members)**

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

23 61. During the Class Period, Defendants failed to pay accrued wages and other  
24 compensation due immediately to each Class Member who was terminated, and failed to pay  
25 accrued wages and other compensation due within seventy-two hours to each Class Member,  
26 including Plaintiff, who ended his employment.

27 62. Labor Code § 201 requires an employer who discharges an employee to pay  
28 compensation due and owing to said employee immediately upon discharge. Labor Code § 203

1 provides that if an employer willfully fails to pay compensation promptly upon discharge, as  
2 required by § 201, the employer is liable for waiting time penalties in the form of continued  
3 compensation for up to 30 work days.

4 63. Defendants, and each of them, willfully failed and refused, and continue to  
5 willfully fail and refuse, to timely pay compensation due to Class Members upon termination or  
6 resignation, as required by Labor Code § 201. As a result, Defendants, and each of them, are  
7 liable to Plaintiff and all Class Members similarly situated for waiting time penalties, together  
8 with interest thereon, pursuant to Labor Code § 203, as well as all other available remedies, in an  
9 amount according to proof at the time of trial.

10 **SEVENTH CAUSE OF ACTION**

11 **(For Unfair Competition - Business & Professions Code § 17200, *et seq.***

12 **By Plaintiff Individually and on Behalf of All Class Members)**

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

17 65. As a result of Defendants' unfair business practices, Defendants have reaped unfair  
18 benefits and illegal profits at the expense of Class Members, including Plaintiff, and members of  
19 the public. Defendants should be made to disgorge their ill-gotten gains and to restore them to  
20 Class Members, including Plaintiff.

21 66. Defendants' unfair business practices violate the Unfair Competition Laws and  
22 entitle Plaintiff to seek preliminary and permanent injunctive relief including, but not limited to,  
23 orders that Defendants account for, disgorge and restore to the Class Members, including Plaintiff,  
24 the wages and other compensation unlawfully withheld from them.

25 67. In addition to the actual damages caused by the unlawful conversion, the Class  
26 Members, including Plaintiff, are entitled to recover exemplary damages for the sake of example  
27 and by way of punishing Defendants.

28 ////


1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for judgment  
3 against Defendants as follows:

- 4 1. For an Order certifying the First through Seven Causes of Action as a class action;  
5 2. For an Order appointing Plaintiff's counsel as Class counsel;  
6 3. For compensatory damages in an amount to be ascertained at trial;  
7 4. For restitution in an amount to be ascertained at trial;  
8 5. For punitive and exemplary damages in an amount to be ascertained at trial;  
9 6. For all penalties allowed by law;  
10 7. For prejudgment interest;  
11 8. For reasonable attorneys' fees pursuant to Labor Code §§ 1194;  
12 9. For costs of suit incurred herein;  
13 10. For disgorgement of profits garnered as a result of Defendants' unlawful failure to  
14 pay wages, including overtime wages, earned; and  
15 11. For such further relief as the Court may deem appropriate.

16 DATED: January 11, 2017

LAW OFFICES OF THOMAS W. FALVEY  
HARTOUNIAN LAW FIRM


17  
18 By:   
19 MICHAEL H. BOYAMIAN  
20 Attorneys for Plaintiff Marte Whitten,  
individually and on behalf of all others similarly  
situated

21 **DEMAND FOR JURY TRIAL**

22 Plaintiff Marte Whitten, individually and on behalf of all similarly situated individuals,  
23 demand jury trial of this matter.

24 DATED: January 11, 2017

LAW OFFICES OF THOMAS W. FALVEY  
HARTOUNIAN LAW FIRM

25  
26 By:   
27 MICHAEL H. BOYAMIAN  
28 Attorneys for Plaintiff Marte Whitten,  
individually and on behalf of all others similarly  
situated