

Exhibit A

MARLIN & SALTZMAN, LLP
Stanley D. Saltzman, Esq (SBN 90058)
Cody R. Kennedy, Esq (SBN 296061)
29800 Agoura Rd., Suite 210
Agoura Hills, California 91301
Telephone: (818) 991-8080
Facsimile: (818) 991-8081
ssaltzman@marlinsaltzman.com
ckennedy@marlinsaltzman.com

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
03/06/2018 at 04:37:00 PM
Clerk of the Superior Court
By Valeria Contreras, Deputy Clerk

DAVTYAN, PLC
Emil Davtyan, Esq. (SBN 299363)
21900 Burbank Boulevard, Suite 300
Woodland Hills, California 91367
Telephone: (818) 992-2935
Facsimile: (818) 975-5525
Emil@davtyanlaw.com

Attorneys for Plaintiff ARMANDO DE LA CRUZ, individually
and on behalf of the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

ARMANDO DE LA CRUZ, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

TARGET CORPORATION and DOES 1 through
100, inclusive,

Defendants.

CASE NO: 37-2018-00011389-CU-OE-CTL

CLASS ACTION

COMPLAINT FOR:

1. Failure to Timely and Properly Provide Rest Periods (Labor Code §§ 512, 226.7, and Wage Order No. 7);
2. Failure to Accurately Itemize and Report Wages, Hours, and Pay Rates (Labor Code § 226 and Wage Order No. 7);
3. Failure to Pay All Earned Wages at Termination (Labor Code § 203);
4. Unfair Business Practices (Bus. & Prof. Code §§ 17200, *et seq.*)

DEMAND FOR JURY TRIAL

Plaintiff ARMANDO DE LA CRUZ (“Plaintiff”), individually and on behalf of all others
similarly situated, brings this action against TARGET CORPORATION (“Defendant”) for rest period
wages, waiting time damages, damages for failure to accurately report wages, hours, and pay rates,

1 penalties under the California Labor Code, and for restitution and injunctive relief as follows:

2 **INTRODUCTION**

3 1. This complaint challenges Defendant’s systemic unlawful employment practices resulting in
4 violations of the California Labor Code, applicable regulations, and California’s Unfair Competition
5 Law (“UCL”). Specifically, Defendant’s policies and practices force employees to routinely remain
6 under the control of Defendant during purported “rest breaks”. As such, Defendant’s policies and
7 practices result in widespread violations of California’s law.

8 **JURISDICTION AND VENUE**

9 2. The Court has jurisdiction over the violations of the California Labor Code §§ 201-204, 226,
10 226.7, 227.3, IWC Wage Order No. 7, and the UCL.

11 3. Venue is proper because Plaintiff resides in San Diego County, Defendant does business in
12 San Diego County, and the events giving rise to Plaintiff’s claims took place in San Diego County.

13 **PARTIES**

14 4. Plaintiff Armando De La Cruz was employed by Defendant as a non-exempt employee in
15 San Diego, California, during the relevant time period and until July 11, 2017. Throughout his
16 employment, Plaintiff was denied the opportunity to take required rest breaks and was instead forced to
17 remain subject to Defendant’s rules, requirements, and control during all purported “rest breaks.”

18 5. Defendant Target Corporation is a Minnesota corporation with its principal place of business
19 located in Minneapolis, Minnesota. Defendant regularly does business in the State of California.

20 6. Plaintiff does not know the true names or capacities, whether individual, partner or corporate,
21 of the Defendants sued herein as DOES 1 through 100, inclusive, and for that reason, said Defendants
22 are sued under such fictitious names. Plaintiff will seek leave to amend this complaint when the true
23 names and capacities are known.

24 7. Plaintiff is informed and believes, and based thereon alleges, that each of said fictitious
25 Defendants were responsible in some way for the matters alleged herein and proximately caused
26 Plaintiff and members of the general public and class to be subject to the illegal employment practices,
27 wrongs and injuries complained of herein. At all times herein mentioned, each Defendant participated in
28 the doing of the acts alleged to have been done by the named Defendant, and furthermore, all

1 Defendants were the agents, servants and employees of each of the other Defendants, and at all times
2 herein mentioned, were acting within the course and scope of said agency and employment. At all
3 relevant times, Defendants were members of, and engaged in, a joint venture, partnership and common
4 enterprise, and acting within the course and scope of, and in pursuance of, said joint venture, partnership
5 and common enterprise.

6 **FACTUAL ALLEGATIONS**

7 8. Defendant is a large retailer that sells everyday essentials – from toiletries to electronics – to
8 consumers. Defendant primarily staffs its stores with non-exempt employees. These non-exempt
9 employees are subjected to Defendant’s uniform employment policies, including those that violate
10 California labor law.

11 9. Defendant engages in a policy and practice of providing purported “rest breaks” to Plaintiff
12 and Class Members where Defendant does not actually relinquish control over Plaintiff and the Class
13 Members. As a matter of policy Plaintiff and Class Members are uniformly not permitted to leave
14 “Target property” during their rest breaks, under any circumstances whatsoever. Plaintiff and the Class,
15 specifically, were denied the opportunity to take legally mandated rest breaks because they were
16 required to remain subject to Defendant’s prohibition against leaving company property and were
17 thereby denied the freedom to use their breaks in a manner they saw fit.

18 **CLASS ACTION ALLEGATIONS**

19 10. Plaintiff seeks class certification, pursuant to California Code of Civil Procedure § 382, on
20 behalf of the following class:

21 All of Defendant’s California employees employed during the time frame
22 commencing four years prior to the filing of the original complaint in this
23 matter up to and including the present (the “Class Period”), who Defendant
24 classified as non-exempt.

25 Additionally, Plaintiff seeks to represent a subclass consisting of:

26 All members of the foregoing Class whose employment with Defendant
27 terminated during the Class Period. (hereinafter referred to as the “Separated
28 Employee Subclass”)

1 Excluded from the Classes are Defendant, its owners, directors, officers, executives, and all management
2 personnel whose responsibility it was to maintain and/or enforce the policies, procedures, customs
3 and/or business practices complained of herein.

4 **11. Numerosity:** Plaintiff alleges that there are well over 1,000 current and former employees
5 of Defendant who constitute the putative class. The members of the class are so numerous that joinder
6 of all members would be impractical, if not impossible.

7 **12. Adequacy of Representation:** The named Plaintiff is fully prepared to take all necessary
8 steps to represent fairly and adequately the interests of the class defined above. Plaintiff's attorneys are
9 ready, willing and able to fully and adequately represent the class and individual Plaintiff. Plaintiff's
10 attorneys have prosecuted and settled wage-and-hour class actions in the past and currently have a
11 number of wage-and-hour class actions pending in California courts.

12 **13. Common Question of Law and Fact:** There are predominant common questions of law and
13 fact and a coherent community of interest between Plaintiff and the claims of the Class, concerning
14 Defendant's treatment of them, including, but not limited to:

- 15 a. Whether Defendant violated California Labor Code and applicable wage orders by failing
16 to provide daily rest periods to non-exempt employees for every four hours or major
17 fraction thereof worked and failing to compensate said employees one hour's wages in
18 lieu of rest periods;
- 19 b. Whether Defendant's written policy requiring that all employees remain on company
20 premises during their purported "rest breaks" constituted a violation of the California
21 Labor Code and/or the applicable IWC wage order;
- 22 c. Whether Defendant failed to pay premium wages required by the Wage Order's rest
23 break regulations;
- 24 d. Whether Defendant failed to pay all earned wages at the time of termination of
25 employment;
- 26 e. Whether Defendant failed to provide class members with accurate itemized pay
27 statements;
- 28 f. Whether the Defendant's actions, as alleged herein, were unlawful and constitute unfair

1 and/or unlawful business practices.

2 14. **Typicality:** Plaintiff’s claims are typical of the claims of all members of the class in that
3 Plaintiff has suffered the harms alleged in this Complaint in a similar and typical manner as the class
4 members. Plaintiff was denied the opportunity to take rest periods in compliance with California law.
5 Plaintiff also was denied reporting time pay when Plaintiff was scheduled to work, reported for work,
6 but was not permitted to work at least half his scheduled shift. Plaintiff was not paid his final wages in a
7 timely fashion and Defendant did not provide accurate itemizations of the hours worked, the rates of
8 pay, wages earned, net wages earned, the hours and wages earned in proper pay periods in violation of
9 California law. Plaintiff’s claims, therefore, are typical.

10 15. **Superiority:** A class action is the superior means of litigating the Class’ claims. The claims
11 set forth herein are based on Defendant’s systemic treatment of the Class members and, as such, the
12 same body of evidence necessary to prove one claim would be accessed to prove each Class member’s
13 claim. Proof of Defendant’s wrongdoing may be shown by a common body of evidence, including but
14 not limited to Defendant’s written policies and procedures. It is preferable, from an efficiency and case
15 management standpoint, that the claims of all of the Class members be litigated as a single litigation,
16 rather than as thousands of individual claims.

17 **FIRST CAUSE OF ACTION**

18 **FOR FAILURE TO PROVIDE COMPLIANT REST BREAKS**

19 **(Cal. Lab. Code §§ 226.7; IWC Wage Order No. 7 § 12)**

20 16. Plaintiff incorporates by reference the preceding paragraphs of this complaint as though set
21 forth in full.

22 17. California Labor Code § 226.7 provides as follows:

23 (a) No employer shall require any employee to work during any meal or rest period
24 mandated by an applicable order of the Industrial Welfare Commission.

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

///
28

1 18. The applicable Wage Order requires rest breaks be provided as follows:

2 Every employer shall authorize and permit all employees to take rest periods, which
3 insofar as practicable shall be in the middle of each work period. The authorized rest
4 period time shall be based on the total hours worked daily at the rate often (10) minutes
5 net rest time per four (4) hours or major fraction thereof. However, a rest period need not
6 be authorized for employees whose total daily work time is less than three and one-half
7 (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which
8 there shall be no deduction from wages.

9 19. In order for a rest break to be considered valid under California Law “employers [must]
10 relinquish any control over how employees spend their break time”; additionally “employees must not
11 only be relieved of work duties, but also be freed from employer control over how they spend their
12 time.” *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260, 270, as modified on denial of
13 reh'g (Mar. 15, 2017)

14 20. Defendant maintains a uniform written policy and practice of compelling employees to
15 remain at the ready and tethered to company premises at all times during each of their purported “rest
16 breaks” in violation of the California requirement to relieve employees of all work duties and employer
17 control during 10-minute rest periods.

18 21. Due to Defendant’s policy of retaining control over its employees during all purported “rest
19 periods”, said rest periods are in actuality illegal “on-call” and/or “on-duty” periods that do not satisfy
20 California’s rest period requirements.

21 22. For the reasons discussed herein and above, Defendant violated Section 226.7 by failing to
22 provide the rest periods required by Section 226.7 and the applicable wage order, and by failing to
23 provide one hour pay at the employees' regular rate of compensation for each work day that the rest
24 period was not provided and one hour pay at the employees' regular rate of compensation for each work
25 day that the rest period is not provided.

26 **SECOND CAUSE OF ACTION**

27 **FOR FAILURE TO ACCURATELY REPORT ITEMIZED TIME AND WAGES**

28 (Labor Code §§ 226, 1174, et seq.; Wage Order)

29 23. Plaintiff incorporates by reference the preceding paragraphs of this complaint as though set
30 forth in full.

1 24. Labor Code § 226 and the Wage Order require Defendant to provide to Plaintiff and the
2 members of the class, at the time of the payment of wages, “an accurate itemized statement” in writing
3 that states, *inter alia*, all wages earned, all applicable pay rates, and all hours worked.

4 25. The statements presented to Plaintiff and the class members were/are not correct or accurate
5 in that they failed to account for all time worked, including premium wages for missed rest breaks.

6 26. As a result of these violations, Plaintiff and the members of the class suffered actual injury,
7 insofar as they were completely dependent on Defendant to capture and report hours worked, calculate
8 proper rates of pay, identify tardy and/or abbreviated and/or missed rest breaks, and identify “reporting
9 time” violations. Defendant’s failure to accurately report these items resulted in the employees not
10 receiving all compensation owed to them, in violation of California law, as set forth herein.

11 27. Any employer who fails to maintain such records or to accurately maintain such records is
12 subject to a civil penalty, under Labor Code section 1174.5 and under the Wage Order. Plaintiff and
13 putative class members are entitled to the civil penalties imposed by the Labor Code and the applicable
14 Wage Order.

15 28. Plaintiff and putative class members are entitled to the civil penalties imposed by the Labor
16 Code and the applicable Wage Order.

17 **THIRD CAUSE OF ACTION**

18 **FAILURE TO PAY ALL EARNED WAGES**

19 **UPON SEPARATION FROM EMPLOYMENT**

20 **(Labor Code §§ 200-203)**

21 29. Plaintiff incorporates by reference the preceding paragraphs of this complaint as though set
22 forth in full.

23 30. Labor Code §§ 201 and 202 require that Defendant pays its employees all wages due within
24 24 hours after a discharge or 72 hours after a resignation from employment, if the employee has given
25 less than 72 hours notice. Labor Code § 203 provides that if an employer willfully fails to timely pay
26 such wages the employer must, as a penalty, continue to pay the employee’s daily wage until the back
27 wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

28 31. Plaintiff was separated from Defendant’s employ in July 11, 2017. Plaintiff and subclass

1 members were not paid for all earned wages at the time of their separation from Defendant's employ,
2 including premium wages for rest periods that were not provided.

3 32. More than 30 days have passed since Plaintiff and subclass members terminated from their
4 employment with Defendant. Defendant has not paid Plaintiff and each subclass member, whose
5 employment has ended, all wages owed. As a consequence of Defendant's willful conduct in not paying
6 Plaintiff and each subclass member all earned wages at the time their employment with Defendant
7 ended, Plaintiff and each terminated subclass member is entitled to 30 days' wages as a penalty under
8 Labor Code § 203.

9 **FOURTH CAUSE OF ACTION**

10 **UNFAIR BUSINESS PRACTICES**

11 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

12 33. Plaintiff repeats and realleges by reference the allegations set forth above, as though set forth
13 herein in full.

14 34. Defendant's failure to provide required rest breaks constitutes an unlawful and unfair
15 business practice under Bus. & Prof. Code §§ 17200, *et seq.*)

16 35. Defendant's employment practices undermine California's wage and hour laws reflect the
17 strong public policy favoring protection of workers' general welfare and society's interest in a stable job
18 market.

19 36. The gravity of harm Defendant's employment practices places on its employees substantially
20 outweighs any utility, reasons, justifications, and motives Defendant can provide for these practices.

21 37. Plaintiff seeks, on behalf of himself and all others similarly situated, full restitution of
22 monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or
23 converted by the Defendant by means of the unfair practices complained of herein.

24 38. Plaintiff seeks, on behalf of himself and all others similarly situated, an injunction to
25 prohibit Defendant from continuing to engage in the unfair business practices complained of herein.

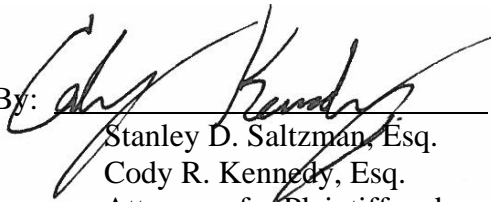
26 WHEREFORE, Plaintiff prays for judgment for herself and all others on whose behalf this
27 suit is brought against Defendants, jointly and severally, as follows:

- 28 1. For an order certifying the proposed class;

- 2. For an order appointing Plaintiff as the representative of the class as described herein;
- 3. For an order appointing Plaintiff’s counsel as Class Counsel;
- 4. For payment of premium wages for untimely, abbreviated, and/or missed rest breaks;
- 5. For “reporting time” pay;
- 6. For penalties and all relief afforded pursuant to Labor Code § 226 and the Wage Order;
- 7. For waiting time penalties according to proof pursuant to Labor Code § 203;
- 8. For restitution to Plaintiff and others similarly affected members of the general public of all funds unlawfully acquired by Defendants by means of any of the acts or practices declared by this Court to constitute violations of Bus. & Prof. Code §§ 17200 *et seq.* and for an injunction to prohibit DEFENDANTS from engaging in the unfair business practices complained of herein, for an injunction requiring Defendants to give notice to persons to whom restitution is owing of the means to file for restitution;
- 9. For attorneys’ fees and costs as provided by Labor Code §§ 218.5, 226, 226.7, and Code of Civil Procedure § 1021.5; and,
- 10. For such other and further relief as the Court deems just and proper.

DATED: March 5, 2018

MARLIN & SALTZMAN, LLP
DAVTYAN, PLC


By: 
 Stanley D. Saltzman, Esq.
 Cody R. Kennedy, Esq.
 Attorneys for Plaintiff and
 the Proposed Class

DEMAND FOR JURY TRIAL

Plaintiff, for herself and the class, hereby demands a jury trial as provided by California law.

DATED: March 5, 2018

MARLIN & SALTZMAN, LLP
DAVTYAN, PLC

By: 
Stanley D. Saltzman, Esq.
Cody R. Kennedy, Esq.
Attorneys for Plaintiff and
the Proposed Class

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Case Challenges Target's Allegedly Restrictive Employee Rest Break Policy](#)
