

1 **LAW OFFICES OF**
2 **WAGNER & JONES LLP**
3 Nicholas J.P. Wagner, SBN 109455
4 Andrew B. Jones, SBN 076915
5 Daniel M. Kopfman, SBN 192191
6 Lawrence M. Artenian, SBN 103367
7 Paul C. Mullen, SBN 216447
8 1111 E. Herndon, Ste. 317
9 Fresno, CA 93720
10 559/449-1800; 559/449-0749 Fax

11 Attorneys for Plaintiffs

12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 JANELL ERICKSON, an individual,
15 LYNDA TREMAIN, an individual, an
16 individual, NAOMI GRIMM, an
17 individual on behalf of themselves, and
18 all persons similarly situated,

19 Plaintiffs,

20 v.

21 OLD REPUBLIC TITLE COMPANY, NORTH
22 STATE TITLE COMPANY, MARA ESCROW
23 COMPANY and DOES 1-50, inclusive,

24 Defendants.

Case No. '13CV1210 GPC NLS

COLLECTIVE AND CLASS ACTION

**COMPLAINT FOR DAMAGES,
RESTITUTION AND INJUNCTIVE
RELIEF FOR:**

(1) **COLLECTIVE ACTION UNDER
§216(b) OF THE FAIR LABOR
STANDARDS ACT**

(2) **FAILURE TO PAY WAGES OWED
IN VIOLATION OF CAL. LAB. CODE §§
§§ 203, 204, 218, 218.5, AND 218.6;**

(3) **FAILURE TO PAY OVERTIME
COMPENSATION IN VIOLATION OF
CAL. LAB. CODE §§ 510, 1174, 1174.5,
1194 and 1198;**

(4) **FAILURE TO PROVIDE MEAL AND
REST PERIODS IN VIOLATION OF
CAL. LAB. CODE §§ 218.5, 218.6, 226.7
and 512; and,**

(5) **FAILURE TO ITEMIZE PAY
STATEMENTS IN VIOLATION OF CAL.
LAB. CODE §§ 226, 226.3, 1174, 2751,
2810.5;**

(6) **VIOLATION OF CAL. LAB. CODE
§§ 201, 202, 203, 558**

(7) **UNFAIR COMPETITION IN
VIOLATION OF CAL. BUS. & PROF.
CODE § 17200 et seq.**

JURY TRIAL DEMAND

1 3. Plaintiff Lynda Tremain resides in El Dorado County in Cameron Park, California. She
2 was employed as an Escrow Officer for Defendants in El Dorado County. She worked for
3 Defendants from approximately December 2008 to February 2011.

4 4. Plaintiff Naomi Grimm resides in El Dorado County in El Dorado Hills, California.
5 She was employed as an Escrow Assistant for Defendant in El Dorado County from
6 approximately April 2010 to February 2011.
7

8 5. Each of Defendants is a corporation that is incorporated in California, and commonly
9 owned at all relevant times and affiliates of each other. Prior to its merger with Old Republic
10 Title Company, Frontier Title Company was a California corporation.
11

12 **JURISDICTION AND VENUE**

13 6. This Court has original federal question jurisdiction under 28 U.S.C. §1331 for the
14 claims brought under the FLSA, 29 U.S.C. §201, *et seq.*

15 7. The United States District Court for the Southern District of California has personal
16 jurisdiction because Defendants conduct business within this District.
17

18 8. Venue is proper in this Court under 28 U.S.C. §1391(b), in that Defendants have offices,
19 conduct business, and can be found in the Southern District of California. Venue is also proper
20 under 29 U.S.C. §1132(e)(2) because Defendants have substantial business contacts within the
21 state of California.

22 9. At all relevant times herein, Defendants have been, and continue to be, “employers”
23 engaged in the interstate “commerce” and/or in the production of “goods” for “commerce”
24 within the meaning of the FLSA, 29 U.S.C. §203. At all relevant times, Defendants have
25 employed, and/or continue to employ, “employee[s],” including the Plaintiffs and all similarly
26 situated employees.
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1 10. The proposed Class consists of current and former employees of Defendants and each
2 of them, and consisting of three subclasses as follows: persons who worked as an “Escrow
3 Officer,” “Escrow Assistant” or similar position, however titled, who:

4 (a) Performed work for Defendants and each of them and was not properly paid for
5 that work, and/or;

6 (b) Worked more than eight (8) hours in any given day and/or more than forty (40)
7 hours in any given week, and who were not paid the overtime premium compensation
8 pursuant to the applicable California Labor Code sections and Industrial Welfare
9 Commission Wage Order requirements including in connection with commissions,
10 and/or;.

11 (c) Worked without breaks or lunch periods as required by California Labor Code
12 section 226.7, and 512 and subsections 11 and 12 of the applicable Industrial Welfare
13 Commission Orders and were not compensated for all the time worked as required by
14 Labor Code §1194 and subsections 3 and 4 of the applicable Industrial Welfare
15 Commission Orders.
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19 11. The proposed Class Period commences on the date that is within the applicable
20 statute of limitations and through the date of final judgment.

21 **CLASS ALLEGATIONS**

22 12. Plaintiffs Janell Erickson, Lynda Tremain and Naomi Grimm, at all material times
23 mentioned herein;

24 (a) Performed work for Defendants and each of them that they were not properly
25 compensated for;
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1 (b) Worked more than eight (8) hours and/or more than forty (40) hours on numerous
2 occasions and did not receive overtime compensation;

3 (c) Worked without breaks or lunch periods on numerous occasions and were not
4 compensated for all the time worked;

5 13. This Class Action meets the statutory prerequisites for the maintenance of a
6 Class Action as set forth in FRCP Rule 23:
7

8 (a) The persons who comprise the Class are so numerous that the joinder of all such
9 persons is impracticable and the disposition of their claims as a class will benefit the parties and
10 the Court;

11 (b) Nearly all factual, legal, statutory, and declaratory relief issues that are raised in
12 the Complaint are common to the Class and will apply uniformly to every member of the
13 CLASS, and as a practical matter be dispositive of interests of the other members not party to
14 the adjudication or substantially impair or impede their ability to protect their interests;
15

16 (c) Common questions of law and fact exist as to the members of the Class and
17 predominate over any question affecting only individual members, and a Class Action is
18 superior to other available methods for the fair and efficient adjudication of the controversy,
19 including consideration of:
20

21 1) The interests of the members of the Class in individually controlling the
22 prosecution or defense of separate actions;

23 2) The extent and nature of any litigation concerning the controversy already
24 commenced by or against members of the Class;

25 3) The desirability or undesirability of concentrating the litigation of the claims in
26 the particular forum; and
27
28

1 4) The difficulties likely to be encountered in the management of a Class Action.

2 14. The Court should permit this action to be maintained as a Class Action pursuant
3 to FRCP, Rule 23 because:

4 (a) The questions of law and fact common to the Class predominate over any
5 question affecting only individual members;

6 (b) A Class Action is superior to any other available method for the fair and
7 efficient adjudication of the claims of the members of the Class;

8 (c) The members of the Class are so numerous that it is impractical to bring
9 all members of the Class before the Court;

10 (d) Plaintiffs, and the other Class members, will not be able to obtain
11 effective and economic legal redress unless the action is maintained as a Class Action;

12 (e) There is a community of interest in obtaining appropriate legal and
13 equitable relief for the common law and statutory violations and other improprieties, and
14 in obtaining adequate compensation for the damages and injuries which Defendants and
15 each of their actions have inflicted upon the Class; and

16 (f) There is a community of interest in ensuring that the combined assets and
17 available insurance of Defendants and each of them is sufficient to adequately
18 compensate the members of the Class for and damages sustained.

19 **DEFENDANTS**

20 15. Plaintiffs are informed and believe and thereupon allege that at all times
21 mentioned herein, Defendants and Does 1 through 50, were and are, corporations licensed to do
22 business and actually doing business in the State of California. Defendants own and operate an
23 industry, business and establishment in numerous separate geographic locations within the State
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1 of California. Thus, Defendants are subject to the applicable Cal. Lab. Codes; California
2 Business and Professions Code §17200 et seq., and the applicable wage order(s) issued by the
3 Industrial Welfare Commission of the State of California. Defendants are or were incorporated
4 in California at all relevant times herein.

5 16. The true names and capacities, whether individual, corporate, subsidiary,
6 partnership, associate or otherwise of defendant Does 1 through 50, inclusive, are unknown to
7 the Plaintiffs who therefore sue these defendants by such fictitious names. The Plaintiffs will
8 seek leave to amend their Complaint to allege the true names and capacities of Does 1 through
9 50, inclusive, when they are ascertained.
10

11 17. At all times herein mentioned, each of said Defendants participated in the doing
12 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
13 Defendants, and each of them, were the agents, servants and employees of each and every one
14 of the other Defendants, as well as the agents of all Defendants, and at all times herein
15 mentioned, were acting within the course and scope of said agency and employment.
16

17 18. At all times mentioned herein, the defendants, and each of them, were members
18 of, and engaged in, a joint venture, partnership and common enterprise, and acting within the
19 course and scope of said agency and employment.
20

21 19. At all times herein mentioned, the acts and omissions of various defendants, and
22 each of them, concurrently contributed to the various acts and omissions of each and every one
23 of the other Defendants in proximately causing the wrongful conduct, harm and damages
24 alleged herein.
25

26 20. At all times herein mentioned, Defendants, and each of them, approved of,
27 condoned and/or otherwise ratified each and every one of the acts or omission complained of
28

1 herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the
2 acts and omissions of each and every one of the other Defendants thereby proximately causing
3 the damages as herein alleged.

4
5 **FIRST CAUSE OF ACTION**
6 **Collective Action under §216(b) of the Fair Labor Standards Act**

7 21. Plaintiffs hereby incorporate by reference paragraphs 1 through 20 of the complaint into
8 this Count.

9 22. Plaintiffs' putative representative action ("PRA") consists of non-exempt employees
10 who are entitled under the FLSA to receive overtime. Defendants compensate Plaintiffs by
11 paying them an hourly wage based upon a forty-hour work week.
12

13 23. The FLSA requires each covered employer, such as Defendants, to compensate all non-
14 exempt employees for services performed and to compensate them at a rate of not less than one
15 and one-half the regular rate of pay for work performed in excess of forty hours in a work week.
16

17 24. All PRA Plaintiffs working for Defendants are similarly situated in that they all perform
18 essentially the same respective job functions.

19 25. All PRA Plaintiffs are similarly situated in that they are all subject to Defendants' same
20 compensation policy, plan, or procedure that requires them to perform work and/or requires
21 them to be present at work while not compensating them for their services. In turn, this denies
22 Plaintiff's and the PRA Plaintiffs compensation for services performed, and denies them their
23 overtime compensation. Defendants' conduct is in violation of the FLSA.
24

25 26. Plaintiffs bring this Complaint as a collective action pursuant to 29 U.S.C. §216(b) of
26 the FLSA, on behalf of all persons who were, are, or will be employed by the Defendants as
27 non-exempt employees within three years from the commencement of this action who have not
28

1 been compensated at one and one-half times the regular rate of pay for all services performed in
2 excess of forty hours per week.

3 27. The names and addresses of the PRA Plaintiffs are available from Defendants. To the
4 extent required by law, notice will be provided to said individuals via First Class Mail and/or by
5 the use of techniques and a form of notice similar to those customarily used in representative
6 actions.
7

8 28. Defendants failed to compensate Plaintiffs and the PRA Plaintiffs at a rate of not less
9 than one and one-half times the regular rate of pay for work performed in excess of forty hours
10 in a work week, and therefore Defendants have violated, and continue to violate the FLSA, 29
11 U.S.C. §§ 201 *et seq.*, including but not limited to 29 U.S.C. §207(a)(1).
12

13 29. The foregoing conduct constitutes a willful violation of the FLSA within the meaning of
14 29 U.S.C. §255(a).
15

16 30. Plaintiffs, on behalf of themselves and all similarly-situated employees of Defendants
17 who comprise the PRA Plaintiffs, seek damages in the amount of all respective unpaid overtime
18 compensation at a rate of one and one-half times the regular rate of pay for work performed in
19 excess of forty hours in a work week, plus liquidated damages, as provided by the FLSA, 29
20 U.S.C. §216(b), and such other legal and equitable relief as the Court deems just and proper.
21

22 31. Plaintiffs, on behalf of themselves and all similarly-situated employees of Defendants
23 who comprise PRA Plaintiffs, seek recovery of all attorneys' fees, costs, and expenses of this
24 action, to be paid by Defendants, as provided by the FLSA, 29 U.S.C. §216(b).
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SECOND CAUSE OF ACTION
FAILURE TO PAY WAGES OWED
[Cal. Lab. Code §§ 203, 204, 218, 218.5, 218.6]
(By the Class against all Defendants)

32. Plaintiffs, Janell Erickson, Lynda Tremain and Naomi Grimm, and the other members of the Class, re-allege and incorporate by their reference, as though fully set forth herein, the preceding paragraphs of their Complaint.

33. Cal. Lab. Code §§ 203, 204 establish the fundamental right of all employees in the State of California to be paid wages in a timely fashion for their work.

34. Pursuant to the IWC Wage Order(s), Defendants are required to pay Plaintiffs, Janell Erickson, Lynda Tremain and Naomi Grimm, and other members of the Class, for each hour worked, meaning the time during which an employee is either subject to the control of an employer, or is suffered or permitted to work.

35. Defendants' uniform policy and procedure requires their employees to work "off the clock" without compensation for time spent working for Defendants and/or subject to the control of the Defendants. Plaintiffs seek unpaid wages and penalties therefor.

36. Defendants, as a matter of established company policy and procedure, in each and every county of the State of California where Defendants conducted business, consistently:

- a. Administered a uniform company policy and practice regarding the duties and responsibilities of the Plaintiffs, Janell Erickson, Lynda Tremain and Naomi Grimm and other members of the Class;
- b. Had and/or have numerous manuals, letters, correspondence, policy handbooks and the like which taken together constitute, created or comprise, a written contract for employment for Plaintiffs, Janell Erickson, Lynda Tremain and Naomi Grimm and other members of the Class; and,

1 c. Scheduled to work and/or required, suffered or permitted Plaintiffs Janell Erickson,
2 Lynda Tremain and Naomi Grimm, and other members of the Class, to work without
3 paying lawful wages for each and every hour worked.

4 37. Defendants' pattern, practice and uniform administration of corporate policy regarding
5 illegal employee compensation as described herein is unlawful and creates an entitlement,
6 pursuant to Cal. Lab. Code §218, to recovery by Plaintiffs, and other members of the Class, in a
7 civil action, for the unpaid balance of the full amount of the straight time compensation owing.
8

9 38. Pursuant to Cal. Lab. Code §218.6 and the California Civil Code §3287 (b) and §3289,
10 Plaintiffs Janell Erickson, Lynda Tremain and Naomi Grimm, and other members of the Class,
11 seek recovery of pre-judgment interest on all amounts recovered herein.
12

13 39. Pursuant to Cal. Lab. Code §218.5, Plaintiffs Janell Erickson, Lynda Tremain and
14 Naomi Grimm, and other members of the Class, request that the Court award reasonable
15 attorneys' fees and costs incurred by them in their action.
16

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18 **THIRD CAUSE OF ACTION**
19 **FOR FAILURE TO PAY OVERTIME COMPENSATION**
20 **[Cal. Lab. Code §§510, 1174, 1174.5, 1194 and 1198]**
21 **(By the Class against all Defendants)**

22 40. Plaintiffs Janell Erickson, Lynda Tremain and Naomi Grimm, and the other members of
23 the Class, re-allege and incorporate by their reference, as though fully set forth herein, the
24 preceding paragraphs of their Complaint.

25 41. Cal. Lab. Code §510 provides that employees in California shall not be employed more
26 than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive
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1 additional compensation beyond their regular wages in amounts specified by law. Specifically,
2 Cal. Lab. Code §510 (a) requires that:

3 Any work in excess of eight hours in one workday and any work in excess of 40
4 hours in any one workweek and the first eight hours worked on the seventh day of
5 work in any one workweek shall be compensated at the rate of **no less than one and**
6 **one-half times the regular rate of pay** for an employee. Any work in excess of 12
7 hours in one day shall be compensated at the rate of **no less than twice the regular**
8 rate of pay for an employee.

9 (Emphasis Added.)

10 42. Cal. Lab. Code §1194 establishes an employee's right to recover unpaid overtime
11 compensation, interest thereon, together with the costs of suit, and attorney's fees. Cal. Lab.
12 Code §1198 states that the employment of an employee for longer hours than those fixed by the
13 Industrial Welfare Commission is unlawful.

14 43. Defendants and each of them have intentionally and improperly required Plaintiffs
15 Janell Erickson, Lynda Tremain and Naomi Grimm, and other members of the Class to
16 inaccurately report each hour worked, specifically excluding the recordation of hours they have
17 worked over eight (8) hours in a day and/or forty (40) hours in a week to miscalculate their
18 compensation and other benefits in violation of the Cal. Lab. Code §§ 510, 1174, 1174.5 and
19 Industrial Welfare Commission requirements.

20 44. At all times relevant hereto, from time to time, Plaintiffs Janell Erickson, Lynda
21 Tremain and Naomi Grimm and other members of the Class, have worked more than eight
22 hours in a workday, and/or more than forty hours in a work week.

23 45. At all times relevant hereto, Defendants failed to pay Plaintiffs Janell Erickson, Lynda
24 Tremain and Naomi Grimm, and other members of the Class, the overtime compensation
25 premium for the hours they have worked in excess of the maximum hours permissible by law as
26 required by Cal. Lab. Code §§510 and 1198. In fact, however, Plaintiffs Janell Erickson, Lynda
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28

1 Tremain and Naomi Grimm, and other members of the Class, were regularly required to work
2 overtime hours and were paid less than one and a half times their regular rate of pay, in
3 violation of Cal. Lab. Code §510.

4 46. By virtue of Defendants' unlawful failure to pay the lawful rate of compensation to the
5 Plaintiff, and other members of the Class, for their overtime hours, the Plaintiffs Janell
6 Erickson, Lynda Tremain and Naomi Grimm, and other members of the Class, have suffered,
7 and will continue to suffer, damages in amounts which are presently unknown to them and will
8 be ascertained according to proof at trial.

9
10 47. Defendants and each of them acted and is acting intentionally, oppressively, and
11 maliciously toward the Plaintiffs and other members of the Class, with a conscious disregard of
12 their rights, or the consequences to them, with the intent of depriving them of property and legal
13 rights and otherwise causing them injury.

14
15 48. Plaintiffs Janell Erickson, Lynda Tremain and Naomi Grimm, and other members of the
16 Class, request recovery of overtime compensation according to proof, interest, attorney's fees
17 and costs pursuant to Cal. Lab. Code §§218.5 and 1194(a), as well as the assessment of any
18 statutory penalties against Defendants, in a sum as provided by the Cal. Lab. Code and/or other
19 statutes.

20
21 49. Further, Plaintiffs, and other members of the Class, are entitled to seek and recover
22 reasonable attorneys' fees and costs pursuant to Cal. Lab. Code §§218.5 and 1194.

23
24 **FOURTH CAUSE OF ACTION**
25 **FOR FAILURE TO PROVIDE MEAL PERIODS AND REST PERIODS**
26 **[Cal. Lab. Code §§ 218.5, 226.7 and 512]**
27 **(By the Class against all Defendants)**

28 50. Plaintiffs Janell Erickson, Lynda Tremain and Naomi Grimm, and the other members of

1 the Class, re-allege and incorporate by their reference, as though fully set forth herein, the preceding
2 paragraphs of their Complaint.

3 51. Cal Lab Code §512 provides:

4
5 (a) An employer may not employ an employee for a work period of more than five
6 hours per day without providing the employee with a meal period of not less than 30
7 minutes, except that if the total work period per day of the employee is no more than six
8 hours, the meal period may be waived by mutual consent of both the employer and
9 employee. An employer may not employ an employee for a work period of more than
10 10 hours per day without providing the employee with a second meal period of not less
11 than 30 minutes, except that if the total hours worked is no more than 12 hours, the
12 second meal period may be waived by mutual consent of the employer and the
13 employee only if the first meal period was not waived.

14 52. §11 of the applicable Industrial Welfare Commission Wage Order provides:

15 (A) No employer shall employ any person for a work period of more than five (5) hours
16 without a meal period of not less than 30 minutes, except that when a work period of not
17 more than six (6) hours will complete the day's work the meal period may be waived by
18 mutual consent of the employer and the employee. Unless the employee is relieved of all
19 duty during a 30 minute meal period, the meal period shall be considered an "on duty"
20 meal period and counted as time worked. An "on duty" meal period shall be permitted
21 only when the nature of the work prevents an employee from being relieved of all duty
22 and when by written agreement between the parties an on-the-job paid meal period is
23 agreed to. The written agreement shall state that the employee may, in writing, revoke
24 the agreement at any time.

25 (B) If an employer fails to provide an employee a meal period in accordance with the
26 applicable provisions of this order, the employer shall pay the employee one (1) hour of
27 pay at the employee's regular rate of compensation for each workday that the meal
28 period is not provided.

53. §12 of the applicable Industrial Welfare Commission Wage Order provides:

(A) Every employer shall authorize and permit all employees to take rest periods, which
insofar as practicable shall be in the middle of each work period. The authorized rest
period time shall be based on the total hours worked daily at the rate of ten (10) minutes
net rest time per four (4) hours or major fraction thereof. However, a rest period need
not be authorized for employees whose total daily work time is less than three and one-
half (3 ½) hours. Authorized rest period time shall be counted as hours worked for
which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the
applicable provisions of this order, the employer shall pay the employee one (1) hour of
pay at the employee's regular rate of compensation for each workday that the rest
period is not provided.

54. Cal. Lab. Code §226.7 provides:

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

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

5 55. Cal. Lab. Code §§226.7 provides:

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

8 (b) If an employer fails to provide an employee a meal period or rest period in
9 accordance with an applicable order of the Industrial Welfare Commission, the
10 employer shall pay the employee on additional hour of pay at the employee's regular
11 rate of compensation for each work day that the meal or rest period is not provided.
12 Cal. Lab. Code §226.7 provides that if an employer fails to provide an employee a
13 meal period in accordance with their section, the employer shall pay the employee one
14 (1) hour of pay at the employee's regular rate of compensation for each five (5) hours
15 of work that the meal period is not provided.

16 56. Defendants and each of them employed and/or required Plaintiffs Janell Erickson,
17 Lynda Tremain and Naomi Grimm and other class members of the Class, to work in violation of
18 Cal. Lab. Code §§226.7 and 512, and §§ 11 and 12 of the applicable Industrial Welfare Commission
19 Wage Order.

20 57. Defendants and each of them have intentionally and improperly denied rest periods to
21 Plaintiffs, Janell Erickson, Lynda Tremain and Naomi Grimm, and other members of the CLASS, in
22 violation of Cal. Lab. Code §§226.7 and 512, and §§ 11 and 12 of the applicable Industrial Welfare
23 Commission Wage Order.

24 58. Plaintiffs Janell Erickson, Lynda Tremain and Naomi Grimm, and the other members of
25 the Class, are entitled to seek and recover reasonable attorneys' fees and costs pursuant to Cal. Lab.
26 Code §218.5.

27 **FIFTH CAUSE OF ACTION**
28 **FOR FAILURE TO ITEMIZE PAY STATEMENTS**
[Cal. Lab. Code §§226, 226.3, 1174, 2751, 2810.5]
(By the Class and against all Defendants)

59. Plaintiffs Janell Erickson, Lynda Tremain and Naomi Grimm, and the other
members of the Class, reallege and incorporate by their reference, as though fully set forth herein,

1 the preceding paragraphs of their Complaint.

2 60. Cal. Lab. Code §226 provides:

3 (a) Every employer shall, semimonthly or at the time of each payment of wages,
4 furnish each of his or her employees, either as a detachable part of the check,
5 draft, or voucher paying the employee's wages, or separately when wages are
6 paid by personal check or cash, an accurate itemized statement in writing
7 showing (1) gross wages earned, (2) total hours worked by the employee, except
8 for any employee whose compensation is solely based on a salary and who is
9 exempt from payment of overtime under subdivision (a) of Section 515 or any
10 applicable order of the Industrial Welfare Commission, (3) the number of piece-
11 rate units earned and any applicable piece rate if the employee is paid on a piece
12 rate basis, (4) all deductions, provided that all deductions made on written orders
13 of the employee may be aggregated and shown as one item, (5) net wages
14 earned, (6) the inclusive dates of the period for which the employee is paid, (7)
15 the name of the employee and her or her social security number, except that by
16 January 1, 2008, only the last four digits of her or her social security number or
17 an existing employee identification number other than a social security number
18 may be shown on the check, (8) the name and address of the legal entity that is
19 the employer, and (9) all applicable hourly rates in effect during the pay period
20 and the corresponding number of hours worked at each hourly rate by the
21 employee. The deductions made from payments of wages shall be recorded in
22 ink or other indelible form, properly dated, showing the month, day, and year,
23 and a copy of the statement or a record of the deductions shall be kept on file by
24 the employer for at least three years at the place of employment or at a central
25 location within the State of California.

18 (b) An employer that is required by this code or any regulation adopted pursuant
19 to this code to keep the information required by subdivision (a) shall afford
20 current and former employees the right to inspect or copy the records pertaining
21 to that current or former employee, upon reasonable request to the employer.
22 The employer may take reasonable steps to assure the identity of a current or
23 former employee. If the employer provides copies of the records, the actual cost
24 of reproduction may be charged to the current or former employee.

23 (c) An employer who receives a written or oral request to inspect or copy
24 records pursuant to subdivision (b) pertaining to a current or former employee
25 shall comply with the request as soon as practicable, but not later than 21
26 calendar days from the date of the request. A violation of this subdivision is an
27 infraction. Impossibility of performance, not caused by or a result of a violation
28 of the law, shall be an affirmative defense for an employer in any action alleging
a violation of this subdivision. An employer may designate the person to whom
a request under this subdivision will be made.

1 (d) This section does not apply to any employer of any person employed by the
2 owner or occupant of a residential dwelling whose duties are incidental to the
3 ownership, maintenance, or use of the dwelling, including the care and
4 supervision of children, or whose duties are personal and not in the course of the
5 trade, business, profession, or occupation of the owner or occupant.

6 (e) An employee suffering injury as a result of a knowing and intentional failure
7 by an employer to comply with subdivision (a) is entitled to recover the greater
8 of all actual damages or fifty dollars (\$50) for the initial pay period in which a
9 violation occurs and one hundred dollars (\$100) per employee for each violation
10 in a subsequent pay period, not exceeding an aggregate penalty of four thousand
11 dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's
12 fees.

13 (f) A failure by an employer to permit a current or former employee to inspect
14 or copy records within the time set forth in subdivision (c) entitles the current or
15 former employee or the Labor Commissioner to recover a seven hundred fifty
16 dollars (\$750) penalty from the employer.

17 (g) An employee may also bring an action for injunctive relief to ensure
18 compliance with this section, and is entitled to an aware of costs and reasonable
19 attorney's fees.

20 61. Defendants and each of their failure to maintain the records required by Cal. Lab. Code
21 §226 have caused injury to Plaintiffs, Janell Erickson, Lynda Tremain and Naomi Grimm, and other
22 members of the Class including the possibility of not being paid overtime, employee confusion over
23 whether they received all wages owed them, difficulty and expense involved in reconstructing pay
24 records, and forcing them to make mathematical computations to analyze whether the wages paid in
25 fact compensated them for all hours worked. The violation of Cal. Labor Code §226 also violates
26 Labor Code §§ 1174, 2751, and 2810.5 not accurately reflecting records of actual time worked and
27 the terms and conditions of employment.

28 62. Accordingly, Plaintiffs, Janell Erickson, Lynda Tremain and Naomi Grimm and the other
members of the Class may be prejudiced in their ability to establish the total amount of their actual
damages.

63. Therefore, Plaintiffs Janell Erickson, Lynda Tremain and Naomi Grimm and the other
members of the Class seek the remedy set forth in Cal. Lab. Code §§226(e) and 226.3.

1 **SIXTH CAUSE OF ACTION**

2 **(Penalties Pursuant To California Labor Code sections 201, 202, 203, 558, and**
3 **Subsection 20 Of The Applicable Industrial Welfare Commission Orders)**

4 **(By the Class Against All Defendants)**

5 64. Plaintiffs Janell Erickson, Lynda Tremain and Naomi Grimm and members of the
6 Class, re-allege and incorporate by their reference, as though fully set forth herein, the preceding
7 paragraphs of their Complaint.

8 65. Plaintiffs Janell Erickson, Lynda Tremain and Naomi Grimm and Class Members
9 identified herein were discharged by Defendants or voluntarily quit their employment with
10 Defendants. The Defendants, in violation of California Labor Code sections 201 and 202, et seq.,
11 respectively, had a consistent and uniform business policy, practice and procedure of willfully
12 failing to pay the earned and unpaid wages of all such former employees, including Plaintiffs Janell
13 Erickson, Lynda Tremain and Naomi Grimm and members of the Class. Plaintiffs Janell Erickson,
14 Lynda Tremain and Naomi Grimm and Class Members did not secret or absent themselves from
15 Defendants nor refuse to accept the earned and unpaid wages from Defendants. Accordingly,
16 Defendants are liable for waiting time penalties for the unpaid wages pursuant to California Labor
17 Code section 203.

18 66. In addition to the penalties imposed by California Labor Code sections 203 and 558,
19 Defendants, and each of them are liable for the penalties imposed by subsection 20 of the applicable
20 Industrial Welfare Commission Orders which provides in relevant part as follows:

21 (a) In addition to any other civil penalties provided by law, any employer or any other
22 person acting on behalf of the employer who violates, or causes to violate, the provisions of this
23 order, shall be subject to the civil penalty of: (1) Initial Violation - \$50.00 for each underpaid
24 employee for each pay period during which the employee was underpaid in addition to the amount
25 which is sufficient to recover unpaid wages; (2) Subsequent Violations - \$100.00 for each underpaid
26 employee for each pay period during which the employee was underpaid in addition to an amount
27 which is sufficient to recover unpaid wages.
28

1 73. Plaintiffs Janell Erickson, Lynda Tremain and Naomi Grimm, and the other members of
2 the Class are entitled to, and do, seek such relief as may be necessary to restore to them the money
3 and property which Defendants and each of them, acquired, or of which Plaintiffs, and other
4 members of the Class, have been deprived, by means of the above described unfair and unlawful
5 business acts and practices.

6
7 74. Plaintiffs, and the other members of the Class, have no plain, speedy, and/or adequate
8 remedy at law to redress the injuries which they have suffered as a consequence of the unfair and
9 unlawful business practices of Defendants and each of them. As a result of the unfair and unlawful
10 business practices described above, Plaintiffs, and the other members of the Class, have suffered and
11 will continue to suffer irreparable harm. Defendants and each of them should be required to
12 disgorge the unpaid moneys to Plaintiffs, and the other members of the Class.
13

14 **PRAYER**

15
16 WHEREFORE, Plaintiffs Janell Erickson, Lynda Tremain and Naomi Grimm pray for
17 judgment against Defendants and each of them in favor of Plaintiffs Janell Erickson, Lynda Tremain
18 and Naomi Grimm and the Class as follows:
19

20 **ON THE FIRST CAUSE OF ACTION**

- 21 a. Designation of this action as a collective action on behalf of the proposed PRA Plaintiffs
22 and prompt issuance of notice pursuant to 29 U.S.C. §216(b) to all PRA Plaintiffs (the
23 FLSA opt-in class), apprising them of the pendency of this action and permitting them to
24 assert timely FLSA claims in this action by filing individual Consents to Join pursuant ot
25 29 U.S.C. §216(b);
26
27
28

- 1 b. Designation of Plaintiffs Janell Erickson, Lynda Tremain and Naomi Grimm as
2 representative plaintiffs of the PRA Plaintiffs;
- 3 c. Designation of Wagner & Jones LLP as the attorneys representing the PRA Plaintiffs;
- 4 d. A declaratory judgment that the practices complained of herein are unlawful under the
5 FLSA, 29 U.S.C. §201, *et seq.*;
- 6
- 7 e. An injunction against Defendants and their officers, agents, successors, employees,
8 representatives, and any and all persons acting in concert with Defendants, as provided
9 by law, from engaging in each of the unlawful practices, policies and patterns set forth
10 herein;
- 11
- 12 f. An award of damages for overtime compensation due for the Plaintiff and the PRA
13 Plaintiffs, including liquidated damages, to be paid by Defendants;
- 14 g. Costs and expenses of this action incurred herein, including reasonable attorneys' fees
15 and expert fees;
- 16
- 17 h. Pre-judgment and post-judgment interest, as provided by law; and
- 18 i. Any and all such other and further legal and equitable relief as this Court deems
19 necessary, just and proper.

20

21 **ON THE SECOND CAUSE OF ACTION**

22 A) For compensatory damages, including lost wages, commissions, bonuses, and other
23 losses, according to proof;

24 B) For general damages, according to proof;

25 C) For an award of interest, including prejudgment interest at the legal rate; and

26 D) For statutory damages, including reasonable attorneys' fees and cost of suit.
27
28

1 action therefore is commenced, not exceeding 30 days; and

2 B) For reasonable attorney's fees, and costs as provided by Cal. Lab. Code §203.

3
4 **ON THE SEVENTH CAUSE OF ACTION**

5 A) For restitution and disgorgement;

6 B) For injunctive relief ordering the continuing unfair business acts and practices to cease,
7 or as the Court otherwise deems just and proper;

8 C) For other injunctive relief ordering Defendants to notify the Class that they have not been
9 paid the proper amounts required in accordance with California law

10
11 **ON ALL CAUSES OF ACTION**

12 A) An Order certifying the Class and/or the subclasses contained therein, approving
13 Plaintiffs as the collective and class representatives of the Class, and permitting their case to proceed
14 as a class action; and,
15

16 B) For such other and further relief as the Court deems just and proper.

17
18 **Demand for Jury Trial**

19 Plaintiffs hereby demand a jury trial on the causes of action and claims with respect to
20 which they and all members of the proposed representative action have a right to jury trial.

21 Respectfully submitted,

22
23 DATED: May 21, 2013

LAW OFFICES OF
WAGNER & JONES LLP

24
25
26
27 _____/s/_____
Nicholas Wagner

28 Erickson Grimm & Tremain 0123-13