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11 **UNITED STATES DISTRICT COURT**
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

13 ALICIA HARRIS, as an individual and on
14 behalf of all others similarly situated,

15 Plaintiffs,

16 vs.

17 VECTOR MARKETING CORPORATION, a
18 Pennsylvania corporation; and DOES 1
19 through 20, inclusive,

20 Defendants.

Case No.: CV 08 5198 EMC

CLASS AND COLLECTIVE ACTION

**FOURTH AMENDED CLASS AND
COLLECTIVE ACTION COMPLAINT
FOR DAMAGES AND INJUNCTIVE
RELIEF FOR:**

- 21 **(1) FAILURE TO PAY MINIMUM
WAGES IN VIOLATION OF LABOR
CODE § 1197;**
- 22 **(2) FAILURE TO PAY MINIMUM
WAGES IN VIOLATION OF FAIR
LABOR STANDARDS ACT, 29 U.S.C.
§ 206;**
- 23 **(3) VIOLATION OF LABOR CODE §
201-203;**
- 24 **(4) VIOLATION OF LABOR CODE §
2802;**
- 25 **(5) VIOLATION OF LABOR CODE §
2698 ET SEQ.;**
- 26 **(6) UNFAIR BUSINESS PRACTICES
(Violation of California Business &
Professions Code §17200 et seq.).**

DEMAND FOR JURY TRIAL

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1 Plaintiff Alicia Harris (hereinafter referred to as “Plaintiff”), hereby submits her Fourth
2 Amended Class and Collective Action Complaint against Defendant Vector Marketing
3 Corporation and Does 1-20 (hereinafter collectively referred to as “DEFENDANTS”) on behalf
4 of themselves and the class of all other similarly situated current and former employees and
5 common law employees of DEFENDANTS, as follows:

6 **INTRODUCTION**

7 **1.** This class action is within the Court’s jurisdiction under California Labor Code §§
8 201-203, 450, 2698, 2802, 1197, California Business and Professions Code § 17200, et seq.,
9 (Unfair Practices Act), and the Fair Labor Standards Act 29 U.S.C. § 206 (“FLSA”).

10 **2.** This complaint challenges systemic illegal employment practices resulting in
11 violations of the California Labor Code, Business and Professions Code and the FLSA against
12 employees of DEFENDANTS.

13 **3.** Plaintiff is informed and believes and based thereon alleges DEFENDANTS, joint
14 and severally have acted intentionally and with deliberate indifference and conscious disregard to
15 the rights of all employees in paying training wages owed to them, failure to pay training wages
16 upon the termination of employment, and coercing the purchase of work related tools from
17 Defendant all in violation of the Labor Code.

18 **4.** Plaintiff is informed and believes and based thereon alleges DEFENDANTS have
19 engaged in, among other things a system of willful violations of the California Labor Code,
20 Business and Professions Code, applicable IWC wage orders, and the FLSA by creating and
21 maintaining policies, practices and customs that knowingly deny employees the above stated
22 rights and benefits.

23 **5.** The policies, practices and customs of defendants described above and below have
24 resulted in unjust enrichment of DEFENDANTS and an unfair business advantage over
25 businesses that routinely adhere to the strictures of the California Labor Code, Business and
26 Professions Code, and the FLSA.
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1 believe and based thereon alleges that each of said fictitious DEFENDANTS were responsible in
2 some way for the matters alleged herein and proximately caused Plaintiff and members of the
3 general public and class to be subject to the illegal employment practices, wrongs and injuries
4 complained of herein.

5 **13.** At all times herein mentioned, each of said DEFENDANTS participated in the
6 doing of the acts hereinafter alleged to have been done by the named DEFENDANTS; and
7 furthermore, the DEFENDANTS, and each of them, were the agents, servants and employees of
8 each of the other DEFENDANTS, as well as the agents of all DEFENDANTS, and at all times
9 herein mentioned, were acting within the course and scope of said agency and employment.

10 **14.** Plaintiff is informed and believe and based thereon alleges that at all times
11 material hereto, each of the DEFENDANTS named herein was the agent, employee, alter ego
12 and/or joint venturer of, or working in concert with each of the other co-DEFENDANTS and was
13 acting within the course and scope of such agency, employment, joint venture, or concerted
14 activity. To the extent said acts, conduct, and omissions were perpetrated by certain
15 DEFENDANTS, each of the remaining DEFENDANTS confirmed and ratified said acts,
16 conduct, and omissions of the acting DEFENDANTS.

17 **15.** At all times herein mentioned, 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, and in pursuance of, said joint venture, partnership and common enterprise.

20 **16.** At all times herein mentioned, the acts and omissions of various DEFENDANTS,
21 and each of them, concurred and contributed to the various acts and omissions of each and all of
22 the other DEFENDANTS in proximately causing the injuries and damages as herein alleged. At
23 all times herein mentioned, DEFENDANTS, and each of them, ratified each and every act or
24 omission complained of herein. At all times herein mentioned, the DEFENDANTS, and each of
25 them, aided and abetted the acts and omissions of each and all of the other DEFENDANTS in
26 proximately causing the damages as herein alleged.
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1 to pay to Plaintiff and the class minimum wages for training time, (b) failing to pay minimum
2 wages for training time in a timely manner upon termination of employment, (c) requiring
3 Plaintiff and the class to patronize Defendants' business during training as a term of
4 employment, and (d) engaging in Unfair Business Practices.

5 **21.** Plaintiff is informed and believes and based thereon alleges DEFENDANTS had
6 a consistent and uniform policy, practice and procedure of willfully failing to comply with Labor
7 Code §§ 201-203, 450, 2698, 2802, 1197, and the FLSA. Plaintiff and other members of the
8 Class did not secret or absent themselves from DEFENDANTS, nor refuse to accept the earned
9 and unpaid wages from DEFENDANTS. Accordingly, DEFENDANTS are liable for waiting
10 time compensation for the unpaid training time wages to separated employees pursuant to
11 California Labor Code § 201-203.

12 **22. Common Question of Law and Fact:** There are predominant common questions
13 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
14 concerning DEFENDANTS' (a) not paying Plaintiff and the Class minimum wages for training
15 time, (b) failing to pay minimum wages for training time in a timely manner, (c) requiring
16 Plaintiff and the class to patronize Defendants' business as a term of employment, and (d)
17 engaging in Unfair Business Practices.

18 **23. Typicality:** The claims of Plaintiff are typical of the claims of all members of the
19 class. Plaintiff is a members of the Class and has suffered the alleged violations of California
20 Labor Code §§ 201-203, 450, 2698, 2802, 1197, and the FLSA.

21 **24.** The California Labor Code and the FLSA upon which Plaintiff bases her claims
22 are broadly remedial in nature. These laws and labor standards serve an important public interest
23 in establishing minimum working conditions and standards. These laws and labor standards
24 protect the average working employee from exploitation by employers who may seek to take
25 advantage of superior economic and bargaining power in setting onerous terms and conditions of
26 employment.

27 **25.** The nature of this action and the format of laws available to Plaintiff and
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1 members of the Class identified herein make the class action format a particularly efficient and
2 appropriate procedure to redress the wrongs alleged herein. If each employee and common law
3 employee were required to file an individual lawsuit, the corporate DEFENDANTS would
4 necessarily gain an unconscionable advantage since it would be able to exploit and overwhelm
5 the limited resources of each individual plaintiff with their vastly superior financial and legal
6 resources. Requiring each class member to pursue an individual remedy would also discourage
7 the assertion of lawful claims by employees who would be disinclined to file an action against
8 their former and/or current employer for real and justifiable fear of retaliation and permanent
9 damage to their careers at subsequent employment.

10 **26.** The prosecution of separate actions by the individual class members, even if
11 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
12 to individual class members against the DEFENDANTS and which would establish potentially
13 incompatible standards of conduct for the DEFENDANTS, and/or (b) adjudications with respect
14 to individual class members which would, as a practical matter, be dispositive of the interest of
15 the other class members not parties to the adjudications or which would substantially impair or
16 impede the ability of the class members to protect their interests. Further, the claims of the
17 individual members of the class are not sufficiently large to warrant vigorous individual
18 prosecution considering all of the concomitant costs and expenses.

19 **27.** Such a pattern, practice and uniform administration of corporate policy regarding
20 illegal employee compensation described herein is unlawful and creates an entitlement to
21 recovery by the Plaintiff and the Class identified herein, in a civil action, for the unpaid balance
22 of the full amount unpaid wages, including interest thereon, applicable penalties, reasonable
23 attorney's fees, and costs of suit according to the mandate of California Labor Code §§ 1194 and
24 Code of Civil Procedure § 1021.5.

25 **28.** Proof of a common business practice or factual pattern, which the named Plaintiff
26 experienced and are representatives of, will establish the right of each of the members of the
27 Plaintiff class to recovery on the causes of action alleged herein.
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1 **42.** As a pattern and practice, Defendants regularly required their trainee employees
2 including Plaintiff and members of the class to attend a mandatory initial 3-5 day training session
3 without the payment of any wages, including minimum wages. Defendants were aware of such
4 non-payment of wages.

5 **43.** As a pattern and practice, Defendants regularly failed to pay Plaintiff and Class
6 Members minimum wage compensation for hours worked during the initial 3-5 day training
7 session.

8 **44.** Plaintiff is informed and believes and based thereon alleges that Defendants'
9 regular business custom and practice of requiring its sales employees to attend the initial 3-5 day
10 training sessions without the payment of minimum wages, according to the mandates of Federal
11 law is, and at all times herein mentioned was, in violation of 29 U.S.C. § 206. Defendants'
12 employment policies and practices wrongfully and illegally failed to compensate Plaintiff and
13 Class Members for minimum wages earned as required by Federal law.

14 **45.** The conduct of Defendants and their agents and employees as described herein
15 was oppressive, fraudulent and malicious, done in conscious disregard of Plaintiff's and class
16 members' rights, and done by managerial employees of Defendants. Plaintiff and Class
17 Members are thereby entitled to an award of punitive damages against Defendants, in an amount
18 appropriate to punish and make an example of Defendants, and in an amount to conform to
19 proof.

20 **46.** Plaintiff is informed and believes and based thereon alleges that Defendants
21 willfully failed to pay Class Members for hours worked during the initial 3-5 day training
22 session. Plaintiff is informed and believes and based thereon alleges that Defendants' willful
23 failure to provide wages due and owing them upon separation from employment results in a
24 continued payment of wages up to thirty (30) days from the time the wages were due. Therefore,
25 Plaintiff and other Class Members who have separated from employment are entitled to
26 compensation pursuant to Labor Code § 201-203.

27 **47.** Such a pattern, practice and uniform administration of corporate policy regarding
28 illegal employee compensation as described herein is unlawful and creates an entitlement to

1 recovery by Plaintiff in a civil action, for the unpaid balance of the full amount of wages owing,
2 including interest thereon, penalties, reasonable attorneys fees, and costs of suit.

3 **THIRD CAUSE OF ACTION**

4 **VIOLATION OF LABOR CODE § 201-203**

5 **(AGAINST ALL DEFENDANTS BY PLAINTIFF)**

6 **48.** Plaintiff re-alleges and incorporates by reference paragraphs 1 through 47 as
7 though fully set for herein.

8 **49.** At all times relevant herein, Defendants were required to pay their employees
9 minimum wages for hours worked during an initial 3-5 day training session owed in a timely
10 fashion at the end of employment pursuant to California Labor Code §§ 201 to 203.

11 **50.** As a pattern and practice, Defendants regularly failed to pay Plaintiff and class
12 members their final wages pursuant to Labor Code §§ 201 to 203 and accordingly owe waiting
13 time penalties pursuant to Labor Code § 203.

14 **51.** The conduct of Defendants and their agents and employees as described herein
15 was willfully done in violation of Plaintiff's and class members' rights, and done by managerial
16 employees of Defendants.

17 **52.** Plaintiff is informed and believes and based thereon alleges Defendants' willful
18 failure to pay training time minimum wages earned due and owing them upon separation from
19 employment results in a continued payment of wages up to thirty (30) days from the time the
20 wages were due. Therefore, Plaintiff and class members who have separated from employment
21 are entitled to compensation pursuant to Labor Code § 203.

22 **FOURTH CAUSE OF ACTION**

23 **VIOLATION OF LABOR CODE § 2802**

24 **(AGAINST ALL DEFENDANTS BY PLAINTIFF)**

25 **53.** Plaintiff re-alleges and incorporates by reference paragraphs 1 through 52 as
26 though fully set for herein.

27 **54.** This cause of action is brought pursuant to Labor Code § 2802 which provides
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1 that employees are entitled to be indemnified for expenses and losses in discharging the duties of
2 their employers.

3 **55.** As a pattern and practice, Defendants regularly required Plaintiff and class
4 members to patronize Defendants to purchase sample knife sets during training time and failing
5 to reimburse and indemnify Plaintiff and class members for such work related tools.

6 **56.** Defendants had a uniform corporate pattern and practice and procedure regarding
7 the above practices in violation of Labor Code § 2802.

8 **57.** The conduct of Defendants and their agents and employees as described herein
9 was oppressive, fraudulent and malicious, done in conscious disregard of Plaintiff's and class
10 members' rights, and done by managerial employees of Defendants. Plaintiff and class members
11 are thereby entitled to an award of punitive damages against Defendants, in an amount
12 appropriate to punish and make an example of Defendants, and in an amount to conform to
13 proof.

14 **58.** Such a pattern, practice and uniform administration of corporate policy regarding
15 illegal employee compensation as described herein is unlawful and creates an entitlement to
16 recovery by Plaintiff in a civil action, for the unpaid balance of the full amount of damages
17 owed, including interest thereon, penalties, attorneys fees, and costs of suit according to the
18 mandate of California Labor Code § 2802, et seq.

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20 **FIFTH CAUSE OF ACTION**

21 **FOR VIOLATIONS OF CALIFORNIA LABOR CODE § 2698 ET SEQ.**

22 **(AGAINST ALL DEFENDANTS BY PLAINTIFF)**

23 **59.** Plaintiff re-alleges and incorporates by reference paragraphs 1 through 58 as
24 though fully set for herein.

25 **60.** On or about October 14, 2008, Plaintiff provided written notice to the California
26 Labor & Workforce Development Agency ("LWDA") of Defendant's violation of California
27 Labor Code § 450 pursuant to the California Labor Code § 2699 *et seq.*, the Private Attorney
28 General Act ("PAGA"). On November 20, 2008, the LWDA provided written notice that the

1 LWDA did not intend to investigate Plaintiff's said allegations and therefore allowed Plaintiff to
2 proceed under PAGA against Defendant for said violations.

3 **61.** Pursuant to Labor Code § 2699(a), the members of all classes seek recovery of all
4 applicable civil penalties for Defendants' violation of Labor Code §§ 450 in connection with
5 Defendants requirement that Plaintiff and class members patronize Defendants business to
6 purchase sample knife sets during training time.

7 **62.** Pursuant to Labor Code § 2699(f), the members of all classes seek recovery of all
8 applicable civil penalties as follows:

- 9 **a.** One hundred dollars (\$100.00) for each aggrieved employee per pay
10 period for the initial violation, and
11 **b.** Two hundred dollars (\$200.00) for each aggrieved employee per pay
12 period for each subsequent violation.

13 **SIXTH CAUSE OF ACTION**

14 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE § 17200 ET SEQ.**

15 **(AGAINST ALL DEFENDANTS BY PLAINTIFF)**

16 **63.** Plaintiff re-alleges and incorporates by reference paragraphs 1 through 62 as
17 though fully set for herein.

18 **64.** Defendants, and each of them, have engaged and continue to engage in unfair and
19 unlawful business practices in California by practicing, employing and utilizing the employment
20 practices outlined above, inclusive, to wit, by (a) not paying Plaintiff and the Class all minimum
21 wages earned for training time hours (b) failing to pay all earned training time minimum wages
22 in a timely manner, and (c) requiring Plaintiff and the class to purchase and patronize
23 Defendants' business as a term of employment in violation of Labor Code §§ 2802 and 450.

24 **65.** Defendants' utilization of such unfair and unlawful business practices constitutes
25 unfair, unlawful competition and provides an unfair advantage over Defendants' competitors.

26 **66.** Plaintiff seeks, on her own behalf, on behalf of other members of the class
27 similarly situated, and on behalf of the general public, full restitution of monies, as necessary and
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- 1 6. Upon the Third Cause of Action, for waiting time penalties according to proof pursuant
- 2 to California Labor Code § 201-203;
- 3 7. Upon the Fourth Cause of Action, for consequential damages according to proof, for
- 4 punitive and exemplary damages according to proof pursuant to California Labor Code
- 5 § 201-203
- 6 8. Upon the Fifth Cause of Action, for consequential damages and penalties according to
- 7 proof pursuant to California Labor Code §§ 450, 2699 and 2802;
- 8 9. Upon the Sixth Cause of Action, for restitution to Plaintiff and other similarly effected
- 9 members of the general public of all funds unlawfully acquired by Defendants by means
- 10 of any acts or practices declared by this Court to be in violation of Business and
- 11 Professions Code § 17200 et seq., for an injunction to prohibit Defendants to engage in
- 12 the unfair business practices complained of herein, for an injunction requiring
- 13 Defendants to give notice to persons to whom restitution is owing of the means by
- 14 which to file for restitution;
- 15 10. On all causes of action for attorneys fees and costs as provided by California Labor
- 16 Code §§ 218.5, 1194, 2699 and Code of Civil Procedure § 1021.5 and the Fair Labor
- 17 Standards Act and for such other and further relief the Court may deem just and proper.
- 18

19 Dated: March 29, 2011

DIVERSITY LAW GROUP

20 By: _____/s/_____
21 Larry W. Lee, Esq.
22 Attorney for Plaintiff

23 **DEMAND FOR JURY TRIAL**

24 Plaintiff, for herself and the class, hereby demands a jury trial.

25
26 Dated: March 29, 2011

DIVERSITY LAW GROUP

27 By: _____/s/_____
28 Larry W. Lee, Esq.
Attorney for Plaintiff

Sandy Laranjo

From: ECF-CAND@cand.uscourts.gov
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Case Name: Harris v. Vector Marketing Corporation
Case Number: [3:08-cv-05198-EMC](#)
Filer: Alicia Harris
Document Number: [468](#)

Docket Text:

AMENDED COMPLAINT *Fourth Amended Class and Collective Action Complaint for Damages and Injunctive Relief* against Vector Marketing Corporation. Filed by Alicia Harris. (Humphrey, Christina) (Filed on 5/4/2011)

3:08-cv-05198-EMC Notice has been electronically mailed to:

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3:08-cv-05198-EMC Please see [General Order 45 Section IX C.2 and D](#); Notice has NOT been electronically mailed to:

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