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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

7/108

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JSC JSC

JEFFREY LAPAN, ASHWIN CHANDRA,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

PVH CORP.,

Defendant.

Cas. No. **CV 13 5006**

COMPLAINT

[CLASS ACTION]

JURY TRIAL DEMANDED

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1 Jeffrey Lapan and Ashwin Chandra (collectively, "Plaintiffs") on behalf of themselves
2 and all others similarly situated, alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiffs Jeffrey Lapan and Ashwin Chandra bring this action as a Nationwide
5 Breach of Contract Class on behalf of all current and former employees of PVH Corp.
6 ("Defendant") during the applicable statute of limitation periods of this action for breach of a
7 written contact up to the time this action is certified as a class action who were paid through a
8 payroll card program and charged fees resulting in class members not receiving their wages
9 free and clear from unlawful deductions.

10 2. Plaintiffs also bring this action as a Nationwide Representative Action on behalf
11 of current and former PVH Corp. employees employed within the last three years who elect to
12 opt-in to this action and who were paid through a payroll card program and charged fees
13 resulting in class members not receiving their wages free and clear from unlawful deductions,
14 not receiving their statutory minimum wage, and not receiving their overtime compensation in
15 violation of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq.*
16 ("FLSA").

17 3. Plaintiffs also bring this action as a California-only Sub-Class on behalf of all
18 current and former employees of PVH Corp. within the State of California during the last four
19 years up time the time this case is certified as a class action who were paid through a payroll
20 card program and charged fees resulting in class members not receiving their wages free and
21 clear from unlawful deductions, not receiving their minimum wage, and not receiving their
22 overtime compensation in violation of California law.

23 4. Plaintiffs also bring this action as a California-only Waiting Time Penalties Sub-
24 Class on behalf of all former California-based employees during the last three years up time
25 this case is certified as a class action who were not timely and properly paid their final wages at
26 time of termination in violation of California Labor Code §§ 201-203.

27 5. Plaintiffs are unaware of the names and capacities of all defendants who may
28 have caused or contributed to the harms complained of herein, but will seek leave to amend this

1 complaint once their identities become known to Plaintiffs. Upon information and belief,
2 Plaintiffs allege that at all relevant times each defendant was the officer, director, employee,
3 agent, representative, alter ego, joint employer, co-employer, or co-conspirator of each of the
4 other defendants, and has engaged in the conduct alleged herein was in the course and scope of
5 and in furtherance of such relationship.

6 6. The Nationwide Breach of Contract Class, the Nationwide Representative
7 Action, the California Sub-Class, and the California Waiting Time Penalties Sub-Class are
8 hereafter collectively referred to as the "Class."

9 7. The individual members of the Class are hereafter collectively referred to as the
10 "Class Members."

11 JURISDICTION AND VENUE

12 8. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1332
13 and 29 U.S.C. § 216(b) on account of the federal question at issue in this litigation and diversity
14 between the parties.

15 9. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 over Plaintiffs'
16 state law claims because those claims derive from a common nucleus of operative facts.

17 10. Venue is proper pursuant to 28 U.S.C. § 1391 as Defendant is subject to
18 personal jurisdiction in this district because it does business in this judicial district. Defendant
19 has not designated a principal place of business in California.

20 PARTIES

21 11. Plaintiff Jeffrey Lapan is a resident of the State of California and has been
22 employed by Defendant during the statutory time period covered by this complaint. Plaintiff
23 Lapan was paid through Defendant's payroll card program. Plaintiff Lapan did not receive all
24 of his wages due and owing because he was charged fees associated with the use of
25 Defendant's payroll card.

26 12. For purposes of the Nationwide Representative Action, Plaintiff Lapan consents
27 in writing to be a party to this action, pursuant to 29 U.S.C. § 216(b).

28 13. Plaintiff Ashwin Chandra is a resident of the State of California and was

1 employed by Defendant during the statutory time period covered by this complaint. Plaintiff
2 Chandra was paid through Defendant's payroll card program. Plaintiff Chandra did not receive
3 all of his wages due and owing because he was charged fees associated with the use of
4 Defendant's payroll card. Additionally, Plaintiff Chandra was not timely paid all of his final
5 wages at time of termination.

6 14. For purposes of the Nationwide Representative Action, Plaintiff Chandra
7 consents in writing to be a party to this action, pursuant to 29 U.S.C. § 216(b).

8 15. At all relevant times during the applicable class period, Defendant PVH Corp. is
9 a publicly traded company with its principal place of business in New York, New York. PVH
10 Corp. is one of the world's largest apparel companies and, as a segment of its business,
11 operates retail stores, principally in outlet malls, under brands such as *Calvin Klein, Tommy*
12 *Hilfiger, Van Heusen, IZOD, and G. H. Bass & Co.*

13 16. Defendant operates nationwide and does business within this judicial district.
14 Defendant employs and has employed, upon information and belief, over one hundred
15 employees in the State of California who were paid through a payroll card and charged a fee
16 during the statutory coverage of this action. Plaintiffs estimate the Nationwide Class to be in
17 excess of the size of the estimated California Class during the relevant statute of limitation
18 periods.

19 **FACTUAL ALLEGATIONS**

20 17. As a condition of employment, Defendant informed Plaintiffs and the Class
21 through Defendant's written policies and procedures that they would be paid in accordance
22 with state and federal law. Defendant informed Plaintiffs and the Class that they would be paid
23 their wages free and clear of unlawful deductions. Defendant informed Plaintiffs and the Class
24 that they would be paid their wages promptly at each pay period and they would have
25 immediate access to their wages. Plaintiffs and the Class relied on Defendant's representations
26 in accepting employment with Defendant to their detriment. Plaintiffs and the Class did not
27 agree to have their wages reduced by unlawful deductions or have their receipt of their wages
28 interfered with or delayed.

1 18. Plaintiffs and the Class were informed by Defendant that it was a companywide
2 policy and practice that they could only be paid through direct deposit or through a payroll
3 card. Defendant did not give Plaintiffs or the Class the choice of receiving a paper payroll
4 check.

5 19. Defendant, on a companywide basis, utilized various payroll cards, including the
6 TotalPay payroll card, through its payroll vendor ADP during the statutory coverage of this
7 action. The TotalPay payroll card is managed by Money Network and licensed by Visa U.S.A.,
8 Inc. Plaintiffs are informed and believe and thereon allege that ADP has discontinued the
9 TotalPay payroll card as of February 2013 and replaced this payroll card program with the
10 Aline Card. Defendant continues to utilize the TotalPay payroll card.

11 20. Because Plaintiffs did not have checking accounts at banking institutions,
12 Plaintiffs were given no choice but to be paid through Defendant's payroll card program.

13 21. Plaintiffs and the Class performed work for Defendant consistent with the
14 agreement between Plaintiffs and the Class and Defendant. Plaintiffs and the Class were paid
15 by Defendant on a weekly basis by having additional funds loaded onto their payroll cards.

16 22. Notwithstanding its written agreement to pay Plaintiffs and the Class in
17 accordance with state and federal law, Defendant's companywide payroll card program charged
18 various fees associated with the use of its payroll card resulting in Plaintiffs and the Class being
19 paid less than what Defendant agreed to pay for their work. Defendant's reduction in the
20 wages of Plaintiffs and the Class caused Plaintiffs and the Class to be paid less than the
21 statutory minimum wage and statutory overtime compensation for all hours worked.

22 23. Plaintiffs and the Class could not refuse to pay the fees, negotiate the fee
23 schedule, or in any way modify, amend or delay the types, amounts and frequency of fees
24 charged by Defendant. The fees for Defendant's payroll card were unilaterally imposed on
25 Plaintiffs and the Class by Defendant. The fees incurred by Plaintiffs and the Class were
26 automatically withdrawn from their payroll card accounts without their express authorization or
27 consent.

28 24. Plaintiffs and the Class were forced to incur fees in order to access their wages

1 as a result of Defendant's payroll card such that they were paid less than what Defendant
2 agreed to pay for their work.

3 25. As a result of Defendant's companywide payroll card program, former
4 employees in California were not timely or properly paid their final wages at time of
5 termination.

6 26. At some point during statute of limitation periods covered by this action,
7 Defendant caused to be charged various fees for transactions associated with the use of the
8 payroll card including, but not limited to, the following:

- 9 a. Monthly Maintenance Fee: \$1.50 per month.
- 10 b. All ATM Transactions: \$1.50 per transaction.
- 11 c. ATM Withdrawal at a Non-Networked ATM: \$2.00 per withdrawal.
- 12 d. ATM Withdrawal at a Networked ATM: \$5.00 per withdrawal.
- 13 e. Personal Identification Number Point of Sale Transactions: \$0.25 per
14 transaction.
- 15 f. Over-the-Counter Cash Withdrawal at a Member Bank: \$5.00 per
16 withdrawal.
- 17 g. Fund Transfer to an Account in the U.S. via ACH: \$2.00 per transfer.
- 18 h. Call to Automated Phone Service: \$0.50 per call after two calls per
19 month.
- 20 i. Call to Customer Service Representative: \$2.00 per call after one call
21 per month.
- 22 j. Web Access Money Transfer: \$2.00 after two per month.
- 23 k. ATM Balance Inquiry at any ATM: \$0.50 per inquiry.
- 24 l. ATM Declined Transaction: \$0.50 per declined transaction.
- 25 m. Debit Card Negative Balance: \$10.00 per negative balance transaction.
- 26 n. Replacement Card: \$6.00 to \$30.00 per card.
- 27 o. Visa ReadyLink: \$0.50 per transaction.
- 28 p. Secondary Card Initial Issuance: \$2.00 per secondary card.

1 q. Secondary Card Monthly Maintenance: \$1.50 per month and all of the
2 other fees associated with the primary card.

3 r. Additional Copies of Statement: \$1.50 per page.

4 27. All Class Members were subject to the same fee schedule and terms and
5 conditions of use of Defendant's payroll card program. All Class Members were charged the
6 same types of fees, for the same reason, and in the same amount. Plaintiffs are informed and
7 believe and thereon allege that the fee schedule for Defendant's payroll card was periodically
8 amended during the statutory time periods covered by this action. When the fee schedule was
9 amended, it was amended for all Class Members unilaterally.

10 28. Evidence reflecting the precise number, amount, and type of fees Plaintiffs and
11 the Class were charged is in the possession of Defendant.

12 **CLASS ACTION ALLEGATIONS**

13 29. Plaintiffs bring this action on behalf of a Nationwide Breach of Contract Class
14 and two California Sub-Classes pursuant to Federal Rule of Civil Procedure 23 and Plaintiffs
15 also bring a Nationwide Representative Action pursuant to the FLSA, 29 U.S.C. 216(b).

16 30. The members of the classes are so numerous that joinder of all members is
17 impracticable. The exact number of the members of the classes can be determined by
18 reviewing Defendant's records. Plaintiffs are informed and believe and thereon allege that
19 there are thousands of individuals in the Nationwide Class and Nationwide Representative
20 Action.

21 31. Plaintiffs will fairly and adequately protect the interests of the Class and have
22 retained counsel that are experienced and competent in class action and employment litigation.
23 Plaintiffs have no interests that are contrary to, or in conflict with, other class members.

24 32. A class action/collective action suit, such as the instant one, is superior to other
25 available means for fair and efficient adjudication of this lawsuit. The damages suffered by
26 individual members of the Class may be relatively small when compared to the expense and
27 burden of litigation, making it virtually impossible for members of the Class to individually
28 seek redress for the wrongs done to them.

1 33. A class action/collective action is, therefore, superior to other available methods
2 for the fair and efficient adjudication of the controversy. Absent these actions, the class
3 members likely will not obtain redress for their injuries and Defendant will retain the proceeds
4 of its unlawful conduct in failing to follow federal and state law.

5 34. Even if any individual class member could afford individual litigation against
6 Defendant, it would be unduly burdensome to the judicial system. Centralizing this litigation in
7 one forum will promote judicial economy and parity among the claims of individual members
8 of the Class and provide for judicial consistency.

9 35. There is a well-defined community of interest in the questions of law and fact
10 affecting the Class as a whole. Questions of law and fact common to each of the Class
11 predominate over any questions affecting solely individual members of the action including,
12 but not limited to, the following:

- 13 a. Whether Defendant's payroll card program, which charged fees and
14 caused employees to be paid less than what had been agreed to,
15 constitutes a breach of Defendant's agreement.
- 16 b. Whether Defendant's payroll card program caused employees to not
17 receive their wages promptly, free and clear, and without discount.
- 18 c. Whether Defendant's payroll card program caused employees to make
19 less than the statutory minimum wage and/or the statutory overtime
20 premium.
- 21 d. Whether the fees charged by Defendant's payroll card program
22 constitutes a willful refusal to pay the wages due and owing.
- 23 e. Whether Defendant withheld the wages of its employees through its
24 payroll card program.
- 25 f. Whether the fees charged by Defendant's payroll card program
26 constitutes a secret payment of a lower wage.
- 27 g. Whether Defendant timely and properly paid all of the wages due and
28 owing to employees at time of termination.

1 h. Whether Defendant converted the property of its employees by charging
2 them fees through its payroll card program.

3 36. The answers to these predominant common questions are equally applicable to
4 all Class Members and are answers that will drive resolution of this litigation.

5 37. Pursuant to Fed. R. Civ. Pro. 23(a) and (b), Plaintiffs seek to prosecute these
6 claims as a Nationwide Breach of Contract Class on behalf of themselves and the following
7 persons similarly situated:

8 All current and former employees PVH Corp. in the United States
9 of America who were paid through a payroll card program and
10 charged fees at any time from the start of the applicable statutory
11 coverage of this action for breach of a written contract until the time
12 this action is certified as a class action.

13 38. Pursuant to 29 U.S.C. § 207, Plaintiff seeks to prosecute the FLSA claims as a
14 collective action on behalf of:

15 All current and former employees PVH Corp. in the United States
16 of America who were paid through a payroll card program and
17 charged fees at any time from three years prior to the filing of this
18 action to the time this case is certified as a collective action.

19 39. Pursuant to Federal Rule of Civil Procedure 23(a) and (b), Plaintiffs also allege a
20 California-only Sub-Class of on behalf of themselves and the following persons similarly
21 situated:

22 All current and former employees of PVH Corp. within the State of
23 California who were paid through a payroll card program and
24 charged fees at any time from four years prior to the filing of this
25 action until the time this action is certified as a class action.

26 40. Pursuant to Federal Rule of Civil Procedure 23(a) and (b), Plaintiffs also allege a
27 California-only Waiting Time Penalties Sub-Class of on behalf of themselves and the following
28 persons similarly situated:

 All former employees of PVH Corp. within the State of California
who were not properly and timely paid their wages at time of
termination at any time from three years prior to the filing of this
action until the time this action is certified as a class action.

1 41. Notice of the pendency and any resolution of this action can be provided to
2 Classes by mail, print, and/or internet publication.

3 **COUNT ONE**

4 (Common Law Breach of Contract on behalf of Nationwide Breach of Contract Class)

5 42. Plaintiffs incorporate the allegations contained in the previous paragraphs of this
6 Complaint as if fully set forth herein.

7 43. Plaintiffs bring this cause of action for common law breach of a written contract
8 on behalf of themselves and all other members of the Nationwide Breach of Contract Class.

9 44. As part of the terms and conditions of employment, it was agreed that Defendant
10 would pay Plaintiffs and the Class for all work performed consistent with state and federal law.
11 It was agreed and understood that Defendant would pay their wages free and clear from
12 unlawful deductions.

13 45. As a part of the terms and conditions of employment, Defendant informed the
14 Plaintiffs and the Class that they would be paid their wages promptly at each pay period
15 without interference and they would have immediate access to their wages.

16 46. In consideration for being paid in accordance with state and federal laws,
17 Plaintiffs and the Class agreed to perform their duties and responsibilities and Plaintiffs and the
18 Class performed their duties and responsibilities.

19 47. Plaintiffs and the Class relied on Defendant's representations in accepting
20 employment with Defendant to their detriment. Plaintiffs and the Class did not agree to have
21 their wages reduced by unlawful deductions or have their receipt of their wages interfered,
22 obstructed, or delayed.

23 48. Plaintiffs and the Class were informed by Defendant that it was a companywide
24 policy and practice that they could only be paid through direct deposit or through a payroll
25 card. Defendant did not give Plaintiffs or the Class the choice of receiving a paper payroll
26 check.

27 49. Notwithstanding its written agreement to pay Plaintiffs and the Class in
28 accordance with state and federal law, Defendant breached its agreement by imposing its

1 companywide payroll card program on Plaintiffs and the Class which charged fees associated
2 with the use of its payroll card resulting in Plaintiffs and the Class being paid less than what
3 Defendant agreed to pay for their work and resulted in Plaintiffs and the Class being paid less
4 than the statutory minimum wage and statutory overtime compensation. Defendant breached
5 its agreement by unlawfully interfering with, obstructing and delaying Plaintiffs' and the Class'
6 prompt and immediate access to all of their wages due and owing. The terms and conditions of
7 Defendant's payroll card program imposed unreasonable and unlawful interference and
8 obstacles to the prompt and immediate access by Plaintiffs and the Class to their wages due and
9 owing.

10 50. Plaintiffs and the Class could not refuse to pay the fees, negotiate the fee
11 schedule, or in any way modify, amend or delay the types, amounts and frequency of fees
12 charged by Defendant. The fees for Defendant's payroll card were unilaterally imposed on
13 Plaintiffs and the Class by Defendant.

14 51. Defendant's breach of its agreement resulted in Plaintiff and the Class being
15 paid less than what Defendant had promised and resulted in Plaintiff and the Class being paid
16 less than the statutory minimum wage and statutory overtime compensation thereby causing
17 Plaintiff and the Class to be damaged thereby.

18 **COUNT TWO**

19 (Violations of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* on behalf of the
20 Nationwide Representative Action)

21 52. Plaintiffs incorporate the allegations contained in the previous paragraphs of this
22 Complaint as if fully set forth herein.

23 53. At all relevant times, Defendant has been, and continues to be, an employer
24 engaged in interstate commerce and/or the production of goods for commerce, within the
25 meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).

26 54. At all relevant times, Defendant employed, and/or continues to employ,
27 Plaintiffs and each member of the Nationwide Representative Action within the meaning of the
28 FLSA.

1 55. As stated above, Defendant had a policy and practice of failing to properly pay
2 wages, free and clear and without reduction, to its employees through its payroll card program.
3 Defendant's reduction in the wages of Plaintiffs and the Class caused Plaintiffs and the Class to
4 be paid less than the statutory minimum wage and statutory overtime compensation for all
5 hours worked.

6 56. Defendant's failure to pay Plaintiffs and all other members of the Nationwide
7 Representative Action their wages free and clear, without reduction, and at a rate not less than
8 the minimum wage and not less than one and one-half times their regular rate for work
9 performed beyond the 40 hour workweek is in violation of 29 U.S.C. §§ 203, 206, 207.

10 57. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA
11 within the meaning 29 U.S.C. § 255(a).

12 58. Due to the Defendant's FLSA violations, Plaintiffs, on behalf of the members of
13 the Nationwide Representative Action, are entitled to recover from Defendant unpaid minimum
14 wages, overtime compensation, an additional amount equal as liquidated damages, reasonable
15 attorneys' fees, and costs pursuant to 29 U.S.C. § 216(b).

16 **COUNT THREE**

17 (Minimum Wage violations on behalf of the California-only Sub Class)

18 59. Plaintiffs incorporate the allegations contained in the previous paragraphs of this
19 Complaint as if fully set forth herein.

20 60. Plaintiffs bring this cause of action for statutory minimum wage violations on
21 behalf of the California-only Sub Class.

22 61. Defendant's companywide payroll card program charged various fees associated
23 with the use of its payroll card resulting in Plaintiffs and the Class being paid less than the
24 statutory minimum wage in violation of California Labor Code §§ 1182.11 and 1182.12.

25 62. Defendant's failure to pay the statutory minimum wage permits Plaintiffs to
26 bring this action pursuant to California Labor Code § 1194. Plaintiffs and the Class seek the
27 unpaid balance of the minimum wage, including interest thereon, attorneys' fees and costs.

28 63. Defendant failure to pay the statutory minimum wage entitles Plaintiffs and the

1 Class to an award of liquidated damages pursuant to California Labor Code § 1194.2 and
2 penalties pursuant to California Labor Code §§ 1197.1 and 1199.

3 **COUNT FOUR**

4 (Overtime Wage violations on behalf of the California-only Sub Class)

5 64. Plaintiffs incorporate the allegations contained in the previous paragraphs of this
6 Complaint as if fully set forth herein.

7 65. Plaintiffs bring this cause of action for statutory overtime wage violations on
8 behalf of the California-only Sub Class.

9 66. Defendant's companywide payroll card program charged various fees associated
10 with the use of its payroll card resulting in Plaintiffs and the Class being paid less than the
11 statutory overtime wage in violation of California Labor Code § 510.

12 67. Defendant's failure to pay the statutory overtime wage permits Plaintiffs to
13 bring this action pursuant to California Labor Code § 1194. Plaintiffs and the Class seek the
14 unpaid balance of the overtime wage, including interest thereon, attorneys' fees and costs.

15 68. Defendant failure to pay the statutory overtime rate entitles Plaintiffs and the
16 Class to an award of penalties pursuant to California Labor Code § 558.

17 **COUNT FIVE**

18 (Violations of the California Labor Code on behalf of the California-only Sub Class)

19 69. Plaintiffs incorporate the allegations contained in the previous paragraphs of this
20 Complaint as if fully set forth herein.

21 70. Plaintiffs bring this cause of action for violations of the California Labor Code
22 on behalf of the California-only Sub Class.

23 71. As a result of Defendant's companywide payroll card program, Defendant: (a)
24 failed to pay the wages due and owing without discount in violation of Labor Code § 212; (b)
25 willfully refused to pay the wages due and payable in violation of Labor Code § 216; (c)
26 collected and received a part of the wages paid to its employees in violation of Labor Code §
27 221; (d) secretly paid a lower wage while purporting to pay the wage designated by contract or
28 statute in violation of Labor Code § 223; (e) charged the wages of employees for replacement

1 cards in violation of Labor Code §§ 224, 2802 and 2804; and, (f) failed to maintain and provide
2 employees with accurate and detailed records of wages earned in violation of Labor Code §§
3 226 and 1174.

4 72. As a result of Defendant's violations of the aforementioned statutes, Plaintiffs
5 and the class are entitled to damages as provided by statute, penalties pursuant to Labor Code
6 §§ 226, 226.3, 1174.5, and interest pursuant to Labor Code § 218.6.

7 **COUNT SIX**

8 (Violations of California Unfair Competition Law, Business & Professions Code § 17200 *et*
9 *seq.* on behalf of the California-only Sub Class)

10 73. Plaintiffs incorporate the allegations contained in the previous paragraphs of this
11 Complaint as if fully set forth herein.

12 74. Defendant's payroll card program has caused its employees to not be paid their
13 wages free and clear without reduction, caused its employees not to receive their statutory
14 minimum wage, and caused its employees not to receive their statutory overtime compensation
15 in breach of Defendant's agreement with Plaintiffs and the Class.

16 75. Defendant's payroll card program has caused its employees to not be paid their
17 wages free and clear without reduction, caused its employees not to receive their statutory
18 minimum wage, and caused its employees not to receive their statutory overtime compensation
19 in violation of the FLSA, 29 U.S.C. §§ 203, 206, 207.

20 76. Defendant's payroll card program has caused its employees to not be paid their
21 wages free and clear without reduction, caused its employees not to receive their statutory
22 minimum wage, and caused its employees not to receive their statutory overtime compensation
23 in violation of California Labor Code §§ 212, 216, 221, 223, 224, 226, 510, 1174, 1182.11,
24 1182.12, 1194, 2802.

25 77. As a result of the foregoing, Defendant has engaged in unlawful, unfair and
26 fraudulent conduct and committed acts of unfair competition in violation of California Bus. &
27 Prof. Code § 17200 *et seq.*

28 78. Pursuant to Bus. & Prof. Code § 17203, Plaintiffs request an order requiring

1 Defendant to make restitution of all wages due and interest thereon to the California-only Sub
2 Class in an amount to be proven at trial.

3 79. Plaintiffs, and all persons similarly situated, are further entitled to and do seek a
4 both a declaration that the above-described business practices are unfair, unlawful and/or
5 fraudulent and injunctive relief restraining Defendant from engaging in any of such business
6 practices in the future. Such misconduct by Defendant, unless and until enjoined and restrained
7 by order of this Court, will cause great and irreparable injury to all members of the class in that
8 the Defendant will continue to violate state and federal law unless specifically ordered to
9 comply with same. This expectation of future violations will require current and future
10 employees to repeatedly and continuously seek legal redress in order to gain compensation to
11 which they are entitled under California law. Plaintiff has no other adequate remedy at law to
12 insure future compliance with the laws alleged to have been violated herein.

13 **COUNT SEVEN**

14 (Waiting Time Penalties, California Labor Code § 203)

15 80. Plaintiffs incorporate the allegations contained in the previous paragraphs of this
16 Complaint as if fully set forth herein.

17 81. Plaintiffs bring this cause of action for waiting time penalties pursuant to
18 California Labor Code § 203 on behalf of themselves and all other members of the California
19 Waiting Time Penalty Sub-Class.

20 82. Defendant willfully and intentionally failed to pay Plaintiff Chandra and the
21 other members of the California Waiting Time Penalty Sub-Class, who are no longer employed
22 by Defendant, all the wages they were due and/or by the deadlines imposed under Labor Code
23 §§ 201 and 202 upon cessation of the Class Members' employment with Defendant. Plaintiff
24 and the other members of the California Sub-Class did not secret or absent themselves from
25 Defendant nor refuse to accept the earned and unpaid wages from Defendant. Accordingly,
26 Plaintiff and members of the California Sub-Class no longer employed by Defendant are
27 entitled to waiting time penalties per Labor Code § 203 of up to thirty (30) days' pay, in an
28 amount to be proven at trial.

1 **COUNT EIGHT**

2 (Conversion on behalf of the California-only Sub Class)

3 83. Plaintiffs incorporate the allegations contained in the previous paragraphs of this
4 Complaint as if fully set forth herein.

5 84. Plaintiff brings this cause of action for conversion on behalf of himself and all
6 other members of the California Sub-Class.

7 85. At the time Defendant refused to pay the wages due to Plaintiffs and the Class,
8 as alleged herein, Plaintiff and the class owned and had the right to possess the withheld wages.
9 Defendant willfully and without legal justification interfered with the rights of Plaintiffs and
10 the Class to own and possess their wages. The amount of those wages is capable of being made
11 certain from a review of the information of Plaintiffs and Class Members and from the records
12 of Defendant.

13 86. In refusing to pay wages to Plaintiffs and the Class, Defendant unlawfully and
14 intentionally took and converted the property of Plaintiffs and the Class to its own use. At the
15 time the conversion took place Plaintiffs and the Class were entitled to immediate possession of
16 the amounts of wages payable. This conversion was oppressive, malicious and fraudulent.
17 This conversion was concealed by the Defendant from Plaintiffs and the Class.

18 87. Plaintiffs and the Class have been injured by this conversion and are entitled to:
19 (a) all monies converted by the Defendant with interest thereon; (b) any and all profits whether
20 direct or indirect, the Defendant acquired by its conversion; and, (c) punitive and exemplary
21 damages.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiffs prays for:

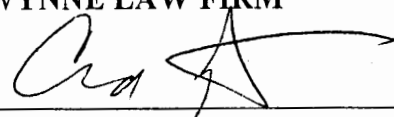
- 24 1. For an order certifying the proposed classes, sub-classes and representative
25 actions;
- 26 2. For compensatory and punitive damages and all other statutory remedies
27 permitted;
- 28 3. For an injunction and declaratory relief;

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- 4. For penalties as alleged herein;
- 5. For prejudgment interest;
- 6. For an order awarding attorneys' fees and costs pursuant to Labor Code § 1194,
Code of Civil Procedure § 1021.5, and any other statutory or equitable basis;
- 7. For equitable restitution of all wages improperly withheld; and,
- 8. For all other relief as the Court deems just.

Dated: October 23, 2013

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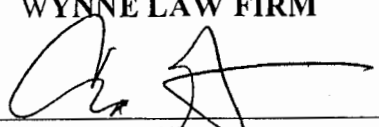
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Counsel for Plaintiffs

JURY DEMAND

Plaintiffs hereby request a jury trial on all issues so triable.

Dated: October 23, 2013

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