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ENDORSED

2010 MAR 29 P 1:15

David H. Yamasaki, Clerk of the Superior Court
County of Santa Clara, California

By A. Ilias
County Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

MARIANNE ARIAS, individually and on
behalf of all others similarly situated,

NO. 110CV167769

CLASS ACTION

Plaintiff,

COMPLAINT

vs.

1. Failure to Provide Mandated Rest Periods
2. Failure to Provide Mandated Meal Periods.
3. Waiting Time Penalties
4. Unfair Business Practices, Bus & Prof Code section 17200

ANNA'S LINEN COMPANY, and DOES
1 through 50 inclusive,

Defendants.

COMES NOW, Plaintiff, MARIANNE ARIAS, hereinafter "Plaintiff," an individual over the age of eighteen (18), and brings this challenge to Defendants' lucrative, repressive and unlawful business practices on behalf of herself and a class of all others

1 similarly situated and for a Cause of Action against Defendants, ANNA'S LINEN COMPANY,
2 and DOES 1-50, inclusive, (hereinafter Defendants) and each of them, alleges as follows:

3 **THE PARTIES, JURISDICTION AND VENUE**

4
5 **1.**

6 This class action is brought pursuant to §382 of the California Code of Civil Procedure.
7 The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction
8 limits of the Superior Court and will be established according to proof at trial. The monetary
9 damages sought on behalf of each and every member of the class and as aggregate class
10 damages exceed those jurisdictional limits as well. However, the claims of individual class
11 members, including Plaintiff, are under the \$75,000 jurisdictional threshold for federal court.
12 For example, a class member who was or has been employed for a relatively brief period could
13 never reasonably be expected to receive a recovery of \$75,000 or more. Further there is no
14 federal question at issue, as all the issues related to payment wages alleged herein are based
15 solely on California law and statutes, including the Labor Code, Civil Code, Code of Civil
16 Procedure, and Business and Professions Code.

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18
19 **2.**

20 Plaintiff, Marianne Arias ("Plaintiff") was employed in California as a salaried store
21 employee of ANNA'S LINEN COMPANY. Ms. Arias worked in Defendants' ANNA'S
22 LINEN stores as a salaried store employee within four years prior to the filing of this
23 Complaint.

24
25 **3.**

26 Plaintiff brings this action against Anna's Linen Company (including all California
27 Anna's Linen stores, collectively "Anna's Linens") for engaging in a uniform policy and
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1 systematic scheme of wage abuse against their salary paid employees in California. This
2 scheme involved, inter alia, failing to provide the salaried store employees with uninterrupted,
3 off-duty meal periods lasting not less than thirty (30) minutes; and failing to authorize and
4 permit the salaried store employees to take uninterrupted, off-duty rest periods according to
5 California law. As a result of Defendant's systematic and clandestine scheme the salaried store
6 employees throughout California were deprived of mandated meal periods and rest breaks.
7 Accordingly, Anna's Linen has violated California common and statutory laws as described
8 more particularly below.
9

11 4.

12 Defendants own/owned and operate/operated an industry, business and establishment in
13 dozens of separate geographic locations within the State of California, including Santa Clara
14 County, for the purpose of selling merchandise under the name of ANNA'S LINENS. As such,
15 and based upon all the facts and circumstances incident to Defendants' business in California,
16 Defendants are subject to California Labor Code Sections 1194, 226.7, 500, et seq., 2698, et
17 seq., California Business and Professions Code Section 17200, et seq., (Unfair Practices Act)
18 and the applicable wage order(s) issued by the Industrial Welfare Commission. At least some
19 of the acts complained of herein occurred in Santa Clara County as Defendants own/owned and
20 operate/operated stores in the County of Santa Clara. Plaintiff is informed and believes and
21 thereon alleges that at all times herein mentioned Defendants are and were corporations
22 licensed to do business and actually doing business in the State of California.
23

25 5.

26 At all times herein mentioned Plaintiff and the class identified herein worked for
27 Defendants as salaried store employees in Defendants' ANNA'S LINEN COMPANY. These
28

1 store positions are not positions which involve work falling within any exception to the above-
2 referenced Labor Code sections, the Unfair Practices Act and/or California Industrial Welfare
3 Commission orders applicable to Defendants' business.
4

5 6.

6 Plaintiff does not know the true names or capacities, whether individual, partner or
7 corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason,
8 said Defendants are sued under such fictitious names, and Plaintiff prays leave to amend this
9 complaint when the true names and capacities are known. Plaintiff is informed and believes
10 and thereon alleges that each of said fictitious Defendants was responsible in some way for the
11 matters alleged herein and proximately caused Plaintiff and members of the class to be subject
12 to the illegal employment practices, wrongs and injuries complained of herein.
13

14 7.

15 At all times herein mentioned, each of said Defendants participated in the doing of the
16 acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
17 Defendants, and each of them, were the agents, servants and employees of each of the other
18 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
19 acting within the course and scope of said agency and employment.
20
21

22 8.

23 At all times herein mentioned, Defendants, and each of them, were members of, and
24 engaged in, a joint venture, partnership and common enterprise, and acting within the course
25 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.
26

27 9.

28 At all times herein mentioned, the acts and omissions of various Defendants, and each

1 of them, concurred and contributed to the various acts and omissions of each and all of the
2 other Defendants in proximately causing the injuries and damages as herein alleged.

3
4 **10.**

5 At all times herein mentioned, Defendants, and each of them, ratified each and every act
6 or omission complained of herein. At all times herein mentioned, the Defendants, and each of
7 them, aided and abetted the acts and omissions of each and all of the other Defendants in
8 proximately causing the damages as herein alleged. Further, at all times mentioned herein, the
9 wage and hour related compensation policies of stores in California are and were dictated by,
10 controlled by, and ratified by the Defendants herein and each of them.

11
12 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

13 **11.**

14 Plaintiff and all members of the class identified herein were regularly scheduled as a
15 matter of uniform company policy to work and in fact worked as salaried store employees at
16 Defendants' retail locations in California. Defendant illegally failed to provide the Plaintiff and
17 class members the required rest and meal periods during the relevant time period as required
18 under the California Labor Code and IWC Wage Orders. Plaintiff and the class members thus
19 are entitled to any and all applicable wages, penalties, restitution, attorney fees and any other
20 relief as this Court may deem proper.

21
22
23 **12.**

24 This complaint is brought by Plaintiff pursuant to California Code of Civil Procedure
25 Section 382 on behalf of a class. A previous complaint was filed on or about September 24,
26 2004 entitled *Elisa Coe, et al v. Anna's Linen Company, et al*, Orange County Superior Court
27 action no. 04 CC 00660 ("COE"). The COE action alleged meal and rest break violations for a
28

1 class that included, inter alia, the same class alleged herein, to wit, California based salaried
2 store employees. The filing of the COE action tolled the statute of limitations for the claims
3 alleged herein. All claims alleged herein arise under California law for which Plaintiff seeks
4 relief authorized under California law. The class is comprised of, and defined as:

5
6 All California based salaried store employees who worked at any time during
7 the four years preceding the filing of the COE Complaint up until the date of
8 class certification at any retail store in the State of California owned, operated
9 and/or acquired by Defendants.

10 The members of the class are so numerous that joinder of all members would be impractical, if
11 not impossible. The members of the class are readily ascertainable by a review of Defendants'
12 records. Further, the subject matter of this action both as to factual matters and as to matters of
13 law, are such that there are questions of law and fact common to the class which predominate
14 over questions affecting only individual members including, among other things, the following:

15
16 a. Statistically, one hundred percent of the class members were paid on a salary
17 basis;

18 b. 100% of the class member employees are entitled to the benefit of the meal and
19 rest break laws in California -- and fall within the meal and rest periods regulations mandated
20 by the California Labor Code and IWC Wage Order;

21
22 c. Insufficient staffing levels and high work demands routinely prevented class
23 members from being authorized and permitted to take "off duty" rest and/or provided meal
24 periods during the relevant time period as required under California law. Defendants did not
25 provide the class members with "off-duty" meal periods or authorize/permit the class members
26 to take "off-duty" rest periods.
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13.

As a pattern and practice, also in violation of the aforementioned labor laws and wage orders, Defendants did not maintain any records pertaining to when salaried store employees took statutory mandated meal periods.

14.

There are predominant common questions of law and fact and a community of interest amongst Plaintiff and the claims of the absent class members concerning whether Defendants' regular business custom and practice of requiring employees to work through statutory mandated meal and rest periods was in violation of the California Labor Code 500, et seq., the Unfair Practices Act and the applicable California Industrial Welfare Commission wage orders. For instance, questions of fact and/or law common to the members of the aforesaid class -- which predominate over any questions which may affect only individual members -- are:

i. Whether Defendants' considered Plaintiff and the class to be exempt from the meal and rest break laws in California;

ii. Whether Plaintiff and the class could waive the wage and hour laws designed for their benefit under California law and whether such waivers were voluntary, knowing and valid;

iii. Whether Defendants' conduct constituted an illegal, or unfair, business practice in violation of California law;

iv. Whether Plaintiff and the class are entitled to compensatory damages pursuant to the California Labor Code;

vi. Whether Plaintiff and the class are entitled to injunctive relief, including restitution pursuant to California law.

1 their former employer for real and justifiable fear of retaliation and permanent damage to their
2 careers at subsequent employment.

3
4 **17.**

5 The prosecution of separate actions by the individual class members, even if possible,
6 would create a substantial risk of (1) inconsistent or varying adjudications with respect to
7 individual class members against the Defendants and which would establish potentially
8 incompatible standards of conduct for the Defendants, and/or (2) adjudications with respect to
9 individual class members which would, as a practical matter, be dispositive of the interests of
10 the other class members not parties to the adjudications or which would substantially impair or
11 impede the ability of the class members to protect their interests. Further, the claims of the
12 individual members of the class are not sufficiently large to warrant vigorous individual
13 prosecution considering all of the concomitant costs and expenses.
14

15
16 **18.**

17 Such a pattern, practice and uniform administration of corporate policy regarding illegal
18 employee compensation, as described herein, is unlawful and creates an entitlement to recovery
19 by the Plaintiff and the class identified herein, in a civil action, for the unpaid balance of the
20 full amount of the minimum wage owed, including statutory penalties, reasonable attorneys
21 fees, and costs of suit according to the mandates of California Labor Code Sections 1194 and
22 2298, et seq.law.
23

24 **19.**

25 Proof of a common business practice or factual pattern, of which the named Plaintiff's
26 experiences are representative, will establish the right of each of the members of the Plaintiff
27 class to recovery on the causes of action alleged herein.
28

1 20.

2 The Plaintiff class is entitled in common to a specific fund with respect to the meal and
3 rest period wages illegally and unfairly retained by Defendants. The Plaintiff class is entitled in
4 common to restitution of those funds being improperly withheld and unpaid by Defendants.
5 This action is brought for the benefit of the entire class and will result in the creation of a
6 common fund.
7

8 WHEREFORE, Plaintiff on her own behalf and on behalf of the members of the class
9 prays for judgment as hereinafter set forth.
10

11 **FIRST CAUSE OF ACTION**

12 **FAILURE TO ALLOW REST PERIODS IN VIOLATION OF IWC WAGE**
13 **ORDER 7-2001, LABOR CODE SECTIONS 226.7 AND 2698 ET SEQ.**
14 **(ON BEHALF OF THE PLAINTIFF AND THE PLAINTIFF CLASS)**
15

16 21.

17 Plaintiff hereby incorporates by reference each and every paragraph above, as if fully
18 set forth herein by reference.

19 22.

20 At all times herein mentioned Plaintiff and the putative class members were non-exempt
21 employees and subject to the rest period provisions of the Industrial Welfare Commission.
22

23 23.

24 At all times herein referenced, Defendants failed to authorize and permit Plaintiff and
25 the putative class members to take rest periods during every four hour period worked. The law
26 requires that employers allow employees such as Plaintiff and the putative to take a 10 minute
27 off-duty break during every four hour work period. The prescribed break should be allowed, as
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1 close to the middle of the four hour period as possible, according to the Industrial Welfare
2 Commission (hereinafter "IWC") wage orders. Thus, the Plaintiff and the putative class
3 members should have been afforded a 10 minute off-duty break at or around the two hour point
4 of any four hour work period. Defendants failed to authorize and permit such breaks.
5

6 24.

7 Wages are due to employees for "all hours worked" under IWC Order 7-2001 § 4(A).
8 "[R]est periods shall be counted as hours worked" . . . pursuant to IWC Order 7-2001 § 12(A).
9 The wage order goes on to say that there shall be no deduction from wages. Thus, wages are
10 due to Plaintiff and the class to compensate for the rest periods minimum wage reimbursement
11 of one hour per each rest period violation under applicable laws, rules, requirements, and
12 regulations. In addition, the plaintiff class is entitled to recover interest on the unpaid rest
13 period wages denied them. Further, the plaintiff class demands reasonable attorney's fees and
14 costs of suit, pursuant to Labor Code § 1194, plus all appropriate penalties for the wage and
15 hour violations pursuant to the Private Attorney General Act, Labor Code section 2698 et seq.
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18 25.

19 Plaintiff's Counsel has taken the steps necessary to exhaust the administrative remedies
20 and Plaintiff has exhausted his administrative remedies under California Labor Code Section
21 2698-99, et seq.
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1 30.

2 Under California law, meal periods must be recorded unless all operations cease during
3 the scheduled meal periods. Defendants failed to record Plaintiff and the putative class
4 members' meal periods (and operations never ceased during the work day). Plaintiff is not only
5 entitled to compensation for the lost meal periods, but to the extent that DEFENDANT claims
6 that meal periods were taken which are not documented, Plaintiffs also seek all applicable
7 penalties for Defendants' failure to keep accurate time records and to issue plaintiff and the
8 plaintiff class accurate earnings statements.
9

10 31.

11 Plaintiff's Counsel has taken the steps necessary to exhaust the administrative remedies
12 and Plaintiff has exhausted his administrative remedies under California Labor Code Section
13 2698-99 et seq.
14

15 **THIRD CAUSE OF ACTION**

16 **VIOLETION OF LABOR CODE §203 FAILURE TO PAY WAGES DUE FORMER**
17 **EMPLOYEES (ON BEHALF OF PLAINTIFF AND THE PLAINTIFF CLASS)**
18

19 32.

20 Plaintiff hereby realleges each and every paragraph above by reference, as if fully set
21 forth herein.
22

23 33.

24 California Labor Code §§ 201, 202 require that an employer pay all wages due to an
25 employee after said employee is discharged or quits.
26

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1 34.

2 California Labor Code § 203 provides a penalty for the willful failure to pay all wages
3 due to an employee who is discharged or quits. This penalty consists of an amount equal to the
4 sum of the employee's wages at the employee's prior rate of pay, until the unpaid wages are
5 paid, in an amount not to exceed the equivalent of 30 days pay.
6

7 35.

8 During all relevant times prior to the filing of the present action, numerous individuals
9 employed by Defendants as salaried employees have left the company as a result of being
10 discharged or having voluntarily terminated their employment.
11

12 36.

13 While employed by Defendants, these salaried employees were entitled to
14 compensation for meal periods and rest periods not given, all as set forth above.
15

16 37.

17 Defendants failed to pay the minimum wages due to Plaintiff and the putative class
18 members who left their employment at Defendants by failing to pay for the meal periods and
19 rest periods due and unpaid. Defendants are required to reimburse their former employees all
20 unpaid wages earned and an additional penalty equal to the daily earnings of such employees
21 up to an amount equal to 30 days pay. Failure to do so is yet another Unfair Business Practice,
22 prohibited by Business and Professions Code § 17200, *et seq.*
23

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1 FOURTH CAUSE OF ACTION

2 VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200 et seq.

3 38.

4
5 Plaintiff herein repeats and re-alleges as though fully set forth at length each and every
6 paragraph of this Complaint, excepting those paragraphs which are inconsistent with this cause
7 of action for relief regarding Defendants' violations of Business and Professions Code 17200 et
8 seq. (Unfair Practices Act).

9 39.

10
11 At all times herein mentioned, Defendants, and each of them, have engaged in unfair
12 business practices in California by practicing, employing and utilizing the employment
13 practices outlined in herein, including but not limited to failing to authorize and permit rest
14 periods for Plaintiff and the putative class and for failing to provide meal periods to Plaintiff
15 and the putative class, failing to keep statutorily required records of meal periods, failing to
16 abide by LC sections 226, 1194, 226.7, 200, et seq., and 1198. Defendants' utilization of such
17 unfair business practices constitutes unfair competition and provides an unfair advantage over
18 Defendants' competitors. Plaintiff – and members of the class -- seeks full restitution, as
19 necessary and according to proof, to restore any and all monies withheld, acquired and/or
20 converted by the Defendants by means of the unfair practices complained of herein. Plaintiff
21 seeks, on her own behalf and on behalf of the class, the appointment of a receiver, as necessary.

22 40.

23
24 Plaintiff is informed and believes and on that basis alleges that at all times herein
25 mentioned Defendants have engaged in unlawful, deceptive and unfair business practices, as
26 proscribed by California Business and Professions Code section 17200, including those set
27
28

1 forth in Paragraphs xx through xx herein thereby depriving Plaintiff and other members of the
2 class minimum working condition standards and conditions due to them under the California
3 labor laws and Industrial Welfare Commission wage orders as specifically described herein.
4

5 **41.**

6 Plaintiff, and all persons similarly situated, are further entitled to and do seek a both a
7 declaration that the above-described business practices are unfair, unlawful and/or fraudulent
8 and injunctive relief restraining Defendants from engaging in any of such business practices in
9 the future. Such misconduct by Defendants, unless and until enjoined and restrained by order
10 of this Court, will cause great and irreparable injury to all members of the class in that the
11 Defendants will continue to violate these California laws, represented by labor statutes and
12 IWC Wage Orders, unless specifically ordered to comply with same. This expectation of future
13 violations will require current and future employees to repeatedly and continuously seek legal
14 redress in order to gain compensation to which they are entitled under California law. Plaintiff
15 has no other adequate remedy at law to insure future compliance with the California labor laws
16 and wage orders alleged to have been violated herein.
17
18

19 WHEREFORE, Plaintiff, on his own behalf and on behalf of the members of the class,
20 prays for judgment as follows.

- 21 1. Determining that this action may proceed and be maintained as a class action;
- 22 2. For the First and Second Causes of Action:
 - 23 a. For compensatory damages against Defendants to be paid to
24 plaintiff and plaintiff class, including all minimum wages owed
25 to the class under California law.
 - 26 b. For interest and prejudgment interest on the above amounts as
27
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1 allowed by Labor Code and California Civil Code § 3287;

2 c. For all appropriate penalties for Defendants wage and hour
3 violations under the IWC wage orders and the California Labor
4 Code, authorized pursuant to Labor Code section 2698, et seq.
5 (Private Attorney General Act).

6
7 d. For reasonable attorney's fees and costs, pursuant to the Labor
8 Code and Code of Civil Procedure.

9
10 3. For the Third Cause of Action

11 a. For payment of all monies Defendants have collected, taken
12 and received from CLASS MEMBERS.

13 b. For the waiting time penalty.

14 c. For Attorney's fees and costs.

15
16 4. For the Fourth Cause of Action.

17 a. Ordering Defendants, their agents, servants, and employees, and
18 all persons acting, directly or indirectly, in concert with it, to restore all
19 funds to Plaintiff and each member of the Class acquired by means of
20 any act or practice declared by this Court to be unlawful, unfair or
21 fraudulent and therefore constitute unfair competition under § 17200 et
22 seq. of the California Business and Professions Code;

23 b. For injunctive relief pursuant to California Business & Professions Code
24 § 17203, consisting of, inter alia: (1) a declaration that Defendant have
25 engaged in unlawful and unfair business acts and practices in violation of
26 California Business & Professions Code § 17200 et seq.; (2) a
27 preliminary and/or permanent injunction enjoining Defendants and their
28 respective successors, agents, servants, officers, directors, employees and
all persons acting in concert with them from pursuing the policies, acts

1 and practices complained of herein and prohibiting Defendants from
2 continuing such acts of unfair and illegal business acts and practices; (3)
3 Restitution pursuant to California Industrial Welfare Commission Order
4 No. 7-2001(11)(D) and Labor Code section 226.7, which provides: “[i]f
5 an employer fails to provide an employee a meal period in accordance
6 with the applicable provisions of this Order, the employer shall pay the
7 employee one (1) hour of pay at the employee's regular rate of
8 compensation for each work day that the rest period is not provided.”

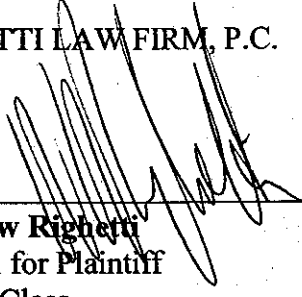
9 c. Restitution pursuant to California Industrial Welfare Commission Order
10 No. 7-2001(12)(C), which provides: “[i]f an employer fails to provide an
11 employee a rest period in accordance with the applicable provisions of
12 this Order, the employer shall pay the employee one (1) hour of pay at
13 the employee's regular rate of compensation for each work day that the
14 rest period is not provided;”

15
16 5. Awarding Plaintiff and the Class their attorneys' fees and costs of suit to the
17 extent permitted by law;

18 6. All other relief as this Court may deem just and proper.

19
20 DATED: March 26, 2010

RIGHETTI LAW FIRM, P.C.

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24 **Matthew Righetti**
25 Counsel for Plaintiff
26 and the Class
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