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Los Angeles Superior Court

MAY 12 2010

John A. Blake, Executive Officer/Clerk
By Dorothy Swain, Deputy
DOROTHY SWAIN

MATTHEW RIGHETTI {SBN: 121012}
JOHN GLUGOSKI {SBN: 191551}
MICHAEL RIGHETTI {SBN: 258541}
RIGHETTI LAW FIRM, P.C.
456 Montgomery Street, Suite 1400
San Francisco, CA 94104
Tel: (415) 983-0900
Fax: (415) 397-9005

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ALMA SALINAS, Individually and on
behalf of all persons similarly situated,

Plaintiff,

vs.

OVERHILL FARMS, INC., AND DOES 1
THROUGH 100, INCLUSIVE,

Defendants.

CLASS ACTION

COMPLAINT BC437574

CASE No.

1. Failure to Provide Mandated Meal Periods
2. Failure to Authorize/Permit Mandated Rest Periods
3. Failure to Pay Minimum Wage
4. Failure to Make Payments Within the Required Time
5. Violation of B & P § 17200, et seq.
6. Labor Code Section 2698, et seq. (PAGA)

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff, ALMA SALINAS, 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 similarly situated and for

1
2 a Cause of Action against Defendants, OVERHILL FARMS, INC., and DOES 1-100, inclusive,
3 (hereinafter Defendants) and each of them, alleges as follows:

4 **INTRODUCTION**

5 **1.**

6 This is a class action against Defendants to challenge their policy and practice of requiring
7 their non-exempt employees to work substantial amounts of time "off-the-clock" and without pay,
8 and failing to provide their non-exempt employees with the meal and rest periods to which they
9 are entitled by law.

10 **2.**

11 Plaintiff and the members of the Class are hourly paid production-line employees. Under
12 Defendants' wage compensation system, Overhill Farms does not pay Plaintiff and class members
13 for all required pre- and post- production-line activities that are necessary and integral to their
14 overall employment responsibilities, such as: donning and doffing protective equipment and gear,
15 waiting in lines to receive clean Personal Protective Equipment (hereinafter "PPE"), walking from
16 lockers to supply rooms and from supply rooms to work stations, doffing PPE during meal and
17 rest breaks, donning PPE during meal and rest breaks, waiting in lines to use hoses, using hoses
18 and hot water stations to wash PPE and persons, time spent waiting to punch out, walking from
19 work stations to lockers and time spent returning PPE to lockers.

20 **3.**

21 The time that Defendants require their employees to work without compensation is
22 substantial, and aggregately deprives Plaintiff and the Class of many hours' worth of wages (both
23 straight-time and overtime) per week. In addition, because Plaintiff and the Class are required to
24 perform numerous tasks both at the beginning and the end of their meal and rest breaks, they are
25 not provided with 30 minutes of off-duty time for meal breaks (though a full 30 minutes is
26 deducted from their pay), or 10 minutes of off-duty time in which to rest, as required by
27
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1
2 California law. Nor was Plaintiff or the Class paid one hour of wages for each meal/rest period
3 violation as statutorily mandated under California law.

4 **4.**

5 As a result of all of these violations, Defendants are also liable for various other penalties
6 under the Labor Code, and for violation the Unfair Business Practices Act ("UCL"), Business
7 and Professions Code §§17200, et seq.
8

9 **5.**

10 Plaintiff seeks full compensation and restitution on behalf of herself and all others
11 similarly situated individuals for all unpaid wages, unpaid overtime, denied meal and rest periods,
12 and waiting time penalties. Plaintiff further seeks penalties on behalf of themselves and the
13 proposed California-law class for Defendants' violations of the Labor Code and California
14 Industrial Welfare Commission ("IWC") wage orders. Plaintiff also seeks declaratory and
15 injunctive relief, including restitution. Finally, Plaintiff seek reasonable attorneys' fees and costs
16 under California Labor Code Section 1194 and California Code of Civil Procedure § 1021.5.
17

18 **PARTIES**

19 **6.**

20 Plaintiff Salinas has been employed by Overhill Farms on the production line at
21 Overhill Farms' California facility within the statutory period in this case. Plaintiff Salinas is a
22 resident of Inglewood in Los Angeles County, California.
23

24 **7.**

25 Defendant Overhill Farms, Inc. is, and at all times has been, a manufacturer of frozen food
26 products. It maintains a major manufacturing facility in Vernon located in Los Angeles County,
27
28

1
2 California.

3 8.

4 The true names and capacities, whether individual, corporate, associate, or otherwise of
5 Does 1-100, inclusive, are unknown to Plaintiff, who therefore sues the Doe Defendants by
6 fictitious names. Plaintiff is informed, believes, and thereon alleges that each of these fictitiously-
7 named Defendants are responsible in some manner for the occurrences and Plaintiff's and the
8 Class's
9 damages as herein alleged. Plaintiff will amend this Complaint to show their true names and
10 capacities when they have been ascertained.
11

12 9.

13 At all relevant times, Defendants have done business under the laws of California, have
14 had places of business in California, including in this judicial district, and have employed Class
15 Members in this judicial district. Defendants are "persons" as defined in California Labor Code
16 §18 and California Business and Professions Code § 17201. Defendants are also the "employer"
17 as that term is used in the California Labor Code and the IWC's Orders regulating wages, hours
18 and working conditions.
19

20 **JURISDICTION**

21 10.

22 This Court has jurisdiction over Defendant, Plaintiff's and the Class members' claims for
23 unpaid wages and denied meal and rest periods pursuant to the California Labor Code, including
24 Labor Code §§218 and 1194, and the wage orders of the IWC.
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11.

This Court has jurisdiction over Plaintiff's and the Class members' claims for injunctive relief, including restitution of earned wages and benefits, which are the money and property of Plaintiff and the Class members, arising from Defendants' unfair competition under Business & Professions Code §§17203 and 17204.

12.

This Court also has jurisdiction over Plaintiff's and the Class members' claims for penalties in violation of the Labor Code pursuant to Business and Professions Code § 17202, as well as pursuant to the applicable Labor Code provisions.

VENUE

13.

Venue is proper in this County pursuant to Code of Civil Procedure §395(a). Defendants conduct business, employ Class members, and have locations in this County, and the events complained of occurred in this County.

FACTUAL ALLEGATIONS

14.

The policies and practices of Defendants, including the alleged failure to pay for all hours worked, the failure to pay overtime wages, denial of meal and rest periods, and failure to pay wages upon termination of employment, at all relevant times have been substantially similar for Plaintiff and the members of the Class.

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15.

Pursuant to state and federal regulations and Defendants' own internal policies and procedures, Plaintiff and Class members are required to wear PPE gear for protection and sanitary reasons. PPE includes, inter alia, aprons, guards, sleeves, sheaths, gloves, hats, hairnets, coveralls, and other protective equipment and coverings.

16.

At the beginning of each work day, Plaintiff and Class members arrive at the plant, well before the start of their shifts. Plaintiff and class members go to their lockers prior to the commencement of paid time to don PPE that is integral and indispensable to their primary job functions and without which, they would not be permitted by law, and company rules, to perform their production jobs. Plaintiff and the Class members are not paid for any of these work activities.

17.

During their unpaid lunch breaks, Plaintiff and Class members must doff their PPE and then search for an open hook on which to hang their PPE. They must then remove their PPE and hang it before proceeding exiting the production floor. At the conclusion of their unpaid lunches, Plaintiff and Class members must return to their work stations several minutes before the line starts, in order to allow them sufficient time to re-don their PPE and be on the production line ready to work prior to the expiration of the 30 minute meal break. Although all of these activities are work activities, Defendants do not compensate Plaintiff and the Class members for the time it takes to perform them – and in fact deducts such time from Plaintiff and Class members compensable work time.

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18.

At the end of the day—and after being taken "off the clock" by Defendants — Plaintiff and the Class members must continue to engage in non production work activities without compensation. Uncompensated work activities include, *inter alia*, doffing PPE, walking to wash stations, waiting in line to wash PPE and work tools, such as knives, washing PPE and tools, drying PPE and tools, walking to punch clocks, waiting to punch out, walking to locker rooms and returning PPE to lockers. Despite the fact that these activities are compensable work and take a substantial amount of time to complete, Defendants do not pay Plaintiff and the Class members for this time.

19.

Defendants deny to Plaintiff and the Class members the meal and rest periods to which they are statutorily entitled to each day. Even when Plaintiff and the Class members are allowed to take a meal or rest break, the multiple tasks they must perform both before and after their meal or rest break mean that they are not actually provided with duty-free breaks for the requisite amount of time set by statute.

20.

Overhill Farms' unlawful conduct has been widespread, repeated, and willful throughout its' Vernon, California facility. Overhill Farms knew or should have known that its policies and practices have been unlawful and unfair.

CLASS ACTION ALLEGATIONS

21.

Plaintiff brings this case as a class action on behalf of herself and all others similarly

1 situated pursuant to California Code of Civil Procedure ("CCP") §382. The Class that Plaintiff
2 seeks to represent is defined as follows:
3

4 All individuals who are currently employed, or formerly have been employed by
5 Defendants as non-exempt production-line workers in the State of California, at
6 any time within four years prior to the filing of the original complaint until
7 resolution of this action.

8 **22.**

9 This action has been brought and may properly be maintained as a class action under CCP
10 § 382 because there is a well-defined community of interest in the litigation and the proposed
11 class is easily ascertainable:

12 i. Whether Defendants, through their policy of requiring non-exempt
13 production-line workers to perform substantial work off-the-clock, fail to pay class
14 members all of the wages they are owed in violation of the California Labor Code;

15 ii. Whether Defendants, through their policy of requiring non-exempt
16 production-line workers to perform substantial work off-the-clock, fail to pay class
17 members all of the overtime wages they are owed in violation of the California
18 Labor Code;

19 iii. Whether Defendants, through their policy of requiring non-exempt
20 production-line employees to perform substantial work off-the-clock, fail to pay
21 class members all of the overtime wages they are owed in violation of Business and
22 Professions Code § 17200 et seq.;

23 iv. Whether Defendants, through their policy of requiring non-exempt
24 production-line workers to perform substantial work off-the-clock, fail to provide
25 class members with the off duty meal periods to which they are entitled in violation
26 of the California Labor Code;

27 v. Whether Defendants, through their policy of requiring non-exempt
28 production-line workers to perform substantial work off-the-clock, fail to provide
class members with the meal periods to which they are entitled in violation of
Business and Professions Code § 17200 et seq.;

vi. Whether Defendants, through their policy of requiring non-exempt
production-line employees to perform substantial work off-the-clock, fail to
authorize and permit class members to take rest periods to which they are entitled in
violation of the California Labor Code;

1
2 ix. Whether Defendants, through their policy of requiring non-exempt
3 production-line employees to perform substantial work off-the-clock, fail to
4 authorize and permit class members rest periods to which they are entitled in
violation of Business and Professions Code § 17200 et seq.;

5 x. Whether Defendants systemic failure to provide class members with
6 off-duty meal periods violates the California Labor Code and IWC wage orders;

7 xi. Whether Defendants' systemic failure to provide class members with
8 off-duty meal periods has been an unlawful, unfair or fraudulent business act or
practice in violation of Business and Professions Code § 17200 et seq.;

9 xii. Whether Defendants' policy and practice of failing to pay class
10 members all wages due upon the end of their employment violates the California
Labor Code;

11 xiii. Whether Defendants' policy and practice of failing to pay class
12 members all wages due upon the end of their employment has been an unlawful,
13 unfair or fraudulent business act or practice in violation of Business and Professions
Code § 17200 et seq.;

14 xiv. The proper formula for calculating restitution, damages and
15 penalties owed to Plaintiff and the Class as alleged herein.

16 **23.**

TYPICALITY

17
18 Plaintiff's claims are typical of the claims of the Class. Defendants' common course of
19 conduct in violation of law as alleged herein has caused Plaintiff and Class members to sustain
20 the same or similar injuries and damages. Plaintiff's claims are thereby representative of and co-
21 extensive with the claims of the Class.

22 **24.**

23 **ADEQUACY OF REPRESENTATION**

24
25 Plaintiff is a member of the Class, does not have any conflicts of interest with other Class
26 members, and will prosecute the case vigorously on behalf of the Class. Counsel representing
27
28

1 Plaintiff is competent and experienced in litigating large employment class actions, including large
2 minimum-wage and overtime class actions. Plaintiff will fairly and adequately represent and
3 protect the interests of the class members.
4

5 25.

6 **SUPERIORITY OF CLASS ACTION**

7 A class action is superior to other available means for the fair and efficient adjudication of
8 this controversy. Individual joinder of all Class members is not practicable, and questions of law
9 and fact common to the Class predominate over any questions affecting only individual members
10 of the Class. Each Class member has been damaged and is entitled to recovery by reason of
11 Defendants' illegal policies and/or practices. Class action treatment will allow those similarly
12 situated persons to litigate their claims in the manner that is most efficient and economical for the
13 parties and the judicial system.
14

15 **FIRST CAUSE OF ACTION**

16 **Failure to Compensate for All Hours Worked
17 (Against All Defendants)**

18 26.

19 Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
20 herein.
21

22 27.

23 California Labor Code §204 provides that wages for all work performed must be paid
24 "twice during each calendar month, on days designated in advance by the employer as the
25 regular paydays."
26

27 28.

28 Plaintiff and the Class were expected to and did systemically work "off-the-clock"

1 without compensation for their work performed. Thus, Plaintiff and the Class members were
2 forced to perform work for the benefit of Defendants without compensation.

3
4 **29.**

5 In violation of state law, Defendants knowingly and willfully refused to perform their
6 obligations to provide Plaintiff and the Class with compensation for all time worked as
7 required by California law. Defendants committed the acts alleged herein knowingly and
8 improper motives amounting to malice, and in conscious disregard of the rights of Plaintiff and
9 the Class. Plaintiff and the Class are thus entitled to recover nominal, actual, compensatory
10 damages and Labor Code penalties in amounts according to proof at time of trial.

11 **30.**

12 As a proximate result of the aforementioned violations, Plaintiff and the Class have been
13 damaged in an amount according to proof at time of trial.

14 **31.**

15 Wherefore, Plaintiff and the Class request relief as hereinafter provided.

16 **SECOND CAUSE OF ACTION**
17 **Failure to Pay Overtime Wages**
18 **(Against All Defendants)**

19 **32.**

20 Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
21 herein.

22 **33.**

23 California Labor Code §510(a) provides as follows:

24 Eight hours of labor constitutes a day's work. Any work in excess of eight
25 hours in one workday and any work in excess of 40 hours in any one
26 workweek and the first eight hours worked on the seventh day of work in
27 any one workweek shall be compensated at the rate of no less than one and
28

1 one-half times the regular rate of pay for an employee. Any work in excess
2 of 12 hours in one day shall be compensated at the rate of no less than
3 twice the regular rate of pay for an employee. In addition, any work in
4 excess of eight hours on any seventh day of a workweek shall be
5 compensated at the rate of no less than twice the regular rate of pay of an
6 employee. Nothing in this section requires an employer to combine more
7 than one rate of overtime compensation in order to calculate the amount to
8 be paid to an employee for any hour of overtime work.

34.

9 The IWC Wage Order 4-2001(3)(A)(1), 8 Cal. Code Regs. §11040, states:

10 (3)(A)(1)The following overtime provisions are applicable to employees
11 18 years of age or over and to employees 16 or 17 years of age who are
12 not required by law to attend school and are not otherwise prohibited by
13 law from engaging in the subject work. Such employees shall not be
14 employed more than eight (8) hours in any workday or more than 40 hours
15 in any workweek unless the employee receives one and one-half (1 1/2)
16 times such employee's regular rate of pay for all hours worked over 40
17 hours in the workweek. Eight (8) hours of labor constitutes a day's work.
18 Employment beyond eight (8) hours in any workday or more than six (6)
19 days in any workweek is permissible provided the employee is
20 compensated for such overtime at not less than:

21 One and one-half (1 1/2) times the employee's regular rate of pay for all
22 hours worked in excess of eight (8) hours up to and including 12 hours in
23 any workday, and for the first eight (8) hours worked on the seventh (7th)
24 consecutive day of work in a workweek; and

25 Double the employee's regular rate of pay for all hours worked in excess
26 of 12 hours in any workday and for all hours worked in excess of eight (8)
27 hours on the seventh (7th) consecutive day of work in a workweek.

35.

28 California Labor Code §1194(a) provides as follows:

Notwithstanding any agreement to work for a lesser wage, any employee
receiving less than the legal minimum wage or the legal overtime
compensation applicable to the employee is entitled to recover in a civil
action the unpaid balance of the full amount of this minimum wage or
overtime compensation, including interest thereon, reasonable attorney's
fees, and costs of suit.

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36.

California Labor Code §200 defines wages as "all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis or other method of calculation." All such wages are subject to California's overtime requirements, including those set forth above.

37.

Defendants' across-the-board policy of requiring Plaintiff and the Class to perform substantial work "off the clock" has been unlawful. As a result of this unlawful policy, Plaintiff and Class Members have worked overtime hours for Defendants without being paid overtime premiums in violation of the California Labor Code, IWC wage orders and other applicable law.

38.

Defendants have knowingly and willfully refused to perform its obligations to compensate Plaintiff and the Class for all premium wages for overtime work. As a proximate result of the aforementioned violations, Defendants have damaged Plaintiff and the Class in amounts to be determined according to proof at time of trial, but in an amount in excess of the jurisdictional requirements of this Court.

39.

Defendants are liable to Plaintiff and the Class alleged herein for the unpaid overtime and Labor Code penalties, with interest thereon. Furthermore, Plaintiff is entitled to an award of attorneys' fees and costs as set forth below.

40.

Wherefore, Plaintiff and the Class request relief as hereinafter provided.

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1
2 **THIRD CAUSE OF ACTION**
3 **Failure to Provide Meal and Rest Periods**
4 **(Against All Defendants)**

5 **41.**

6 Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
7 herein.

8 **42.**

9 California Labor Code §§226.7 and 512 and the applicable IWC wage orders require
10 Overhill Farms to provide meal and rest periods to its production-line employees. Labor Code
11 §§226.7 and 512 and the IWC wage orders prohibit employers from employing an employee for
12 more than five hours without a meal period of not less than 30 minutes, and from employing an
13 employee more than ten hours per day without providing the employee with a second meal period
14 of not less than 30 minutes. Section 226.7 and the applicable wage orders also require employers
15 to provide employees ten minutes of net rest time per four hours or major fraction thereof of
16 work, and to pay employees their full wages during those rest periods. Unless the employee is
17 relieved of all duty during the 30-minute meal period and ten-minute rest period, the employee is
18 considered "on duty" and the meal or rest period is counted as time worked under the applicable
19 wage orders.

20 **43.**

21 Under §226.7(b) and the applicable wage orders, an employer who fails to provide a
22 required meal period must, as compensation, pay the employee one hour of pay at the employee's
23 regular rate of compensation for each workday that the meal period was not provided. Similarly, an
24 employer must pay an employee denied a required rest period one hour of pay at the employee's
25 regular rate of compensation for each workday that the rest period was not provided.
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44.

Despite these requirements, Defendants have knowingly and willfully refused to perform their obligations to provide Plaintiff and the Class with the minimum off-duty meal periods and authorize and permit the minimum off duty rest periods to which they are entitled. Defendants have also failed to pay Plaintiff and the Class one hour of pay for each off-duty meal and/or rest period that they are denied and have improperly deducted time for "meal periods" that counts as work time under the law. Defendants' conduct described herein violates California Labor Code §§226.7 and 512, and the applicable wage orders. Therefore, pursuant to Labor Code §226.7(b), Plaintiff and the Class are entitled to compensation for the failure to provide meal and rest periods, plus interest, attorneys' fees, Labor Code penalties, expenses and costs of suit.

45.

Wherefore, Plaintiff and the Class request relief as hereinafter provided.

FOURTH CAUSE OF ACTION
Unpaid Wages and Waiting Time Penalties Pursuant to Labor Code §§201-203
(Against All Defendants)

46.

Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

47.

Labor Code §201 provides:

If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

48.

Labor Code §202 provides:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention

1
2 to quit, in which case the employee is entitled to his or her wages at the time of quitting.

3 **49.**

4 Labor Code §203 provides, in relevant part:

5 If an employer willfully fails to pay, without abatement or reduction, in accordance with
6 Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or
7 who quits, the wages of the employee shall continue as a penalty from the due date
8 thereof at the same rate until paid or until an action therefore is commenced; but the
9 wages shall not continue for more than 30 days.

10 **50.**

11 Class members have left their employment with Defendants during the statutory period, at
12 which time Defendants owed them their unpaid wages. Defendants willfully refused and continues
13 to refuse to pay Class members all the wages that were due and owing them upon the end of their
14 employment. As a result of Defendants' actions, the Class has suffered and continues to suffer
15 substantial losses, including lost earnings and interest.

16 **51.**

17 Defendants' willful failure to pay Class members the wages due and owing them
18 constitutes a violation of Labor Code §§201-202. As a result, Defendants are liable to Plaintiff
19 and the Class members for all penalties owing pursuant to Labor Code §§201-203.

20 **52.**

21 In addition, §203 provides that an employee's wages will continue as a penalty up to thirty
22 (30) days from the time the wages were due. Therefore, the Class is entitled to penalties pursuant
23 to Labor Code §203, plus interest.

24 **53.**

25 Plaintiff is entitled to an award of attorneys' fees and costs as set forth below.
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54.

Wherefore, Plaintiff and the Class request relief as hereinafter provided.

FIFTH CAUSE OF ACTION
Violation of California Business and Professions Code §§17200, et seq.
(Against All Defendants)

55.

Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

56.

California Business and Professions Code §§17200 et seq. (also referred to herein as the "Unfair Business Practices Act," "Unfair Competition Law," or "UCL"), prohibits unfair competition in the form of any unlawful, unfair or fraudulent business acts or practices.

57.

California Business and Professions Code §17204 allows a person injured by the unfair business acts or practices to prosecute a civil action for violation of the UCL.

58.

Labor Code §90.5(a) states it is the public policy of California to vigorously enforce minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

59.

Beginning at an exact date unknown to Plaintiff, but at least since the date four years prior to the filing of this suit, Defendants have committed acts of unfair competition as defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair and fraudulent business

1 practices and acts described in this Complaint, including, but not limited to:

- 2 a. violations of Labor Code §204 pertaining to the payment of wages for all hours
3 worked;
- 4 b. violations of Labor Code §§510 and 1194 and IWC wage orders pertaining to
5 overtime;
- 6 c. violations of Labor Code §§226.7 and 512 and IWC wage orders pertaining to
7 meal and rest breaks;
- 8 d. violations of Labor Code §§221-223 and 401-410, and IWC wage orders
9 pertaining to wage deductions; and
- 10 e. violations of Labor Code §§201-203;
- 11 f. violations of Labor Code §§ 2698-99.
- 12
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15 **60.**

16 The violations of these laws and regulations, as well as of the fundamental California public
17 policies protecting wages and discouraging overtime labor underlying them, serve as unlawful
18 predicate acts and practices for purposes of Business and Professions Code §§17200 et seq.

19 **61.**

20 The acts and practices described above constitute unfair, unlawful and fraudulent business
21 practices, and unfair competition, within the meaning of Business and Professions Code §§17200,
22 et seq. Among other things, the acts and practices have taken from Plaintiff and the Class wages
23 rightfully earned by them, while enabling Overhill Farms to gain an unfair competitive advantage
24 over law-abiding employers and competitors.

25 **62.**

26 Business and Professions Code § 17203 provides that a court may make such orders or
27 judgments as may be necessary to prevent the use or employment by any person of any practice
28

1 which constitutes unfair competition. Injunctive relief is necessary and appropriate to prevent
2 Defendants from repeating its unlawful, unfair and fraudulent business acts and business practices
3 alleged above.
4

5 **63.**

6 As a direct and proximate result of the aforementioned acts and practices, Plaintiff and the
7 Class members have suffered a loss of money and property, in the form of unpaid wages which
8 are due and payable to them.

9 **64.**

10 Business and Professions Code § 17203 provides that the Court may restore to any person
11 in interest any money or property which may have been acquired by means of such unfair
12 competition. Plaintiff and the Class are entitled to restitution pursuant to Business and Professions
13 Code § 17203 for all wages and payments unlawfully withheld from employees during the four-
14 year period prior to the filing of this Complaint.
15

16 **65.**

17 Business and Professions Code § 17202 provides: "Notwithstanding Section 3369 of the
18 Civil Code, specific or preventive relief may be granted to enforce a penalty, forfeiture, or penal
19 law in a case of unfair competition." Plaintiff and Class members are entitled to enforce all
20 applicable penalty provisions of the Labor Code pursuant to Business and Professions Code §
21 17202.
22

23 **66.**

24 Plaintiff's success in this action will enforce important rights affecting the public interest
25 and in that regard Plaintiff sues on behalf of themselves as well as others similarly situated.
26 Plaintiff and the Class seek and are entitled to unpaid wages, declaratory and injunctive relief, and
27 all other equitable remedies owing to them.
28

1
2 67.

3 Plaintiff herein takes upon herself enforcement of these laws and lawful claims. There is a
4 financial burden involved in pursuing this action, the action is seeking to vindicate a public right,
5 and it would be against the interests of justice to penalize Plaintiff by forcing her to pay attorneys'
6 fees from the recovery in this action. Attorneys' fees are appropriate pursuant to Code of Civil
7 Procedure §1021.5 and otherwise. Wherefore, Plaintiff and the Class request relief as hereinafter
8 provided.

9 68.

10 Wherefore, Plaintiff and the Class request relief as hereinafter provided.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff prays for relief as follows:

- 13 1. Damages and restitution according to proof at trial for all unpaid wages, unpaid
14 overtime, and unpaid minimum wages and other injuries, as provided by the California Labor
15 Code;
- 16 2. For a declaratory judgment that Defendants have violated the California Labor Code
17 and public policy as alleged herein;
- 18 3. For a declaratory judgment that Defendants have violated Business and Professions
19 Code §§17200 et seq., as a result of the aforementioned violations of the Labor Code and of
20 California public policy protecting wages;
- 21 4. For preliminary, permanent and mandatory injunctive relief prohibiting
22 Defendants, their officers, agents and all those acting in concert with them, from committing in
23 the future those violations of law herein alleged;
- 24 5. For an equitable accounting to identify, locate and restore to all current and former
25 employees the wages they are due, with interest thereon;
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6. For an order awarding Plaintiff and the Class Members compensatory damages, including lost wages, earnings and other employee benefits and all other sums of money owed to Plaintiff and Class Members, together with interest on these amounts, according to proof;

7. For an order awarding Plaintiff and the Class civil penalties pursuant to the Labor Code provisions cited herein and the Unfair Business Practices Act, with interest thereon;

8. For general damages, including interest, according to proof, Plaintiff's costs incurred herein, for statutory penalties as set for in Labor Code § 2698-99 and for all appropriate declaratory and equitable relief;

9. For an award of reasonable attorneys' fees as provided by California Labor Section; California Code of Civil Procedure § 1021.5; and/or other applicable law;

10. For all costs of suit; and

For such other and further relief as this Court deems just and proper.

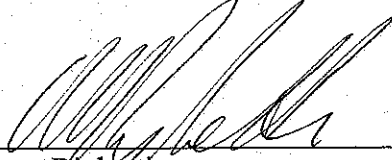
69.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

Date: May 11, 2010

RIGHETTI LAW FIRM, P.C.


Matthew Righetti
Attorneys for Plaintiff