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CLERK-SUPERIOR COURT
SAN DIEGO, CALIF.

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2 **JOHN GLUGOSKI, ESQ.** {191551}
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9 **SUPERIOR COURT OF CALIFORNIA**
10 **COUNTY OF SAN DIEGO**

11 **MARIA HERNANDEZ**, on behalf of
12 Herself and others similarly situated

NO. GIC 840481

CLASS ACTION

13 **Plaintiff,**

COMPLAINT

14 vs.

15 **ANNA'S LINENS**, and **DOES**
16 1 through 50 inclusive,

- 1. **Violation of Labor Code;**
- 2. **Violation of B & P § 17200, et seq;**
- 3. **Failure to Provide Mandated Meal Periods and Rest Breaks**

17 **Defendants.**

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22 **FIRST CAUSE OF ACTION**

23 COMES NOW, Plaintiff, an individual over the age of eighteen (18), and brings this
24 challenge to defendants' lucrative, repressive and unlawful business practices on behalf of
25 herself and a class of all others similarly situated and for a Cause of Action against defendants,
26 ANNA'S LINENS, and DOES 1-50, inclusive, (hereinafter defendants) and each of them,
27 alleges as follows:
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1 purposes of the payment of overtime compensation when, in fact, they were "non-exempt" non-
2 managerial employees according to California law. Further, Anna's Linen denied the salaried
3 store employees mandated meal and rest breaks under California law. As a result of
4 Defendant's systematic and clandestine scheme the salaried store employees throughout
5 California were not paid all wages owed and were deprived of mandated meal periods and rest
6 breaks. Accordingly, Anna's Linen has violated California common and statutory laws as
7 described more particularly below.

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10 **4.**

11 Defendants own/owned and operate/operated an industry, business and establishment in
12 approximately 76 separate geographic locations within the State of California, including San
13 Diego County, for the purpose of selling merchandise under the name of ANNA'S LINENS.
14 As such, and based upon all the facts and circumstances incident to defendants' business in
15 California, defendants are subject to California Labor Code Sections 1194, et seq., 500, et seq.,
16 California Business and Professions Code Section 17200, et seq., (Unfair Practices Act) and the
17 applicable wage order(s) issued by the Industrial Welfare Commission. At least some of the
18 acts complained of herein occurred in San Diego County as defendants own/owned and
19 operate/operated stores in the County of San Diego where Plaintiff worked. Plaintiff is
20 informed and believes and thereon alleges that at all times herein mentioned defendants are and
21 were corporations licensed to do business and actually doing business in the State of California.

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24 **5.**

25 At all times herein mentioned Plaintiff and the class identified herein worked for
26 defendants as salaried store employees in defendants' ANNA'S LINEN stores. These salaried
27 store positions are not positions, which involve work falling within any exception to the above-
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1 referenced Labor Code sections, the Unfair Practices Act and/or California Industrial Welfare
2 Commission orders applicable to defendants' business.

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4 **6.**

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

13 **7.**

14 At all times herein mentioned, each of said defendants participated in the doing of the
15 acts hereinafter alleged to have been done by the named defendants; and furthermore, the
16 defendants, and each of them, were the agents, servants and employees of each of the other
17 defendants, as well as the agents of all defendants, and at all times herein mentioned, were
18 acting within the course and scope of said agency and employment.
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20 **8.**

21 At all times herein mentioned, defendants, and each of them, were members of, and
22 engaged in, a joint venture, partnership and common enterprise, and acting within the course
23 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.
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At all times herein mentioned, the acts and omissions of various defendants, and each of them, concurred and contributed to the various acts and omissions of each and all of the other defendants in proximately causing the injuries and damages as herein alleged.

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

FACTUAL ALLEGATIONS

11.

Plaintiff and all members of the class identified herein were regularly scheduled as a matter of uniform company policy to work and in fact worked as salaried store employees in excess of eight hours per workday and/or in excess of forty hours per workweek without receiving straight time or overtime compensation for such overtime hours worked in violation of California Labor Code Section 1194 and the applicable California Industrial Welfare Commission wage order(s). Plaintiff and the other members of the class were improperly and illegally mis-classified by defendants as "exempt" managerial/executive employees when, in fact, they were "non-exempt" non-managerial employees according to California law. Plaintiff and the other members of the class have the right to be compensated by defendants at the appropriate compensatory wage rate for said work heretofore performed, consisting of the

1 straight time rate plus the appropriate overtime premium as mandated by California law.
2 Furthermore, Defendants failed to provide the Plaintiff and class members the required rest and
3 meal periods during the relevant time period as required under the IWC Wage Orders and thus
4 are entitled to any and all applicable penalties.
5

6 **12.**

7 This complaint is brought by Plaintiff pursuant to California Code of Civil Procedure
8 section 382 on behalf of a class. All claims alleged herein arise under California law for which
9 Plaintiff seeks relief authorized under California law. The class is comprised of, and defined
10 as:
11

12 All California based salaried store employees 1) who worked at any time during
13 the four years preceding the filing of this Complaint up until the date of class
14 certification at any retail store in the State of California owned, operated and/or
15 acquired by defendants.

16 The members of the class are so numerous that joinder of all members would be impractical, if
17 not impossible. The members of the class are readily ascertainable by a review of defendants'
18 records. Further, the subject matter of this action both as to factual matters and as to matters of
19 law, are such that there are questions of law and fact common to the class which predominate
20 over questions affecting only individual members including, among other things, the following:
21

22 a. Statistically, one hundred percent of the class members were paid on a salary
23 basis with no overtime compensation paid for work accomplished in excess of forty hours per
24 week, or eight hours per day. Plaintiff is informed and believes and based thereon alleges that
25 all class members failed to meet the exemption requirements of California law such as 1)
26 regularly spend more than 50% of their time performing exempt work; 2) customarily and
27 regularly exercised discretion and independent judgment and; 3) have authority to hire and fire.
28

1 Thus, Plaintiff and the class members were not exempt from the overtime requirements of
2 California law for that reason;

3 b. Defendants uniformly administered a corporate policy concerning both staffing
4 levels and duties and responsibilities of the class members which required that the class
5 members both work overtime without pay and regularly spend more than 50% of their time
6 performing non-exempt tasks. This included a uniform corporate pattern and practice of
7 allocating and authorizing inadequate staffing levels at the individual stores. This corporate
8 conduct had the effect of placing customer service and other clerical "non-management" duties
9 and responsibilities onto the shoulders of the class members who were customarily and
10 regularly caused to work far in excess of forty hours in a week and/or eight hours in a day
11 without pay. Thus, Plaintiff and all other members of the class routinely, regularly and
12 customarily (i.e., well in excess of 50% of their work time) performed non-exempt, non-
13 managerial work and work that did not regularly involve discretion and independent judgment.
14 Therefore, such employees are entitled to overtime compensation under California law.

15 c. The duties and responsibilities of the salaried store positions at the defendants'
16 stores were virtually identical from region to region, district to district, store to store, and,
17 employee to employee. Further, any variations in job activities between the different
18 individuals in these positions are legally insignificant to the issues presented by this action
19 since the central facts remain, to wit: these employees performed non-exempt work in excess
20 of 50% of the time in their workday, these employees did not regularly exercise discretion and
21 independent judgment; these employees' work routinely included work in excess of 40 hours
22 per week and/or 8 hours per day and they were not, and have never been, paid overtime
23 compensation for their work. Furthermore, Defendants failed to provide Plaintiff and class
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1 members the required "off duty" rest and meal periods during the relevant time period as
2 required under the IWC Wage Orders.

3 d. Members of the class identified herein were discharged by defendants or
4 voluntarily quit, and did not have a written contract for employment. The defendants, in
5 violation of California Labor Code Sections 201, and 202, et seq., respectively, had a consistent
6 and uniform policy, practice and procedure of willfully failing to pay the earned and unpaid
7 wages of all such former employees. The defendants have willfully failed to pay the earned
8 and unpaid wages of such individuals, including, but not limited to, regular time, overtime, and
9 other wages earned and remaining uncompensated according to amendment, or proof.
10

11
12 **13.**

13 As a pattern and practice, also in violation of the aforementioned labor laws and wage
14 orders, defendants did not maintain any records pertaining to when salaried store employees
15 began and ended each work period, meal period, the total daily hours worked, and the total
16 hours worked per pay period and applicable rates of pay.
17

18 **14.**

19 There are predominant common questions of law and fact and a community of interest
20 amongst Plaintiff and the claims of the absent class members concerning whether defendants'
21 regular business custom and practice of requiring substantial "overtime" work and not paying
22 for said work according to the overtime mandates of California law is, and at all times herein
23 mentioned was, in violation of California Labor Code Sections 1194 and 500, et seq., the
24 Unfair Practices Act and the applicable California Industrial Welfare Commission wage orders.
25 Defendants' employment policies and practices wrongfully and illegally failed to compensate
26 salaried store employees for substantial overtime compensation earned as required by
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1 California law. For instance, questions of fact and/or law common to the members of the
2 aforesaid class -- which predominate over any questions which may affect only individual
3 members -- are:

4
5 i. Whether defendants' salaried store employees were classified as
6 "exempt" in violation of California law;

7 ii. Whether defendants uniformly failed to pay overtime wages to its
8 salaried store employees by virtue of defendants' unlawful class wide designation of such
9 employees as "exempt" in violation of California law;

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

14 iv. Whether defendants' conduct constituted an illegal, or unfair, business
15 practice in violation of California law;

16
17 v. Whether Plaintiff and the class are entitled to compensatory damages
18 pursuant to the California Labor Code;

19 vi. Whether Plaintiff and the class are entitled to injunctive relief, including
20 restitution and/or disgorgement of profits pursuant to California law.

21
22 vii. What is the correct computation formula for the payment of overtime in
23 California?

24 viii. What work is customarily and regularly accomplished by class members
25 in defendants' -- and what category (exempt or non-exempt) does that work properly fall into?

26
27 ix. What are the realistic requirements of the salaried store positions?
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1 x. What are the expectations of defendants vis-à-vis the class members job
2 performance?

3 xi. Who has the burden of proof on the exemption issue?

4 xii. Can defendant rely on the "sole charge" or "primary duty" exemption
5 standards applicable under federal law, or must defendants comply with California's more strict
6 quantitative exemption standards?
7

8 xiii. Whether Defendants failed to provide Plaintiff and class members rest
9 and meal breaks in violation of California Labor Code and applicable IWC wage orders;
10

11 **15.**

12 The claims of Plaintiff are typical of the claims of all members of the class. Plaintiff, as
13 a representative party, will fairly and adequately protect the interests of the class by vigorously
14 pursuing this suit through attorneys who are skilled and experienced in handling civil litigation
15 of this type.
16

17 **16.**

18 The California Labor Code and wage order provisions upon which Plaintiff asserts these
19 claims are broadly remedial in nature. These laws and labor standards serve an important
20 public interest in establishing minimum working conditions and standards in California. These
21 laws and labor standards protect the average working employee from exploitation by employers
22 who may seek to take advantage of superior economic and bargaining power in setting onerous
23 terms and conditions of employment. The nature of this action and the format of laws available
24 to Plaintiff and members of the class identified herein make the class action format a
25 particularly efficient and appropriate procedure to redress the wrongs alleged herein. If each
26 employee were required to file an individual lawsuit, the corporate defendants would
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1 necessarily gain an unconscionable advantage since it would be able to exploit and overwhelm
2 the limited resources of each individual Plaintiff with its vastly superior financial and legal
3 resources. Requiring each class member to pursue an individual remedy would also discourage
4 the assertion of lawful claims by employees who would be disinclined to file an action against
5 their former employer for real and justifiable fear of retaliation and permanent damage to their
6 careers at subsequent employment.
7

8 **17.**

9
10 The prosecution of separate actions by the individual class members, even if possible,
11 would create a substantial risk of (1) inconsistent or varying adjudications with respect to
12 individual class members against the defendants and which would establish potentially
13 incompatible standards of conduct for the defendants, and/or (2) adjudications with respect to
14 individual class members which would, as a practical matter, be dispositive of the interests of
15 the other class members not parties to the adjudications or which would substantially impair or
16 impede the ability of the class members to protect their interests. Further, the claims of the
17 individual members of the class are not sufficiently large to warrant vigorous individual
18 prosecution considering all of the concomitant costs and expenses.
19

20 **18.**

21
22 Such a pattern, practice and uniform administration of corporate policy regarding illegal
23 employee compensation, as described herein, is unlawful and creates an entitlement to recovery
24 by the Plaintiff and the class identified herein, in a civil action, for the unpaid balance of the
25 full amount of the straight time compensation and overtime premiums owing, including interest
26 thereon, willful penalties, reasonable attorneys fees, and costs of suit according to the mandate
27 of California Labor Code Section 1194, et seq.
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19.

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

20.

The Plaintiff class is entitled in common to a specific fund with respect to the overtime compensation monies illegally and unfairly retained by defendants. The Plaintiff class is entitled in common to restitution and disgorgement of those funds being improperly withheld by defendants. This action is brought for the benefit of the entire class and will result in the creation of a common fund.

WHEREFORE, Plaintiff on his own behalf and on behalf of the members of the class, prays for judgment as hereinafter set forth.

SECOND CAUSE OF ACTION

COME NOW, Plaintiff, individually and on behalf of both the class and as a second, separate and distinct cause of action against defendants, and each of them, alleges as follows:

21.

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

22.

1
2 Defendants, and each of them, have engaged in unfair business practices in California
3 by practicing, employing and utilizing the employment practices outlined in Paragraphs 11
4 through 14, inclusive, to wit, by requiring their salaried store employees to perform the labor
5 services complained of herein without overtime compensation. Defendants' utilization of such
6 unfair business practices constitutes unfair competition and provides an unfair advantage over
7 defendants' competitors. Plaintiff – and members of the class -- seek full restitution and
8 disgorgement of monies, as necessary and according to proof, to restore any and all monies
9 withheld, acquired and/or converted by the defendants by means of the unfair practices
10 complained of herein. Plaintiff seeks, on his own behalf and on behalf of the class, the
11 appointment of a receiver, as necessary. The acts complained of herein occurred, at least in
12 part, within the last four (4) years preceding the filing of the original complaint in this action.
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17 Plaintiff is informed and believes and on that basis alleges that at all times herein
18 mentioned defendants have engaged in unlawful, deceptive and unfair business practices, as
19 proscribed by California Business and Professions Code section 17200, including those set
20 forth in Paragraphs 11 through 14 herein thereby depriving Plaintiff and other members of the
21 class minimum working condition standards and conditions due to them under the California
22 labor laws and Industrial Welfare Commission wage orders as specifically described herein.
23
24

24.

25 Plaintiff, and all persons similarly situated, are further entitled to and do seek a both a
26 declaration that the above-described business practices are unfair, unlawful and/or fraudulent
27 and injunctive relief restraining defendants from engaging in any of such business practices in
28

1 the future. Such misconduct by defendants, unless and until enjoined and restrained by order of
2 this Court, will cause great and irreparable injury to all members of the class in that the
3 defendants will continue to violate these California laws, represented by labor statutes and IWC
4 Wage Orders, unless specifically ordered to comply with same. This expectation of future
5 violations will require current and future employees to repeatedly and continuously seek legal
6 redress in order to gain compensation to which they are entitled under California law. Plaintiff
7 has no other adequate remedy at law to insure future compliance with the California labor laws
8 and wage orders alleged to have been violated herein.
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11 **THIRD CAUSE OF ACTION**

12 COME NOW, Plaintiff, individually and on behalf of a class and as a third, separate and
13 distinct cause of action against defendants, and each of them, alleges as follows:
14

15 **25.**

16 Plaintiff re-alleges and incorporates by reference each and every allegation set forth in
17 the preceding paragraphs.

18 **26.**

19 Cal. Lab. Code §226.7(a) provides, "No employer shall require any employee to work
20 during any meal or rest period mandated by an applicable order of the Industrial Welfare
21 Commission."
22

23 **27.**

24 Industrial Welfare Commission Order No. 7-2001(11)(c) provides in relevant part,
25 "Unless the employees is relieved of all duty during a 30 minute meal period, the meal period
26 shall be considered an 'on duty' meal period and counted as time worked."
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28.

Industrial Welfare Commission Order No. 7-2001 (12)(A) authorizes employees to take rest periods based on the total hours worked daily at the rate of ten minutes rest per four hours or major fraction thereof.

29.

Cal. Lab. Code Section 512, which provides in relevant part:

Meal periods

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

30.

As alleged herein, defendants routinely interrupted and/or failed to permit, authorize and/or provide Plaintiff's and Class members' meal and rest breaks. By these actions, defendants violated Cal. Lab. Code §226.7(a) and is liable to Plaintiff and the Class.

31.

As a result of the unlawful acts of defendants, Plaintiff and Class members have been deprived of meal and rest breaks, and are entitled to recovery under Cal. Lab. Code §226.7(b) in the amount of one additional hour of pay at the employee's regular rate of compensation for each work day that a meal or rest period was not provided.

1 WHEREFORE, Plaintiff on his own behalf and on behalf of the members of the class
2 prays for judgment as follows:

- 3 1. Determining that this action may proceed and be maintained as a class action;
- 4 2. For the First Cause of Action:
 - 5 a. A declaratory judgment that Defendant has violated Cal. Lab. Code
 - 6 b. An award to Plaintiffs and the Class of damages for the amount of
7 unpaid overtime compensation, including interest thereon, and penalties
8 subject to proof;
 - 9 c. An award to Plaintiffs and the Class of reasonable attorneys' fees and
10 costs pursuant to Cal. Lab. Code § 1194 and/or other applicable state
11 laws;
- 12 3. For the Second Cause of Action:
 - 13 a. Ordering Defendant, its agents, servants, and employees, and all persons
14 acting, directly or indirectly, in concert with it, to restore and disgorge all
15 funds to each member of the Class acquired by means of any act or
16 practice declared by this Court to be unlawful, unfair or fraudulent and
17 therefore constitute unfair competition under § 17200 et seq. of the
18 California Business and Professions Code;
 - 19 b. For injunctive relief pursuant to California Business & Professions Code
20 § 17203, consisting of, inter alia: (1) a declaration that Defendant has
21 engaged in unlawful and unfair business acts and practices in violation of
22 California Business & Professions Code § 17200 et seq.; (2) a
23 preliminary and/or permanent injunction enjoining Defendant and its
24 respective successors, agents, servants, officers, directors, employees and
25 all persons acting in concert with them from pursuing the policies, acts
26 and practices complained of herein and prohibiting Defendant from
27 continuing such acts of unfair and illegal business acts and practices; (3)
28 Restitution pursuant to California Industrial Welfare Commission Order
 No. 7-2001(11)(D), which provides: “[i]f an employer fails to provide an
 employee a meal period in accordance with the applicable provisions of
 this Order, the employer shall pay the employee one (1) hour of pay at
 the employee's regular rate of compensation for each work day that the
 rest period is not provided.”
 - c. Restitution pursuant to California Industrial Welfare Commission Order
 No. 7-2001(12)(C), which provides: “[i]f an employer fails to provide an

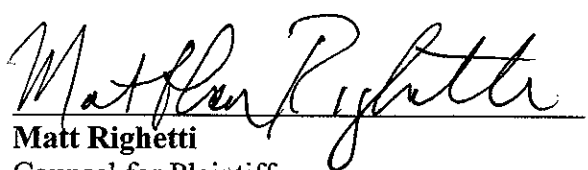
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employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided;"

- 4. For the Third Cause of Action:
 - a. A declaratory judgment that Defendant has violated Cal. Lab. Code §226.7;
 - b. An award to Plaintiffs and the Class of an additional hour of pay at the employee's regular rate of compensation for each workday that a meal or rest break was not provided;
 - c. An award to Plaintiffs and the Class of reasonable attorneys' fees and costs pursuant to Cal. Lab. Code §1194 and/or other applicable state laws;
 - d. An award to Plaintiffs and the Class of interest, which shall accrue from the date that the wages were due and payable, pursuant to Cal. Lab. Code §218.6;
- 5. Awarding Plaintiffs and the Class their attorneys' fees and costs of suit to the extent permitted by law;
- 6. All other relief as this Court may deem proper.

DATED: December 8, 2004

RIGHETTI WYNNE, P.C.


Matt Righetti
Counsel for Plaintiff
and the Class