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FILED HARSTOW
SAN BERNARDINO COUNTY
SUPERIOR COURT
MAR 25 2010
COPY

BY Rebecca Mendez
DEPUTY

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

PAUL NOLL, STEVEN MCCLURE,
and MARK SUTHERLAND,

Plaintiffs,

vs.

TRAVELCENTERS OF AMERICA LLC,
and DOES 1 through 50 inclusive,

Defendants.

CASE NO. CIVBS800871

CLASS ACTION

FIRST AMENDED COMPLAINT

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

FIRST CAUSE OF ACTION

COMES NOW, Plaintiffs, individuals over the age of eighteen (18), and bring this challenge to defendants' lucrative, repressive and unlawful business practices on behalf of themselves and a class of all others similarly situated and for a Cause of Action against defendants, TRAVELCENTERS OF AMERICA LLC, and DOES 1-50, inclusive, (hereinafter defendants) and each of them, alleges as follows:

1 worked as Profit Center Managers as "exempt" managerial/executive employees for purposes of
2 the payment of overtime compensation when, in fact, they were "non-exempt" non-managerial
3 employees according to California law. Further, TravelCenters of America LLC denied the
4 salaried station employees who worked as Profit Center Managers mandated meal and rest breaks
5 under California law. As a result of Defendants' systematic and clandestine scheme the salaried
6 store employees throughout California were not paid all wages owed and were deprived of
7 mandated meal periods and rest breaks. Accordingly, TravelCenters of America LLC has violated
8 California common and statutory laws as described more particularly below.
9

10 4.

11 Defendants own/owned and operate/operated an industry, business and establishment in
12 approximately 10 separate geographic locations within the State of California, including San
13 Bernardino County, for the purpose of selling merchandise under the name of TravelCenters of
14 America LLC. As such, and based upon all the facts and circumstances incident to defendants'
15 business in California, defendants are subject to California Labor Code Sections 1194, et seq.,
16 500, et seq., California Business and Professions Code Section 17200, et seq., (Unfair Practices
17 Act) and the applicable wage order(s) issued by the Industrial Welfare Commission. At least
18 some of the acts complained of herein occurred in San Bernardino County as defendants
19 own/owned and operate/operated stations in the County of San Bernardino. Plaintiffs are
20 informed and believe and thereon allege 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.
22
23

24 5.

25 At all times herein mentioned Plaintiffs and the class identified herein worked for
26 defendants as salaried station employees who worked as Profit Center Managers in defendants'
27 TravelCenters of America stations. These salaried station positions are not positions, which
28

1 involve work falling within any exception to the above-referenced Labor Code sections, the
2 Unfair Practices Act and/or California Industrial Welfare Commission orders applicable to
3 defendants' business.

4 6.

5 Plaintiffs do 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 Plaintiffs pray leave to amend this
8 complaint when the true names and capacities are known. Plaintiffs are informed and believe
9 and thereon allege that each of said fictitious defendants was responsible in some way for the
10 matters alleged herein and proximately caused Plaintiffs 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 acting
18 within the course and scope of said agency and employment.
19

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 and
23 scope of, and in pursuance of, said joint venture, partnership and common enterprise.
24

25 9.

26 At all times herein mentioned, the acts and omissions of various defendants, and each of
27

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

3 10.

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

10
11 FACTUAL ALLEGATIONS

12 11.

13 Plaintiffs and all members of the class identified herein were regularly scheduled as a
14 matter of uniform company policy to work and in fact worked as salaried station employees in
15 excess of eight hours per workday and/or in excess of forty hours per workweek without
16 receiving straight time or overtime compensation for such overtime hours worked in violation of
17 California Labor Code Section 1194 and the applicable California Industrial Welfare
18 Commission wage order(s). Plaintiffs and the other members of the class were improperly and
19 illegally mis-classified by defendants as "exempt" managerial/executive employees when, in fact,
20 they were "non-exempt" non-managerial employees according to California law. Plaintiffs and
21 the other members of the class have the right to be compensated by defendants at the appropriate
22 compensatory wage rate for said work heretofore performed, consisting of the straight time rate
23 plus the appropriate overtime premium as mandated by California law. Furthermore, Defendants
24 failed to provide the Plaintiffs and class members the required rest and meal periods during the
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1 relevant time period as required under the IWC Wage Orders and thus are entitled to any and all
2 applicable penalties.

3 12.

4 This complaint is brought by Plaintiffs pursuant to California Code of Civil Procedure
5 section 382 on behalf of a class. All claims alleged herein arise under California law for which
6 Plaintiffs seek relief authorized under California law. The class is comprised of, and defined as:

7 All California based salaried station employees also described by
8 Defendants as Profit Center Managers, who worked at any time during the
9 four years preceding the filing of this Complaint up until the date of class
10 certification at any station in the State of California owned, operated
and/or acquired by defendants.

11 Defendants claim that they cannot comprehend the term "salaried station employees," yet
12 Defendants do understand that all "profit center managers" working for Defendants in California
13 were paid on a salary basis, typically worked overtime hours and were categorically classified as
14 "exempt" from California's overtime laws. Based on Defendant's apparent confusion, Plaintiffs
15 have clarified the term "salaried station employees" by adding the language "Profit Center
16 Manager" which is the title of the positions used by Defendants that receive a salary at the
17 Defendants' retail locations in California. The members of the class are so numerous that joinder
18 of all members would be impractical, if not impossible. The members of the class are readily
19 ascertainable by a review of defendants' records. Further, the subject matter of this action both as
20 to factual matters and as to matters of law, are such that there are questions of law and fact
21 common to the class which predominate over questions affecting only individual members
22 including, among other things, the following:

23
24 a. Statistically, one hundred percent of the class members were paid on a salary basis
25 with no overtime compensation paid for work accomplished in excess of forty hours per week, or
26 eight hours per day. Plaintiffs are informed and believes and based thereon alleges that all class
27

1 members failed to meet the exemption requirements of California law such as 1) regularly spend
2 more than 50% of their time performing exempt work; 2) customarily and regularly exercised
3 discretion and independent judgment and; 3) have authority to hire and fire. Thus, Plaintiffs and
4 the class members were not exempt from the overtime requirements of California law for that
5 reason;

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

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

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

12
13 13.

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

18
19 14.

20 There are predominant common questions of law and fact and a community of interest
21 amongst Plaintiffs and the claims of the absent class members concerning whether defendants'
22 regular business custom and practice of requiring substantial "overtime" work and not paying for
23 said work according to the overtime mandates of California law is, and at all times herein
24 mentioned was, in violation of California Labor Code Sections 1194 and 500, et seq., the Unfair
25 Practices Act and the applicable California Industrial Welfare Commission wage orders.
26 Defendants' employment policies and practices wrongfully and illegally failed to compensate
27

1 salaried store employees for substantial overtime compensation earned as required by California
2 law. For instance, questions of fact and/or law common to the members of the aforesaid class --
3 which predominate over any questions which may affect only individual members -- are:

4 i. Whether defendants' salaried station employees who worked as Profit
5 Center Managers were classified as "exempt" in violation of California law;

6 ii. Whether defendants uniformly failed to pay overtime wages to its salaried
7 station employees who worked as Profit Center Managers by virtue of defendants' unlawful class
8 wide designation of such employees as "exempt" in violation of California law;

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

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

14 v. Whether Plaintiffs and the class are entitled to compensatory damages
15 pursuant to the California Labor Code;

16 vi. Whether Plaintiffs and the class are entitled to injunctive relief, including
17 restitution and/or disgorgement of profits pursuant to California law.

18 vii. What is the correct computation formula for the payment of overtime in
19 California?

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

22 ix. What are the realistic requirements of the salaried store positions?

23 x. What are the expectations of defendants vis-à-vis the class members job
24 performance?
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xi. Who has the burden of proof on the exemption issue?

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

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

15.

The claims of Plaintiffs are typical of the claims of all members of the class. Plaintiffs, as representative parties, will fairly and adequately protect the interests of the class by vigorously pursuing this suit through attorneys who are skilled and experienced in handling civil litigation of this type.

16.

The California Labor Code and wage order provisions upon which Plaintiffs asserts these claims are broadly remedial in nature. These laws and labor standards serve an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiffs and members of the class identified herein make the class action format a particularly efficient and appropriate procedure to redress the wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate defendants would necessarily gain an unconscionable advantage since it would be able to exploit and overwhelm the limited resources of each individual Plaintiffs with its vastly superior financial and legal resources. Requiring each

1 class member to pursue an individual remedy would also discourage the assertion of lawful
2 claims by employees who would be disinclined to file an action against their former employer for
3 real and justifiable fear of retaliation and permanent damage to their careers at subsequent
4 employment.

5 17.

6 The prosecution of separate actions by the individual class members, even if possible,
7 would create a substantial risk of (1) inconsistent or varying adjudications with respect to
8 individual class members against the defendants and which would establish potentially
9 incompatible standards of conduct for the defendants, and/or (2) adjudications with respect to
10 individual class members which would, as a practical matter, be dispositive of the interests of the
11 other class members not parties to the adjudications or which would substantially impair or
12 impede the ability of the class members to protect their interests. Further, the claims of the
13 individual members of the class are not sufficiently large to warrant vigorous individual
14 prosecution considering all of the concomitant costs and expenses.
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 Plaintiffs and the class identified herein, in a civil action, for the unpaid balance of the full
20 amount of the straight time compensation and overtime premiums owing, including interest
21 thereon, willful penalties, reasonable attorneys fees, and costs of suit according to the mandate of
22 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 Plaintiffs' experiences are representatives, will establish the right of each of the members of the Plaintiffs' class to recovery on the causes of action alleged herein.

20.

The Plaintiffs' class is entitled in common to a specific fund with respect to the overtime compensation monies illegally and unfairly retained by defendants. The Plaintiffs' 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, Plaintiffs on their own behalf and on behalf of the members of the class, prays for judgment as hereinafter set forth.

SECOND CAUSE OF ACTION

COME NOW, Plaintiffs, 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.

Plaintiffs 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.

Defendants, and each of them, have engaged in unfair business practices in California by practicing, employing and utilizing the employment practices outlined in Paragraphs 11 through 14, inclusive, to wit, by requiring their salaried store employees who worked as Profit Center

1 Managers to perform the labor services complained of herein without overtime compensation.
2 Defendants' utilization of such unfair business practices constitutes unfair competition and
3 provides an unfair advantage over defendants' competitors. Plaintiffs – and members of the class
4 -- seek full restitution and disgorgement of monies, as necessary and according to proof, to
5 restore any and all monies withheld, acquired and/or converted by the defendants by means of the
6 unfair practices complained of herein. Plaintiffs seek, on their own behalf and on behalf of the
7 class, the appointment of a receiver, as necessary. The acts complained of herein occurred, at
8 least in part, within the last four (4) years preceding the filing of the original complaint in this
9 action.
10

11 23.

12 Plaintiffs are informed and believes and on that basis alleges that at all times herein
13 mentioned defendants have engaged in unlawful, deceptive and unfair business practices, as
14 proscribed by California Business and Professions Code section 17200, including those set forth
15 in Paragraphs 11 through 14 herein thereby depriving Plaintiffs and other members of the class
16 minimum working condition standards and conditions due to them under the California labor
17 laws and Industrial Welfare Commission wage orders as specifically described herein.
18

19 24.

20 Plaintiffs, and all persons similarly situated, are further entitled to and do seek a both a
21 declaration that the above-described business practices are unfair, unlawful and/or fraudulent and
22 injunctive relief restraining defendants from engaging in any of such business practices in the
23 future. Such misconduct by defendants, unless and until enjoined and restrained by order of this
24 Court, will cause great and irreparable injury to all members of the class in that the defendants
25 will continue to violate these California laws, represented by labor statutes and IWC Wage
26 Orders, unless specifically ordered to comply with same. This expectation of future violations
27

1 will require current and future employees to repeatedly and continuously seek legal redress in
2 order to gain compensation to which they are entitled under California law. Plaintiffs have no
3 other adequate remedy at law to insure future compliance with the California labor laws and
4 wage orders alleged to have been violated herein.

5 **THIRD CAUSE OF ACTION**

6 COME NOW, Plaintiffs, individually and on behalf of a class and as a third, separate and
7 distinct cause of action against defendants, and each of them, alleges as follows:
8

9 25.

10 Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the
11 preceding paragraphs.

12 26.

13 Cal. Lab. Code §226.7(a) provides, "No employer shall require any employee to work
14 during any meal or rest period mandated by an applicable order of the Industrial Welfare
15 Commission."
16

17 27.

18 Industrial Welfare Commission Order No. 7-2001(11)(c) provides in relevant part,
19 "Unless the employees is relieved of all duty during a 30 minute meal period, the meal period
20 shall be considered an 'on duty' meal period and counted as time worked."
21

22 28.

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

26 29.

27 Cal. Lab. Code Section 512, which provides in relevant part:
28

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 Plaintiffs and Class members' meal and rest breaks. By these actions, defendants violated Cal. Lab. Code §226.7(a) and is liable to Plaintiffs and the Class.

31.

As a result of the unlawful acts of defendants, Plaintiffs 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.

WHEREFORE, Plaintiffs on their own behalf and on behalf of the members of the class prays for judgment as follows:

1. Determining that this action may proceed and be maintained as a class action;
2. For the First Cause of Action:
 - a. A declaratory judgment that Defendant has violated Cal. Lab. Code
 - b. An award to Plaintiffs and the Class of damages for the amount of unpaid overtime compensation, including interest thereon, and penalties subject to proof;
 - 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;

3. For the Second Cause of Action:

- a. Ordering Defendant, its agents, servants, and employees, and all persons acting, directly or indirectly, in concert with it, to restore and disgorge all funds to each member of the Class acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent and therefore constitute unfair competition under § 17200 et seq. of the California Business and Professions Code;
- b. For injunctive relief pursuant to California Business & Professions Code § 17203, consisting of, inter alia: (1) a declaration that Defendant has engaged in unlawful and unfair business acts and practices in violation of California Business & Professions Code § 17200 et seq.; (2) a preliminary and/or permanent injunction enjoining Defendant and its respective successors, agents, servants, officers, directors, employees and all persons acting in concert with them from pursuing the policies, acts and practices complained of herein and prohibiting Defendant from continuing such acts of unfair and illegal business acts and practices; (3) 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 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;

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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: February 24, 2009

Respectfully Submitted,
RIGHETTI LAW FIRM, P.C.



Michael Righetti
Attorney for Plaintiff