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7 SUPERIOR COURT OF CALIFORNIA
8 COUNTY OF ALAMEDA
9

10 JOSE DAGUNA and JANDIRA ARANTES, NO. RG 08426190
11 CLASS ACTION

12 Plaintiff,

13 vs. FIRST AMENDED COMPLAINT

14
15 COCA COLA ENTERPRISE, and DOES
16 1 through 100, inclusive

17 Defendants.
18

- 1. Violation of Labor Code;
- 2. Violation of B & P § 17200, et seq;
- 3. Failure to Provide Mandated Meal Periods and Rest Breaks
- 4. Failure to Make Payments Within Expenditures and/or Losses the Required Time

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FIRST CAUSE OF ACTION

COMES NOW, Plaintiffs, Jose Daguna and Jandira Arantes (Plaintiffs herein after) individuals over the age of eighteen (18), and brings this challenge to defendant's 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, COCA COLA ENTERPRISE and DOES 1-100, inclusive, (hereinafter defendants) (BCI Coca Cola of Los Angeles has been named as DOE Defendant No. 1 and has been served accordingly) and each of them, alleges as follows:

THE PARTIES, JURISDICTION AND VENUE

1.

This class action is brought pursuant to §382 of the California Code of Civil Procedure. The monetary damages and restitution sought by Plaintiffs exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. The monetary damages sought on behalf of each and every member of the class and as aggregate class damages exceed those jurisdictional limits as well. However, the claims of individual class members, including Plaintiffs, are under the \$75,000 jurisdictional threshold for federal court. For example, a class member who was or has been employed for a relatively brief period could never reasonably be expected to receive a recovery of \$75,000 or more. The total damages for the entire case does not exceed \$5,000,000.00. In addition, there is no federal question at issue, as all the issues related to payment wages alleged herein are based solely on California law and statutes, including the Labor Code, Civil Code, Code of Civil Procedure, and Business and Professions Code. Further there is no federal question at issue, as all the issues related to

1 payment wages alleged herein are based solely on California law and statutes, including the
2 Labor Code, Civil Code, Code of Civil Procedure, and Business and Professions Code.

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4 2.

5 Plaintiff, Jose Daguna ("Plaintiff") was employed in California as a Production
6 Supervisor at COCA COLA ENTERPRISE. Mr. Daguna has worked for defendant COCA
7 COLA ENTERPRISE within four years prior to the filing of this Complaint.

8 Plaintiff, Jandira Arantes ("Plaintiff") was employed in California as a Production
9 Supervisor at COCA COLA ENTERPRISE. Ms. Arantes has worked for defendant COCA
10 COLA ENTERPRISE within four years prior to the filing of this Complaint.

11
12 3.

13 Plaintiffs bring this action against COCA COLA ENTERPRISE, for engaging in a
14 uniform policy and systematic scheme of wage abuse against their salary paid employees in
15 California. This scheme involved, inter alia, misclassifying the Production Supervisors as
16 "exempt" managerial/executive employees for purposes of the payment of overtime
17 compensation when, in fact, they were "non-exempt" non-managerial employees according to
18 California law. Further, COCA COLA ENTERPRISE denied the Production Supervisors
19 mandated meal and rest breaks under California law. As a result of Defendant's systematic and
20 clandestine scheme the salaried store employees throughout California were not paid all wages
21 owed and were deprived of mandated meal periods and rest breaks. Accordingly, COCA COLA
22 ENTERPRISE has violated California common and statutory laws as described more
23 particularly below.
24

25
26 4.

27 Defendants own/owned and operate/operated an industry, business and establishment in
28 within the State of California, including Alameda County, for the purpose of selling their

1 product and merchandise under the name of COCA COLA ENTERPRISE. As such, and based
2 upon all the facts and circumstances incident to defendant's business in California, defendants
3 are subject to California Labor Code Sections 1194, et seq., 500, et seq., California Business
4 and Professions Code Section 17200, et seq., (Unfair Practices Act) and the applicable wage
5 order(s) issued by the Industrial Welfare Commission. At least some of the acts complained of
6 herein occurred in Alameda County as defendants do business in Alameda County area.
7 Plaintiffs are informed and believe and thereon allege that at all times herein mentioned
8 defendants are and were corporations licensed to do business and actually doing business in the
9 State of California.
10

11 5.

12 At all times herein mentioned Plaintiffs and the class identified herein worked for
13 defendants as Production Supervisors at COCA COLA ENTERPRISE. These positions are not
14 positions, which involve work falling within any exception to the above-referenced Labor Code
15 sections, the Unfair Practices Act and/or California Industrial Welfare Commission orders
16 applicable to defendant's business.
17

18 6.

19 Plaintiffs do not know the true names or capacities, whether individual, partner or
20 corporate, of the defendants sued herein as DOES 1 through 100, inclusive, and for that reason,
21 said defendants are sued under such fictitious names, and Plaintiffs pray leave to amend this
22 complaint when the true names and capacities are known. Plaintiffs are informed and believes
23 and thereon alleges that each of said fictitious defendants was responsible in some way for the
24 matters alleged herein and proximately caused Plaintiffs and members of the class to be subject
25 to the illegal employment practices, wrongs and injuries complained of herein.
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7.

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

8.

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

9.

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.

10.

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.

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

17 12.

18 This complaint is brought by Plaintiffs pursuant to California Code of Civil Procedure
19 section 382 on behalf of a class. All claims alleged herein arise under California law for which
20 Plaintiffs seeks relief authorized under California law. The class is comprised of, and defined
21 as:
22

23 All California based Production Supervisors 1) who worked at any time
24 during the four years preceding the filing of this Complaint up until the
date of class certification for Defendants in the State of California.

25 The members of the class are so numerous that joinder of all members would be impractical, if
26 not impossible. The members of the class are readily ascertainable by a review of defendant's
27 records. Further, the subject matter of this action both as to factual matters and as to matters of
28

1 law, are such that there are questions of law and fact common to the class which predominate
2 over questions affecting only individual members including, among other things, the following:

3 a. Statistically, one hundred percent of the class members were paid on a salary
4 basis with no overtime compensation paid for work accomplished in excess of forty hours per
5 week, or eight hours per day. Plaintiffs are informed and believes and based thereon alleges
6 that all class members failed to meet the exemption requirements of California law. Thus,
7 Plaintiffs and the class members were not exempt from the overtime requirements of California
8 law for that reason;

10 b. Defendants uniformly administered a corporate policy concerning both staffing
11 levels and duties and responsibilities of the class members which brought them outside of any
12 of the applicable exemption for overtime under California law.

13 c. The duties and responsibilities of the Production Supervisor's at the defendant's
14 locations were virtually identical from region to region, district to district, employee to
15 employee. Further, any variations in job activities between the different individuals in these
16 positions are legally insignificant to the issues presented by this action since the central facts
17 remain, to wit: whether the factors for overtime exemption were met. Further, these employees
18 did not regularly exercise discretion and independent judgment; these employees' work
19 routinely included work in excess of 40 hours per week and/or 8 hours per day and they were
20 not, and have never been, paid overtime compensation for their work. Furthermore, Defendants
21 failed to provide Plaintiffs and class members the required "off duty" rest and meal periods
22 during the relevant time period as required under the IWC Wage Orders.

25 d. Members of the class identified herein were discharged by defendants or
26 voluntarily quit, and did not have a written contract for employment. The defendants, in
27 violation of California Labor Code Sections 201, and 202, et seq., respectively, had a consistent
28

1 and uniform policy, practice and procedure of willfully failing to pay the earned and unpaid
2 wages of all such former employees. The defendants have willfully failed to pay the earned and
3 unpaid wages of such individuals, including, but not limited to, regular time, overtime, and
4 other wages earned and remaining uncompensated according to amendment, or proof.

5
6 13.

7 As a pattern and practice, also in violation of the aforementioned labor laws and wage
8 orders, defendants did not maintain any records pertaining to when Production Supervisor's
9 began and ended each work period, meal period, the total daily hours worked, and the total
10 hours worked per pay period and applicable rates of pay.

11 14.

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

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23
24 i. Whether defendant's California based Production Supervisor's were
25 classified as "exempt" in violation of California law;

1 ii. Whether defendants uniformly failed to pay overtime wages to its
2 Production Supervisor's by virtue of defendant's unlawful class wide designation of such
3 employees as "exempt" in violation of California law;

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

7 iv. Whether defendant's conduct constituted an illegal, or unfair, business
8 practice in violation of California law;

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

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

13 vii. What is the correct computation formula for the payment of overtime in
14 California?

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

17 ix. What are the realistic requirements of the Production Supervisor
18 positions?

19 x. What are the expectations of defendants vis-à-vis the class members job
20 performance?

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

22 xii. Can defendant rely on the "sole charge" or "primary duty" exemption
23 standards applicable under federal law, or must defendants comply with California's more strict
24 quantitative exemption standards?
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17.

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

18.

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

19.

Proof of a common business practice or factual pattern, of which the named Plaintiffs' experiences are representative, 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'

1 class is entitled in common to restitution and disgorgement of those funds being improperly
2 withheld by defendants. This action is brought for the benefit of the entire class and will result
3 in the creation of a common fund.

4 WHEREFORE, Plaintiffs on thier own behalf and on behalf of the members of the
5 class, prays for judgment as hereinafter set forth.

6
7 **SECOND CAUSE OF ACTION**

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

10 21.

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

15
16 22.

17 Defendants, and each of them, have engaged in unfair business practices in California
18 by practicing, employing and utilizing the employment practices outlined in Paragraphs 11
19 through 14, inclusive, to wit, by requiring their Production Supervisor's to perform the labor
20 services complained of herein without overtime compensation. Defendant's utilization of such
21 unfair business practices constitutes unfair competition and provides an unfair advantage over
22 defendant's competitors. Plaintiffs - and members of the class -- seek full restitution and
23 disgorgement of monies, as necessary and according to proof, to restore any and all monies
24 withheld, acquired and/or converted by the defendants by means of the unfair practices
25 complained of herein. Plaintiffs seek, on their own behalf and on behalf of the class, the
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1 appointment of a receiver, as necessary. The acts complained of herein occurred, at least in
2 part, within the last four (4) years preceding the filing of the original complaint in this action.

3
4 **23.**

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

11
12 **24.**

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

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25 **THIRD CAUSE OF ACTION**

26 COME NOW, Plaintiffs, individually and on behalf of a class and as a third, separate
27 and distinct cause of action against defendants, and each of them, alleges as follows:
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25.

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

26.

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

27.

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

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

1 employer and the employee only if the first meal period was not
2 waived.

3 30.

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

7 31.

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

12 WHEREFORE, Plaintiffs on their own behalf and on behalf of the members of the class
13 prays for judgment as follows:
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15 **FOURTH CAUSE OF ACTION**
16 **(Failure to Make Payment Within the Required Time: California**
17 **Labor Code Sections 201, 202, 203, 226)**

18 36.

19 Plaintiffs re-alleges and incorporates by reference each and every allegation set forth in
20 the preceding paragraphs.

21 37.

22 California Labor Code Section 201 provides in relevant part, "[i]f an employer
23 discharges an employee, the wages earned and unpaid at the time of discharge are due and
24 payable immediately."

25 38.

26 California Labor Code Section 202 provides in relevant part, "[i]f an employee not
27 having a written contract for a definite period quits his or her employment, his or her wages
28

1 shall become due and payable not later than 72 hours thereafter, unless the employee has given
2 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to
3 his or her wages at the time of quitting."
4

5 39.

6 As alleged herein, Defendants failed to pay earned wages to Plaintiffs and the Class who
7 are former employees of Defendants at the time they became due and payable. Thus,
8 Defendants violated Cal. Labor Code Sections 201 and 202. Accordingly, Plaintiffs seek
9 recovery of waiting time penalties as provided under Labor Code Section 203.

10 WHEREFORE, Plaintiffs on their own behalf and on behalf of the members of the class
11 prays for judgment as follows:
12

- 13 1. Determining that this action may proceed and be maintained as a class action;
- 14 2. For the First Cause of Action:
 - 15 a. A declaratory judgment that Defendants have violated Labor Code Sections
 - 16 1194, 1194.2 and 1197;
 - 17 b. An award to Plaintiffs and the Classes of damages for the balance of unpaid
 - 18 compensation, including interest thereon, and penalties subject to proof;
 - 19 c. An award to Plaintiffs and the Classes of reasonable attorneys' fees and costs
 - 20 pursuant to Labor Code Section 1194;
 - 21 d. Pursuant to Labor Code Section 218.6, an award of all accrued interest from the
 - 22 date that the wages were due and payable at the interest rate specified in
 - 23 subdivision (b) or Section 3289 of the Civil Code; and
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- 25 3. For the Second Cause of Action:
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a. Ordering Defendants, their agents, servants and employees, and all persons acting, directly or indirectly, in concert with them, 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 Section 17200 *et. seq.* of the Business and Professions Code;

b. For injunctive relief pursuant to Business and Professions Code Section 17203, consisting of *inter alia*: (1) a declaration that Defendants have engaged in unlawful and unfair and fraudulent business acts and practices in violation of California Business and Professions Code Section 17200 *et. seq.*; (2) a preliminary and/or permanent injunction enjoining Defendants and their 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 Defendants from continuing such acts of unfair and illegal business acts and practices; and

c. Restitution, including, but not limited to, the relief permitted by the California IWC Order Nos. 7-1997 through 7-2001 *et. seq.*

4. For the Third Cause of Action:

a. A declaratory judgment that Defendants have violated Labor Code Sections 226.7, 512, and the IWC Order Nos. 7-1997 *et seq.* through 7-2001 *et seq.*;

b. Pursuant to Labor Code Section 226.7, an award to Plaintiffs and the Class of an additional hour of pay at the rate of the employee's regular rate of compensate for each work day that a meal and/or rest break was not provided;

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- c. Pursuant to Labor Code Section 218.6, an award of all accrued interest from the date that the wages were due and payable at the interest rate specified in subdivision (b) or Section 3289 of the Civil Code; and
 - d. An award to Plaintiffs and the Class members of reasonable attorneys' fees and costs pursuant to Labor Code Section 218.5; and
- For punitive damages.

5. For the Fourth Cause of Action:

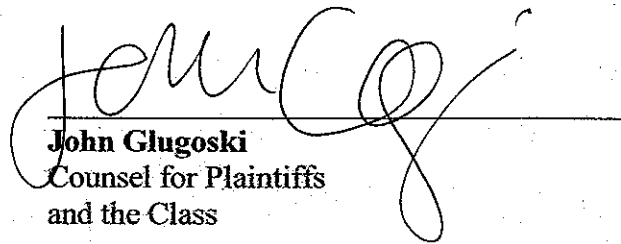
- a. A declaratory judgment that Defendants have violated Labor Code Sections 201 and 202;
- b. An award to Plaintiffs and the Classes who are former employees of continuing wages as a penalty from the due date thereof at the same rate until paid or until this action was commenced; but for no more that 30 days;
- c. Pursuant to Labor Code Section 226, an award to Plaintiffs and the Class of actual damages as well as an award of costs and reasonable attorneys' fee; and

7. Awarding Plaintiffs and the Class their attorneys' fees and costs of suit to the extent permitted by law;

8. All other relief as this Court may deem proper.

DATED: April 13, 2009

RIGHETTI LAW FIRM, P.C.



John Glugoski
Counsel for Plaintiffs
and the Class