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FILED  
Superior Court Of California,  
Sacramento  
09/19/2012  
emedina  
By \_\_\_\_\_, Deputy  
Case Number:  
34-2012-00131994

**SUPERIOR COURT OF CALIFORNIA**  
**COUNTY OF SACRAMENTO**

CARL ADAMS, III,

Plaintiff,

vs.

ACTIONLINK, LLC and DOES 1 through 50  
inclusive,

Defendants.

NO.

CLASS ACTION

**COMPLAINT**

1. Violation of Labor Code;
2. Failure to Pay Overtime
3. Violation of B & P § 17200, et seq;
4. Failure to Make Payments Within the Required Time
5. Failure to Indemnify Employees for
6. Penalties Pursuant to PAGA

DEPARTMENT  
ASSIGNMENTS  
Case Management 44  
Law and Motion 53  
Minors Compromise 45

1.

COMES NOW, Plaintiff, an individual over the age of eighteen (18), and bring 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, ACTIONLINK, LLC, and DOES 1-50, inclusive, (hereinafter defendants) and each of them, alleges as follows:

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**THE PARTIES, JURISDICTION AND VENUE**

**2.**

This class action is brought pursuant to §382 of the California Code of Civil Procedure. The claims of individual class members, including Plaintiff, 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 amount recoverable in this case does not exceed \$5,000,000.00. Further 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.

**3.**

Plaintiff Carl Adams, III ("Plaintiff") brings this action against ACTIONLINK, LLC, (collectively "Defendants") for engaging in a uniform policy and systematic scheme of wage abuse against their hourly employees and salaried employees in California. This scheme involved, inter alia, failing to pay hourly and salaried employees all wages earned for all hours worked. As a result of Defendant's systematic and clandestine scheme of failing to properly pay their hourly and salaried employees wages for all hours worked throughout California, Defendants have violated California common and statutory laws as described more particularly below.

**4.**

Defendants own/owned and operate/operated an industry, business and establishment in within the State of California, including Sacramento County, for the purpose of assisting customer store owners with sales campaign and merchandising to increase sales of products at

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

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11 5.

12 Defendants own/owned and operate/operated an industry, business and establishment in  
13 within the State of California, including Sacramento County, for the purpose of assisting  
14 customer store owners with sales campaign and merchandising to increase sales of products at  
15 the store level under the name of ACTIONLINK, LLC. Venue is proper in this county under  
16 California Business and Professions Code §17203 and California Code of Civil Procedure  
17 §§395(a) and 395.5. As such, and based upon all the facts and circumstances incident to  
18 defendant's business in California, defendants are subject to California Labor Code Sections  
19 1194, et seq., 500, et seq., California Business and Professions Code Section 17200, et seq.,  
20 (Unfair Practices Act) and the applicable wage order(s) issued by the Industrial Welfare  
21 Commission. At least some of the acts complained of herein occurred in Sacramento County as  
22 defendants do business in Sacramento County area and Plaintiff performed work for Defendants  
23 in Sacramento County. Plaintiff is informed and believes and thereon alleges that at all times  
24 herein mentioned defendants are and were corporations licensed to do business and actually  
25 doing business in the State of California.  
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6.

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

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.

Plaintiff Carl Adams ("Mr. Adams") was a California resident at all pertinent times herein who worked for Defendants. During his employment with Defendant and during the class period, Plaintiff was paid on both a salary and hourly basis. Plaintiff and class members were converted to hourly status from salaried status during the class period but continued to perform the same duties and responsibilities for which they were not paid for all hours worked. Defendant required Mr. Adams and the class to work hours for which they were never paid, and work overtime for which they were never paid. Plaintiff, Carl Adams ("Plaintiff") was employed in California as a Field Representative (aka "delegate, Merchandising specialist and/or Brand

1 Advocate”) of ACTIONLINK, LLC. Mr. Adams has worked for defendants within four years  
2 prior to the filing of this Complaint.

3  
4 **9.**

5 The true names and capacities, whether is individual, corporate, associate, representative,  
6 or otherwise, of Defendants named herein as DOES 1 through 50 are unknown to Plaintiff at this  
7 time, and they are therefore sued by such fictitious names pursuant to California Code of Civil  
8 Procedure §474. Plaintiff will amend this Complaint to allege the true names and capacities of  
9 DOES 1 through 50 when Plaintiff knows them. Each of DOES 1 through 50 is in some manner  
10 legally responsible for the violations of law alleged herein.

11  
12 **10.**

13 The acts charged in this Complaint as having been done by Defendant was authorized,  
14 ordered, or done by their officers, agents, employees, or representatives, while actively engaged  
15 in the management of the Defendant’s businesses or affairs.

16 **CLASS ACTION ALLEGATIONS**

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18 **11.**

19 Plaintiff bring this action on behalf of themselves and as a class action on behalf of all  
20 persons similarly situated pursuant to California Code of Civil Procedure §382, Civil Code  
21 §1781, and the procedural provisions of Rule 23 of the Federal Rules of Civil Procedure as they  
22 have been adopted for use, referenced, and interpreted by this State’s courts. Plaintiff seeks to  
23 represent and to certify the following class and subclasses:

24 **CLASS**

25 All California based Field Representatives (aka “delegates, Merchandising  
26 Specialists and/or Brand advocates”) who worked at any time during the  
27 four years preceding the filing of this Complaint up until the date of class  
28 certification for Defendants in the State of California.

**SUBCLASSES**

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a. All hourly California based Field Representative (aka “delegates, Merchandising Specialists and/or Brand advocates”) who worked at any time during the four years preceding the filing of this Complaint up until the date of class certification for Defendants in the State of California.

b. All salary California based Field Representative (aka “delegates, Merchandising Specialists and/or Brand advocates”) who were classified as exempt employees and worked at any time during the four years preceding the filing of this Complaint up until the date of class certification for Defendants in the State of California.

The Class excludes Defendant, its subsidiaries, affiliates, dealers, officers, directors, members of Defendant's affiliates, officers, dealers' and directors' immediate families, any entities in which Defendant has a controlling interest, and the officers, directors, affiliates, legal representatives, heirs, successors and/or assigns of any of the individuals or entities mentioned in this paragraph, and any judge assigned to hear this action.

**12.**

This action has been brought and may properly be maintained as a class action pursuant to California Code of Civil Procedure §382, Civil Code §1781, as well as under Federal Rule of Civil Procedure 23(a)(1)-(4), 23 (b)(1), (2), or (3), and case law there under, to which the California trial courts have been directed by the California Supreme Court to look for guidance.

**13.**

Plaintiff believes there are at least several hundred presently and formerly employed hourly-paid and salary-paid ACTIONLINK, LLC employees in the Class. Given Defendant’s massive size and the systematic nature of Defendant’s failure to comply with California employment law and common law, the members of the Class are so numerous that joinder of all members is impractical.

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**14.**

Plaintiff's claims are typical of the claims of the members of the Class because he was both an hourly and salaried employee who, like the members of the Class, was impacted by the conduct complained of herein and sustained damages and other loss arising out of the Defendant's campaign to fail to properly compensate them for all hours worked, and failure to properly maintain accurate records of the actual hours and/or days worked by Plaintiff and the members of the Class.

**15.**

Plaintiff will fairly and adequately protect the interests of the Class members. Plaintiff has retained counsel competent and experienced in complex, class action litigation.

**16.**

Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to Plaintiff and the Class are:

- a. Whether Defendant has engaged in a pattern and/or practice in California of failing to properly compensate the Plaintiff and the Class for all hours worked;
- b. Whether Defendant has engaged in a pattern and/or practice in California of encouraging Plaintiff and the Class not to report all time worked;
- c. Whether Defendant has engaged in a pattern and/or practice in California of threatening Plaintiff and the Class with discharge, demotion, or discrimination or otherwise intimidating them if they do not work off-the-clock;
- d. Whether Defendant failed to keep true and accurate time records for all hours worked by its employees and/or improperly altered time records;
- e. Whether Defendant failed to pay Plaintiff and the Class for the work

1 Defendant required them to perform;

2 f. Whether Defendant violated Cal. Lab. Code §§ 1194 et seq., 1197, 1198,  
3 §510, §512, §551, §552, §§201-203, §§226, 226.7;

4 g. Whether Defendant violated California Industrial Welfare Commission  
5 Orders;

6 h. Whether Plaintiff and the Class are entitled to restitution under Cal. Bus.  
7 & Prof. Code §17200 et seq.

8 i. The nature and extent of class-wide injury and the measure of damages for  
9 the injury, and;

10 j. Whether the Class is entitled to injunctive relief.

11 k. What is the correct computation formula for the payment of overtime in  
12 California?

13 l. For the period when the class was classified as exempt and paid on a  
14 salaried basis, what work is customarily and regularly accomplished by class members in  
15 defendants' – and what category (exempt or non-exempt) does that work properly fall into?

16 m. For the period when the class was classified as exempt and paid on a  
17 salaried basis, what are the realistic requirements of the salaried store positions?

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

20 o. For the period when the class was classified as exempt and paid on a  
21 salaried basis, who has the burden of proof on the exemption issue?

22 p. For the period when the class was classified as exempt and paid on a  
23 salaried basis, can defendant rely on the “sole charge” or “primary duty” exemption standards  
24



1 applicable under federal law, or must defendants comply with California's more strict  
2 quantitative exemption standards?

3 q. Whether Defendants failed to provide Plaintiff and class members rest and meal  
4 breaks in violation of California Labor Code and applicable IWC wage orders;

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

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

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

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

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

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18 **17.**

19 A class action is superior to other available methods for the fair and efficient adjudication  
20 of this controversy for the following reasons:

21 a. A class action is the only available method for the fair and efficient  
22 adjudication of this controversy. The members of the Plaintiff Class are so numerous that joinder  
23 of all members is, at a minimum, impractical, and probably impossible.

24 b. The damages suffered by individual Class members are relatively small  
25 compared to the expense and burden of prosecuting this complex case against a well-financed  
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1 corporation. Consequently, this class action is the only way that every Class member can redress  
2 the harm and damage caused by Defendant's conduct.

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4 c. Should this Court require individual Class members to bring separate  
5 actions, this Court would face a multiplicity of lawsuits, which would unduly burden both the  
6 California court system and the litigants. The prosecution of separate actions will create a risk of  
7 inconsistent rulings and contradictory judgments which might dispose of other Class members'  
8 interests who are not parties to the adjudication, thereby impeding and impairing Class members'  
9 ability to protect their interests. Inconsistent results will magnify the delay and expense to all  
10 parties and to the California court system. By contrast, this class action presents far fewer  
11 management difficulties while providing unitary adjudication, economies of scale and  
12 comprehensive supervision by a single court.  
13

14 **18.**

15 In the alternative, this action is certifiable under the provisions of Rule 23(b)(1)(2) and/or  
16 (b)(2) of the Federal Rule of Civil Procedure, which have been found applicable to the State of  
17 California, because:

18 a. The prosecution of separate actions by individual Class members will  
19 create a risk of inconsistent or varying adjudications with respect to individual Class members  
20 which would establish incompatible standards of conduct for Defendant;  
21

22 b. The prosecution of separate actions by individual Class members will  
23 create a risk of adjudications with respect to the Class which might, as a practical matter, be  
24 dispositive of the interests of other Class members not parties to the adjudications, or  
25 substantially impair other Class members' ability to protect their interests; and

26 c. Defendant has acted or refused to act on grounds generally applicable to  
27 the Class thereby making appropriate final injunctive relief with respect to all Class members.  
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**19.**

A class action will cause an orderly and expeditious administration of the claims of the Class. Economies of time, effort and expense will be fostered and uniformity of decisions will be insured.

**20.**

Plaintiff anticipates little, if any, difficulty in the management of this litigation.

**SUMMARY OF ALLEGATIONS**

**21.**

Defendant offered the Plaintiff and each Class member employment as hourly and/or salaried paid employees, which each Plaintiff and Class member accepted, thereby entering into an employment relationship governed by the California Labor Code and its implementing regulations and orders.

**22.**

At the time Plaintiff and members of the Class accepted employment with Defendant, they were expressly told the rate they would earn for each hour worked when paid hourly and the salary they would receive when paid on salaried basis. During the four years preceding the filing of the lawsuit, Defendant reclassified some if not all the positions at issue in this lawsuit from salaried exempt to hourly non-exempt. Plaintiff was amongst those individuals who was converted from salary to hourly status. For those, class members including Plaintiff who were reclassified, their duties and responsibilities remained constant. When paid on a salaried basis, Plaintiff and the class have not paid for all hours worked. When paid on an hourly basis, Plaintiff and the class have not been paid for all hours worked.

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23.

One of ACTIONLINK, LLC's largest expenses is the payroll of its employees. A basis for ACTIONLINK, LLC's profitability is its creation and implementation of a uniform policy and system that required the employees when paid on salaried-basis to work overtime without compensation although they were misclassified and should have been compensated; When paid on a hourly basis, Defendant created and implemented a uniform policy and system that required the employees to work hours for which Defendant will not compensate them throughout its California properties.

24.

Beginning at a date unknown to Plaintiff, but at least as early as four years preceding the filing of this Complaint, Defendant committed, and continue to commit, acts of wage abuse against their employees by failing to properly compensate ACTIONLINK, LLC's employees throughout California for all hours worked.

25.

Defendant's clandestine program of failing to pay its these employees for all hours worked is, in part, carried out through its culture. Defendant gives employees work assignments that Defendant knows or should know its employees cannot complete within their scheduled hours. Defendant also pressures employees to complete their work assignments through intimidation, threats of discharge, and demotion, while at the same time precluding such employees from clocking in hours worked and necessary to accomplish their assignments outside their regular work schedule. Consequently, employees must work after clocking out at the end of their shifts, and before clocking in at the beginning of their shifts. When hours are recorded on time sheets, then Defendant routinely and systematically alters the time records to delete time worked.

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

17 **26.**

18  
19 Defendant ACTIONLINK, LLC has adopted and is using unfair business practices to hold  
20 down pay to these employees, including the Plaintiff and the Class. Among these unfair business  
21 practices are failure to pay hourly employees for all hours worked as required under California  
22 law.

23 **27.**

24 Defendant ACTIONLINK, LLC's corporate policies also encourage its hourly employees  
25 to not record all their time actually worked, and/or refuses to pay for all hours logged. Indeed,  
26 Defendant's corporate practice is to pay little or no overtime. Defendant ACTIONLINK, LLC  
27 meets this cost-saving goal by systematically having employees work hours for which they will  
28 not pay.

1 Defendant ACTIONLINK, LLC's corporate policies also encourage its salaried employees  
2 to work overtime but refuses to pay for all hours worked, claiming the employees are exempt.  
3 Indeed, Defendant's corporate practice is to pay no overtime. Defendant ACTIONLINK, LLC  
4 meets this cost-saving goal by systematically having employees work hours for which they will  
5 not pay.

6 **FIRST CAUSE OF ACTION**

7 **Failure to Pay Minimum Wage**  
8 **Violation of Cal. Lab. Codes §§1194, 1194.2, 1197**  
9 **28.**

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

12 **29.**

13 The Class Period for this cause of action is four years from the filing of the complaint.

14 **30.**

15 Cal. Lab. Code §1197 provides, "the minimum wage for employees fixed by the  
16 commission is the minimum wage to be paid to employees, and the payment of a less wage than  
17 the minimum so fixed is unlawful."

18 **31.**

19 Cal. Lab. Code §1194 provides in relevant part that any employee receiving less than the  
20 legal minimum wage applicable to the employee is entitled to recover in a civil action the unpaid  
21 balance of the full amount of this minimum wage, including interest thereon, reasonable  
22 attorneys' fees, and costs of suit.

23 **32.**

24 Cal. Lab. Code § 1194.2 provides in relevant part that: "In any action under ... Section  
25 1194 to recover wages because of a payment of a wage less than the minimum wage fixed by an  
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1 order of the commission, an employee shall be entitled to recover liquidated damages in an  
2 amount equal to the wages unlawfully unpaid and interest thereon. "

3  
4 **33.**

5 As alleged herein, Defendant required Plaintiff and the Class members to work without  
6 compensating them for all hours worked in violation of California law. By these actions,  
7 Defendant violated Cal. Lab.Code § 1197 and is liable to Plaintiff and the Class.

8 **34.**

9 As a result of the unlawful acts of Defendant, Plaintiff and the Class members have been  
10 deprived of compensation in amounts to be determined at trial, and are entitled to recovery of  
11 such amounts, including interest thereon, attorneys' fees, costs, and any other damages as set  
12 forth under California law, including statutory penalties under Cal. Labor Code §2699.

13  
14 **35.**

15 When paid on an hourly basis, Plaintiff and the class have not been paid for all hours  
16 worked. Plaintiff and all members of the class identified herein were regularly scheduled and in  
17 fact performed work for which Defendant would not pay as time worked nor allow Plaintiff and  
18 the class to claim as time worked. Further, during the class period, Plaintiff and class members  
19 have been classified for a period of time as exempt but they did not meet the criteria for this  
20 classification. Plaintiff and all members of the class identified herein were regularly scheduled as  
21 a matter of uniform company policy to work and in fact worked as salaried store employees in  
22 excess of eight hours per workday and/or in excess of forty hours per workweek without  
23 receiving straight time or overtime compensation for such overtime hours worked in violation of  
24 California Labor Code Section 1194 and the applicable California Industrial Welfare  
25 Commission wage order(s). Plaintiff and the other members of the class were improperly and  
26 illegally mis-classified by defendants as "exempt" managerial/executive employees when, in fact,  
27  
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1 they were "non-exempt" non-managerial employees according to California law. Plaintiff and  
2 the other members of the class have the right to be compensated by defendants at the appropriate  
3 compensatory wage rate for said work heretofore performed for both the time they were paid on a  
4 salaried basis and/or hourly basis, consisting of the straight time rate plus the appropriate  
5 overtime premium as mandated by California law. Furthermore, Defendants failed to provide the  
6 Plaintiff and class members the required rest and meal periods during the relevant time period as  
7 required under the IWC Wage Orders and thus are entitled to any and all applicable penalties.

8  
9 **SECOND CAUSE OF ACTION**

10 **Failure to Pay Overtime Wages**  
11 **Violations of Cal. Lab. Code §§ 510, 1194 et seq., 1198**

12 **36.**

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

15 **37.**

16 The Class Period for this cause of action is four years from the filing of the complaint.

17 **38.**

18 Cal. Lab. Code §510, "Day's work" provides in relevant part:

19 Eight hours of labor constitutes a day's work

20 \* \* \* \*

21 Any work in excess of eight hours in one workday and any work in  
22 excess of 40 hours in anyone workweek and the first eight hours  
23 worked on the seventh day of work in anyone workweek shall be  
24 compensated at the rate of no less than one and one-half times the  
25 regular rate of pay for an employee. Any work in excess of 12 hours  
26 in one day shall be compensated at the rate of no less than twice the  
27 regular rate of pay for an employee. In addition, any work in excess  
28 of eight hours on any seventh day of a workweek shall be  
compensated at the rate of no less than twice the regular rate of pay  
of an employee. Nothing in this section requires an employer to  
combine more than one rate of overtime compensation in order to



1 calculate the amount to be paid to an employee for any hour of  
2 overtime work.

3 **39.**

4 Cal. Lab. Code § 1194 provides in relevant part that: "any employee receiving less than  
5 the minimum wage or the legal overtime compensation applicable to the employee is entitled to  
6 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime  
7 compensation, including interest thereon, reasonable attorney's fees, and costs of suit."  
8

9 **40.**

10 Cal. Lab. Code § 1198 provides in relevant part, "the employment of any employee for  
11 longer hours than those fixed by the order or under conditions of labor prohibited by the order is  
12 unlawful."  
13

14 **41.**

15 Industrial Welfare Commission Order No. 7-2001(3)(A)(I) provides in relevant  
16 part:

17 [E]mployees shall not be employed more than eight (8) hours in any  
18 workday or more than 40 hours in any workweek unless the  
19 employee receives one and one-half (1 1/2) times such employee's  
20 regular rate of pay for all hours worked over 40 hours in the  
21 workweek. Eight (8) hours of labor constitutes a day's work.  
Employment beyond eight (8) hours in any workday or more than six  
(6) days in any workweek is permissible provided the employee is  
compensated for such overtime at not less than:

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

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

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**42.**

As alleged herein, Defendant required Plaintiff and Class members to work overtime without receiving overtime compensation for any hours worked over eight per day or forty per week.

**43.**

By their actions alleged above, Defendant violated the provisions of §§ 510, 1194 and 1198 of the California Labor Code and is liable to Plaintiff and the Class.

**44.**

As a result of the unlawful acts of Defendant, Plaintiff and the Class have been deprived of overtime compensation in amounts to be determined at trial, injunctive relief and are entitled to recovery of such amounts, including interest thereon, attorneys' fees, costs, and penalties.

**THIRD CAUSE OF ACTION**

**Unfair Competition  
Violations of Cal. Bus. & Prof. Code §17200 et seq.**

**45.**

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

**46.**

The Class period for this cause of action is four years from the filing of the complaint.

**47.**

Section 17200 of the California Business & Professions Code prohibits any unlawful, unfair, or fraudulent business acts or practice.

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**48.**

As used in this Complaint and in §17200, "unfair competition" means an unlawful, unfair or fraudulent business act or practice. This conduct is actionable pursuant to Business and Professions Code §§ 17200, 17203.

**49.**

Through the actions alleged herein, Defendant has engaged in unfair competition within the meaning of Cal. Bus. & Prof. Code § 17200, because Defendant's conduct has violated state wage and hour laws and the California common law as herein described. Indeed, Defendant's conduct as herein alleged has damaged Plaintiff and the Class by wrongfully denying them earned wages and therefore was substantially injurious to Plaintiff and the Class.

**50.**

Beginning at a date unknown to Plaintiff, but at least as early as four years preceding the filing of this lawsuit, Defendant committed, and continues to commit, acts of unfair competition, as defined by § 17200 et seq. of the California Business and Professions Code, by, among other things, engaging in the acts and practices described above.

**51.**

Defendant engaged in unfair competition in violation of Cal. Bus. & Prof. Code § 17200 et seq. by violating, inter alia, each of the following, each of which constitutes an independent and separate violation of Cal. Bus. & Prof. Code § 17200 et seq.:

- a. Failure to pay wages for all hours worked;
- b. Cal. Lab. Code §§201,202, 204 et seq.;
- c. Cal. Lab. Code §§226, 226.7;
- d. Cal. Lab. Code §510;
- e. Cal. Lab. Code Section 512;

1 f. Cal. Lab. Code §551, which provides that "[e]very person employed in any  
2 occupation of labor is entitled to one day's rest there from in seven."

3  
4 g. Cal. Lab. Code §552, which provides that "No employer of labor shall  
5 cause his employees to work more than six days in seven."

6 h. Cal. Lab. Code § 1182. 11, which provides the minimum wage for all  
7 industries;

8 i. Cal. Lab. Code § 1194 et seq.;

9 j. Cal. Lab. Code § 1197, 1198;

10 j. Cal. Lab. Code § 2802;

11 k. California Industrial Welfare Commission Order  
12

13 **52.**

14 Defendants' course of conduct, acts, and practices in violation of the California laws  
15 mentioned in each paragraph above constitute a separate and independent violation of §17200, et  
16 seq., of the California Business and Professions Code.

17 **53.**

18 The harm to Plaintiff and the Class in being wrongfully denied lawfully earned wages  
19 outweighs the utility, if any, of Defendant's policy/practices and, therefore, Defendant's actions  
20 described herein constitute an unfair business practice or act within the meaning of California  
21 Business and Professions Code §17200.  
22

23 **54.**

24 Further, Defendants failed to provide Plaintiffs and Class Members with their legally  
25 required meal break, and Plaintiff and Class Members seek to recover by way of restitution the  
26 wages owed to them for Defendants' violations of Labor Code § 226.7 and Wage Order  
27 provisions for meal periods, which constituted unfair business practices.  
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**55.**

Defendant's conduct described herein constitutes an incipient violation of state wage and hour laws and the California and/or violates the policy or spirit of such laws or otherwise significantly threatens or harms competition.

**56.**

Defendant's course of conduct also violates Cal. Bus. & Prof. Code § 17200 in that it is fraudulent and improper.

**57.**

The unlawful, unfair, and fraudulent business practices and acts of Defendants, and each of them, as described above, have injured Plaintiff and members of the Class in that they were wrongfully denied the payment of all wages owed as required under California law.

**58.**

Pursuant to Business and Professions Code § 17203, the Court may impose injunctive relief against any conduct found to constitute unfair competition pursuant to Business and Professions Code § 17200. The court may also make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

**59.**

Plaintiffs are informed and believe that for the last four years, Defendants have intentionally and improperly violated the Labor Laws and Regulations for Plaintiffs and Class Members as alleged herein, and have induced and directed its officers, managers, supervisors and/or other employees or agents to engage in violations including (1) failing and refusing to pay

1 all wages owed for hours worked; and (2) failing to pay compensation due in a timely manner  
2 upon termination, and (3) failing to provide thirty-minute, uninterrupted, off-duty time for meal  
3 periods, which constitute unfair business practices in violation of California Business &  
4 Professions Code Sections 17200, *et seq*  
5

6 **FOURTH CAUSE OF ACTION**

7 **Failure to Make Payment Within the Required Time**  
8 **Violations of Cal. Lab. Code §§201-203, 226**

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

12 **60.**

13 The Class Period for this cause of action is four year from the filing of the complaint.

14 **61.**

15 Cal. Lab. Code §201 provides in relevant part, "[i]f an employer discharges an employee,  
16 the wages earned and unpaid at the time of discharge are due and payable immediately."  
17

18 **62.**

19 Cal. Lab. Code §202 provides in relevant part, " [i]f an employee not having a written  
20 contract for a definite period quits his or his employment, his or his wages shall become due and  
21 payable not later that 72 hours thereafter, unless the employee has given 72 hours previous notice  
22 of his or his intention to quit, in which case the employee is entitled to his or his wages at the  
23 time of quitting."  
24

25 **63.**

26 As alleged herein, Defendant failed to pay earned wages to Plaintiff and the Class who  
27 are former employees of ACTIONLINK, LLC at the time they became due and payable. Thus,  
28 Defendant violated Cal. Lab. Code §§201 and 202.

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64.

As a result of Defendant's unlawful acts, Plaintiff and the Class who are former employees of ACTIONLINK, LLC are entitled to recover, pursuant to Cal. Lab. Code §203, 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 than 30 days.

65.

In addition, Cal. Lab. Code §226(a) provides in relevant part that "Every employer shall furnish each of his or his employees ... an itemized statement in writing showing ... total hours worked by the employee ... and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee." Cal. Lab. Code §226(b) then provides in relevant part: "Any employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) shall be entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000) and shall be entitled to an award of costs and reasonable attorney's fees." Plaintiff and the Class are entitled to recover accordingly.

**FIFTH CAUSE OF ACTION**  
**(Failure to Indemnify Employees for**  
**Expenditures: California Labor Code Sections 2802)**

66.

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

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67.

California Labor Code Section 2802 provides in relevant part, "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

68.

As alleged herein, Defendants failed to indemnify Plaintiff and the class members for all business expenses and/or losses as required under Labor Code Section 2802 and *Gattuso v. Harte-Hanke Shoppers, Inc.* incurred while working under the direction of Defendants.

69.

As a result of the unlawful acts of Defendants, Plaintiff and the Class members have been deprived of compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, including interest thereon, attorneys' fees, costs, and any other damages as set forth under California Law.

**SIXTH CAUSE OF ACTION**

**[Penalties Pursuant to Labor Code Section 2698-99]**

70.

Plaintiff herein re-alleges and incorporates each and every allegation set forth in the proceeding paragraphs and brings this cause of action on a representative basis on behalf of himself and all others similarly situated.

71.

As a further and direct proximate result of the failure to pay overtime compensation, failure to provide, authorize and/or permit meal and rest periods, and failure to



1 make payments within the required time, Plaintiff is entitled to recover penalties pursuant to  
2 California Labor Code Sections 2698-99 (Private Attorney General's Act aka PAGA).  
3 Plaintiff seeks statutory penalties for violations of Cal. Labor Code sections §§204, 210, 226,  
4 558, and 1194.  
5

6 **72.**

7 Plaintiff has taken the steps necessary to exhaust administrative remedies and Plaintiff  
8 has exhausted his administrative remedies and may now proceed forward to recover PAGA  
9 penalties in a civil action on behalf of Plaintiff and those similarly situated.  
10

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff, on behalf of themselves and the members of the Class, pray for  
13 judgment against the Defendant as follows:

- 14 1. Determining that this action may proceed and be maintained as a class action;
- 15 2. On the First Cause of Action:
  - 16 a. A declaratory judgment that Defendant has violated Cal. Lab. Code  
17 §§1194, 1194.2 and 1197;
  - 18 b. An award to Plaintiff and the Class of damages for the balance of unpaid  
19 overtime compensation, including interest thereon, and penalties subject to  
20 proof;
  - 21 c. An award to Plaintiff and the Class of reasonable attorneys' fees and costs  
22 pursuant to Cal. Lab. Code § 1194 and/or other applicable state laws;
  - 23 d. An award to Plaintiff and the Class of liquidated damages, pursuant to Cal.  
24 Lab. Code § 1194.2;
  - 25 e. Awarding the Named Plaintiff and the Class pre-judgment interest at the  
26 highest legal rate, on all unpaid wages from the date such wages were  
27 earned and due;
- 28 3. For the Second Cause of Action:
  - a. A declaratory judgment that Defendant has violated Cal. Lab. Code
  - b. An award to Plaintiff and the Class of damages for the amount of unpaid

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overtime compensation, including interest thereon, and penalties subject to proof;

c. An award to Plaintiff and the Class of reasonable attorneys' fees and costs pursuant to Cal. Lab. Code § 1194 and/or other applicable state laws;

4. For the Third 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;

5. For the Fourth Cause of Action:

a. A declaratory judgment that Defendant has violated Cal. Lab. Code §§201, 202 and 226;

b. An award to Plaintiff and the Class 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 than 30 days;

c. An award to Plaintiff 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.

d. An award to Plaintiff and the Class of reasonable attorneys' fees and costs pursuant to Cal. Lab. Code §1194 and/or other applicable state laws;

e. An award to Plaintiff and the Class of actual damages as well as an award of costs and reasonable attorneys' fees, pursuant to Cal. Lab. Code §226;

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7. For the Fifth Cause of Action:

- a. A declaratory judgment that Defendants have violated Labor Code Section 2802;
- b. An award to Plaintiff and the Class of compensatory damages to be paid by Defendant for failure to indemnify Plaintiff and the Class for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful;
- c. An award to Plaintiff and the Class of reasonable attorneys' fees and costs pursuant to Labor Code Section 2802;
- d. An award of all accrued interest from the date that the compensation was due and payable at the interest rate specified in subdivision (b) or Section 3289 of the Civil Code; and

8. For the Sixth Cause of Action:

- a. A declaratory judgment that Defendants have violated Cal. Labor Code Sections 204, 210, 226.7, 510, 558, and 1194.
- b. For the maximum statutory penalties as set forth in the California Labor Code Private Attorney's General Act.

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

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

Dated: September 18, 2012

Respectfully submitted,

**Righetti • Glugoski, P.C.**



John Glugoski  
Attorneys for Plaintiff