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CASE MANAGEMENT CONFERENCE SET
APR 24 2009 - 9:00 AM
DEPARTMENT 212

ENDORSED
FILED
Superior Court of California
County of San Francisco
NOV 24 2008
GORDON PARK-LI, Clerk
BY: CRISTINA BAUTISTA
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

JAIME GRAND, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

PLAINTIFFS,

V.

WTS INTERNATIONAL, INC. International, Inc., AND DOES 1 TO 100 INCLUSIVE,

DEFENDANTS.

CLASS ACTION

CASE NO.:

CGC-08-482245

COMPLAINT

1. **FAILURE TO PAY MIMIMUM WAGE**
2. **FAILURE TO PAY OVERTIME COMPENSATION**
3. **FAILURE TO PROVIDE MANDATED MEAL AND REST BREAKS**
4. **FAILURE TO MAKE PAYMENTS WITHIN THE REQUIRED TIME**
5. **VIOLATION OF LABOR CODE SECTION 2802**
6. **VIOLATION OF LABOR CODE SECTION 227.3**
7. **VIOLATION OF B & P § 17200, ET SEQ.**
8. **VIOLATION OF SAN FRANCISCO'S SICK LEAVE ORDINANCE**
9. **CONVERSION**

FIRST CAUSE OF ACTION

COME NOW, Plaintiffs, individuals 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, WTS INTERNATIONAL, INC. , and DOES 1-100, inclusive, (hereinafter defendants) 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 plaintiff exceed 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. 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.

2.

Plaintiff, Jaime Grand ("Plaintiff") brings this action against WTS INTERNATIONAL, INC. , for engaging in a uniform policy and systematic scheme of wage abuse against their hourly paid employees in California. This scheme involved, inter alia, failing to pay hourly 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 employees wages for all hours worked

in their California Spa. WTS INTERNATIONAL, INC. has violated California common and statutory laws as described more particularly below.

3.

WTS INTERNATIONAL, INC. is a Spa in the United States, and has a property location in San Francisco, California with a team of approximately 40 spa and wellness workers.

4.

Venue is proper in this county under California Business and Professions Code §17203 and California Code of Civil Procedure §§395(a) and 395.5. WTS INTERNATIONAL, INC. operates its spa in San Francisco, California, and employs at least 35-40 persons in the State of California. Further, Plaintiffs are informed and believe, and based thereon allege, that many of the centralized policies and procedures and conduct complained about herein emanated from and occurred at Defendant's business in San Francisco County.

5.

The Defendant is within the jurisdiction of this Court. WTS INTERNATIONAL, INC. operates a spa in San Francisco County. Thus, Defendant has obtained the benefits of the laws of the State of California and the California business markets.

6.

Plaintiff Jaime Grand ("Ms. Grand") was a California resident at all pertinent times herein who worked within four years from the filing of the complaint, at the San Francisco, California WTS INTERNATIONAL, INC. location. During her employment as an hourly employee, Defendant required Ms. Grand to work time off-the-clock for which she was never paid and work overtime for which she was never paid. Ms. Grand was denied mandated meal and rest breaks, denied minimum wage, incurred expenditures and losses in direct consequence

of the discharge of her duties for which she was not indemnified and was not provided with credit for vested vacation time, sick time, nor has she accrued the requisite sick leave throughout her time employed at WTS INTERNATIONAL, INC. as required under the law.

7.

The true names and capacities, whether is individual, corporate, associate, representative, or otherwise, of Defendants named herein as DOES 1 through 100 are unknown to Plaintiffs at this time, and they are therefore sued by such fictitious names pursuant to California Code of Civil Procedure §474. Plaintiffs will amend this Complaint to allege the true names and capacities of DOES 1 through 100 when Plaintiff knows them. Each of DOES 1 through 100 is in some manner legally responsible for the violations of law alleged herein.

8.

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

CLASS ACTION ALLEGATIONS

9.

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

> All current and former hourly paid employees of WTS INTERNATIONAL, INC. in San Francisco, California from four years preceding the filing of this Complaint ("the Class").

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.

10.

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)(l)-(4), 23 (b)(l), (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.

11.

Plaintiff believes there are over 40 presently and formerly employed hourly-paid WTS INTERNATIONAL, INC. hourly employees in the Class. Given Defendant's 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.

12.

Plaintiffs' claims are typical of the claims of the members of the Class because they were hourly employees who, like the members of the Class, were 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 Plaintiffs and the members of the Class. Defendant required the class to work time off-the-clock for which they were never paid and work overtime

for which they were never paid. The class was denied mandated meal and rest breaks, denied minimum wage, incurred expenditures and losses in direct consequence of the discharge of their duties for which they were not indemnified and were not provided with credit for vested vacation time, sick time, nor did they accrue the requisite sick leave throughout their time employed at WTS INTERNATIONAL, INC. as required under the law.

13.

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

14.

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 Plaintiffs and the Class are:

a. Whether Defendant has engaged in a pattern and/or practice in California of failing to properly compensate the Plaintiffs and the Class for all hours worked;

b. Whether Defendant has engaged in a pattern and/or practice in California of encouraging Plaintiffs and the Class not to report all time worked;

c. Whether Defendant has engaged in a pattern and/or practice in California of threatening Plaintiffs 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 Plaintiffs and the Class for the work Defendant required them to perform;

f. Whether Defendant violated Cal. Lab. Code §§ 1194 et seq., 1197, 1198, §510, §512, §551, §552, §§201-203, §§226, 226.7; 227.3.

g. Whether Defendant violated California Industrial Welfare Commission Orders;

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

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

j. Whether the Class is entitled to injunctive relief.

k. Whether Defendant violated Chapter 12W.3. and 4: Sick Leave

15.

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

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

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

c. Should this Court require individual Class members to bring separate actions, this Court would face a multiplicity of lawsuits, which would unduly burden both the California court system and the litigants. The prosecution of separate actions will create a risk of

inconsistent rulings and contradictory judgments which might dispose of other Class members' interests who are not parties to the adjudication, thereby impeding and impairing Class members' ability to protect their interests. Inconsistent results will magnify the delay and expense to all parties and to the California court system. By contrast, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale and comprehensive supervision by a single court.

16.

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

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

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

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

17.

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.

18.

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

SUMMARY OF ALLEGATIONS

19.

Defendant offered the Plaintiff and each Class member employment as hourly paid employees ("Associates"), which each Plaintiffs and Class member accepted, thereby entering into an employment relationship governed by the California Labor Code and its implementing regulations and orders.

20.

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.

21.

One of WTS INTERNATIONAL, INC. 's largest expenses is the payroll of its hourly employees. A basis for WTS INTERNATIONAL, INC. 's profitability is its creation and implementation of a uniform policy and system that requires hourly employees to work hours for which WTS INTERNATIONAL, INC. will not compensate them at its San Francisco, California Spa.

22.

Beginning at a date unknown to Plaintiff, but at least as early as four years preceding the filling of this Complaint, Defendant committed, and continues to commit, acts of wage abuse against their hourly-paid employees by failing to properly compensate WTS INTERNATIONAL, INC. 's hourly employees for all hours worked at its San Francisco, California spa.

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23.

Defendant has a clandestine program of failing to pay its hourly employees for all hours worked, fails to pay hourly employees overtime, and employees work hours without pay. Defendant fails to properly maintain accurate records of the actual hours and/or days worked by employees. Defendant required the class to work time off-the-clock for which they were never paid and work overtime for which they were never paid. Plaintiff and the Class were denied mandated meal and rest breaks, denied minimum wage, incurred expenditures and losses in direct consequence of the discharge of their duties for which they were not indemnified and were not provided with credit for vested vacation time, sick time, nor did they accrue the requisite sick leave throughout their time employed at WTS INTERNATIONAL, INC. as required under the law.

24.

Defendant WTS INTERNATIONAL, INC. has adopted and is using unfair business practices to hold down pay to hourly employees, including the Plaintiffs and the Class. Among these unfair business practices are failure to pay hourly employees for all hours worked as required under California law.

25.

Defendant's corporate practice is to pay little or no overtime. Defendant WTS INTERNATIONAL, INC. meets this cost-saving goal by systematically having employees work hours for which they will not pay including but not limited to work performed while having no active appointments for employees to cover.

FIRST CAUSE OF ACTION
Failure to Pay Minimum Wage
Violation of Cal. Lab. Codes §§1194, 1194.2, 1197

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26.

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

27.

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

28.

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

29.

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

30.

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

31.

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

32.

As a result of the unlawful acts of Defendant, 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.

SECOND CAUSE OF ACTION

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

33.

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

34.

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

35.

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

> Eight hours of labor constitutes a day's work
>
> * * * *
>
> Any work in excess of eight hours in one workday and any work in excess of 40 hours in anyone workweek and the first eight hours worked on the seventh day of work in anyone workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess 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 calculate the amount to be paid to an employee for any hour of overtime work.

36.

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

37.

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

38.

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

> [E]mployees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the 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:
>
> (a) One and one-half (1 1/2) times the employees' regular rate of pay for all hours worked in excess of eight (8) hours up to and 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
>
> (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

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39.

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

40.

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

41.

As a result of the unlawful acts of Defendant, Plaintiffs 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
Failure to Provide Mandated Meal and Rest Breaks

42.

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

43.

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

44.

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."

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45.

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."

46.

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.

47.

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 my 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.

48.

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

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49.

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

FOURTH CAUSE OF ACTION
Failure to Make Payment Within the Required Time
Violations of Cal. Lab. Code §§201-203, 226

50.

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

51.

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

52.

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

53.

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

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54.

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

55.

As a result of Defendant's unlawful acts, Plaintiff and the Class who are former employees of WTS INTERNATIONAL, INC. 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.

56.

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.

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57.

FIFTH CAUSE OF ACTION
Failure to Indemnify Employees In
Violation of Labor Code Section 2802

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

58.

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

59.

Labor Code Section 2802 provides:

(a) An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequences of the discharge of his or her duties, or 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.

60.

As alleged herein, Defendants required Plaintiff and the Class members were required to make expenditures for which Defendants failed to indemnify. Further, Defendants required Plaintiff and the Class Members to incur losses without indemnification, instead Defendants made deductions against Plaintiff and the Class Members' wages. By these actions, Defendants violated Labor Code Section 2802 and is liable to Plaintiff and the class.

61.

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.

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62.

SIXTH CAUSE OF ACTION
Failure to Make Payment for Vested Vacation Time on Termination of Employment Under Cal. Lab § 227.3

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

63.

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

64.

Labor Code Section 227.3 provides:

> Unless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply the principles of equity and fairness.

65.

As alleged herein, Defendants failed to provide for all vested vacation time which is to be paid in accordance with Labor Code Section 227.3. Plaintiff and the Class members were not provided with payment at their final rate in accordance with their contract of employment and therefore lost vested vacation time when employees ceased employment or were terminated by employer. By these actions, Defendants violated Labor Code Section 227.3 and is liable to Plaintiff and the class.

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66.

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.

67.

SEVENTH CAUSE OF ACTION
Unfair Competition
Violations of Cal. Bus. & Prof. Code §17200 et seq.

68.

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

69.

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

70.

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

71.

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.

72.

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.

73.

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.

74.

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;

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

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

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

i. Cal. Lab. Code § 1194 et seq.;

j. Cal. Lab. Code § 1197, 1198;

k. Cal. Lab. Code § 2802;

l. Cal. Lab. Code §227.3; and

m. California Industrial Welfare Commission Order

n. Chapter 12W.3. and 4: Sick Leave

75.

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

76.

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

77.

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.

78.

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

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79.

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.

80.

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.

81.

EIGHTH CAUSE OF ACTION
Failure to Abide by San Francisco's
Chapter 12W.3 and 12W.4: Sick Leave Ordinance

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

82.

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

83.

San Francisco's Sick Leave Ordinance at Chapter 12W.3. Accrual of Paid Sick Leave provides:

> (a) For employee working for an employer on or before the operative date of this Chapter, paid sick leave shall begin to accrue as of the operative date of this Chapter. For employees hired after the operative date of this Chapter, paid sick leave shall begin to accrue 90 days after the commencement of employment with the employer.

(b) For every 30 hours worked after paid sick leave begins to accrue for an employee, the employee shall accrue one hour of paid sick leave. Paid sick leave shall accrue only in hour-unit increments; there shall be no accrual of a fraction of an hour of paid sick leave.

San Francisco's Sick Leave Ordinance at Chapter 12W.4. Use of Paid Sick Leave Provides:

(a) An employee may use paid sick leave not only when he or she is ill or injured or for the purpose of the employee's receiving medical care, treatment, or diagnosis, as specified more fully in California Labor Code Section 223(b)(4), but also to aid or care for the following persons when they are ill or injured or receiving medical care, treatment, or diagnosis: Child; parent; legal guardian or ward; sibling; grandparent; grandchild; and spouse etc.

84.

As alleged herein, Defendants failed to credit to the Plaintiff and the Class Members all paid sick leave time based on hours worked which would otherwise be accruing as provided by Chapter 12W.3. Plaintiff and the Class Members did not accrue paid sick leave as required under the law. By these actions, Defendants violated San Francisco's Chapter 12W.3 and is liable to Plaintiff and the Class.

85.

Defendant did not maintain adequate records and documents re: accrual and use of paid sick leave as required by San Francisco's Chapter 12W.3 and is liable to Plaintiff and the Class.

86.

Defendant failed to allow Plaintiff and the class to use paid sick leave that should have accrued based on hours worked as required by San Francisco's Chapter 12W.4 and is liable to Plaintiff and the Class.

87.

As a result of the unlawful acts of Defendants, Plaintiff and the Class members have been deprived of paid sick leave and 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.

88.

NINTH CAUSE OF ACTION
Conversion

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

89.

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

90.

At the relevant times herein, Defendants, and each of them, had a legal obligation imposed by statute to properly pay wages owed to Plaintiff and the Class. Defendants promised to pay Plaintiff, all of Plaintiffs earnings due to them and those wages were due under Labor Code section 204 at least twice during each calendar month; under sections 201 and 202, payment must be made immediately for discharged employees or those who quit. Defendants failure to pay overtime wages on the next payday (or, when applicable, immediately) constitutes converting the funds to their own use, thereby depriving Plaintiff of the wages due and owing to them. The wages belonged to Plaintiff at the time the services were provided to Defendants. Accordingly, the wages are and were Plaintiffs property.

91.

Defendants knowingly, willfully and intentionally interfered with Plaintiffs right to own, possess and/or control disposition of said wages. Plaintiff is informed and believe and thereon alleges that they were not paid overtime wages ever, let alone when they were due.

///

92.

At the time the conversion took place, Plaintiff was entitled to immediate possession of the wages earned said conversion was oppressive, malicious and fraudulent and was concealed by the Defendants, and each of them, from the named Plaintiff and all others similarly situated, as hereinafter alleged. Defendants wrongfully converted the earned wages of Plaintiff as Defendants' monies. Defendants' action constituting conversion was oppressive, malicious and fraudulent, and was concealed by the Defendants, and each of them, from the named Plaintiff as herein before alleged. Plaintiff has been injured by Defendants' oppressive, malicious, intentional and fraudulent actions entitling Plaintiff to punitive and/or exemplary damages.

PRAYER FOR RELIEF

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

1. Determining that this action may proceed and be maintained as a class action;

2. On the First Cause of Action:

   a. A declaratory judgment that Defendant has violated Cal. Lab. Code §§1194, 1194.2 and 1197;

   b. An award to Plaintiff and the Class of damages for the balance of unpaid 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;

   d. An award to Plaintiff and the Class of liquidated damages, pursuant to Cal. Lab. Code § 1194.2;

   e. Awarding the Named Plaintiff and the Class pre-judgment interest at the highest legal rate, on all unpaid wages from the date such wages were earned and due;

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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 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. A declaratory judgment that Defendant has violated Cal. Lab. Code §226.7;

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

d. An award to 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;

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 WTS INTERNATIONAL, INC. 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;

6. 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 who are former hourly-paid employees of indemnification by Defendant for all business expenditures and losses incurred; and

c. Pursuant to Labor Code Section 2802, an award to Plaintiff and the Class of actual damages as well as an award of costs and reasonable attorneys' fees.

7. For the Sixth Cause of Action:

a. For general damages, including interest, according to proof;

b. For Plaintiff costs incurred herein;

c. For special damages according to proof; and

d. For an award of costs and reasonable attorneys' fees

8. For the Seventh 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;

9. For the Eighth Cause of Action:

a. For general damages, including interest, according to proof;

b. For special damages according to proof; and

c. For an award of costs and reasonable attorneys' fees and Plaintiff costs incurred herein.

10. For the Ninth Cause of Action:

a. For general damages, including interest, according to proof;

b. For punitive damages according to proof;

c. For Plaintiff costs incurred herein;

d. For special damages according to proof; and

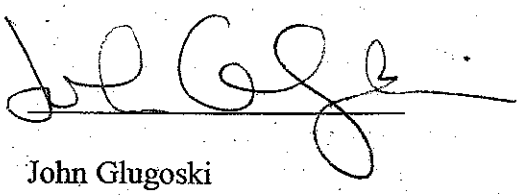
e. For all such other relief as is just and necessary under the circumstances.

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

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

Dated: November 21, 2008

Respectfully submitted,
RIGHETTI LAW FIRM P.C.



John Glugoski
Attorneys for Plaintiff