

CLERK OF SUPERIOR COURT  
CENTRAL DIVISION  
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SUPERIOR COURT  
SAN DIEGO COUNTY, CA

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Isam C. Khoury (SBN 58759)  
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6 Attorneys for Plaintiff O'nekola "Nikki" Jones  
7 on behalf of herself and all others similarly situated,

8  
9  
10 **SUPERIOR COURT OF CALIFORNIA**  
11 **COUNTY OF SAN DIEGO**

12 O'NEKOLA "NIKKI" JONES, on behalf of  
13 herself and all others similarly situated,

14 Plaintiffs,

15 v.

16 CASUAL MALE RETAIL GROUP, INC., a  
17 Delaware Corporation; and DOES 1 through  
18 100, Inclusive,

19 Defendants.  
20  
21  
22  
23  
24

) CASE NO. 37-2009-00089721-CU-OE-CTL  
) **CLASS ACTION COMPLAINT FOR**  
) **DAMAGES, INJUNCTIVE RELIEF, AND**  
) **RESTITUTION**  
) **1) Failure to pay Overtime Wages (Lab.**  
) **Code, § 1194)**  
) **2) Failure to Pay Wages of Terminated or**  
) **Resigned Employees (Lab. Code, §§ 201-**  
) **203)**  
) **3) Violations of the Unfair Competition**  
) **Law (Bus. & Prof. Code, §§ 17200-17208)**  
) **DEMAND FOR JURY TRIAL**

1 Plaintiff O'NEKOLA "NIKKI" JONES, on behalf of herself and all others similarly  
2 situated, complains and alleges as follows:

3 I.

4 **INTRODUCTION**

5 1. This case arises out of the non-payment of overtime compensation to certain  
6 California employees of defendant CASUAL MALE RETAIL GROUP, INC. (hereinafter  
7 "CASUAL MALE" or "Defendants"). The proposed Plaintiff Class consists of persons classified  
8 as Store Managers and other similarly situated employees of Defendants who, during the Class  
9 Period, although performing non-exempt functions for the Defendants, were misclassified as  
10 exempt employees and not paid overtime compensation.

11 2. The Labor Code section 203 Sub-Class includes Class members that ended their  
12 employment for the Defendants during the Class Period, but who were not timely paid wages as  
13 required by Labor Code, sections 201-203. Such Plaintiff Sub-Class members are additionally  
14 entitled to penalties pursuant to California Labor Code, section 203.

15 3. As used herein, the term "Plaintiff" includes O'NEKOLA "NIKKI" JONES who  
16 is the named Plaintiff Class representative; the term "Plaintiff Class" includes the Plaintiff and  
17 all Plaintiff Class members; the term "non-exempt" refers to the Plaintiff and Plaintiff Class  
18 members paid salaries but not properly exempt from the lawful requirement to be paid overtime  
19 compensation by the Defendants.

20 4. Plaintiff seeks compensation for work performed and moneys due herself and the  
21 Plaintiff Class and Sub Class during the "Class Period," which is defined as November 1, 2005  
22 through the date Defendants changed the classification of the Plaintiff Class and Sub Class from  
23 exempt to non-exempt, which based upon information and belief, occurred in May 2008.

24 II.

25 **JURISDICTION AND VENUE**

26 5. Venue as to each Defendant is proper in this judicial district, pursuant to Code of  
27 Civil Procedure, section 395. Defendants conduct business and commit Labor Code violations in  
28 San Diego County, and each Defendant is within the jurisdiction of this Court for service of

1 process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and those  
2 similarly situated within the State of California and within San Diego County. Plaintiff was  
3 employed by Defendants and suffered the alleged Labor Code violations in San Diego County.  
4 Defendants employ numerous Class Members in San Diego County. The California Superior  
5 Court also has jurisdiction in this matter because the individual members of the classes herein are  
6 under the seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for Federal Court  
7 and the aggregate claim is under the five million dollar (\$5,000,000.00) threshold of the Class  
8 Action Fairness Act of 2005. Further, there is no federal question at issue, as the issues herein are  
9 based solely on California statutes and law, including the Labor Code, IWC Wage Orders, Code  
10 of Civil Procedure, Civil Code, and Business and Professions Code.

### 11 III.

#### 12 THE PARTIES

##### 13 A. The Plaintiff

14 6. Plaintiff O'NEKOLA "NIKKI" JONES is a former employee of the Defendants  
15 and an employee entitled to overtime compensation and waiting time penalties from the  
16 Defendants. Plaintiff O'NEKOLA "NIKKI" JONES was employed by the Defendants as of the  
17 date four years prior to the commencement of this action and through the present. She was  
18 employed by Defendants during the Class Period in a salaried position.

19 7. Each of the Plaintiff Class members are identifiable, similarly situated persons  
20 who were employed as "Store Managers," and other similarly situated positions in California for  
21 the Defendants during the Class Period. "Store Managers" and other similarly situated positions  
22 include all other job titles or descriptions primarily engaged in non-exempt duties as more fully  
23 described below.

##### 24 B. The Defendants

25 8. Plaintiff is informed and believes, and thereon alleges, that CASUAL MALE is a  
26 Delaware corporation with its principal place of business in Canton, Massachusetts, and is and  
27 was the employer of the Plaintiff and the members of Plaintiff Class and Sub-Class during the  
28 Class Period.



1 executive, administrative and professional employees, which imposed an obligation on the part  
2 of the Defendants to pay Plaintiff and Plaintiff Class members lawful overtime compensation.

3 15. During the Class Period, Defendants were obligated to pay Plaintiff and the  
4 Plaintiff Class overtime compensation for all hours worked over eight (8) hours of work in one  
5 (1) day or forty (40) hours in one week. Defendant regularly required Plaintiff and the Plaintiff  
6 Class to work overtime hours and to be on call and engaged to wait without overtime  
7 compensation.

8 16. Plaintiff and each Plaintiff Class member primarily performed non-exempt work  
9 in excess of the maximum regular rate hours set by the IWC in the above Wage Orders,  
10 regulations or statutes, and therefore entitled the Plaintiff and Plaintiff Class members to  
11 overtime compensation at time and a half rate, and when applicable, double time rates as set forth  
12 by the above Wage Orders, regulations and/or statutes.

13 17. Class members who ended their employment during the Class Period, but were  
14 not paid the above due overtime compensation timely upon the termination of their employment  
15 as required by Labor Code, sections 201-203, are entitled to penalties as provided by California  
16 Labor Code § 203.

17 18. During the Class Period, the Defendants, and each of them, required the Plaintiff  
18 and Plaintiff Class members to work overtime without lawful compensation, in violation of the  
19 various above applicable Wage Orders, regulations and statutes, and the Defendants: (1) willfully  
20 failed and refused, and continue to fail and refuse to pay lawful overtime compensation to the  
21 Plaintiff Class members; and (2) willfully failed and refused, and continue to fail and refuse to  
22 pay wages promptly when due upon termination of employment to each of the Plaintiff Sub Class  
23 Members.

24 19. Store Managers and other similarly situated employee positions are primarily  
25 engaged in non-exempt functions. They are not employed to manage Defendants' enterprise in  
26 managerial duties. They do not perform work related to Defendants' general business operation  
27 but primarily perform functions related to the product or service provided by Defendants and do  
28 not exercise discretion and/or independent judgment to be exempt in an administrative capacity.

1 Further, they are not employed on an hourly basis with pay not less than the statutory rate set by  
2 the IWC Wage Orders and premium overtime pay. Hence, the work performed in the so-called  
3 “Store Managers” and other similarly situated employee positions is not exempt work but rather  
4 is non-exempt customer support work.

5 V.

6 **CLASS ACTION ALLEGATIONS**

7 20. Plaintiff brings this action on behalf of herself and all other similarly situated  
8 persons as a class action pursuant to California Code of Civil Procedure, section 382. The class  
9 which Plaintiff seeks to represent is composed of and defined as follows:

10 Plaintiff Class: All of Defendants’ California Store Managers and other similarly  
11 situated employee positions employed by Defendants on or after November 1,  
12 2005 through the date Defendants reclassified the Store Managers and other  
13 similarly situated employee positions as non-exempt (“Relevant Time Period”)  
14 who were not paid the legally requisite overtime rate for all hours worked in  
15 excess of eight (8) hours per workday and/or forty (40) hours per workweek.

16 21. Further, Plaintiff brings this action on behalf of herself and all other similarly  
17 situated persons in a Sub-Class of the Plaintiff Class, which is composed of and defined as  
18 follows:

19 Plaintiff Sub-Class: All of Defendants’ California Store Managers and other  
20 similarly situated employee positions employed by Defendants, during the  
21 Relevant Time Period, as to whom Defendants failed to pay wages upon  
22 termination or resignation under Labor Code, sections 201-203.

23 22. Plaintiff reserves the right under Rule 3.764, California Rules of Court, to amend  
24 or modify the Class description with greater specificity or further division into subclasses or  
25 limitation to particular issues.

26 23. This action has been brought and may be maintained as a class action pursuant to  
27 Code of Civil Procedure, section 382 because there is a well-defined common interest of many  
28 persons and it is impractical to bring them all before the court.

a. The Plaintiff Class and Plaintiff Sub-Class members are so numerous that  
the individual joinder of all such plaintiffs is impractical. While the exact number of class  
members is unknown to Plaintiff at this time, Plaintiff believes there are over 100 class members.  
Therefore, joinder of all Plaintiff Class and Plaintiff Sub-Class members is impractical.

1           b.       Common questions of law and fact exist as to the Plaintiff, Plaintiff Class  
2 and Plaintiff Sub-Class members, and predominate over any questions which affect only  
3 individual members of the Plaintiff Class and Sub-Class. These common questions include, but  
4 are not limited to:

5                   (1)       Whether Plaintiff and Plaintiff Class members are entitled to  
6 overtime compensation from the Defendants under the applicable IWC Wage Orders, regulations  
7 and statutes, or whether each member of the Plaintiff Class is “exempt” from the requirements of  
8 overtime compensation as set forth in the applicable Wage Orders, regulations and statutes;

9                   (2)       Whether the Class members as a Class primarily performed non-  
10 exempt related functions and spent less than 50% percent of their time performing exempt  
11 functions;

12                   (3)       Whether the Defendants violated the Unfair Competition Law,  
13 Business and Professions Code, sections 17200, et seq., by their practices as alleged herein;

14                   (4)       Whether Defendants violated Section 1174 of the Labor Code by  
15 failing to keep accurate records of the Plaintiff Class members' hours of work;

16                   (5)       The effect upon and the extent of any injuries sustained by the  
17 Plaintiff Class and Plaintiff Sub-Class members and appropriate type and/or measure of  
18 damages;

19                   (6)       Whether the Plaintiff Class is entitled to waiting time penalties  
20 under Labor Code, section 203;

21                   (7)       The amount of restitution owed by the Defendants attributable to  
22 their violation of the Unfair Competition Law by failure to pay overtime compensation to the  
23 class members, and other wage violations;

24                   (8)       The appropriateness and nature of relief to each Plaintiff Class and  
25 Sub-Class member;

26                   (9)       The appropriate nature of class wide equitable relief; and

27                   (10)      The extent of liability of each Defendant, including DOE  
28 Defendants, to each Plaintiff Class and Sub-Class member.

1           c.       Plaintiff is a member of the Plaintiff Class and at least one Plaintiff Sub-  
2 Class, and her claims are typical of the claims of the Plaintiff Class and Sub-Class members.  
3 Plaintiff and all members of the Plaintiff Class and Plaintiff Sub-Class sustained similar injuries  
4 and damages arising out of Defendants' common course of conduct in violation of the law as  
5 alleged herein.

6           d.       Plaintiff will adequately and fairly protect the interests of the members of  
7 the Plaintiff Class and Plaintiff Sub-Class. Plaintiff was employed by the Defendants in  
8 misclassified exempt positions in which she was in fact primarily performing non-exempt duties  
9 at all times during the class period and is therefore an adequate representative for the Plaintiff  
10 Class and Plaintiff Sub-Class, as has no interest adverse to the interests of the absent class  
11 members. Plaintiff is represented by legal counsel who have substantial class action experience  
12 in civil litigation and employment law.

13           e.       A class action is superior to other available means of fair and efficient  
14 adjudication of the claims of the Plaintiff Class and Plaintiff Sub-Class members, since joinder of  
15 all members of the Plaintiff Class and Plaintiff Sub-Classes is impractical. Class action  
16 treatment will allow a large number of similarly situated persons to prosecute their common  
17 claims in a single forum, simultaneously, efficiently, and without the unnecessary duplication of  
18 effort and expense that numerous individual actions would cause to such plaintiffs or to the court  
19 system. Further, the damages of many individual class members may be relatively small, and the  
20 burden and expenses of individual litigation would make it difficult or impossible for individual  
21 members of the class to seek and obtain relief, while a class action will serve an important public  
22 interest. Further, individual litigation would present the potential for inconsistent or  
23 contradictory judgments.

24           24.     Plaintiff is unaware of any difficulties that are likely to be encountered in the  
25 management of this action that would preclude its maintenance as a class action.

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1 VI.

2 VIOLATIONS ALLEGED

3 FIRST CAUSE OF ACTION

4 **FAILURE TO PAY OVERTIME WAGES**

5 **(Plaintiff and each Plaintiff Class member against each Defendant)**

6 25. Plaintiff incorporates paragraphs 1 through 24 of this complaint as if fully alleged  
7 herein.

8 26. Plaintiff and the Plaintiff Class members were regularly required to work overtime  
9 hours and are entitled to overtime compensation for overtime work performed for the  
10 Defendants, in an amount according to proof. Pursuant to Labor Code, section 1194, the Plaintiff  
11 Class members seek the payment of all overtime compensation which they earned and accrued  
12 after four (4) years prior to filing of this complaint, according to proof.

13 27. Additionally, Plaintiff and Plaintiff Class members are entitled to attorneys' fees  
14 and costs, pursuant to California Labor Code, section 1194 and prejudgment interest.

15 Wherefore, Plaintiff and the Plaintiff Class members request relief as hereinafter prayed  
16 for.

17 SECOND CAUSE OF ACTION

18 **FAILURE TO PAY WAGES OF TERMINATED OR RESIGNED EMPLOYEES**

19 **(Plaintiff and each Plaintiff Sub-Class member against each Defendant)**

20 28. Plaintiff incorporates paragraphs 1 through 27 of this complaint as if fully alleged  
21 herein.

22 29. Plaintiff and/or the members of the Plaintiff Sub-Class who ended their  
23 employment with the Defendants during the Class Period were entitled to be promptly paid  
24 lawful overtime compensation and other premiums, as required by Labor Code, sections 201-  
25 203. Pursuant to Labor Code, section 203, such Plaintiff Sub-Class members seek the payment  
26 of penalties, according to proof.

27 30. Additionally, Plaintiff and Plaintiff Sub-Class members are entitled to attorneys'  
28 fees and costs, pursuant to Labor Code, section 203 and prejudgment interest.





1           6.       That the Defendants be ordered and enjoined to pay restitution to Plaintiff, each  
2 Plaintiff Class member and each Plaintiff Sub-Class member due to the Defendants' unlawful  
3 and unfair competition, including disgorgement of their wrongfully obtained profits, wrongfully  
4 withheld wages according to proof, and interest thereon pursuant to Business and Professions  
5 Code, sections 17203 and 17204, on the Third Cause of Action;

6           7.       That Defendants be enjoined from further acts of unfair competition and  
7 specifically from failing to pay overtime compensation to class members on the Third Cause of  
8 Action and injunctive relief to reclassify the putative class members from exempt to non-exempt  
9 status;

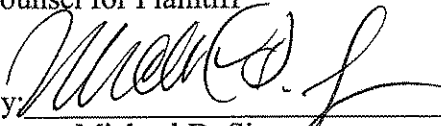
10          8.       That Plaintiff, Plaintiff Class Plaintiff Sub-Class members be awarded Attorneys'  
11 fees and costs pursuant to statute, including but not limited to Labor Code, section 1194 and  
12 Code of Civil Procedure, section 1021.5;

13          9.       Otherwise determine the appropriate remedy to compensate Plaintiff, each  
14 Plaintiff Class and each Sub-Class member as required to promote fairness and justice, including  
15 but not limited to establishing procedures for compensation, compensation amounts and fluid  
16 recovery if appropriate;

17          10.      Prejudgment Interest; and

18          11.      Any other relief as this court deems proper.

19                   COHELAN KHOURY & SINGER  
20                   Counsel for Plaintiff

21                   By:   
22                   Michael D. Singer

21                   Dated: June 4, 2009

23                   **DEMAND FOR JURY TRIAL**

24                   Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.

25                   COHELAN KHOURY & SINGER  
26                   Counsel for Plaintiff

27                   By:   
28                   Michael D. Singer

27                   Dated: June 4, 2009