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13  
14 Attorneys for Plaintiff GHAZALA H. DURRANI on behalf of  
herself and all others similarly-situated

15  
16 **SUPERIOR COURT OF CALIFORNIA**  
17 **COUNTY OF ORANGE**

18 GHAZALA H. DURRANI, on behalf of herself )  
and all others similarly situated, )  
19 Plaintiffs, )

20 v. )

21 WESTERN DIGITAL CORPORATION, a )  
Delaware Corporation; WESTERN DIGITAL )  
22 TECHNOLOGIES, INC., a Delaware )  
Corporation and DOES 1 through 100, Inclusive, )  
23 Defendants. )

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) )  
) **CASE NO.30-2009-00268212**  
) **Assigned for All Purposes to the Hon.**  
) **Nancy Wieben Stock**  
) **Dept CX 105**  
)  
) **FIRST AMENDED CLASS ACTION**  
) **COMPLAINT**  
)  
) **1) Failure to Pay Overtime Wages (Lab.**  
) **Code §1194)**  
)  
) **2) Failure to Provide Meal Periods or**  
) **Compensation in Lieu Thereof (Lab. Code**  
) **§§226.7, 512; IWC Wage Orders; Cal**  
) **Code Regs., Title 8 §11040)**  
)  
) **3) Failure to Provide Rest Periods or**  
) **Compensation in Lieu Thereof (Lab. Code,**  
) **§226.7; IWC Wage Orders; Cal. Code**  
) **Regs., Title 8 §11040)**

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

SEP 21 2009

ALAN CARLSON, Clerk of the Court

*A. Knox*  
BY A. KNOX

- 1 4) Waiting Time Penalties (Labor Code §203) ) 5) Knowing and Intentional Failure to  
2 ) Comply With Itemized Employee Wage  
3 ) Statement Provisions (Lab. Code §226(b))  
4 ) 6) Violations of the Unfair Competition  
5 ) Law (Bus. & Prof. Code §§17200-17208)  
6 ) 7) Declaratory Relief  
7 ) DEMAND FOR JURY TRIAL  
8  
9

10 Plaintiff GHAZALA H. DURRANI (hereinafter "DURRANI" or "Plaintiff"), on behalf of  
11 herself and all others similarly-situated, complains and alleges as follows:

12 I.

13 INTRODUCTION

14 1. This case arises out of Defendants' systematic mis-classification of proposed class  
15 members as exempt from overtime pay, resulting in the non-payment of overtime compensation  
16 and failure to provide rest and meal periods to certain readily ascertainable California-based  
17 Information-Technology (IT) employees of Defendants WESTERN DIGITAL CORPORATION  
18 and/or WESTERN DIGITAL TECHNOLOGIES, INC. (hereinafter collectively referred to as  
19 "WESTERN DIGITAL" or "Defendants"). The job titles for these proposed WESTERN  
20 DIGITAL class members may have changed through the years encompassed by this action, though  
21 job tasks and duties have changed very little, if at all. The proposed Plaintiff Class covers low-  
22 level Engineering job positions related to the production of computerized data storage devices  
23 whose specific titles include, without limitation to the following: "Engineer - Data Analysis,"  
24 "Engineer - Data Management," "Engineer - Firmware," "Engineer - Software Development,"  
25 "Engineer - Electronic Design" and "Engineer - Product Design" and/or equivalent Engineer  
26 positions with pay-grade 81 designation by the company. These non-senior level employees  
27 primarily performed non-exempt repetitive and routine functions for the Defendants and were  
28 misclassified as exempt employees and not paid overtime compensation for those work days

1 exceeding eight (8) hours per day and/or forty (40) hours per week during the Class Period, which  
2 is defined as four years prior to the filing of the Complaint through the date of commencement of  
3 trial in the action.

4         2.       The "Overtime Subclass" includes class members in the State of California who  
5 were not paid overtime compensation for hours worked in excess of (8) per day and/or forty (40)  
6 hours per week at a rate of not less than 1.5 times their hourly rate of pay. The "Meal Period  
7 Subclass" includes class members who worked periods exceeding five hours without an  
8 uninterrupted, off-duty, 30-minute meal period and/or periods in excess of ten hours without a  
9 second uninterrupted off-duty, 30-minute meal period and were denied commensurate pay under  
10 Labor Code sections 226.7 and 512. The "Rest Period Subclass" includes Class members who  
11 worked periods of four hours or a major fraction thereof without a rest period of at least 10-  
12 minutes and were denied commensurate pay under Labor Code section 226.7 as a result of  
13 Defendants' systematic mis-classification of said employees as "exempt."

14         3.       Class members who ended their employment with the Defendants during the Class  
15 Period, but who were not timely paid wages earned as required by the Labor Code, are entitled to  
16 penalties pursuant to California Labor Code section 203. (The "Waiting Time Subclass.")

17         4.       Class members are entitled to penalties pursuant to Labor Code section 226(b) for  
18 Defendants' failure to provide accurate itemized wage statements. (The "Illegal Records  
19 Subclass.")

20         5.       As used herein, the term "Plaintiff" means GHAZALA H. DURRANI, who is the  
21 named Plaintiff Class representative; the term "Plaintiff Class" includes the Plaintiff and all  
22 members of the proposed Class.

23         6.       Plaintiff has complied with California Labor Code § 2699 under the Private  
24 Attorneys General Act of 2004 ("PAGA") by submission of a letter to Defendants and to the  
25 applicable agency of the State of California to act as a party representative for recovery of  
26 penalties as authorized in Labor Code § 2699 et seq., as more fully set forth in the Prayer for relief  
27 below. Plaintiff's letter and the response of the LWDA are attached hereto as Exhibits A and B.

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1 **B. The Defendants**

2 12. Plaintiff is informed and believes, and based thereon alleges, that WESTERN  
3 DIGITAL CORPORATION and WESTERN DIGITAL TECHNOLOGIES, INC. are both  
4 Delaware corporations with their principal place of business in Lake Forest, California. Plaintiff is  
5 informed and believes that both entities are related as one entity was identified on wage statements  
6 and the other on official employment correspondence. For purposes of this lawsuit, the allegations  
7 contained herein, both individually and as to the putative class, WESTERN DIGITAL is and was  
8 the employer of Plaintiff and the members of Plaintiff Class and Subclasses during the Class Period.

9 13. Plaintiff is ignorant of the true names, capacities, relationships and extent of  
10 participation in the conduct herein alleged, of the Defendants sued herein as DOES 1 through 100,  
11 inclusive, but on information and belief alleges that said Defendants are legally responsible for the  
12 payment of overtime compensation, rest and meal period compensation and/or Labor Code section  
13 203 penalties to the Plaintiff Class members by virtue of their unlawful practices, and therefore  
14 sues these Defendants by such fictitious names. Plaintiff will amend this complaint to allege the  
15 true names and capacities of the DOE Defendants when ascertained.

16 14. Plaintiff is informed and believes, and based thereon alleges, that each Defendant  
17 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint  
18 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are  
19 legally attributable to the other Defendants. Plaintiff will seek leave to amend this Complaint if  
20 additional information material to the identity of the parties or their relationship with one another  
21 requires such amendment for the protection of the putative class.

22 **IV.**

23 **GENERAL ALLEGATIONS**

24 15. California Labor Code section 1194 provides that notwithstanding any agreement  
25 to work for a lesser wage, an employee receiving less than the legal overtime compensation is  
26 entitled to recover in a civil action the unpaid balance of their overtime compensation, including  
27 interest thereon, reasonable attorneys' fees, and costs of suit.

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1           16. Further, Business and Professions Code section 17203 provides that any person  
2 who engages in unfair competition may be enjoined in any court of competent jurisdiction.  
3 Business and Professions Code section 17204 provides that any person who has suffered actual  
4 injury and has lost money or property as a result of the unfair competition may bring an action for  
5 restitution in a court of competent jurisdiction.

6           17. During all, or a portion, of the Class Period, Plaintiff and each member of the  
7 Plaintiff Class were employed by Defendants and each of them, in the State of California.

8           18. Plaintiff and each Plaintiff Class member were non-exempt employees covered  
9 under one or more Industrial Welfare Commission (IWC) Wage Orders, including Wage Order 4-  
10 2000, 4-2001 ("Wage Orders"), Labor Code section 510, and/or other applicable wage orders,  
11 regulations and statutes, and each Plaintiff Class member was not subject to an exemption for  
12 computer, executive, administrative or professional employees, which imposed an obligation on the  
13 part of the Defendants to pay Plaintiff and Plaintiff Class members lawful overtime compensation,  
14 and denied rest and meal period compensation.

15           19. During the Class Period, Defendants were obligated to pay Plaintiff and the Plaintiff  
16 Class overtime compensation for all hours worked over eight (8) hours of work in one (1) day or  
17 forty (40) hours in one week. Defendants regularly required Plaintiff and the Plaintiff Class to  
18 work overtime hours without overtime compensation.

19           20. Plaintiff and each Plaintiff Class member primarily performed non-exempt work in  
20 excess of the maximum regular rate hours set by the IWC in the above Wage Orders, regulations  
21 or statutes, and therefore entitled the Plaintiff and Plaintiff Class members to overtime  
22 compensation at the rate of time and one-half, and when applicable, double time rates as set forth  
23 by the above Wage Orders, regulations and/or statutes.

24           21. During the Class Period, the Defendants, and each of them, required Plaintiff and  
25 Plaintiff Class members to work overtime without lawful compensation, in violation of the various  
26 above applicable Wage Orders, regulations and statutes, and the Defendants: (1) willfully failed  
27 and refused, and continue to fail and refuse to pay lawful overtime compensation to the Plaintiff  
28 Class members; and (2) willfully failed and refused, and continue to fail and refuse to pay wages

1 promptly when due upon termination of employment to each of the Plaintiff Class members.

2       22. During the Class Period, the Defendants, and each of them, required members of  
3 the Plaintiff Class to work without being given paid 10-minute rest periods as required by law and  
4 without being given a 30-minute meal period and second 30-minute meal periods as required by  
5 law, during which Plaintiff Class members were relieved of all duties and free to leave the  
6 premises. Defendants did not pay any Class member one hour's pay at the employee's regular rate  
7 of pay as premium pay compensation for failure to provide rest and/or meal periods.

8       23. Plaintiff Class members performed primarily non-exempt functions for the  
9 Defendants and were mis-classified as exempt employees. They do not qualify under the computer  
10 professional exemption because they are not paid statutory minimum pay to qualify for this  
11 exemption. They are not employed to manage Defendants' enterprise in managerial duties. They  
12 do not perform work related to Defendants' general business operation but primarily perform  
13 functions related to the product or service provided by Defendants and do not exercise discretion  
14 and/or independent judgment to be exempt in an administrative capacity. Further, they are not  
15 employed on an hourly basis with pay not less than the statutory rate set by the IWC Wage Orders  
16 and premium overtime pay. Hence, the work performed in these employee positions is not exempt  
17 work but rather is non-exempt work.

18       24. Class members who ended their employment during the Class Period, but were not  
19 paid the above due overtime compensation timely upon the termination of their employment as  
20 required by Labor Code sections 201-203, are entitled to penalties as provided by California Labor  
21 Code section 203.

22       25. Class members are likewise entitled to penalties for Defendants' failure to provide  
23 accurate itemized wage statements concerning hours worked and meal periods taken.

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V.

**CLASS ACTION ALLEGATIONS**

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

**Plaintiff Class:**

All Defendants' current and former employees holding job positions of Grade 81 Engineer and/ or equivalent positions in the State of California, employed on or after four years prior to the commencement of this action through the date of trial.

27. Further, Plaintiff seeks to certify a subclass of employees composed of and defined as follows:

**Plaintiff "Overtime Subclass":**

All Defendants' current and former employees holding job positions of Grade 81 Engineer and/or equivalent job positions in the State of California who were classified as exempt employees and not paid the legally requisite overtime rate for all hours worked in excess of eight (8) hours per workday and/or forty (40) hours per workweek on or after four years prior to the commencement of this action through the date of trial.

28. Further, Plaintiff seeks to certify a subclass of employees composed of and defined as follows:

**Plaintiff "Meal Period Subclass":**

All Defendants' current and former employees holding job positions of Grade 81 Engineer and/or equivalent job positions in the State of California who, within four years of the filing of this complaint, worked periods exceeding five hours without an uninterrupted, off-duty, 30-minute meal period and/or periods in excess of ten hours without a second uninterrupted, off-duty, 30-minute meal periods, and were not provided compensation of one hour's pay at the employee's regular rate for each such day

29. Further, Plaintiff seeks to certify a subclass of employees composed of and defined as follows:

**Plaintiff "Rest Period Subclass":**

All Defendants' current and former employees holding job positions of Grade 81 Engineer and/or equivalent job positions in the State of California who, within four years of the filing of this complaint, worked periods of four hours or a major fraction thereof without a rest period of at least 10-minutes without compensation of one hour's pay at the employee's regular rate for each such day.

1 30. Plaintiff, on behalf of herself and all others similarly situated, will also seek to  
2 certify a "Waiting Time Subclass" that is currently composed of and defined as follows:  
3

4 **Plaintiff "Waiting Time Subclass":**

5 All Defendants' former employees holding job positions of Grade 81 Engineer and/or  
6 equivalent job positions in the State of California who voluntarily or involuntarily  
7 terminated their employment during the Class Period and to whom Defendant failed to  
timely pay all wages due as required by Labor Code sections 201-203 and/or applicable  
IWC Wage Orders.

8 31. Plaintiff, on behalf of herself and all others similarly situated, will also seek to  
9 certify an "Illegal Records Subclass" that is currently composed of and defined as follows:

10 **Plaintiff "Illegal Records Subclass":**

11 All Defendants' former employees holding job positions of Grade 81 Engineer and/or  
12 equivalent job positions in the State of California who, during the Class Period, Defendant  
13 knowingly and intentionally provided inaccurate itemized wage statements in violation of  
Labor Code section 226, et seq., and applicable IWC Wage Orders.

14 Plaintiff reserves the right under Rule 3.765(b), California Rules of Court, to amend or  
15 modify the Class description with greater specificity or further division into subclasses or limitation  
16 to particular issues.

17 32. **Ascertainable Class:** The proposed class and each subclass are ascertainable in  
18 that their members can be identified and located using information contained in Defendants' payroll  
19 and personnel records.

20 33. **Numerosity:** The potential quantity of members of the Class and Subclasses as  
21 defined is so numerous that joinder of all members would be unfeasible and impractical. The  
22 disposition of their claims through this class action will benefit both the parties and this Court. The  
23 quantity of members of the Class and Subclasses is unknown to Plaintiff at this time, however, it is  
24 estimated that each the Class and Subclasses number is in excess of 100 individuals. The quantity  
25 and identity of such membership is readily ascertainable via inspection of Defendants' records.

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1           34.    **Typicality:** The claims of Plaintiff DURRANI for overtime wages, denied meal and  
2 rest period compensation, illegally deducted wages, as well as penalties, interest, and attorneys'  
3 fees are typical of the claims of all members of the Class and Subclasses mentioned herein because  
4 all members of the Class and Subclasses sustained similar injuries and damages arising out of  
5 Defendants' common course of conduct in violation of law and the injuries and damages of all  
6 members of the Class and Subclasses were caused by Defendants' wrongful conduct in violation of  
7 law, as alleged herein.

8           35.    **Adequacy:** Plaintiff DURRANI is an adequate representative of the Class and  
9 Subclasses herein, will fairly protect the interests of the members of the Class and Subclasses, has  
10 no interests antagonistic to the members of the Class and Subclasses and will vigorously pursue  
11 this suit via attorneys who are competent, skilled and experienced in litigating matters of this type.  
12 Class Counsel are competent and experienced in litigating large employment law class actions.

13           36.    **Superiority:** The nature of this action and the nature of laws available to Plaintiff  
14 make use of the class action format a particularly efficient and appropriate procedure to afford  
15 relief to Plaintiff for the wrongs alleged herein, as follows:

16                   a.    This case involves large corporate Defendants and a sufficient numerous  
17 group of individual Class Members with many relatively small claims and common  
18 issues of law and fact;

19                   b.    If each individual member of each of the Class and Subclasses was required  
20 to file an individual lawsuit, the large corporate Defendants would necessarily gain  
21 an unconscionable advantage because Defendants would be able to exploit and  
22 overwhelm the limited resources of each individual member of the Class and  
23 Subclasses with Defendants' vastly superior financial and legal resources;

24                   c.    Requiring each individual member of each of the Class and Subclasses to  
25 pursue an individual remedy would also discourage the assertion of lawful claims by  
26 the members of the Class and Subclasses who would be disinclined to pursue an  
27 action against Defendants because of an appreciable and justifiable fear of  
28 retaliation and permanent damage to their lives, careers and well-being;

1 d. Proof of a common business practice or factual pattern, of which the  
2 members of the Class and Subclasses experienced, is representative of the Class and  
3 Subclasses herein and will establish the right of each of the members of the Class  
4 and Subclasses to recover on the causes of action alleged herein;

5 e. The prosecution of separate actions by the individual members of the Class  
6 and Subclasses, even if possible, would create a substantial risk of inconsistent or  
7 varying verdicts or adjudications with respect to the individual members of the  
8 Class and Subclasses against Defendants; and which would establish potentially  
9 incompatible standards of conduct for Defendants; and/or legal determinations with  
10 respect to individual members of the Class and Subclasses which would, as a  
11 practical matter, be dispositive of the interest of the other members of the Class and  
12 Subclasses who are not parties to the adjudications or which would substantially  
13 impair or impede the ability of the members of the Class and Subclasses to protect  
14 their interests; and

15 f. The claims of the individual members of the Class and Subclasses are not  
16 sufficiently large to warrant vigorous individual prosecution considering all of the  
17 concomitant costs and expenses attending thereto.

18 g. Furthermore, as the damages suffered by each individual member of the  
19 class may be relatively small, the expenses and burden of individual litigation would  
20 make it difficult or impossible for individual members of the class to redress the  
21 wrongs done to them, while an important public interest will be served by  
22 addressing the matter as a class action.

23 h. The cost to the court system of adjudication of such individualized  
24 litigation would be substantial. Individualized litigation would also present the  
25 potential for inconsistent or contradictory judgment.

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1 I. Finally, the alternative of filing a claim with the California Labor  
2 Commission is not superior, given the lack of discovery in such proceedings, the  
3 availability of fewer remedies, and the fact that the losing party has the right to a  
4 trial de novo in the Superior Court.

5 37. **Existence and Predominance of Common Questions of Fact and Law:** There  
6 are common questions of law and fact as to the members of the Class and Subclasses which  
7 predominate over questions affecting only individual members of the Class and Subclasses  
8 including, without limitation:

- 9 a. Whether the Class Members qualify for exempt status under the  
10 administrative exemption;
- 11 b. Whether the Class Members qualify for exempt status under the computer  
12 professional exemption;
- 13 c. Whether the Class Members were improperly mis-classified by Defendants  
14 without analysis as to job duties performed.
- 15 d. The extent to which Defendants analyzed the duties and responsibilities of  
16 the Class Members before classifying them as exempt;
- 17 e. The number of hours per week and per day Class Members are expected to  
18 work;
- 19 f. Defendants' expectations as to the duties and responsibilities of the Class  
20 Members, and whether these expectations are reasonable under the circumstances;
- 21 g. Whether the various tasks performed by the Class Members qualify as  
22 exempt or non-exempt tasks;
- 23 h. The number of denied meal and rest periods for Class Members over the  
24 relevant time period and the amount of pay owing and unpaid;
- 25 i. Whether Defendants' withholding of overtime pay and was willful under the  
26 meaning of Labor Code Section 203.

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- 1           j.       Whether Defendants failed to keep adequate records for the members of the  
2           Illegal Records Subclass pursuant to Labor Code 226(a) (and the consequence for  
3           such statutory violations if Defendants did not);
- 4           k.       Whether Defendants' conduct constitutes unfair competition within the  
5           meaning of Business and Professions Code sections 17200 and 17203;
- 6           l.       Whether members of the Class and Subclasses are entitled to compensatory  
7           damages, and if so, the means of measuring such damages;
- 8           m.       Whether the members of the Class and Subclasses are entitled to injunctive  
9           and/or declaratory relief;
- 10          n.       Whether the members of the Class and Subclasses are entitled to restitution;
- 11          o.       Whether Defendants are liable for pre-judgment interest; and
- 12          p.       Whether Defendants are liable for attorneys' fees and costs.

13           **38. Manageability of Class and Common Proof:** The nature of this action and the  
14 nature of laws available to Plaintiff make use of the class action format a particularly efficient and  
15 appropriate procedure to afford relief to Plaintiff for the wrongs alleged herein. Specifically, the  
16 primary class turns upon Defendants' own uniform, systematic practice of classifying all affected  
17 job positions as "salaried exempt" without any individual scrutiny of tasks and duties is in  
18 compliance with Labor Code section 1194 and the presumptions against employees being deemed  
19 "exempt" from overtime payment requirements. Therefore, the propriety of the classification  
20 scheme applicable to all employees in the position of a Grade 81 Engineer, with titles including,  
21 without limitation "Engineer - Data Analysis," "Engineer - Data Management," "Engineer -  
22 Firmware," "Engineer - Software Development," "Engineer - Electronic Design" and "Engineer -  
23 Product Design" is a predominant question of fact that is easily cable of being discovered through  
24 manageable devices of common proof such as statistical random sampling, survey evidence based  
25 on scientific principles, representative testimony, documentary evidence and common  
26 practices/procedures of the Defendants in treating each of the class members as a homogeneous  
27 group in the payment of their wages. Once the predominant issue of exempt classification is  
28 determined, then each of the derivative Subclass claims of damages, if any, suffered by each

1 member is capable of being shown by several means of common proof and limited individual  
2 showings of entitlement to recovery that can be professionally administered and tailored to the  
3 facts and circumstances of the case.

4 VI.

5 CAUSES OF ACTION

6 **FIRST CAUSE OF ACTION**  
7 **FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF LABOR CODE §1194**  
8 **(Against each Defendant and on behalf of Plaintiff and the Overtime Subclass)**

9 39. Plaintiff incorporates all preceding paragraphs of this complaint as if fully alleged  
10 herein.

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

16 41. Additionally, Plaintiff and Plaintiff Class members are entitled to attorneys' fees,  
17 and costs, pursuant to California Labor Code section 1194 and prejudgment interest.

18 SECOND CAUSE OF ACTION

19 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**  
20 **IN VIOLATION OF LABOR CODE §§226.7, 512; IWC Wage Orders; Cal. Code Regs.,**  
21 **Title 8 §11040**  
22 **(Against each Defendant and on behalf of Plaintiff and the Meal Period Subclass)**

23 42. Plaintiff incorporates all preceding paragraphs of this complaint as if fully alleged  
24 herein.

25 43. By requiring Plaintiff and members of the Plaintiff Class to work periods exceeding  
26 five hours without an uninterrupted, off-duty 30-minute meal period and to work periods  
27 exceeding ten hours without a second uninterrupted, off-duty 30-minute meal period and not  
28 compensating one hour of pay at their regular rate of compensation for each such occurrence, as  
alleged above, Defendants willfully violated the provisions of Labor Code sections 226.7, 512 and  
IWC Wage Order Nos. 5-1998, 5-2000, and 5-2001. Pursuant to Labor Code sections 226.7 and

1 512, the Plaintiff Class members seek the payment of all meal period compensation which they are  
2 owed, according to proof.

3 44. Additionally, Plaintiff and Plaintiff Class members are entitled to attorneys' fees,  
4 and costs, and prejudgment interest.

5 **THIRD CAUSE OF ACTION**

6 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF IN**  
7 **VIOLATION OF LABOR CODE §§226.7, 512; IWC Wage Orders; Cal. Code Regs., Title 8**  
8 **§11040**  
9 **(Against each Defendant and on behalf of Plaintiff and the Rest Period Subclass)**

10 45. Plaintiff incorporates all preceding paragraphs of this complaint as if fully alleged  
11 herein.

12 46. By requiring Plaintiff and members of the Plaintiff Class she seeks to represent to  
13 work four hours or a major fraction thereof without a rest period of at least ten minutes, and  
14 failing to provide appropriate compensation in lieu thereof, as alleged above, Defendants willfully  
15 violated the provisions of Labor Code section 226.7 and IWC Wage Order Nos. 4-2000, and  
16 4-2001. Plaintiff and the Class members she seeks to represent did not willfully waive through  
17 mutual consent with Defendants such rest periods. Plaintiff and Plaintiff Class members are entitled  
18 to an hour of pay for each day that Defendants failed to properly provide one or more rest periods  
19 as set forth in the IWC wage orders, in an amount according to proof. Pursuant to Labor Code  
20 section 226.7, the Plaintiff Class members seek the payment of all rest period compensation which  
21 they are owed according to proof.

22 47. Additionally, Plaintiff and members of the Plaintiff Class are entitled to attorneys'  
23 fees, and costs, and prejudgment interest.

24 **FOURTH CAUSE OF ACTION**

25 **WAITING TIME PENALTIES IN VIOLATION OF LABOR CODE §203**  
26 **(Against all Defendants on Behalf of Plaintiff and the Waiting Time Subclass)**

27 48. Plaintiff incorporates all preceding paragraphs of this Complaint.  
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1           49. Labor Code section 203 requires all employees separated from their employer be  
2 timely paid all wages owed for work performed. Plaintiff is informed and believes and based  
3 thereupon alleges during the relevant time period, due to the failure to pay overtime wages and the  
4 taking of illegal deductions from pay, that for former employees of the company, separating from  
5 their employment, the Defendants, and each of them, knowingly and intentionally failed to pay all  
6 wages owed in the time limits proscribed by Labor Code section 203. As a consequence, for all  
7 former employees of Defendants, during the relevant time period, Plaintiff seeks waiting time  
8 penalties for wage due and unpaid at the time of discharge, termination or voluntary separation by  
9 Plaintiff and other former employees.

10           50. By improperly categorizing Plaintiff and the putative class as exempt, Defendants  
11 did not pay for all hours actually caused or suffered to be worked by the Plaintiff and the putative  
12 class. By their acts, Defendants, and each of them, have committed acts and practices of unfair  
13 competition by not paying all wages due and owed in the time period proscribed by Labor Code  
14 Section 203 for employees who during the Relevant Time Period, voluntarily or involuntarily  
15 terminated their employment. The wages were earned and pertain to all actual hours caused or  
16 suffered to work and are vested property of Plaintiff and the putative class, such that Defendant  
17 has unjustly withheld said payments, such that a court of competent jurisdiction may order  
18 equitable disgorgement and restitution, in addition to remedies available at law, including the  
19 premium pay penalty of 30-days wage at that last hourly rate as required by Labor Code Section  
20 203.

21           51. Pursuant to Bus. & Prof. Code section 17203, Plaintiff requests an order requiring  
22 Defendants to make restitution of all wages due to the Waiting Time Subclass in an amount to be  
23 proven at trial, for the period commencing four years from the date of the filing of the Complaint  
24 herein to the date of commencement of trial in this action. Further, as set forth in the Prayer for  
25 Relief, Plaintiff seeks interest, penalties and attorneys' fees as permitted by law and/or equitable  
26 principles.

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1 **FIFTH CAUSE OF ACTION**

2 **KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED**  
3 **EMPLOYEE WAGE STATEMENT PROVISIONS**  
4 **(Against each Defendant and on behalf of Plaintiff and the Illegal Record Subclass)**

5 52. Plaintiff incorporates all preceding paragraphs of this Complaint.

6 53. Labor Code section 226 requires an employer to furnish its employees with an  
7 accurate itemized statement in writing showing, among other things, (1) gross wages earned, (2)  
8 total hours worked by each respective individual, (3) all deductions, (4) net wages earned and/or  
9 (5) all applicable hourly rates in effect during each respective pay period and the corresponding  
10 number of hours worked at each hourly rate by each respective individual. Defendants, and each  
11 of them, systematically failed to provide such wage statements with accurate information and  
12 engaged in a policy of underpayment for all hours actually worked.

13 54. Moreover, pursuant to Labor Code section 226, California employers are required  
14 to maintain accurate records pertaining to the total hours worked for Defendants by the members  
15 of the Illegal Records Subclass, including, but not limited to, the total hours worked per pay period  
16 and applicable rates of pay. Plaintiff is informed and believes and thereupon alleges that  
17 Defendants, and each of them, did not maintain accurate records of all hours worked and instead  
18 failed to keep accurate time records of all hours worked and/or directed employees to only report  
19 8 hours per work day irrespective of actual hours worked.

20 55. The members of the Illegal Records Subclass include all Plaintiffs and the proposed  
21 Plaintiff Class during the relevant time period for whom Defendants did not accurately record all  
22 hours the employee was actually caused or suffered to work, nor did Defendants pay for overtime  
23 compensation for employees, including Plaintiff and each of the Subclasses, based on the  
24 Defendants' improper and illegal mis-classification of said employees as exempt from overtime  
25 requirements.

26 56. As a pattern and practice, in violation of Labor Code section 226(a), Defendants  
27 did not furnish each of the members of the Illegal Records Subclass with an accurate itemized  
28 statement in writing showing (1) gross wages earned, (2) total hours worked by each respective  
individual, (3) all deductions, (4) net wages earned and/or (5) all applicable hourly rates in effect

1 during each respective pay period and the corresponding number of hours worked at each hourly  
2 rate by each respective individual.

3 57. As a pattern and practice, in violation of Labor Code section 226(a), Defendants  
4 did not maintain accurate records pertaining to the total hours worked for Defendants by the  
5 members of the Illegal Records Subclass, including, but not limited to, beginning and ending of  
6 each work period, the total daily hours worked, and the total hours worked per pay period and  
7 applicable rates of pay.

8 58. Pursuant to Labor Code section 226(e), the members of the Illegal Records  
9 Subclass are entitled to penalties as follows:

- 10 a. Fifty dollars (\$50.00) per employee for the initial pay period in which a  
11 violation occurs; and  
12 b. One hundred dollars (\$100.00) per employee for each violation in a  
13 subsequent pay period, not to exceed \$4,000 per claimant.

14 59. Pursuant to Labor Code section 226(g), the members of the Illegal Records  
15 Subclass are entitled to injunctive relief to ensure Defendants' compliance with Labor Code section  
16 226.

17 60. The members of the Illegal Records Subclass are entitled to an award of costs and  
18 reasonable attorneys' fees.

19 61. Labor Code section 226(a) requires Defendants to itemize in wage statements all  
20 deductions from wages of Plaintiff and the members of the proposed Class.

21 62. Defendants have knowingly and intentionally failed to comply with Labor Code  
22 section 226(a) on each and every wage statement provided to Plaintiff and members of the  
23 proposed subclass.

24 **SIXTH CAUSE OF ACTION**

25 **VIOLATIONS OF UNFAIR COMPETITION LAW**  
26 **(Against each Defendant and on Behalf of Plaintiff and the General Public)**

27 63. Plaintiff incorporates all preceding paragraphs of this Complaint.

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1           64. Defendants' failure to pay overtime and denied meal and rest period pay to Plaintiff  
2 and members of the Class and Subclasses, under the IWC Wage Orders and under California Labor  
3 Code, and failure to keep proper records, as alleged herein, constitute unlawful activity prohibited  
4 by Business and Professions Code sections 17200, et seq.

5           65. The actions of Defendants in failing to pay Plaintiff and members of the Plaintiff  
6 Class and Subclasses in a lawful manner, as alleged herein, constitute false, unfair, fraudulent and  
7 deceptive business acts and/or practices, within the meaning of Business and Professions Code  
8 sections 17200, et seq.

9           66. Plaintiff is entitled to an injunction and other equitable relief against such unlawful  
10 practices in order to prevent future damage, for which there is no adequate remedy at law, and to  
11 avoid a multiplicity of lawsuits. Plaintiff brings this cause individually and as a member of the  
12 general public as a representative of all others subject to Defendants' unlawful acts and practices.  
13 Plaintiff has suffered actual pecuniary harm as a result of each of the Defendant's aforementioned  
14 acts and practices.

15           67. As a result of their unlawful acts, Defendants have reaped and continue to reap  
16 unfair benefits at the expense of Plaintiff, and the Class and Subclasses she seeks to represent.

17           68. Defendants should be enjoined from this activity and made to disgorge these ill-  
18 gotten gains and restore to Plaintiff and the members of the Class and Subclasses the wrongfully  
19 withheld wages and meal and rest period pay, pursuant to Business and Professions Code section  
20 17200, et seq. Plaintiff is informed and believe, and thereon alleges, that Defendants are unjustly  
21 enriched through their failure to pay overtime wages to Plaintiff and members of the Class and  
22 Subclasses.

23           69. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and members of  
24 the Class are prejudiced and harmed by Defendants' unfair trade practices as actual earned and  
25 vested wages were not paid and were instead withheld illegally by Defendants, and each of them.

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**As to the First Cause of Action for Overtime Pay:**

- 2. For payment of overtime pay;
- 3. For interest as authorized by Labor Code sections 218.6 and 1194(a) and Civil Code sections 3287(b) and 3289;
- 4. For restitution of overtime pay by Defendants and/or disgorgement of unpaid wages;
- 5. For an award of reasonable attorneys' fees and costs;

**As to the Second Cause of Action for Meal Period Violations:**

- 6. For payment of meal period pay pursuant to Labor Code 226.7;
- 7. For interest as authorized by Labor Code sections 218.6 and 1194(a) and Civil Code sections 3287(b) and 3289;
- 8. For restitution/d disgorgement by Defendants of unpaid premium wages for missed meal periods;
- 9. For an award of reasonable attorneys' fees and costs;

**As to the Third Cause of Action for Rest Period Violations:**

- 10. For payment of rest period pay pursuant to Labor Code 226.7;
- 11. For interest as authorized by Labor Code sections 218.6 and 1194(a) and Civil Code sections 3287(b) and 3289;
- 12. For restitution/d disgorgement by Defendants of unpaid premium wages for missed rest periods;
- 13. For an award of reasonable attorneys' fees and costs;

**As to the Fourth Cause of Action for Waiting Time Premium Wage:**

- 14. Waiting time penalties not to exceed 30 days pay per former employee separated from the employer during the relevant time period pursuant to Labor Code section 203;
- 15. For reasonable attorneys' fees and costs incurred as permitted by statute;

**As to the Fifth Cause of Action for Illegal Record Keeping:**

- 16. For penalties as authorized by Labor Code section 226(e);

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1 17. For injunctive relief to ensure Defendants' compliance with Labor Code section 226  
2 pursuant to Labor Code section 226(g);

3 18. For an award of costs and reasonable attorneys' fees;

4 **As to the First Through Fifth Causes of Action:**

5 19. For penalties as provided, per violation, under the Private Attorneys General Act of  
6 2004, Labor Code section 2699 et seq. (the "Act"), and as provided by Labor Code Section 558  
7 where applicable, to be distributed in accordance with the Act;

8 **As to the Sixth Cause of Action for Unfair Business Practices:**

9 20. For an accounting, under administration of Plaintiff and/or the receiver and subject  
10 to Court review, to determine the amount to be returned by Defendants, and the amounts to be  
11 refunded to members of the Class and Subclasses who are owed monies by Defendants;

12 21. For an Order requiring Defendants to identify each of the members of the Class and  
13 Subclasses by name, home address, and home telephone number;

14 22. For an Order requiring Defendants to make full restitution and payment pursuant to  
15 Labor Code sections 200, 203, 206, 221, 226.7 and 1194;

16 23. For the creation of an administrative process wherein each injured member of the  
17 Class and Subclasses may submit a claim in order to receive his/her money;

18 24. For all other appropriate injunctive, declaratory and/or equitable relief;

19 25. For pre-judgment and post-judgment interest to the extent permitted by law;

20 26. For an award of attorneys' fees and costs incurred in the investigation, filing and  
21 prosecution of this action pursuant to Code of Civil Procedure section 1021.5, Business and  
22 Professions Code sections 17200, et seq., Labor Code section 1194 and any other applicable  
23 provision of law;

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As to the Seventh Cause of Action for Declaratory Relief:

27. For a Declaration of the respective rights and responsibilities of the parties;

As to All Causes of Action:

28. For reasonable attorneys' fees and costs incurred; and.

29. For such other and further relief as this Court may deem just and proper.

DATED: September 16, 2009

COHELAN KHOURY & SINGER  
THE COOPER LAW FIRM, P.C.  
THE CARTER LAW FIRM

By: 

Michael D. Singer, Esq.

J. Jason Hill, Esq.

Attorneys for Plaintiff

GHAZALA H. DURRANI, on behalf of herself  
and all others similarly-situated

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial

DATED: September 16, 2009

COHELAN KHOURY & SINGER  
THE COOPER LAW FIRM, P.C.  
THE CARTER LAW FIRM

By: 

Michael D. Singer, Esq.

J. Jason Hill, Esq.

Attorneys for Plaintiff

GHAZALA H. DURRANI, on behalf of herself  
and all others similarly-situated