

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

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PLAINTIFF(S) / PETITIONER(S): Juan Casillas et.al.

DEFENDANT(S) / RESPONDENT(S): The Copley Press, Inc. et.al.

CASILLAS VS. THE COPLEY PRESS, INC.

**NOTICE OF CASE ASSIGNMENT**

CASE NUMBER:

37-2010-00085012-CU-OE-CTL

Judge: Charles R. Hayes

Department: C-66

**COMPLAINT/PETITION FILED: 02/05/2010**

**CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL REQUIREMENTS LISTED BELOW**

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

**TIME STANDARDS:** The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil consists of all cases except: Small claims appeals, petitions, and unlawful detainers.

**COMPLAINTS:** Complaints must be served on all named defendants, and a CERTIFICATE OF SERVICE (SDSC CIV-345) filed within 60 days of filing. This is a mandatory document and may not be substituted by the filing of any other document.

**DEFENDANT'S APPEARANCE:** Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.)

**DEFAULT:** If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT AND OTHER PROVIDERS. SEE ADR INFORMATION PACKET AND STIPULATION.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION PURSUANT TO CCP 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND THE COURT ORDERS THE CASE TO ARBITRATION PURSUANT TO CCP 1141.10. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SDSC CIV-359 PRIOR TO THAT HEARING

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CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

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6  
7 **SUPERIOR COURT OF CALIFORNIA**

8 **COUNTY OF SAN DIEGO**

9 JUAN CASILLAS, an individual; ESMERALDA)  
SOSA, an individual; FELIPE GUZMAN GARCIA,) )  
10 an individual; ADRIANA VASQUEZ, an) )  
individual; and ROES 1-50 on behalf of themselves) )  
11 and in a representative capacity for all others) )  
similarly situated ) )

12 Plaintiffs, ) )

13 v. ) )

14 ) )  
15 THE COPLEY PRESS, INC., an Illinois) )  
Corporation; BREAK OF DAWN DELIVERY) )  
16 SERVICES, INC., a California Corporation; TROY) )  
PELKY & ASSOCIATES DISTRIBUTION, INC.,) )  
17 a California Corporation; FIRST LIGHT) )  
MORNING NEWS DELIVERY, INC., a California) )  
18 Corporation; THE SAN DIEGO UNION-) )  
TRIBUNE, LLC, a Delaware Limited Liability) )  
19 Company; PLATINUMEQUITY, LLC, a Delaware) )  
Limited Liability Company; NHM DELIVERY) )  
20 SERVICE, INC., a California Corporation; JOHN) )  
TARANTINO DISTRIBUTION, a business entity) )  
21 unknown; and DOES 1 through 50 inclusive ) )

22 Defendants. ) )

Case No.: 37-2010-00065012-CU-OE-CTL

**CLASS AND REPRESENTATIVE  
ACTION COMPLAINT FOR  
DAMAGES AND INJUNCTIVE  
RELIEF FOR:**

- 1. FAILURE TO PAY MINIMUM WAGE (Labor Code §§ 1194, 1194.2, 1197);
  - 2. FAILURE TO PAY OVERTIME COMPENSATION (Labor Code §§ 510, 1194 *et seq.*);
  - 3. FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF (Labor Code § 226.7; IWC Wage Orders);
  - 4. FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF (Labor Code §§ 226.7, 512; IWC Wage Orders);
  - 5. FAILURE TO REIMBURSE FOR REASONABLE BUSINESS EXPENSES (Labor Code § 2802);
  - 6. UNLAWFUL DEDUCTIONS FROM WAGES (Labor Code §§ 221, 223);
  - 7. FAILURE TO TIMELY PAY WAGES DUE AT TERMINATION (labor Code §§ 201, 202, 203);
  - 8. FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS (Labor Code § 226)
  - 9. CONVERSION;
  - 10. UNFAIR BUSINESS PRACTICES (Bus. & Prof. Code § 17200 *et seq.*);
  - 11. DECLARATORY RELIEF;
  - 12. ACCOUNTING; and
  - 13. INJUNCTIVE RELIEF
- DEMAND FOR JURY TRIAL**

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**I.**

**INTRODUCTION**

1. Plaintiffs bring this action pursuant to California Code of Civil Procedure Section 382, against Defendants THE COPLEY PRESS, INC.; BREAK OF DAWN DELIVERY SERVICES, INC.; TROY PELKY & ASSOCIATES DISTRIBUTION, INC.; FIRST LIGHT MORNING NEWS DELIVERY, INC; THE SAN DIEGO UNION-TRIBUNE, LLC; PLATINUM EQUITY, LLC; NHM DELIVERY SERVICE, INC.; and JOHN TARANTINO DISTRIBUTION (hereinafter collectively referred to as "Defendants"). This class action is brought on behalf of workers who have performed newspaper delivery services for Defendants from February 5, 2006, through the present. Defendants have violated the California Labor Code and applicable California Wage Orders by misclassifying Plaintiffs and the Plaintiff Class members as independent contractors when they are, as a matter of law, employees. Defendants have intentionally misclassified these workers for the purpose of denying them the various benefits to which they are entitled as employees, including minimum wage, overtime compensation, rest and meal periods, other wage protections, and eligibility for unemployment and workers' compensation. The above-named Plaintiffs seek to recover, on their own behalf and on behalf of all similarly situated individuals, compensation for these violations, declaratory and injunctive relief and attorneys' fees and costs, as provided by law.

**II.**

**THE PARTIES**

2. Plaintiff Juan Casillas (hereinafter referred to as "Casillas") is an individual residing in San Diego County, California. Casillas has performed newspaper delivery services for Defendants within four (4) years prior to the filing of this Complaint (the Class Period.) During the time he has performed newspaper delivery services for Defendants, Casillas has worked regular and overtime hours for which he was not paid and was not properly compensated for missed and/or interrupted meal and rest breaks. Furthermore, Defendants unlawfully deducted amounts from his pay checks for customer complaints and refused to reimburse him for his reasonable business expenses.

1           3.       Plaintiff Esmeralda Sosa (hereinafter referred to as "Sosa") is an individual residing  
2 in San Diego County, California. Sosa has performed newspaper delivery services for Defendants  
3 within four (4) years prior to the filing of this Complaint (the Class Period.) During the time she  
4 has performed newspaper delivery services for Defendants, Sosa has worked regular and overtime  
5 hours for which she was not paid and was not properly compensated for missed and/or interrupted  
6 meal and rest breaks. Furthermore, Defendants unlawfully deducted amounts from her pay checks  
7 for customer complaints and refused to reimburse her for her reasonable business expenses.

8           4.       Plaintiff Adriana Vasquez (hereinafter referred to as "Vasquez") is an individual  
9 residing in San Diego County, California. Vasquez has performed newspaper delivery services for  
10 Defendants within four (4) years prior to the filing of this Complaint (the Class Period.) During  
11 the time she has performed newspaper delivery services for Defendants, Vasquez has worked  
12 regular and overtime hours for which she was not paid and was not properly compensated for  
13 missed and/or interrupted meal and rest breaks. Furthermore, Defendants unlawfully deducted  
14 amounts from her pay checks for customer complaints and refused to reimburse her for her  
15 reasonable business expenses.

16           5.       Plaintiff Felipe Guzman Garcia (hereinafter referred to as "Garcia") is an individual  
17 residing in San Diego County, California. Garcia has performed newspaper delivery services for  
18 Defendants within four (4) years prior to the filing of this Complaint (the Class Period.) During  
19 the time he has performed newspaper delivery services for Defendants, Garcia has worked regular  
20 and overtime hours for which he was not paid and was not properly compensated for missed and/or  
21 interrupted meal and rest breaks. Furthermore, Defendants unlawfully deducted amounts from his  
22 pay checks for customer complaints and refused to reimburse him for his reasonable business  
23 expenses.

24           6.       Plaintiffs bring this action for themselves and in a representative capacity pursuant  
25 to Business and Professions Code §§ 17000-17200 *et seq.*, and as a class action on behalf of  
26 themselves and all others similarly situated.

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1           7.       On information and belief, Plaintiff alleges that Defendant THE COPLEY PRESS,  
2 INC. is a corporation qualified to do business in the State of California and actually doing business  
3 in the State of California and County of San Diego.

4           8.       On information and belief, Plaintiff alleges that Defendant BREAK OF DAWN  
5 DELIVERY SERVICES, INC. is a corporation qualified to do business in the State of California  
6 and actually doing business in the State of California and County of San Diego.

7           9.       On information and belief, Plaintiff alleges that Defendant TROY PELKY &  
8 ASSOCIATES DISTRIBUTION, INC. is a corporation qualified to do business in the State of  
9 California and actually doing business in the State of California and County of San Diego.

10          10.       On information and belief, Plaintiff alleges that Defendant FIRST LIGHT  
11 MORNING NEWS DELIVERY, INC. is a corporation qualified to do business in the State of  
12 California and actually doing business in the State of California and County of San Diego.

13          11.       On information and belief, Plaintiff alleges that Defendant THE SAN DIEGO  
14 UNION-TRIBUNE, LLC is a limited liability company qualified to do business in the State of  
15 California and actually doing business in the State of California and County of San Diego.

16          12.       On information and belief, Plaintiff alleges that Defendant PLATINUM EQUITY,  
17 LLC is a limited liability company qualified to do business in the State of California and actually  
18 doing business in the State of California and County of San Diego.

19          13.       On information and belief, Plaintiff alleges that Defendant NHM DELIVERY  
20 SERVICE, INC. is a corporation qualified to do business in the State of California and actually  
21 doing business in the State of California and County of San Diego.

22          14.       Plaintiff is informed and believes and thereon alleges that Defendant JOHN  
23 TARANTINO DISTRIBUTION is a business entity unknown and at all times relevant hereto was,  
24 registered and licensed to conduct business in the State of California and does conduct business  
25 in the State of California by specifically maintaining offices and conducting business as JOHN  
26 TARANTINO DISTRIBUTION in San Diego County, California.

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1 IV.

2 FACTS

3 21. Defendants are engaged in the management and operation of The San Diego Union-  
4 Tribune newspaper. They publish and distribute that newspaper in San Diego County.

5 22. Defendants employ newspaper delivery workers, whom they categorize as  
6 "independent contractors," to assemble and deliver The San Diego Union-Tribune to Defendants'  
7 home subscribers.

8 23. Defendants maintain distribution facilities in San Diego County. Plaintiffs and the  
9 Plaintiff class members perform work at those distribution facilities, which are owned and  
10 controlled by Defendants, including but not limited to inserting material provided by Defendants  
11 into newspapers for delivery.

12 24. Defendants determine and control the number of newspapers made available to  
13 Plaintiffs and the Plaintiff Class members and determined and control where and when those  
14 newspapers are required to be picked up by Plaintiffs and the Plaintiff Class members.

15 25. Defendants require Plaintiffs and the Plaintiff Class members to use their personal  
16 vehicles to deliver newspapers. However, Defendants refuse to reimburse the newspaper delivery  
17 workers for their gasoline and for wear and tear of their vehicles.

18 26. Defendants also require the newspaper delivery workers to purchase string, rubber  
19 bands, and bags to bind and protect the newspapers. Again, Defendants refuse to reimburse the  
20 newspaper delivery workers for these expenditures.

21 27. Defendants purport to classify their newspaper delivery workers as independent  
22 contractors. However, these workers are in fact employees as they do not meet the definition of  
23 independent contractors as set forth in California Labor Code section 2750.5.

24 28. The behavioral and financial control manifested over these workers by Defendants  
25 demonstrates that the workers are employees rather than independent contractors.

26 29. The newspaper delivery workers perform services within Defendants' usual course  
27 of business, which is to provide newspapers to customers.

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1           30.     Also, Defendants instruct the newspaper delivery workers in how to do their work  
2 and dictate their performance of the details of their jobs.

3           31.     The newspaper delivery workers generally do not work in an independently  
4 established trade, occupation, profession, or business. Instead, the newspaper delivery workers  
5 perform delivery services exclusively for Defendants.

6           32.     Also, the newspaper delivery workers do not represent themselves to the public as  
7 being in an independent business to provide newspaper delivery, and they typically have not  
8 invested in an independent business.

9           33.     Because of their misclassification by Defendants as independent contractors, these  
10 newspaper delivery workers have not received the benefits that inure from the employment  
11 relationship under law.

12           34.     For example, Defendants' newspaper delivery workers frequently do not receive  
13 the minimum wage for the work they perform.

14           35.     Although many of them, including Casillas, Garcia, Sosa, and Vasquez, work  
15 overtime hours, they do not receive one and one-half times their regular rate for those overtime  
16 hours.

17           36.     These newspaper delivery workers also typically work without taking proper rest  
18 or meal breaks. Nor do they receive additional compensation for completing their deliveries  
19 without breaks.

20           37.     These newspaper delivery workers do not receive pay for their travel time while  
21 they are delivering newspapers on their route.

22           38.     Also, because of the misclassification, Defendants' newspaper delivery workers are  
23 not covered by workers' compensation when they are injured on the job.

24                           V.

25                           **CLASS ACTION ALLEGATIONS**

26           39.     Plaintiffs, and the class members they seek to represent, include hundreds of former  
27 and current newspaper delivery workers who work or have worked for Defendants.

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1           40.     Plaintiffs bring this action against Defendants on their own behalf and on behalf of  
2 all other persons similarly situated, as a class action, under California Code of Civil Procedure  
3 section 382. Plaintiffs seek to represent a class composed of and defined as follows: all  
4 individuals in the State of California who have executed an "Independent Contractor Distribution  
5 Agreement for Home Delivery" with Defendants and performed services under said agreement  
6 during the statutory time period ("Class Members").

7           **A.     Numerosity**

8           41.     The Class is comprised of an unknown number of persons at this time, but the  
9 joinder of all these individuals is impractical, and the disposition of their claims in a class action  
10 will benefit both the parties and this Court. The class is sufficiently numerous because several  
11 hundred individuals throughout California have, during the class period, worked for Defendants  
12 in the capacity described herein and executed contracts with Defendants under the terms described  
13 herein.

14           **B.     Commonality**

15           42.     There is a well-defined community of interest in the questions of law and fact  
16 involved affecting the parties to be represented. The class is united in its interests with respect to  
17 proof of Defendants' common course of conduct or corporate policies and practices and the alleged  
18 effects of injuries caused by such policies and practices. The questions of law and fact common  
19 to the class predominate over questions which may affect individual class members, including the  
20 following:

21                 a.     Whether Plaintiffs and other similarly situated newspaper delivery workers  
22 who have executed "Independent Contractor Distribution Agreements for Home Delivery" with  
23 Defendants are properly classified as employees of Defendants, rather than independent  
24 contractors;

25                 b.     Whether Defendants violated the Wage Orders by withholding overtime  
26 compensation from class members;

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- 1           c.       Whether Defendants violated California Labor Code sections 226.7 and 512,  
2 the applicable IWC Wage Orders, regulations and statutes by failing to provide daily ten minute  
3 rest periods to their newspaper delivery workers for every four hours or major fraction thereof  
4 worked and failing to provide adequate compensation in lieu thereof;
- 5           d.       Whether Defendants violated California Labor Code sections 226.7 and 512,  
6 the applicable IWC Wage Orders, regulations and statutes by failing to provide minimum 30  
7 minute meal periods to their newspaper delivery workers on days they worked in excess of five  
8 hours and failing to provide adequate compensation in lieu thereof;
- 9           e.       Whether Defendants violated California Labor Code section 2802 by failing  
10 to reimburse their newspaper delivery workers for all reasonable business expenses;
- 11          f.       Whether Defendants violated Labor Code sections 221 and 223 by illegally  
12 deducting amounts from their newspaper delivery workers' wages;
- 13          g.       Whether the class is entitled to waiting time penalties under Labor Code  
14 section 203 and/or underpayment penalties under Labor Code section 558;
- 15          h.       Whether Defendants failed to keep accurate payroll records pursuant to  
16 Labor Code section 1174;
- 17          i.       Whether Defendants failed to provide their newspaper delivery workers with  
18 accurate wage statements under Labor Code section 226;
- 19          j.       Whether Defendants wrongfully converted monies owed to Plaintiffs and  
20 other similarly situated newspaper delivery workers;
- 21          k.       Whether Defendants committed unfair business practices under section  
22 17200 *et seq.* of the Business & Professions Code; and
- 23          l.       Whether Plaintiffs and other similarly situated newspaper delivery workers  
24 have been damaged, and, if so, the extent of such damages and/or the nature of equitable and  
25 injunctive relief, restitution, compensatory and punitive damages to which the class members are  
26 entitled.

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1           **C.    Typicality**

2           43.    Plaintiffs are asserting claims that are typical of the claims of the various classes  
3 they seek to represent. The newspaper cleaning workers who entered into Independent Contractor  
4 Distribution Agreements performed identical duties for Defendants and were misclassified as  
5 independent contractors rather than properly classified as employees. All Plaintiffs and class  
6 members sustained similar damages arising out of Defendants' common course of conduct, which  
7 is in violation of laws and regulations governing the compensation of employees.

8           **D.    Adequacy of Representation**

9           44.    Plaintiffs will fairly and adequately represent and protect the interests of the class  
10 in that they have no interests antagonistic to those of the class. Plaintiffs have retained counsel  
11 who are competent and experienced in class action litigation. Plaintiffs' attorneys have  
12 successfully reached multi-million dollar settlements in wage and hour class actions totaling in  
13 excess of \$10 million and have litigated wage and hour class actions since approximately 2004.

14           **E.    Superiority of Class Action**

15           45.    Plaintiffs and the class members have suffered damages as a result of Defendants'  
16 wrongful conduct. Absent a class action, Plaintiffs and the individual newspaper delivery workers  
17 whom they seek to represent will not recover the unpaid compensation which is owed to them  
18 because the damages to each class member may be relatively small, and thus would be difficult to  
19 litigate individually.

20           46.    Class action treatment will allow these similarly situated persons to litigate their  
21 claims in the manner that is most efficient and economical for the parties and the judicial system.  
22 Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of  
23 this action that would preclude its maintenance as a class action.

24           47.    Notice of the pendency of this action can be given either by regular mail or by  
25 publication, the cost of which, under California law, can and should reasonably be imposed upon  
26 Defendants.

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1 FIRST CAUSE OF ACTION

2 **(Failure to Pay Minimum Wage [Cal. Lab. Code §§ 1194, 1194.2, 1197])**

3 48. Plaintiffs repeat and incorporate by reference paragraphs 1 through 47, inclusive,  
4 as though fully set forth at length herein.

5 49. The Class Period for this cause of action commences four (4) years prior to filing  
6 this complaint according to proof.

7 50. Labor Code section 1197 provides, “the minimum wage fixed by the commission  
8 is the minimum wage to be paid to employees, and payment of a less wage than the minimum so  
9 fixed is unlawful.”

10 51. Labor Code section 1194 *et seq.* provides in relevant part that any employee  
11 receiving less than the minimum wage applicable to the employee is entitled to recover in a civil  
12 action the unpaid balance of the full amount of this minimum wage, including interest thereon,  
13 reasonable attorneys’ fees, and costs of suit.

14 52. Labor Code section 1194.2 provides in relevant part that: “In any action  
15 under...Section 1194 to recover wages because of a payment of a wage less than the minimum  
16 wage fixed by an order of the commission, an employee shall be entitled to recover liquidated  
17 damages in amount equal to the wages unlawfully unpaid and interest thereon.”

18 53. As alleged herein, Defendants required Plaintiffs and each Plaintiff Class Member  
19 to work as needed to perform newspaper delivery services. Based on the number of hours  
20 necessary to delivery the newspapers and insert the necessary materials prior to delivery, Plaintiffs  
21 and each Plaintiff Class Member frequently averaged less than minimum wage in compensation.  
22 By their actions Defendants violated Labor Code section 1197 and are liable to Plaintiffs and the  
23 Class.

24 54. As a result of the unlawful acts of Defendants, Plaintiffs and each Plaintiff Class  
25 Member have been deprived of compensation in amounts to be determined at trial, and are entitled  
26 to recover such amounts, including interest thereon, attorneys’ fees, costs and any other damages  
27 as set forth under California law.

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1 **SECOND CAUSE OF ACTION**

2 **(Failure to Pay Overtime Compensation [Labor Code §§ 510, 1194 et seq.])**

3 55. Plaintiffs repeat and incorporate by reference paragraphs 1 through 54, inclusive,  
4 as though fully set forth at length herein.

5 56. At all relevant times herein, Plaintiffs and each Plaintiff Class Member were  
6 entitled to payment of wages, including overtime compensation, for all time worked. Plaintiffs and  
7 each Plaintiff Class Member were entitled to wages equal to one and one-half times the minimum  
8 wage for all hours worked in excess of eight (8) hours in one day and forty (40) hours in one week.  
9 Plaintiffs and each Plaintiff Class Member routinely were required to perform tasks without  
10 receiving minimum wage and overtime compensation.

11 57. By their policy of requiring Plaintiffs and each Plaintiff Class Member to perform  
12 tasks without being compensated, and requiring each employee to work overtime without  
13 compensating such employee at the rate of one and one-half times the minimum wage, Defendants  
14 violated the provisions of Labor Code section 1194, IWC Wage Orders, regulations and statutes.

15 58. As a direct and legal result of Defendants' violation of the Labor Code and  
16 applicable wage orders, Plaintiffs and each Plaintiff Class Member have been damaged in an  
17 amount to be proven at trial.

18 59. Pursuant to Labor Code sections 1194 and 1199, Plaintiffs and each Plaintiff Class  
19 Member are entitled to, and request, unpaid overtime, interest, penalties, and reasonable attorneys'  
20 fees and costs incurred in this action in an amount to proven at or following trial of this matter.

21 **THIRD CAUSE OF ACTION**

22 **(Failure to Provide Rest Periods or Compensation in Lieu Thereof**

23 **[Labor Code § 226.7; IWC Wage Orders])**

24 60. Plaintiffs repeat and incorporate by reference paragraphs 1 through 59, inclusive,  
25 as though fully set forth at length herein.

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1 77. Defendants made deductions from Plaintiffs' and the class members' wages as part  
2 of a wrongful attempt to make Plaintiffs and the class members the insurers of Defendants'  
3 merchandise, which is prohibited under California law.

4 78. Defendants' withholding of wages from Plaintiffs and the class members in order  
5 to recoup their losses from subscribers' nonpayment and fees, also constituted a device utilized by  
6 Defendants to pay Plaintiffs and the class members less than their stated wages, which is a  
7 violation of Labor Code section 221..

8 79. Furthermore, the illegal deductions charged by Defendants against the wages of the  
9 Plaintiffs and class members constituted a device utilized by Defendants to pay Plaintiffs and the  
10 class members less than their stated wages, which is a violation of Labor Code section 221.

11 80. Plaintiffs and the class members are entitled to recover the amounts illegally  
12 deducted from their wages by Defendants according to proof at the time of trial. Further, Plaintiffs  
13 and the class members are entitled to recover penalties of \$100 for the initial violation and \$200  
14 for each subsequent violation for every pay period in which Defendants made said illegal  
15 deductions from the wages of Plaintiffs and the class members. Under Labor Code section 218.5  
16 Plaintiffs and the class members are further entitled to recover their attorney's fees and costs, in  
17 an amount to be proven at the time of trial.

18 **SEVENTH CAUSE OF ACTION**

19 **(Failure to Timely Pay Wages Due At Termination [Labor Code, §§ 201, 202, 203])**

20 **(Plaintiffs and each Plaintiff Class member against each Defendant)**

21 81. Plaintiffs repeat and incorporate by reference paragraphs 1 through 80, inclusive,  
22 as though fully set forth at length herein.

23 82. Sections 201 and 202 of the California Labor Code require Defendants to pay their  
24 employees all wages due within 72 hours of termination of employment. Section 203 of the Labor  
25 Code provides that if an employer willfully fails to timely pay such wages the employer must, as  
26 a penalty, continue to pay the subject employee's wages until the back wages are paid in full or an  
27 action is commenced. The penalty cannot exceed 30 days of wages.

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1 83. Defendants failed to pay earned wages to each Plaintiff Class member who are  
2 former employees entitled to compensation for wages earned but which to date have not received  
3 such compensation. More than 30 days have passed since such employees left Defendants'  
4 employ.

5 84. As a consequence of Defendants' willful conduct in not paying all wages due within  
6 72 hours of termination of employment compensation due and owing them, each Plaintiff Class  
7 member is entitled to 30 days' wages as a penalty under Labor Code section 203 for failure to pay  
8 legal overtime wages and is entitled to 30 days' wages as a penalty under Labor Code section 203  
9 for failure to pay one hour's wages in lieu thereof for denied rest and meal periods, together with  
10 interest thereon and attorneys' fees and costs.

11 **EIGHTH CAUSE OF ACTION**

12 **(Failure to Provide Accurate Wage Statements [Labor Code §226])**

13 **(Plaintiffs and each Plaintiff Class member against each Defendant)**

14 85. Plaintiffs repeat and incorporate by reference paragraphs 1 through 84, inclusive,  
15 as though fully set forth at length herein.

16 86. Defendants knowingly and intentionally failed to provide Plaintiffs and each  
17 Plaintiff Class member with a true and accurate wage statement showing all applicable hourly rates  
18 in effect during the pay period and the corresponding number of hours worked at each hourly rate  
19 by the employee, in violation of Labor Code section 226(a).

20 87. Pursuant to Labor Code section 226(e), Plaintiffs and each Plaintiff Class member  
21 are each entitled to penalties in the amount of \$50 for the initial pay period in which the violation  
22 occurred, plus \$100 for each violation in a subsequent pay period, up to an aggregate penalty of  
23 \$4,000. In addition, Plaintiffs and each Plaintiff Class member are entitled to attorneys' fees and  
24 costs in an amount to be proved at trial.

25 **NINTH CAUSE OF ACTION**

26 **(Conversion)**

27 88. Plaintiffs repeat and incorporate by reference paragraphs 1 through 87, inclusive,  
28 as though fully set forth at length herein.

