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FILED

MAR 30 2005

FRESNO COUNTY SUPERIOR COURT

By \_\_\_\_\_ NAG DEPUTY

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF FRESNO

10 JUAN QUEZADA, individually and on behalf )  
11 of others similarly situated, )

12 Plaintiff,

13 vs.

14 FRESNO BEVERAGE COMPANY, INC., )  
15 VALLEY WIDE BEVERAGE COMPANY, )  
16 and DOES 1 through 50, inclusive, )

17 Defendants.

05 CE CG 00982AMS  
NO. \_\_\_\_\_

COMPLAINT

[CLASS ACTION]

- 1. Violations of Labor Code
- 2. Violation of B&P § 17200

This case has been assigned to Judge Alan M. Simpson for all purposes

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20  
21 FIRST CAUSE OF ACTION

22 Representative Plaintiff brings this challenge to Defendants' lucrative, repressive and  
23 unlawful business practices on behalf of himself and a class of all others similarly situated and  
24 for a Cause of Action against Defendants, FRESNO BEVERAGE COMPANY, INC., dba  
25 VALLEY WIDE BEVERAGE COMPANY, and DOES 1-50, inclusive, (hereinafter,  
26 "Defendants") and each of them, allege as follows:  
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1 **THE PARTIES, JURISDICTION AND VENUE**

2 1.

3 This class action is brought pursuant to Section 382 of the California Code of Civil  
4 Procedure. The monetary damages and restitution sought by Plaintiff exceeds the minimal  
5 jurisdiction limits of the Superior Court and will be established according to proof at trial. The  
6 amount in controversy for the class representative, including his claim for compensatory  
7 damages and pro rata share of attorney fees, is less than \$75,000.  
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9 2.

10 Venue is proper in the County of Fresno as at least some of the acts complained of  
11 herein occurred in the County of Fresno and Defendant owns and operates its principal place of  
12 business in the County of Fresno. At all times herein mentioned, Representative Plaintiff and  
13 the class identified herein worked as employees for Defendants in salaried delivery driver  
14 positions, within the County of Fresno and other locations in the State of California.  
15 Defendants' salaried delivery driver employees covered by this action are not employees who  
16 fall into an exception to the California Labor Code Section 1194 and/or California Industrial  
17 Welfare Commission Wage Orders applicable to Defendants' business. The acts complained of  
18 in this First Cause of Action occurred, at least in part, within three years of the filing of the  
19 original complaint in this action up to and including the time that this action is certified as a  
20 class action. The Representative Plaintiff who worked in a salaried delivery driver position at  
21 locations assigned by Defendant within the State of California is Juan Quezada.  
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24

25 3.

26 Defendant, FRESNO BEVERAGE COMPANY, INC., is a California corporation doing  
27 business in California and maintains its principal place of business at 4010 E. Hardy Ave.  
28

1 Fresno, CA 93725. Defendant FRESNO BEVERAGE COMPANY, INC. owns, operates,  
2 manages and controls beverage distribution operations in California. Defendant FRESNO  
3 BEVERAGE COMPANY, INC., does business as "VALLEY WIDE BEVERAGE  
4 COMPANY" in the State of California, County of Fresno.  
5

6 4.

7 Plaintiff is informed and believes and thereon alleges that all times herein mentioned  
8 Defendants and Does 1 through 50, are and were corporations, business entities, individuals  
9 and partnerships, licensed to do business and actually doing business in the State of California.  
10 Defendants own and operate an industry, business and establishment at locations within the  
11 State of California, including within Fresno County, in the beverage distribution business. As  
12 such, and based upon all the facts and circumstances incident to Defendants' business in  
13 California, Defendants are subject to California Labor Code § 1194, *et seq.*, California  
14 Business and Professions Code § 17200, *et seq.*, (Unfair Practices Act) and IWC Wage Orders  
15 as applicable.  
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18 5.

19 Plaintiff does not know the true names or capacities, whether individual, partner or  
20 corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason,  
21 said Defendants are sued under such fictitious names, and Plaintiff prays leave to amend this  
22 complaint when the true names and capacities are known. Plaintiff is informed and believes  
23 and thereon alleges that each of said fictitious Defendants were responsible in some way for the  
24 matters alleged herein and proximately caused Plaintiff and members of the class to be subject  
25 to the illegal employment practices, wrongs and injuries complained of herein.  
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6.

At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants and employees of each of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting within the course and scope of said agency and employment.

7.

At all times herein mentioned, Defendants, and each of them, were members of, and engaged in, a joint venture, partnership and common enterprise, and acting within the course and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

8.

At all times herein mentioned, the acts and omissions of various Defendants, and each of them, concurred and contributed to the various acts and omissions of each and all of the other Defendants in proximately causing the injuries and damages as herein alleged.

9.

At all times herein mentioned, Defendants, and each of them, ratified each and every act or omission complained of herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the acts and omissions of each and all of the other Defendants in proximately causing the damages as herein alleged. Further, at all times mentioned herein, the wage and hour related compensation policies of Defendants' locations in California are and were dictated by, controlled by, and ratified by the Defendants herein and each of them.

10.

Plaintiff is informed and believes and thereon alleges that at no time did he enter into an arbitration agreement with Defendants. Plaintiff also alleges that if he did enter into an arbitration agreement with Defendants, such agreement does not cover the claims asserted

1 herein, is void *ab initio*, unenforceable, unconscionable, unjust, unconstitutional, illegal, and  
2 against public policy.

3 **FACTUAL AND CLASS ALLEGATIONS**

4 **11.**

5 Pursuant to California Labor Code §§ 218, 218.5, 218.6, and 1194, Plaintiff may bring a  
6 civil action for overtime wages directly against the employer without first filing a claim with  
7 the California Division of Labor Standards Enforcement and may recover such wages, together  
8 with interest thereon, penalties, attorney fees and costs.

9 **12.**

10 Representative Plaintiff and all members of the class identified herein were regularly  
11 scheduled as a matter of uniform company policy to work and in fact worked as salaried  
12 delivery driver employees in excess of eight hours per workday and/or in excess of forty hours  
13 per workweek without receiving overtime compensation for such overtime hours worked in  
14 violation of California Labor Code § 1194 and IWC Wage Orders as applicable.  
15 Representative Plaintiff and the other members of the class were improperly and illegally mis-  
16 classified by Defendants as "exempt" employees when, in fact, they were "non-exempt"  
17 employees according to California law. Representative Plaintiff and the class have the right to  
18 be compensated by Defendants at the appropriate compensatory wage rate for said work  
19 heretofore performed, consisting of the straight time rate plus the appropriate overtime  
20 premium as mandated by California law including interest, attorney fees and costs, and civil  
21 penalties thereon pursuant to Labor Code §§ 558 and 1197.1.

22 **13.**

23 Plaintiff brings this complaint pursuant to California Code of Civil Procedure § 382 on  
24 behalf of a class. All claims alleged herein arise under California law for which Plaintiff seeks  
25 relief authorized under California law. The class is comprised of, and defined as:  
26

27 All current and former California based salaried personnel who worked  
28 and/or are working overtime for Defendants in the position of Delivery  
Driver, or the functional equivalent, within the last four years of the

1 filing of the original complaint in this action up to and including the time  
2 that this action is certified as a class, yet were not paid all overtime  
3 amounts due and owing.

4 The members of the class are so numerous that joinder of all members would be  
5 impractical, if not impossible. The members of the class are readily ascertainable by a review  
6 of Defendants' records. Further, the subject matter of this action both as to factual matters and  
7 as to matters of law, are such that there are questions of law and fact common to the class  
8 which predominate over questions affecting only individual members including, among other  
9 things, the following:

10 a. Statistically, one hundred percent of the class members were paid on a salary  
11 basis with no overtime compensation paid for work accomplished in excess of forty hours per  
12 week, or eight hours per day. Plaintiff is informed and believes and based thereon alleges that  
13 Defendants and each of them have failed to meet the requirements for establishing the  
14 exemption because all class members (1) regularly spent more than 50% of their time  
15 performing non-exempt work, (2) did not customarily and regularly exercise discretion and  
16 independent judgment, (3) did not have the authority to hire or fire or make meaningful  
17 recommendations regarding same, (4) did not customarily and regularly supervise at least two  
18 employees or the equivalent, (5) did not perform work directly related to the management  
19 policies or the general business operations of Defendants or Defendants' customers, (6) did  
20 perform non-exempt production and/or sales work a majority of their time (i.e., in excess of  
21 50%) consistent with Defendants' expectations, (7) did not customarily and regularly spend  
22 more than 50% of their time away from the Defendants' place of business selling or obtaining  
23 orders or contracts, and (8) did not earn more than 50% of their compensation in a bona fide  
24 commission plan. Thus, Plaintiff and the class members were not exempt from the overtime  
25 requirements of California law for these reasons.  
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15.

Representative Plaintiff's claims are typical of the claims of all members of the class. Plaintiff, as a representative party, will fairly and adequately protect the interests of the class by vigorously pursuing this suit through attorneys who are skilled and experienced in handling civil litigation of this type.

16.

The California Labor Code and Wage Order provisions upon which Plaintiff asserts these claims are broadly remedial in nature. These laws and labor standards serve an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Representative Plaintiff and members of the class identified herein make the class action format a particularly efficient and appropriate procedure to redress the wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual class member with their vastly superior financial and legal resources. Requiring each class member to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their current or former employer for real and justifiable fear of retaliation and permanent damage to their careers at subsequent employment.

17.

The prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of (1) inconsistent or varying adjudications with respect to individual class members against the Defendants and which would establish potentially incompatible standards of conduct for the Defendants, and/or (2) adjudications with respect to individual class members which would, as a practical matter, be dispositive of the interests of



1 the other class members not parties to the adjudications or which would substantially impair or  
2 impede the ability of the class members to protect their interests. Further, the claims of the  
3 individual members of the class are not sufficiently large to warrant vigorous individual  
4 prosecution considering all of the concomitant costs and expenses.

5 **18.**

6 Such a pattern, practice and uniform administration of corporate policy regarding illegal  
7 employee compensation, as described herein, is unlawful and creates an entitlement to recovery  
8 by Representative Plaintiff and the class identified herein, in a civil action, for the unpaid  
9 balance of the full amount of the overtime premiums owing, including interest thereon,  
10 penalties, reasonable attorneys fees, and costs of suit according to the mandate of California  
11 Labor Code § 1194, et seq.

12 **19.**

13 Proof of a common business practice or factual pattern, of which the named Plaintiff's  
14 experiences are representative, will establish the right of each member of the plaintiff class to  
15 recovery on the causes of action alleged herein.

16 **20.**

17 The plaintiff class is entitled in common to a specific fund with respect to the overtime  
18 compensation monies illegally and unfairly retained by Defendants. The plaintiff class is  
19 entitled in common to restitution and disgorgement of those funds being improperly withheld  
20 by Defendants.

21 **21.**

22 Representative Plaintiff and the members of the class identified herein were discharged  
23 by Defendants or voluntarily quit, and did not have a written contract for employment. The  
24 Defendants, in violation of California Labor Code §§ 201 and 202, et seq., respectively, had a  
25 consistent and uniform policy, practice and procedure of willfully failing to pay the earned and  
26 unpaid wages of all such former employees. The Defendants have willfully failed to pay the  
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1 earned and unpaid wages of such individuals, including, but not limited to, straight time,  
2 overtime, vacation time, bonus payments, and other wages earned and remaining  
3 uncompensated according to amendment, or proof. Representative Plaintiff and other members  
4 of the class did not secret or absent themselves from Defendants nor refuse to accept the earned  
5 and unpaid wages from Defendants. Accordingly, Defendants are liable for waiting time  
6 penalties for the unpaid wages pursuant to California Labor Code § 203.  
7

8 WHEREFORE, Representative Plaintiff, on his own behalf and on behalf of the  
9 members of the class, prays for judgment as hereinafter set forth.  
10

11 **SECOND CAUSE OF ACTION**

12 COMES NOW, Representative Plaintiff, individually and on behalf of the class and as a  
13 second, separate and distinct cause of action against Defendants, and each of them, alleges as  
14 follows:

15 **22.**

16 Plaintiff herein repeats and re-alleges as though fully set forth at length each and every  
17 paragraph of this Complaint, excepting those paragraphs which are inconsistent with this cause  
18 of action for relief regarding Defendants' violations of California Business and Professions  
19 Code § 17200 *et seq.* (Unfair Practices Act).  
20

21 **23.**

22 At all times herein mentioned Defendants, and each of them, acting as the employer,  
23 individually or through officers, directors, agents or employees of another, or as the alter ego of  
24 another, have (1) required or caused Representative Plaintiff and the class to work for longer  
25 hours than those fixed or under conditions prohibited by Industrial Welfare Commission wage  
26 orders applicable to Defendants' business, (2) paid or caused to be paid to Plaintiff and the  
27 class less than the minimum fixed by the applicable IWC Wage Orders, and (3) violated,  
28 refused, or neglected to comply with any provision of Part 4, Chapter 1 of the Labor Code

1 beginning at § 1171 or any order or ruling of the Industrial Welfare Commission. As a result of  
2 the foregoing and the acts complained of herein, Defendants, and each of them, are guilty of  
3 violating California Labor Code §§ 204, 216, 1198 and 1199. In addition to the other  
4 violations of the law set forth in the First Cause of Action, Defendants' violations of California  
5 Labor Code §§ 204, 216, 1198 and 1199 serve as a further basis for Defendants' liability under  
6 California Business & Professions Code § 17200, *et seq.*  
7

8  
9 **24.**

10 Defendants, and each of them, have engaged in unfair business practices in California  
11 by practicing, employing and utilizing the employment practices as outlined herein, to wit, by  
12 requiring their salaried delivery driver employees to perform the labor services without  
13 overtime compensation. Defendants' utilization of such unfair business practices constitutes  
14 unfair competition and provides an unfair advantage over Defendants' competitors.  
15 Representative Plaintiff, and other similarly situated members of the plaintiff class, seeks full  
16 restitution of monies, as necessary and according to proof, to restore any and all monies  
17 withheld, acquired and/or converted by the Defendants by means of the unfair practices  
18 complained of herein. Representative Plaintiff seeks, on his own behalf and on behalf of the  
19 plaintiff class, the appointment of a receiver, as necessary.  
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22 **25.**

23 Plaintiff is informed and believes and on that basis alleges that at all times herein  
24 mentioned Defendants have engaged in unlawful, deceptive and unfair business practices, as  
25 proscribed by California Business and Professions Code § 17200 *et seq.*, including those  
26 alleged herein thereby depriving Plaintiff and other members of the plaintiff class the minimum  
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1 working standards and conditions due to them under the California labor law and Industrial  
2 Welfare Commission Wage Orders as specifically described herein.

3  
4 **26.**

5 Representative Plaintiff, and all persons similarly situated, are further entitled to and do  
6 seek both a declaration that the above-described business practices are unfair, unlawful and/or  
7 fraudulent and injunctive relief restraining Defendants from engaging in any of such business  
8 practices in the future. Such misconduct by Defendants, unless and until enjoined and  
9 restrained by order of this Court, will cause great and irreparable injury to all members of the  
10 class in that the Defendants will continue to violate California law, represented by labor  
11 statutes and the IWC Wage Orders, unless specifically ordered to comply with same. This  
12 expectation of future violations will require current and future employees to repeatedly and  
13 continuously seek legal redress in order to gain compensation to which they are entitled under  
14 California law. Plaintiff has no other adequate remedy at law to insure future compliance with  
15 the California labor laws and Wage Orders alleged to have been violated herein.

16  
17  
18 WHEREFORE, Representative Plaintiff, on his own behalf and on behalf of the  
19 members of the class, pray for judgment as follows:

- 20 1. For an order certifying the proposed class;
- 21 2. Upon the First Cause of Action, for consequential damages according to proof  
22 as set forth in California Labor Code § 1194, *et seq.* (and applicable California Industrial  
23 Welfare Commission Wage Orders) related to unpaid wages due and owing;
- 24 3. Upon the First Cause of Action, for waiting time penalties according to proof  
25 pursuant to California Labor Code § 203;
- 26 4. Upon the First Cause of Action, for civil penalties pursuant to California Labor  
27 Code §§ 558 and 1197.1;
- 28

1           5.       Upon the Second Cause of Action, that Defendants be ordered to show cause  
2 why they should not be enjoined and ordered to comply with the applicable IWC Wage Orders  
3 related to payment of overtime compensation for Defendants' salaried delivery driver  
4 employees who work more than 40 hours per week and/or 8 hours per day; and for an order  
5 enjoining and restraining Defendants and their agents, servants and employees related thereto;

6           6.       Upon the Second Cause of Action, for a declaratory judgment and a decree  
7 adjudging and decreeing that Representative Plaintiff and the members of the class have  
8 regularly worked compensable overtime; further, that the work performed by Representative  
9 Plaintiff and the members of the class have earned wages for which no overtime compensation  
10 has been paid, and that Representative Plaintiff and the members of the class are entitled to  
11 overtime compensation for said work;

12           7.       Upon the Second Cause of Action, for restitution to Representative Plaintiff and  
13 other similarly effected members of the class of all funds unlawfully acquired by Defendants by  
14 means of any acts or practices declared by this Court to be violative of the mandate established  
15 by California Business and Professions Code § 17200 *et seq.*;

16           8.       For pre-judgment interest as allowed by California Labor Code § 1194;

17           9.       For reasonable attorneys fees, expenses and costs as provided by California  
18 Labor Code §§ 218.5 and 1194; and,

19           10.      For such other and further relief the Court may deem just and proper.

20           DATED: March 28, 2005

**RIGHETTI ♦ WYNNE**

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25           By: 

Edward J. Wynne  
Attorneys for Plaintiff