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Los Angeles Superior Court

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John A. Clarke, Executive Officer/Clerk
By S. Gabb Deputy
S. Gabb

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

DANIEL ENCHEFF individually and on
behalf of other members of the class similarly
situated,

Plaintiff,

vs.

RUBIO ARTS, LLC, and DOES 1 though 50,
inclusive,

Defendant.

NO.

BC 340377

COMPLAINT

[CLASS ACTION]

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

FIRST CAUSE OF ACTION

Representative Plaintiff brings this challenge to Defendants' lucrative, repressive and unlawful business practices on behalf of themselves and a class of all others similarly situated and for a Cause of Action against Defendants, RUBIO ARTS, LLC, and DOES 1-50, inclusive, (hereinafter, "Defendants") and each of them, allege as follows:

1 Defendants' business in California, Defendants are subject to California Labor Code § 1194, *et*
2 *seq.*, California Business and Professions Code § 17200, *et seq.*, (Unfair Practices Act) and the
3 applicable IWC Wage Orders.

4
5 **5.**

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

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14 **6.**

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

20
21 **7.**

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

25
26 **8.**

27 At all times herein mentioned, the acts and omissions of various Defendants, and each
28 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.

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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, Defendants wage and hour related compensation policies in California are and were dictated by, controlled by, and ratified by the Defendants herein and each of them.

FACTUAL AND CLASS ALLEGATIONS

10.

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

11.

Representative Plaintiff and all members of the class identified herein were regularly scheduled as a matter of uniform company policy to work and in fact worked as hourly nonexempt employees in excess of eight hours per workday and/or in excess of forty hours per workweek without receiving all of the overtime compensation for such overtime hours worked in violation of California Labor Code § 1194 and the applicable IWC Wage Orders. Representative Plaintiff and all members of the class identified herein were regularly scheduled as a matter of uniform company policy to work and in fact worked as hourly nonexempt employees without receiving the legal minimum wage for all hours worked in violation of California Labor Code § 1194 and the applicable IWC Wage Orders. Representative Plaintiff and the class have the right to be compensated by Defendants at the appropriate compensatory wage rate for said work heretofore performed, consisting of the straight time rates at or above the legal minimum wage, plus the appropriate overtime premium as mandated by California

1 law including interest, attorney fees and costs, and civil penalties thereon pursuant to Labor
2 Code §§ 558 and 1197.1.

3 **12.**

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

7 All current and former California based hourly nonexempt personnel
8 who worked and/or are working for Defendants within the last four years
9 of the filing of the original complaint in this action up to and including
10 the time that this action is certified as a class and:

11 Subclass One: Those hourly nonexempt personnel who were not properly paid for all
12 hours worked during the time they were subject to the control of the Defendants.

13 Subclass Two: Those hourly nonexempt personnel who were not properly paid the
14 legal minimum wage for all hours of work.

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

- 21 a. All class members were classified as hourly nonexempt by Defendant.
- 22 b. Defendants have a uniform and customary practice of regularly and customarily
23 paying class members less than the legal minimum wage for all hours worked.
- 24 c. Defendants have a uniform and customary practice of requiring all class
25 members to regularly and customarily record less hours than Defendants instructed, suffered,
26 and/or permitted class members to work.
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1 d. All class members of Subclass Two were eligible for and did receive incentive
2 pay in addition to their hourly base pay.

3 e. All class members of Subclass Two were not paid any overtime compensation
4 for overtime hours worked based on their earned incentive pay.

5 **13.**

6 There are predominant common questions of law and fact and a community of interest
7 amongst Plaintiff and the claims of the absent class members concerning whether Defendants'
8 regular business custom and practice of not paying regular rate and premium rate compensation
9 for all hours worked, Defendants' regular business custom and practice of not paying overtime
10 compensation on the incentive pay, and Defendants' regular business custom and practice of not
11 paying the legal minimum wage is, and at all times herein mentioned was, in violation of
12 California Labor Code § 1194, *et seq.*, the Unfair Practices Act and the applicable IWC Wage
13 Orders.
14

15 **14.**

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

20 **15.**

21 The California Labor Code and Wage Order provisions upon which Plaintiff asserts
22 these claims are broadly remedial in nature. These laws and labor standards serve an important
23 public interest in establishing minimum working conditions and standards in California. These
24 laws and labor standards protect the average working employee from exploitation by employers
25 who may seek to take advantage of superior economic and bargaining power in setting onerous
26 terms and conditions of employment. The nature of this action and the format of laws available
27 to Representative Plaintiff and members of the class identified herein make the class action
28 format a particularly efficient and appropriate procedure to redress the wrongs alleged herein.

1 If each employee were required to file an individual lawsuit, the corporate Defendants would
2 necessarily gain an unconscionable advantage since they would be able to exploit and
3 overwhelm the limited resources of each individual class member with their vastly superior
4 financial and legal resources. Requiring each class member to pursue an individual remedy
5 would also discourage the assertion of lawful claims by employees who would be disinclined to
6 file an action against their current or former employer for real and justifiable fear of retaliation
7 and permanent damage to their careers at subsequent employment.

8
9 **16.**

10 The prosecution of separate actions by the individual class members, even if possible,
11 would create a substantial risk of (1) inconsistent or varying adjudications with respect to
12 individual class members against the Defendants and which would establish potentially
13 incompatible standards of conduct for the Defendants, and/or (2) adjudications with respect to
14 individual class members which would, as a practical matter, be dispositive of the interests of
15 the other class members not parties to the adjudications or which would substantially impair or
16 impede the ability of the class members to protect their interests. Further, the claims of the
17 individual members of the class are not sufficiently large to warrant vigorous individual
18 prosecution considering all of the concomitant costs and expenses.

19 **17.**

20 Such a pattern, practice and uniform administration of corporate policy regarding illegal
21 employee compensation, as described herein, is unlawful and creates an entitlement to recovery
22 by Representative Plaintiff and the class identified herein, in a civil action, for the unpaid
23 balance of the full amount of the below the legal minimum wages and overtime owing,
24 including interest thereon, penalties, reasonable attorneys fees, and costs of suit according to
25 the mandate of California Labor Code § 1194, et seq. Defendants' failure to pay the minimum
26 wages due and owing was not in good faith nor did Defendants have a reasonable ground for
27 the failure to pay minimum wages. Accordingly, Defendants are liable for liquidated damages
28 per Labor Code § 1194.2.

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18.

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

19.

The Plaintiff class is entitled in common to a specific fund with respect to the wages below legal minimums and overtime compensation monies illegally and unfairly retained by Defendants. The Plaintiff class is entitled in common to restitution and disgorgement of those funds being improperly withheld by Defendants.

20.

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

21.

As a pattern and practice, in violation of the aforementioned labor laws and wage orders, Defendants knowingly and intentionally did not maintain any records or furnish any records to the class pertaining to when Representative Plaintiff and the members of the class began and ended each work period, meal period, the total daily hours worked, and the total hours worked per pay period and applicable rates of pay in violation of California Labor Code

1 §§ 226 and 1174 thereby causing injury to the class. Accordingly, Defendants and each of
2 them are liable for civil penalties to Plaintiff and the class pursuant to Labor Code §§ 226,
3 226.3, 558, and 1174.5.

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

6 **SECOND CAUSE OF ACTION**

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

10 **22.**

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

15 **23.**

16 At all times herein mentioned Defendants, and each of them, acting as the employer,
17 individually or through officers, directors, agents or employees of another have (1) required or
18 caused Representative Plaintiff and the class to work for longer hours than those fixed or under
19 conditions prohibited by Industrial Welfare Commission Wage Orders applicable to
20 Defendants' business, (2) paid or caused to be paid to Plaintiff and the class less than the
21 minimum fixed by the applicable IWC Wage Orders, and (3) violated, refused, or neglected to
22 comply with any provision of Part 4, Chapter 1 of the Labor Code beginning at § 1171 or any
23 order or ruling of the Industrial Welfare Commission. As a result of the foregoing and the acts
24 complained of herein, Defendants, and each of them, are guilty of violating California Labor
25 Code §§ 204, 216, 1198 and 1199. In addition to the other violations of the law set forth in the
26 First Cause of Action, Defendants' violations of California Labor Code §§ 204, 216, 1198 and
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1 1199 serve as a further basis for Defendants' liability under California Business & Professions
2 Code § 17200, *et seq.*

3 **24.**

4 Defendants, and each of them, have engaged in unfair business practices in California
5 by practicing, employing and utilizing the employment practices as outlined herein, to wit, by
6 failing to properly pay their hourly nonexempt employees all of the wages due and owing.
7 Defendants' utilization of such unfair business practices constitutes unfair competition and
8 provides an unfair advantage over Defendants' competitors. Representative Plaintiff and other
9 similarly situated members of the Plaintiff class seek full restitution of monies, as necessary
10 and according to proof, to restore any and all monies withheld, acquired and/or converted by
11 the Defendants by means of the unfair practices complained of herein. Representative Plaintiff
12 seeks, on his own behalf and on behalf of the Plaintiff class, the appointment of a receiver, as
13 necessary.
14

15 **25.**

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

24 Representative Plaintiff, and all persons similarly situated, are further entitled to and do
25 seek a both a declaration that the above-described business practices are unfair, unlawful and/or
26 fraudulent and injunctive relief restraining Defendants from engaging in any of such business
27 practices in the future. Such misconduct by Defendants, unless and until enjoined and
28 restrained by order of this Court, will cause great and irreparable injury to all members of the
class in that the Defendants will continue to violate California law, represented by labor

1 statutes and IWC Wage Orders, unless specifically ordered to comply with same. This
2 expectation of future violations will require current and future employees to repeatedly and
3 continuously seek legal redress in order to gain compensation to which they are entitled under
4 California law. Plaintiff has no other adequate remedy at law to insure future compliance with
5 the California labor laws and Wage Orders alleged to have been violated herein.

6 WHEREFORE, Representative Plaintiff, on his own behalf and on behalf of the
7 members of the class, prays for judgment as follows:

- 8 1. For an order certifying the proposed class and subclasses;
- 9 2. Upon the First Cause of Action, for consequential damages according to proof
10 as set forth in California Labor Code § 1194, *et seq.* (and California Industrial Welfare
11 Commission Wage Order applicable to Defendants' business related to unpaid wages due and
12 owing;
- 13 3. Upon the First Cause of Action, for waiting time penalties according to proof
14 pursuant to California Labor Code § 203;
- 15 4. Upon the First Cause of Action, for civil penalties and liquidated damages
16 pursuant to California Labor Code §§ 226, 226.3, 558, 1174.5, 1194.2 and 1197.1;
- 17 5. Upon the Second Cause of Action, that Defendants be ordered to show cause
18 why they should not be enjoined and ordered to comply with the applicable IWC Wage Orders
19 related to payment of overtime compensation for Defendants' hourly nonexempt employees
20 who work more than 40 hours per week and/or 8 hours per day; and for an order enjoining and
21 restraining Defendants and their agents, servants and employees related thereto;
- 22 6. Upon the Second Cause of Action, that Defendants be ordered to show cause
23 why they should not be enjoined and ordered to comply with the applicable IWC Wage Orders
24 related to payment of the legal minimum hourly wage compensation for Defendants' hourly
25 nonexempt employees; and for an order enjoining and restraining Defendants and their agents,
26 servants and employees related thereto;
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1 7. Upon the Second Cause of Action, for a declaratory judgment and a decree
2 adjudging and decreeing that Representative Plaintiff and the members of the class have
3 regularly been paid less than the legal minimum hourly wage as required by law; further, that
4 the work performed by Representative Plaintiff and the members of the class have earned
5 wages for which they have not received the legal minimum hourly wage, and that
6 Representative Plaintiff and the members of the class are entitled to overtime compensation for
7 said work;

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

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

18 10. For pre-judgment interest as allowed by California Labor Code § 1194;

19 11. For reasonable attorneys fees, expenses and costs as provided by California
20 Labor Code §§ 218. and 1194; and,

21 12. For such other and further relief the Court may deem just and proper.

22 DATED: September 8, 2005

RIGHETTI ♦ WYNNE

23
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25 By: 

Edward J. Wynne, Esq.
Attorneys for Plaintiff