

1 **STEWART, ESTES & DONNELL**

2 **Pro Hac Vice (upon Motion)**

3 **Peter F. Klett, Esq. (Tenn. Bar No. 12688)**

4 **M. Reid Estes, Jr., Esq. (Tenn. Bar No. 9043)**

5 424 Church Street, Suite 1401

6 Nashville, Tennessee 37219

7 Tel. (615) 244-6538

8 Fax. (615) 256-8386

9 **RIGHETTI ♦ WYNNE**

10 **Matthew Righetti, Esq. (SBN 121012)**

11 **Edward J. Wynne, Esq. (SBN 165819)**

12 456 Montgomery Street, Ste. 1400

13 San Francisco, CA 94104

14 Tel. (415) 983-0900

15 Fax. (415) 387-9005

16 Attorneys for Plaintiff

17 **THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

18 **COUNTY OF ALAMEDA – NORTHERN DIVISION**

19 PETE GARCIA, on behalf of himself and )  
20 on behalf of all others members of the )  
21 general public similarly situated, )

22 Plaintiff,

23 vs. )

24 SAVE MART SUPERMARKETS, SAVE )  
25 MART SUPERMARKETS dba S-MART )  
26 FOODS, SAVE MART SUPERMARKETS )  
27 dba FOOD MAXX, and DOES 1 through 50, )  
28 inclusive, )

Defendants. )  
/

**NO.** \_\_\_\_\_

**CLASS ACTION**

**COMPLAINT FOR DAMAGES  
AND EQUITABLE RELIEF**

- 1. **Failure to pay overtime compensation**
- 2. **Failure to maintain and furnish records of hours worked**
- 3. **Violations of B&P § 17200**
- 4. **Conversion**
- 5. **Violations of Labor Code § 203**

1 **CLASS ACTION COMPLAINT**

2 Representative Plaintiff brings this challenge to Defendant’s lucrative, repressive and  
3 unlawful business practices on behalf of himself and on behalf of all other members of the  
4 general public similarly situated, and hereby alleges and states as follows:  
5

6 1. This is a class action brought against Defendant, Save Mart Supermarkets and  
7 its subsidiaries, S-MART FOODS and FOOD MAXX (collectively hereinafter referred to as  
8 “Save Mart”), on behalf of a collective class of all persons employed by Save Mart in the  
9 position of “Grocery Manager” (or persons with the equivalent position however titled) who  
10 were misclassified as exempt from California overtime wage requirements prior and  
11 subsequent to the date this action was filed at one or more grocery stores owned and/or  
12 operated by Save Mart within the State of California (the “Class”). The salaried position of  
13 “Grocery Manager” for Save Mart is not a position which falls within an exemption to  
14 California Labor Code § 1194 and/or any of the California Industrial Welfare Commission  
15 Orders applicable to Defendant’s business.  
16  
17

18 2. This action alleges that Save Mart: (1) improperly and in violation of California  
19 state law classified the putative class as exempt employees; (2) failed to pay overtime to its  
20 “Grocery Managers” in violation of California Labor Code § 1194 and the applicable Industrial  
21 Welfare Commission Orders; (3) failed to maintain and furnish records of the hours worked by  
22 “Grocery Managers” in violation of California Labor Code §§ 226, 1174 and the applicable  
23 IWC Orders; (4) violated California Business and Professions Code § 17200, *et seq.*; (5) failed  
24 to pay compensation due former employees in violation of California Labor Code §203; and,  
25 (6) converted the wages owed to the Plaintiff and the Class with conscious disregard to  
26  
27  
28

1 Plaintiff's and the Class' rights, entitling Plaintiff and the Class to an award of punitive  
2 damages.

3 3. This action seeks relief for the unremedied violations of California law,  
4 including, *inter alia*:

5 (a) Damages and/or restitution, as appropriate, to Plaintiff and to the Class,  
6 who have not been paid for working overtime and/or whose records of hours worked have not  
7 been maintained or furnished, have been inaccurately maintained or have been destroyed,  
8 including exemplary damages where and if appropriate;

9 (b) An Order requiring disgorgement from Save Mart of all monies  
10 wrongfully withheld as a result of the practices alleged herein;

11 (c) Implementation of other equitable and injunctive relief, including, *inter*  
12 *alia*, an injunction prohibiting Save Mart from (1) failing to pay overtime to "Grocery  
13 Managers" as required under California Labor Code § 1194 and Industrial Welfare  
14 Commission Order No. 7-2001; (2) failing to maintain records of the hours worked by  
15 "Grocery Managers" as required under California Labor Code § 1174; (3) failing to furnish  
16 records of hours worked in violation of California Labor Code § 226 and Industrial Welfare  
17 Commission Order No. 7-2001; (4) failing to pay compensation due former employees in  
18 violation of California Labor Code §203; and (5) converting the wages of the "Grocery  
19 Managers" for its own use and benefit;

20 (d) Interest;

21 (e) Attorney fees and costs as provided by statute and/or applicable case  
22 law; and

23 (f) Such other relief as the Court deems just and proper.  
24  
25  
26  
27  
28

1 **JURISDICTION AND VENUE**

2 4. This class action lawsuit for damages and equitable relief is founded upon  
3 California state law including, but not limited to, violations of the California Labor Code, the  
4 California Code of Regulations (Industrial Welfare Commission Orders) and the California  
5 Business and Professions Code which are subject to the jurisdiction of this Court.  
6

7 5. Venue is proper in this Court because Defendant owns and operates grocery  
8 stores in Alameda County where Defendant has misclassified class members as exempt. The  
9 Class has suffered damages and will continue to suffer the same harm as the Representative  
10 Plaintiff as a result of Defendant’s wrongful conduct unless relief is granted.  
11

12 **PARTIES**

13 6. Plaintiff Pete Garcia (“Garcia”) is a resident of Kermin, Fresno County,  
14 California. He brings this action in his individual capacity on behalf of himself, on behalf of all  
15 others similarly situated pursuant to California Code of Civil Procedure § 382, and, pursuant to  
16 California Business and Professions Code § 17200 *et seq.*, on behalf of the general public.  
17

18 7. Defendant Save Mart Supermarkets is a California corporation with its principal  
19 place of business at 1800 Sandiford Avenue, Modesto, California. Save Mart is licensed to do  
20 business and actually doing business in the state of California and its registered agent for  
21 service of process is Michael J. Silveria, 1800 Sandiford Avenue, Modesto, California 95350.  
22

23 8. Upon information and belief, Defendant owns and operates approximately one  
24 hundred (100) grocery stores in the state of California. Defendant is and at all relevant times  
25 was an employer under the applicable Industrial Welfare Commission Orders. The Defendant  
26 herein is the corporation or other entity employing the Representative Plaintiff herein, and  
27  
28

1 employing "Grocery Managers" in each geographical area within the state of California in  
2 which it does business.

3           9. Plaintiff does not know the true names or capacities of Defendants sued herein  
4 under California Codes of Civil Procedure § 474 as Does 1 through 50, inclusive, and for that  
5 reason the Plaintiff sues these Defendants by such fictitious names. Plaintiff will seek to  
6 amend his Complaint and include these Doe Defendant's true names and capacities as soon as  
7 they can be reasonably ascertained. Each of the fictitiously named Defendants is responsible in  
8 some manner for the conduct alleged herein and for the injuries suffered by the Plaintiff, the  
9 members of the class and the general public. One or more of such Defendants are and were  
10 residents of the State of California.

11           10. Plaintiff is informed and believes and thereon alleges that all times herein  
12 mentioned Defendants and Does 1 through 50 are and were corporations, business entities,  
13 individuals, and partnerships, licensed to do business and actually doing business in the State of  
14 California. As such, and based upon all the facts and circumstances incident to Defendant's  
15 business in California, Defendants are subject to California Labor Code §1194, *et seq.*,  
16 California Business and Professions Code § 17200, *et seq.*, and the applicable wage orders  
17 issued by the Industrial Welfare Commission.

18           11. At all times mentioned in the causes of action alleged herein, each and every  
19 Defendant was an agent of each and every other Defendant. At all relevant times, each and  
20 every Defendant was acting within the course and scope of this agency or employment and was  
21 acting with the consent, confirmation and authorization of each of the remaining Defendants,  
22 with respect to the allegations set forth herein. All actions of each Defendant as alleged and the  
23  
24  
25  
26  
27  
28

1 cause of action stated herein were ratified and/or approved by every other Defendant or their  
2 officers or managing agents.

3 12. At all times herein mentioned, Defendants, and each of them, were members of,  
4 and engaged in, a joint venture, partnership and common enterprise, and acting within the  
5 course and scope of, and in pursuance of, said joint venture, partnership and common  
6 enterprise.  
7

8 13. At all times herein mentioned, the acts and omissions of various Defendants, and  
9 each of them, concurred and contributed to the various acts and omissions of each and all of the  
10 other Defendants in proximately causing the injuries and damages herein alleged.  
11

12 14. At all times herein mentioned, Defendants, and each of them, ratified each and  
13 every act or omission complained of herein. At all times herein mentioned, the Defendants,  
14 and each of them, aided and abetted the acts and omissions of each and all of the other  
15 Defendants in proximately causing the damages as herein alleged.  
16

17 **FACTUAL ALLEGATIONS**

18 15. Save Mart is one of the largest independently owned grocery store chains in  
19 California. Its supermarkets and warehouse stores operate under the S-Mart, Save Mart and  
20 Food Maxx banners. Save Mart owns approximately one hundred (100) grocery stores in  
21 Northern and Central California.  
22

23 16. Plaintiff Garcia worked for Save Mart as a “Grocery Manager” for  
24 approximately twelve (12) years. Plaintiff Garcia was regularly scheduled as a matter of  
25 uniform company policy to work and in fact worked as salaried “Grocery Manager” for  
26 Defendant in excess of eight hours per day and/or forty hours per workweek without receiving  
27 straight time or overtime compensation for such overtime hours worked in violation of  
28

1 California Labor Code Section 1197 and the applicable California Industrial Welfare  
2 Commission wage order(s). Plaintiff was improperly and illegally misclassified by Defendant  
3 as an "exempt" managerial employee when, in fact, he was a "non-exempt," non-managerial  
4 employee according to California law. In the performance of his duties which did not place  
5 him within an exemption to California's overtime requirements, Plaintiff met the realistic  
6 expectations of his employer.  
7

8           17. This action is brought on behalf of all "Grocery Managers" who are presently or  
9 who were formerly employed by Save Mart and/or its subsidiaries within four years from the  
10 date of the filing of the original complaint in this action up until the time this action is certified  
11 at one or more of the locations owned and operated by Save Mart and/or its subsidiaries within  
12 the state of California.  
13

14           18. During all times relevant to this action, Representative Plaintiff and the Class  
15 typically work and/or worked in excess of eight (8) hours per day and/or in excess of forty (40)  
16 hours per week. Plaintiff and the Class, however, are not and were not paid any overtime  
17 wages even though they are non-exempt, non-managerial employees as defined by California  
18 law.  
19

20           19. As a matter of uniform company policy, Plaintiff and all members of the Class  
21 were regularly scheduled to work and in fact worked as salaried grocery personnel in excess of  
22 eight hours per day and/or forty hours per workweek without receiving straight time or  
23 overtime compensation for such overtime hours worked in violation of California Labor Code §  
24 1197 and the applicable California Industrial Welfare Commission Wage Order(s). Plaintiff  
25 and the Class were improperly and illegally misclassified by Defendant, as "exempt"  
26 managerial employees when, in fact, they were "non-exempt," non-managerial employees  
27  
28

1 according to California law. Plaintiff and the other members of the Class have/had the right to  
2 be compensated by Defendant at the appropriate compensatory wage rate for said work  
3 performed, consisting of the straight time rate plus the appropriate overtime premium as  
4 mandated by California law.  
5

6 20. Statistically, one hundred percent of the Class was paid on a salary basis with no  
7 overtime compensation paid for work performed in excess of eight hours per day and/or forty  
8 hours per week as required by California law. Plaintiff is informed and believes and based  
9 thereon alleges that all members of the Class were customarily and regularly engaged in non-  
10 exempt work in excess of 50% of their workday and workweek and were not exempt from the  
11 overtime requirements of California law for that reason. In primarily performing non-exempt  
12 work, the Class was meeting the realistic expectations of Defendant.  
13

14 21. Defendant uniformly administered a corporate policy concerning staffing levels,  
15 duties and responsibilities which required that the “Grocery Managers” both work overtime  
16 without appropriate pay and regularly spend more than 50% of the time performing non-  
17 exempt tasks. This included a uniform corporate pattern and practice of allocating and  
18 authorizing inadequate staffing levels at the individual grocery stores. The inadequate staffing  
19 levels were enforced and ensured through the uniform and mandated corporate policy of a  
20 minimal “labor budget” applicable to each grocery store location. This corporate conduct was  
21 accomplished with the advance knowledge and designed intent to place, e.g., stocking,  
22 customer service and clerical “non-management” duties and responsibilities onto the shoulders  
23 of the “Grocery Managers” who were customarily and regularly caused to work overtime  
24 hours.  
25  
26  
27  
28



1           22.     Representative Plaintiff and all other members of the Class routinely, regularly  
2 and customarily (i.e., well in excess of 50% of their work time) performed non-exempt and  
3 non-managerial work. Thus, such employees are entitled to overtime compensation under  
4 California law. Further, Defendant dispensed misinformation amongst the store employees to  
5 the effect that salaried grocery personnel are not entitled to overtime compensation under  
6 Defendant’s labor policies and practices under California law.

8           23.     The labor practices and all other aspects of operation of each grocery store, as  
9 well as the job duties of “Grocery Managers,” are stringently controlled by uniform standards  
10 established by Save Mart that are monitored closely by senior management personnel.

12           24.     The duties and responsibilities of the “Grocery Manager” were and/or are  
13 virtually identical from region to region, area to area, store to store and employee to employee.  
14 Further, any variation in job activities between the different individuals are legally insignificant  
15 to the issues presented by this action since the central facts remain, to wit, Plaintiff and the  
16 Class performed non-exempt work in excess of 50% of the time in their workday; that their  
17 workweek routinely included work in excess of forty hours per week and/or eight hours per  
18 workday; and they were not, and have never been, paid overtime compensation for their  
19 overtime hours worked as required by California law.

21           25.     Although California Labor Code § 1174 mandates that every employer shall  
22 keep on file for not less than two years records of the actual hours worked each day by each  
23 employee, and although California Labor Code § 1175 provides that each failure to comply  
24 with § 1174 is a misdemeanor, Save Mart has failed to keep accurate records of the actual hours  
25 worked by “Grocery Managers.” Save Mart’s practices also violate Industrial Welfare  
26  
27  
28



1 California law for which Representative Plaintiff seeks relief authorized under California law.  
2 The Class is comprised of, and defined as, all current and former California-based salaried,  
3 non-exempt personnel of Defendant with the title “Grocery Manager” or persons with the  
4 equivalent position however titled, who worked and/or are working overtime within four years  
5 prior to the filing of the original Complaint in this action up to and including the time this  
6 action is certified as a class, yet were not paid overtime.  
7

8         30. The members of the Class are so numerous that joinder of all members would be  
9 impractical, if not impossible. The identity of the members of the Class is readily ascertainable  
10 by review of Defendant’s records. Further, the subject matter of this action both as to factual  
11 matters and as to matters of law, is such that there are questions of law and fact common to the  
12 Class which predominate over questions affecting only individual members.  
13

14         31. The California Labor Code and Wage Order provisions upon which Plaintiff  
15 bases his claims are broadly remedial in nature. These laws and labor standards serve an  
16 important public interest in establishing minimum working conditions and standards in  
17 California. These laws and labor standards protect the average working employee from  
18 exploitation by employers who may seek to take advantage of superior economic and  
19 bargaining power in setting onerous terms and conditions of employment. The nature of this  
20 action and the format of laws available to Plaintiff and the Class make the class action format a  
21 particularly efficient and appropriate procedure to redress the wrongs alleged herein. Further,  
22 this case involves a large corporate employer and a large number of individual employees with  
23 many relatively small claims. If each employee were required to file an individual lawsuit, the  
24 corporate Defendant would necessarily gain an unconscionable advantage since they would be  
25 able to exploit and overwhelm the limited resources of each individual Plaintiff with its vastly  
26  
27  
28

1 superior financial and legal resources. Requiring each member of the Class to pursue an  
2 individual remedy would also discourage the assertion of lawful claims by employees who  
3 would be disinclined to file an action against their former and/or current employer for real and  
4 justifiable fear of retaliation and permanent damage to their careers at subsequent employment.  
5

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

17 33. Such a pattern, practice and uniform administration of corporate policy  
18 regarding illegal employee compensation as described herein is unlawful and creates an  
19 entitlement to recovery by the Plaintiff and the Class, in a civil action, for the unpaid balance of  
20 the full amount of the straight time compensation and overtime premiums owing, including  
21 interest thereon, waiting time penalties, reasonable attorney's fees, and costs of suit according  
22 to the mandate of California Labor Code § 1194, *et seq.*  
23

24 34. Proof of a common business practice or factual pattern, of which the named  
25 Plaintiff's experiences are representative, will establish the right of each of the members of the  
26 Class to recovery on the causes of action alleged herein.  
27  
28

1           35.     The Class is entitled in common to a specific fund with respect to the wages and  
2 overtime compensation illegally and unfairly retained by Defendant. The Class is entitled in  
3 common to restitution and disgorgement of those funds being improperly withheld by  
4 Defendant. This action is brought for the benefit of the entire Class and will result in the  
5 creation of a common fund.  
6

7           36.     There is a well-defined community of interest in the questions of law and fact  
8 involved affecting the parties to be represented. The questions of law and fact common to the  
9 Class predominate over questions that may affect individual Class members, including the  
10 following:  
11

12                   (a)     Whether Save Mart was required by law to pay overtime to “Grocery  
13 Managers” based upon the duties and assignments uniformly assigned by Save Mart to and/or  
14 performed by “Grocery Managers”;

15                   (b)     Whether Save Mart implemented and engaged in a systematic practice  
16 whereby it would improperly classify “Grocery Managers” as exempt and thereafter fail to pay  
17 overtime to such persons despite the fact that they worked overtime, and were thus entitled to  
18 be paid overtime under California law;

19                   (c)     Whether upon recognizing its legal obligation to pay wages and overtime  
20 to members of the Class, Save Mart paid all wages and overtime actually due;

21                   (d)     Whether Save Mart failed to keep, maintain or furnish accurate records  
22 of the actual hours worked by “Grocery Managers;”

23                   (e)     Whether Save Mart failed to maintain any other records and/or other  
24 evidence relevant to the claims asserted in this litigation;  
25  
26  
27  
28

1 (f) Whether Save Mart willfully failed to pay all wages due (including  
2 overtime) to all terminated “Grocery Managers;”

3 (g) Whether the systematic acts and practices of Save Mart as alleged herein  
4 violated, *inter alia*, California Labor Code §§ 203, 226, 1174 and 1194, Industrial Welfare  
5 Commission Orders No. 7-2001 and 7-98 and the California Business and Professions Code §  
6 17200, *et seq.*

8 37. Because Plaintiff and others in the position of “Grocery Manager” routinely  
9 worked overtime and were not compensated for all the overtime they worked as required by  
10 law, and based upon the uniform duties and responsibilities required by Save Mart and its  
11 uniform pay scheme for such employees, Plaintiff’s claims are typical of the claims of the  
12 entire Class.  
13

14 38. Plaintiff will fairly and adequately represent and protect the interests of the  
15 Class in that he has no disabling conflicts of interest that would be antagonistic to those of the  
16 other members of the Class. Plaintiff has retained counsel who are competent and experienced  
17 in the prosecution of class action litigation, and in overtime wage class action litigation in  
18 particular.  
19

20 39. Plaintiff and the members of the Class have all similarly suffered irreparable  
21 harm and damages as a result of Save Mart’s unlawful and wrongful conduct. Save Mart’s  
22 systematic failure to retain records of hours worked by “Grocery Managers” as required by law  
23 makes Class treatment especially appropriate. This action will provide substantial benefits to  
24 both the Class and the public since, absent this action, Save Mart’s unlawful conduct will  
25 continue unremedied and uncorrected.  
26  
27  
28

1 **FIRST CAUSE OF ACTION**

2 **(Failure to pay overtime compensation.)**

3 40. Plaintiff incorporates by reference the allegations contained in Paragraphs 1  
4 through 39 of this Complaint as if fully set forth herein.

5 41. During all relevant periods, Save Mart required, suffered or permitted Plaintiff  
6 and the Class to work in excess of eight hours per day and to work in excess of 40 hours per  
7 week.  
8

9 42. During all relevant periods from January 1, 1998 through January 1, 2000,  
10 Industrial Welfare Commission Order No. 7-98 applied to Plaintiff's and the Class'  
11 employment by Save Mart, and provided that any work performed by an employee in excess of  
12 40 hours in any workweek be compensated at one-and-one-half times the employee's regular  
13 rate of pay. Save Mart did not compensate Plaintiff or the Class for the hours worked in excess  
14 of 40 hours in any workweek at one-and-one-half times their regular rate of pay from January  
15 1, 1998 through January 1, 2000. Thus, Plaintiff and the Class are entitled to recover their  
16 unpaid overtime compensation and penalties arising therefrom.  
17  
18

19 43. During all relevant periods after January 1, 2000, California Labor Code §510  
20 applied to Plaintiff's and the Class' employment by Save Mart, and provided that any work  
21 performed by an employee in excess of eight hours in any work day, on the seventh day of  
22 work in any workweek, or in excess of forty hours in any workweek, be compensated at one-  
23 and-one-half times the employee's regular rate of pay. Save Mart did not compensate Plaintiff  
24 or the Class for the hours worked in excess of eight hours in any work day, on the seventh day  
25 of work in any workweek, or in excess of 40 hours in any workweek at one-and-one-half times  
26  
27  
28

1 his regular rate of pay. Thus, Plaintiff and the Class are entitled to recover their unpaid  
2 overtime compensation and penalties arising therefrom.

3 44. During all relevant periods after January 1, 2000, California Labor Code §510  
4 applied to Plaintiff's and the Class' employment by Save Mart, and provided that any work  
5 performed by an employee in excess of 12 hours in any work day, or in excess of eight hours  
6 on the seventh day of work in any workweek be compensated at double the employee's regular  
7 rate of pay. Save Mart did not compensate Plaintiff or the Class for the hours worked in excess  
8 of 12 hours in any work day or in excess of eight hours on the seventh day of work in any  
9 workweek at double his regular rate of pay. Thus, Plaintiff and the Class are entitled to recover  
10 their unpaid overtime compensation and penalties arising therefrom.  
11

12 45. Despite all of the available California law, Save Mart willfully refused, and  
13 continues to refuse, to pay Plaintiff and the Class the overtime compensation they are owed.  
14

15 46. In failing to compensate Plaintiff and the Class for the overtime they worked as  
16 alleged herein, Save Mart acted maliciously, oppressively, despicably, with the wrongful  
17 intention of causing injury and hardship to Plaintiff and the Class by reaping economic gain at  
18 Plaintiff's and the Class' expense, in willful and conscious disregard of their statutory and  
19 regulatory right to overtime compensation.  
20

21 47. Plaintiff and the other members of the Class are therefore entitled to the relief  
22 requested below.  
23

24 **SECOND CAUSE OF ACTION**

25 **(Failure to maintain and furnish records of hours worked.)**

26 48. Plaintiff incorporates by reference the allegations contained in Paragraphs 1  
27 through 47 of this Complaint as if fully set forth herein.  
28





1 and/or converted by the Defendant by means of the unfair practices complained of herein.  
2 Plaintiff seeks, on his own behalf, on behalf of the Class, and on behalf of the general public,  
3 the appointment of a receiver, as necessary. Plaintiff seeks, on his own behalf, on behalf of the  
4 Class, and on behalf of the general public, an injunction and declaratory relief to prohibit  
5 Defendant from continuing to engage in the unfair business practices complained of herein.  
6 The restitution includes all wages earned and unpaid, including interest thereon. The acts  
7 complained of herein occurred, at least in part, within the last four (4) years preceding the filing  
8 of the Complaint in this action.  
9

10  
11 54. Plaintiff is informed and believes and on that basis alleges that at all times  
12 herein mentioned Defendant has engaged in unlawful, deceptive and unfair business practices,  
13 as proscribed by California Business and Professions Code § 17200 *et seq.*, including those set  
14 forth above thereby depriving Plaintiff and other members of the general public the minimum  
15 working condition standards and conditions due to them under the California labor laws and  
16 Industrial Welfare Commission wage orders as specifically described herein.  
17

18 55. Business and Professions Code § 17200, *et seq.*, prohibits acts of unfair  
19 competition which shall mean and include any “unlawful, unfair or fraudulent business act or  
20 practice.” Under California law, wages unlawfully withheld from an employee constitutes an  
21 unfair business act as defined by §17200 entitling the Plaintiff and the Class to a restitution  
22 remedy authorized by §17203. Plaintiff, the Class and the general public are therefore entitled  
23 to the relief requested below.  
24  
25  
26  
27  
28

1 **FOURTH CAUSE OF ACTION**

2 **(Conversion)**

3 56. Plaintiff incorporates by reference the allegations contained in Paragraphs 1  
4 through 55 of this Complaint as if fully set forth herein.

5  
6 57. At the time Defendant failed to pay the wages due to Plaintiff, as alleged herein,  
7 Plaintiff had earned, was owed and had the right to possess the withheld wages. Defendant  
8 willfully and without legal justification interfered with Plaintiff's and the Class' right to own  
9 and possess their wages.

10  
11 58. In refusing to pay wages to the Plaintiff and the Class, Defendant unlawfully and  
12 intentionally took and converted the property of Plaintiff and the Class for its own use. At the  
13 time the conversion took place, Plaintiff and the Class was entitled to immediate possession of  
14 the amounts of wages payable. As a result, Plaintiff and the Class have been denied use and  
15 enjoyment of the property and have been otherwise damaged in an amount to be proven at trial.  
16 This conversion was willful, oppressive, malicious, and fraudulent and/or done with conscious  
17 disregard of Plaintiff's and the Class' rights. This conversion was concealed by the Defendant  
18 from the Plaintiff and the Class.

19  
20 59. The Plaintiff and the Class have been injured by this conversion and are entitled  
21 to: (1) all monies converted by the Defendant with interest thereon; (2) any and all profits,  
22 whether direct or indirect, the Defendant acquired by its conversion; and (3) punitive and  
23 exemplary damages.

24 **FIFTH CAUSE OF ACTION**

25 **(Violations of Labor Code §203)**



1 by means of any act or practice declared by this Court to constitute unlawful, unfair or  
2 fraudulent acts or practices;

3           5. That Defendant be ordered to show cause why it should not be enjoined and  
4 ordered to comply with the applicable California Industrial Welfare Commission wage orders  
5 related to payment of overtime compensation and record keeping for Defendant's salaried  
6 grocery store personnel who are primarily engaged in non-exempt work and work more than 40  
7 hours per week or 8 hours per day; and for an order enjoining and restraining Defendant and its  
8 agents, servants and employees related thereto;

9  
10           6. For a declaratory judgment and a decree adjudging and decreeing that the  
11 Plaintiff and the Class have regularly worked compensable overtime; further, that the work  
12 performed and to be performed by Plaintiff and the Class is subject to overtime compensation  
13 requirements and/or is in excess of 40 hours per week and/or 8 hours a day, and that the  
14 Plaintiff the Class are entitled to overtime compensation for said work;

15  
16           7. For restitution to Plaintiff and other similarly affected members of the general  
17 public (and disgorgement from Defendant) of all funds unlawfully acquired by Defendant by  
18 means of any acts or practices declared by this Court to be violative of the mandate established  
19 by California Business and Professions Code § 17200 *et seq.*;

20  
21           8. For the appointment of a receiver to receive, manage and distribute any and all  
22 funds disgorged from the Defendant determined to have been wrongfully acquired by the  
23 Defendant as a result of violations of California Business and Professions Code § 17200 *et seq.*;

24           9. For (a) all monies converted by the Defendant with interest thereon; (b) any and  
25 all profits, whether direct or indirect, Defendant acquired by its conversion; and (c) punitive  
26 and exemplary damages;

