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10 UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 PATRICA SCURA, FRED SCHUTES,
14 MARGARITA NIEVES, LEE NEALON,
15 STACY MOHAMMED

16 Plaintiffs,

17 vs.

18 SHURGARD STORAGE CENTERS, INC.,

19 Defendant,

) Case No.

)
) **COMPLAINT FOR VIOLATION OF THE**
) **FAIR LABOR STANDARDS ACT OF 1938**

) **CLASS ACTION**

) **DEMAND FOR JURY TRIAL**

20
21 Come the representative Plaintiffs, PATRICIA SCURA, FRED SCHUTES,
22 MARGARITA NIEVES and STACY MOHAMMED and file this lawsuit against Defendant
23 SHURGARD STORAGE CENTERS, INC. for themselves and all other similarly situated, for
24 legal relief to redress unlawful violations of Plaintiffs' rights under the Fair Labor Standards
25 Act of 1938 ("FLSA" or "the Act"), 29 U.S.C. §§ 201, *et seq.*, and specifically the collective
26 action provision of the Act found at § 216(b), to remedy violations of the wage provisions of the
27 FLSA by SHURGARD STORAGE CENTERS, ("SHURGARD") which have deprived the
28 named Plaintiffs, as well as others similarly situated to the named Plaintiffs, of their lawful

1 wages. The suit is brought on behalf of the named Plaintiffs and all others similarly situated,
2 pursuant to § 216(b) of the FLSA.

3 **JURISDICTION AND VENUE**

4 1. Jurisdiction over Plaintiffs' federal claims is based upon: (a) Section 16(b) of the
5 FLSA, 29 U.S.C. § 216(b), which authorizes employees to bring civil actions in courts of
6 appropriate jurisdiction to recover damages for an employer's failure to pay overtime wages as
7 required by the FLSA; and (b) 29 U.S.C. §§ 1331 and 1337.

8 2. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b). At all times
9 material herein, Defendant SHURGARD has been actively conducting business in the State of
10 California and within the geographic area encompassing the Northern District of the State of
11 California.

12 3. Jurisdiction over Plaintiffs' state law class action claims and the claim under
13 §17200 of the California Business and Professions Code are based upon this Court's
14 supplemental jurisdiction under 28 U.S.C. § 1367(a), because the state law claims are so related
15 to Plaintiffs' federal claims that they form a part of the same case or controversy between
16 Plaintiffs and Defendant.

17 **INTRODUCTION**

18 4. The Plaintiffs are employees or former employees for the Defendant, and bring
19 this action as a collective action in accordance with 29 U.S.C. §216(b) of the FLSA against the
20 Defendant on behalf of themselves and all others similarly situated because of Defendant's
21 unlawful deprivation of Plaintiffs' rights to overtime compensation. Plaintiffs seek a
22 declaratory judgment under 28 U.S.C. § 2201 and compensation, damages, equitable and other
23 relief available under the FLSA, as amended, 29 U.S.C. § 201 *et seq.* Plaintiffs also seek relief
24 on a collective and a class-wide basis challenging the unlawful business practice engaged in by
25 Defendant of failing to compensate for meal periods during which Plaintiffs are not permitted to
26 be entirely relieved of all duties.

27 5. Defendant is in the business of owning and operating self-storage properties.
28 Defendant is one of the largest operators of storage centers in the United States and owns and

1 manages more than 450 locations in 154 cities in the states of Washington, California, Arizona,
2 Texas, Colorado, Oklahoma, Mississippi, Florida, Tennessee, Kentucky, Illinois, Indiana,
3 Michigan, Georgia, North Carolina, Virginia, Washington D.C., Maryland, Pennsylvania, New
4 Jersey and New York. Defendant provides self-storage in “mini-warehouses” for individuals
5 and businesses as well as “bulk” storage for businesses. Additionally, Defendant rents trucks,
6 sells packing supplies, and provides “storage to go” services in some communities.

7 6. The Area Managers, Managers, Managers-in-Training and Associates
8 (“Shurgard Employees”) work at Shurgard Storage Centers and are paid on an hourly basis.
9 The Shurgard Employees are expected to provide customer care, property management, and
10 business management services. In performing these tasks, the Shurgard Employees must run
11 the daily operations of the facility, including seeking new customers, offering customer service,
12 renting space, renting trucks, selling retail items, cleaning and maintaining storage units and
13 managing the office. Additionally, Area Managers supervise multiple Shurgard Storage
14 locations.

15 7. In addition to their activities during normal business hours, Shurgard Employees
16 are expected to and do arrive early each day to prepare the offices and grounds for daily
17 activities. Also, in addition to the activities during normal business hours, Shurgard Employees
18 are expected to and do stay late each night to complete paperwork, clean storage units and make
19 banking deposits. Additionally, Shurgard Employees are expected to and do provide services 24
20 hours per day, including but not limited to, security checks, responses to security calls and
21 customer service upon demand from either their assigned Shurgard Storage Center Unit, or at
22 the beck and call from a 1-800 number for Shurgard Storage Centers, Inc. It is a Shurgard
23 Storage Centers, Inc. company policy that Shurgard Employees are expected to be “on-call” and
24 ready to respond to any calls, 24 hours-a-day, seven days-a-week. Shurgard Storage Centers,
25 Inc. promotes and publishes a company policy that “Days off are for wimps.”

26 8. The FLSA claim is brought under Section 16(b) of the FLSA, 29 U.S.C. §
27 216(b), as a nation-wide "opt-in" collective action (hereinafter "the FLSA Action"). The FLSA
28 Action is brought on behalf of all persons in the United States who have been, are and/or will be

1 employed by Defendant as Area Managers, Manager, Manager-in-Training and/or Associate
2 (hereinafter "the FLSA Employees"). The FLSA Action seeks to (i) recover unpaid overtime
3 compensation owed to the FLSA Employees, (ii) recover unpaid compensation for meal periods
4 during which the FLSA Employees were not entirely relieved of all duties, (iii) obtain an equal
5 amount in liquidated damages, as provided by Section 16(b) of the FLSA, and (iv) recover
6 reasonable attorneys' fees and costs of the action, as provided for by Section 16(b) of the FLSA.

7 9. Plaintiffs also assert various claims under California law as a conventional "opt-
8 out" class action under Rule 23 of the Federal Rules of Civil Procedure ("the California Sub-
9 Class Action"). The California Sub-Class Action is brought on behalf of all persons who have
10 been, are and/or will be employed by Defendant in the position of Area Managers, Managers,
11 Managers-in-Training and/or Associates in the State of California (hereinafter "the California
12 Sub-Class"). The California Sub-Class Action has claims based upon the same unlawful
13 business practices engaged in by Defendant of not paying Shurgard Employees compensation
14 due and owing to which they are entitled under California law. The California Sub-Class also
15 has claims based upon the same unlawful business practice of not paying Shurgard Employees
16 compensation for meal periods as required under the applicable California Wage Orders. The
17 California Sub-Class also has claims based upon the unlawful business practice of requiring
18 Shurgard Employees to maintain their company uniforms, without compensation, in violation of
19 California Labor Code Section 452.

20 10. The California Sub-Class seeks to (i) recover daily and weekly unpaid
21 compensation owed to the California Sub-Class, (ii) recover meal time penalties for those
22 Shurgard Employees who were not properly provided required time for meal periods and/or
23 were not entirely relieved of all duties; (iii) recover waiting time penalties under Section 203 of
24 the California Labor Code owed to those Shurgard Employees whose employment with
25 Defendant has terminated and who have not been properly paid all wages due to them upon
26 termination of their employment, (iv) recover uniform maintenance penalties as permitted under
27 California Labor Code Section 452, and (v) recover reasonable attorneys' fees and costs as
28 provided for by Section 1194 of the California Labor Code.

1 11. Finally, the claim under Section 17200 of the California Business and
2 Professions Code seeks injunctive relief enjoining Defendant from failing to make, keep and
3 preserve the records required by the FLSA and California law. This claim also seeks to (i)
4 obtain disgorgement and restitution of all ill-gotten gains from the unlawful conduct engaged in
5 by Defendant, and (ii) recover reasonable attorneys' fees and costs as provided for by Section
6 1021.5 of the California Code of Civil Procedure.

7 12. The FLSA Action is maintained as a collective action under 29 U.S.C. § 216(b)
8 on behalf of all past, present and future employees of Defendant who have been, are and/or will
9 be employed as Area Managers, Managers, Managers-in-Training and/or Associates in the
10 United States. Plaintiffs are citizens of the United States, and reside in the States of California
11 and Maryland. At all times material herein, each of them has been employed by the Defendant
12 Shurgard, in the positions of Area Managers, Managers, Managers-in-Training and/or
13 Associate. Plaintiffs are identified in the caption of the Complaint and have given their written
14 consent to be party Plaintiffs in this action pursuant to 29 U.S.C. §216(b). Such consents are
15 appended to the Complaint.

16 13. The California Sub-Class is maintained on behalf of a class of past, present and
17 future employees of Defendant who have been, are and/or will be employed as Area Managers,
18 Managers, Managers-in-Training and/or Associates in the State of California.

19
20 **THE PARTIES**

21 14. The individually-named plaintiff Patricia Scura ("Scura") is a citizen of the State
22 of California and resides in Hercules, California. Scura has standing to pursue the Third Claim
23 for Relief under California Business and Professions Code Section 17200 on behalf of the
24 public interest. Scura is a former employee of Defendant. Scura worked for Defendant as a
25 Manager, Manager-in-Training and/or Associate in the State of California in the years 1999
26 through 2002. During her employment with Defendant, Scura, like other Shurgard Employees,
27 regularly worked in excess of eight (8) hours in a workday and in excess of forty (40) hours in a
28 workweek. Scura was not paid overtime wages as required under the FLSA and California law,

1 either during the course of her employment or at the time her employment terminated. Scura
2 was not provided meal periods during which she was entirely relieved of her duties. Scura was
3 required to maintain her Shurgard uniform without compensation therefore. Scura has been
4 injured by the illegal practices and conduct alleged in this Complaint. Scura's claims under the
5 FLSA and California law are similar to and typical of the claims of the FLSA Employees and
6 the members of the California Sub-Class.

7 15. The individually-named plaintiff, Fred Schutes ("Schutes"), is a former employee
8 of Defendant and resides in Oakdale, California. Schutes has standing to pursue the Third Claim
9 for Relief under California Business and Professions Code Section 17200 on behalf of the
10 public interest. Mr. Schutes worked for Defendant as a Manager and/or Manager-in-Training in
11 the State of California in the years 2000 through 2002. During his employment with Defendant,
12 Schutes, like other Shurgard Employees, regularly worked in excess of eight (8) hours in a
13 workday and in excess of forty (40) hours in a workweek. Schutes was not paid overtime wages
14 as required under the FLSA and California law, either during the course of his employment or at
15 the time his employment terminated. Schutes was not provided meal periods during which he
16 was entirely relieved of his duties. Schutes was required to maintain his Shurgard uniform,
17 without compensation therefore. Schutes has been injured by the illegal practices and conduct
18 alleged in this Complaint. Schutes' claims under the FLSA and California law are similar to and
19 typical of the claims of the FLSA Employees and the members of the California Sub-Class.

20 16. The individually-named plaintiff Margarita Nieves ("Nieves") is a citizen of the
21 State of California and resides in Hayward, California. Nieves has standing to pursue the Third
22 Claim for Relief under California Business and Professions Code Section 17200 on behalf of
23 the public interest. Nieves is a former employee of Defendant. Nieves worked for Defendant as
24 a Manager, Manager-in-Training and/or Associate in the State of California in the year 2001.
25 During her employment with Defendant, Nieves, like other persons employed at Shurgard,
26 regularly worked in excess of eight (8) hours in a workday and in excess of forty (40) hours in a
27 workweek. Nieves was not paid overtime wages as required under the FLSA and California
28 law, either during the course of his employment or at the time her employment terminated.

1 Nieves was not provided meal periods during which she was entirely relieved of her duties.
2 Nieves was required to maintain her Shurgard uniform, without compensation therefore. Nieves
3 has been injured by the illegal practices and conduct alleged in this Complaint. Nieves claims
4 under the FLSA and California law are similar to and typical of the claims of the FLSA
5 Employees and the members of the California Sub-Class.

6 17. The individually-named plaintiff, Lee Nealon ("Nealon"), is a former employee
7 of Defendant and resides in Hayward, California. Mr. Nealon worked for Defendant as a
8 Manager-in-Training in the State of California in the years 2001 through 2002. During his
9 employment with Defendant, Nealon, like other Shurgard Employees, regularly worked in
10 excess of eight (8) hours in a workday and in excess of forty (40) hours in a workweek. Nealon
11 was not paid overtime wages as required under the FLSA and California law, either during the
12 course of his employment or at the time his employment terminated. Nealon was not provided
13 meal periods during which he was entirely relieved of his duties. Nealon was required to
14 maintain his Shurgard uniform, without compensation therefore. Nealon has been injured by the
15 illegal practices and conduct alleged in this Complaint. Nealon's claims under the FLSA and
16 California law are similar to and typical of the claims of the FLSA Employees and the members
17 of the California Sub-Class.

18 18. The individually-named plaintiff Stacy Mohammed ("Mohammed") is a former
19 employee of Defendant and resides in the State of Maryland. Mohammed worked for
20 Defendant as an Area Manager, Manager, Manager-in-Training and/or Associate in the States of
21 Maryland and Virginia in the years 1997 to 2001. During her employment with Defendant,
22 Mohammed, like other persons employed at Shurgard, regularly worked in excess of eight (8)
23 hours in a workday and in excess of forty (40) hours in a workweek. Mohammed was not paid
24 overtime wages as required under the FLSA, either during the course of her employment or at
25 the time her employment terminated. Mohammed was not provided meal periods during which
26 she was entirely relieved of her duties. Mohammed has been injured by the illegal practices and
27 conduct alleged in this Complaint. Mohammed's claims under the FLSA are similar to and
28 typical of the claims of the FLSA Employees.

1 19. On information and belief, Defendant Shurgard Storage Centers, Inc. is a
2 corporation incorporated in the State of Washington with its worldwide headquarters located at
3 1155 Valley Street, Suite 400, Seattle, Washington. Shurgard is listed on the New York Stock
4 Exchange under the symbol “SHU” and trades as a Real Estate Investment Trust under the
5 name, Shurgard Storage Centers, Inc. Shurgard is qualified to and does do business in the State
6 of California and nationwide.

7 20. Shurgard maintains either actual or constructive control, oversight, or direction
8 over the operation of its individual storage locations and sales offices, including their
9 employment practices.

10 21. Shurgard is subject to personal jurisdiction in the State of California for purposes
11 of this lawsuit.

12 22. At all times material to this action, Defendant Shurgard has been an enterprise
13 engaged in commerce or in the production of goods for commerce as defined by § 203(s)(1) of
14 the FLSA, and has had a gross volume of sales which has exceeded \$500,000.

15 23. At all times material to this action, Defendant Shurgard has been an “employer”
16 of the named Plaintiffs, as defined by § 203(d) of the FLSA.

17 18 **CLASS ACTION ALLEGATIONS**

19 24. The California Sub-Class may be appropriately maintained as a class action
20 under Rule 23 because all of the prerequisites set forth under Rule 23(a) are met.

21 25. Members of the California Sub-Class are so numerous that joinder of all such
22 members is impracticable. Although the exact size of the California Sub-Class is unknown, it is
23 believed and alleged that the number of persons currently employed as Shurgard Employees by
24 Defendant in the State of California number more than 50, and over the past four years, it is
25 believed and alleged that Defendant have employed more than 200 persons as Managers and/or
26 Managers-in-Training in the State of California. The numbers of current and former California
27 based employees of SHURGARD are so numerous that joinder is impractical if not impossible.
28

1 26. There are questions of law and fact common to the California Sub-Class with
2 respect to the liability issues, relief issues and anticipated affirmative defenses. For example,
3 predominate common questions of fact and law include Defendant's policy and practice of
4 requiring its employees to work without compensation; the propriety of Defendant's record
5 keeping policies and practices; and Defendant's policy and practice of requiring its employees
6 to work without uninterrupted meal breaks. Calculation of the regular rate and premium rate of
7 pay under California law also involves common questions of law and fact that predominate over
8 questions effecting only individuals. (Fed.R.Civ.P. 23(b)(3).

9 27. The prosecution of separate actions by the California Sub-Class would create a
10 risk of inconsistent or varying adjudications with respect to individual members of the
11 California Sub-Class that would establish incompatible standards of conduct for parties
12 opposing the class. (Fed.R.Civ.P. 23(b)(1)(A).)

13 28. Plaintiffs Schutes, Scura, Nieves and Nealon will fairly and adequately protect
14 the interests of the California Sub-Class because they and their counsel possess the requisite
15 resources and abilities to prosecute this case as a class action.

16 29. The prosecution of separate actions by the California Sub-Class would create a
17 risk of adjudications with respect to individual members of the class that would, as a practical
18 matter, be dispositive of the interests of the other members not parties to the adjudications or
19 substantially impair or impede their ability to protect their interests. (Fed.R.Civ.P. 23(b)(1)(B).)

20 30. The questions of law and fact common to the California Sub-Class predominate
21 over any questions affecting only individual class members, and a class action is superior to
22 other available methods for the fair and efficient adjudication of the controversy. (Fed.R.Civ.P.
23 23(b)(3).) More specifically,

24 a. Members of the California Sub-Class have little or no interest in
25 individually controlling the prosecution of separate actions. (Fed.R.Civ.P. 23(b)(3)(A).)

26 b. Plaintiffs are not aware of any other litigation concerning the controversy
27 already commenced by the California Sub-Class. (Fed.R.Civ.P. 23(b)(3)(B).)

1 c. It is desirable to concentrate the litigation of the claims in this Court
2 because Defendant does a substantial amount of business in this district;

3 d. This action is manageable as a class action because, compared to any
4 other method such as individual interventions or the consolidation of individual actions,
5 a class action is more fair and efficient. (Fed.R.Civ.P. 23(b)(3)(D).)

6 31. Plaintiffs contemplate providing a notice or notices to the California Sub-Class,
7 as approved by the Court, to be delivered through the United State mail. The notice or notices
8 shall, among other things, advise the California Sub-Class that they shall be entitled to "opt out"
9 of the class certified for the California Action if they so request by a date specified within the
10 notice, and that any judgment on the California Action, whether favorable or not, entered in this
11 case will bind all class members except those who affirmatively exclude themselves by timely
12 opting out.

13 32. Plaintiffs also contemplate providing a notice or notices to all of the FLSA
14 Employees, as approved by the Court, to be delivered through the United State mail. The notice
15 or notices shall, among other things, advise each of the FLSA Employees that they shall be
16 entitled to "opt into" the FLSA Action if they so request by the date specified within the notice,
17 and that any judgment on the FLSA Action, whether favorable or not, entered in this case will
18 bind all FLSA call members who timely request inclusion in the class.

19 **FIRST CLAIM FOR RELIEF FOR VIOLATION**
20 **OF THE FAIR LABOR STANDARDS ACTION OF 1938**
21 **(On Behalf of the FLSA Employees As Against Defendant)**

22 33. Plaintiffs reassert and reallege the allegations set forth in Paragraphs 1 through
23 32, above excepting those paragraphs that are inconsistent with this cause of action brought
24 pursuant to the FLSA.

25 34. The FLSA regulates, among other things, the payment of overtime pay by
26 employers whose employees are engaged in commerce, or engaged in the production of goods
27 for commerce, or employed in an enterprise engaged in commerce or in the production of goods
28 for commerce. 29 U.S.C. § 207(a)(1).

1 35. Section 7(a)(1) of the FLSA, 29 U.S.C. § 207(a)(1), requires employers to pay
2 non-exempt employees who work longer than forty (40) hours in a workweek one and one-half
3 times the employee's regular rate of pay for the hours worked in the workweek in excess of
4 forty (40) hours. Defendant is, and was, subject to this requirement to pay Shurgard Employees
5 one and one-half times the employees' regular rate of pay for all hours worked in a workweek in
6 excess of forty (40) hours. Defendant violated the FLSA by paying Shurgard Employees an
7 hourly rate, limited to only forty (40) hours per week without regard to the number of hours
8 worked in excess of forty (40) hours in a workweek.

9 36. Defendant has deprived Plaintiffs and the other Shurgard Employees of overtime
10 compensation through such policies and practices as:

- 11 a. Manipulating employees' time cards so that they reflect fewer hours than the
12 number of hours actually worked during the workweek.
- 13 b. Requiring employees to make time entries falsely representing the number of
14 hours worked during the workweek.
- 15 c. Requiring employees to work through meal periods without being relieved of all
16 duties.
- 17 d. Implementing a "stop-go, never-say-no" policy in which during lunch periods or
18 at the end of employees' shifts, employees are required to assist customers even
19 though they are off-the-clock and are not paid compensation for this work time.
- 20 e. Requiring employees to arrive early to prepare paperwork and the operations of
21 either or both the Shurgard and/or the Ryder Truck Rental systems prior to
22 opening the doors for business when they are off-the-clock and are not receiving
23 compensation for this work time.
- 24 f. Requiring employees to complete paperwork and make deposits when they are
25 off-the-clock and are not paid compensation for this work time.
- 26 g. Requiring employees to perform cleaning and maintenance of storage units
27 and/or truck rentals when they are off-the-clock and are not paid compensation
28 for this time.

- 1 h. Requiring employees to perform work off-the-clock during scheduled days off in
2 order to meet assigned work duties that could not be completed during the time
3 locations were open to the public and not being paid for this work time.
- 4 i. Requiring employees to respond to security alarms after hours when they are off-
5 the-clock and are not paid compensation for this work time.
- 6 j. Requiring employees to perform work off-the-clock and without pay during
7 scheduled holidays.
- 8 k. Requiring employees to respond to calls for customer assistance received from
9 either the Shurgard Storage Center to which the employee is assigned or through
10 the national Shurgard Customer Assistance Center, when the employee is off-
11 the-clock and is not paid compensation for this work time.

12 37. Defendant Shurgard's violations of the FLSA as alleged herein have been done
13 in a willful and bad faith manner such that the FLSA Employees are entitled to damages equal
14 to the amount of overtime premium pay within the three years preceding the filing of this
15 complaint, plus periods of equitable tolling. As a result of the aforesaid willful violations of the
16 FLSA, overtime compensation has been unlawfully withheld by Defendant Shurgard from
17 Plaintiffs and similarly situated persons for which the Defendant is liable pursuant to 29 U.S.C.
18 § 216(b), together with an additional equal amount as liquidated damages, as well as interest,
19 reasonable attorneys' fees and costs.

20 38. The employment and work records for the Plaintiffs are in the exclusive
21 possession, custody and control of Defendant Shurgard and Plaintiffs are unable to state at this
22 time the exact amount owing to each of them. Defendant Shurgard is under a duty imposed by
23 29 U.S.C. § 211(c) and the regulations of the U.S. Department of Labor to maintain and
24 preserve Plaintiffs' payroll and other employment records from which the amounts of the
25 Defendant's liability can be ascertained.

26 **SECOND CLAIM FOR RELIEF FOR VIOLATION**
27 **OF CALIFORNIA LAW FOR FAILURE TO PAY OVERTIME**
28 **(On Behalf of the California Sub-Class Only)**

1 39. Plaintiffs reassert and reallege the allegations set forth in Paragraphs 1 through
2 32 and Paragraph 36, above excepting those paragraphs that are inconsistent with this cause of
3 action brought pursuant to California law.

4 40. The Shurgard Employees employed by Defendant are subject to the terms and
5 conditions of the California Wage Orders, found in the California Code of Regulations, at Title
6 8, Section 11000, *et seq.*, as amended.

7 41. The persons employed by Defendant as Shurgard Employees in the State of
8 California regularly, and as a matter of policy and practice, worked and do work in excess of
9 forty (40) hours in a workweek, and in excess of eight (8) hours in a day. These persons are
10 therefore entitled to payment of daily and weekly overtime pay under California Wage Orders.
11 Defendant has failed to pay these persons the wages for hours worked and overtime pay to
12 which they are entitled, thereby violating California law.

13 42. The Shurgard Employees employed by Defendant in the State of California
14 regularly, and as a matter of practice, did not receive statutory meal periods as required by the
15 California Wage Orders. The California Sub-Class was not relieved of all duties during meal
16 periods and/or was not permitted to leave the Defendant's premises during meal periods.
17 Defendant has failed to pay these persons the wages to which they are entitled due to the failure
18 to provide uninterrupted meal periods in violation of California law.

19 43. The Shurgard Employees employed by Defendant in the State of California
20 regularly, and as a matter of practice, did not receive statutory compensation for uniform
21 maintenance as required by the California Labor Code. Defendant has failed to pay the
22 Shurgard Employees the compensation to which they are entitled for maintenance of their
23 uniforms, thereby violating the California Labor Code.

24 44. The California Sub-Class is entitled to receive the unpaid overtime pay due them
25 under California law. In addition, the California Sub-Class is entitled to recover interest on the
26 amount of unpaid overtime pay due them and reasonable attorneys' fees and costs of suit,
27 pursuant to Section 1194(a) of the California Labor Code. In addition, Section 203 of the
28 California Labor Code provides for the payment of "waiting time penalties" if an employer does

1 not properly pay all wages due an employee upon termination of the employee's employment.
2 Shurgard Employees in the State of California whose employment with Defendant has
3 terminated have not been properly paid the wages that are due them upon termination of their
4 employment. Accordingly, these class members are entitled to recover "waiting time penalties"
5 under Section 203 of the California Labor Code.

6 **THIRD CLAIM FOR RELIEF FOR VIOLATION OF**
7 **BUSINESS AND PROFESSIONS CODE SECTION 17200**
8 **(On Behalf of the California Class Only)**

9 45. Plaintiffs reassert and reallege the allegations set forth in Paragraphs 1 through
10 32, Paragraph 36 and Paragraphs 40 through 44, above excepting those paragraphs which are
11 inconsistent with this cause of action for violations of the California Business and Professions
12 Code § 17200.

13 46. Section 17200 of the California Business and Professions Code prohibits any
14 unlawful, unfair or fraudulent business act or practice.

15 47. Defendant has engaged in, and continues to engage in the following unlawful,
16 unfair and fraudulent business practices in violation of Section 17200 of the California Business
17 and Professions Code:

18 a. The failure to pay Shurgard Employees all wages for hours worked including
19 overtime pay, meal period compensation and uniform maintenance compensation due them
20 under California law;

21 b. The failure to pay the Shurgard Employees employed in the State of California
22 all wages for hours worked due them upon termination of their employment;

23 c. The failure to maintain accurate and complete payroll records as required by the
24 FLSA, including as required by Section 1174(d) of the California Labor Code.

25 48. These challenged policies and practices have harmed the named Plaintiffs, the
26 members of the California Sub-Class and the general public.

27 49. As a result of these unlawful policies and practices, Plaintiffs are entitled to an
28 injunction issue against Defendant, pursuant to Section 17203 of the California Business and
Professions Code, to prevent them from engaging in such future unlawful, unfair and fraudulent

1 business practices. Plaintiffs also are entitled to an order requiring Defendant to disgorge the ill-
2 gotten gains obtained by engaging in these unlawful business practices and to provide
3 restitution to all persons who have suffered damages or injury as a result of these unlawful
4 business practices, including but not limited to all Shurgard Employees employed in California
5 during the applicable limitations period.

6 50. Plaintiffs are entitled to an award of reasonable attorneys' fees pursuant to
7 California Code of Civil Procedure § 1021.5.

8
9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs pray for judgment as follows:

- 11 1. Enter a declaratory judgment declaring that the Defendant has willfully and
12 wrongfully violated its statutory and legal obligations and deprived Plaintiffs and all
13 other who are similarly situated of their rights, privileges, protections,
14 compensation, benefits and entitlements under the law, as alleged herein;
- 15 2. Order a complete and accurate accounting of all the compensation to which the
16 Plaintiffs and all others who are similarly situated are entitled;
- 17 3. For compensatory damages against Defendant to be paid to the FLSA Employees,
18 including all overtime pay and meal compensation pay owed to the FLSA
19 Employees under the FLSA;
- 20 4. For liquidated damages against Defendant to be paid to the FLSA Employees under
21 Section 16(b) of the FLSA;
- 22 5. For compensatory damages against Defendant to be paid to the California Sub-
23 Class, including all overtime pay, meal period pay and compensation for uniform
24 maintenance owed to the California Sub-Class under California law;
- 25 6. For "waiting time penalties," pursuant to Section 203 of the California Labor Code,
26 against Defendant to be paid to members of the California Sub-Class whose
27 employment has terminated with Defendant and who were not properly paid all
28 wages due and owing to them at the time of such termination;

- 1 7. For attorneys' fees and costs as allowed by Section 16(b) of the FLSA, Section 1194
2 of the California Labor Code, and Section 1021.5 of the California Code of Civil
3 Procedure;
- 4 8. For an order requiring Defendant to disgorge all ill-gotten gains from its unlawful
5 conduct in the State of California; and
- 6 9. For injunctive relief including, but not limited to, an Order enjoining Defendant
7 from continuing to engage in the State of California in the unlawful business
8 practices of:
- 9 a. The failure to pay Shurgard Employees all wages for hours worked including
10 overtime pay and meal period compensation due them under the FLSA and California
11 law;
- 12 b. The failure to pay the Shurgard Employees employed in the State of California
13 all wages for hours worked due them upon termination of their employment;
- 14 c. The failure to maintain accurate and complete payroll records for Shurgard
15 Employees as required by California law, including as required under Section 1174(d) of
16 the California Labor Code; and
- 17 10. Grant such other legal and equitable relief as may be just and proper.

18 DATED: October ____, 2002

RIGHETTI ♦ WYNNE

22 _____
23 J.E.B. PICKETT
24 Attorneys for Plaintiffs

25
26 **JURY TRIAL DEMAND**

27 Plaintiffs hereby demand a jury trial in this action.
28