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Los Angeles Superior Court

DEC 02 2003
John A. Clarke, Executive Officer/Clerk
By SUE GABB, Deputy

9 **SUPERIOR COURT OF CALIFORNIA,**
10 **LOS ANGELES COUNTY**

11 VIVIAN VARGAS, JOSE RENTERIA,
12 individually, and on behalf of other
13 members of the general public similarly
14 situated,

15 Plaintiffs,

16 vs.

17 WENDYS INTERNATIONAL, INC.,
18 and Does 1 thru 50, inclusive,

19 Defendants.

NO. BC307110

COMPLAINT

[CLASS ACTION]

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

1 **FIRST CAUSE OF ACTION**

2 COME NOW, Plaintiffs, individuals over the age of eighteen (18), and bring this
3 challenge to Defendant's lucrative, repressive and unlawful business practices on behalf of
4 themselves and a class of all others similarly situated and for a Cause of Action against
5 Defendants, WENDYS INTERNATIONAL, INC. and DOES 1-50, inclusive, (hereinafter
6 Defendants) and each of them, allege as follows:
7

8 **THE PARTIES, JURISDICTION AND VENUE**

9
10 **1.**

11 This class action is brought pursuant to Section 382 of the California Code of Civil
12 Procedure. The monetary damages and restitution sought by Plaintiffs exceed the minimal
13 jurisdiction limits of the Superior Court and will be established according to proof at trial. The
14 amount in controversy for each class representative, including their claims for compensatory
15 damages and pro rata share of attorney fees, are less than \$75,000.
16

17 **2.**

18 Venue is proper in Los Angeles County as at least some of the acts complained of
19 herein occurred in Los Angeles County as Defendants own and operate restaurants in Los
20 Angeles County. At all times herein mentioned, Plaintiffs and the class identified herein
21 worked as employees for Defendants in salaried positions in Defendants' restaurant locations
22 under the business name "Wendy's." Defendants' salaried restaurant positions are not
23 positions which fall into an exception to the California Labor Code Section 1194 and/or
24 California Industrial Welfare Commission Wage Order 5 governing the public housekeeping
25 industry, applicable to Defendants' business. The acts complained of in this First Cause of
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28 Action occurred, at least in part, within three years of the filing of the original complaint in this

1 action up to and including the time that this action is certified as a class action. The
2 representative Plaintiffs who worked in a salaried restaurant position at one of Defendants'
3 restaurant locations within the State of California are VIVIAN VARGAS and JOSE
4 RENTERIA.
5

6 3.

7 Defendant, WENDY'S INTERNATIONAL, INC., is a corporation doing business in
8 California. Defendant WENDY'S INTERNATIONAL, INC. owns, operates, manages and
9 controls "quick-service" and "fast-casual dining" restaurants in California.
10

11 4.

12 Plaintiffs are informed and believe and thereon allege that all times herein mentioned
13 Defendants and Does 1 through 50, are and were corporations, business entities, individuals
14 and partnerships, licensed to do business and actually doing business in the State of California,
15 Los Angeles County. Defendants own and operate an industry, business and establishment in
16 approximately 29 separate geographic locations within the State of California, including within
17 Los Angeles County, for the purpose of selling food. As such, and based upon all the facts and
18 circumstances incident to Defendants' business in California, Defendants are subject to
19 California Labor Code § 1194, et seq., California Business and Professions Code § 17200, et
20 seq., (Unfair Practices Act) and IWC Wage Order 5.
21
22

23 5.

24 Plaintiffs do not know the true names or capacities, whether individual, partner or
25 corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason,
26 said Defendants are sued under such fictitious names, and Plaintiffs pray leave to amend this
27 complaint when the true names and capacities are known. Plaintiffs are informed and believe
28

1 and thereon allege that each of said fictitious Defendants was responsible in some way for the
2 matters alleged herein and proximately caused Plaintiffs and members of the general public and
3 the class to be subject to the illegal employment practices, wrongs and injuries complained of
4 herein.
5

6 6.

7 At all times herein mentioned, each of said Defendants participated in the doing of the
8 acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
9 Defendants, and each of them, were the agents, servants and employees of each of the other
10 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
11 acting within the course and scope of said agency and employment.
12

13 7.

14 At all times herein mentioned, Defendants, and each of them, were members of, and
15 engaged in, a joint venture, partnership and common enterprise, and acting within the course
16 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.
17

18 8.

19 At all times herein mentioned, the acts and omissions of various Defendants, and each
20 of them, concurred and contributed to the various acts and omissions of each and all of the
21 other Defendants in proximately causing the injuries and damages as herein alleged.
22

23 9.

24 At all times herein mentioned, Defendants, and each of them, ratified each and every act
25 or omission complained of herein. At all times herein mentioned, the Defendants, and each of
26 them, aided and abetted the acts and omissions of each and all of the other Defendants in
27 proximately causing the damages as herein alleged. Further, at all times mentioned herein, the
28

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

3 **FACTUAL AND CLASS ALLEGATIONS**

4
5 **10.**

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

10 **11.**

11 Plaintiffs and all members of the class identified herein were regularly scheduled as a
12 matter of uniform company policy to work and in fact worked as salaried restaurant employees
13 in excess of eight hours per workday and/or in excess of forty hours per workweek without
14 receiving straight time or overtime compensation for such overtime hours worked in violation
15 of California Labor Code § 1194 and IWC Wage Order 5. Plaintiffs and the other members of
16 the class were improperly and illegally mis-classified by Defendants as "exempt" employees
17 when, in fact, they were "non-exempt" employees according to California law. Plaintiffs and
18 the class have the right to be compensated by Defendants at the appropriate compensatory wage
19 rate for said work heretofore performed, consisting of the straight time rate plus the appropriate
20 overtime premium as mandated by California law including interest, attorney fees and costs,
21 and civil penalties thereon pursuant to Labor Code §§ 558 and 1197.1.

22
23
24 **12.**

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26 This complaint is brought by Plaintiffs pursuant to California Code of Civil Procedure §
27 382 on behalf of a class. All claims alleged herein arise under California law for which
28

1 Plaintiffs seek relief authorized under California law. The class is comprised of, and defined
2 as:

3 All current and former California based salaried non-exempt restaurant
4 personnel who worked and/or are working overtime for Defendants
5 within the last four (4) years of the filing of the Complaint in this action
6 up to and including the time that this action is certified as a class, yet
7 were not paid overtime.

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

14 a. Statistically, one hundred percent of the class members were paid on a salary
15 basis with no overtime compensation paid for work accomplished in excess of forty hours per
16 week, or eight hours per day. Plaintiffs are informed and believe and based thereon allege that
17 Defendants and each of them have failed to meet the requirements for establishing the
18 exemption because all class members (1) regularly spent more than 50% of their time
19 performing non-exempt work, (2) did not customarily and regularly exercise discretion and
20 independent judgment, (3) did not have the authority to hire or fire or make meaningful
21 recommendations regarding same, and, (4) did not customarily and regularly supervise at least
22 two employees or the equivalent. In primarily engaging in non-exempt work, Plaintiffs and the
23 class, at all times relevant, met the realistic expectations of Defendants and each of them. Thus,
24 Plaintiffs and the class members were not exempt from the overtime requirements of California
25 law for these reasons.
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1 mentioned was, in violation of California Labor Code § 1194, et seq., the Unfair Practices Act
2 and IWC Wage Order 5. Defendants' employment policies and practices wrongfully and
3 illegally failed to compensate salaried restaurant employees for substantial overtime
4 compensation earned as required by California law.

6 14.

7 Plaintiffs' claims are typical of the claims of all members of the class. Plaintiffs, as
8 representative parties, will fairly and adequately protect the interests of the class by vigorously
9 pursuing this suit through attorneys who are skilled and experienced in handling civil litigation
10 of this type.

12 15.

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

3
4 **16.**

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

15
16 **17.**

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

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25 **18.**

26 Proof of a common business practice or factual pattern, of which the named Plaintiffs'
27 experience is representative, will establish the right of each member of the plaintiff class to
28 recovery on the causes of action alleged herein.

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19.

The plaintiff class is entitled in common to a specific fund with respect to the 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. This action is brought for the benefit of the entire class and will result in the creation of a common fund.

20.

Plaintiffs and members of the class identified herein 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, and other wages earned and remaining uncompensated according to amendment, or proof. Plaintiffs and other members of the class 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 Plaintiffs 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

1 period and applicable rates of pay in violation of California Labor Code §§ 226 and 1174
2 thereby causing injury to the class. Accordingly, Defendants and each of them are liable for
3 civil penalties to Plaintiffs and the class pursuant to Labor Code §§ 226, 226.3, 558 and 1174.5.
4

5 22.

6 In violation of sections 11 and 12 of IWC Wage Order 5, Defendants failed to provide
7 meal and rest period breaks in the requisite number, length and manner as provided in the
8 Wage Order. At no time have Plaintiffs and the class entered into any written agreement with
9 the Defendants expressly or impliedly waiving their right to their meal breaks. Plaintiffs and
10 the class have been injured by Defendants' failure to comply with sections 11 and 12 of IWC
11 Wage Order 5 and are thus entitled to the wages set forth in Wage Order 5 and penalties per
12 Labor Code § 558.
13

14 23.

15 Pursuant to Labor Code § 2699, the Labor Code Private Attorneys General Act of 2004
16 (SB 796 operative January 1, 2004), Plaintiffs bring this action on behalf of themselves and
17 other current and former employees and seek recovery of applicable civil penalties as follows:
18

19 a. where civil penalties are specifically provided in the Labor Code for each of the
20 violations alleged herein, Plaintiffs seek recovery of such penalties;

21 b. where civil penalties are not established in the Labor Code for each of the
22 violations alleged herein, Plaintiffs seek recovery of the penalties established in § 2699(e) of
23 the Labor Code Private Attorneys General Act of 2004.

24 WHEREFORE, Plaintiffs on their own behalf and on behalf of the members of the
25 class, pray for judgment as hereinafter set forth.
26
27
28

1 **SECOND CAUSE OF ACTION**

2 COME NOW, Plaintiffs, individually and on behalf of both the class and the general
3 public and as a second, separate and distinct cause of action against Defendants, and each of
4 them, allege as follows:
5

6 **24.**

7 Plaintiffs herein repeat and re-allege as though fully set forth at length each and every
8 paragraph of this Complaint, excepting those paragraphs which are inconsistent with this cause
9 of action for relief regarding Defendants' violations of California Business and Professions
10 Code § 17200 et seq. (Unfair Practices Act).
11

12 **25.**

13 At all times herein mentioned Defendants, and each of them, acting as the employer,
14 individually or through officers, directors, agents or employees of another have (1) required or
15 caused Plaintiffs and the class to work for longer hours than those fixed or under conditions
16 prohibited by Industrial Welfare Commission wage orders applicable to Defendants' business,
17 (2) paid or caused to be paid to Plaintiffs and the class less than the minimum fixed by IWC
18 Wage Order 5, and (3) violated, refused, or neglected to comply with any provision of Part 4,
19 Chapter 1 of the Labor Code beginning at § 1171 or any order or ruling of the Industrial
20 Welfare Commission. As a result of the foregoing and the acts complained of herein,
21 Defendants, and each of them, are guilty of violating California Labor Code §§ 204, 216, 1198
22 and 1199. In addition to the other violations of the law set forth in the First Cause of Action,
23 Defendants' violations of California Labor Code §§ 204, 216, 1198 and 1199 serve as a further
24 basis for Defendants' liability under California Business & Professions Code § 17200. et seq.
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26.

Defendants, and each of them, have engaged in unfair business practices in California by practicing, employing and utilizing the employment practices as outlined herein, to wit, by requiring their salaried restaurant employees to perform the labor services without overtime compensation. Defendants' utilization of such unfair business practices constitutes unfair competition and provides an unfair advantage over Defendants' competitors. Plaintiffs, and other similarly situated members of the general public, seek full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by the Defendants by means of the unfair practices complained of herein. Plaintiffs seek, on their own behalf and on behalf of the general public, the appointment of a receiver, as necessary.

27.

Plaintiffs are informed and believe and on that basis allege that at all times herein mentioned Defendants have engaged in unlawful, deceptive and unfair business practices, as proscribed by California Business and Professions Code § 17200 et seq., including those alleged herein thereby depriving Plaintiffs and other members of the general public the minimum working standards and conditions due to them under the California labor law and Industrial Welfare Commission Wage Orders as specifically described herein.

28.

Plaintiffs, and all persons similarly situated, are further entitled to and do seek a both a declaration that the above-described business practices are unfair, unlawful and/or fraudulent and injunctive relief restraining Defendants from engaging in any of such business practices in the future. Such misconduct by Defendants, unless and until enjoined and restrained by order

1 of this Court, will cause great and irreparable injury to all members of the class in that the
2 Defendants will continue to violate California law, represented by labor statutes and IWC
3 Wage Orders, unless specifically ordered to comply with same. This expectation of future
4 violations will require current and future employees to repeatedly and continuously seek legal
5 redress in order to gain compensation to which they are entitled under California law. Plaintiffs
6 have no other adequate remedy at law to insure future compliance with the California labor
7 laws and Wage Orders alleged to have been violated herein.
8

9 WHEREFORE, Plaintiffs on their own behalf and on behalf of the members of the class
10 and the general public, pray for judgment as follows:
11

- 12 1. For an order certifying the proposed class;
- 13 2. Upon the First Cause of Action, for consequential damages according to proof
14 as set forth in California Labor Code § 1194, et seq. (and California Industrial Welfare
15 Commission Wage Order 5) related to overtime wages due and owing;
16
- 17 3. Upon the First Cause of Action, for waiting time penalties according to proof
18 pursuant to California Labor Code § 203;
- 19 4. Upon the First Cause of Action, for damages pursuant to California Labor Code
20 § 226;
21
- 22 5. Upon the First Cause of Action, for civil penalties pursuant to California Labor
23 Code §§ 226, 226.3, 558, 1174.5, 1197.1 and 2699;
- 24 6. Upon the First Cause of Action, for wages pursuant to IWC Wage Order 5,
25 Sections 11 and 12;
26
- 27 7. Upon the Second Cause of Action, that Defendants be ordered to show cause
28 why they should not be enjoined and ordered to comply with IWC Wage Order 5 related to

1 payment of overtime compensation and record keeping for Defendants' salaried restaurant
2 employees who are primarily engaged in non-exempt work and work more than 40 hours per
3 week or 8 hours per day; and for an order enjoining and restraining Defendants and their
4 agents, servants and employees related thereto;

5
6 8. Upon the Second Cause of Action, for a declaratory judgment and a decree
7 adjudging and decreeing that Plaintiffs and the members of the class have regularly worked
8 compensable overtime; further, that the work performed by Plaintiffs and the members of the
9 class is subject to overtime compensation requirements and/or is in excess of 40 hours per week
10 and/or 8 hours a day, and that Plaintiffs and the members of the class are entitled to overtime
11 compensation for said work;

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

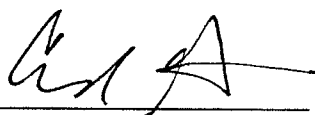
17
18 10. For pre-judgment interest as allowed by California Labor Code §§ 1194 and
19 218.6;

20
21 11. For reasonable attorneys fees, expenses and costs as provided by California
22 Labor Code §§ 218, 1194, and 2699; and,

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

24 DATED: November 18, 2003

RIGHETTI ♦ WYNNE

25
26 By: 
27 Edward J. Wynne
28 Attorneys for Plaintiffs