

**SUMMONS ON SECOND AMENDED**  
**(CITACION JUDICIAL) CLASS ACTION COMPLAINT**

SUM-100

**NOTICE TO DEFENDANT: FRESH & EASY NEIGHBORHOOD MARKET (AVISO AL DEMANDADO): INC.; and DOES 1 to 50, Inclusive,**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**CONFORMED COPY**  
OF ORIGINAL FILED  
Los Angeles Superior Court

OCT 22 2009

**YOU ARE BEING SUED BY PLAINTIFF: THOMAS STEPHENS, on (LO ESTÁ DEMANDANDO EL DEMANDANTE):** behalf of himself and others similarly situated,

John A. Clarke, Executive Officer/Clerk  
*John A. Clarke*  
**BY MARY GARCIA, Deputy**

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es):

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES  
111 N. HILL STREET  
LOS ANGELES, CA 90012

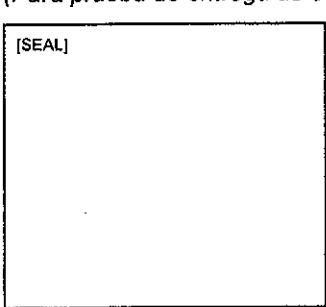
CASE NUMBER:  
(Número del Caso):  
BC418826

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
GEORGE R. KINGSLEY, ESQ. SBN-38022 (818) 990-8300 FAX (818) 990-2903  
ERIC B. KINGSLEY, ESQ. SBN-185123  
DARREN M. COHEN, ESQ. SBN-221938  
16133 VENTURA BOULEVARD, SUITE 1200, ENCINO, CA 91436

DATE: \_\_\_\_\_ Clerk, by JOHN A. CLARKE, Deputy  
(Fecha) \_\_\_\_\_ *John A. Clarke* (Adjunto)

(For proof of service of this summons, use P (Para prueba de entrega de esta citación use el formulario Proof of Service (POS-010)).



**NOTICE TO THE PERSON SERVED: You are served**

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):
3.  on behalf of (specify):  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify):
4.  by personal delivery on (date):

 **COPY**

1 **KINGSLEY & KINGSLEY, APC**  
2 **GEORGE R. KINGSLEY, ESQ. SBN-38022**  
3 **ERIC B. KINGSLEY, ESQ. SBN-185123**  
4 **DARREN M. COHEN, ESQ. SBN-221938**  
5 **ELANA R. LEVINE, ESQ. SBN-234155**  
6 **16133 VENTURA BLVD., SUITE 1200**  
7 **ENCINO, CA 91436**  
8 **(818) 990-8300, FAX (818) 990-2903**

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**OF ORIGINAL FILED**  
**Los Angeles Superior Court**

**OCT 22 2009**

*John A. Clarke* Executive Officer/Clerk

*Mary Garcia*  
**BY MARY GARCIA, Deputy**

9 **Attorneys for Plaintiffs**

10  
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **FOR THE COUNTY OF LOS ANGELES**

13 **THOMAS STEPHENS, on behalf**  
14 **of himself and others similarly situated,**

15 **Plaintiffs,**

16 **v.**

17 **FRESH & EASY NEIGHBORHOOD**  
18 **MARKET INC.; and**  
19 **DOES 1 to 50, Inclusive,**

20 **Defendants.**

**CASE NO.: BC418826**

**SECOND AMENDED CLASS ACTION**  
**COMPLAINT FOR:**

- 1. **Failure to Pay Wages and/or Overtime**
- 2. **Failure to Provide Meal Breaks Under Labor Code §226.7**
- 3. **Failure to Provide Rest Breaks Under Labor Code §226.7**
- 4. **Penalties Pursuant to Labor Code §203**
- 5. **Penalties Pursuant to Labor Code §2699**
- 6. **Violation of Business & Professions Code §17200**

21 Plaintiff **THOMAS STEPHENS** on behalf of himself and all others similarly situated, complains  
22 of defendants, and each of them, as follows:

23 **I**

24 **INTRODUCTION**

25 1. This is a Class Action, pursuant to Code of Civil Procedure §382, on behalf of plaintiff  
26 and all individuals who hold or held the position of "Team Leader" and/or "Assistant Manager" who are  
27 employed by, or formerly employed by **FRESH & EASY NEIGHBORHOOD MARKET INC.**, and  
28 any subsidiaries or affiliated companies, including those doing business as "**FRESH & EASY**  
**NEIGHBORHOOD MARKET INC.**" (hereinafter referred to as "**FRESH**" or "**Defendants**"), within  
the State of California.

1           2.       For at least four (4) years prior to the filing of this action continuing to the present,  
2 defendants have had a consistent policy of failing to pay wages and/or overtime to "Team Leaders"  
3 and/or "Assistant Managers" for all work performed and/or work over eight (8) hours per day or forty  
4 (40) per week.

5           3.       For at least four (4) years prior to the filing of this action and continuing to the present,  
6 defendants have had a consistent policy of requiring "Team Leaders" and/or "Assistant Managers"  
7 within the State of California, including plaintiff, to work at least five (5) hours without an uninterrupted  
8 meal period and failing to pay such employees one (1) hour of pay at the employees regular rate of  
9 compensation for each workday that the meal period is not provided or provided after five (5) hours, as  
10 required by California state wage and hour laws.

11           4.       For at least four (4) years prior to the filing of this action and continuing to the present,  
12 defendants have had a consistent policy of failing to provide "Team Leaders" and/or "Assistant  
13 Managers" within the State of California, including plaintiff, rest periods of at least ten (10) minutes per  
14 four (4) hours worked or major fraction thereof and failing to pay such employees one (1) hour of pay  
15 at the employees regular rate of compensation for each workday that the rest period was not provided,  
16 as required by California state wage and hour laws.

17           5.       Plaintiff, on behalf of himself and all proposed class members, brings this action pursuant  
18 to Labor Code §§201, 202, 203, 226, 226.7, 510, 512, 558, 1194, and 1199, seeking wages and/or  
19 overtime, unpaid meal and rest period compensation, waiting time penalties, injunctive and other  
20 equitable relief, and reasonable attorneys' fees and costs.

21           6.       Plaintiff, on behalf of himself and all proposed class members, pursuant to Labor Code  
22 §2699, seeks penalties for defendants failure to provide overtime compensation, meal and rest breaks,  
23 and wages upon termination/resignation.

24           7.       Plaintiff, on behalf of himself and all proposed class members, pursuant to Business &  
25 Professions Code §§17200-17208, also seeks injunctive relief, restitution, and disgorgement of all  
26 benefits defendants enjoyed from their failure to provide meal and rest period compensation and other  
27 wage compensation.

28       ///

II  
PARTIES

A. Plaintiff

8. Venue as to each defendant is proper in this judicial district, pursuant to Code of Civil Procedure §395. Defendants operate several locations within Southern California. Defendants do business within Los Angeles County. The unlawful acts alleged herein have a direct effect on plaintiff and those similarly situated within the State of California and Los Angeles County.

9. Plaintiff **THOMAS STEPHENS** is a resident of California.

10. As a "Team Leader" and/or "Assistant Manager", plaintiff **STEPHENS** was regularly required to:

(A) Work without receiving compensation for all hours worked and/or work performed over eight (8) hours per day or forty (40) per week without being provided premium overtime pay rates;

(B) Work in excess of five (5) hours per day without being provided a meal period and not being compensated one (1) hour of pay at the regular rate of compensation for each workday that a meal period was not provided or provided after five (5) hours, all in violation of California labor laws, regulations, and Industrial Welfare Commission Wage Orders;

(C) Work without being provided a minimum ten (10)minute rest period for every four (4) hours or major fraction thereof worked and not being compensated one (1) hour of pay at their regular rate of compensation for each workday that a rest period was not provided;

(D) Work without being provided an accurate itemized wage statements that reflects all deductions from payment of wages and accurately reporting total hours worked, including when the employee begins and ends each work period, meal periods, and total daily hours worked, by plaintiff and the members of the proposed class.

11. Defendants willfully failed to compensate plaintiff and others for wages at the termination of their employment with defendants.

B. Defendants

12. Defendant **FRESH & EASY NEIGHBORHOOD MARKET INC.** is a Delaware

1 corporations operating in California. Defendant owns and operates several locations in the State of  
2 California. Defendant's corporate address is 2120 Park Place, Suite 200, El Segundo, CA 90245.  
3 Defendant employed plaintiff and similarly situated persons as a "Team Leader" and/or "Assistant  
4 Manager" within California.

5 13. The true names and capacities, whether individual, corporate, associate, or otherwise, of  
6 defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to plaintiff, who therefore  
7 sues defendants by such fictitious names under Code of Civil Procedure §474. Plaintiff is informed and  
8 believes, and based thereon alleges, that each of the defendants designated herein as a DOE is legally  
9 responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court  
10 to amend this Complaint to reflect the true names and capacities of the defendants designated hereinafter  
11 as DOES when such identities become known.

12 14. Plaintiff is informed and believes, and based thereon alleges, that each defendant acted  
13 in all respects pertinent to this action as the agent of the other defendants, carried out a joint scheme,  
14 business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally  
15 attributable to the other defendants. Furthermore, defendants in all respects acted as the employer and/or  
16 joint employer of plaintiff and the proposed class.

### 17 III

#### 18 FACTUAL BACKGROUND

19 15. Plaintiff and the Class are, and at all times pertinent hereto, have been non-exempt  
20 employees within the meaning of the California Labor Code, and the implementing rules and regulations  
21 of the IWC California Wage Orders. Defendants hire employees who work as a "Team Leader" and/or  
22 "Assistant Manager".

23 16. Plaintiff and the class worked without receiving compensation for all hours worked at the  
24 proper corresponding rate. Amongst other things, on a regular and consistent basis, defendants have  
25 required plaintiff and the class to work during their meal breaks. Defendants then deduct the "meal  
26 break" time from hours worked, even though these employees do not take meal breaks or are forced to  
27 work through meal breaks.

28 17. Plaintiff and the Class have not been provided meal periods for work days in excess of five

1 (5) hours and were not compensated one hours wages in lieu thereof. Amongst other things, on a regular  
2 and consistent basis, plaintiff and the class were not provided a meal break, required to stay on the  
3 premises during their meal break, and/or were interrupted during their meal break without receiving the  
4 proper compensation.

5 18. Plaintiff and the Class have rest periods for work days in excess of four (4) without being  
6 provided a rest period and were not compensated one hours wages in lieu thereof.

7 19. Defendants did not fully compensate the proposed class for defendants' failure to provide  
8 rest periods and meal periods. Defendants' requirement that plaintiff and the proposed class work  
9 through meal and rest periods without paying legal compensation for failure to provide meal or rest  
10 periods was willful and deliberate.

11 20. Defendants have failed to comply with Industrial Welfare Commission ("IWC") Wage  
12 Order 7-2001(7) by failing to maintain time records showing when the employee begins and ends each  
13 work period, meal periods, and total daily hours worked by itemizing in wage statements all deductions  
14 from payment of wages and accurately reporting total hours worked by plaintiff and the members of the  
15 proposed class.

16 21. Plaintiff and the proposed class are, and at all times pertinent hereto, have been  
17 non-exempt employees within the meaning of the California Labor Code, and the implementing rules  
18 and regulations of the IWC California Wage Orders.

19 22. Plaintiff and the class are covered by California Industrial Welfare Commission  
20 Occupational Wage Order No. 7-2001, California Industrial Welfare Commission in No. 7 (Title 8 Cal.  
21 Code of Reg. §§11070).

#### 22 IV

#### 23 CLASS ACTION ALLEGATIONS

24 23. Plaintiff brings this action on behalf of himself and all others similarly situated as a Class  
25 Action pursuant to §382 of the Code of Civil Procedure. Plaintiff seeks to represent a class defined as  
26 follows:

27 All persons who are employed or have been employed, and who have  
28 worked as a "Team Leader" and/or "Assistant Manager" for FRESH in the  
State of California since four (4) years prior to the filing of this action.

1           24. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or  
2 modify the class description with greater specificity or further division into subclasses or limitation to  
3 particular issues.

4           25. This action has been brought and may properly be maintained as a class action under the  
5 provisions of §382 of the Code of Civil Procedure because there is a well-defined community of interest  
6 in the litigation and the proposed class is easily ascertainable.

7           **A.     Numerosity**

8           26. The potential members of the proposed class as defined are so numerous that joinder of  
9 all the members of the proposed class is impracticable. While the precise number of proposed class  
10 members has not been determined at this time, plaintiff is informed and believes that defendants  
11 currently employ, and during the relevant time periods employed, over 100 "Team Leaders" and/or  
12 "Assistant Managers".

13           27. Plaintiff alleges defendants' employment records would provide information as to the  
14 number and location of all proposed class members. Joinder of all members of the proposed class is not  
15 practicable.

16           **B.     Commonality**

17           28. There are questions of law and fact common to the proposed class that predominate over  
18 any questions affecting only individual class members. These common questions of law and fact  
19 include, without limitation:

20                   (A) Whether defendants failed to pay wages and/or overtime compensation as required  
21 by the Labor Code and Wage Orders for all hours worked;

22                   (B) Whether defendants violated Labor Code §§226.7 and 512, IWC Wage Order 7-  
23 2001 or other applicable IWC Wage Orders, by failing to provide meal periods on days "Team Leaders"  
24 and/or "Assistant Managers" worked in excess of five (5) hours and failing to compensate said  
25 employees one (1) hours wages in lieu of meal periods;

26                   (C) Whether defendants violated Labor Code §§226.7 and 512, Wage Order 7-2001  
27 or other applicable IWC Wage Orders, by failing to provide daily rest periods for every four (4) hours  
28 or major fraction thereof worked and failing to compensate said employees one (1) hours wages in lieu

1 of rest periods;

2 (D) Whether defendants violated Wage Order 7-2001(7) or other applicable IWC  
3 Wage Orders by failing to maintain time records showing when the employee begins and ends each work  
4 period, meal periods, and total daily hours worked by itemizing in wage statements all deductions from  
5 payment of wages and accurately reporting total hours worked by plaintiff and the members of the  
6 proposed class;

7 (E) Whether defendants violated §§201-203 of the Labor Code by failing to pay  
8 compensation due and owing at the time that any proposed class member's employment with defendants  
9 terminated;

10 (F) Whether defendants violated §2699 et. seq. of the Labor Code by engaging in the  
11 acts previously alleged;

12 (G) Whether defendants violated §17200 et seq. of the Business & Professions Code  
13 by failing to provide wages and compensation to restaurant employees; and

14 (H) Whether plaintiff and the members of the proposed class are entitled to equitable  
15 relief pursuant to Business & Professions Code §17200, et. seq.

16 **C. Typicality**

17 29. The claims of the named plaintiff are typical of the claims of the proposed class. Plaintiff  
18 and all members of the proposed class sustained injuries and damages arising out of and caused by  
19 defendants' common course of conduct in violation of laws, regulations that have the force and effect  
20 of law and statutes as alleged herein.

21 **D. Adequacy of Representation**

22 30. Plaintiff will fairly and adequately represent and protect the interests of the members of  
23 the proposed class. Counsel who represents plaintiffs are competent and experienced in litigating large  
24 employment class actions.

25 **E. Superiority of Class Action**

26 31. A class action is superior to other available means for the fair and efficient adjudication  
27 of this controversy. Individual joinder of all proposed class members is not practicable, and questions  
28 of law and fact common to the proposed class predominate over any questions affecting only individual

1 members of the proposed class. Each member of the proposed class has been damaged and is entitled  
2 to recovery by reason of defendants' illegal policy and/or practice of failing to compensate class members  
3 for wages due and denying class members rest and meal periods without legal compensation.

4 32. Class action treatment will allow those similarly situated persons to litigate their claims  
5 in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is  
6 unaware of any difficulties that are likely to be encountered in the management of this action that would  
7 preclude its maintenance as a class action.

8 V

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO PAY WAGES AND OVERTIME**

11 33. Plaintiff incorporates paragraphs 1 through 32 as though fully set forth herein.

12 34. Plaintiff and others were forced to work on a regular and consistent basis without receiving  
13 compensation for all hours worked at their regular rate or if more than eight (8) hours a day and/or forty  
14 (40) hours per week, at the applicable overtime rate. Plaintiff and the Class have not been compensated  
15 for this time. Defendant had a consistent policy of failing to pay plaintiff and members of the class for  
16 all hours worked.

17 35. By their policy of requiring plaintiff to work without receiving compensation for all hours  
18 worked at their regular rate, or if in excess of eight (8) hours in a workday and/or forty (40) hours in a  
19 workweek, without compensating plaintiff at the rate of time and one-half (1 1/2), defendant wilfully  
20 violated the provisions of Labor Code §510.

21 36. As a result of the unlawful acts of defendants, plaintiff has been deprived of wages and/or  
22 overtime in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest  
23 and penalties thereon, pursuant to Labor Code §§510, 1194 and 1199.

24 VI

25 **SECOND CAUSE OF ACTION**

26 **FAILURE TO ALLOW MEAL BREAKS PURSUANT TO LABOR CODE §226.7**

27 37. Plaintiff incorporates paragraphs 1 through 36 as though fully set forth herein.

28 38. Labor Code §226.7 requires an employer to pay an additional hour of compensation for

1 each meal period the employer fails to provide. Employees are entitled to a meal period of at least thirty  
2 (30) minutes per five (5) hour work period. Plaintiff and the class consistently worked over five (5) hour  
3 shifts. Pursuant to the Code, plaintiff and the class are entitled to a meal period of not less than thirty  
4 (30) minutes prior to exceeding five (5) hours of employment.

5 39. Defendants failed to provide plaintiff and others with timely meal breaks of not less than  
6 thirty (30) minutes as required by the Labor Code during the relevant class period.

7 40. Pursuant to Labor Code §226.7, plaintiff and the class are entitled to damages in an  
8 amount equal to one (1) hour of wages per missed meal break, in a sum to be proven at trial.

9 **VII**

10 **THIRD CAUSE OF ACTION**

11 **FAILURE TO ALLOW REST BREAKS PURSUANT TO LABOR CODE §226.7**

12 41. Plaintiff incorporates paragraphs 1 through 40 as though fully set forth herein.

13 42. Labor Code §226.7 requires an employer to pay an additional hour (1) of compensation  
14 for each rest period the employer fails to provide. Employees are entitled to a paid ten (10) minute rest  
15 break for every four (4) hours worked. Plaintiff and the class consistently worked over four (4) hours  
16 per shift with no rest breaks.

17 43. Defendants failed to provide plaintiff and others with rest breaks of not less than ten (10)  
18 minutes as required by the Labor Code during the relevant class period.

19 44. Pursuant to Labor Code §226.7, plaintiff and the class are entitled to damages in an  
20 amount equal to one (1) hour of wages per missed rest break, in a sum to be proven at trial.

21 **VIII**

22 **FOURTH CAUSE OF ACTION**

23 **WAITING TIME PENALTIES UNDER LABOR CODE §203**

24 45. Plaintiff incorporates paragraphs 1 through 44 as though fully set forth herein.

25 46. Numerous members of the proposed class including plaintiff are no longer employed by  
26 defendants. They were either fired or quit defendants employ.

27 47. The defendants' failure to pay wages, as alleged above was willful in that defendants and  
28 each of them knew wages to be due but failed to pay them, thus entitling plaintiff and the proposed class

1 to penalties under Labor Code §203, which provides that an employee's wages shall continue as a penalty  
2 until paid for a period of up to thirty (30) days from the time they were due.

3 48. Defendants have failed to pay plaintiff and others a sum certain at the time of termination  
4 or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30)  
5 days thereafter. Pursuant to the provisions of Labor Code §203, plaintiff and the proposed class entitled  
6 to penalties in the amount of plaintiff's and others' daily wage multiplied by thirty (30) days.

7 **IX**

8 **FIFTH CAUSE OF ACTION**

9 **PENALTIES PURSUANT TO LABOR CODE §2699**

10 49. Plaintiff incorporates paragraphs 1 through 48 as though fully set forth herein.

11 50. As a result of the acts alleged above, plaintiff seeks penalties under Labor Code §§2698  
12 and 2699 because of defendants' violation of Labor Code §§201, 202, 203, 226, 226.7, 510, 512, 558,  
13 1194, and 1199 which call for civil penalties.

14 51. For each such violation, plaintiff and the proposed class are entitled to penalties in an  
15 amount to be shown at the time of trial subject to the following formula:

16 a. For \$100 for the initial violation per employee per pay period

17 b. For \$200 for each subsequent violation per employee per pay period

18 52. These penalties shall be allocated 75% to the Labor and Workforce Development Agency  
19 and 25% to the affected employees.

20 53. Plaintiff sent a certified letter to the LDWA and defendants as prescribed by the code  
21 postmarked August 3, 2009. On August 28, 2009, plaintiff received a letter from the LWDA indicating  
22 that it does not intend to investigate the alleged Labor Code violations. Therefore, under Labor Code  
23 §2699.3(a)(2)(A), plaintiff may proceed and file a complaint for penalties pursuant to Labor Code §2699.

24 **X**

25 **SIXTH CAUSE OF ACTION**

26 **UNFAIR COMPETITION PURSUANT TO**

27 **BUSINESS & PROFESSIONS CODE §17200**

28 54. Plaintiff incorporates paragraphs 1 through 53 as though fully set forth herein.

1           55.     This is a Representative Private Attorney General Action and Class Action for Unfair  
2 Business Practices. Plaintiff **THOMAS STEPHENS** on his own behalf and on behalf of the general  
3 public, and on behalf of others similarly situated, brings this claim pursuant to Business & Professions  
4 Code §17200, et seq. The conduct of all defendants as alleged in this Complaint has been and continues  
5 to be unfair, unlawful, and harmful to plaintiff, the general public, and the proposed class. Plaintiff  
6 seeks to enforce important rights affecting the public interest within the meaning of Code of Civil  
7 Procedure §1021.5.

8           56.     Plaintiff is a "person" within the meaning of Business & Professions Code §17204, and  
9 therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate  
10 equitable relief.

11          57.     Business & Profession Code §17200, et seq. prohibits unlawful and unfair business  
12 practices.

13          58.     Wage and hour laws express fundamental public policies. Providing employees with  
14 wages and/or overtime for all hours worked, meal and/or rest breaks, and providing accurate itemized  
15 records are fundamental public policies of this State and of the United States. Labor Code §90.5(a)  
16 articulates the public policies of this State to enforce vigorously minimum labor standards, to ensure that  
17 employees are not required or permitted to work under substandard and unlawful conditions, and to  
18 protect law-abiding employers and their employees from competitors who lower their costs by failing  
19 to comply with minimum labor standards.

20          59.     Defendants have violated statutes and public policies. Through the conduct alleged in this  
21 Complaint, defendants, and each of them, have acted contrary to these public policies, have violated  
22 specific provisions of the Labor Code, and have engaged in other unlawful and unfair business practices  
23 in violation of Business & Profession Code §17200, et seq., depriving plaintiff, and all persons similarly  
24 situated, and all interested persons of rights, benefits, and privileges guarantees to all employees under  
25 law.

26          60.     Defendants' conduct, as alleged hereinabove, constitutes unfair competition in violation  
27 of §17200 et. seq. of the Business & Professions Code.

28          61.     Defendants by engaging in the conduct herein alleged, by not providing proper wages, and

1 breaks either knew or in the exercise of reasonable care should have known that the conduct was  
2 unlawful. As such it is a violation of §17200 et. seq. of the Business & Professions Code.

3 62. As a proximate result of the above mentioned acts of defendants, plaintiff and others  
4 similarly situated have been damaged in a sum as may be proven.

5 63. Unless restrained by this Court, defendants will continue to engage in the unlawful  
6 conduct as alleged above. Pursuant to Business & Professions Code this Court should make such orders  
7 or judgments, including the appointment of a receiver, as may be necessary to prevent the use or  
8 employment, by defendants, their agents or employees, of any unlawful or deceptive practice prohibited  
9 by the Business & Professions Code, and/or, including but not limited to, disgorgement of profits which  
10 may be necessary to restore plaintiff and the proposed class members to the money defendants have  
11 unlawfully failed to pay.

12  
13 **RELIEF REQUESTED**

14 **WHEREFORE**, plaintiff prays for the following relief:

- 15 1. For wages and/or overtime in an amount according to proof, with interest thereon;
- 16 2. For compensatory damages in the amount of plaintiff's and each class members' hourly  
17 wage for each meal period missed or taken late from at least four (4) years prior to the filing of this  
18 action to the present as may be proven;
- 19 3. For compensatory damages in the amount of plaintiff's and each class members' hourly  
20 wage for each shift where rest period(s) were missed from at least four (4) years prior to the filing of this  
21 action to the present as may be proven;
- 22 4. For penalties pursuant to Labor Code §203 for all employees who quit or were fired equal  
23 t. their daily wage times thirty (30) days;
- 24 5. For penalties pursuant to Labor Code §2699;
- 25 6. An award of prejudgment and post judgment interest;
- 26 7. An order enjoining defendant and its agents, servants, and employees, and all persons  
27 acting under, in concert with, or for it from failing to provide plaintiff and the class with proper wages  
28 and/or overtime, meal and rest breaks, and providing accurate itemized records pursuant to Labor Code

1 §§226(a), 226.7, 510, 512, and IWC 7-2001;

2 8. For restitution for unfair competition pursuant to Business & Professions Code §17200,  
3 including disgorgement or profits, in an amount as may be proven;

4 9. An award providing for payment of costs of suit;

5 10. An award of attorneys' fees; and

6 11. Such other and further relief as this Court may deem proper and just.

7  
8 **DEMAND FOR JURY TRIAL**

9 Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

10  
11 DATED: October 21, 2009

KINGSLEY & KINGSLEY, APC

12  
13 By: 

14 DARREN M. COHEN  
15 ATTORNEY FOR PLAINTIFFS  
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