

1 **MARLIN & SALTZMAN, LLP**
 Louis M. Marlin (SBN 54053)
 2 Dale A. Anderson (SBN 122104)
 3200 El Camino Real, Ste. 100
 3 Irvine, CA 92602
 Tel: (714) 669-4900 Fax: (714) 669-4750
 4 louis.marlin@marlinsaltzman.com
 danderson@marlinsaltzman.com

5 Attorneys for Plaintiff*
 6 *Additional plaintiff's counsel on following page

7 **SEYFARTH SHAW, LLP**
 Andrew M. Paley (SBN 149699)
 8 Sheryl L. Skibbe (SBN 199441)
 2029 Century Park East, Suite 3500
 9 Los Angeles, CA 90067
 Tel: (310) 277-7200 Fax: (310) 277-7100
 10 apaley@seyfarth.com
sskibbe@seyfarth.com

11 Attorneys for Defendants

12
 13 **UNITED STATES DISTRICT COURT**
 14 **IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA**

15 ARABELLA LEMUS, as an individual and)
 on behalf of all others similarly situated,)

16 Plaintiff,)

17 vs.)

18 H&R BLOCK TAX AND BUSINESS)
 SERVICES, INC., a Delaware corporation;)
 19 H&R BLOCK ENTERPRISES, INC., a)
 Missouri corporation; H&R BLOCK TAX)
 20 SERVICES, INC., a Missouri corporation;)
 H&R BLOCK SERVICES, INC., a Missouri)
 21 corporation; and DOES 1 through 50,)
 inclusive,)

22 Defendants.)
 23 _____)

Case No. CV-09-03179 SI
 The Honorable Susan Illston

**JOINT STIPULATION TO PERMIT
 PLAINTIFFS TO FILE THIRD
 AMENDED COMPLAINT**

Complaint Filed: June 9, 2009
 FAC Filed: July 8, 2009
 SAC Filed: October 8, 2009

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ADDITIONAL PLAINTIFF'S COUNSEL

MARLIN & SALTZMAN, LLP

Stanley Saltzman (SBN 90058)
Marcus Bradley (SBN 174156)
29229 Canwood St., Ste. 208
Agoura Hills, California 91301
Tel: (818) 991-8080 Fax: (818) 991-8081
ssaltzman@marlinsaltzman.com
mbradley@marlinsaltzman.com

DIVERSITY LAW GROUP, APC

Larry W. Lee (SBN 228175)
444 S. Flower Street
Citigroup Center, Suite 1370
Los Angeles, California 90071
Telephone: (213) 488-6555
lwlee@diversitylaw.com

LAW OFFICE OF SHERRY JUNG

Sherry Jung (SBN 234406) sherryj23@hotmail.com
448 S. Hill St., Suite 605
Los Angeles, California 90013
Telephone: (213)489-8900

1 The parties, by and through their counsel of record, hereby stipulate and agree as follows:

2 WHEREAS, on or about June 9, 2009, Plaintiff ARABELLA LEMUS ("Plaintiff") filed a
3 class action complaint against Defendants H&R Block Tax and Business Services, Inc., H&R Block
4 Enterprises, Inc., H&R Block Tax Services, Inc., and H&R Block Services, Inc. (collectively
5 "Defendants") in the Superior Court of California, County of San Francisco;

6 WHEREAS, on or about July 8, 2009, Plaintiff filed her First Amended Complaint against
7 Defendants in the Superior Court of California, County of San Francisco;

8 WHEREAS, H&R Block Tax and Business Services, Inc. and H&R Block Services, Inc.,
9 were the only Defendants who were served with the FAC;

10 WHEREAS, on or about July 13, 2009, H&R Block Tax and Business Services, Inc. filed
11 an Answer to Plaintiff's First Amended Complaint in the Superior Court of California, County of San
12 Francisco;

13 WHEREAS, on or about July 14, 2009, H&R Block Tax and Business Services, Inc. removed
14 the instant action to the United States District Court, Northern District;

15 WHEREAS, on or about October 8, 2009, Plaintiff filed her Second Amended Complaint
16 against Defendants in the United States District Court, Northern District of California;

17 WHEREAS, on or about November 11, 2009 H&R Block Enterprises, LLC filed an answer
18 to Plaintiff's Second Amended Complaint;

19 WHEREAS, on May 18, 2010 the Court ordered the parties to meet and confer by June 1,
20 2010 concerning reaching an agreement on Plaintiff filing a third amended complaint;

21 WHEREAS the parties, through their counsel of record, have met and conferred regarding
22 filing of a Third Amended Complaint, which includes the dismissal of H&r Block Tax and Business
23 Services, Inc., H&r Block Tax Services, Inc., and H&r Block Services, Inc. without prejudice;

24 WHEREAS a copy of Plaintiff's Third Amended Complaint is attached hereto as Exhibit "A";

25 IT IS HEREBY STIPULATED by the parties herein, through their counsel of record, as
26 follows:

27 1. Plaintiffs' Third Amended Complaint may be filed and is deemed served as of the
28 date the Court accepts this Stipulation and enters an order permitting the filing of the Third Amended

1 Complaint.

2 2. Plaintiffs' Third Amended Complaint will dismiss the H&R Block entities, with the
3 exception of H&R BLOCK ENTERPRISES, LLC (fka H&R BLOCK ENTERPRISES, INC., a
4 Missouri corporation), without prejudice. In the event that Plaintiffs believe that they have
5 uncovered evidence during the course of the litigation that would support a theory of liability against
6 any other H&R Block entity, Plaintiffs retain the right to move to include them in this action as Doe
7 defendants and defendants will not raise the issue of Plaintiff having previously dismissed any entity
8 as a defense to that motion. Defendant may raise any other opposition to Plaintiffs' motion to name
9 any H&R Block entity as a Doe defendant.

10 3. The parties agree that Plaintiffs' vacation pay claim raised in Plaintiffs' Third
11 Amended Complaint does not relate back to the original filing date, but does relate to the date the
12 court approves the stipulation to file the Third Amended Complaint.

13 4. Defendant shall have 20 days from the date the Court accepts this Stipulation to file
14 its answer to Plaintiffs' Third Amended Complaint

15 DATED: June 1, 2010

MARLIN & SALTZMAN, LLP



16
17 By: Dale A. Anderson
18 Dale A. Anderson, Esq.
Attorneys for Plaintiffs

19 DATED: June 1, 2010

SEYFARTH SHAW, LLP

20
21 By: /s/ Andrew Paley
22 Andrew Paley, Esq.
Attorneys for Plaintiffs and plaintiff class

23
24 I, Dale A. Anderson, attest that I have obtained concurrence from Andrew Paley in the filing
25 of this Stipulation. See N.D. Cal. General Order 45 § X(B).

26
27 Dale A. Anderson
Dale A. Anderson

28

EXHIBIT A

1 **MARLIN & SALTZMAN, LLP**
Louis M. Marlin (SBN 54053)
2 Dale A. Anderson (SBN 122104)
3200 El Camino Real, Ste. 100
3 Irvine California 92602
Tel: (714) 669-4900 Fax: (714) 669-4750
4 louis.marlin@marlinsaltzman.com
danderson@marlinsaltzman.com
5

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Larry W. Lee (SBN 228175) lwlee@diversitylaw.com
444 S. Flower Street
7 Citigroup Center, Suite 1370
Los Angeles, California 90071
8 Telephone: (213) 488-6555

9 Attorneys for Plaintiffs*
*Additional Counsel On Page Following Caption
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11

12 **UNITED STATES DISTRICT COURT**
13 **IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA**

14 ARABELLA LEMUS, MALVIN A. AYALA)
15 as individuals and on behalf of all others)
16 similarly situated,)

17 Plaintiffs,)

18 vs.)

19 H&R BLOCK ENTERPRISES, LLC (fka)
H&R BLOCK ENTERPRISES, INC., a)
20 Missouri corporation); and DOES 1 through)
50, inclusive,)

21 Defendants.)
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Case No. CV-09-03179 SI
The Honorable Susan Illston

CLASS ACTION

THIRD AMENDED COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF
FOR:

- (1) FAILURE TO TIMELY PAY EARNED WAGES IN VIOLATION OF LABOR CODE § 204
- (2) FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS IN VIOLATION OF LABOR CODE §226;
- (3) FAILURE TO REIMBURSE NECESSARY EXPENDITURES IN VIOLATION OF LABOR CODE § 2802;
- (4) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF LABOR CODE §510;
- (5) FAILURE TO PAY ALL WAGES DUE AT TIME OF TERMINATION OF EMPLOYMENT IN VIOLATION OF LABOR CODE § 203;

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(6) UNFAIR COMPETITION:
CALIFORNIA BUSINESS AND
PROFESSIONS CODE § 17200
ETC;

DEMAND FOR JURY TRIAL

Complaint Filed: June 9, 2009
FAC Filed: July 8, 2009
SAC Filed: October 8, 2009

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ssaltzman@marlinsaltzman.com
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LAW OFFICE OF SHERRY JUNG
Sherry Jung (SBN 234406) sherryj23@hotmail.com
448 S. Hill St., Suite 605
Los Angeles, California 90013
Telephone: (213)489-8900

1 Plaintiffs Arabella Lemus and Malvin A. Ayala (hereinafter referred to as "Plaintiffs"),
2 hereby submit their Class Action Complaint (Third Amended Complaint) against Defendants H&R
3 Block Enterprises, LLC (fka H&R Block Enterprises, Inc.) and Does 1-50 (hereinafter collectively
4 referred to as "Defendants") on behalf of themselves and the class of others similarly situated current
5 and former employees of Defendants for reimbursement of expenses, overtime and commission
6 wages owed, vacation wages owed, waiting time penalties and penalties for failure to keep accurate
7 records as follows.

8 INTRODUCTION

9 1. This matter is brought as a class action pursuant to California *Code of Civil*
10 *Procedure* section 382, on behalf of plaintiffs and the plaintiff class, which is defined more
11 specifically below, but which is comprised, generally, of all former and current non-exempt tax
12 preparers of defendant. The Class Period is from June 9, 2005, to the date judgment is rendered
13 herein.

14 2. Plaintiffs seek relief on behalf of themselves, and the members of the plaintiff class,
15 as a result of employment policies, practices and procedures, more specifically described below,
16 which violate the California *Labor Code*, and the orders and standards promulgated by the California
17 Department of Industrial Relations, Industrial Welfare Commission, and Division of Labor
18 Standards, and which have resulted in the failure of defendants to pay plaintiff and members of the
19 plaintiff class all wages and reimbursements due to them. Said employment policies, practices and
20 procedures are generally described as follows:

21 a. Defendants failed to timely pay plaintiffs and plaintiff class of all earned wages in
22 violation of *Labor Code* section 204;

23 b. Defendants failed to properly calculate and timely pay all overtime pay earned by
24 plaintiffs and the plaintiff class in violation of *Labor Code* section 1194

25 c. Defendants failed to provide plaintiffs and members of the plaintiff classes accurate
26 wage statements as required by *Labor Code* section 226;

27 d. Defendants failed to reimburse plaintiffs and members of the plaintiff class for all
28 necessary expenditures incurred by them in direct consequence of the discharge of their duties or in

1 obedience to the directions of defendants, in violation of *Labor Code* section 2802;

2 e. Defendants failed to pay plaintiffs and members of the Terminated Sub-Class all
3 wages due upon termination of their employment, in violation of *Labor Code* sections 201-203; and

4 f. Defendants failed to pay plaintiff Ayala and members of the Terminated Sub-Class
5 for unused vacation time at the time of termination, in violation of *Labor Code* section 227.3.

6 3. In addition, plaintiffs and members of the plaintiff class seek relief and damages for
7 defendants' violation, by way of the above-described conduct, of California's unfair competition laws
8 (*Business & Professions Code* § 17200, et.seq.), including the equitable remedies of declaratory
9 relief, disgorgement, accounting, and restitution.

10 **JURISDICTION AND VENUE**

11 4. Venue is proper because the Defendants do business in the State of California, they
12 did not list a principal place of business in California with the California Secretary of State, and their
13 principal place of business is outside of California.

14 5. This action was originally filed in the Superior Court for the State of California,
15 County of San Francisco and removed to this Court on July 13, 2009 under the Class Action Fairness
16 Act (28 U.S.C. §13332(d)(2)) and Diversity of Citizenship.

17 **THE PARTIES**

18 6. Plaintiff ARABELLA LEMUS was employed by defendants until on or about April
19 3, 2009. Plaintiff MALVIN A. AYALA was employed by defendants until on or about January
20 2010. Hereinafter both Plaintiff ARABELLA LEMUS and Plaintiff MALVIN A. AYALA may be
21 referred to jointly as "Plaintiffs."

22 7. Plaintiffs were each employed as a non-exempt employee in the position of a tax
23 preparer.

24 8. The members of the proposed class are likewise current and former employees of
25 defendants, employed by defendants within the state of California as non-exempt tax preparers.
26 Although the exact job titles may differ, all class members generally perform the same job duties,
27 which include those typically associated with assisting in the preparation and completion of annual
28 state and federal tax returns.

1 14. Plaintiffs, and the members of the plaintiff class are classified by defendant as non-
2 exempt employees, pursuant to the provisions of California *Labor Code*, and the orders and
3 standards promulgated by the California Department of Industrial Relations, Industrial Welfare
4 Commission, and Division of Labor Standards, including Wage Order 4-2001 (8 CCR § 11040). In
5 addition, said statutory provisions, wage orders, regulations and standards obligate the employer to
6 maintain accurate records of the hours worked by employees.

7 15. Plaintiffs and the members of the plaintiff class are each required to enter into written
8 employment agreements for each tax season they are employed by defendants. Generally, the
9 employment terms run from November of one year through the middle of April of the following year.
10 The employment agreements end, or terminate, generally around April 20.

11 16. The employment agreements for plaintiffs and the plaintiff class include, as part of
12 the agreed upon compensation, non-discretionary “additional compensation.” This “additional
13 compensation” includes monies to be paid based on services sold, monies to be paid for repeat
14 customers, specific tax plans sold, and other items. Defendants were able to, and in fact did,
15 calculate the amount of the additional compensation earned by the plaintiffs and members of the
16 plaintiff class each month and/or payperiod. Thus, at any time in the course of their employment,
17 plaintiffs and members of the plaintiff class could see exactly how much additional compensation
18 they had earned.

19 17. Despite the fact defendants were able to, and in fact did, calculate the amount of
20 additional compensation earned by plaintiffs and the plaintiff class on a continuing basis, defendants
21 violated *Labor Code* section 204 by not timely paying to plaintiffs and the plaintiff class the full
22 amount of wages, including overtime and additional compensation, owed to them. Rather than
23 paying plaintiffs and the members of the plaintiff class the earned additional compensation no later
24 than the payday for the next regular pay period, defendants waited until several weeks after the
25 employment of plaintiff and the plaintiff class terminated to pay the additional compensation earned.

26 18. As a condition of employment with defendants, plaintiffs and members of the plaintiff
27 class were required by defendants to pay for and take a tax preparation course provided by
28 defendants. Plaintiffs and members of the plaintiff class have not been reimbursed for the expenses

1 of these courses which were incurred at the direction and requirement of defendants.

2 19. Plaintiffs and members of the plaintiff class were, and are routinely provided wage
3 statements which do not truly and accurately reflect the number of hours worked by them, or the
4 wages due to them, including but not limited to, failing to reflect compensation due for the earned
5 commissions and bonuses for each pay period. During the Class Period, defendants have had a
6 consistent policy of failing to provide plaintiffs and members of the plaintiff class true and accurate
7 wage statements upon payment of wages, as required by California *Labor Code* section 226(a).

8 20. Plaintiffs and members of the plaintiff class, in addition to the agreed hourly rate,
9 earned additional compensation based on various factors outlined in their standard employment
10 agreement. Defendants did not timely and properly calculate the amount of additional overtime to
11 which Plaintiffs and the members of the plaintiff class were entitled based on the amount of
12 additional compensation earned. Specifically, defendants waited until several weeks after the
13 termination of the employment to calculate and pay adjusted overtime. In the process, defendants
14 utilized an improper format for calculating the additional overtime to which Plaintiffs and the
15 members of the plaintiff class were entitled. Consequently, defendants were untimely in the payment
16 of the adjusted overtime, and paid the wrong amount.

17 21. Plaintiffs and members of the Terminated Sub-Class, were routinely not paid, upon
18 termination of their annual employment, all wages due to them, in violation of California *Labor*
19 *Code* sections 201-203. Each year, the employment of plaintiffs and the plaintiff class terminates
20 on a specific date known in advance to Defendants based on the specific terms of the employment
21 agreements. Defendants are required under *Labor Code* section 203 to pay plaintiffs and members
22 of the plaintiff class, all wages due them on that termination date. Specifically, plaintiffs and
23 members of the Terminated Sub-Class were not paid for “additional compensation,” and the proper
24 calculation of overtime pay. During the Class Period, and continuing to the present, defendants have
25 had a consistent policy of failing to provide Plaintiffs and members of the Terminated Sub-Class all
26 wages due to them upon termination.

27 22. Plaintiff Ayala and members of the Terminated Sub-Class who earned vacation time,
28 whose employment with defendants was terminated during the Class Period, were routinely not paid,

1 upon termination, for earned and vested vacation and personal time, in violation of California *Labor*
2 *Code* section 227.3. During the Class Period, and continuing to the present, Defendants have had
3 a consistent policy of failing to pay members of the Terminated Sub-Class for earned and unused
4 vacation and personal time upon termination.

5 23. The wage and hour violations herein alleged were and are wilful and deliberate, and
6 were taken pursuant to, and resulted from defendants' policies, patterns and practices, which
7 defendants applied uniformly to plaintiffs and all members of the plaintiff class, and which have
8 resulted in the unjust enrichment of defendants at the expense of plaintiffs and members of the
9 plaintiff class.

10 24. As a direct result of the wage and hour violations herein alleged, plaintiffs and
11 members of the plaintiff class have suffered, and continue to suffer substantial losses related to the
12 use and enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in seeking
13 to compel defendants to fully perform their obligations under state law, all to their respective damage
14 in amounts according to proof at the time of trial.

15 25. Defendants committed the acts alleged herein knowingly and willfully, with the
16 wrongful and deliberate intention of injuring plaintiffs and members of the plaintiff class, from
17 improper motives amounting to malice, and in conscious disregard of plaintiffs' rights, and the rights
18 of the plaintiff class. Plaintiffs and members of the plaintiff class are thus entitled to recover
19 nominal, actual, compensatory, punitive, and exemplary damages in amounts according to proof at
20 time of trial.

21 26. Plaintiffs have complied, or are currently in the process of complying, with the
22 procedures for bringing suit specified in California *Labor Code* section 2699.3. By letters dated July
23 8, 2009, and on October 13, 2009, plaintiffs gave written notice by certified mail to the Labor and
24 Workforce Development Agency ("LWDA"), and Defendants, of the specific provisions of the *Labor*
25 *Code* alleged to have been violated, including the facts and theories to support the alleged violations.
26 On July 31, 2009, the Labor and Workforce Development Agency notified Plaintiff Lemus that it
27 did not intend to investigate the allegations of violations of the provisions of the *Labor Code* and
28 wage orders promulgated by the Industrial Welfare Commission.

1 **CLASS ACTION ALLEGATIONS**

2 27. Plaintiffs incorporate herein by reference the allegations set forth above in paragraphs
3 1 through 27.

4 28. Plaintiffs bring this action on behalf of themselves and all others similarly situated
5 as a class action, pursuant to California *Code of Civil Procedure* section 382. The class which
6 plaintiffs seek to represent is composed of, and defined as follows:

7 **Plaintiff Class:**

8 All non-exempt employees who were or are employed by defendants during
9 the Class Period in California as tax preparers.

10 **Terminated Sub-Class:**

11 All members of the Plaintiff Class whose employment ended during the Class
12 Period.

13 29. The Class Period is the period from June 9, 2005, through and including the date
14 judgment is rendered in this matter.

15 30. The class is so numerous that the individual joinder of all members is impracticable.
16 While the exact number and identification of class members are unknown to plaintiffs at this time
17 and can only be ascertained through appropriate discovery directed to defendants, plaintiffs are
18 informed and believe that the class includes potentially more than 5,000 members.

19 31. Common questions of law and fact exist as to all members of the class which
20 predominate over any questions affecting only individual members of the class. These common legal
21 and factual questions, which do not vary from class member to class member, and which may be
22 determined without reference to the individual circumstances of any class member, include, but are
23 not limited to, the following:

24 a. Whether plaintiffs and members of the proposed class are subject to and entitled to
25 the benefits of California wage and hour statutes;

26 b. Whether defendants failed to pay plaintiffs and the plaintiff class the full amount of
27 wages earned in the time frame required by *Labor Code* section 204;

28 c. Whether defendants failed to promptly pay compensation owing to plaintiffs and

1 members of the Terminated Sub-Class upon termination of their employment, in violation of *Labor*
2 *Code* sections 201-203;

3 d. Whether defendants failed to reimburse plaintiffs and plaintiff class for all necessary
4 expenditures incurred by them in direct consequence of the discharge of their duties or in obedience
5 to the directions of defendants, in violation of *Labor Code* section 2802;

6 e. Whether defendants maintained accurate records of the hours worked by employees;

7 f. Whether defendants failed to provide plaintiffs and members of the plaintiff class
8 with true and proper wage statements upon payment of wages, in violation of *Labor Code* section
9 226;

10 g. Whether defendants failed to compensate terminated employees for earned, but
11 unused vacation and personal time;

12 h. Whether plaintiffs and members of the plaintiff class sustained damages, and if so,
13 the proper measure of such damages, as well as interest, penalties, costs, attorneys' fees, and
14 equitable relief; and

15 . Whether defendants' conduct as alleged herein violates the Unfair Business Practices
16 Act of California, *Business & Professions Code* section 17200, et seq.

17 32. The claims of the named plaintiffs are typical of the claims of the members of the
18 proposed class. Plaintiffs and other class members sustained losses, injuries and damages arising
19 from defendants' common policies, practices, procedures, protocols, routines, and rules which were
20 applied to other class members as well as plaintiff. Plaintiffs seek recovery for the same type of
21 losses, injuries, and damages as were suffered by other members of the proposed class.

22 33. Plaintiffs are adequate representatives of the proposed class because they are members
23 of the class and their interests do not conflict with the interests of the members they seek to
24 represent. Plaintiffs have retained competent counsel, experienced in the prosecution of complex
25 class actions, and together plaintiffs and their counsel intend to prosecute this action vigorously for
26 the benefit of the class. The interests of the class members will fairly and adequately be protected
27 by plaintiffs and their attorneys.

28 34. A class action is superior to other available methods for the fair and efficient

1 adjudication of this litigation since individual litigation of the claims of all class members is
2 impracticable. It would be unduly burdensome to the courts if these matters were to proceed on an
3 individual basis, because this would potentially result in hundreds of individual, repetitive lawsuits.
4 Individual litigation presents the potential for inconsistent or contradictory judgments, and the
5 prospect of a "race to the courthouse," and an inequitable allocation of recovery among those with
6 equally meritorious claims. By contrast, the class action device presents far fewer management
7 difficulties and provides the benefit of a single adjudication, economics of scale, and comprehensive
8 supervision by a single court.

9 35. The various claims asserted in this action are additionally or alternatively certifiable
10 under the provisions of the California *Code of Civil Procedure* section 382 because:

11 a. The prosecution of separate actions by hundreds of individual class members would
12 create a risk of varying adjudications with respect to individual class members, thus establishing
13 incompatible standards of conduct for defendants, and

14 b. The prosecution of separate actions by individual class members would also create
15 the risk of adjudications with respect to them that, as a practical matter, would be dispositive of the
16 interest of the other class members who are not a party to such adjudications and would substantially
17 impair or impede the ability of such non-party class members to protect their interests.

18 **FIRST CAUSE OF ACTION**

19 **(Failure to Timely Pay Earned Wages in Violation of *Labor Code* § 204)**

20 **(By All Plaintiffs Against All Defendants)**

21 36. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 35 as though
22 fully set for herein.

23 37. At all times relevant herein, defendants were required to compensate plaintiffs and
24 members of the plaintiff class certain wages earned by them in addition to their stated hourly rate.
25 These additional wages include a percentage of the amount of products and/or services sold by the
26 Plaintiffs and members of the plaintiff class.

27 38. As a pattern and practice, defendants regularly failed to pay Plaintiffs and class
28 members additional wages earned by them until weeks after the termination of their employment.

1 51. At all times relevant herein, defendants were required to compensate their employees
2 proper overtime wages for overtime hours worked pursuant to California *Labor Code* section 1194.
3 plaintiffs and the Class were employed by defendants as non-exempt employees entitled to overtime
4 wages. During plaintiffs' employment with defendants, plaintiffs and the class worked overtime
5 hours. Specifically, plaintiffs and the class worked more than 8 hours in a workday and/or 40 hours
6 in a workweek, without being paid the proper amount of overtime pay.

7 52. During their employment with defendants, including during pay periods wherein
8 plaintiffs and the class worked overtime, plaintiffs and the class also earned non-discretionary
9 incentive pay (including but not limited to commissions/bonuses). Defendants did not properly and
10 timely calculate and/or factor such non-discretionary pay into plaintiffs' and class members' wages
11 for purposes of calculating overtime pay and, as such, owe plaintiffs and the class additional
12 overtime pay.

13 53. Plaintiffs are informed and believe and based thereon allege that defendants' policy
14 and practice of requiring overtime work and not paying for said work in accordance with the
15 overtime mandates of California law is, and at all times herein mentioned was, in violation of
16 California *Labor Code* section 1194 and California Industrial Welfare Commission wage order(s).
17 Defendants' employment policies and practices wrongfully and illegally failed to compensate
18 plaintiffs and the class for overtime compensation earned as required by California law.

19 54. The conduct of defendants and their agents and employees as described herein was
20 willful and intentional and part of a corporate policy and procedure and practice.

21 55. Plaintiffs are informed and believe and based thereon allege that defendants willfully
22 failed to pay employees proper compensation for all overtime hours worked at the appropriate rate
23 of overtime pay. Plaintiffs are informed and believe and based thereon allege that defendants'
24 willful failure to provide all overtime wages due and owing them upon separation from employment
25 results in a continued payment of wages up to thirty (30) days from the time the wages were due.

26 56. Such a pattern, practice and uniform administration of corporate policy regarding
27 illegal employee compensation as described herein is unlawful and creates an entitlement to recovery
28 by plaintiffs in a civil action, for the unpaid balance of the full amount of overtime premiums owing,

1 including interest thereon, penalties, attorney's fees, and costs of suit according to the mandate of
2 California *Labor Code* section 1194, *et seq.*

3 **FIFTH CAUSE OF ACTION**

4 **(Failure to Pay All Wages Due at Time of Termination**
5 **of Employment in Violation of *Labor Code* §§201- 203)**

6 **(By All Plaintiffs Against All Defendants)**

7 57. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 56 as though
8 fully set for herein.

9 58. At all times relevant herein, defendants were required to pay their employees all wages
10 owed in a timely fashion at the end of employment pursuant to California *Labor Code* sections 201
11 to 203.

12 59. As a pattern and practice, defendants regularly failed to pay plaintiffs and class
13 members their full and complete final wages at the time the employment of plaintiffs and plaintiff
14 class ended each year pursuant to *Labor Code* sections 201 to 203 and accordingly owe waiting time
15 penalties pursuant to *Labor Code* section 203. Additionally, defendants did not properly compute
16 overtime pay and adjustments and, therefore, did not provide full and complete payment. Further,
17 Defendants failed to include the full amount of any accrued vacation pay in final payment. Finally,
18 as a corporate pattern and practice, for class members who were terminated from their employment
19 during the middle of each tax season, such employees had their earned non-discretionary incentive
20 pay (including but not limited to bonuses/commissions) forfeited by defendants.

21 60. The conduct of defendants and their agents and employees as described herein was
22 willfully done in violation of plaintiffs and class members' rights, and done by managerial employees
23 of defendants.

24 61. Plaintiffs are informed and believe and based thereon allege defendants' willful failure
25 to pay wages due and owing them upon separation from employment results in a continued payment
26 of wages up to thirty (30) days from the time the wages were due. Therefore, plaintiffs and class
27 members who have separated from employment are entitled to compensation pursuant to *Labor Code*
28 section 203.

1 plaintiff class can be readily determined from defendants' records. The members of the proposed
2 class are entitled to restitution of monies due and obtained by defendants during the Class Period as
3 a result of defendants' unlawful and unfair conduct.

4 70. During the Class Period, defendants committed, and continue to commit acts of unfair
5 competition as defined by section 17200 et. seq. of the *Business & Professions Code*, by and among
6 other things, engaging in the acts and practices described above.

7 71. Defendants' course of conduct, acts, and practices in violation of the California law
8 as mentioned in each paragraph above constitutes a separate and independent violation of
9 section 17200 etc. of the *Business & Professions Code*.

10 72. The harm to plaintiffs and the members of the plaintiff class of being wrongfully
11 denied lawfully earned and unpaid wages outweighs the utility, if any, of defendants' policies and
12 practices and, therefore, defendants' actions described herein constitute an unfair business practice
13 or act within the meaning of *Business & Professions Code* section 17200.

14 73. Defendants' conduct described herein threatens an incipient violation of California's
15 wage and hour laws, and/or violates the policy or spirit of such laws, or otherwise significantly
16 threatens or harms competition.

17 74. Defendants' course of conduct described herein further violates *Business &*
18 *Professions Code* section 17200 in that it is fraudulent, improper, and unfair.

19 75. The unlawful, unfair, and fraudulent business practices and acts of defendants as
20 described herein above have injured plaintiffs and members of the plaintiff class in that they were
21 wrongfully denied the timely and full payment of wages due to them.

22 PRAYER FOR RELIEF

23 WHEREFORE, plaintiffs, on behalf of themselves, and on behalf of the members of the
24 plaintiff class, prays for judgment against defendants as follows:

- 25 1. For an order certifying the proposed class;
- 26 2. For nominal damages;
- 27 3. For compensatory damages;
- 28 4. For equitable relief in the nature of declaratory relief, restitution of all monies due to

1 plaintiffs and members of the plaintiff class, and disgorgement of profits from the unlawful business
2 practices of defendants, and accounting;

3 5. For penalties permitted by *Labor Code* section 201, 202, 203, 204, 210, 225.5, 223,
4 226, 226.3, 227.3, 450, 510, 512, 1194, 1194.2 and 2802;

5 6. For all penalties permitted by California's Private Attorney General's Act (PAGA),
6 *Labor Code* section 2698, et seq.;

7 7. For interest accrued to date;

8 8. For costs of suit and expenses incurred herein pursuant to *Labor Code* sections 218.5,
9 226 1194, 2699 and 2802;

10 9. For reasonable attorneys' fees pursuant to *Labor Code* sections 218.5, 226 and 1194;
11 and

12 10. For all such other and further relief that the Court may deem just and proper.

13 DATED: May , 2010

MARLIN & SALTZMAN, LLP

14
15 By: _____

Louis M. Marlin, Esq.

Dale A. Anderson, Esq.

Attorneys for Plaintiffs and plaintiff class

16
17
18 **DEMAND FOR JURY TRIAL**

19 Plaintiffs, for themselves and the class, hereby demand a jury trial.

20 DATED: May , 2010

MARLIN & SALTZMAN, LLP

21
22 By: _____

Louis M. Marlin, Esq.

Dale. A. Anderson, Esq.

Attorneys for Plaintiffs and plaintiff class