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SUPERIOR COURT
SAN DIEGO COUNTY, CA

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11 and the Plaintiff Classes

12 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **IN AND FOR THE COUNTY OF SAN DIEGO**

14 JOHN CHRISTMAN, STEVE WHITE)
15 individually, and on behalf of all others)
16 similarly situated,)

17 Plaintiffs,)

18 vs.)

19 GOOD GUYS, INC., and DOES 1)
20 through 25, inclusive,)

21 Defendants.)

Case No.: GIS21939

CLASS ACTION

**SECOND AMENDED COMPLAINT FOR
DAMAGES, INJUNCTIVE RELIEF AND
RESTITUTION**

22 Representative Plaintiffs allege as follows:

23 **PRELIMINARY STATEMENT**

24 1. This is a class action, under Code of Civil Procedure § 382, seeking unpaid wages,
25 including unpaid overtime compensation and interest thereon, rest and meal period penalties, waiting
26 time penalties, injunctive and other equitable relief and reasonable attorneys' fees and costs, under,
27 *inter alia*, California Code of Civil Procedure § 382, Labor Code §§ 201, 202, 203, 218.5, 221, 226,
28 226.7, , 400 to 410, 510, 512, 1174, 1194 and 3751, CCP § 1021.5 and Title 8 Cal. Code of Reg. §
11070, on behalf of Plaintiffs and all other persons who are or have been employed by defendant
GOOD GUYS, INC. and DOES 1 through 25, inclusive (collectively "GOOD GUYS") in any of
GOOD GUYS' retail stores in the State of California at any time after the commencement of the pay

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1 period including August 25, 2001 as an allegedly-overtime exempt salaried Assistant Manager, Sales
2 Manager and/or Store Manager and all other employees entitled to a bonus calculated to include
3 deductions for cash shortages, merchandise shortages and shrinkage, worker's compensation, tort
4 claims by non-employees, and/or other expenses and losses beyond the bonus recipients' control
5 and/or were not caused by the willful negligence, dishonest acts or gross negligence of the bonus
6 recipient. The Representative Plaintiffs, on behalf of themselves and the Class Members, also seek
7 injunctive relief and restitution of all benefits GOOD GUYS has enjoyed from its failure to pay
8 overtime compensation and wages under Business and Professions Code §§ 17200-17208.

9 2. The Class Periods are designated as the time from at least the commencement of the
10 pay period including August 25, 2001 through the trial date and each period is based upon the
11 allegation that these respective violations of California's wage and hour laws, as described more
12 fully below, have been ongoing since at least these dates. During the Class Periods, GOOD GUYS
13 has had a consistent policy of (1) permitting, encouraging, and/or requiring their allegedly-overtime
14 exempt salaried Assistant Managers, Sales Managers and Store Managers, including Representative
15 Plaintiffs and Class Members, to work in excess of eight hours per day and in excess of forty hours
16 per week without paying them overtime compensation as required by California state wage and hour
17 laws; (2) unlawfully denying the Representative Plaintiffs and the Class Members statutorily-
18 mandated meal and rest periods; (3) willfully failing to pay compensation (including unpaid
19 overtime) owing in a prompt and timely manner to the Representative Plaintiffs and/or those Class
20 Members whose employment with GOOD GUYS terminated; (4) willfully failing to provide
21 Plaintiffs and the Class Members with accurate semimonthly itemized statements of the total number
22 of hours each of them worked, the applicable deductions and the applicable hourly rates in effect
23 during the pay period; and (5) willfully paying its employees, including Representative Plaintiffs,
24 a bonus calculated to include deductions for cash shortages, merchandise shortages and shrinkage,
25 worker's compensation, tort claims by non-employees, and other expenses and losses beyond the
26 bonus recipients' control and/or were not caused by the willful negligence, dishonest acts or gross
27 negligence of the bonus recipient.

28 ///

INTRODUCTION

1
2 3. Nearly a hundred years ago, California enacted its first daily overtime law, thereby
3 setting California's first workday standard, long before the federal government enacted overtime
4 protections for workers.

5 4. According to findings of the California Legislature, numerous studies have linked
6 long work hours to increased rates of accident and injury and a loss of family cohesion when either
7 or both parents are kept away from home for extended periods of time, on either a daily or weekly
8 basis.

9 5. Since its inception, defendant GOOD GUYS has offered a wide range of merchandise
10 to the public, including televisions, video recorders, stereos and other electronics and entertainment
11 items. Representative Plaintiffs are informed and believe and, based thereon, allege that, within the
12 class period, GOOD GUYS has operated numerous retail stores throughout the State of California.
13 In so doing, GOOD GUYS has employed hundreds, if not thousands, of individuals in recent years
14 alone in salaried Assistant Manager, Sales Manager and Store Manager positions, employment
15 positions which have not and currently do not meet the test for exemption from the payment of
16 overtime and other legally mandated wages.

17 6. Despite actual knowledge of these facts and legal mandates, GOOD GUYS has
18 enjoyed an advantage over its competition and a resultant disadvantage to its workers by electing to
19 deduct business expenses from the bonus wages earned by its employees, to not pay premium
20 (overtime) and/or "penalty" (a.k.a. "waiting time") wages to Assistant Managers, Sales Managers
21 and Store Managers nor provide them with statutorily-mandated meal and rest periods or accurate
22 and complete semimonthly itemized statements.

23 7. Representative Plaintiffs are informed and believe and, based thereon, allege that
24 officers of GOOD GUYS knew of these facts and legal mandates, yet, nonetheless, repeatedly
25 authorized and/or ratified the violation of the laws cited herein.

26 8. Despite GOOD GUYS' knowledge of the Plaintiff Class' entitlement to premium
27 (overtime) pay for excess hours worked and to meal and rest periods, GOOD GUYS failed to
28 provide or require the use, maintenance or submission of accurate and complete time records by

1 members of the Plaintiff Classes, in violation of California Labor Code §1174[d]). This action is
2 brought to redress and end this long-time pattern of unlawful conduct.

3
4 **JURISDICTION AND VENUE**

5 9. This Court has jurisdiction over Representative Plaintiffs' and Class Members' claims
6 for unpaid overtime wages under Labor Code § 1194, for bonus wages under Labor Code § 221, for
7 penalties for failure to provide meal and rest periods under Labor Code §§ 226.7 and 512, for
8 penalties for failure to pay wages of discharged employees under Labor Code § 203 and for penalties
9 for failure to provide itemized statements of actual hours worked and all applicable hourly rates
10 under Labor Code § 226.

11 10. This Court has jurisdiction over Representative Plaintiffs' and Class Members' claims
12 for injunctive relief, and restitution of ill-gotten benefits arising from defendant GOOD GUYS'
13 unlawful business practices under Business & Professions Code §§ 17203 and 17204.

14 11. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
15 Civil Procedure § 395(a). Defendant GOOD GUYS operates retail stores in San Diego County, and
16 transacts business, has agents, and is otherwise within this Court's jurisdiction for purposes of
17 service of process. The unlawful acts alleged herein have a direct effect on Representative Plaintiffs
18 and those similarly situated within the State of California and within San Diego County. Defendant
19 GOOD GUYS operates said retail stores and has employed numerous Class Members in San Diego
20 County.

21
22 **PLAINTIFFS**

23 12. During a portion of the herein-relevant time period, the Representative Plaintiffs
24 identified herein were and are natural persons, and were, during the relevant time period identified
25 herein, employed by defendant GOOD GUYS as an allegedly-overtime-exempt salaried Assistant
26 Manager, Sales Manager and/or Store Manager, an employment position which was mis-classified
27 as salaried/exempt from overtime pay, and was paid a bonus which was calculated to include
28 deductions for losses beyond Plaintiffs' control.

1 13. As used throughout this Complaint, the terms "Plaintiffs" and/or "Class(es)" refer to
2 the named plaintiffs herein as well as each and every person eligible for membership in one or more
3 of the Plaintiff Classes, as further described and defined below.

4 14. The Plaintiff Classes consists, generally, of all members who are/were employed as
5 salaried Assistant Managers, Sales Managers and/or Store Managers of GOOD GUYS, and were
6 classified thereby as overtime-exempt employees, and all members who were employed by GOOD
7 GUYS and received a bonus which was calculated to include deductions for losses beyond the bonus
8 recipients' control, at any time between the commencement of the pay period including August 25,
9 2001 and the present.

10 15. At all times herein relevant, the Representative Plaintiffs were and now are persons
11 within the Classes of persons further described and defined herein.

12 16. The Representative Plaintiffs bring this action on behalf of themselves and as a class
13 action, pursuant to California Code of Civil Procedure §382, on behalf of all persons or entities
14 similarly situated and proximately damaged by the unlawful conduct described herein.

15
16 **DEFENDANTS**

17 17. At all times herein relevant, defendants GOOD GUYS, INC. and Does 1 through 25,
18 inclusive (collectively referred to as "GOOD GUYS" and/or "Defendant") were corporations, duly
19 licensed and located and doing business in, but not limited to, the County of San Diego, in the State
20 of California.

21 18. Those defendants identified as Does 1 through 25, inclusive, are and were, at all
22 relevant times herein-mentioned, officers, directors and/or managing agents of some/each of the
23 remaining defendants.

24 19. Representative Plaintiffs are unaware of the true names and capacities of those
25 defendants sued herein as Does 1 through 25, inclusive and, therefore, sues these defendants by such
26 fictitious names. Representative Plaintiffs will seek leave of court to amend this Complaint when
27 same are ascertained. Representative Plaintiffs are informed and believe and, on that basis, allege
28 that each of the fictitiously-named defendants is responsible in some manner for, gave consent to,

1 ratified and/or authorized the conduct herein alleged and that Representative Plaintiffs' and Class
2 Members' damages, as herein alleged, were proximately caused thereby.

3 20. Representative Plaintiffs are informed and believe and, on that basis, allege that, at
4 all relevant times herein mentioned, each of the defendants was the agent and/or employee of each
5 of the remaining defendants and, in doing the acts herein alleged, was acting within the course and
6 scope of such agency and/or employment.

7
8 **CLASS ACTION ALLEGATIONS**

9 21. Representative Plaintiffs JOHN CHRISTMAN and STEVE WHITE bring this action
10 on behalf of themselves and as a class action on behalf of all persons or entities similarly situated and
11 proximately damaged by GOOD GUYS' conduct as set forth herein, including, but not necessarily
12 limited to the following Classes:

13 Store Manager Class: All persons who are/were employed as a Store
14 Manager by Good Guys, Inc., in one or more of Good Guys, Inc.'s
15 California retail stores and who were classified as overtime-exempt
at any time between August 25, 2001 and the present.

16 Assistant Manager Class: All persons who are/were employed as an
17 Assistant Manager by Good Guys, Inc., in one or more of Good Guys,
Inc.'s California retail stores and who were classified as overtime-
exempt at any time between August 25, 2001 and the present.

18 Sales Manager Class: All persons who are/were employed as a Sales
19 Manager by Good Guys, Inc., in one or more of Good Guys, Inc.'s
20 California retail stores and who were classified as overtime-exempt
at any time between August 25, 2001 and the present.

21 Bonus Class: All persons who are/were employed in one or more of
22 Good Guys, Inc.'s California retail stores, who were entitled to
receive a bonus as a component of their regular compensation at any
time between August 25, 2001 and the present.

23 22. Defendants, their officers and directors are excluded from the Classes.

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

27 a. Numerosity: A class action is the only available method for
28 the fair and efficient adjudication of this controversy. The
members of the classes are so numerous that joinder of all

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members is impractical, if not impossible, insofar as Representative Plaintiffs are informed and believe and, on that basis, allege that the total membership in each class is in the hundreds to thousands of individuals. Membership in the Classes will be determined upon analysis of employee and payroll, among other, records maintained by GOOD GUYS.

b. Commonality: The Representative Plaintiffs and the Class Members share a community of interests in that there are numerous common questions and issues of fact and law which predominate over any questions and issues solely affecting individual members, including, but not necessarily limited to:

- i. whether defendant GOOD GUYS violated IWC Wage Orders and/or Labor Code § 510 by failing to pay overtime compensation to Assistant Managers, Sales Managers and Store Managers who worked in excess of forty hours per week and/or eight hours per day.
- ii. whether defendant GOOD GUYS violated Business and Professions Code § 17200 by failing to pay overtime compensation to Assistant Managers, Sales Managers and Store Managers who worked in excess of forty hours per week and/or eight hours per day.
- iii. whether defendant GOOD GUYS violated Labor Code §§ 226.7 and/or 512 by failing to consistently provide meal and rest periods to its Assistant Managers, Sales Managers and Store Managers.
- iv. whether defendant GOOD GUYS violated Labor Code § 1174 by failing to keep accurate records of employees' hours of work.
- v. whether defendant GOOD GUYS violated Labor Code §§ 201-203 by failing to pay overtime wages due and owing at the time that certain Class Members' employment with Defendant terminated.
- vi. whether defendant GOOD GUYS violated Labor Code § 226 by failing to provide the semimonthly itemized statements to Class Members of total hours worked by each and all applicable hourly rates in effect during the pay period.
- vii. whether Representative Plaintiffs and the Class are entitled to "waiting time" penalties, pursuant to Labor Code § 203.
- viii. whether defendant GOOD GUYS violated Labor Code § 221 or §§ 401 to 410 by paying employees a bonus calculated to include deductions for losses beyond the bonus recipients' control.

- 1 ix. whether defendant GOOD GUYS violated Title 8 Cal
- 2 Code of Reg. § 11070 by paying employees a bonus
- 3 calculated to include deductions for losses beyond the
- 4 bonus recipients' control.

- 5 x. whether defendant GOOD GUYS violated Labor
- 6 Code §3751 by paying employees a bonus calculated
- 7 to include deductions for worker's compensation
- 8 claims.

- 9 c. Typicality: The Representative Plaintiffs' claims are typical
- 10 of the claims of the Classes. The Representative Plaintiffs
- 11 and all members of the Classes sustained injuries and
- 12 damages arising out of and caused by defendant GOOD
- 13 GUYS' common course of conduct in violation of law, as
- 14 alleged herein.

- 15 d. Superiority of Class Action: Since the damages suffered by
- 16 individual Class Members, while not inconsequential, may be
- 17 relatively small, the expense and burden of individual
- 18 litigation by each member makes or may make it impractical
- 19 for members of the Classes to seek redress individually for the
- 20 wrongful conduct alleged herein. Should separate actions be
- 21 brought or be required to be brought by each individual
- 22 member of the Classes, the resulting multiplicity of lawsuits
- 23 would cause undue hardship and expense for the Court and
- 24 the litigants. The prosecution of separate actions would also
- 25 create a risk of inconsistent rulings, which might be
- 26 dispositive of the interests of other Class Members who are
- 27 not parties to the adjudications and/or may substantially
- 28 impede their ability to adequately protect their interests.

- e. Adequacy of Representation: The Representative Plaintiffs
- in this class action are adequate representatives of the Classes,
- in that the Representative Plaintiffs' claims are typical of
- those of the Classes and the Representative Plaintiffs have the
- same interests in the litigation of this case as the Class
- Members. The Representative Plaintiffs are committed to
- vigorous prosecution of this case, and has retained competent
- counsel, experienced in litigation of this nature. The
- Representative Plaintiffs are not subject to any individual
- defenses unique from those conceivably applicable to the
- Classes as a whole. The Representative Plaintiffs anticipate
- no management difficulties in this litigation.

COMMON FACTUAL ALLEGATIONS

24. As described herein, GOOD GUYS has, for years, knowingly failed to adequately compensate Assistant Managers, Sales Managers and Store Managers within the class definition identified above for premium (overtime) wages due and for bonus wages earned, thereby enjoying a significant competitive edge over other retail store chains. Even upon termination or resignation

1 of the employment of numerous class members, GOOD GUYS has declined to pay these wages, in
2 blatant violation of California Labor Code §§ 201 and/or 202.

3 25. Furthermore, despite its knowledge of the Representative Plaintiffs' and the Class
4 Members' entitlement to premium (overtime) pay for excess hours worked, GOOD GUYS violated
5 California Labor Code §1174[d] by failing to provide or require the use, maintenance or submission
6 of time records by members of the Plaintiff Class. GOOD GUYS also failed to provide
7 Representative Plaintiffs and members of the Class with accurate semimonthly itemized statements
8 of the total number of hours worked by each and all applicable hourly rates in effect during the pay
9 period in violation of California Labor Code § 226. In so doing, GOOD GUYS has not only failed
10 to pay its workers the full amount of compensation due, it has, until now, effectively shielded itself
11 from its employees' scrutiny for its unlawful conduct by concealing the magnitude (i.e., the full
12 number of hours worked) and financial impact of its wrongdoing.

13 26. California Labor Code §§ 201 and 202 require defendant GOOD GUYS to pay its
14 employees all wages due immediately upon discharge. California Labor Code § 203 provides that,
15 if an employer willfully fails to timely pay such wages, the employer must, as a penalty, continue to
16 pay the subject employees' wages until the back wages are paid in full or until an action is
17 commenced. The penalty cannot exceed 30 days of wages.

18 27. Representative Plaintiffs and all persons similarly situated are entitled to unpaid
19 compensation, yet, to date, have not received such compensation. More than 30 days have passed
20 since certain class members have left defendant GOOD GUYS' employ.

21 28. As a consequence of defendant GOOD GUYS' willful conduct in not paying
22 compensation for all hours worked or bonus wages earned and not paying for denied meal and rest
23 periods, certain class members are entitled to 30 days wages as a penalty under Labor Code section
24 203, together with interest thereon and attorneys' fees and costs.

25 29. As a direct and proximate result of GOOD GUYS' unlawful conduct, as set forth
26 herein, Representative Plaintiffs and particular Class Members have sustained damages, as described
27 above, including, but not limited to a loss of earnings for hours of overtime worked on behalf of
28 Defendants and bonus wages owing from Defendants, in an amount to be established at trial. As a

1 further direct and proximate result of Defendant's unlawful conduct, as set forth herein, certain Class
2 Members herein are entitled to recover "waiting time" penalties/wages (pursuant to California Labor
3 Code § 203) and penalties for failure to provide semimonthly statements of actual hours worked and
4 all applicable hourly rates (pursuant to Labor Code § 226) in an amount to be established at trial.
5 As a further direct and proximate result of Defendant's unlawful conduct, as set forth herein,
6 Representative Plaintiffs and the Classes are also entitled to recover costs and attorneys' fees,
7 pursuant to statute.

8
9 **FIRST CAUSE OF ACTION**
10 **UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT**
11 **(California Business & Professions Code §§ 17200-17208)**

12 30. Representative Plaintiffs incorporate in this cause of action each and every allegation
13 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

14 31. Representative Plaintiffs further bring this cause of action on behalf of the general
15 public, seeking equitable and statutory relief to stop the misconduct of Defendant, as complained of
16 herein, and to seek restitution from Defendant through the unfair, unlawful and fraudulent business
17 practices described herein.

18 32. The knowing conduct of Defendant, as alleged herein, constitutes an unlawful and/or
19 fraudulent business practice, as set forth in California Business & Professions Code §§ 17200-17208.
20 Specifically, Defendant conducted business activities while failing to comply with the legal mandates
21 cited herein.

22 33. Defendant's knowing failure to adopt policies in accordance with and/or adhere to
23 these laws, all of which are binding upon and burdensome to Defendant's competitors, engenders
24 an unfair competitive advantage for Defendant, thereby constituting an unfair business practice, as
25 set forth in California Business & Professions Code §§ 17200-17208.

26 34. Defendant has clearly established a policy of accepting a certain amount of collateral
27 damage, as represented by the damages to Representative Plaintiffs and the Plaintiff Classes herein
28 alleged, as incidental to its business operations, rather than accept the alternative costs of full
compliance with fair, lawful and honest business practices ordinarily borne by responsible

1 competitors of Defendant and as set forth in legislation and the judicial record.

2
3 **SECOND CAUSE OF ACTION**
4 **UNLAWFUL FAILURE TO PAY REQUIRED OVERTIME**
5 **(California Labor Code § 510)**

6 35. Representative Plaintiffs incorporate in this cause of action each and every allegation
7 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

8 36. During the time period beginning as of the commencement of the pay period
9 including August 25, 2001 and continuing through the present, Representative Plaintiffs and the
10 Class Members worked in excess of eight hours in a workday and/or forty hours in a workweek. The
11 precise number of hours will be proven at trial.

12 37. During said time period, defendant GOOD GUYS refused to compensate
13 Representative Plaintiffs and the Class Members for some and/or all of the overtime wages earned
14 in violation of applicable Wage Order(s) and the California Labor Code.

15 38. During said time period, particular Class Members herein were employed by and were
16 thereafter terminated or resigned from their positions with GOOD GUYS, yet were not paid all
17 premium (overtime) and/or other wages due upon said termination or within seventy-two hours of
18 said resignation of employment therefrom. Said non-payment was the direct and proximate result
19 of a willful refusal to do so by Defendant.

20 39. At all relevant times, Defendant was aware of and was under a duty to comply with
21 various provisions of the California Labor Code. Some of these Labor Code provisions include(d):

- 22 a. Labor Code § 203: "If an employer willfully fails to pay, without
23 abatement or reduction, in accordance with Sections 201, 201.5, 202, and
24 205.5, any wages of an employee who is discharged or who quits, the wages
25 of the employee shall continue as a penalty from the due date thereof at the
26 same rate until paid or until an action therefor is commenced; but the wages
27 shall not continue for more than 30 days."
28 b. Labor Code § 226: "Every employer shall semimonthly or at the time of
each payment of wages, furnish each of his or her employees, either as a
detachable part of the check, draft, or voucher paying the employee's wages,
or separately when wages are paid by personal check or cash, an itemized
statement in writing showing . . . (2) total hours worked by the employee . .
. and (9) all applicable hourly rates in effect during the pay period and the
corresponding number of hours worked at each hourly rate by the employee."

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- c. Labor Code § 510: “Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day or work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee”
- d. Labor Code § 1194: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.
- e. Labor Code § 1198: “[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”
- f. Labor Code § 1199: “Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who . . . (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission. . . [or] (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.”

40. By refusing to compensate Representative Plaintiffs and the Class Members for overtime wages earned, Defendant violated those California Labor Code provisions cited herein, as well as various IWC Wage Order provisions.

41. As a direct and proximate result of Defendant’s unlawful conduct, as set forth herein, Representative Plaintiffs and the Class Members have sustained damages, including loss of earnings for hours of overtime worked on behalf of Defendant, in an amount to be established at trial. As a further direct and proximate result of Defendant’s unlawful conduct, as set forth herein, some Class Members are entitled to recover “waiting time” penalties/wages, in an amount to be established at trial, as well as costs and attorneys’ fees, pursuant to statute.

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE MEAL AND REST PERIODS
(California Labor Code §§ 226.7 and 512)

42. Representative Plaintiffs incorporate in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

1 43. California Labor Code § 512 provides:
2
3 An employer may not employ an employee for a work period of more
4 than five hours per day without providing the employee with a meal
5 period of not less than 30 minutes, except that if the total work period
6 per day of the employee is no more than six hours, the meal period
7 may be waived by mutual consent of both the employer and
8 employee. An employer may not employ an employee for a work
9 period of more than 10 hours per day without providing the employee
10 with a second meal period of not less than 30 minutes, except that if
11 the total hours worked is no more than 12 hours, the second meal
12 period may be waived by mutual consent of the employer and the
13 employee only if the first meal period was not waived.
14
15 44. At all relevant times, Defendant was aware of and was under a duty to comply with
16 California Labor Code § 512 as well as California Labor Code § 226.7.
17
18 45. Specifically, California Labor Code § 226.7 provides:
19
20 (a) No employer shall require any employee to work during any meal
21 or rest period mandated by an applicable order of the Industrial
22 Welfare Commission.
23
24 (b) If an employer fails to provide an employee a meal period or rest
25 period in accordance with an applicable order of the Industrial
26 Welfare Commission, the employer shall pay the employee one
27 additional hour of pay at the employee's regular rate of compensation
28 for each work day that the meal or rest period is not provided.

46. One or more Industrial Welfare Commission Wage Orders mandates that Defendant authorize and permit ten minutes of “net rest time” for every four hours of work “or major fraction thereof” for non-exempt employees such as Representative Plaintiffs and members of the Plaintiff Classes.

47. By failing to consistently provide meal and rest periods to Representative Plaintiffs and Class Members, Defendant violated these California Labor Code provisions.

48. As a direct and proximate result of Defendant’s unlawful conduct, as set forth herein, Representative Plaintiffs and the Class Members have sustained damages, including loss of earnings, in an amount to be established at trial. As a further direct and proximate result of Defendant’s unlawful conduct, as set forth herein, Representative Plaintiffs and the Class Members are entitled to recover various penalties, in an amount to be established at trial, as well as costs and attorneys’ fees, pursuant to statute.

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FOURTH CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
(California Labor Code § 226)

49. Representative Plaintiffs incorporate in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

50. California Labor Code § 226(a) provides:

Each employer shall semimonthly, or at the time of each payment of wages, furnish each of his or her employees either as a detachable part of the check, draft or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized wage statement in writing showing: (1) gross wages earned; (2) total number of hours worked by each employee whose compensation is based on an hourly wage; (3) all deductions; provided, that all deductions made on written orders of the employee may be aggregated and shown as one item; (4) net wages earned; (5) the inclusive date of the period for which the employee is paid; (6) the name of the employee and his or her social security number; and (7) the name and address of the legal entity which is the employer.

51. California Labor Code § 226(e) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

52. Representative Plaintiffs seek to recover actual damages (including prospective damages associated with filing restatements of earnings with taxing and/or other authorities), costs and attorneys' fees under this section on behalf of themselves and the Plaintiff Classes.

53. Defendant GOOD GUYS failed to provide timely, accurate and complete itemized wage statements to Representative Plaintiffs and the Plaintiff Classes in accordance with Labor Code § 226(a). Plaintiffs have suffered injuries due to this unlawful conduct insofar as they have lost use of the compensation due, were forced to bring this action to redress these violations, were forced to file inaccurate wage information with government agencies and, should this action be successful, may be required to restate earnings for prior years and/or incur time and costs in so doing.

54. None of the statements provided by Defendant has accurately reflected total number of hours worked, actual gross wages earned, net wages earned, or the appropriate deductions.

FIFTH CAUSE OF ACTION
UNLAWFUL DEDUCTIONS FROM EARNINGS
(California Labor Code §§ 221, 400 to 410, 3751; Title 8 Cal. Code Regs. § 11070)

55. Representative Plaintiffs incorporate in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

56. California Labor Code § 221 provides:

It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.

57. California Labor Code § 3751(a) provides:

No employer shall exact or receive from any employee any contribution, or make or take any deduction from the earnings of any employee, either directly or indirectly, to cover the whole or any part of the cost of compensation under this division.

58. Title 8 Cal. Code Regs. § 11070, subdivision 8 provides:

No employer shall make any deduction from the wage or require any reimbursement from an employee for any cash shortage, breakage, or loss of equipment, unless it can be shown that the shortage, breakage, or loss is caused by a dishonest or willful act, or by the gross negligence of the employee.

59. At all relevant times, Defendant was aware of and was under a duty to comply with California Labor Code §§ 221, 401-410 and 3751 as well as Title 8 Cal. Code Regs. § 11070.

60. Representative Plaintiffs and the Class Members were paid bonus wages that were and are calculated to include deductions for any cash shortages, merchandise shortages and shrinkage, worker's compensation, tort claims by non-employees, and other losses beyond the bonus recipients' control, and/or not caused by the willful negligence, dishonest acts or gross negligence of the bonus recipients' in violation of California law.

61. Through this method of compensation, Defendant wrongfully deducted and deducts expenses from the wages of its employees, including Representative Plaintiffs, which expenses the law requires to be borne by the defendant-employer.

62. As a direct and proximate result of the aforementioned acts, Defendant wrongfully retained and continues to retain wages earned by Representative Plaintiffs and the Class Members in an amount to be established at trial.

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RELIEF SOUGHT

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2 **WHEREFORE, the Representative Plaintiffs**, on behalf of themselves and the proposed
3 **Classes**, pray for judgment and the following specific relief against **Defendants, and each of them**,
4 jointly and separately, as follows:

5 1. For an Order certifying the proposed Classes and/or any other appropriate subclasses
6 under Code of Civil Procedure § 382;

7 2. That defendant GOOD GUYS is found to have violated the overtime and wage
8 provisions of the Labor Code as to the Representative Plaintiffs and the Classes;

9 3. That defendant GOOD GUYS is found to have violated Labor Code §§ 226.7 and 512
10 for willful failure to provide meal periods, including second meal periods and rest periods;

11 4. That defendant GOOD GUYS is found to have violated the record keeping provisions
12 of Labor Code §§ 226(a) and 1174(d) as to Representative Plaintiffs and the Classes and for willful
13 failure to provide accurate semimonthly itemized statements thereto;

14 5. That defendant GOOD GUYS is found to have violated Labor Code §§ 201 and 202
15 for willful failure to pay all compensation owed at the time of termination of employment to
16 particular members of the Plaintiff Classes;

17 6. That defendant GOOD GUYS is found to have violated Business and Professions
18 Code § 17200 by failing to pay Representative Plaintiffs and Class Members overtime compensation,
19 “waiting time” penalties and/or by failing to provide accurate and complete itemized wage
20 statements;

21 7. An award to Representative Plaintiffs and the Plaintiff Classes of damages for the
22 amount of unpaid overtime compensation, the amount of wage due as a result of Defendant’s failure
23 to provide meal and rest periods, the amount of prospective damages associated with filing
24 restatements of earnings with taxing and/or other authorities, and related damages, including interest
25 thereon, and penalties in an amount to be proven at trial;

26 8. That defendant GOOD GUYS be ordered to pay restitution to Representative
27 Plaintiffs and the Plaintiff Classes due to defendant GOOD GUYS’ unlawful activities, pursuant to
28 Business and Professions Code §§ 17200-08;

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9. That defendant GOOD GUYS further be enjoined to cease and desist from unlawful activities in violation of Business and Professions Code § 17200;

10. For all other Orders, findings and determinations identified and sought in this Complaint;

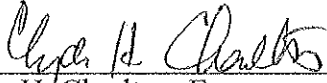
11. For Interest on the amount of any and all economic losses, at the prevailing legal rate;

12. For reasonable Attorneys' Fees, pursuant to California Labor Code §§218.5 and 1194 and/or California Civil Code §1021.5; and

13. For costs of suit and any and all such other relief as the Court deems just and proper.

Dated: March 28, 2006

SCOTT COLE & ASSOCIATES, APC

By: 
Clyde H. Charlton, Esq.

Attorneys for the Representative Plaintiffs
and the Plaintiff Classes