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Superior Court of California
County of Los Angeles

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11 Attorneys for Representative Plaintiffs
12 and the Plaintiff Class

13 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **IN AND FOR THE COUNTY OF LOS ANGELES**

15 CHRISTINA RENDON, and TRACI
16 STAMPS, individually and on behalf of
17 all others similarly situated,

18 Plaintiffs

19 vs.

20 PARTY CITY CORPORATION., and
21 DOES 1 through 100, inclusive,

22 Defendants.

Case No. **BC534864** BY FAX

CLASS ACTION

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

[Jury Trial Demanded]

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23 Representative Plaintiffs allege as follows:

24 PRELIMINARY STATEMENT

25 1. This is a class action seeking unpaid wages, including meal and rest period
26 compensation, interest thereon, and other penalties, injunctive and other equitable relief, and
27 reasonable attorneys' fees and costs under, *inter alia*, California Labor Code §§ 200-204, inclusive,
28 226, 226.7, 510, 512, 1174, 1194, 1198 and 2699, California Business and Professions Code §§
17200, *et seq.* and California Code of Civil Procedure § 1021.5. ("Plaintiffs") bring this action on
behalf of themselves and all other persons similarly situated ("Class Members" and/or the "Plaintiff
Classes") who are or have been employed by Defendant Party City Corporation and/or Does 1
through 100, inclusive (collectively "Defendant" and/or "Party City") as non-exempt retail store

1 employees, including as non-exempt managerial employees, within the State of California at any
2 time after January 30, 2010.

3 2. The “Class Period” is designated as the time from January 30, 2010 through the date
4 of trial and is based upon the allegation that Defendant’s violations of California’s wage and hour
5 laws, as described more fully below, have been ongoing during that time.

6 3. During the Class Period, Defendant has had a consistent policy of, *inter alia* (1)
7 requiring its non-exempt managerial employees to remain on-duty and under the control of Party
8 City during meal and/or rest periods, (2) willfully failing to provide meal periods and/or rest periods
9 to Plaintiffs and/or Class Members, (3) willfully failing to pay compensation owing in a prompt and
10 timely manner to Plaintiffs and/or Class Members whose employment with Party City has
11 terminated, and (4) willfully failing to provide Plaintiffs and Class Members with accurate
12 semimonthly itemized statements of the total number of hours each of them worked, the applicable
13 deductions, and the applicable hourly rates in effect during the pay period.

14
15 **INTRODUCTION**

16 4. Plaintiffs are informed and believe and, based thereon, allege that, within the Class
17 Period, Defendant Party City operated at least 100 retail establishments across the State of
18 California. In doing so, Party City has employed thousands of individuals in non-exempt retail
19 positions which are entitled to full, uninterrupted and statutorily-mandated meal and rest periods, as
20 well as other benefits of employment as set forth herein.

21 5. Despite actual knowledge of these facts and legal mandates, Party City has and
22 continues to enjoy an advantage over its competition and a resultant disadvantage to its workers by
23 electing not to sufficiently offer meal and rest periods to its California non-exempt retail employees,
24 and by not providing duty free and uninterrupted meal and rest periods to its California non-exempt
25 managerial employees.

26 6. Plaintiffs are informed and believe and, based thereon, allege that officers of Party
27 City knew of these facts and legal mandates yet, nonetheless, repeatedly authorized and/or ratified
28 the violation of the laws cited herein.

1 exercised control over the wages, hours, and/or working conditions of Plaintiffs and Class Members
2 at various California locations, as identified in the preceding paragraph.

3 20. Plaintiffs are unaware of the true names and capacities of those defendants sued
4 herein as Does 1 through 100, inclusive and, therefore, sues these Defendants by such fictitious
5 names. Plaintiff will seek leave of court to amend this Complaint when such names are ascertained.
6 Plaintiffs are informed and believe and, based thereon, allege that each of the fictitiously-named
7 defendants is/was responsible in some manner for, gave consent to, ratified, and/or authorized the
8 conduct herein-alleged and that Plaintiff's and Class Members' damages, as herein-alleged, were
9 proximately caused thereby.

10 21. Plaintiffs are informed and believe and, based thereon, allege that, at all relevant
11 times herein-mentioned, each of the Defendants was the agent and/or employee of each of the
12 remaining Defendants and, in doing the acts herein alleged, was acting within the course and scope
13 of such agency and/or employment.

14
15 **CLASS ACTION ALLEGATIONS**

16 22. Plaintiffs Christina Rendon and Traci Stamps bring this action on behalf of herself
17 and as a class action on behalf of the following Plaintiff Classes:

18 *Managerial Class: All persons who were employed as non-exempt managerial*
19 *employees by Party City Corporation, in one or more of Party City's California*
20 *retail stores between January 30, 2010 and the present.*

21 *Retail Class: All persons who are and/or were employed as non-exempt retail*
22 *employees by Party City Corporation, in one or more of Party City's California*
23 *retail stores between January 30, 2010 and the present.*

24 23. Defendants and their officers and directors are excluded from the Plaintiff Classes.

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

28 a. Numerosity: A class action is the only available method for the fair and
efficient adjudication of this controversy. The members of the Plaintiff
Classes are so numerous that joinder of all members is impractical, if not
impossible, insofar as Plaintiffs are informed and believe and, based thereon,

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allege that the total number of Class Members are, at least, in the hundreds of individuals. Membership in the Classes will be determined by and upon analysis of employee and payroll records, among other records maintained by Party City.

- b. Commonality: 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:
 - 1) Whether defendant Party City violated California Labor Code §§ 226.7 and/or 512 by failing to consistently provide duty-free meal periods and/or rest periods to its non-exempt retail employees;
 - 2) Whether defendant violated California Labor Code § 1174 by failing to keep accurate records of Class Members' hours of work;
 - 3) Whether defendant violated California Labor Code §§ 201-204 by failing to pay all wages due and owed during the pendency of employment and/or at the time of the termination of employment with Defendant of Plaintiffs and/or Class Members;
 - 4) Whether defendant violated California Labor Code § 226 by failing to provide Plaintiffs and the Class Members with semimonthly itemized statements including total hours worked and all applicable hourly rates in effect during the pay period; and
 - 5) Whether Party City violated Business and Professions Code §§ 17200, *et seq.* by engaging in unfair, unlawful and/or fraudulent business practices.
- c. Typicality: Plaintiffs' claims are typical of the claims of the Plaintiff Classes. Plaintiffs and all members of the Plaintiff Classes sustained damages arising out of and caused by Defendant's common course of conduct in violation of law, as alleged herein.
- d. Adequacy of Representation: Plaintiffs in this class action are adequate representatives of the Plaintiff Classes in that Plaintiffs' claims are typical of those of the Plaintiff Classes and Plaintiffs have the same interest in the litigation of this case as the Class Members. Plaintiffs are committed to vigorous prosecution of this case and has retained competent counsel who is experienced in conducting litigation of this nature. Plaintiffs are not subject to any individual defense unique from those conceivably applicable to Class Members as a whole. Plaintiffs anticipate no management difficulties in this litigation.
- e. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes or may make it impractical for members of the Plaintiff Classes to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought, or be required to be brought, by each individual member of the Plaintiff Classes, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings which might be dispositive of the interests of other Class Members who are not parties to the

1 adjudications and/or may substantially impede their ability to adequately
2 protect their interests.

3 **COMMON FACTUAL ALLEGATIONS**

4 25. Defendant has failed to provide Plaintiffs and the Plaintiff Classes with net ten
5 minute rest periods for work shifts exceeding four hours or a major fraction thereof, and has failed to
6 provide uninterrupted, unrestricted meal periods of at least 30 minutes for work shifts exceeding five
7 hours. In addition, Defendant failed to provide members of the Managerial Class, non-exempt
8 managerial employees, with duty-free, uninterrupted net ten minute rest periods for work shifts
9 exceeding four hours or a major fraction thereof, and duty-free, uninterrupted meal periods of at least
10 30 minutes for shifts lasting five hours or more. Defendant has declined to pay the wages due as a
11 result of these violations, even upon a Class Member's termination or resignation from employment,
12 in blatant violation of California Labor Code §§ 201-204, inclusive. More than 30 days has passed
13 since certain Class Members have left Defendant's employ.

14 26. Defendant also failed to provide Plaintiffs and Class Members with accurate
15 semimonthly itemized statements of the total number of hours worked by each, and all applicable
16 hourly rates in effect during each pay period, in violation of California Labor Code §§ 226 and/or
17 1174(d). In doing so, Defendant has not only failed to pay its workers the full amount of
18 compensation due, it has, until now, effectively shielded itself from its employees' scrutiny for its
19 unlawful conduct by concealing the magnitude (e.g., the full number of hours worked) and financial
20 impact of its wrongdoing.

21 27. As a direct and proximate result of Defendant's unlawful conduct, as set forth
22 herein, Plaintiffs and Class Members have sustained damages, as described above, including missed
23 meal periods, and missed rest periods, in an amount to be established at trial. As a further direct and
24 proximate result of Defendant's unlawful conduct, as set forth herein, Plaintiffs and Class Members
25 are entitled to recover penalties/wages for Defendant's failure to pay wages owed upon termination
26 (pursuant to California Labor Code §§ 201-204), and for Defendant's failure to provide semimonthly
27 itemized wage statements of hours worked and all applicable hourly rates (pursuant to California
28 Labor Code § 226) in an amount to be established at trial. As a further direct and proximate result of

1 Defendant’s unlawful conduct, as set forth herein, Plaintiffs and Class Members are also entitled to
2 recover attorneys’ fees, litigation costs, and restitution of ill-gotten gains, pursuant to statute.

3 28. Plaintiffs complied with the procedures for bringing suit specified in California Labor
4 Code § 2699.3. By letter dated January 30, 2014. Plaintiffs gave written notice, by certified mail, to
5 the Labor and Workforce Development Agency (“LWDA”) and Defendant of the specific provisions
6 of the California Labor Code alleged to have been violated, including the facts and theories to
7 support those violations.

8 **FIRST CAUSE OF ACTION**
9 **FAILURE TO PROVIDE MEAL AND REST PERIODS**
10 **(California Labor Code §§ 226.7 and 512)**

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

13 30. At all relevant times, Defendant was aware of and was under a duty to comply with
14 California Labor Code §§ 226.7 and 512.

15 31. California Labor Code §226.7 provides:

- 16 (a) No employer shall require any employee to work during any meal or
17 rest period mandated by an applicable order of the Industrial Welfare
18 Commission.
19 (b) If an employer fails to provide an employee a meal period or rest
20 period in accordance with an applicable order of the Industrial
21 Welfare Commission, the employer shall pay the employee one
22 additional hour of pay at the employee’s regular rate of compensation
23 for each work day that the meal or rest period is not provided.

24 32. Moreover, California Labor Code § 512 provides:

25 An employer may not employ an employee for a work period of more than
26 five hours per day without providing the employee with a meal period of not
27 less than 30 minutes, except that if the total work period per day of the
28 employee is no more than six hours, the meal period may be waived by
mutual consent of both the employer and employee. An employer may not
employ an employee for a work period of more than 10 hours per day without
providing the employee with a second meal period of not less than 30
minutes, except that if the total hours worked is no more than 12 hours, the
second meal period may be waived by mutual consent of the employer and
the employee only if the first meal period was not waived.

1 33. By failing to consistently provide uninterrupted and unrestricted meal and rest periods
2 to Class Members, Defendant violated California Labor Code §§ 226.7 and/or 512, and §§ 11 and 12
3 of the IWC Wage Order No. 7.

4 34. Section 11 of this Wage Order provides:

5 (A) No employer shall employ any person for a work period of more than five (5)
6 hours without a meal period of not less than 30 minutes

7 (B) An employer may not employ an employee for a work period of more than
8 ten (10) hours per day without providing the employee with a second meal
9 period of not less than 30 minutes

10 (C) If an employer fails to provide an employee a meal period in accordance with
11 the applicable provisions of this order, the employer shall pay the employee
12 one (1) hour of pay at the employee's regular rate of compensation for each
13 workday that the meal period is not provided.

14 35. Moreover, Section 12 of this Wage Order provides:

15 (A) Every employer shall authorize and permit all employees to take rest periods,
16 which insofar as practicable shall be in the middle of each work period. The
17 authorized rest period time shall be based on the total hours worked daily at
18 the rate of ten (10) minutes net rest time per four (4) hours or major fraction
19 thereof

20 (B) If an employer fails to provide an employee a rest period in accordance with
21 the applicable provisions of this order, the employer shall pay the employee
22 one (1) hour of pay at the employee's regular rate of compensation for each
23 workday that the rest period is not provided.

24 36. By failing to consistently (1) provide meal breaks within the first five hours of a
25 work shift, (2) provide uninterrupted thirty-minute meal periods, and/or (3) authorize and permit ten-
26 minute rest periods to Class Members, Defendant violated California's Labor Code and §§ 11 and 12
27 of IWC Wage Order No. 7.

28 37. Party City refuses to provide these employees with one hour of compensation for
these respective violations as mandated by California law. Plaintiffs are informed and believe and,
based thereon, allege that Defendant has never paid the one hour of compensation to any Class
Member.

38. As a direct and proximate result of Defendant's unlawful conduct, as set forth
herein, Plaintiffs and Class Members have sustained damages, including lost compensation resulting
from missed meal and/or rest periods, in an amount to be established at trial. As a further direct and

1 proximate result of Defendant’s unlawful conduct, as set forth herein, certain Class Members are
2 entitled to recover “waiting time” and other penalties, in an amount to be established at trial, as well
3 as attorneys’ fees, costs, and restitution, pursuant to statute.

4
5 **SECOND CAUSE OF ACTION**
6 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
7 **(California Labor Code §§ 226 and 1174)**

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

10 40. California Labor Code § 226(a) provides:

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

22 41. Moreover, California Labor Code § 226(e) provides:

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

42. Finally, California Labor Code § 1174(d) provides:

Every person employing labor in this state shall ... Keep, at a central
location in the state ... payroll records showing the hours worked daily by
and the wages paid to... employees.... These records shall be kept in
accordance with rules established for this purpose by the commission, but
in any case shall be kept on file for not less than two years.

43. Defendant has failed to provide timely, accurate itemized wage statements to
Plaintiffs and Class Members in accordance with California Labor Code § 226. Plaintiffs are
informed and believe and, based thereon, allege that none of the statements provided by Defendant

1 accurately reflected actual gross wages earned, net wages earned, or the appropriate deductions for
2 any Class Member.

3 44. As a direct and proximate result of Defendant’s unlawful conduct, as set forth
4 herein, Plaintiffs and the Plaintiff Classes are entitled to recover penalties, in an amount to be
5 established at trial, as well as attorneys’ fees and costs, pursuant to statute.

6 **THIRD CAUSE OF ACTION**
7 **FAILURE TO PAY WAGES ON TERMINATION**
8 **(California Labor Code § 203)**

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

11 46. California Labor Code §203 provides that:

12 If an employer willfully fails to pay, without abatement or
13 reduction, in accordance with Sections 201, 201.5, 202, and 205.5,
14 any wages of an employee who is discharged or who quits, the
15 wages of the employee shall continue as a penalty from the due date
16 thereof at the same rate until paid or until an action therefor is
17 commenced; but the wages shall not continue for more than 30
18 days.

19 47. Numerous Class Members were employed by Defendant during the Class Period
20 and were thereafter involuntarily terminated or voluntarily resigned from their positions, yet were
21 not paid all wages due upon said termination or within 72 hours of said resignation of employment
22 therefrom. Said non-payment was the direct and proximate result of a willful refusal to do so by
23 Defendant.

24 48. More than thirty days has elapsed since certain Class Members were involuntarily
25 terminated or voluntarily resigned from Defendant’s employ.

26 49. As a direct and proximate result of Defendant’s willful conduct in failing to pay
27 said Class Members for all hours worked, affected Class Members are entitled to recover “waiting
28 time” penalties of up to thirty days’ wages pursuant to California Labor Code §203 in an amount to
be established at trial, together with interest thereon, and attorneys’ fees and costs.

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1 **FOURTH CAUSE OF ACTION**
2 **UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT**
3 **(California Business & Professions Code §§ 17200-17208)**

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

6 51. Plaintiffs further bring this cause of action seeking equitable and injunctive relief to
7 stop Defendant's misconduct, as complained of herein, and to seek restitution of the amounts
8 Defendant acquired through the unfair, unlawful, and fraudulent business practices described herein.

9 52. Defendant's knowing conduct, as alleged herein, constitutes an unlawful and/or
10 fraudulent business practice, as set forth in California Business & Professions Code §§ 17200-
11 17208. Specifically, Defendant conducted business activities while failing to comply with the legal
12 mandates cited herein.

13 53. Defendant's knowing failure to adopt policies in accordance with and/or adhere to
14 these laws, all of which are binding upon and burdensome to its competitors, engenders an unfair
15 competitive advantage for Party City thereby constituting an unfair business practice under
16 California Business & Professions Code §§ 17200-17208.

17 54. Defendant has clearly established a policy of accepting a certain amount of collateral
18 damage, as represented by the damages to the Plaintiffs and to Class Members herein alleged, as
19 incidental to its business operations, rather than accept the alternative costs of full compliance with
20 fair, lawful, and honest business practices, ordinarily borne by its responsible competitors and as set
21 forth in legislation and the judicial record.

22 **FIFTH CAUSE OF ACTION**
23 **PRIVATE ATTORNEYS GENERAL ACT CLAIM**
24 **(California Labor Code §§ 2699)**

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

27 54. California Labor Code § 2699(a) states:

28 Notwithstanding any other provision of the law, any provision of this code
that provides for a civil penalty to be assessed and collected by the Labor
and Workforce Development Agency or any of its departments, divisions,
commissions, boards, agencies, or employees, for a violation of this code,

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may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees...

55. Plaintiffs (and each and every other Class Member) are “aggrieved employees,” as defined by California Labor Code § 2699(c), because they were employed by Defendant and were of many employees against whom violations of law were committed.

56. Plaintiffs have met and/or will meet all of the requirements set forth in California Labor Code § 2699.3 necessary to maintain a civil action against Defendants for violations of (and/or recovery under) California Labor Code §§ 200-204, inclusive, 226, 226.7, 510, 512, 1174, 1194, 1194.2, 1197, and/or 1198.

57. Plaintiffs bring this action on behalf of herself and all Class Members alleging violations of the California Labor Code sections cited in the preceding paragraphs.

58. As a direct and proximate result of Defendant’s unlawful conduct, as set forth herein, Plaintiffs and Class Members have sustained damages, including loss of earnings, in an amount to be established at trial.

59. As a further direct and proximate result of Defendant’s unlawful conduct, as set forth herein, Plaintiffs and Class Members are entitled to recover various penalties as provided by California Labor Code § 2699, in an amount to be established at trial, as well as costs and attorneys’ fees, pursuant to statute.

RELIEF SOUGHT

WHEREFORE, the Representative Plaintiffs, on behalf of herself and the proposed Plaintiff Classes, pray for judgment and the following specific relief against Defendants, and each of them, jointly and separately, as follows:

1. That the Court declare, adjudge, and decree that this action is a proper class action and certify the proposed Classes and/or any other appropriate subclasses pursuant to California Code of Civil Procedure § 382;

2. That the Court make an award to Plaintiffs and Class Members of one hour of wages at each employee’s regular rate of compensation for each duty-free, uninterrupted meal period that was not provided;

1 3. That the Court make an award to Plaintiffs and Class Members of one hour of wages
2 at each employee’s regular rate of compensation for each workday that a duty-free, uninterrupted
3 rest period was not provided;

4 4. That the Court declare, adjudge, and decree that Defendants violated the wage
5 provisions of the California Labor Code and the applicable California Industrial Welfare
6 Commission Wage Order as to Plaintiffs and Class Members;

7 5. That the Court make an award to Representative Plaintiffs and Class Members of civil
8 penalties specified in California Labor Code § 2699 for each violation of California Labor Code §§
9 201-203, inclusive, 226, 226.7, 512, and/or 1174.

10 6. That the Court order Defendant to pay restitution to Plaintiffs and Class Members due
11 to Defendant’s unlawful activities, pursuant to California Business and Professions Code §§ 17200-
12 17208;

13 7. That the Court further enjoin Defendant, ordering it to cease and desist from unlawful
14 activities in violation of California Business and Professions Code §§ 17200, *et seq.*;

15 8. For all other Orders, findings and determinations identified and sought in this
16 Complaint;

17 9. For interest on the amount of any and all economic losses at the prevailing legal rate;

18 10. For reasonable attorneys’ fees, pursuant to California Labor Code §§1194 and/or
19 California Code of Civil Procedure § 1021.5; and,

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

Dated: January 30, 2014

SCOTT COLE & ASSOCIATES, APC

By: 

Matthew R. Bainer, Esq.
Attorneys for Representative Plaintiffs and
the Plaintiff Class

JURY DEMAND

Plaintiffs and the Plaintiff Class hereby demand trial by jury of all issues triable as of right by jury.

Dated: January 30, 2014

SCOTT COLE & ASSOCIATES, APC

By: 

Matthew R. Bainer, Esq.
Attorneys for Representative Plaintiffs and
the Plaintiff Class