

EX-103

RIGHETTI GLUGOSKI, P.C.
MATTHEW RIGHETTI (State Bar No. 121012)
JOHN GLUGOSKI (State Bar No. 191551)
456 Montgomery Street, Suite 1400
San Francisco, California 94104
Telephone: (415) 983-0900
Facsimile: (415) 397-9005

Attorneys for Plaintiffs

AEGIS LAW FIRM, PC
KASHIF HAQUE, State Bar No. 218672
SAMUEL A. WONG, State Bar No. 217104
ALISON M. MICELI, State Bar No. 243131
8105 Irvine Center Drive, Suite 1070
Irvine, California 92618
Telephone: (949) 379-6250
Facsimile: (949) 379-6251

Attorneys for Plaintiffs

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

NOV 07 2012

John A. Clarke, Executive Officer/Clerk
By SHAUNYA WESLEY, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – CENTRAL DISTRICT

JANA MESTANEK, on her own behalf and
on behalf of all others similarly situated,

Plaintiffs,

vs.

SUNFLOWER FARMERS MARKETS,
LLC, a Delaware limited liability company;
and DOES 1 through 10, inclusive,

Defendants.

Case No.:

BC 495260

*Unlimited Civil – Amount Demanded Exceeds
\$25,000*

CLASS ACTION COMPLAINT FOR:

1. Unlawful Deductions;
2. Failure to Reimburse for Business Expenses;
3. Failure to Pay Wages Upon Separation of Employment;
4. Failure to Provide Accurate Itemized Wage Statements;
5. Violation of the Private Attorneys General Act (California Labor Code §§ 2698, *et seq.*); and
6. Violation of Business and Professions Code §§ 17200, *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff JANA MESTANEK ("Plaintiff" or "MESTANEK"), individually and on behalf of
2 all others similarly situated, alleges against Defendant SUNFLOWER FARMERS MARKETS,
3 LLC. and DOES 1 through 10, inclusive (collectively, "Defendants") as follows:

4 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

5 1. Plaintiff brings this putative class and representative action against Defendants on
6 behalf of herself individually and a purported class of non-exempt employees employed by
7 Defendants throughout California.

8 2. Defendants own and operate a network of specialty grocery stores in five states
9 throughout the country selling fresh foods, produce, healthy foods, vitamins and supplements.

10 3. Through this action, Plaintiff is alleging that Defendants have engaged in a
11 systematic pattern of wage and hour violations under the California Labor Code and Industrial
12 Welfare Commission ("IWC") Wage Orders, all of which contribute to Defendants' deliberate
13 unfair competition.

14 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have
15 increased their profits by violating state wage and hour laws by, among other things:

- 16 (a) Taking unlawful deductions;
17 (b) Failing to reimburse for business-related expenses;
18 (c) Failing to pay all wages due upon separation of employment; and
19 (d) Failing to provide accurate itemized wage statements.

20 5. Plaintiff brings this lawsuit seeking monetary and injunctive relief against
21 Defendants on behalf of herself and all others similarly situated in California to recover, among
22 other things, unpaid wages and benefits, interest, attorney's fees, costs and expenses and penalties
23 pursuant to Labor Code §§ 201, 202, 203, 221, 224, 226, 2698, *et seq.* and 2802.

24 **JURISDICTION AND VENUE**

25 6. This is a class action pursuant to California Code of Civil Procedure § 382. The
26 monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional limits of
27 the Superior Court and will be established according to proof at trial. Based on information,
28 investigation and analysis, Plaintiff alleges that the amount in controversy, including claims for

1 monetary damages, restitution and attorney's fees is less than seventy-five thousand dollars
2 (\$75,000) and that the aggregate amount in controversy for the proposed class action, including
3 monetary damages, restitution, injunctive relief and attorney's fees is less than five million dollars
4 (\$5,000,000).

5 7. This Court has jurisdiction over this action pursuant to the California Constitution,
6 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those
7 given by statutes to other courts. The statutes under which this action is brought do not specify any
8 other basis for jurisdiction.

9 8. This Court has jurisdiction over all Defendants because, upon information and
10 belief, each party is either a citizen of California, has sufficient minimum contacts in California or
11 otherwise intentionally avails itself of the California market so as to render the exercise of
12 jurisdiction over it by the California courts consistent with traditional notions of fair play and
13 substantial justice.

14 9. Venue is proper in this Court because, upon information and belief, one or more of
15 the named Defendants resides, transacts business or has offices in this county and the acts and
16 omissions alleged herein took place in this county.

17 **THE PARTIES**

18 10. Plaintiff JANA MESTANEK is, and at all relevant times herein, has been an
19 individual residing in California.

20 11. Plaintiff is informed and believes, and thereon alleges, that SUNFLOWER
21 FARMERS MARKETS, LLC was and is a Delaware limited liability company doing business in
22 California and, at all times hereinafter mentioned, was an employer as defined in and subject to the
23 Labor Code and IWC Wage Orders, whose employees are engaged throughout this county and the
24 State of California.

25 12. Plaintiff is unaware of the true names or capacities of the Defendants sued herein
26 under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the
27 Complaint and serve such fictitiously named Defendants once their names and capacities become
28 known.

13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 are the partners, agents, owners, shareholders, managers or employees of Defendants at all relevant times.

14. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES 1 through 10, acting as the agent or alter ego for the other, with legal authority to act on the other's behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

15. At all relevant times, Defendants, and each of them, acted within the scope of such agency or employment, or ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

16. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in some manner intentionally, negligently or otherwise responsible for the acts, omissions, occurrences and transactions alleged herein.

CLASS ALLEGATIONS

17. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of herself and all others similarly situated who were affected by Defendants' Labor Code, Business and Professions Code §§ 17200 and IWC Wage Order violations.

18. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

19. Plaintiff's proposed class consists of and is defined as follows: All current and former non-exempt employees employed by Defendants in California within four years prior to the filing of the Complaint to the present and continuing.

20. Members of the class described above will collectively be referred to as “class members.” Plaintiff reserves the right to re-define the above class and add subclasses as appropriate based on investigation, discovery and specific theories of liability.

21. There are common questions of law and fact as to the class that predominate over

1 any questions affecting only individual members including, but not limited to:

- 2 a. Whether Defendants withheld any portion of Plaintiff and class members'
3 wages without their written authorization for such deductions;
- 4 b. Whether Defendants failed to reimburse Plaintiff and class members for all
5 necessary business expenses incurred in direct consequence of their duties;
- 6 c. Whether Defendants failed to timely pay all wages due to Plaintiff and
7 former class members upon termination or within 72 hours of resignation;
- 8 d. Whether Defendants failed to provide accurate itemized wage statements to
9 Plaintiff and class members; and
- 10 e. Whether Defendants engaged in unfair business practices in violation of
11 Business and Professions Code §§ 17200, *et seq.*

12 22. There is a well-defined community of interest in this litigation and the class is
13 readily ascertainable:

- 14 a. Numerosity: The members of the class are so numerous that joinder of all
15 members is impractical. Although the members of the entire class are
16 unknown to Plaintiff at this time, on information and belief, the class is
17 estimated to be greater than one hundred (100) individuals. The identity of
18 the class is readily ascertainable by inspection of Defendants' employment
19 and payroll records.
- 20 b. Typicality: The claims (or defenses, if any) of Plaintiff are typical of the
21 claims (or defenses, if any) of the class because Defendants' failure to
22 comply with the provisions of California wage and hour laws entitle each
23 class member to similar pay, benefits and other relief. The injuries sustained
24 by Plaintiff are also typical of the injuries sustained by the class because they
25 arise out of and are caused by Defendants' common course of conduct as
26 alleged herein.
- 27 c. Adequacy: Plaintiff will fairly and adequately represent and protect the
28

1 interests of all members of the class because it is in her best interests to
2 prosecute the claims alleged herein to obtain full compensation and penalties
3 due her and the class. Plaintiff's attorneys, as proposed class counsel, are
4 competent and experienced in litigating large employment class actions and
5 versed in the rules governing class action discovery, certification and
6 settlement. Plaintiff has incurred and, throughout the duration of this action,
7 will continue to incur attorney's fees and costs that have been and will be
8 necessarily expended for the prosecution of this action for the substantial
9 benefit of each class member. Plaintiff has no interests that are adverse to
10 the interests of the class.

11 d. Superiority: The nature of this action makes the use of class action
12 adjudication superior to other methods. A class action will achieve
13 economies of time, effort and expense as compared with separate lawsuits,
14 and will avoid inconsistent outcomes because the same issues can be
15 adjudicated in the same manner and at the same time for the entire class. If
16 appropriate this Court can, and is empowered to, fashion methods to
17 efficiently manage this case as a class action.

18 e. Public Policy Considerations: Employers in the State of California violate
19 employment and labor laws every day. Current employees are often afraid to
20 assert their rights out of fear of direct or indirect retaliation. Former
21 employees are fearful of bringing actions because they believe their former
22 employers might damage their future endeavors through negative references
23 and/or other means. Class actions provide the class members who are not
24 named in the Complaint with a type of anonymity that allows for the
25 vindication of their rights at the same time as affording them privacy
26 protections.

27
28 **GENERAL ALLEGATIONS**

1 23. At all relevant times mentioned herein, Defendants employed Plaintiff and other
2 persons as non-exempt hourly employees.

3 24. Defendants employed Plaintiff in a non-exempt, hourly paid position at Defendants'
4 Orange County, California business location from approximately January 23, 2012 until June 15,
5 2012 as a clerk. Plaintiff's job duties included, among other things, providing customer service,
6 stocking and rotating merchandise and facing product according to department procedure,
7 maintaining back-stock areas according to department standards, assisting with training other staff
8 as needed and handling closing duties.

9 25. Defendants continue to employ non-exempt hourly employees within California.

10 26. Plaintiff is informed and believes, and thereon alleges, that at all times herein
11 mentioned, Defendants were advised by skilled lawyers, employees and other professionals who
12 were knowledgeable about California wage and hour laws, employment and personnel practices
13 and the requirements of California law.

14 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that they could not lawfully collect or receive any part of wages previously paid
16 to Plaintiff and class members without the express written authorization of Plaintiff and class
17 members. In violation of the Labor Code, Plaintiff and class members experienced unlawful wage
18 deductions.

19 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and class members were entitled to receive full reimbursement for
21 all business-related expenses and costs they incurred during the course and scope of their
22 employment. In violation of the Labor Code, Plaintiff and class members did not receive full
23 reimbursement for all applicable business-related expenses and costs they incurred.

24 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and former class members were entitled to timely payment of
26 wages upon separation of employment. In violation of the Labor Code, Plaintiff and former class
27 members were not reimbursed for unlawfully deducted wages, within permissible time periods.

28 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and class members were entitled to receive itemized wage
2 statements that accurately showed all deductions in accordance with California law. In violation of
3 the Labor Code, Plaintiff and class members were not provided with accurate itemized wage
4 statements.

5 31. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
6 herein, Defendants knew or should have known that they had a duty to compensate Plaintiff and
7 class members, and that Defendants had the financial ability to pay such compensation but
8 willfully, knowingly and intentionally failed to do so all in order to increase Defendants' profits.

9 **FIRST CAUSE OF ACTION**

10 **UNLAWFUL DEDUCTIONS**

11 (Violation of California Labor Code §§ 221 and 224; Violation of IWC Wage Order §9)
12 (Alleged by Plaintiff Individually and On Behalf of All Other Aggrieved Employees,
Against All Defendants)

13 32. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 31,
14 inclusive, as though fully set forth herein.

15 33. Labor Code § 221 provides that it is unlawful for any employer to collect or receive
16 from an employee any part of wages theretofore paid by said employer to said employee.

17 34. Labor Code § 224 provides that it is unlawful to withhold a portion of the
18 employee's wages if "a deduction is expressly authorized in writing by the employee."

19 35. Section 9 of the applicable IWC Wage Order states that when uniforms are required
20 by the employer to be worn by the employee as a condition of employment, such uniforms shall be
21 provided and maintained by the employer.

22 36. Defendants required all of its non-exempt hourly employees to dress in appropriate
23 attire for the performance of their job. The "Guidelines to Sprouts Policies" provides as follows:
24 "Sprouts provides employees with 2 uniform shirts upon hire, then 2 new shirts each anniversary
25 year. You may purchase a Sprouts sweatshirt or jacket."

26 37. Defendants employed systematic class-wide policies and practices to order these
27 uniforms for Plaintiff and class members, which resulted in deductions of a portion of Plaintiff and
28 class members' wages previously paid to them. Specifically, Defendants used management

1 employees to instruct Plaintiff and class members to order uniforms from a flier and price sheet and
2 then Defendants unlawfully deducted the cost of these uniforms from their paychecks. For
3 example, Plaintiff had "Uniforms" listed as a line-item deduction on her paystubs in the amounts of
4 \$14.95 and \$19.95, for a total Uniform deduction of \$34.90. The specific amounts of such
5 deductions were not expressly authorized in writing by Plaintiff or class members. Defendants
6 have failed to reimburse Plaintiff and class members for these unlawfully deducted wages.

7 38. Defendants' conduct as alleged herein violates Labor Code §§ 221 and 224.

8 39. Plaintiff and class members are entitled to recover all unlawfully deducted wages,
9 and such general and special damages as may be appropriate, as well as interest on all due and
10 unpaid wages.

11 **SECOND CAUSE OF ACTION**

12 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

13 (Violation of California Labor Code § 2802; Violation of IWC Wage Order § 9)
14 (Alleged by Plaintiff Individually and On Behalf of All Other Aggrieved Employees,
Against All Defendants)

15 40. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 39,
16 inclusive, as though fully set forth herein.

17 41. Labor Code § 2802 provides that an employer shall indemnify his or her employee
18 for all necessary expenditures or losses incurred by the employee in direct consequence of the
19 discharge of his or her duties.

20 42. Defendants required all of their non-exempt hourly employees to dress in
21 appropriate attire for the performance of their job. The "Guidelines to Sprouts Policies" provides
22 as follows: "Sprouts provides employees with 2 uniform shirts upon hire, then 2 new shirts each
23 anniversary year. Slip resistant shoes must be worn for safety reasons."

24 43. During the relevant time period, Defendants required all of their non-exempt hourly
25 employees to purchase uniforms and non-slip shoes for the performance of their job.

26 44. Defendants failed to reimburse Plaintiff and class members for their uniform and
27 shoe expenses, even though Defendants required uniforms and slip resistant shoes to be worn as a
28 condition of employment.

45. As a result of Defendants' knowing and intentional failure to comply with Labor Code § 2802, Plaintiff and class members are entitled to recover from Defendants all of their business-related expenses and costs incurred during the course and scope of their employment, plus interest pursuant to Labor Code § 2802.

THIRD CAUSE OF ACTION

FAILURE TO PAY ALL WAGES UPON SEPARATION OF EMPLOYMENT

(Violations of California Labor Code §§ 201, 202 and 203)
(Alleged by Plaintiff Individually and On Behalf of All Others Similarly Situated,
Against All Defendants)

46. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 45, inclusive, as though fully set forth herein.

47. Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his employment, his wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his intention to quit, in which case the employee is entitled to his wages at the time of quitting.

48. During the relevant time period, Defendants willfully failed to reimburse Plaintiff and former class members for their business-related expenses either at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ.

49. Defendants' failure to pay Plaintiff and former class members all their earned wages at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ is in violation of Labor Code §§ 201 and 202.

50. Labor Code § 203 provides that if an employer willfully fails to pay wages owed immediately upon discharge or resignation in accordance with Labor Code §§ 201 and 202, then the wages of the employee shall continue as a penalty from the due date at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

51. Plaintiff and former class members are entitled to recover from Defendants the statutory penalty which is defined as Plaintiff and former class members' regular daily wages for

1 each day they were not paid, at their regular hourly rate of pay, up to a thirty (30) day maximum
2 pursuant to Labor Code § 203.

3 **FOURTH CAUSE OF ACTION**

4 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

(Violation of California Labor Code § 226)

5 (Alleged by Plaintiff Individually and On Behalf of All Others Similarly Situated,
6 Against All Defendants)

7 52. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 51,
8 inclusive, as though fully set forth herein.

9 53. Labor Code § 226(a) requires employers to furnish their employees with an accurate
10 itemized wage statement that shows gross wages earned, total hours worked, all deductions, net
11 wages earned, the inclusive dates of the period for which the employee is paid, the name of the
12 employee and the portion of his or her social security number as required by law, the name and
13 address of the legal entity that is the employer and all applicable hourly rates in effect during the
14 pay period and the corresponding number of hours worked at each hourly rate by the employee.

15 54. During the relevant time period, Defendants have knowingly and intentionally
16 failed to provide Plaintiff and class members with the above-described writing through actions
17 alleged herein. The deficiencies include, among other things, the failure to accurately list the gross
18 and net wages earned and all deductions.

19 55. As a result of Defendants' knowing and intentional failure to comply with Labor
20 Code § 226(a), Plaintiff and class members have suffered injury and damage to their statutorily
21 protected rights.

22 56. Specifically, Plaintiff and class members have been injured by Defendants'
23 intentional violation of Labor Code § 226(a) because they were denied both their legal right to
24 receive, and their protected interest in receiving, accurate itemized wage statements under Labor
25 Code § 226(a). In addition, because Defendants failed to accurately list all deductions, Plaintiff has
26 had to file this lawsuit and perform computations in order to analyze whether in fact Plaintiff was
27 paid correctly and the extent of the underpayment, thereby causing Plaintiff to incur expenses and
28 lost time. Plaintiff would not have had to engage in these efforts and incur these costs had

1 Defendants accurately listed all wages and deductions on his paystubs. This has also delayed
2 Plaintiff's ability to demand and recover the underpayment of wages from Defendants.

3 57. Plaintiff and class members are entitled to recover from Defendants the greater of
4 their actual damages caused by Defendants' failure to comply with Labor Code § 226(a), or an
5 aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

6 58. Plaintiff and class members are also entitled to injunctive relief under Labor Code §
7 226(g), compelling Defendants to comply with Labor Code § 226, and seek recovery of attorney's
8 fees and costs incurred in obtaining this injunctive relief.

9 **FIFTH CAUSE OF ACTION**

10 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

11 (Violation of California Labor Code §§ 2698, *et seq.*)

12 (Alleged by Plaintiff Individually and On Behalf of All Other Aggrieved Employees,
Against All Defendants)

13 59. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 58,
14 inclusive, as though fully set forth herein.

15 60. Pursuant to Labor Code §§ 2698, *et seq.*, any provision of the Labor Code that
16 provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
17 Agency ("LWDA") or any of its departments, divisions, commissions, boards, agencies or
18 employees for violation of the code may, as an alternative, be recovered through a civil action
19 brought by an aggrieved employee on behalf of herself and other current or former employees
20 pursuant to the procedures specified in Labor Code § 2699.3.

21 61. Defendants' conduct violates numerous Labor Code sections including, but not
22 limited to, the following:

- 23 (a) Violation of Labor Code §§ 221 and 224 for unlawful deductions taken from
24 Plaintiff and other aggrieved employees' paychecks as herein alleged;
- 25 (b) Violation of Labor Code § 2802 for failure to reimburse Plaintiff and other
26 aggrieved employees for all necessary business-related expenses and costs as
27 herein alleged;
- 28

1 (c) Violation of Labor Code §§ 201, 202 and 203 for failure to pay all earned
2 wages owed to Plaintiff and other aggrieved employees upon separation of
3 employment as herein alleged; and

4 (d) Violation of Labor Code § 226 for failure to provide accurate itemized wage
5 statements to Plaintiff and other aggrieved employees as herein alleged.

6 62. Plaintiff is an “aggrieved employee” because she was employed by the alleged
7 violator and had one or more of the alleged violations committed against her, and therefore is
8 properly suited to represent the interests of all other aggrieved employees.

9 63. On September 24, 2012, Plaintiff sent written notice, via certified mail, to the
10 LWDA and Defendants regarding the specific provisions of the Labor Code that were violated,
11 including the facts and theories to support the alleged violations.

12 64. Pursuant to Labor Code § 2699.3(a)(2)(A), the LWDA shall notify the employer and
13 aggrieved employee by certified mail that it does not intend to investigate the alleged violations
14 within 30 calendar days of the postmark date of said notice being received. Upon receipt of that
15 notice, or if no notice is provided within 33 calendar days of the postmark date of the notice given,
16 the aggrieved employee may commence a civil action under section 2699.

17 65. The LWDA has failed to provide notice within 33 calendar days of the September
18 24, 2012 postmark date. Therefore, Plaintiff has exhausted her administrative remedies and seeks
19 recovery of penalties on behalf of herself and all other similarly aggrieved employees pursuant to
20 the Labor Code.

21 66. Labor Code §§ 2698, *et seq.* imposes upon Defendants, a penalty of one hundred
22 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
23 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent
24 violation in which Defendants violated the Labor Code.

25 67. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff and all other
26 aggrieved employees are entitled to recover civil penalties against Defendants, in addition to other
27 remedies, for violations of Labor Code §§ 201, 202, 203, 221, 224, 226 and 2802.

68. For bringing this action, Plaintiff is entitled to attorney's fees and costs incurred herein.

SIXTH CAUSE OF ACTION

VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200, ET SEQ.

(Alleged by Plaintiff Individually and On Behalf of All Others Similarly Situated,
Against All Defendants)

69. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 68, inclusive, as though fully set forth herein.

70. Defendants' conduct, as alleged herein, has been and continues to be unfair, unlawful and harmful to Plaintiff, class members and to the general public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

71. Defendants' activities, as alleged herein, violate California law and constitute unlawful business acts or practices in violation of California Business and Professions Code §§ 17200, *et seq.*

72. A violation of Business and Professions Code §§ 17200, *et seq.* may be predicated on the violation of any state or federal law.

73. Defendants' policies and practices have violated state law in at least the following respects:

- (a) Unlawfully deducting wages from Plaintiff and class members' paychecks without their express written authorization;
- (b) Failing to reimburse Plaintiff and class members for business-related expenses;
- (c) Failing to timely pay all earned wages to Plaintiff and former class members upon separation of employment in violation of Labor Code §§ 201, 202 and 203; and
- (d) Failing to provide Plaintiff and class members with accurate itemized wage statements in violation of Labor Code § 226.

1 74. Defendants intentionally avoided paying Plaintiff and class members' wages and
2 monies, thereby creating for Defendants an artificially lower cost of doing business in order to
3 undercut their competitors and establish and gain a greater foothold in the marketplace.

4 75. Pursuant to Business and Professions Code §§ 17200, *et seq.* Plaintiff and class
5 members are entitled to restitution of the wages unlawfully withheld and retained by Defendants
6 during a period that commences four years prior to the filing of the Complaint; injunctive relief
7 enjoining Defendants from engaging in the practices alleged herein; disgorgement of profits
8 requiring Defendants to pay all outstanding wages due to Plaintiff and class members; an award of
9 attorney's fees pursuant to Code of Civil Procedure § 1021.5 and other applicable laws; and an
10 award of costs.

11 **DEMAND FOR JURY TRIAL**

12 Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.

13 **PRAYER FOR RELIEF**

14 Plaintiff, on her own behalf and on behalf of all others similarly situated, prays for relief
15 and judgment against Defendants, jointly and severally, as follows:

16 1. For certification of this action as a class action on behalf of the class of current and
17 former non-exempt employees employed by Defendants;

18 2. For appointment of Jana Mestanek as the class representative;

19 3. For appointment of Righetti Glugoski, P.C. and Aegis Law Firm, PC as class
20 counsel for all purposes;

21 4. For general damages;

22 5. For special damages;

23 6. For reasonable attorney's fees, costs of suit and interest to the extent permitted by
24 law, including pursuant to Code of Civil Procedure § 1021.5;

25 7. For statutory penalties to the extent permitted by law, including those pursuant to
26 the Labor Code and IWC Wage Orders;

27 8. For injunctive relief as provided by the Labor Code and Business and Professions
28 Code §§ 17200, *et seq.*;

- 1 9. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;
- 2 10. For an order requiring Defendants to restore and disgorge all funds to each employee
- 3 acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent
- 4 and, therefore, constituting unfair competition under Business and Professions Code §§ 17200, *et*
- 5 *seq.*;
- 6 11. For an award of damages in the amount of unpaid compensation including, but not
- 7 limited to, unpaid wages, benefits and penalties, in excess of twenty-five thousand dollars
- 8 (\$25,000) but not to exceed five million dollars (\$5,000,000), exclusive of interest and costs.
- 9 Plaintiff reserves the right to seek a larger amount based upon new and different information
- 10 resulting from investigation and discovery;
- 11 12. For pre-judgment interest; and
- 12 13. For such other relief as the Court deems just and proper.

13

14 Dated: 10-31-12

RIGHETTI GLUGOSKI, P.C.

15

16

17 By: 

Matthew Righetti
John Glugoski
Attorneys for Plaintiffs

18

19

20

21

22

23

24

25

26

27

28