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on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SHASTA

KIMBERLY CHANDLER on behalf of herself
and all others similarly situated

Plaintiff,

vs.

TA OPERATING LLC., a Delaware
corporation d.b.a. TRAVELCENTERS OF
AMERICA, and DOES 1 through 50, inclusive,

Defendants.

Case No.

ASSIGNED FOR ALL PURPOSES TO:

JUDGE:

DEPT:

CLASS ACTION COMPLAINT

- 1) Failure to pay Lawful Wages Owed;**
- 2) Failure to Provide Lawful Meal Periods or Compensation in Lieu Thereof;**
- 3) Failure to Provide Lawful Rest Periods or Compensation in Lieu Thereof;**
- 4) Failure to Timely Pay Wages;**
- 5) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions;**
- 6) Failure to indemnify employee for expenditures; and**
- 7) Violations of the Unfair Competition Law**

JURY TRIAL DEMANDED

Plaintiff KIMBERLY L. CHANDLER (hereinafter "Plaintiff") on behalf of herself and all others similarly situated assert claims against Defendant TA OPERATING LLC d.b.a.

1 TRAVELCENTERS OF AMERICA and DOES 1 through 50 (hereinafter collectively referred to
2 as "Defendants") as follows:

3 **I.**

4 **INTRODUCTION**

5 1. This is a Class Action, pursuant to Code of Civil Procedure section 382, brought
6 against Defendants and any subsidiaries and affiliated companies on behalf of Plaintiff and all
7 Non-Exempt Employees employed by Defendants in California as a "Cashier", and similar
8 positions (hereinafter "Non-Exempt Employees" or "Class Members")

9 2. During the liability period, defined as the applicable statute of limitations for each
10 and every cause of action contained herein, Defendants enforced shift schedules, employment
11 policies and practices, and/or workload requirements wherein Plaintiff and Non-Exempt
12 Employees were, amongst other statutory violations, not paid all lawful wages owed; not
13 provided compliant rest and meal periods; not provided accurate itemized wage statements; not
14 paid timely wages at termination; and not reimbursed for expenses.

15 3. Plaintiff, on behalf of herself and Class Members, bring this action pursuant to
16 Labor Code sections 201-203, 225, 226, 226.7, 510, 512, 558, 1194, 1198, 2802, Title 8,
17 Ssection 11050 and any other applicable Industrial Welfare Commission ("IWC") Wage Orders,
18 seeking unpaid lawful wages, unpaid rest and meal period compensation, penalties and other
19 equitable relief, and reasonable attorneys' fees and costs.

20 4. Plaintiff, on behalf of herself and all Class Members, pursuant to Business and
21 Professions Code sections 17200-17208, also seeks restitution from Defendants based on
22 Defendants' violations of California Labor Code of Regulations, Title 8, section 11050 *et seq.*

23 **II.**

24 **JURISDICTION AND VENUE**

25 5. This Court has jurisdiction over this action pursuant to the California
26 Constitution Article VI §10, which grants the California Superior Court original jurisdiction in
27 all causes except those given by statute to other courts. The statutes here do not give
28

jurisdiction to any other court. The monetary damages and restitution sought by Plaintiffs exceed the minimum jurisdiction limits of the California Superior Court and will be established according to proof at trial. Venue is proper to each Defendant pursuant to Code of Civil Procedure section 395 because they conduct substantial and continuous business activities in Shasta County, California and are within the jurisdiction of this Court for service of process purposes. Defendants employ numerous Class Members in Shasta and other Counties throughout California.

III.

PARTIES

6. Plaintiff is, and at all times mentioned in this complaint was, a resident of Shasta County, California.

7. Upon information and belief, Defendants are headquartered in Westlake, Ohio and operate truck stops and travel centers along California and U.S. highways. Plaintiff believes Defendants were always qualified to do business in California and continue to transact business in California

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

9. Plaintiff is informed and believes, and based thereon alleges, that Defendants acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants.

1 IV.

2 **FACTUAL BACKGROUND**

3 10. Plaintiff was hired by Defendants, as a Cashier, on or about September 3, 2014
4 and worked until about September 3, 2019. She typically worked 5 days and over 40 hours a
5 week, at Defendants' Redding location.

6 11. During the liability period, Defendants did not pay all lawful wages owed,
7 including overtime, to Plaintiff and Class Members by failing to pay for all hours worked. For
8 instance, on a recurring basis, Plaintiff and Class Members would clock out from their shifts and
9 be required to work an additional 20-30 minutes helping other employees with paperwork.
10 Further, due to the demands of work shifts, Plaintiff and Class Members would clock-out for
11 their scheduled meal period but work through it. Defendants failed to accurately record such
12 times and failed to compensate Plaintiff and Class Members for time spent working "off the
13 clock."

14 12. During the liability period, due to the demands of work shifts, Plaintiff and Class
15 Members were required to work in excess of five (5) hours without being provided an
16 uninterrupted thirty (30) minute meal period by the end of the fifth hour and were not
17 compensated one (1) hour of pay at their regular rate of compensation for each workday that a
18 compliant meal period was not provided. At least twice a week, Plaintiff and Class Members
19 would clock-out within the first 5 hours of a shift, keep working, and then take meal break after
20 the fifth hour. Similarly, due to the demands of work shifts, Plaintiff and Class Members meal
21 breaks were routinely interrupted to go back to work.

22 13. During the liability period, due to the demands of work shifts, Plaintiff and Class
23 Members were at times required to work in excess of ten (10) hours without being provided a
24 second uninterrupted thirty (30) minute meal period by the end of the fifth hour and were not
25 compensated one (1) hour of pay at their regular rate of compensation for each workday that a
26 compliant meal period was not provided. Plaintiff and Class Members worked 10 plus hours
27 twice a week and did not receive a second 30-minute meal break.

28 14. During the liability period, due to the workload requirements and time constraints

1 resulting from the demands of work shifts, Plaintiff and Class Members were not permitted to
2 take a lawful minimum ten (10) minute rest period for every four hours or major fraction thereof
3 worked. Plaintiff and Class Members were not allowed to leave the premises. Further, every
4 shift (of at least 8 hours) Plaintiff and Class Members did not receive at least one rest break.
5 Plaintiff and Class Members were not compensated one (1) hour of pay at his regular rate of
6 compensation for each workday that rest periods were not provided, in violation of California
7 labor laws, regulations, and IWC Wage Orders.

8 15. On information and belief, Defendants failed to pay Non-Exempt Employees all
9 earned wages in a timely manner; nor have Defendants paid to Non-Exempt Employees, upon or
10 after termination, all compensation due, including but not limited to all wages owed and
11 compensation for having failed to properly provide rest periods and meal periods.

12 16. Defendants have also failed to maintain accurate itemized records reflecting total
13 hours worked and have failed to provide Non-Exempt Employees with accurate itemized wage
14 statements reflecting total hours worked and appropriate rates of pay for those hours worked.

15 17. During the liability period, Plaintiff and Class Members were not reimbursed for
16 items purchased for work such as brooms, mops, tissues, and cleaning products.

17 18. Upon information and belief, Plaintiff alleges that Defendants currently and
18 during the relevant period employ over fifty (50) employees in California in non-exempt hourly
19 positions as Cashiers and/or similar positions

20 19. Non-Exempt Employees employed by Defendants all times pertinent hereto, have
21 been non-exempt employees within the meaning of the California Labor Code, and the
22 implementing rules and regulations of the IWC California Wage Orders.

23
24 **V.**

25 **CLASS ACTION ALLEGATIONS**

26 20. Plaintiff seeks to represent a Class comprised of and defined as: All persons who
27 are employed or have been employed by Defendants in the state of California as hourly
28 nonexempt employees to work for Defendants and who occupied position of "Cashier" and

1 similar position within four (4) years prior to the date this lawsuit is filed (“liability period”)
2 until resolution of this lawsuit (collectively referred to as the “Class” and/or Class Members”).

3 21. Plaintiff also seeks to represent Subclasses comprised of and defined as:

4 a. All Non-Exempt Employees employed by Defendants in California as a
5 “Cashier” and similar positions within the statutory liability period and were not accurately
6 and fully paid all lawful wages owed to them, including overtime, for all hours worked;

7 b. All Non-Exempt Employees employed by Defendants in California as a
8 “Cashier” and similar positions within the statutory liability period and have not been provided
9 an thirty (30) minute uninterrupted meal period when they worked over five hours in a work
10 shift by the end of the fifth hour and/or over 10 hours in a work shift by the end of the tenth
11 hour and were not provided compensation in lieu thereof.

12 c. All Non-Exempt Employees employed by Defendants in California as a
13 “Cashier” and similar positions within the statutory liability period and have not been provided
14 a minimum ten (10) minute rest period for every four (4) hours or major fraction thereof
15 worked per day and were not provided compensation in lieu thereof;

16 d. All Non-Exempt Employees employed by Defendants in California as a
17 “Cashier” and similar positions within the statutory liability period and were not timely paid
18 all wages due and owed to them upon the termination of their employment with Defendants;
19 and

20 e. All Non-Exempt Employees employed by Defendants in California as a
21 “Cashier” and similar positions within the statutory liability period and were not provided with
22 accurate and complete itemized wage statements.

23 f. All Non-Exempt Employees employed by Defendants in California as a
24 “Cashier” and similar positions within the statutory liability period and were not indemnified
25 for expenses incurred in direct consequence of the discharge of their duty.

26 22. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend
27 or modify the class description with greater specificity or further division into subclasses or
28 limitation to particular issues.

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

A. Numerosity

24. The potential members of the Class as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined at this time, Plaintiff is informed and believes that Defendants currently employ, and/or during the relevant time period employed, approximately over 50 Non-Exempt Employees in California who are or have been affected by Defendants' unlawful practices as alleged herein.

B. Commonality

25. There are questions of law and fact common to the Class predominating over any questions affecting only individual Class Members. These common questions of law and fact include, without limitation:

- i. Whether Defendants violated Labor Codes sections 200, 1194, and 1197 and applicable IWC Wage Orders for failing to pay all lawful wages owed, including overtime, to Non-Exempt Employees for time spent under Defendants' control and working "off the clock" without pay;
- ii. Whether Defendants violated sections 226.7, 512 of the Labor Code and applicable IWC Wage Order by failing to provide statutorily compliant thirty (30) minute meal periods to Non-Exempt Employees on days in which they worked in excess of five (5) hours and failing to compensate said employees one hour wages in lieu of meal periods;
- iii. Whether Defendants violated Labor Code section 226.7 and applicable IWC Wage Orders by failing to authorize and permit minimum ten (10) minute rest periods

1 to Non-Exempt Employees for every four hours or major fraction thereof worked and
2 failing to compensate said employees one (1) hours wages in lieu of rest periods;

3 iv. Whether Defendants violated sections 201-203 of the Labor Code and
4 applicable IWC Wage Orders by failing to pay all earned wages and/or premium wages
5 due and owing at the time that any Non-Exempt Employees' employment with
6 Defendants terminated;

7 v. Whether Defendants violated section 2802 of the Labor Code by not
8 indemnifying Non-Exempt employees for expenses incurred in being required to use
9 their personal phones in the performance of their job duties; and

10 vi. Whether Defendants violated section 17200 *et seq.* of the Business and
11 Professions Code through their violation of the above-referenced Labor Code and Civil
12 Code sections and applicable IWC Wage Orders which violation constitutes a violation
13 of fundamental public policy.

14 **C. Typicality**

15 26. The claims of the named Plaintiff are typical of the claims of the Class. Plaintiff
16 and all members of the Class sustained injuries and damages arising out of and caused by
17 Defendants' common course of conduct in violation of California laws, regulations, and statutes
18 as alleged herein.

19 **D. Adequacy of Representation**

20 27. Plaintiff will fairly and adequately represent and protect the interests of the
21 members of the Class. Counsel who represents Plaintiff is competent and experienced in
22 litigating large employment class actions.

23 **E. Superiority of Class Action**

24 28. A class action is superior to other available means for the fair and efficient
25 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
26 questions of law and fact common to the Class predominate over any questions affecting only
27 individual members of the Class. Each member of the Class has been damaged and is entitled to
28 recovery by reason of Defendants' unlawful policy and/or practice herein complained of.

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

VI. CAUSES OF ACTION

First Cause of Action

Failure to Pay Lawful Wages Owed
(Lab. Code §§ 510, 1194, IWC Wage Orders)
(Against All Defendants)

30. Plaintiff repeats and incorporates herein by reference every allegation set forth above, as though fully set forth herein.

31. During the liability period, Defendants implemented a timekeeping practice that drove Non-Exempt Employees to clock-in and clock-out in a manner that resulted in loss of time worked. As a result, Non-Exempt Employees were consistently underpaid and were required to work off the clock and without pay.

32. Defendants’ policies, practices and work shift requirements resulted in Non-Exempt Employees working “off the clock” and not receiving compensation for all earned wages including overtime in violation of California state wage and hour laws.

33. During the liability period, Defendants' policies and/or practices resulted in Non-Exempt Employees working off the clock and in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without receiving the proper compensation at the rate of time and one-half (1 1/2) of such employee's regular rate of pay.

34. During the liability period, Defendants' policies and/or practices resulted in Plaintiff and Non-Exempt Employees not receiving minimum wages for time spent working off the clock while subject to the control of Defendant all without pay.

35. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to represent have been deprived of compensation for all earned wages in amounts to be determined

1 at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon,
2 attorneys' fees, and costs, pursuant to Labor Code section 1194.

3 36. WHEREFORE, Plaintiff, and the Class he seeks to represent, request relief as
4 described herein and below.

5
6 **Second Cause of Action**

7 Failure to Provide Lawful Meal Periods
8 Or Compensation in Lieu Thereof
9 (Lab. Code §§226.7, 512, IWC Wage Orders)
10 (Against All Defendants)

11 37. Plaintiff repeats and incorporates herein by reference every allegation set forth
12 above, as though fully set forth herein.

13 38. By their failure to provide thirty (30) minute uninterrupted meal periods by the
14 end of the fifth hour for days which Non-Exempt Employees worked in excess of five (5) hours
15 and failing to provide compensation for such statutorily non-compliant meal periods, Defendants
16 violated the provisions of Labor Code §512 and applicable IWC Wage Orders.

17 39. By their failure to provide a second thirty (30) minute uninterrupted meal period
18 by the end of the fifth hour for days which Non-Exempt Employees worked ten (10) hours and
19 failing to provide compensation for such statutorily non-compliant meal periods, Defendants
20 violated the provisions of Labor Code §512 and applicable IWC Wage Orders

21 40. As a result of the unlawful acts of Defendants, Plaintiff and the Class he seeks to
22 represent have been deprived of premium wages in amounts to be determined at trial, and are
23 entitled to recovery of such amounts, plus interest and penalties thereon under Labor Code
24 §226.7.

25 41. WHEREFORE, Plaintiff, and the Class he seeks to represent, request relief as
26 described herein and below.

27 **Third Cause of Action**

28 Failure to Provide Rest Periods
Or Compensation in Lieu Thereof
(Lab. Code §§226.7, IWC Wage Orders)

(Against All Defendants)

42. Plaintiff repeats and incorporates herein by reference every allegation set forth above, as though fully set forth herein.

43. By their failure to authorize and permit a minimum ten (10) minute rest period for every four (4) hours or major fraction thereof worked per day by Non-Exempt Employees, and failing to provide compensation for such non-provided rest periods, as alleged above, Defendants willfully violated the provisions of Labor Code section 226.7 and IWC applicable Wage Orders.

44. As a result of the unlawful acts of Defendants, Plaintiff, and the Class he seeks to represent have been deprived of premium wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon under Labor Code §226.7.

45. WHEREFORE, Plaintiff, and the Class he seeks to represent, request relief as described herein and below.

Fourth Cause of Action

Failure to Timely Pay Wages Due at Termination
Lab. Code §§ 201-203, 227.3, IWC Wage Orders)
(Against All Defendants)

46. Plaintiff incorporates by reference and realleges every allegation contained above, as though fully set forth herein.

47. Sections 201 and 202 of the California Labor Code require Defendants to pay its employees all wages due within 72 hours of termination of employment. Section 203 of the Labor Code provides that if an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject employees' wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

48. Plaintiff and class members are entitled to compensation for all forms of wages earned, including compensation for non-provided rest and meal periods, but to date have not received such compensation therefore entitling them Labor Code section 203 penalties.

1 49. More than 30 days have passed since Plaintiff and Class Members have left
2 Defendants' employ, and on information and belief, have not received payment pursuant to Labor
3 Code §203. As a consequence of Defendants' willful conduct in not paying all earned wages,
4 certain Class Members are entitled to 30 days' wages as a penalty under Labor Code section 203
5 for failure to pay legal wages.

6 50. WHEREFORE, Plaintiff, and the Class he seeks to represent, request relief as
7 described herein and below.

8
9 **Fifth Cause of Action**
10 Knowing and Intentional Failure to Comply with Itemized Employee
11 Wage Statement Provisions
12 (Lab. Code § 226, IWC Wage Orders)
13 (Against All Defendants)

14 51. Plaintiff repeats and incorporates herein by reference every allegation set forth
15 above, as though fully set forth herein.

16 52. Section 226(a) of the California Labor Code requires Defendants to itemize in
17 wage statements all deductions from payment of wages and to accurately report total hours
18 worked by Plaintiff and the members of the proposed class. IWC Wage Orders require
19 Defendants to maintain time records showing, among others, when the employee begins and
20 ends each work period, meal periods, split shift intervals and total daily hours worked in an
21 itemized wage statement, and must show all deductions and reimbursements from payment of
22 wages, and accurately report total hours worked by Plaintiff and the members of the proposed
23 class. On information and belief, Defendants have failed to record all or some of the items
24 delineated in Industrial Wage Orders and Labor Code §226.

25 53. Defendants violated Section 226(a)(2) by failing to provide Plaintiff and class
26 members with statements of wages that accurately showed the total hours worked by Plaintiff
27 and the other class members. Defendants violated Section 226(a)(5) by failing to provide
28 Plaintiff and the class members with statements of wages that accurately showed the net wages
earned for regular hours worked, overtime hours worked. Defendants violated Section 226(a)(9)

1 by failing to provide Plaintiff and the other class members with statements of wages that
2 accurately showed the applicable hourly rates in effect during the pay period and the
3 corresponding number of hours worked at each hourly rate.

4 54. Plaintiff and Class Members have been injured by Defendants' actions by rendering
5 them unaware of the full compensation to which they were entitled under applicable provisions
6 of the California Labor Code and applicable IWC Wage Orders.

7 55. Pursuant Labor Code §226, Plaintiff and Class Members are entitled up to a
8 maximum of \$4,000.00 each for record-keeping violations.

9 56. WHEREFORE, Plaintiff, and the Class he seeks to represent, request relief as
10 described herein and below.

11
12 **Sixth Cause of Action**
13 Failure to Indemnify Employees for Expenditures
14 (Lab. Code § 2802)
(Against All Defendants)

15 57. Plaintiff repeats and incorporates herein by reference every allegation
16 set forth above, as though fully set forth herein.

17 58. As set forth above, Section 2802 of the California Labor Code requires
18 Defendants to indemnify employees for all necessary expenditures incurred in direct
19 consequence of the discharge of his duties.

20 59. Defendants violated Section 2802 by, among other things, failing to
21 indemnify
22 Plaintiff and Class Members for expenditures incurred for using personal cellular phone in
23 the performance of job duties.

24 60. As a result of the unlawful acts of Defendants, Plaintiff, and the Class he seeks to
25 represent have incurred expenditures in amounts to be determined at trial.

26 61. WHEREFORE, Plaintiff, and the Class he seeks to represent, request relief as
27 described herein and below.
28

Seventh Cause of Action
Violation of Unfair Competition Law
(Bus. & Prof. Code, §§ 17200-17208)
(Against All Defendants)

62. Business & Professions Code Section 17200 provides:

As used in this chapter, unfair competition shall mean and include any **unlawful, unfair** or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.) (Emphasis added.)

Defendants' violations of the Labor Code and Wage Order provisions set forth above constitute unlawful and/or unfair business acts or practices.

63. The actions of Defendants, as alleged within this Complaint, constitute false, fraudulent, unlawful, unfair, and deceptive business practices, within the meaning of Business and Professions Code section 17200, *et seq.*

64. Plaintiff and Class Members have been personally aggrieved by Defendants' unlawful and unfair business acts and practices alleged herein.

65. As a direct and proximate result of the unfair business practices of Defendants, and each of them, Plaintiff, individually and on behalf of all employees similarly situated, is entitled to restitution of all wages which have been unlawfully withheld from Plaintiff and members of the Plaintiff Class as a result of the business acts and practices described herein.

66. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described herein and below.

VII.

PRAYER

WHEREFORE, Plaintiff prays for judgment as follows:

1. That the Court determine that this action may be maintained as a class action;
2. For compensatory damages in an amount according to proof with interest thereon;
3. For economic and/or special damages in an amount according to proof with interest thereon;

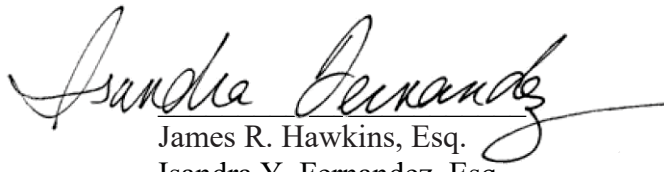
- 1 4. For premium wages pursuant to Labor Code §§226.7 and 512;
2 5. For premium pay and penalties pursuant to Labor Code §§203, 226;
3 6. For attorneys' fees, interests, and costs of suit under Labor Code §§226, 1194 and
4 2802; and
5 7. For such other and further relief as the Court deems just and proper.
6

7 **DEMAND FOR JURY TRIAL**

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

10 **Dated: July 21, 2020**

JAMES HAWKINS, APLC

11 

James R. Hawkins, Esq.

Isandra Y. Fernandez, Esq.

Richard Barnwell, Esq.

Attorneys for Plaintiff

KIMBERLY L. CHANDLER
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