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15 on behalf of herself and all others similarly
16 situated

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

APR 22 2014

Sherri R. Carter, Executive Officer/Clerk
By Cristina Grijalva, Deputy

BC 543325

CHRISTINE ORTEGA, on behalf of herself
and all others similarly situated,

Plaintiffs,

vs.

STEIN MART, INC, a Florida corporation, and
DOES 1 through 10, inclusive,

Defendants.

Case No. _____

CLASS ACTION

COMPLAINT FOR DAMAGES

1. FAILURE TO PAY ALL WAGES DUE (LAB. CODE §§ 1194, 1198, 510, 515)
2. FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF (LAB. CODE §§ 226.7, 512; IWC WAGE ORDERS; CAL. CODE REGS., TITLE 8, § 11070)
3. FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF (LAB. CODE §§ 226.7, 512; IWC WAGE ORDERS; CAL. CODE REGS., TITLE 8, § 11070)
4. FAILURE TO TIMELY PAY WAGES DUE AT TERMINATION (LAB. CODE §§ 201, 202, 203)
5. KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED EMPLOYEE WAGE STATEMENT PROVISIONS (LAB. CODE § 226)
6. VIOLATION OF THE UNFAIR COMPETITION LAW (BUS. & PROF. CODE §§ 17200-17208)

1 **DEMAND FOR TRIAL BY JURY**

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5 Plaintiff CHRISTINE ORTEGA, on behalf of herself and all others similarly situated (herein
6 referred to as "Plaintiff"), has brought this action against Defendant STEIN MART, INC. and DOES
7 1-10 (hereafter collectively referred to as "Defendant" or "Stein Mart"). Plaintiff is informed and
8 believes, and on that basis alleges as follows:

9 **I. INTRODUCTION**

10 1. This is a civil action seeking recovery for Plaintiff and all others similarly situated for
11 unpaid overtime (including doubletime) wages, compensation for each meal and rest period not
12 provided, damages and penalties for failure to comply with wage statement provisions, plus waiting
13 time penalties, interest, attorneys' fees and costs under California Labor Code sections 1194 and
14 226(e), 218.5, 218.6, 1021.5 of the California Code of Civil Procedure, and the IWC Wage Orders.
15 Plaintiff, on behalf of herself and all others similarly situated, also seeks monetary recovery for
16 Defendant's violations of California Business and Professions Code sections 17200, *et seq.*,
17 including full restitution and/or disgorgement of all compensation retained by Defendant as a result
18 of its unlawful, fraudulent and/or unfair business acts and practices.

19 2. Stein Mart operates and, at all times during the relevant liability period (four years
20 prior to the filing of the Complaint in this matter), has done business as a discount department store
21 in Los Angeles County and throughout the state of California. In its endeavor, Stein Mart operates
22 approximately 20 stores in California in which it employs nonexempt personnel in California as
23 Assistant ASMs ("ASMs"). This lawsuit challenges Defendant's wage and hour practices as they
24 concern ASMs.

25 3. ASMs at Stein Mart, including Plaintiff, regularly work more than 8 hours in a day or
26 40 hours in a week. ASMs are misclassified by Stein Mart as exempt employees, and therefore, not
27 eligible for overtime pay for hours over 8 in a day or 40 in a week under Stein Mart's uniform pay
28 policies and practices.

1 “IWC”) Wage Order(s) and related common law principles. The California Superior Court also has
2 jurisdiction in this matter because both the individual and aggregate monetary damages and
3 restitution sought herein exceed the minimal jurisdictional limits of the Superior Court and will be
4 established at trial, according to proof.

5 8. Venue as to Defendant is proper in Los Angeles County and in this judicial district,
6 pursuant to California Code of Civil Procedure sections 395(a) and 395.5 because Defendant
7 operates extensively in Los Angeles County, many of the breaches occurred and liability for the acts
8 complained of herein arose in the County of Los Angeles and in this judicial district. Defendant
9 operates stores, maintains offices, transacts business, including engaging in the conduct giving rise
10 to liability in this action and because Defendant is found within the County of Los Angeles.

11 III. PARTIES

12 A. PLAINTIFF

13 9. Plaintiff Christine Ortega is an individual over the age of eighteen and was formerly
14 employed by Stein Mart as an ASM at its Stevenson Ranch, California store.

15 10. Within the last four years and as recently as February 2014, Plaintiff Ortega worked
16 for Defendant as an ASM, and in so doing was required by Stein Mart to work more than eight hours
17 per day and in excess of 40 hours per week without being paid overtime compensation.

18 11. Plaintiff Ortega was not provided the requisite meal periods or rest periods while
19 employed by Stein Mart, nor was she compensated for meal periods and rest periods not provided by
20 Defendant.

21 12. Plaintiff also seeks damages and penalties from Stein Mart pursuant to Labor Code
22 section 226(e) and seeks waiting time penalties for Defendant’s violations of Labor Code section
23 203.

24 B. DEFENDANT

25 13. Defendant Stein Mart is and at all times mentioned in this Complaint was a Florida
26 corporation qualified to do business and actually doing business in the state of California where it
27 operates as a department store retailer of men’s, women’s and children’s clothing.

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1 might exist among Class Members.

2 19. **Ascertainable Class:** The proposed class is ascertainable in that class members can
3 self-identify their membership status with reference to the class descriptions and class members can
4 also be identified and located using information contained in Defendant's payroll and personnel
5 records.

6 20. **Numerosity:** The potential quantity of members of the Class as defined is so
7 numerous that joinder of all members would be unfeasible and impractical. The disposition of their
8 claims through this class action will benefit both the parties and this Court. Although the number of
9 members of the putative Class is unknown to Plaintiff at this time, Plaintiff is informed and believes
10 that putative Class Members numbers in excess of 100 individuals.

11 21. **Typicality:** The claims of Plaintiff Ortega are typical of the claims of all members of
12 the Class because all members of the Class suffered violations of their legal rights and sustained
13 injuries and damages from Defendant's common course of conduct in violation of law, as alleged
14 herein. Specifically, Stein Mart's employment and payroll policies experienced by Plaintiff Ortega
15 are developed and overseen by a centralized administration and applied uniformly throughout its
16 California store locations. Similarly, Stein Mart distributed the same employee handbook (providing
17 the meal and rest period policies) to Plaintiff Ortega and its other California-based ASMs, without
18 distinction as to their store location.

19 22. **Adequacy:** Plaintiff Ortega is an appropriate and legally adequate representative of
20 the Class and will fairly protect the interests of the members of the Class, has no interest antagonistic
21 to the members of the Class, and will vigorously pursue this suit via attorneys who are competent,
22 skilled and experienced in litigating large class actions of this type.

23 23. **Superiority:** The nature of this action and the laws available to Plaintiff make use of
24 the class action format, which is a particularly efficient and appropriate procedure to afford relief to
25 Plaintiff and the putative Class for the wrongs alleged herein, as follows:

- 26 a. The case involves a large corporate Defendant and a large number of individual
27 Class Members with many relatively small claims who share common issues of
28 law and fact;

- 1 b. If each individual member of each of the Class was required to file an individual
2 lawsuit, the Defendant would necessarily gain an unconscionable advantage
3 because Defendant would be able to exploit and overwhelm the limited resources
4 of each individual member of the Class with Defendant's vastly superior
5 financial and legal resources;
- 6 c. Requiring each individual member of the Class to pursue an individual remedy
7 would discourage the assertion of lawful claims by the members of the Class
8 who would be disinclined to pursue an action against Defendant because of an
9 appreciable and, in the case of putative class members who continue in
10 Defendant's employ, a justifiable fear of retaliation and permanent damages to
11 their lives, careers and well-being;
- 12 d. Proof of the common and unlawful business acts and practices experienced by
13 Plaintiff is representative of the Class and will establish the right of each of the
14 members of the Class to recover on the causes of action alleged herein;
- 15 e. The prosecution of separate actions by the individual members of the Class, even
16 if possible, would create a substantial risk of inconsistent or varying verdicts or
17 adjudications among the individual members of the Class and would establish
18 potentially incompatible standards of conduct for Defendant; or legal
19 determinations with respect to individual members of the Class which would, as
20 a practical matter, be dispositive of the interest of the other members of the Class
21 who are not parties to the adjudications or which would substantially impair or
22 impede the ability of the members of the Class to protect their interest;
- 23 f. The cost to the court system of adjudicating a multitude of individual actions
24 would be substantial and unduly burden the Court and the litigants; and
- 25 g. Finally, the alternative of filing a claim with the California Labor Commissioner
26 is not superior, given the lack of discovery in such proceedings, the availability
27 of fewer remedies, and the fact that the losing party has the right to a trial de
28 novo in the Superior Court.

1 24. **Existence and Predominance of Common Questions of Fact and Law:** Common
2 questions of law and fact predominate over questions affecting only individual members of the Class
3 including, without limitation:

- 4 a. Whether members of the Class are nonexempt;
- 5 b. Whether members of the Class worked more than 8 hours in a day and/or 40
6 hours in a workweek without being paid proper overtime for such overtime hours
7 worked at the proper premium pay rate;
- 8 c. Whether members of the Class worked more than five hours without Defendant
9 providing a meal period, or pay in lieu thereof, as required by Labor Code
10 section 512;
- 11 d. Whether members of the Class worked more than ten hours without Defendant
12 providing a second meal period, or pay in lieu thereof, as required by Labor
13 Code section 512;
- 14 e. Whether members of the Class were provided with paid rest periods as required
15 by Labor Code section 226.7 and the IWC Wage Orders;
- 16 f. Whether the Class received wage statements that failed to include the hourly and
17 overtime rates of pay, or any other item required by Labor Code section 226(a);
- 18 g. Whether the Class was injured by Defendant's failure to include the hourly and
19 overtime rates of pay and the corresponding number of hours worked at each rate
20 on their wage statements;
- 21 h. Whether the failure to include the hourly and overtime rates of pay, or any other
22 item required by Labor Code section 226(a) was "knowing and intentional";
- 23 i. Whether Defendant's withholding of overtime pay or pay for unprovided meal or
24 rest periods was willful under the meaning of Labor Code section 203;
- 25 j. Whether Defendant's conduct constitutes unfair competition within the meaning
26 of Business and Professions Code sections 17200 and 17203;
- 27 k. Whether the members of the Class are entitled to injunctive relief;
- 28 l. Whether the members of the Class are entitled to restitution;

1 m. Whether Defendant is liable for pre-judgment interest; and

2 n. Whether Defendant is liable for attorneys' fees and costs.

3 25. The predominance of these common questions creates a well-defined community of
4 interests among the Plaintiff and the members of the putative Class.

5 **V. CAUSES OF ACTION**

6 **FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS**

7 **FAILURE TO PAY ALL WAGES DUE**

8 26. Plaintiff incorporates the allegations contained in paragraphs 1 through 25 at this
9 point as though set forth in full.

10 27. For the four (4) year period preceding the filing of the Complaint, Defendant has had
11 a uniform practice and procedure of misclassifying its ASMs as "exempt" employees and not paying
12 them for hours worked over 8 hours per day or 40 hours in a week, in violation of Labor Code
13 sections 1194, 1198, 510, 515(d), 219(a), IWC Wage Order 7-2001, and California Code of
14 Regulations, section 11090(3). Plaintiff and the Class spent the majority of their time each week
15 engaged in non-exempt activities such as stocking the store, helping customers and running the cash
16 register. Nor did the ASMs position require Plaintiff or the Class to regularly exercise discretion or
17 independent judgment.

18 28. The specified wage order and regulation provide that Plaintiff shall not be employed
19 more than eight (8) hours in any workday or more than forty (40) hours in any workweek unless
20 the employee receives one and one-half (1 1/2) times his regular rate of pay, and shall not be
21 employed more than twelve (12) hours in any workday or more than eight (8) hours on the seventh
22 (7th) consecutive workday in any workweek unless the employee receives double his regular rate
23 pay.

24 29. Plaintiff regularly worked over eight (8) hours per day and over forty (40) hours per
25 week for Defendant but Defendant willfully and intentionally refused, and continues to refuse, to pay
26 Plaintiff the required overtime compensation.

27 30. As a result of the unlawful acts of Defendant, Plaintiff and the Class have been
28 deprived of overtime wages and/or other compensation in amounts to be determined at trial, and are

1 entitled to recover such amounts from Defendant, plus interest thereon, attorneys' fees and costs.

2 31. As a proximate result of the aforementioned violations, Plaintiff and the Class have
3 been damaged in an amount according to proof at the time of trial, but in an amount that exceeds the
4 minimum jurisdiction of this Court.

5 32. Defendant's pattern, practice and uniform administration of its corporate policy and
6 practice to not pay Plaintiff and the putative Class all wages when due, as described herein, is
7 unlawful and creates entitlements pursuant to Labor Code sections 1194, 1198, 515(d), 219(a), IWC
8 Wage Order 7-2001, and California Code of Regulations, section 11090(3). Plaintiff and the
9 putative Class are entitled to recover from Defendants the full amount of the wages due and unpaid,
10 plus interest, reasonable attorneys' fees and costs of suit.

11 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS**

12 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**

13 33. Plaintiff incorporates by reference and realleges each of the foregoing paragraphs 1
14 through 32.

15 34. Plaintiff and the putative Class, at all relevant times during their employment with
16 Defendant, were entitled under California law to at least a thirty-minute uninterrupted meal period
17 within 5 hours of the start of work for every shift lasting at least five (5) hours, and a second
18 uninterrupted meal period of thirty minutes for any shift longer than ten (10) hours.

19 35. By its failure to provide minimum statutory meal periods, and failing to provide
20 compensation for meal periods not provided, Defendant willfully violated the provisions of Labor
21 Code sections 226.7 and 512 and IWC Wage Order 7-2001 and California Code of Regulations,
22 section 11090(11).

23 36. As a result of the unlawful acts of Defendant, Plaintiff and the putative Class have
24 been deprived of wages and/or other compensation in amounts to be determined at trial, and are
25 entitled to recover such amounts from Defendant, plus interest thereon, attorneys' fees, and costs of
26 suit.

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1 Court.

2 44. Plaintiff and certain members of the Class are no longer employed by Defendant,
3 having either been discharged from or quit their employ.

4 45. Defendant willfully failed to pay Plaintiff and the other terminated members of the
5 putative Class a sum certain at the time of their termination or within seventy-two (72) hours of their
6 resignation, failed to pay those sums for thirty (30) days thereafter, and continue to owe such sums.

7 46. Defendant's willful failure to pay wages to the Plaintiff and the other terminated
8 members of the putative Class violates Labor Code section 203 because Defendant knew wages were
9 due to Plaintiff and the putative Class, but failed to pay them.

10 47. Thus, Plaintiff and the other terminated members of the Class are entitled to penalties
11 pursuant to Labor Code section 203, in the amount of their respective daily wages multiplied by
12 thirty (30) days.

13 48. Defendant's pattern, practice and uniform administration of corporate policy
14 regarding its willful failure to timely pay wages as described herein is unlawful. Plaintiff and the
15 other terminated members of the Class are entitled to recover from Defendant the full amount of the
16 unpaid wages, plus interest, reasonable attorneys' fees and costs of suit.

17 **FIFTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

18 **ILLEGAL RECORD KEEPING**

19 49. Plaintiff incorporates by reference and realleges each of the foregoing paragraphs 1
20 through 48.

21 50. Labor Code section 226 requires an employer to furnish its employees with an
22 accurate itemized wage statement in writing showing, among other things, gross wages earned, net
23 wages earned, all applicable hourly rates in effect during each respective pay period and the
24 corresponding number of hours worked at each hourly rate by each respective individual. As a
25 pattern and practice, in violation of Labor Code section 226(a), Defendant did not furnish accurate
26 itemized wage statements.

27 51. Pursuant to Labor Code section 226(e), Plaintiff and the putative Class are entitled to
28 penalties of (a) Fifty Dollars (\$50.00) per employee for the initial pay period in which a violation

1 occurs; (b) One Hundred Dollars (\$100.00) per employee for each violation in a subsequent pay
2 period, not to exceed \$4,000 per claimant; and (c) an award of costs and reasonable attorneys' fees.

3 52. Pursuant to Labor Code section 226(g), the members of the Class are entitled to
4 injunctive relief to ensure Defendant's compliance with Labor Code section 226.

5 **SIXTH CAUSE OF ACTION AGAINST ALL DEFENDANTS**

6 **UNFAIR BUSINESS PRACTICES**

7 **(ON BEHALF OF PLAINTIFF, THE CLASS AND THE GENERAL PUBLIC)**

8 53. Plaintiff incorporates by reference and realleges each of the foregoing paragraphs 1
9 through 52.

10 54. Defendant's failure to pay earned wages in the form of overtime to Plaintiff and
11 members of the putative Class under the California Labor Code and IWC Wage Orders, as alleged
12 herein, constitute unlawful activity prohibited by Business and Professions Code section 17200.

13 55. The actions of Defendant in failing to pay Plaintiff and the Class in a lawful manner
14 constitute false, unfair, fraudulent and deceptive business practices, within the meaning of Business
15 and Professions Code sections 17200, *et seq.*

16 56. Plaintiff is entitled to an injunction and other equitable relief against such unlawful
17 practices in order to prevent further damage, for which there is no adequate remedy at law, and to
18 avoid a multiplicity of lawsuits. Plaintiff brings this cause as a Class Action and as a member of the
19 general public as a representative of all others similarly situated who were subject to Defendant's
20 unlawful acts and practices.

21 57. Plaintiff and the putative Class have lost money and/or property as a result of
22 Defendant's unfair business acts and practices and Defendant is unjustly enriched to the extent of its
23 failure to pay earned wages to Plaintiff and members of the putative Class.

24 58. The unlawful acts and conduct alleged herein is continuing and there is no indication
25 that Defendant will stop such activity in the future. Plaintiff alleges that if Defendant is not enjoined
26 from the conduct set forth in this Complaint, it will continue to withhold payment of earned wages
27 and other compensation due Plaintiff and the putative Class.

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1 59. As a direct and proximate result of the unfair business acts and practices of
2 Defendant, Plaintiff, individually and on behalf of all employees similarly situated, is entitled to
3 equitable and injunctive relief, including full restitution, disgorgement, and/or specific performance
4 of payment of all wages that have been unlawfully withheld from Plaintiff and the putative Class,
5 and issuance of an order pursuant to Business and Professions Code section 17200, *et seq.*, enjoining
6 Defendant from engaging in the unlawful acts and practices described herein.

7 60. Plaintiff further requests that the Court issue a preliminary and permanent injunction
8 prohibiting Defendant from continuing the illegal practices described hereinabove.

9 **THEREFORE, Plaintiff and the individuals she seeks to represent request relief**
10 **as described below.**

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff individually and on behalf of all employees similarly situated prays
13 for judgment against Defendant as follows:

14 1. For compensatory damages available under Labor Code, including for unpaid
15 wages, unlawful wage statements, unprovided meal periods, unprovided rest periods, and waiting
16 time penalties;

17 2. For restitution of all monies due to Plaintiff and the putative Class for the unlawful
18 business acts and practices of Defendant;

19 3. For all statutory penalties available under Labor Code, including for unpaid wages,
20 unlawful wage statements, unprovided meal and rest periods, and waiting time penalties;

21 4. For interest accrued to date;

22 5. For costs of suit incurred herein and reasonable attorneys' fees pursuant to the
23 referenced statutes;

24 6. For prejudgment interest pursuant to California Civil Code section 3287 and/or
25 3288;

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- 7. For injunctive relief; and
- 8. For such other and further relief as the Court may deem just and proper.

Dated: April 22, 2014

GLEASON & FAVAROTE, LLP
Torey J. Favarote

By: 

TOREY J. FAVAROTE
Attorneys for Plaintiff Christine Ortega and the
putative class

Dated: April 22, 2014

LAW OFFICE OF JOSEPH R. BECERRA
Joseph R. Becerra

By: 

JOSEPH R. BECERRA
Attorneys for Plaintiff Christine Ortega and the
putative class


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Demand for Jury Trial

Plaintiff hereby demands a trial by jury.

Dated: April 22, 2014

GLEASON & FAVAROTE, LLP
Torey J. Favarote

By: 

TOREY J. FAVAROTE
Attorneys for Plaintiff Christine Ortega and the putative class

Dated: April 22, 2014

LAW OFFICE OF JOSEPH R. BECERRA
Joseph R. Becerra

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