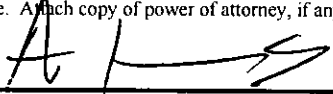



<b>UNITED STATES BANKRUPTCY COURT</b> Southern District of New York		<b>PROOF OF CLAIM</b>
Name of Debtor: <u>Jennifer Convertibles, Inc.</u>		Case Number: <u>10-13779 (ALG)</u>
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): <u>Avisha Combs, as representative of an employee class</u>		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.  Court Claim Number: _____ (If known)  Filed on: _____
Name and address where notices should be sent: <u>Alan Harris, Harris &amp; Ruble</u> <u>6424 Santa Monica, Blvd.</u> <u>Los Angeles, CA 90038</u>  Telephone number: <u>(323) 962-3777</u>		
Name and address where payment should be sent (if different from above):   Telephone number: _____		
1. Amount of Claim as of Date Case Filed: \$ <u>7,632,100.00</u>  If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.  If all or part of your claim is entitled to priority, complete item 5.  <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.  Specify the priority of the claim.  <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B). <input checked="" type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507 (a)(4). <input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. §507 (a)(5). <input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507 (a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. §507 (a)(8). <input type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. §507 (a)(____).  Amount entitled to priority: \$ _____  *Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
2. Basis for Claim: <u>Wages and damages</u> (See instruction #2 on reverse side.)		
3. Last four digits of any number by which creditor identifies debtor: _____  3a. Debtor may have scheduled account as: <u>Class Action Litig</u> (See instruction #3a on reverse side.)		
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.  Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: _____  Value of Property: \$ _____ Annual Interest Rate _____ %  Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: _____  Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.		
7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.)  DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.  If the documents are not available, please explain: <u>Too voluminous; privileged.</u>		
Date: <u>09/29/2010</u>	Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. <div style="text-align: center;">  </div>	
Ayisha Combs		FOR COURT USE ONLY   00278

**INSTRUCTIONS FOR PROOF OF CLAIM FORM**

*The instructions and definitions below are general explanations of the law. In certain circumstances, such as bankruptcy cases not filed voluntarily by the debtor, there may be exceptions to these general rules.*

**Items to be completed in Proof of Claim form****Court, Name of Debtor, and Case Number:**

Fill in the federal judicial district where the bankruptcy case was filed (for example, Central District of California), the bankruptcy debtor's name, and the bankruptcy case number. If the creditor received a notice of the case from the bankruptcy court, all of this information is located at the top of the notice.

**Creditor's Name and Address:**

Fill in the name of the person or entity asserting a claim and the name and address of the person who should receive notices issued during the bankruptcy case. A separate space is provided for the payment address if it differs from the notice address. The creditor has a continuing obligation to keep the court informed of its current address. See Federal Rule of Bankruptcy Procedure (FRBP) 2002(g).

**1. Amount of Claim as of Date Case Filed:**

State the total amount owed to the creditor on the date of the Bankruptcy filing. Follow the instructions concerning whether to complete items 4 and 5. Check the box if interest or other charges are included in the claim.

**2. Basis for Claim:**

State the type of debt or how it was incurred. Examples include goods sold, money loaned, services performed, personal injury/wrongful death, car loan, mortgage note, and credit card. If the claim is based on the delivery of health care goods or services, limit the disclosure of the goods or services so as to avoid embarrassment or the disclosure of confidential health care information. You may be required to provide additional disclosure if the trustee or another party in interest files an objection to your claim.

**3. Last Four Digits of Any Number by Which Creditor Identifies Debtor:**

State only the last four digits of the debtor's account or other number used by the creditor to identify the debtor.

**3a. Debtor May Have Scheduled Account As:**

Use this space to report a change in the creditor's name, a transferred claim, or any other information that clarifies a difference between this proof of claim and the claim as scheduled by the debtor.

**4. Secured Claim:**

Check the appropriate box and provide the requested information if the claim is fully or partially secured. Skip this section if the claim is entirely unsecured. (See DEFINITIONS, below.) State the type and the value of property that secures the claim, attach copies of lien documentation, and state annual interest rate and the amount past due on the claim as of the date of the bankruptcy filing.

**5. Amount of Claim Entitled to Priority Under 11 U.S.C. §507(a).**

If any portion of your claim falls in one or more of the listed categories, check the appropriate box(es) and state the amount entitled to priority. (See DEFINITIONS, below.) A claim may be partly priority and partly non-priority. For example, in some of the categories, the law limits the amount entitled to priority.

**6. Credits:**

An authorized signature on this proof of claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

**7. Documents:**

Attach to this proof of claim form redacted copies documenting the existence of the debt and of any lien securing the debt. You may also attach a summary. You must also attach copies of documents that evidence perfection of any security interest. You may also attach a summary. FRBP 3001(c) and (d). If the claim is based on the delivery of health care goods or services, see instruction 2. Do not send original documents, as attachments may be destroyed after scanning.

**Date and Signature:**

The person filing this proof of claim must sign and date it. FRBP 9011. If the claim is filed electronically, FRBP 5005(a)(2), authorizes courts to establish local rules specifying what constitutes a signature. Print the name and title, if any, of the creditor or other person authorized to file this claim. State the filer's address and telephone number if it differs from the address given on the top of the form for purposes of receiving notices. Attach a complete copy of any power of attorney. Criminal penalties apply for making a false statement on a proof of claim.

**DEFINITIONS****Debtor**

A debtor is the person, corporation, or other entity that has filed a bankruptcy case.

**Creditor**

A creditor is a person, corporation, or other entity owed a debt by the debtor that arose on or before the date of the bankruptcy filing. See 11 U.S.C. §101 (10)

**Claim**

A claim is the creditor's right to receive payment on a debt owed by the debtor that arose on the date of the bankruptcy filing. See 11 U.S.C. §101 (5). A claim may be secured or unsecured.

**Proof of Claim**

A proof of claim is a form used by the creditor to indicate the amount of the debt owed by the debtor on the date of the bankruptcy filing. The creditor must file the form with the clerk of the same bankruptcy court in which the bankruptcy case was filed.

**Secured Claim Under 11 U.S.C. §506(a)**

A secured claim is one backed by a lien on property of the debtor. The claim is secured so long as the creditor has the right to be paid from the property prior to other creditors. The amount of the secured claim cannot exceed the value of the property. Any amount owed to the creditor in excess of the value of the property is an unsecured claim. Examples of liens on property include a mortgage on real estate or a security interest in a car.

A lien may be voluntarily granted by a debtor or may be obtained through a court proceeding. In some states, a court judgment is a lien. A claim also may be secured if the creditor owes the debtor money (has a right to setoff).

**Unsecured Claim**

An unsecured claim is one that does not meet the requirements of a secured claim. A claim may be partly unsecured if the amount of the claim exceeds the value of the property on which the creditor has a lien.

**Claim Entitled to Priority Under 11 U.S.C. §507(a)**

Priority claims are certain categories of unsecured claims that are paid from the available money or property in a bankruptcy case before other unsecured claims.

**Redacted**

A document has been redacted when the person filing it has masked, edited out, or otherwise deleted, certain information. A creditor should redact and use only the last four digits of any social-security, individual's tax-identification, or financial-account number, all but the initials of a minor's name and only the year of any person's date of birth.

**Evidence of Perfection**

Evidence of perfection may include a mortgage, lien, certificate of title, financing statement, or other document showing that the lien has been filed or recorded.

**INFORMATION****Acknowledgment of Filing of Claim**

To receive acknowledgment of your filing, you may either enclose a stamped self-addressed envelope and a copy of this proof of claim or you may access the court's PACER system ([www.pacer.psc.uscourts.gov](http://www.pacer.psc.uscourts.gov)) for a small fee to view your filed proof of claim.

**Offers to Purchase a Claim**

Certain entities are in the business of purchasing claims for an amount less than the face value of the claims. One or more of these entities may contact the creditor and offer to purchase the claim. Some of the written communications from these entities may easily be confused with official court documentation or communications from the debtor. These entities do not represent the bankruptcy court or the debtor. The creditor has no obligation to sell its claim. However, if the creditor decides to sell its claim, any transfer of such claim is subject to FRBP 3001(e), any applicable provisions of the Bankruptcy Code (11 U.S.C. § 101 *et seq.*), and any applicable orders of the bankruptcy court.

**United States Bankruptcy Court  
Southern District of New York**

In re Jennifer Convertibles, Inc., Case No. 10-13779 (ALG)  
Debtor Chapter 11

**LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS**

(1) Name of creditor and complete mailing address including zip code	(2) Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted	(3) Nature of claim (trade debt, bank loan, government contract, etc.)	(4) Indicate if claim is contingent, unliquidated, disputed or subject to setoff	(5) Amount of claim [if secured also state value of security]
Haining Mengnu Group, 1061 Long Ling Road, Economic Development Zone, Haining Zhejiang 31440	Morris Zou Phone: +86-573-8726-6200 Fax: +86-573-8726-6285	Trade Debt - Supplier		\$17,378,165.69
Creative Television Marketing 2550 North Hollywood Way Ste 100, Burbank, CA 91505	Richard Storrs Creative Television Marketing Burbank, CA 91505 Phone: (818) 748-4888 Fax: (818) 847-8625	Trade Debt - Advertising		\$1,690,300.00
Class Action Litigation  Case No.: C-09-3242-SI  Ayisha Combs v. Jennifer Convertibles, Inc.	Alan Harris, Esq. Harris & Ruble 6424 Santa Monica Blvd. Los Angeles, CA 90038 Tel: 323-962-3777 Fax: 323-962-3004  Attorney for Ayisha Combs, et al	Settlement	Contingent Unliquidated Disputed	\$1,300,000.00
Klaussner Furniture Industries, PO Box 220, 405 Lewallen St, Asheboro, NC 247204	Ellen Smith Phone: (336) 625-6175 ext 8421 Fax: (336) 625-1879	Trade Debt - Supplier		\$993,615.89
PIC TV Incorporated PO Box 59665 Chicago, IL 60659-0665	Matt Spencer PIC TV Incorporated PO Box 59665 Chicago, IL 60659-0665 Phone: (818) 304-8185 Fax: (818) 304-7220	Trade Debt - Advertising		\$488,921.00

**UNITED STATES BANKRUPTCY COURT**  
**Southern District of New York**

**Jennifer Convertibles, Inc.**  
**Case Number: 10-13779 (ALG)**

**STATEMENT OF FINANCIAL AFFAIRS**

**Exhibit 4A - Suits and administrative proceedings, executions, garnishments and attachments.**

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<b>Caption of the Suit and Case No.</b>	<b>Nature of the Proceeding</b>	<b>Court or Agency Involved and Location</b>	<b>Status or Disposition</b>
Theodore, Dion N. v. Jennifer Convertibles, Inc., Case No. 10-cv-10274 (WGY)	American with Disabilities Act violations in three (3) of the Company's stores	US District Court for the District of Massachusetts	Pending
Combs, Ayisha v. Jennifer Convertibles, Inc., case No. C-09-3242-SI	Putative class action for alleged violations of federal Fair Labor Standards Act and California labor code	US District Court for Northern District of California	Settled
New York City Department of Consumer Affairs	Notice of Violation	New York City Department of Consumer Affairs	Pending
Madison Waldorf, LLC v. Jennifer Convertibles, Inc., Case No. LT-4-2-102711-2010	Landlord/Tenant Dispute	District Court of Maryland for Charles County	Pending
Gibson, Steven vs. Jennifer Convertibles, Inc., Case No. 0502-0010376-2010	Contract claim	District Court of Maryland for Prince George's County Courthouse, Bourne Wing	Pending
Seidel, Karyn Lynn vs. Jennifer Convertibles, Inc., Case No. 0601-0011110-2010	Product liability	District Court of Maryland for Montgomery County	Pending
Insogna, Marilyn vs. Jennifer Convertibles, Inc., Case No. 201010SC000850	Contract claim	Trial Court of Massachusetts, District Court Department, Small Claims Session	Pending

1 Alan Harris (SBN 146079)  
2 Matthew E. Kavanaugh (SBN 239961)  
3 HARRIS & RUBLE  
4 5455 Wilshire Boulevard, Suite 1800  
5 Los Angeles, California 90036  
6 Telephone: 323.931.3777  
7 Facsimile: 323.931.3366  
8 aharris@harrisandruble.com

9 David S. Harris (SBN 215224)  
10 NORTH BAY LAW GROUP  
11 901 Irwin Street  
12 San Rafael, California 94901  
13 Telephone: 415.460.5300  
14 Facsimile: 415.460.5303  
15 dsh@northbaylawgroup.com

16 Attorneys for Plaintiff  
17 AYISHA COMBS

18 UNITED STATES DISTRICT COURT  
19 NORTHERN DISTRICT OF CALIFORNIA

20 AYISHA COMBS, individually and  
21 on behalf of all others similarly  
22 situated,

23 Plaintiff,

24 v.

25 JENNIFER CONVERTIBLES,  
26 INC., a Delaware Corporation,

27 Defendant.

Case No. CV 09-3242 SI

**FIRST AMENDED COMPLAINT**  
**[Class Action Complaint]**

1. Failure to Pay Overtime Compensation, California Labor Code
2. Failure to Provide Accurate Itemized Wage Statements
3. Failure to Pay Overtime Compensation, Fair Labor Standards Act
4. Failure to Provide Adequate Meal Periods
5. Failure to Provide Adequate Rest Periods
6. Continuing Wages
7. Violations of Section 17200 *et seq.* of the California Business and Professions Code
8. California Labor Code § 2802, Indemnification for Expenditures or Losses in Discharge of Duties
9. Civil Penalties under the California Labor Code § 2699, the Labor Code Private Attorneys General Act of 2004

**DEMAND FOR JURY TRIAL**

1  
2 Plaintiff, Ayisha Combs, by and through the undersigned attorneys, alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1441(b).  
5 Defendant Jennifer Convertibles, Inc. ("JCI") constitutes an "enterprise" within the  
6 meaning of the Fair Labor Standards Act, 29 U.S.C. § 203. See 29 U.S.C. § 203(r)  
7 (defining "enterprise"). Defendant is engaged in interstate commerce, with annual sales  
8 in excess of \$1,000,000 and with more than 400 employees nationwide.

9 2. This Court has federal-question jurisdiction under 28 U.S.C. § 1331.  
10 Furthermore, under 28 U.S.C. § 1367, this Court may exercise supplemental jurisdiction  
11 over Plaintiff's state-law claims. There are no grounds that would justify this Court's  
12 declining to exercise its jurisdiction pursuant to 28 U.S.C. § 1367. See 28 U.S.C.  
13 § 1367(c) (explaining grounds on which courts may decline to exercise supplemental  
14 jurisdiction).

15 **PARTIES AND JURISDICTION**

16 3. Plaintiff Ayisha Combs (hereinafter, "Plaintiff") is an individual who, during  
17 the time periods relevant to this Complaint, was employed by JCI. Plaintiff currently  
18 resides in the City of Santa Rosa, in the County of Sonoma, State of California. At all  
19 relevant times herein, JCI served as the employer of Plaintiff and the Class  
20 Members whom Plaintiff seeks to represent in this putative Class Action. Specifically,  
21 from approximately March 14, 2007 through approximately March 24, 2009, Plaintiff  
22 was employed by JCI as a Sales Associate at a various showrooms through the greater  
23 San Francisco Bay Area. Plaintiff was terminated by JCI on or about March 24, 2009,  
24 and Plaintiff has not worked for JCI since this date.

25 4. Defendant JCI was and is a Delaware Corporation doing business within the  
26 State of California. JCI engages in the ownership and licensing of sofabed and specialty  
27 retail stores and leather specialty retail stores throughout the United States. JCI is  
28 headquartered in Woodbury, New York. In addition to doing business in the State of

1 California, JCI does business in all of the following states: Arizona, Connecticut, Florida,  
2 Georgia, Illinois, Maryland, Massachusetts, Michigan, Nevada, New Hampshire, New  
3 Jersey, New York, North Carolina, Pennsylvania, Virginia and Washington D.C. JCI  
4 maintains at least thirty facilities dispersed throughout Northern and Southern California.  
5 At all relevant times JCI employed Plaintiff and numerous other employees in these  
6 facilities. JCI has significant contacts with this judicial district and the activities  
7 complained of herein occurred in whole or in part, in this judicial district.

### 8 **NATURE OF THE CASE**

9 5. Plaintiff worked as a non-exempt sales representative for JCI. In her  
10 capacity as a non-exempt sales representative, Plaintiff worked in JCI showrooms where  
11 she sold sofas and companion pieces, such as sofas, loveseats, chairs, and ottomans,  
12 as well as tables, lamps, and rugs.

13 6. As set forth in the JCI sales training manual, true and correct copies of  
14 portions of which are attached hereto as Exhibit 1, JCI showrooms were open Monday  
15 through Friday, from 10:00 AM until 9:00 PM, Saturday from 10:00 AM until 6:00 PM  
16 and on Sunday from 11:00 AM until 6:00 PM. JCI employees were required to begin  
17 work 15 minutes before the store was scheduled to open. After the store closed, JCI  
18 employees were to stay working until they finished closing down for the day, which often  
19 required an additional 2 hours of work after the store had closed to the public. Thus, JCI  
20 employees, including Plaintiff, were regularly required to work in excess of 11 hours in a  
21 single work day. For example, JCI employees, including Plaintiff, were regularly  
22 scheduled to work from 10 AM until 9 PM. True and correct copies of Plaintiff's work  
23 schedules are attached hereto as Exhibit 2. Often, however, when an employee was  
24 scheduled to work from 10 AM until 9 PM, or 11 hours, that employee would end up  
25 having to work well in excess of 12 hours in order to finalize paperwork and close the  
26 showrooms.

27 7. JCI employees, including Plaintiff, often worked an entire shift by  
28

1 themselves, without any other JCI employees working with them in the JCI showroom.  
2 In such instances, the JCI employee was required to report to work at least 15 minutes  
3 before the store was scheduled to open. The JCI employee would then work on the sales  
4 floor during the entire time the store was open to the public. Throughout the entire time  
5 the store was open, JCI instructed its employees, including Plaintiff, that the JCI store  
6 must be open at all hours without exception. For example, in the JCI employee sales  
7 manual there was a policy entitled, "N.C.S.O." which stands for No Customer Stands  
8 Outside! The "N.C.S.O." policy states, "[w]e must be available when our customers are  
9 out shopping. We must open on time, and remain opened [sic] all operating hours  
10 without exception!! No Customer Stands Outside!" A true and correct copy of JCI's  
11 "N.C.S.O." policy is attached hereto as Exhibit 3.

12 8. As JCI employees, including Plaintiff, were required to keep the showroom  
13 open throughout the working day, JCI employees, including Plaintiff, were unable to take  
14 any rest breaks, much less a 10 minute break every four hours worked. Furthermore, JCI  
15 employees, including Plaintiff, were unable to take a 30 minute lunch, during which the  
16 employee would be relieved of all duties, within the first five hours of the workday.  
17 Indeed, the JCI employee sales manual requires that "the store must remain opened [sic]  
18 all operating hours without exception" and "when working alone, please make sure to  
19 bring food/drink or be able to order for delivery so the store remains opened [sic] all  
20 operating hours." See Ex. 1. Not only did JCI not provide its employees, including  
21 Plaintiff, with the opportunity to take ten-minute rest breaks or a thirty minute  
22 uninterrupted lunch break, but JCI's written policies specifically precluded employees  
23 from taking any rest breaks or meal breaks.

24 9. JCI employees, including Plaintiff, were forced to work hours well in excess  
25 of eight hours in a day and forty hours in a week, yet JCI did not pay its employees,  
26 including Plaintiff, any overtime wages, as required by California and Federal laws.

27 10. JCI employees, including Plaintiff, were often required to drive long  
28



1 distances from one JCI store to another JCI store using the employee's personal vehicle  
2 in order, for example, to attend JCI meetings or to cover a workshift for an employee who  
3 called in sick. JCI employees were not compensated for the time it took to drive from  
4 one store to another. Furthermore, JCI employees were not compensated for the  
5 business-related expenses involved in having to drive from one store to another.  
6 Furthermore, JCI employees, including Plaintiff, were often required to use their personal  
7 vehicles to run work-related errands. Once again, the JCI employees, including Plaintiff,  
8 were not compensated for time spent running these business-related errands nor were  
9 they compensated for the expenses involved in running the business-related errands.

10 11. This Complaint asserts claims against JCI for violations of California  
11 Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 515, 1174, 1198 and  
12 2802; violations of the relevant Wage Order of the Industrial Welfare Commission;  
13 violations of section 17200 *et seq.* of the California Business and Professions Code; and  
14 violations of the Fair Labor Standards Act ("FLSA").

15 12. This action is brought as a California, statewide class action on behalf of all  
16 individuals who, at any time during the four years preceding the filing of the original  
17 Complaint, through the present, were or have been employed by JCI in California.  
18 This action is also brought as a nationwide collective action on behalf of all individuals  
19 who, at any time during the three years preceding the filing of this Complaint, were or  
20 have been employed by JCI in the United States.

21 13. At all times relevant hereto, sections 510, 515, 1194, and 1198 of the  
22 California Labor Code and 8 California Code of Regulations section 11070<sup>1</sup> required (1)  
23 the payment of wages equal to one-and-one-half times an employee's regular rate of pay  
24 for all hours worked in excess of eight per day or forty per week and (2) the payment  
25 of wages equal to double the employee's regular rate of pay for all hours worked in  
26 excess of twelve per day and for all hours worked in excess of eight on the seventh day  
27

28 <sup>1</sup> Section 11070 sets forth the relevant Industrial Welfare Commission Wage Order.

1 of work in any one workweek.

2 14. Similarly, at all times relevant hereto, the FLSA provided:

3 [N]o employer shall employ any of his employees who in any workweek is  
4 engaged in commerce or in the production of goods for commerce, or is  
5 employed in an enterprise engaged in commerce or in the production of  
6 goods for commerce, for a workweek longer than forty hours unless such  
7 employee receives compensation for his employment in excess of the hours  
8 above specified at a rate not less than one and one-half times the regular rate  
9 at which he is employed.

10 29 U.S.C. § 207(a)(1).

11 15. At all time relevant hereto, sections 226, 1174, and 1174.5 of the California  
12 Labor Code required employers to keep records of and provide employees with itemized  
13 wage statements showing the total hours worked.

14 16. At all times relevant hereto, sections 226.7 and 512 of the California Labor  
15 Code, as well as 8 California Code of Regulations section 11070, required employers to  
16 provide employees with a first meal period of not less than thirty minutes, during which  
17 the employees are to be relieved of all duty, before the employees work more than five  
18 hours per day. Sections 226.7 and 512 of the California Labor Code, as well as 8  
19 California Code of Regulations section 11070, also required employers to provide a  
20 second meal period of not less than thirty minutes, during which they are again to be  
21 relieved of all duty, before the employees work more than ten hours per day.  
22 Similarly, sections 226.7 and 512 of the California Labor Code, as well as 8 California  
23 Code of Regulations section 11070, required employers to provide employees with ten-  
24 minute rest periods, during which the employees are relieved of all duty, for each four  
25 hours of work. As alleged herein, JCI has intentionally and improperly failed to provide  
26 meal and rest periods to its employees in violation of the California Labor Code and  
27 California Code of Regulations.  
28

1           17. At all relevant times mentioned herein, section 226.7(b) provided that if an  
2 employer fails to provide an employee a meal period or rest period in accordance with an  
3 applicable order of the Industrial Welfare Commission, the employer shall pay the  
4 employee one additional hour of pay at the employee's regular rate of compensation for  
5 each work day that the meal or rest period is not provided.

6           18. Compensation for missed rest and meal periods constitutes wages within the  
7 meaning of section 201 of the California Labor Code.

8           19. At all relevant times mentioned herein, section 203 of the California Labor  
9 Code provided:

10           If an employer willfully fails to pay, without abatement or reduction, in  
11 accordance with Sections 201, 201.5, 202 and 202.5, any wages of an  
12 employee who is discharged or who quits, the wages of the employee shall  
13 continue as a penalty from the due date thereof at the same rate until paid or  
14 until action therefor is commenced; but the wages shall not continue for  
15 more than 30 days.

16           20. Plaintiff contends that the failure of JCI to pay them within the time  
17 provided by sections 201 and 202 of the California Labor Code has been and is "willful"  
18 within the meaning of section 203 of the California Labor Code and that, accordingly,  
19 Plaintiff is entitled to the "continuing wages" provided for by section 203.

20           21. At all relevant times mentioned herein, section 1198 of the California Labor  
21 Code provided:

22           The maximum hours of work and the standard conditions of labor fixed by  
23 the [Industrial Welfare Commission] shall be the maximum hours of work  
24 and the standard conditions of labor for employees. The employment of any  
25 employee for longer hours than those fixed by [an] order or under conditions  
26 of labor prohibited by [an] order is unlawful.

27           22. At all relevant times mentioned herein, Wage Order Number Four (as  
28

1 periodically amended) applied to Plaintiff.

2 23. Wage Order Four requires a one-hour wage premium for each day that an  
3 employee is not provided with a mandated ten-minute rest period per four-hour work  
4 period. Additionally, Wage Order Four requires a one-hour wage premium for each day  
5 that an employee is not provided with a mandated thirty-minute meal period for any shift  
6 that is longer than five hours. Finally, Wage Order 4 requires that those who are  
7 employed more than eight (8) hours in any workday or more than 40 hours in any  
8 workweek receive overtime compensation.

9 24. At all relevant times mentioned herein, section 558 of the California Labor  
10 Code provided:

11 (a) Any employer or other person acting on behalf of an employer who  
12 violates, or causes to be violated, a section of this chapter or any provision  
13 regulating hours and days of work in any order of the Industrial Welfare  
14 Commission shall be subject to a civil penalty as follows: (1) For any initial  
15 violation, fifty dollars (\$50) for each underpaid employee for each pay  
16 period for which the employee was underpaid in addition to an amount  
17 sufficient to recover underpaid wages. (2) For each subsequent violation,  
18 one hundred dollars (\$100) for each underpaid employee for each pay period  
19 for which the employee was underpaid in addition to an amount sufficient to  
20 recover underpaid wages. (3) Wages recovered pursuant to this section shall  
21 be paid to the affected employee.

22 25. Plaintiff contends that JCI's failure to comply with section 512 of the  
23 California Labor Code and with Wage Order Four subjects JCI to civil penalties pursuant  
24 to section 558.

25 26. Plaintiff also contends that JCI's failure to comply with section 226 of the  
26 California Labor Code subjects JCI to civil penalties pursuant to section 226.3 of the  
27 California Labor Code. At all relevant times mentioned herein, section 226 of the  
28

1 California Labor Code provided:

2 (a) Every employer shall, semimonthly or at the time of each payment of  
3 wages, furnish each of his or her employees, either as a detachable part of  
4 the check, draft, or voucher paying the employee's wages, or separately  
5 when wages are paid by personal check or cash, an itemized statement in  
6 writing showing (1) gross wages earned, (2) total hours worked by the  
7 employee, except for any employee whose compensation is solely based on  
8 a salary and who is exempt from payment of overtime under subdivision (a)  
9 of Section 515 or any applicable order of the Industrial Welfare  
10 Commission, (3) the number of piece-rate units earned and any applicable  
11 piece rate if the employee is paid on a piece-rate basis, (4) all deductions,  
12 provided, that all deductions made on written orders of the employee may be  
13 aggregated and shown as one item, (5) net wages earned, (6) the inclusive  
14 dates of the period for which the employee is paid, (7) the name of the  
15 employee and his or her social security number, (8) the name and address of  
16 the legal entity that is the employer, and (9) all applicable hourly rates in  
17 effect during the pay period and the corresponding number of hours worked  
18 at each hourly rate by the employee. The deductions made from payments  
19 of wages shall be recorded in ink or other indelible form, properly dated,  
20 showing the month, day, and year, and a copy of the statement or a record of  
21 the deductions shall be kept on file by the employer for at least three years at  
22 the place of employment or at a central location within the State of  
23 California.

24 . . . .

25 (e) An employee suffering injury as a result of a knowing and intentional  
26 failure by an employer to comply with subdivision (a) is entitled to recover  
27 the greater of all actual damages or fifty dollars (\$50) for the initial pay  
28

1 period in which a violation occurs and one hundred dollars (\$100) per  
2 employee for each violation in a subsequent pay period, not exceeding an  
3 aggregate penalty of four thousand dollars (\$4,000), and is entitled to an  
4 award of costs and reasonable attorney's fees.  
5

6 . . . . .

7 (g) An employee may also bring an action for injunctive relief to ensure  
8 compliance with this section, and is entitled to an award of costs and  
9 reasonable attorney's fees.

10 JCI employed Plaintiff and Members of the Class, but failed to provide them with the  
11 data required by section 226 of the California Labor Code. For example, JCI failed to  
12 provide information concerning (1) the address of the legal entity that is the employer, (2)  
13 wages earned on account of meal and rest penalties, (3) the total hours worked by the  
14 employee, (4) the number of piece-rate units earned and any applicable piece rate, (5) the  
15 inclusive dates of the period for which the employee is paid, and (6) all applicable hourly  
16 rates in effect during the pay period and the corresponding number of hours worked at  
17 each hourly rate by the employee. Exhibit 4 hereto reflects certain of Plaintiff's wage  
18 statements.

19 27. At all relevant times mentioned herein, section 226.3 of the California Labor  
20 Code provided:

21 Any employer who violates subdivision (a) of Section 226 shall be subject to  
22 a civil penalty in the amount of two hundred fifty dollars (\$250) per  
23 employee per violation in an initial citation and one thousand dollars  
24 (\$1,000) per employee for each violation in a subsequent citation, for which  
25 the employer fails to provide the employee a wage deduction statement or  
26 fails to keep the records required in subdivision (a) of Section 226. The civil  
27 penalties provided for in this section are in addition to any other penalty  
28 provided by law.

1           28.    At all relevant times mentioned herein, section 204(a) of the California  
2 Labor Code provided:

3           All wages, other than those mentioned in Section 201, 202, 204.1, or 204.2,  
4 earned by any person in any employment are due and payable twice during  
5 each calendar month, on days designated in advance by the employer as the  
6 regular paydays. Labor performed between the 1st and 15th days, inclusive,  
7 of any calendar month shall be paid for between the 16th and the 26th day of  
8 the month during which the labor was performed, and labor performed  
9 between the 16th and the last day, inclusive, of any calendar month, shall be  
10 paid for between the 1st and 10th day of the following month.

11           29.    At all relevant times mentioned herein, section 510 (a) of the California  
12 Labor Code provided:

13           Eight hours of labor constitutes a day's work. Any work in excess of eight  
14 hours in one workday and any work in excess of 40 hours in any one  
15 workweek and the first eight hours worked on the seventh day of work in  
16 any one workweek shall be compensated at the rate of at least one and  
17 one-half times the regular rate of pay for an employee. Any work in  
18 excess of 12 hours in one day shall be compensated at the rate of no less  
19 than twice the regular rate of pay for an employee. In addition, any work  
20 in excess of eight hours on any seventh day of a workweek shall be  
21 compensated at the rate of no less than twice the regular rate of pay of an  
22 employee. Nothing in this section requires an employer to combine more  
23 than one rate of overtime compensation in order to calculate the amount to  
24 be paid to an employee for any hour of overtime work. The requirements  
25 of this section do not apply to the payment of overtime compensation to  
26 an employee working pursuant to any of the following

27           (1) An alternative workweek schedule adopted pursuant to Section 511.  
28

1 (2) An alternative workweek schedule adopted pursuant to a collective  
2 bargaining agreement pursuant to Section 514.

3 30. In regard to the employment of Plaintiff, the provisions of subparagraphs (1)  
4 and (2) of section 510 of the California Labor Code were inapplicable in that no  
5 alternative workweek schedule had been adopted pursuant to section 511 and Plaintiff's  
6 employment to which reference is hereinafter made was not governed by any collective  
7 bargaining agreement.

8 31. At all relevant times mentioned herein, section 1194 of the California Labor  
9 Code provided:

10 Notwithstanding any agreement to work for a lesser wage, any employee  
11 receiving less than the legal minimum wage or the legal overtime  
12 compensation applicable to the employee is entitled to recover in a civil  
13 action the unpaid balance of the full amount of this . . . overtime  
14 compensation, including interest thereon, reasonable attorney's fees, and  
15 costs of suit.

16 At all relevant times mentioned herein, section 1194.2 of the California Labor Code  
17 provided:

18 (a) In any action under . . . Section 1194 to recover wages because of the  
19 payment of a wage less than the minimum wage fixed by an order of the  
20 commission, an employee shall be entitled to recover liquidated damages in  
21 an amount equal to the wages unlawfully unpaid and interest thereon.

22 32. Notwithstanding the foregoing requirements of law, Plaintiff was routinely  
23 denied payment of minimum wage and/or overtime wages.

24 33. JCI's conduct of requiring additional work from Plaintiff and Class  
25 Members in the absence of overtime and minimum wage pay, knowingly and  
26 intentionally failing to provide accurate itemized wage statements, failing to provide  
27 adequate meal and rest periods, and willfully failing to pay wages earned and unpaid  
28



1 promptly upon employees' termination or resignation, and failing to reimburse  
2 employees for pertinent expenses violates the above-referenced provisions of  
3 California law and also constitutes unfair competition and unlawful, unfair, and  
4 fraudulent acts and practices within the meaning of section 17200 et seq. of the California  
5 Business and Professions Code.

### 6 **CLASS-ACTION ALLEGATIONS**

7 34. The class represented by Plaintiff (hereafter referred to as the "Class")  
8 consists of all individuals who, at any time during the four years preceding the filing of  
9 the original Complaint, through the present, were or have been employed by JCI in  
10 California (such persons herein referred to as "Class Members" and such period referred  
11 to hereafter as "Class Period").

12 35. Plaintiff contends that the failure of JCI to provide the data required by  
13 section 226 of the California Labor Code entitles each Class Member to either actual  
14 damages or statutory damages, whichever is greater.

15 36. Plaintiff contends that the failure of JCI to pay wages as provided by section  
16 226.7 of the California Labor Code entitles each Class Member to payment of such  
17 earned but unpaid wages owing on account of missed rest periods and meal breaks.

18 37. Plaintiff contends that the failure of JCI to pay overtime wages as provided  
19 by sections 204, 514 and 1194 of the California Labor Code entitles each Class Member  
20 to payment of such earned but unpaid overtime wages, JCI having, inter alia, failed to  
21 consider unpaid wages owed on account of missed rest periods and meal breaks in  
22 computing the overtime rate applicable to Plaintiff and Class Members.

23 38. Plaintiff contends that the failure of JCI to make final wage payments within  
24 the time provided by sections 201 and/or 202 of the California Labor Code has been and  
25 is "willful" within the meaning of section 203 of the California Labor Code and that,  
26 accordingly, each Class Member who has had his employment with Defendant JCI  
27 terminated is entitled to the "continuing wages" for which provision is made by section  
28

1 203 of the California Labor Code.

2 39. Plaintiff contends that the failure of JCI to reimburse employee expenses  
3 in accord with the requirements of section 2802 of the California Labor Code has been  
4 and is in violation of law and that, accordingly, each Class Member who has  
5 unreimbursed expenses is entitled to the indemnification for which provision is made by  
6 section 2802 of the California Labor Code.

7 40. The number of Class Members is great, believed to be well in excess of 500  
8 persons. It therefore is impractical to join each Class Member as a named plaintiff.  
9 Accordingly, utilization of a class action is the most economically feasible means of  
10 determining the merits of this litigation.

11 41. Despite the Class Members' numerosity, the Class Members are readily  
12 ascertainable through an examination of the records that Defendant JCI is required by law  
13 to keep. Likewise, the dollar amount owed to each Class Member is readily ascertainable  
14 by an examination of those same records.

15 42. Common questions of fact and of law predominate in the claims of Class  
16 Members over individual issues regarding the money owed to each Class Member. Some  
17 of the common issues herein are described in Paragraph 45, infra.

18 43. There is a well-defined community of interest in the questions of law and  
19 fact common to the Class Members. Some of the common issues herein are described in  
20 Paragraph 45, infra.

21 44. Plaintiff's claims are typical of the claims of the Class Members, which  
22 claims all arise from the same general operative facts, namely, Defendant JCI did not  
23 compensate its employees as required by the California Labor Code and the Fair Labor  
24 Standards Act. Plaintiff has no conflict of interest with the other Class Members and  
25 Plaintiff and Plaintiff's counsel are able to represent the interests of the other Class  
26 Members fairly and adequately.

27 45. A class action is a superior method for the fair and efficient adjudication of  
28

1 this controversy. The persons within the Class are so numerous that joinder of all of  
2 them is impracticable. The disposition of all claims of the members of the class in a class  
3 action, rather than in individual actions, benefits the parties and the court. The interest of  
4 the Class Members in controlling the prosecution of separate claims against Defendant is  
5 small when compared with the efficiency of a class action. The claims of each individual  
6 Class Member are too small to litigate individually, and the commencement of separate  
7 actions in this Court would lead to an undue burden on scarce judicial resources. Further,  
8 the alternative of individual proceedings before the California Labor Commissioner is  
9 impractical inasmuch as that agency has insufficient resources to process such claims  
10 promptly and, under the provisions of California Labor Code section 98.2, if the  
11 individual class members were to succeed in obtaining awards in their favor, such awards  
12 are subject to appeal as a matter of right for a *de novo* trial, leading to a multiplicity of  
13 such trials. Further, absent class treatment, employees will most likely be unable to  
14 secure redress given the time and expense necessary to pursue individual claims, and  
15 individual Class Members will likely be unable to retain counsel willing to prosecute  
16 their claims on an individual basis, given the small amount of recovery. As a practical  
17 matter, denial of class treatment will lead to denial of recovery to the individual Class  
18 Members.

19       **46. Community of Interest; Existence and Predominance of Common**  
20 **Questions of Law or Fact.** Common questions of fact and law exist as to all Class  
21 Members that predominate over any questions affecting only individual Class Members.  
22 These common legal and factual questions do not vary among Class Members and may  
23 be determined without reference to the individual circumstances of any Class Member.  
24 The questions include, but are not limited to, the following:

25       (a) Was such Class Member an employee of JCI?

26       (b) Was such Class Member paid his or her wages as provided by sections 201  
27 and/or 202 of the California Labor Code?  
28

1 (c) Did JCI fail to pay Class Members their overtime wages?

2 (d) Did JCI fail to provide Class Members with appropriate a thirty minute,  
3 uninterrupted meal break within the first five hours of the work period?

4 (e) Did JCI fail to provide Class Members with a mandated ten-minute rest period  
5 per four-hour work period?

6 (f) Did JCI commit unlawful business acts or practices within the meaning of  
7 California Business and Professions Code sections 17200 *et seq.*?

8 47. **Numerosity of the Class.** The Members of the Class are so numerous that  
9 the individual joinder of all of them is impracticable. Although the exact number and  
10 identities of Class Members are unknown to Plaintiff at this time and can only be  
11 ascertained through appropriate discovery directed to Defendant, Plaintiff believes  
12 and therefore alleges that there are at least five-hundred Class Members.

13 48. **Typicality of Claims.** Plaintiff's claims are typical of the claims of  
14 Members of the Class, and Plaintiff's interests are consistent with and not antagonistic  
15 to those of the other Class Members whom he seeks to represent. Plaintiff and all  
16 Members of the Class have sustained damages and face irreparable harm arising  
17 from JCI's common course of conduct as complained of herein. The damages  
18 sustained by each Member of the Class were caused directly by JCI's wrongful conduct,  
19 as alleged herein.

20 49. **Adequacy of Representation.** Plaintiff will fairly and adequately protect  
21 the interests of Members of the Class. Her claims are not antagonistic to those of Class  
22 Members. Also, Plaintiff has retained attorneys who are experienced in the prosecution  
23 of class actions, including employment class actions, and Plaintiff intends to prosecute  
24 this action vigorously.

25 50. **Superiority.** A class action is superior to other available methods for the  
26 fair and efficient adjudication of this controversy because individual litigation of the  
27 claims of all Class Members is impracticable. Even if every Class Member could  
28

1 afford individual litigation, the court system could not. It would be unduly burdensome  
2 to the courts in which individual litigation of numerous cases would proceed. Moreover,  
3 individualized litigation would present the potential for varying, inconsistent, or  
4 contradictory judgments, and it would magnify the delay and expense to all parties and  
5 to the court system resulting from multiple trials of the same factual issues. By  
6 contrast, the conduct of this action as a class action, with respect to some or all of  
7 the issues presented herein, presents few management difficulties, conserves the  
8 resources of the parties and of the court system, and protects the rights of each Class  
9 Member. Plaintiff anticipates no difficulty in the management of this action as a class  
10 action.

11 51. The interest of each Class Member in controlling the prosecution of his or  
12 her individual claim against Defendant JCI is small when compared with the efficiency of  
13 a class action. The prosecution of separate actions by individual Class Members may  
14 create a risk of adjudications with respect to them that would, as a practical matter,  
15 be dispositive of the interests of the other Class Members not parties to such  
16 adjudications or that would substantially impair or impede the ability of such non-  
17 party Class Members to protect their interests.

18 52. The prosecution of individual actions by Class Members would establish  
19 inconsistent standards of conduct for JCI.

20 53. JCI has acted or refused to act in respects generally applicable to the Class,  
21 thereby making appropriate final and injunctive relief or corresponding declaratory relief  
22 with regard to Class Members as a whole, as requested herein. Likewise, JCI's conduct  
23 as described above is unlawful, continuing, and capable of repetition, and it will  
24 continue unless restrained and enjoined by the Court.

25 54. In addition to asserting class-action claims, pursuant to California Business  
26 and Professions Code section 17200 *et seq.*, Plaintiff asserts a claim on behalf of the  
27 general public. Plaintiff seek to enjoin JCI from engaging in the unfair, unlawful, and/or  
28

1 deceptive business practices alleged in this Complaint, as well as to require JCI to  
2 pay restitution of all monies wrongfully obtained by it through its unfair, unlawful,  
3 and/or deceptive business practices. A representative action is necessary and appropriate  
4 because JCI has engaged in the wrongful acts described herein as a general business  
5 practice.

### 6 **FLSA COLLECTIVE-ACTION ALLEGATIONS**

7 55. In this collective action, Plaintiff seeks to represent all individuals who, at  
8 any time during the three years preceding the filing of this Complaint, were or have been  
9 employed by JCI in the United States (the "COLLECTIVE ACTION MEMBERS").

10 56. Plaintiff is similarly situated with the COLLECTIVE ACTION MEMBERS  
11 in that: (a) Plaintiff and the COLLECTIVE ACTION MEMBERS were employed by JCI;  
12 (b) Plaintiff and the COLLECTIVE ACTION MEMBERS were not paid their overtime  
13 and minimum wages for all hours worked; (c) JCI knowingly and willfully violated  
14 provisions of the FLSA, by not paying Plaintiff and the COLLECTIVE ACTION  
15 MEMBERS their wages; (d) As a result of JCI's practice of withholding compensation  
16 for all hours worked, Plaintiff and the COLLECTIVE ACTION MEMBERS have been  
17 similarly damaged in that they have not received timely payment in full of their earned  
18 wages.

19 57. This action is maintainable as an "opt-in" collective action pursuant to 29  
20 U.S.C. § 216(b) as to claims for liquidated damages, costs and attorneys' fees under the  
21 FLSA.

22 58. All individuals employed by Defendant should be given notice and be  
23 allowed to give their consent in writing, i.e., "opt in," to the collective action pursuant to  
24 29 U.S.C. § 216(b).

### 25 **FIRST CAUSE OF ACTION**

26 **(Failure to Pay Overtime Compensation, California Labor Code)**  
27 **(On Behalf of California Class Against Defendant)**

28 59. The preceding paragraphs of this Complaint are re-alleged and incorporated

1 by reference.

2 60. Pursuant to Labor Code section 1194(a), Plaintiff may bring a civil action  
3 for overtime wages directly against the employer in Plaintiff's name without first filing a  
4 claim with the Department of Labor.

5 61. At all times herein relevant, the sections of the California Labor Code and of  
6 the California Code of Regulations referenced herein applied to the employment of  
7 Plaintiff and Class Members.

8 62. Pursuant to Labor Code section 1198, it is unlawful to employ persons for  
9 longer than the hours set by the Industrial Welfare Commission or under conditions  
10 prohibited by the California Code of Regulations.

11 63. At all times herein relevant, sections 510, 515, 1194, and 1198 of the  
12 California Labor Code and 8 California Code of Regulations section 11070 provided for  
13 the payment of overtime wages equal to one-and-one-half times an employee's regular  
14 rate of pay for all hours worked over eight per day or forty per week, as well as for  
15 the payment of overtime wage equal to double the employee's regular rate of pay  
16 for all hours worked in excess of twelve in any day and for all hours worked in  
17 excess of eight on the seventh day of work.

18 64. Under the provisions of sections 510, 515, 1194, and 1198 of the California  
19 Labor Code and 8 California Code of Regulations section 11070, Plaintiff and each  
20 Class Member should have received overtime wages in a sum according to proof.

21 65. JCI owes Plaintiff and each Class Member overtime wages pursuant to  
22 sections 510, 515, 1194, and 1198 of the California Labor Code and 8 California Code of  
23 Regulations section 11070 according to proof at trial of the hours worked for the period  
24 of time from four years prior to the filing of the Complaint to date.

25 66. JCI has failed and refused, and continues to fail and refuse, to pay Plaintiff  
26 and Class Members the amounts that are owed. JCI's failure to pay Plaintiff and each  
27 Class Member who has quit his or her employment with JCI or whose employment has  
28

1 been terminated by JCI violates California Labor Code sections 201 and 202, which  
2 therefore subjects JCI to continuing-wages liability pursuant to section 203 of the  
3 California Labor Code for the period of time from four years prior to the filing of the  
4 Complaint to date.

5 67. Plaintiff, individually and on behalf of others similarly situated, requests  
6 payment of overtime compensation according to proof, interest, attorney's fees, and  
7 costs pursuant to Labor Code section 1194(a).

8 68. Plaintiff and the Class also request relief as described below.

9  
10 **SECOND CAUSE OF ACTION**  
11 **(Failure to Provide Accurate Itemized Wage Statements)**  
12 **(On Behalf of California Class Against Defendant)**

13 69. The preceding paragraphs of this Complaint are re-alleged and incorporated  
14 by reference.

15 70. At all times herein relevant, section 226 of the California Labor Code and 8  
16 California Code of Regulations section 11070 required that employers provide  
17 employees with itemized wage statements showing (1) the address of the legal entity  
18 that is the employer, (2) wages earned on account of meal and rest penalties, (3) the total  
19 hours worked by the employee, (4) the number of piece-rate units earned and any  
20 applicable piece rate, (5) the inclusive dates of the period for which the employee is paid,  
21 and (6) all applicable hourly rates in effect during the pay period and the corresponding  
22 number of hours worked at each hourly rate by the employee. Moreover, Labor Code  
23 section 226(e) provided that, if an employer knowingly and intentionally fails to provide  
24 a statement with all of the above-referenced information, then the employee is entitled to  
25 recover the greater of all actual damages or \$50 for the initial violation and \$100 for each  
26 subsequent violation, up to a maximum of \$4,000.

27 71. JCI has knowingly and intentionally failed to furnish Plaintiff and Class  
28 Members with timely, itemized statements showing: (1) the address of the legal entity  
that is the employer, (2) wages earned on account of meal and rest penalties, (3) the total



1 hours worked by the employee, (4) the number of piece-rate units earned and any  
2 applicable piece rate, (5) the inclusive dates of the period for which the employee is paid,  
3 and (6) all applicable hourly rates in effect during the pay period and the corresponding  
4 number of hours worked at each hourly rate by the employee. As a result, JCI is liable  
5 to Plaintiff and Class Members for the amounts provided by Labor Code section 226(e)  
6 for the period of time from the four years prior to the filing of the Complaint to date.

7 72. Plaintiff and the Class Members request relief as described below.

8  
9 **THIRD CAUSE OF ACTION**

10 **(Failure to Pay Overtime Compensation, Fair Labor Standards Act)**  
11 **(On Behalf of Nationwide Collective Action Class Against Defendant)**

12 73. The preceding paragraphs of this Complaint are re-alleged and incorporated  
13 by reference.

14 74. Again, at all times herein relevant, the FLSA provided:

15 [N]o employer shall employ any of his employees who in any workweek is  
16 engaged in commerce or in the production of goods for commerce, or is  
17 employed in an enterprise engaged in commerce or in the production of  
18 goods for commerce, for a workweek longer than forty hours unless such  
19 employee receives compensation for his employment in excess of the hours  
20 above specified at a rate not less than one and one-half times the regular rate  
21 at which he is employed.

22 29 U.S.C. § 207(a).

23 75. JCI has intentionally and improperly failed to pay Plaintiff and Collective  
24 Action Members overtime compensation to which they are entitled to receive for hours  
25 worked in excess of forty hours per week.

26 76. During their employment with JCI, Plaintiff and Collective Action Members  
27 were required to work a well in excess of forty hours a week without the payment of  
28 overtime wages and other benefits.

77. Accordingly, Plaintiff, individually and on behalf of others similarly

1 situated, requests payment of overtime compensation according to proof, attorney's fees,  
2 and costs pursuant to 29 U.S.C. § 216(b).

3  
4 **FOURTH CAUSE OF ACTION**  
5 **(Failure to Provide Adequate Meal Periods)**  
6 **(On Behalf of California Class Against Defendant)**

7 78. The preceding paragraphs of this Complaint are re-alleged and incorporated  
8 by reference.

9 79. At all times herein relevant, section 226.7 of the California Labor Code and  
10 8 California Code of Regulations section 11070 provided that employees must receive a  
11 first meal period of not less than thirty minutes before working more than five hours per  
12 day and a second meal period of not less than thirty minutes before working more than  
13 ten hours per day.

14 80. Because JCI failed to provide the required meal breaks to Plaintiff and other  
15 Class Members, its is liable to them for one hour of additional pay at the regular rate of  
16 compensation for each workday that the proper meal periods were not provided,  
17 pursuant to Labor Code section 226.7 and California Code of Regulations section  
18 11070, for the period of time from the three years prior to the filing of the Complaint to  
19 date.

20 81. Plaintiff and the Class Members request relief as described below.

21 **FIFTH CAUSE OF ACTION**  
22 **(Failure to Provide Adequate Rest Periods)**  
23 **(On Behalf of California Class Against Defendant)**

24 82. The preceding paragraphs of this Complaint are re-alleged and incorporated  
25 by reference.

26 83. At all times herein relevant, section 226.7 of the California Labor Code and  
27 8 California Code of Regulations section 11070 provided that employees must receive rest  
28 periods of ten minutes for each four hours of work.

84. Because JCI failed to provide the required rest breaks, it is liable to  
Plaintiff and other Class Members for one hour of additional pay at the regular rate of

1 compensation for each workday that the proper rest periods were not provided,  
2 pursuant to Labor Code section 226.7 and California Code of Regulations section 11070,  
3 for the period of time from the three years prior to the filing of the Complaint to date.

4 85. Plaintiff and the Class request relief as described below.

5 **SIXTH CAUSE OF ACTION**

6 **(Continuing Wages)**  
7 **(On Behalf of California Class Against Defendant)**

8 86. The preceding paragraphs of this Complaint are re-alleged and incorporated  
9 by reference.

10 87. At all times herein relevant, Labor Code sections 201 and 202 provided that  
11 employees must receive wages earned and unpaid promptly upon termination or  
12 resignation.

13 88. Because JCI has willfully failed to pay wages earned and unpaid promptly  
14 upon termination or resignation, JCI is liable for continuing wages under Labor Code  
15 section 203 for the period of thirty days for each former employee who is owed  
16 unpaid wages as herein claimed.

17 89. Plaintiff and the Class request relief as described below.

18 **SEVENTH CAUSE OF ACTION**

19 **(Violations of Section 17200 *et seq.* of the California Business and Professions Code)**  
20 **(On Behalf of California Class Against Defendant)**

21 90. The preceding paragraphs of this Complaint are re-alleged and incorporated  
22 by reference.

23 91. JCI's acts constitute a continuing and ongoing unlawful activity prohibited  
24 by section 17200 *et seq.* of the California Business and Professions Code, and they  
25 justify restitution and the issuance of an injunction pursuant to section 17203 of the  
26 Business and Professions Code.

27 92. Labor Code section 90.5(a) articulates the public policy of this State to  
28 enforce minimum labor standards vigorously, including the requirements to pay overtime  
and benefits pursuant to Labor Code sections 510, 515, 1194, and 1198; the

1 requirements to provide accurate itemized wage statements and to keep payroll  
2 records pursuant to Labor Code sections 226, 226.3, 1174, and 1174.5; the  
3 requirement to provide adequate meal and rest periods pursuant to Labor Code sections  
4 226.7 and 512; and the requirement to pay wages earned and unpaid promptly upon  
5 termination or resignation pursuant to Labor Code sections 201 and 202. JCI's conduct  
6 of requiring certain employees to work an excessive amount of hours in the absence of  
7 overtime, without providing accurate itemized wage statements, without providing  
8 adequate meal and rest periods, and without paying wages earned and unpaid  
9 promptly upon termination or resignation directly violates state law, constitutes unfair  
10 competition and/or unlawful and unfair acts and practices within the meaning of section  
11 17200 *et seq.* of the California Business and Professions Code.

12 93. Through the wrongful and illegal conduct alleged herein, JCI has acted  
13 contrary to the public policy of this State.

14 94. JCI engaged in unlawful business acts and practices by violating California  
15 law, including but not limited to, sections 201, 202, 226, 226.7, 510, 512, 515, 1174,  
16 1194, and 1198 of the California Labor Code and 8 California Code of  
17 Regulations section 11070.

18 95. Under the provisions of the section 17203 of the California Business and  
19 Professions Code, Plaintiff and each Class Member should receive restitution for JCI's  
20 failure to pay overtime wages, JCI's failure to provide accurate itemized wage  
21 statements and to keep payroll records, JCI's failure to provide adequate meal and rest  
22 periods, and JCI's failure to provide wages earned and unpaid promptly upon termination  
23 or resignation, in a sum according to proof for the period of time from the four years  
24 preceding the filing of the Complaint to date.

25 96. As a result of JCI's violations of the UCL, JCI has unjustly enriched itself  
26 at the expense of Plaintiff, Class Members, and the general public.

27 97. To prevent this unjust enrichment, JCI should be required to make restitution  
28

1 to Plaintiff and Class Members, as identified in this Complaint (and as will be identified  
2 through discovery into JCI's books and records), for the period of time from the four  
3 years preceding the filing of the Complaint to date.

4 98. Plaintiff also requests that the Court enter such orders or judgments as may  
5 be necessary to restore to any person in interest any money that may have been acquired  
6 by means of such unfair practices, as provided in section 17203 of the California  
7 Business and Professions Code.

8 99. Plaintiff and Class Members are "persons" within the meaning of section  
9 17204 of the California Business and Professions Code, and each has standing to bring  
10 this claim for relief.

11 100. Injunctive relief is necessary to prevent JCI from continuing to engage in  
12 unfair business practices, as alleged herein. JCI has done, or is now doing and will continue  
13 to do or cause to be done, the herein-described illegal acts unless restrained or enjoined by  
14 the Court.

15 101. The conduct of JCI, as alleged herein, has been and continues to be  
16 deleterious to Plaintiff, Class Members and the general public. By this action, Plaintiff  
17 seeks to enforce important rights affecting the public interest within the meaning of  
18 section 1021.5 of the California Code of Civil Procedure.

19 102. Pursuant to section 17203 of the California Code of Civil Procedure,  
20 Plaintiff, on behalf of himself and all current and former Class Members, requests  
21 injunctive relief and restitution of all sums obtained by Defendant in violation of  
22 section 17200 *et seq.* of the California Business and Professions Code for the period of  
23 time from the four years preceding the filing of the Complaint to date.

24 103. Plaintiff and the Class also request relief as described below.

25 **EIGHTH CAUSE OF ACTION**

26 (California Labor Code § 2802, Indemnification for Expenditures  
27 or Losses in Discharge of Duties)

(On Behalf of California Class Against Defendant)

28 104. Plaintiff repleads, realleges, and incorporates by reference each and every

1 allegation set forth in the Complaint.

2 105. At all times relevant herein, the relevant portion of section 2802 of the  
3 California Labor Code provided:

4 (a) An employer shall indemnify his or her employee for all necessary  
5 expenditures or losses incurred by the employee in direct consequence of the  
6 discharge of his or her duties, or of his or her obedience to the directions of  
7 the employer, even though unlawful, unless the employee, at the time of  
8 obeying the directions, believed them to be unlawful.

9 (b) All awards made by a court or by the Division of Labor Standards  
10 Enforcement for reimbursement of necessary expenditures under this section  
11 shall carry interest at the same rate as judgments in civil actions. Interest  
12 shall accrue from the date on which the employee incurred the necessary  
13 expenditure or loss.

14 (c) For purposes of this section, the term "necessary expenditures or losses"  
15 shall include all reasonable costs, including, but not limited to, attorney's  
16 fees incurred by the employee enforcing the rights granted by this section.

17 106. Plaintiff and the members of the Class were required by JCI to use their own  
18 funds to provide for gas and tolls when traveling to and between JCI's showrooms. On  
19 information and belief, Plaintiff and Class Members have never been reimbursed for such  
20 costs, or depreciation on their vehicles. JCI required Plaintiff and Class Members to bring  
21 and use their vehicles to perform the required duties. Accordingly, Plaintiff and Class  
22 Members use of their vehicles for Defendant was in "direct consequence of the discharge  
23 of ... her duties." Cal. Lab. Code § 2802(a).

24 107. To date, JCI has not reimbursed Plaintiff and/or the Class Members for their  
25 expenditures.

26 **NINTH CAUSE OF ACTION**

27 (Civil Penalties under the California Labor Code § 2699, the  
28 Labor Code Private Attorneys General Act of 2004)

(On Behalf of California Class Against Defendant JCI Only)

108. Accordingly, Plaintiff and the Class Members are entitled to damages in accordance with California Labor Code section 2802.

109. Plaintiff repleads, realleges and incorporates by reference each and every allegation set forth in the Complaint.

110. Pursuant to California Labor Code § 2699.3(a)(1), on July 16, 2009, Plaintiff gave written notice by certified mail to the Labor and Workforce Development Agency and Defendant of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories specified in the First Amended Complaint, filed July 16, 2009.

111. On August 11, 2009, Robert Jones, Deputy Secretary of the Labor and Workforce Development Agency sent a letter to Plaintiff and to Defendant. Pursuant to § 2699.3(a)(2)(A), the letter stated that the Labor and Workforce Development Agency did not intend to investigate the alleged violations. A true and correct copy of this letter is attached hereto as Exhibit 5. Under California law, Plaintiff “may as a matter of right amend [the] existing complaint to add a cause of action arising under this part within 60 days of the time periods specified in this part.” Cal. Lab. Code § 2699.3(a)(2)(C).

112. As alleged above, the pay stubs furnished by Defendant in connection with the employment referred to in this Complaint fail to comply with the provisions of § 226 (a) of the Labor Code. The failure to pay proper overtime wages when due and owing violates the provisions of § 510 and 1194 of the Labor Code and the relevant IWC Wage Order. Section 210 of the Labor Code provides for civil penalties for violations of § 204. Section 226.3 of the Labor Code provides for civil penalties for each violation of § 226 (a). Section 558 of the Labor Code provides for civil penalties for each violation of § 510 of the Labor Code and the IWC Wage Order. Section 2699 (f) of the Labor Code provides for civil penalties for the other violations of the Labor Code. Section 2699(a) provides that civil penalties may be “recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former

1 employees.” Section 2699 (g) provides that an employee who prevails in a civil action  
2 under § 2699 shall be entitled to an award of reasonable attorney’s fees and costs.

3 113. The State of California and Plaintiff are, therefore, entitled to civil penalties,  
4 attorneys’ fees and costs according to proof.

5 **PRAYER FOR RELIEF**

6 **WHEREFORE**, Plaintiff prays for judgment against JCI as follows:

7 **As to the First Cause of Action:**

8 1. For compensatory damages in an amount according to proof at time of trial  
9 representing the amount of unpaid overtime compensation owed to Plaintiff and Class  
10 Members for the period of time from four years prior to the filing of the Complaint to  
11 date.

12 2. For interest calculated according to law on any overtime compensation due  
13 from the day such amounts were due for the period of time from four years prior to the  
14 filing of the Complaint to date.

15 3. For reasonable attorney’s fees and costs of bringing this suit pursuant to  
16 section 1194(a) of the Labor Code.

17 **As to the Second Cause of Action:**

18 1. For compensatory damages in an amount according to proof at time of trial  
19 for not providing accurate itemized wage statements to Plaintiff and Class Members  
20 for the period of time from the three years prior to the filing of the Complaint to date.

21 2. For reasonable attorney’s fees and the costs of bringing this suit pursuant  
22 to section 226(e) of the California Labor Code.

23 **As to the Third Cause of Action:**

24 1. For compensatory damages in an amount according to proof at time of trial  
25 representing the amount of unpaid overtime compensation owed to Plaintiff and  
26 Collective Action Members for the period of time from three years prior to the filing of  
27 this Complaint to date.  
28



1           2.     For liquidated damages pursuant to 29 U.S.C. § 216(b).

2           3.     For attorney's fees and the costs of bringing this suit pursuant to 29 U.S.C.  
3     § 216(b).

4     **As to the Fourth Cause of Action:**

5           1.     For compensatory damages in an amount according to proof at time of trial  
6     representing the amount of unpaid compensation owed to Plaintiff and Class Members  
7     for inadequate meal periods for the period of time from four years prior to filing the  
8     Complaint to date.

9           2.     For interest calculated according to law on any unpaid compensation due  
10    from the day such amounts were due for inadequate meal periods for the period of time  
11    from four years prior to filing the Complaint to date.

12          3.     For reasonable attorney's fees and the costs of bringing this suit.

13    **As to the Fifth Cause of Action:**

14          1.     For compensatory damages in an amount according to proof at time of trial  
15    representing the amount of unpaid overtime compensation owed to Plaintiff and Class  
16    Members for inadequate rest periods for the period of time from four years prior to filing  
17    the Complaint to date.

18          2.     For interest calculated according to law on any overtime compensation due  
19    from the day such amounts were due for inadequate rest periods for the period of time  
20    from four years prior to filing the Complaint to date.

21          3.     For reasonable attorney's fees and the costs of bringing this suit.

22    **As to the Sixth Cause of Action:**

23          1.     For continuing wages pursuant to California Labor Code section 203 for  
24    each instance of the willful failure to pay wages.

25          2.     For the costs of bringing this suit.

26    **As to the Seventh Cause of Action:**

27          1.     For an order requiring JCI to show cause, if any, why it should not be  
28

1 enjoined, as set forth herein above, during and after the pendency of this action.

2       2. For an order that JCI pay restitution of sums to Plaintiff and to each Class  
3 Members for JCI's past failure to pay overtime wages, withholding taxes, matching  
4 funds, Social Security, Medicare, Unemployment, and Worker's Compensation  
5 premiums in violation of section 17200 *et seq.*, in an amount according to proof, for  
6 the period of time from the four years prior to the filing of the Complaint to date.

7       3. For an order that JCI pay restitution of sums to Plaintiff and to each Class  
8 Member for JCI's past failure to provide accurate itemized wage statements and to keep  
9 payroll records in violation of section 17200 *et seq.*, in an amount according to proof,  
10 for the period of time from the four years prior to the filing of the Complaint to  
11 date.

12       4. For an order that JCI pay restitution to Plaintiff and to each Class  
13 Member for JCI's past failure to provide adequate meal and rest periods in violation  
14 of section 17200 *et seq.*, in an amount according to proof, for the period of time from  
15 the four years prior to the filing of the Complaint to date.

16       5. For an order that JCI pay restitution to Plaintiff and to each Class Member  
17 for JCI's past willful failure to pay wages earned and unpaid promptly upon  
18 termination or resignation in violation of section 17200 *et seq.*, in an amount  
19 according to proof, for the period of time from the four years prior to the filing of  
20 the Complaint to date.

21 **As to the Eighth Cause of Action:**

- 22       1. For compensatory damages in an amount according to proof at time of trial.  
23       2. For interest calculated according to law on any damages.  
24       3. For reasonable attorney's fees and the costs of bringing this suit.

25 **As to the Ninth Cause of Action:**

- 26       1. For compensatory damages in an amount according to proof at time of trial.  
27       2. For interest calculated according to law on any damages.  
28

1           3.     For reasonable attorney's fees and the costs of bringing this suit.

2     **As to All Causes of Action:**

3           1.     For such other and further relief as this Court may deem fit and proper.

4  
5     DATED: December 29, 2009

HARRIS & RUBLE

7                                 /s/ \_\_\_\_\_  
8                                 Alan Harris  
                                  Attorneys for Plaintiff

9                                 **DEMAND FOR JURY TRIAL**

10           Plaintiff hereby demands a jury trial as provided by Rule 38(a) of the Federal  
11     Rules of Civil Procedure.

12  
13     DATED: December 29, 2009

HARRIS & RUBLE

15                                 /s/ \_\_\_\_\_  
16                                 Alan Harris  
                                  Attorneys for Plaintiff

# **HARRIS & RUBLE**

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RICHARD LENG\*  
Of Counsel

October 23, 2010

Jennifer Convertibles, Inc.  
c/o MBC Group, Inc.  
18750 Lake Drive East  
Chanhassen, MN 55317

Re: Jennifer Bankruptcy, SD NY, 10-13779 (ALG)

Dear Sir:

Please file the enclosed three claims, for:

Ayisha Combs, as representative of an employee class  
Harris & Ruble  
North Bay Law Group

Please call with any questions.

Very truly yours,

  
Alan Harris

enclosures