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9 and the Plaintiff Class

10

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

12 **IN AND FOR THE COUNTY OF SAN MATEO**

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| | | |
|---|---|--|
| 14 DAVID CHAIDEZ, JOE VELAZCO, |) | Case No.: |
| individually, and on behalf of all others |) | |
| 15 similarly situated, |) | <u>CLASS ACTION</u> |
| |) | |
| 16 Plaintiffs, |) | COMPLAINT FOR DAMAGES, |
| |) | INJUNCTIVE RELIEF AND RESTITUTION |
| 17 vs. |) | |
| |) | |
| 18 ODWALLA, INC., and DOES 1 through |) | |
| 25, inclusive, |) | |
| |) | |
| 19 Defendants. |) | |
| 20 _____ |) | |

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22 Representative Plaintiffs allege as follows:

23

24 **PRELIMINARY STATEMENT**

25 1. This is a class action, under Code of Civil Procedure § 382, seeking unpaid overtime
26 compensation and interest thereon, waiting time penalties, injunctive and other equitable relief and
27 reasonable attorneys' fees and costs, under Labor Code §§ 201, 202, 203, 218.5, 226, and 1194, and
28 CCP §1021.5 on behalf of Representative Plaintiffs and all other persons who are or have been

1 5. Prior to 1998, the Industrial Welfare Commission (“IWC”) issued Wage Orders
2 requiring that employers pay premium (overtime) wages after eight (8) hours of work per day and
3 forty (40) hours of work per week. These Orders were issued for the protection of millions of
4 workers statewide.

5 6. In 1998, the Industrial Welfare Commission issued five Wage Orders that deleted the
6 requirement that employers pay premium (overtime) wages after eight (8) hours of work per day, but
7 left intact Orders governing work in excess of forty (40) hours of work per week. These five Wage
8 Orders became effective January 1, 1998.

9 7. In 1999, the California Legislature enacted the “Eight-Hour-Day Restoration and
10 Workplace Flexibility Act of 1999” (hereinafter the “1999 Restoration Act”). Among other
11 modifications, the 1999 Restoration Act amended Labor Code §510, effective January 1, 2000, to
12 add the requirement that employers pay premium (overtime) wages after eight (8) hours of work per
13 day, reaffirming and restoring the rule in existence prior to January 1, 1998.

14 8. Founded in 1980, Odwalla, Inc., one of the nation’s leading branded super-premium
15 beverage companies, produces and delivers the “Odwalla” (and, subsequent to May 2, 2000, the
16 “Fresh Samantha”) line(s) of all-natural juices, smoothies, dairy-free shakes, spring water and natural
17 food bars to retail and/or wholesale businesses nation-wide. Its products are sold and distributed in
18 thousands of retail locations, including supermarkets, specialty retailers, natural food stores,
19 warehouse outlets, convenience stores, on-line grocers and food service operators through a direct-
20 store-delivery system.

21 9. On October 29, 2001, ODWALLA entered into an Agreement and Plan of Merger
22 with The Coca-Cola Company. Despite the merger, the management and operations of ODWALLA,
23 relating to the issues raised in this Complaint, are alleged to have remained under the exclusive
24 control of ODWALLA. Representative Plaintiffs may seek leave of court to amend this Complaint
25 to include additional defendants as further information regarding the relationship between these
26 entities is ascertained.

27 10. Representative Plaintiffs are informed and believe and, based thereon, allege that,
28 within the Class Period, defendant ODWALLA has operated numerous Sales and Operations and/or

1 other business facilities throughout the State of California. In so doing, ODWALLA has employed
2 dozens, if not hundreds, of individuals in recent years alone within the State of California in Route
3 Sales Representative positions, employment positions which have not and currently do not meet the
4 test for exemption from the payment of overtime wages, as demonstrated by a variety of sources of
5 information, including but not limited to ODWALLA's own Annual Reports and the company's
6 Internet web site.

7 11. Despite actual knowledge of these facts and legal mandates, ODWALLA has enjoyed
8 an advantage over its competition and a resultant disadvantage to its workers by electing not to pay
9 premium (overtime) and/or "penalty" (a.k.a. "waiting time") wages to Route Sales Representatives,
10 among other employment positions.

11 12. Representative Plaintiffs are informed and believe and, based thereon, allege that
12 officers of ODWALLA knew of these facts and legal mandates, yet, nonetheless, repeatedly directed,
13 authorized and/or ratified the violation of the laws cited herein.

14 13. Despite ODWALLA's knowledge of the Plaintiff Class' entitlement to premium
15 (overtime) pay for excess hours worked, ODWALLA failed to provide or require the use,
16 maintenance or submission of accurate time records by members of the Plaintiff Class, in violation
17 of California Labor Code §1174[d)]. This action is brought to redress and end this long-time pattern
18 of unlawful conduct.

19
20 **JURISDICTION AND VENUE**

21 14. This Court has jurisdiction over Representative Plaintiffs' and Class Members' claims
22 for unpaid overtime wages under Labor Code § 1194, for penalties for failure to pay wages of
23 discharged employees under Labor Code § 203 and for penalties for failure to provide itemized
24 statements of hours worked and all applicable hourly rates under Labor Code § 226.

25 15. This Court has jurisdiction over Representative Plaintiffs' and Class Members' claims
26 for injunctive relief, and restitution of ill-gotten benefits arising from defendant ODWALLA's
27 unlawful business practices under Business & Professions Code §§ 17203 and 17204.

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1 All persons who are/were employed as Route Sales Representatives
2 by Odwalla, Inc. and/or DOES 1 through 25, inclusive, in the State of
3 California, were classified thereby as overtime-exempt employees,
4 and who: (1) worked (a) in excess of eight (8) hours per workday (but
5 excluding the calendar year 1999) and/or (b) in excess of forty (40)
6 hours per workweek at any time after April 14, 1999 and (2) did not
7 receive premium (overtime) pay for all excess/overtime hours worked
8 thereby in any given workday/workweek.

9
10 28. Defendants, their officers and directors are excluded from the Plaintiff Class.

11 29. This action has been brought and may properly be maintained as a class action under
12 Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation
13 and the proposed class is easily ascertainable.

14 a. Commonality: The Representative Plaintiffs and the Class Members share
15 a community of interests in that there are numerous common questions and
16 issues of fact and law which predominate over any questions and issues solely
17 affecting individual members, including, but not necessarily limited to:

18 i. whether defendant ODWALLA violated Wage Order Nos. 4-98, and
19 4-2000, and Labor Code § 510 by failing to pay overtime
20 compensation to Route Sales Representatives who worked in excess
21 of 40 hours per week and/or eight (8) hours a day.

22 ii. whether defendant ODWALLA violated Business and Professions
23 Code § 17200 by failing to pay overtime compensation to Route Sales
24 Representatives who worked in excess of forty (40) hours per week
25 and/or eight (8) hours a day.

26 iii. whether defendant ODWALLA violated Labor Code § 1174 by
27 failing to keep accurate records of its Route Sales Representatives'
28 hours of work.

iv. whether defendant ODWALLA violated Labor Code §§ 201-203 by
failing to pay overtime wages due and owing at the time that Class
Members' employment with Defendant terminated.

v. whether defendant ODWALLA violated Labor Code § 226 by failing
to provide semimonthly itemized statements to Class Members of
total hours worked by each and all applicable hourly rates in effect
during each pay period.

vi. whether those members of the Plaintiff Class who are no longer
employed by Defendant are entitled to "waiting time" penalties/wages
pursuant to Labor Code § 203.

b. Typicality: Representative Plaintiffs' claims are typical of the claims of the
Plaintiff Class. The Representative Plaintiffs and all members of the Plaintiff
Class sustained damages arising out of and caused by defendant
ODWALLA's common course of conduct in violation of law, as alleged
herein.

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- c. Numerosity: A class action is the only available method for the fair and efficient adjudication of this controversy. The members of the Plaintiff Class are so numerous that joinder of all members is impractical, if not impossible, insofar as Representative Plaintiffs are informed and believe and, on that basis, allege that the total number of class members is in the dozens, if not hundreds, of individuals. Membership in the class will be determined upon analysis of employee and payroll, among other, records maintained by ODWALLA.

- d. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes or may make it impractical for members of the Plaintiff Class to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought or be required to be brought by each individual member of the Plaintiff Class, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings, which might be dispositive of the interests of other Class Members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests.

- e. Adequacy of Representation: The Representative Plaintiffs in this class action are adequate representatives of the Plaintiff Class, in that the Representative Plaintiffs' claims are typical of those of the Plaintiff Class and the Representative Plaintiffs have the same interests in the litigation of this case as the Class Members. The Representative Plaintiffs are committed to vigorous prosecution of this case and have retained competent counsel, experienced in conducting litigation of this nature. The Representative Plaintiffs are not subject to any individual defenses unique from those conceivably applicable to the Plaintiff Class as a whole. The Representative Plaintiffs anticipate no management difficulties in this litigation.

COMMON FACTUAL ALLEGATIONS

30. As described herein, ODWALLA has, for years, knowingly failed to adequately compensate those Route Sales Representatives within the class definition identified above for premium (overtime) wages due, thereby enjoying a significant competitive edge over other corporations within its industry. Even upon termination or resignation of the employment of numerous Class Members, ODWALLA has declined to pay these wages, in blatant violation of California Labor Code §§201 and/or 202.

31. Furthermore, despite its knowledge of the Representative Plaintiffs' and the Class Members' entitlement to premium (overtime) pay for excess hours worked, ODWALLA violated California Labor Code §1174[d] by failing to provide or require the use, maintenance and/or

1 submission of time records by members of the Plaintiff class. ODWALLA also failed to provide
2 Representative Plaintiffs and members of the Plaintiff Class with semimonthly itemized statements
3 of the total number of hours worked by each and all applicable hourly rates in effect during each pay
4 period in violation of California Labor Code § 226. In so doing, ODWALLA has not only failed to
5 pay its workers the full amount of compensation due, it has, until now, effectively shielded itself
6 from its' employees' scrutiny for its unlawful conduct by concealing the magnitude (the full number
7 of hours worked) and financial impact of its wrongdoing.

8 32. California Labor Code sections 201 and 202 require defendant ODWALLA to pay
9 its employees all wages due immediately upon discharge. California Labor Code § 203 provides
10 that, if an employer willfully fails to timely pay such wages, the employer must, as a penalty,
11 continue to pay the subject employees' wages until the back wages are paid in full or an action is
12 commenced. The penalty cannot exceed 30 days of wages.

13 33. Representative Plaintiffs and all persons similarly situated are entitled to unpaid
14 compensation yet, to date, have not received such compensation.

15 34. More than 30 days have passed since certain Class Members have left defendant
16 ODWALLA's employ.

17 35. As a consequence of defendant ODWALLA's willful conduct in not paying
18 compensation for all hours worked, certain Class Members are entitled to 30 days wages as a penalty
19 under Labor Code section 203, together with interest thereon and attorneys' fees and costs.

20 36. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein,
21 Representative Plaintiffs and members of the Plaintiff Class have sustained damages, as described
22 above, including loss of earnings for hours of overtime worked on behalf of Defendants, in an
23 amount to be established at trial. As a further direct and proximate result of Defendants' unlawful
24 conduct, as set forth herein, the majority of Class Members herein are entitled to recover "waiting
25 time" penalties/wages (pursuant to California Labor Code § 203) and penalties for failure to provide
26 semimonthly statements of hours worked and all applicable hourly rates (pursuant to Labor Code
27 § 226) in an amount to be established at trial. As a further direct and proximate result of Defendants'
28 unlawful conduct, as set forth herein, Representative Plaintiffs and Class Members are also entitled

1 to recover costs and attorneys' fees, pursuant to statute.
2

3 **FIRST CAUSE OF ACTION**
4 **UNLAWFUL FAILURE TO PAY REQUIRED OVERTIME**
5 **(Wage Order Nos. 4-98, 4-2000; Labor Code §§ 201, 202, 226, 1194, 1198 and 1199)**

6 37. Representative Plaintiffs incorporate in this cause of action each and every allegation
7 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

8 38. During the time period beginning April 14, 1999 and continuing through the present,
9 Representative Plaintiffs and the Class Members worked in excess of eight (8) hours in a workday
10 and/or forty (40) hours in a workweek. The precise number of hours will be proven at trial.

11 39. During said time period, defendant ODWALLA refused to compensate
12 Representative Plaintiffs and the Class Members for some and/or all of the overtime wages earned
13 in violation of Wage Order Nos. 4-98 and 4-2000 and the California Labor Code.

14 40. During said time period, many of the Class Members herein were employed by and
15 were thereafter terminated or resigned from their positions with ODWALLA, yet were not paid all
16 premium (overtime) wages due upon said termination or within seventy-two (72) hours of said
17 resignation of employment therefrom. Said non-payment of all wages due was the direct and
18 proximate result of a willful refusal to do so by Defendant.

19 41. At all relevant times, Defendant was aware of and was under a duty to comply with
20 various provisions of the California Labor Code and/or Wage Orders issued by the Industrial Welfare
21 Commission. These provisions include(d):

22 a. Labor Code §203: “If an employer willfully fails to pay, without
23 abatement or reduction, in accordance with Sections 201, 201.5, 202, and
24 205.5, any wages of an employee who is discharged or who quits, the wages
25 of the employee shall continue as a penalty from the due date thereof at the
26 same rate until paid or until an action therefor is commenced; but the wages
shall not continue for more than 30 days.” (*effective at all times herein
relevant*).

27 b. Labor Code § 226: “Every employer shall semimonthly or at the time of
28 each payment of wages, furnish each of his or her employees, either as a
detachable part of the check, draft, or voucher paying the employee’s wages,
or separately when wages are paid by personal check or cash, an itemized

1 statement in writing showing . . . (2) total hours worked by the employee
2 (*effective September 12, 1988 through the present*) . . . and (9) all applicable
3 hourly rates in effect during the pay period and the corresponding number of
4 hours worked at each hourly rate by the employee.” (*effective January 1,*
5 *2000 through the present*).

6 c. Labor Code §510: “Any work in excess of eight hours in one workday
7 and any work in excess of 40 hours in any one workweek and the first eight
8 hours worked on the seventh day or work in any one workweek shall be
9 compensated at the rate of no less than one and one-half times the regular rate
10 of pay for an employee” (*effective January 1, 2000 through the present*)

11 d. Labor Code § 1194: “Notwithstanding any agreement to work for a lesser
12 wage, any employee receiving less than the legal minimum wage or the legal
13 overtime compensation applicable to the employee is entitled to recover in
14 a civil action the unpaid balance of the full amount of this minimum wage or
15 overtime compensation, including interest thereon, reasonable attorney’s fees,
16 and costs of suit.

17 e. Labor Code §1198: “[t]he maximum hours of work and the standard
18 conditions of labor fixed by the commission shall be the maximum hours of
19 work and the standard conditions of labor for employees. The employment
20 of any employee for longer hours than those fixed by the order or under
21 conditions of labor prohibited by the order is unlawful.” (*effective at all times*
22 *herein relevant*).

23 f. Labor Code §1199: “Every employer or other person acting either
24 individually or as an officer, agent, or employee of another person is guilty
25 of a misdemeanor and is punishable by a fine of not less than one hundred
26 dollars (\$100) or by imprisonment for not less than 30 days, or by both, who
27 . . . (a) Requires or causes any employee to work for longer hours than those
28 fixed, or under conditions of labor prohibited by an order of the commission.
29 . . .[or] (c) Violates or refuses or neglects to comply with any provision of
30 this chapter or any order or ruling of the commission.” (*effective at all times*
31 *herein relevant*).

32 g. Wage Order 4-98(3): “No employee . . . shall be employed more than forty
33 (40) hours in any workweek unless the employee receives one and one-half
34 (1 ½) times such employee’s regular rate of pay for all hours worked over
35 forty (40) hours in the workweek.” (*effective January 1, 1998 through*
36 *December 31, 1999*).

37 42. By refusing to compensate Representative Plaintiffs and the Class Members for
38 overtime wages earned, Defendant violated those California Labor Code and IWC Wage Order
39 provisions, cited herein.

40 43. As a direct and proximate result of Defendant’s unlawful conduct, as set forth herein,
41 Representative Plaintiffs and the Class Members have sustained damages, including loss of earnings
42 for hours of overtime worked on behalf of Defendant, in an amount to be established at trial. As

1 a further direct and proximate result of Defendant’s unlawful conduct, as set forth herein,
2 Representative Plaintiffs and the Class Members are entitled to recover “waiting time”
3 penalties/wages, in an amount to be established at trial, costs and attorneys’ fees, pursuant to statute.
4

5 **SECOND CAUSE OF ACTION**
6 **UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT**
7 **(California Business & Professions Code §§ 17200-17208)**

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

10 45. Representative Plaintiffs further bring this cause of action on behalf of the general
11 public, seeking equitable and statutory relief to stop the misconduct of Defendant, as complained of
12 herein, and to compel disgorgement of all profits obtained by Defendant through the unfair, unlawful
13 and fraudulent business practices described herein.

14 46. The knowing conduct of Defendant, as alleged herein, constitutes an unlawful and/or
15 fraudulent business practice, as set forth in California Business & Professions Code §§ 17200-17208.
16 Specifically, Defendant conducted business activities while failing to comply with the legal mandates
17 cited herein.

18 47. Defendant’s knowing failure to adopt policies in accordance with and/or adhere to
19 these laws, all of which are binding upon and burdensome to Defendant’s competitors, engenders
20 an unfair competitive advantage for Defendant, thereby constituting an unfair business practice, as
21 set forth in California Business & Professions Code §§ 17200-17208.

22 48. Defendant has clearly established a policy of accepting a certain amount of collateral
23 damage, as represented by the damages to Representative Plaintiffs and the Plaintiff Class herein
24 alleged, as incidental to its’ business operations, rather than accept the alternative costs of full
25 compliance with fair, lawful and honest business practices ordinarily borne by responsible
26 competitors of Defendant and as set forth in legislation and the judicial record.
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1 **THIRD CAUSE OF ACTION**
2 **FAILURE TO MAINTAIN AND PROVIDE ITEMIZED WAGE STATEMENTS**
3 **(California Labor Code § 226)**

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

6 50. California Labor Code § 226(a) provides:

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

14 51. The IWC Wage Orders also establish this requirement, in section 7(B) (8 Cal. Code
15 Regs. § 11010 et. seq.)

16 52. California Labor Code § 226(b) provides:

17 An employee suffering injury as a result of a knowing an intentional
18 failure by an employer to comply with subdivision (a) shall be
19 entitled to recover all actual damages or one hundred dollars (\$100),
20 whichever is greater, plus costs and reasonable attorney fees.

21 Representative Plaintiffs seek to recover actual damages, costs and attorneys' fees under this
22 section on behalf of themselves and the Plaintiff Class.

23 53. Defendant ODWALLA failed to provide timely, accurate itemized wage statements
24 to Representative Plaintiffs and the Plaintiff Class in accordance with Labor Code § 226(a) and the
25 IWC Wage Orders. None of the statements provided by Defendant(s) has accurately reflected actual
26 gross wages earned, net wages earned, or the appropriate deductions.
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1 **RELIEF SOUGHT**

2 **WHEREFORE, the Representative Plaintiffs**, on behalf of themselves and the proposed
3 **Plaintiff Class**, pray for judgment and the following specific relief against **Defendants, and each**
4 **of them**, jointly and separately, as follows:

5 1. For an Order certifying the proposed Plaintiff Class and/or any other appropriate
6 subclass(es) under Code of Civil Procedure § 382;

7 2. That defendant ODWALLA is found to have violated the overtime provisions of the
8 California Labor Code and the Wage Orders as to the Representative Plaintiffs and the Plaintiff
9 Class;

10 3. That defendant ODWALLA is found to have violated the record keeping provisions
11 of California Labor Code § 1174(d) and Section 7 of the Wage Orders as to Representative Plaintiffs
12 and the Plaintiff Class;

13 4. That defendant ODWALLA is found to have violated California Labor Code §§ 201,
14 202 and 203 for willful failure to pay all compensation owed at the time of termination of
15 employment to particular Class Members;

16 5. That defendant ODWALLA is found to have violated Labor Code § 206 for willful
17 failure to provide semimonthly itemized statements to Representative Plaintiffs and Class Members;

18 6. That defendant ODWALLA is found to have violated Business & Professions Code
19 § 17200 by failing to pay Representative Plaintiffs and Class Members overtime compensation and
20 “waiting time” penalties, by failing to provide itemized statements and by failing to abide by the
21 record keeping provisions of Labor Code § 1174(d);

22 7. An award to Representative Plaintiffs and the Plaintiff Class of damages for the
23 amount of unpaid overtime compensation, including interest thereon, and penalties in an amount to
24 be proven at trial;

25 8. That defendant ODWALLA be ordered and enjoined to pay restitution to
26 Representative Plaintiffs and the Plaintiff Class due to defendant ODWALLA’s unlawful activities,
27 pursuant to Business & Professions Code §§ 17200-08;

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9. That defendant ODWALLA further be enjoined to cease and desist from unlawful activities in violation of Business & Professions Code § 17200;

10. For all other Orders, findings and determinations identified and sought in this Complaint;

11. For Interest on the amount of any and all economic losses, at the prevailing legal rate;

12. For reasonable Attorneys' Fees, pursuant to California Labor Code §§ 218.5 and 1194 and/or California Civil Code § 1021.5; and

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

Dated: April 14, 2003

SCOTT COLE & ASSOCIATES, APC

By: _____
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and the Plaintiff Class