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7
8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF LOS ANGELES**

11 MARCUS A. WYNES, individually;
12 FREDY LUNA, individually, and on
behalf of all others similarly situated,

13 Plaintiffs,

14 vs.

15 BCI COCA-COLA BOTTLING
16 COMPANY OF LOS ANGELES, and
DOES 1 through 100, inclusive,

17 Defendants.
18 _____

) **Case No.: BC296690**

) **CLASS ACTION**

) **[PROPOSED] SECOND AMENDED**
) **COMPLAINT FOR DAMAGES AND**
) **INJUNCTIVE RELIEF**

19 The Individual and Representative Plaintiff(s) allege as follows:

20 **PRELIMINARY STATEMENT**

21 1. This is a class action under Code of Civil Procedure §382, seeking to recover all
22 compensation due to Plaintiffs and the Class Members identified herein, injunctive relief and
23 reasonable attorneys' fees and costs, under, *inter alia*, California Labor Code § 226.7 Industrial
24 Welfare Commission Wage Order(s) and Code of Civil Procedure §1021.5. In addition to Plaintiffs'
25 individual claims, Plaintiff Fredy Luna ("Representative Plaintiff") brings this action on behalf of
26 all other persons similarly situated (hereinafter referred to as the "Class Members" and/or the
27 "Plaintiff Class") who are or have been employed by defendants BCI COCA-COLA BOTTLING
28 COMPANY OF LOS ANGELES and Does 1 through 100, inclusive (collectively "BCI" and/or

1 “Defendant[s]”) in any of BCI’s bottling, canning and/or other production facilities, warehouses,
2 garages, yards and offices within the State of California, at any time between May 30, 2002 and the
3 present, as Security Guards/Officers and who have been denied rest periods. The Representative
4 Plaintiff, on behalf of himself and the Class Members, also seeks injunctive relief pursuant to
5 Business & Professions Code § 17200 et seq.

6 2. The “Class Period” is designated as the time from May 30, 2002 through the trial
7 date, based upon the allegation that the violations of California’s wage and hour laws, as described
8 more fully below, have been ongoing since that time. During the Class Period, BCI has had a
9 consistent policy toward its Security Guards/Officers of (1) permitting, encouraging, and/or requiring
10 the Plaintiffs and Class Members to work, oftentimes in excess of eight (8) hours per day, without
11 consistently providing rest periods, as required by California state wage and hour laws.

12 INTRODUCTION

13
14 3. Plaintiffs are informed and believe and, based thereon, allege that, within the Class
15 Period, defendant BCI has operated numerous bottling, canning and/or other production facilities,
16 warehouses, garages, yards and offices in the State of California. In so doing, BCI has employed
17 scores of individuals in the position of Security Guard/Officer in recent years alone at these
18 facilities/locations within the State of California.

19 4. Despite actual knowledge of these facts and legal mandates, BCI has enjoyed an
20 advantage over its competition and a resultant disadvantage to its workers by electing not to provide
21 rest periods to its Security Guards.

22 5. Plaintiffs are informed and believe and, based thereon, allege that officers and agents
23 of BCI repeatedly directed, authorized and/or ratified the violation of the laws cited herein.

24 6. Despite BCI’s knowledge of the Plaintiff Class’ entitlement to rest periods for all
25 applicable work periods, BCI failed to provide same to members of the Plaintiff Class, in violation
26 of the applicable Industrial Welfare Commission Wage Orders, Title 8 of the California Code of
27 Regulations and California Labor Code §226.7. This action is brought to redress and end this long-
28 time pattern of unlawful conduct.

JURISDICTION AND VENUE

1
2 7. This Court has jurisdiction over the Plaintiffs’ and the Class Members’ claims for
3 compensation under, *inter alia*, Labor Code §226.7 and California Code of Civil Procedure § 382.

4 8. This Court has further jurisdiction over the Representative Plaintiff’s and Class
5 Members’ claims for injunctive relief arising from defendant BCI’s unlawful business practices
6 under Business & Professions Code §17200 et seq.

7 9. Venue as to Defendant(s) is proper in this judicial district, pursuant to Code of Civil
8 Procedure § 395(a). Defendant BCI maintains facilities and offices in the County of Los Angeles,
9 and transacts business, has agents, and is otherwise within this Court’s jurisdiction for purposes of
10 service of process. The unlawful acts alleged herein have a direct effect on the Representative
11 Plaintiff and those similarly situated within the State of California and within Los Angeles County.
12 Defendant BCI operates said facilities and has employed Plaintiffs and numerous Class Members
13 in Los Angeles County as well as in other counties within the State of California.

14
15 **PLAINTIFFS**

16 10. Plaintiffs Marcus A. Wynes, suing in his individual capacity, and Representative
17 Plaintiff Fredy Luna are natural persons, and were, during the relevant time period identified herein,
18 employed by defendant BCI as Security Guards, an employment position which was entitled and
19 continues to enjoy an entitlement to various conditions of employment such as rest periods.

20 11. In said position, Plaintiffs and the Class Members were frequently permitted to work
21 and did work, during the Class Period, shifts exceeding four hours or a major fraction thereof (of at
22 least three and one-half hours), without being afforded net ten minute rest periods. This conduct of
23 BCI is/was commonplace at every facility owned and/or operated thereby.

24 12. As used throughout this Complaint, the term “Class Members” and/or the “Plaintiff
25 Class” refer to each and every named plaintiff herein as well as each and every person eligible for
26 membership in one or more of the Plaintiff Class(es), as further described and defined below.

27 13. The Plaintiff Class consists, generally, of all members who are/were employed as
28 Security Guards by BCI at its various facilities within the State of California and were classified

1 thereby as non-exempt employees, and who worked shifts exceeding four hours or a major fraction
2 thereof (of at least three and one-half hours), without being afforded net ten minute rest periods
3 during one or more work period(s).

4 14. At all times herein relevant, the Representative Plaintiff was and now is a person
5 within the class of persons further described and defined herein.

6 15. The Representative Plaintiff brings this action on behalf of himself and as a class
7 action, pursuant to California Code of Civil Procedure §382, on behalf of all persons or entities
8 similarly situated and proximately damaged by the unlawful conduct described herein.

9
10 **DEFENDANTS**

11 16. At all times herein relevant, defendants BCI COCA-COLA BOTTLING COMPANY
12 OF LOS ANGELES and Does 1 through 100, inclusive (collectively referred to as “BCI” and/or
13 “Defendant[s]”) were business entities, duly licensed and located and doing business in, but not
14 limited to, the County of Los Angeles, in the State of California.

15 17. Plaintiffs are informed and believe and, based thereon, allege that defendant BCI
16 directly or indirectly employs and, since May 30, 2002, has employed and/or exercised control over
17 the wages, hours and/or working conditions of the Plaintiffs and Class Members at BCI’s bottling,
18 canning and/or other production facilities, warehouses, garages, yards and offices in various
19 California counties, including, but not necessarily limited to, Los Angeles County.

20 18. Those defendants identified as Does 1 through 100, inclusive, are and were, at all
21 relevant times herein-mentioned, officers, directors, partners, and/or managing agents of some/each
22 of the remaining defendants. Plaintiffs are informed and believe and, on that basis, allege that, at all
23 relevant times herein mentioned, each of the defendants identified as Does 1 through 100, inclusive,
24 employed and/or exercised control over the wages, hours and/or working conditions of the Plaintiffs
25 and Class Members at various California locations, as identified in the preceding paragraph.

26 19. Plaintiffs are unaware of the true names and capacities of those defendants sued
27 herein as Does 1 through 100, inclusive and, therefore, sue these defendants by such fictitious names.
28 Plaintiffs will seek leave of court to amend this Complaint when same are ascertained. Plaintiffs are

1 informed and believe and, on that basis, allege that each of the fictitiously-named defendants is
2 responsible in some manner for, gave consent to, ratified and/or authorized the conduct herein
3 alleged and that the Plaintiffs' and Class Members' damages, as herein alleged, were proximately
4 caused thereby.

5 20. Plaintiffs are informed and believe and, on that basis, allege that, at all relevant times
6 herein mentioned, each of the defendants was the agent and/or employee of each of the remaining
7 defendants and, in doing the acts herein alleged, was acting within the course and scope of such
8 agency and/or employment.

9 21. There is no preemption of the claims brought in this Complaint because these claims
10 are based upon State law. There is no dispute over the terms of any collective bargaining agreement
11 ("CBA") and there is no need to interpret the terms of any CBA.

12
13 **CLASS ACTION ALLEGATIONS**

14 22. Marcus A. Wynes and Fredy Luna bring this action on behalf of themselves, and
15 Fredy Luna, in his representative capacity, brings this action as a class action on behalf of all persons
16 proximately damaged by Defendants' conduct, including, but not necessarily limited to, the
17 following Plaintiff Class:

18 All persons who are/were employed as Security Guards in the
19 bottling, canning and/or other production facilities, warehouses,
20 garages, yards and/or offices of BCI Coca-Cola Bottling Company of
21 Los Angeles who (1) did not receive each rest period due for each
22 period of work of at least three and one-half hours performed thereby
23 at any time since May 30, 2002 and (2) have not received all
24 compensation and/or penalties due as a result thereof.

25 23. Defendants, their officers and directors are excluded from the Plaintiff Class.

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

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

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1) Whether Defendant violated Labor Code §226.7 and or Section 12 of the Industrial Welfare Commission Wage Orders and/or Title 8 of the California Code of Regulations by failing to consistently provide rest periods to its Security Guards.

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

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 the Representative Plaintiff is informed and believes and, on that basis, alleges that the total number of class members is, at least, in the dozens of individuals. Membership in the Class will be determined upon analysis of employee and payroll, among other, records maintained by BCI.

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 Plaintiff in this class action is an adequate representative of the Plaintiff Class, in that the Representative Plaintiff’s claims are typical of those of the Plaintiff Class and the Representative Plaintiff has the same interests in the litigation of this case as the Class Members. The Representative Plaintiff is committed to vigorous prosecution of this case and has retained competent counsel, experienced in conducting litigation of this nature. The Representative Plaintiff is not subject to any individual defenses unique from those conceivably applicable to the Plaintiff Class as a whole. The Representative Plaintiff anticipates no management difficulties in this litigation.

COMMON FACTUAL ALLEGATIONS

25. As described herein, BCI has, for years, knowingly failed to provide net ten minute rest periods for work shifts exceeding four hours or a major fraction thereof (and at least three and one-half hours) to those Security Guards within the class definition identified above, thereby enjoying a significant competitive edge over other corporations within its industry.

26. In so doing, BCI has not only failed to pay its workers the full amount of

1 compensation due, it has, until now, effectively shielded itself from its employees' scrutiny for its
2 unlawful conduct by concealing the magnitude and financial impact of its wrongdoing.

3 27. The Representative Plaintiff is informed and believes and, on that basis, alleges that
4 many members of the Plaintiff Class are entitled to unpaid compensation, yet, to date, have not
5 received such compensation.

6 28. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
7 the Individual and Representative Plaintiffs and members of the Plaintiff Class have sustained
8 damages, as described above, including lost compensation, in amounts to be established at trial. As
9 a further direct and proximate result of Defendant's unlawful conduct, as set forth herein, the
10 Representative Plaintiff and Class Members are also entitled to recover costs and attorneys' fees,
11 pursuant to statute.

12
13 **FIRST CAUSE OF ACTION**
14 **FAILURE TO PROVIDE REST PERIODS**
15 **(California Labor Code § 226.7)**

16 29. The Representative Plaintiff incorporates in this cause of action each and every
17 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
18 herein.

19 30. California Labor Code §226.7 provides that:

20 (a) No employer shall require any employee to work during any
21 meal or rest period mandated by an applicable order of the Industrial
22 Welfare Commission.

23 (b) If an employer fails to provide an employee a meal period or
24 rest period in accordance with an applicable order of the Industrial
25 Welfare Commission, the employer shall pay the employee one
26 additional hour of pay at the employee's regular rate of compensation
27 for each work day that the meal or rest period is not provided.

28 31. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
the individual and Representative Plaintiffs and the Class Members have sustained damages, in an
amount to be established at trial. As a further direct and proximate result of Defendant's unlawful
conduct, as set forth herein, the individual and Representative Plaintiffs and the Class Members are
entitled to recover penalties, in an amount to be established at trial, as well as costs and attorneys'

1 fees, pursuant to statute.
2

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

6 32. The Representative Plaintiff incorporates in this cause of action each and every
7 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
8 herein.

9 33. The Representative Plaintiff further brings this cause of action on behalf of the
10 general public, seeking injunctive relief to stop the misconduct of Defendant, as complained of
11 herein.

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

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

20 36. Defendant BCI has clearly established a policy of accepting a certain amount of
21 collateral damage, as represented by the damages to the Representative Plaintiff and the Plaintiff
22 Class herein alleged, as incidental to its business operations, rather than accept the alternative costs
23 of full compliance with fair, lawful and honest business practices ordinarily borne by responsible
24 competitors of Defendant and as set forth in legislation and the judicial record.

25 37. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
26 the Representative Plaintiff and the Class Members are entitled to injunctive relief pursuant to
27 Business & Professions Code §17200 et seq.
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1 **RELIEF SOUGHT**

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

- 5 a. For an Order certifying the proposed Plaintiff Class and/or any other appropriate
6 subclass(es) under Code of Civil Procedure § 382;
- 7 b. For an award to the Plaintiffs and the Plaintiff Class of damages pursuant to Labor
8 Code § 226.7, in an amount to be proven at trial;
- 9 c. For an order enjoining defendants from denying Plaintiff Class Members their rest
10 periods;
- 11 d. For all other Orders, findings and determinations identified and sought in this
12 Complaint;
- 13 e. For interest on the amount of any and all economic losses, at the prevailing legal rate;
- 14 f. For reasonable attorneys' fees, pursuant to California Civil Code § 1021.5 and other
15 applicable statutes;
- 16 g. For costs of suit and any and all such other relief as the Court deems just and proper.

17
18 Dated: July __, 2005

19
20 **SCOTT COLE & ASSOCIATES, APC**

21
22 By: _____
23 Clyde H. Charlton, Esq.
24 Attorneys for the Representative Plaintiff
25 and the Plaintiff Class
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