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individually and on behalf of all employees
similarly situated

UNITED STATE DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MIGUEL A. CRUZ, and JOHN D. HANSEN, individually and on behalf of all others similarly situated, Plaintiffs, v. DOLLAR TREE STORES, INC., Defendant.	**CASE NO. 07-2050 SC** **FIRST AMENDED COMPLAINT FOR DAMAGES, INJUNCTIVE RELIEF AND RESTITUTION** **CLASS ACTION** **DEMAND FOR JURY TRIAL**

CLASS ACTION ALLEGATIONS

1. Pursuant to Rule 23 of the *Federal Rules of Civil Procedure*, Public Law 109-2 (Class Action Fairness Act), and other relevant statutory and common laws, Plaintiffs, MIGUEL A. CRUZ and JOHN D. HANSEN, individually and on behalf of all employees similarly situated, seek class-wide relief for patterns and practices of unlawful conduct by Defendant, DOLLAR TREE STORES, INC..

2. The proposed Class that the Plaintiffs seek to represent is composed of current and former employees of Defendant DOLLAR TREE's stores within the State of California, who have held the position of a salaried "store manager" at any time since four years prior to the filing of the initial complaint in this matter up to the date of trial.

3. The persons in the Class are so numerous that the joinder of all such persons is impracticable, and the disposition of their claims as a Class will benefit the parties and the court.

4. There is a well-defined commonality of interest in the questions of law and of fact involving and affecting the class members to be represented in that all of these employees have been harmed by the Defendant's failure to pay overtime wages by virtue of Defendant illegally designating these employees as exempt in violation of the *California Labor Code* and applicable Industrial Welfare Commission ("IWC") wage orders and the *Fair Labor Standards Act*.

5. The claims of Plaintiffs alleged in this Complaint are typical of those claims that could be alleged by any member of the Class, and the relief sought is typical of the relief that would be sought by each member of the Class in separate actions. Each member of the Class enjoys the legal presumption of non-exempt status. Each member has been harmed in the same manner as all other Class members by being denied overtime wages due to DOLLAR TREE's corporate-wide policies and practices.

6. Plaintiffs will fairly and adequately represent and protect the interests of all members of the Class. There are no known conflicts of interest between the named Class

representatives and Class members. If any conflicts do arise, other former and current Class members are available to serve as Class representatives.

7. The prosecution of separate actions by individual members of the Plaintiff Class would create a risk of inconsistent and/or varying adjudications with respect to the individual members of the Class, establishing incompatible standards of conduct for the Defendant and resulting in the impairment of Class members' rights and the disposition of their interests through actions to which they were not parties.

8. Common issues predominate with respect to the employees' claims in that all claims arise out of: (a) Defendant's unlawful designation of Class members as exempt employees; (b) the failure of Defendant to pay Class members overtime compensation for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week; (c) Defendant's failure to issue accurate itemized wage statements; and (d) the Defendant's failure to provide appropriate meal and rest breaks.

9. Proceeding in reliance on the Class form of action is superior to numerous individual actions as a means of adjudicating those claims. 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 Class members to seek redress individually for the wrongful conduct alleged in this Complaint. Should separate actions be brought or be required to be brought by each individual Class member, the resulting multiplicity of lawsuits would cause undue hardship and expense for both 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. Moreover, the Representative Plaintiffs are informed, believe and allege that Defendant, in refusing to pay overtime, or grant meal and rest breaks, or issue accurate itemized wage statements, have acted and refused to act on grounds generally applicable

to all claims, thereby rendering injunctive and monetary relief for *all* members of the Class an appropriate remedy.

10. Plaintiffs have retained adequate counsel. The counsel retained by Plaintiffs are experienced and competent in both class action and employment litigation.

11. This Court has jurisdiction because the parties in the action are citizens of different States (*Constitution of the United States*, Article III, Sec. 2), and because the action is a Class Action wherein the requisite diversity of citizenship exists among the parties and the matter in controversy exceeds the sum or value of $ 5,000,000, exclusive of interest and costs (Public Law 109-2).

GENERAL ALLEGATIONS

12. At all times mentioned in this Complaint, Plaintiff MIGUEL A. CRUZ (hereinafter identified as "Plaintiff CRUZ," or grouped with Plaintiff HANSEN as "Plaintiffs") was an individual residing in the California County of Sonoma.

13. Plaintiff CRUZ worked at the DOLLAR TREE store in Healdsburg, in Sonoma County, from approximately June 22, 2006 to January 12, 2007. While employed at the Healdsburg store, Plaintiff CRUZ was classified by Defendant DOLLAR TREE as a "Store Manager."

14. At all times mentioned in this Complaint, Plaintiff JOHN D. HANSEN (hereinafter identified as "Plaintiff HANSEN" or grouped with Plaintiff CRUZ as "Plaintiffs") was an individual residing in the California County of Sonoma.

15. Plaintiff HANSEN worked at the DOLLAR TREE store in Rohnert Park, in Sonoma County from August of 2006 until April of 2007. While employed at the Rohnert Park Store, Plaintiff HANSEN was classified by Defendant DOLLAR TREE as a "Store Manager."

16. Plaintiffs bring this action on behalf of themselves, other employees of Defendant DOLLAR TREE, and the general public, pursuant to *California Business and*

Professions Code sections 17000 et seq. and 17200 et seq., in addition to *Federal Rule of Civil Procedure* 23 and other relevant authorities.

17. At all times mentioned in this Complaint, Defendant DOLLAR TREE STORES, INC. ("DOLLAR TREE" and/or "Defendant") was and is a corporation organized and existing under the laws of the State of Virginia and licensed to do business in California, and was and is doing business at approximately two hundred (200) locations in the State of California, including numerous locations in the County of Sonoma.

18. At all times mentioned in this Complaint, Defendant DOLLAR TREE was and is engaged in the business of maintaining retail stores for the purpose of selling to the general public discounted household products and miscellaneous merchandise. Defendant operates approximately two hundred (200) such stores throughout the State of California.

19. Each DOLLAR TREE store is located in a "district." Each district comprises a number of stores. The stores where Plaintiffs worked lay in a district that included approximately a dozen stores. Each district was and is overseen by a "district manager." The district manager, in turn, is overseen by a "regional manager." Each regional manager is answerable to individuals employed at DOLLAR TREE'S national headquarters.

20. Each store manager was paid a monthly salary. As "managers," each store manager was, according to Defendant DOLLAR TREE, exempt from state and federal laws mandating overtime wages, accurate itemized wage statements documenting overtime hours earned, and meal and rest breaks. Store managers, however, were hardly "managers," in that virtually all of their time was dedicated to performing regular hourly employee tasks such as stocking shelves and cashiering. The amount of time spent by each store manager supervising other employees, handling payroll, reordering product and performing other tasks generally associated with "managing" was extremely small. The time dedicated to "managing" by each store manager did not equal or exceed fifty

percent (50%) of all time spent each week by each store manager in the employ of DOLLAR TREE. By designating Plaintiffs and members of their Class as "store managers," yet employing them to perform tasks identical to those performed by rank and file wage earning employees, DOLLAR TREE was able to justify employing Plaintiffs and members of their Class for many hours in excess of forty (40) each week without also compensating them at the pay rate mandated by state and federal laws, and without providing them with meal and rest breaks in accordance with state law.

21. Usually, there were only one or two other employees in a given store for a store manager to "supervise." Rarely would an hourly employee have to be talked to by a store manager about work-related problems. Most conversations between a store manager (while acting as "manager") and regular hourly "employees" that did take place had to do with overages or shortages discovered by the store manager at a particular cash register. Store managers also handled most of the actual hiring of hourly employees at the store they were charged with "managing." The hiring process generally consisted of quickly reviewing a resume and making a phone call to tell someone they were hired and when they should report for duty. When the newly hired hourly employee first appeared at the store to work, the store manager would provide him or her with "training." Training consisted of the store manager telling the newly hired employee to begin stocking shelves, how to scan a bar code on a product and how to press the appropriate buttons on the cash register in order to register the sale and make change. Because of the simplicity of the job requirements, training for any given new hourly employee took only several minutes.

22. "Store managers" also handled the scheduling of employees. Scheduling of employees, however, took no more than a half hour per week. Payroll was dictated by the district manager, who regularly informed each store manager of that store manager's store goals regarding overhead. The district manager would then admonish each store manager to keep overhead low so as to attain the stated goal. District managers actually informed each store manager how many hours to cut each week in order to reach the

given goal. If the store manager failed to reach the goal, the store manager was upbraided, chastised and subjected to discipline, including the threat of and actual termination.

23. While managers were technically required to oversee the ordering of store product, ordering was virtually automatic. The maximum product level with respect to each product sold at a given DOLLAR TREE store was programmed into a computer tracking system by persons at the regional and district levels of the DOLLAR TREE hierarchy. This tracking system was linked to the scanners at a given store's cashier stations. When a product item was scanned upon purchase at one of these cashier stations, the total number of items in stock at that store was reduced by one. In this way, it was always possible to know how many items of product were present in the store, and how much less this amount was than the maximum amount of product set for that item. Several times per week store managers would push a button or click the mouse connected to the computer tracking system to request that given products below the maximum stocking levels set for those products be replenished. The manager would not need to calculate the number of units necessary to reach the maximum. The tracking system would determine this. The request would be electronically sent to a supply depot at another location, and the product, in the precise amount determined by the computer tracking system, would be shipped to the store of the manager who made the request.

24. Each store manager remained (and remains) tightly constrained by the instructions and oversight of their respective district's manager. District managers regularly admonished store managers to cut payroll hours as a way of keeping overhead low and maximizing net store profits. District managers did this in response to corporate policy, with the knowledge that if payroll hours were cut, payment for overtime hours would be avoided, and any slack in staffing would be picked up by the store manager, who worked on salary and never accrued overtime. Each week, the district manager would instruct store managers regarding how many hours were available to be staffed and when and in what amount cuts in payroll would be necessary. District managers would

also advise store managers when to order new product, and when to hire new employees (though the actual hiring was done by store managers). Finally, district managers, pursuant to corporate policy, instructed store managers never to be in their respective stores alone. Corporate policy required that store managers always be present with at least one other employee. In other words, each store manager's "managerial" character was so debased (both objectively and in the view of DOLLAR TREE) that they were not even trusted to be in the store by themselves.

FIRST CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

(*California Labor Code* Sections 203, 204, 215, 216, 226, 226.6, 510(a), 558, 1194, 1198 and/or 1199; IWC Wage Order 9 [revised])

25. Plaintiffs, individually and on behalf of all employees similarly situated, restate, reallege, and incorporate by reference paragraphs 1 through 24 of this Complaint as though fully set forth in the pleading of this First Cause of Action.

26. Pursuant to *California Labor Code* sections 203, 204, 215, 216, 226, 226.6, 510(a), 558, 1194, 1198, 1199, and certain Industrial Welfare Commission Wage Orders, it is unlawful in California for an employer to employ a person for longer than eight (8) hours in a single day, or more than forty (40) hours in a single week, without paying a person more than their regularly hourly rate of compensation.

27. At all times mentioned in this Complaint, *California Labor Code* § 510 provided that "any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek and the first eight (8) hours worked on the seventh (7^{th}) day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." At all times mentioned in this Complaint, IWC Wage Order No. 7-80 (revised) provided for payment of overtime wages equal to one and one-half times an employee's regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours in a single

work week, and/or for payment of overtime wages equal to double the employee's regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and/or for all hours worked in excess of eight (8) hours on the seventh (7^{th}) day of work in any one workweek.

28. Defendant has intentionally and improperly designated certain employees, including Plaintiffs and each member of their Class, as exempt store "managers" as a way of avoiding the payment of overtime wages and other benefits in violation of *California Labor Code* § 510, IWC Wage Order No. 7-80 (revised) and the guidelines set forth by the California Division of Labor Standards and Enforcement (hereinafter "D.L.S.E.").

29. The job duties of Plaintiffs and each member of their Class do not fit the definition of either exempt executive or administrative employees as set forth in California law and D.L.S.E. interpretations and opinion letters because:

a. Less than 50% of their work hours have been spent on exempt managerial or administrative duties;

b. More than 50% of their work hours have been spent performing non-exempt duties, including, but not limited to stocking shelves, providing customer service and cashiering.

c. Plaintiffs and each member of their Class have not had (and do not have) discretion or independent judgment as defined by the D.L.S.E. because they must follow exacting and comprehensive company-wide policies that dictate virtually every aspect of "managerial" operations, including, but not limited to merchandise display; selection, purchasing and pricing of merchandise to be sold; employee hiring and scheduling; procedures for receiving, stocking, processing and assembling merchandise; and store layout and design.

d. Plaintiffs and each member of their Class cannot set wages of hourly employees, and they cannot set policies or procedures that bind the corporation.

e. Plaintiffs and each member of their Class have worked under the direct and close supervision of Area Managers, District Managers, and Regional

Managers, each of whom prevent them from making independent decisions that affect the store or the company as a whole.

30. Since commencing their employment with DOLLAR TREE, Plaintiffs and each member of their Class have been required to regularly work in excess of eight (8) hours per day and forty (40) hours per week. Furthermore, Plaintiffs and each member of their Class have been regularly required to work six days per week.

31. Under *Labor Code* § 510 and the provisions of IWC Order 7-80 (revised), Plaintiffs and each member of their Class should have received overtime wages in a sum according to the proof for hours worked during the four (4) years prior to the filing of this lawsuit. Defendant owes Plaintiffs and each Class member overtime wages, but has failed and refused, and continues to fail and refuse, to pay Plaintiffs and each Class member the amount owed.

32. Plaintiffs, individually and on behalf of those similarly situated, request recovery of overtime compensation in an amount to be proven at trial, in addition to interest, attorney fees, and costs pursuant to *California Labor Code* §§§ 218.5, 218.6 and 1194 (a), and *California Code of Civil Procedure* § 1021.5, as well as the assessment of any statutory penalties against the Defendant as authorized and in accordance with relevant sections of the *Labor Code*.

<u>SECOND CAUSE OF ACTION</u>

FAILURE TO PAY ALL UNPAID WAGES AT TIME OF TERMINATION

(*California Labor Code* sections 201 (a) and 202 (a))

33. Plaintiffs, individually and on behalf of all employees similarly situated, restate, reallege, and incorporate by reference paragraphs 1 through 32 of this Complaint, as though fully set forth in the pleading of this Second Cause of Action.

34. *California Labor Code* § 201 (a) provides, in part, "if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

35. *California Labor Code* § 202 (a) provides, in part, "if any employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter…," subject to certain conditions, none of which obviate the duty of the employer to tender the employee all money earned, yet unpaid, to the employee.

36. At all times mentioned in this Complaint, Defendant willfully failed to pay wages (including overtime wages) earned by Plaintiffs and many (if not all) members of their Class upon the termination of their status as employees of Defendant.

37. *California Labor Code* § 203 provides, in part, "if an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202 and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days. *California Labor Code* § 203 permits an employee to bring an action to recover "these penalties at any time before the expiration of the statute of limitations on an action for the wages from which the penalties arise."

38. Because Defendant willfully failed to pay all wages due Plaintiffs and members of Plaintiffs' Class whose employment with Defendant was terminated, Plaintiffs and Class members are entitled to recover all wages that should have been paid to them, but which were not, at the time of termination, in addition to all penalties authorized in *Labor Code* § 203.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(*California Labor Code* § 226 (a))

39. Plaintiffs, individually and on behalf of employees similarly situated, restate, reallege, and incorporate by reference paragraphs 1 through 38 of this Complaint, as though fully set forth in the pleading of this Third Cause of Action.

40. *California Labor Code* § 226(a) provides that, at the time of each payment of wages, an employer shall provide each employee with an accurate wage statement itemizing, among other things, the total hours worked by the employee during the pay period, all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate by the employee.

41. At all times mentioned in this Complaint, Defendant paid no overtime wages to Plaintiffs and members of their Class, even though Plaintiffs and members of their Class earned these wages. The itemized wage statements issued to Plaintiffs and members of their Class did not accurately reflect all applicable hourly rates that should have been in effect during the respective pay periods. Nor did these itemized wage statements list the corresponding number of hours worked by Plaintiffs and members of their Class at each applicable hourly rate. Instead, the itemized wage statements issued to Plaintiffs and members of their Class reflected the reputed salary, without any indication of the rate of pay applicable with respect to those hours worked in excess of eight (8) hour per day and/or forty (40) per week.

42. In failing to receive accurate itemized wage statements from Defendant, Plaintiffs and members of their Class suffered injury.

43. *California Labor Code* §226(e) provides, in part, that an employee suffering injury as a result of a knowing and intentional failure by an employer to comply with *California Labor Code* §226(a) is entitled to recover the greater of his actual damages or a penalty of $50 for the initial pay period in which a violation occurs and $100 for each violation in a subsequent pay period (up to a maximum of $4,000), in addition to attorney fees and costs.

44. Defendant knowingly and intentionally failed to provide timely and accurate itemized wage statements to Plaintiffs and each member of their Class in accordance with *California Labor Code* § 226. The statements provided to Plaintiffs and members of his Class did not (and do not) accurately reflect the actual gross wages they earned or the total number of hours they worked.

45. Because Defendant breached its duty pursuant to *Labor Code* § 226(a), Plaintiffs and members of their Class are entitled to the damages and penalties provided for under *Labor Code* § 226(e) and other relevant sections of the *Labor Code*.

FOURTH CAUSE OF ACTION

MEAL BREAK VIOLATIONS

(*California Labor Code* Sections 226.7 and 512 and IWC Wage Order 7-2001)

46. Plaintiffs, individually and on behalf of employees similarly situated, restate, reallege, and incorporate by reference paragraphs 1 through 45 of this Complaint, as though fully set forth in the pleading of this Fourth Cause of Action.

47. *California Labor Code* § 512 (a) prohibits any employer from requiring any employee to work for a "period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee." This law further prohibits the employer from employing an employee "for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived."

47. *California Labor Code* §226.7 prohibits any employer from requiring any employee to work during any meal period mandated by an applicable IWC Wage Order, and mandates that an employer who fails to provide an employee with a required meal period shall pay that employee one additional hour of pay at the employee's regular rate of compensation for each work day in which the meal period is not provided.

48. Defendant was and is subject to the provisions of *Labor Code* Sections 226.7 and 512 and an applicable IWC Wage Order. IWC Wage Order 7-2001, Subd. 11(A) provides that: "No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes. . . " Such meal

breaks are unpaid only if: (1) such breaks are at least 30 minutes long; (2) the employee is relieved of all duties; and (3) the employee is free to leave the work premises in order to break.

49. Further, Subd. 11(B) of IWC Wage Order 7-2001 reiterates the remedial language of *Labor Code* § 226.7 by stating that if "an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided." (Emphasis added).

50. Plaintiffs and members of their Class are informed, believe and allege that for the four years preceding the filing of this action, Defendant often failed to provide meal breaks to Plaintiffs, consistent with the provisions recounted in the preceding four paragraphs. Plaintiffs routinely worked in excess of ten hours, but failed to receive their appropriate meal breaks. They were not properly informed of their meal break rights, and they never waived any of these rights. Instead of taking steps to ensure that the employees were aware of their meal break rights and adopting reasonable procedures to ensure that the breaks were actually taken, Defendant encouraged Plaintiffs and members of the Plaintiff Class to work without availing themselves of their right to completely cease work and have something to eat.

51. Throughout the four years immediately preceding the filing of this Complaint, Defendant failed to pay Plaintiffs and Plaintiffs' Class Members any statutory and/or regulatory one-hour pay penalty or wage for failing to provide meal breaks as required by law.

52. Under the provisions of IWC Wage Order No. 7, Plaintiffs and members of their Class have suffered a loss of wages equaling one hour's wages, at their regular hourly rates of pay, for all working days in which meal breaks were not properly provided. The exact amount of loss suffered cannot presently be calculated, but likely will be determined once time and payroll records are produced pursuant to discovery.

53. Because Defendant failed to provide Plaintiffs and members of their Class with meal periods as required by law, Plaintiffs and their Class are entitled to payment of additional wages as provided by law.

FIFTH CAUSE OF ACTION

REST BREAK VIOLATIONS

(*California Labor Code* Sections 226.7 and IWC Wage Order 7-2001)

54. Plaintiffs, individually and on behalf of employees similarly situated, restate, reallege, and incorporate by reference paragraphs 1 through 53 of this Complaint, as though fully set forth in the pleading of this Fifth Cause of Action.

55. *California Labor Code* §226.7 prohibits any employer from requiring any employee to work during any rest period mandated by an applicable IWC Wage Order, and mandates that an employer who fails to provide an employee with a required rest period shall pay that employee one additional hour of pay at the employee's regular rate of compensation for <u>each</u> work day in which the rest period is not provided.

56. Defendant was and is subject to the provisions of *Labor Code* Section 226.7 and an applicable IWC Wage Order. IWC Wage Order 7-2001, Subd. 12(A) provides that: "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. . . . Authorized rest period time ***<u>shall be counted as hours worked</u>*** for which there shall be no deduction from wages." (Emphasis added)

57. Subd. 12(B) of IWC Wage Order No. 7 reiterates the remedial language of Labor Code 226.7 by stating that "[i]f an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for *<u>each</u>* workday that the rest period is not provided." (Emphasis added)

58. Plaintiffs and members of their Class are informed, believe and allege that for the four years preceding the filing of this action, Defendant rarely, if ever, provided rest breaks, pursuant to the provisions above, to Plaintiffs and the other Class Members when their daily work time exceeded three and one-half (3½) hours of work per day.

59. Throughout the four years immediately preceding the filing of this Complaint, Defendant failed to pay Plaintiffs or other Class Members any statutory and/or regulatory one-hour pay penalty for failing to provide rest breaks as required by law.

60. Under the provisions of Wage Order No. 7, Plaintiffs and the other Class Members suffered a loss of wages equal to one hour's pay, at their regular rate of pay, for all work days in which rest breaks were not provided. The exact amount of loss suffered by each Plaintiff and Class member cannot presently be calculated, but likely each amount will be determined once time and payroll records are produced pursuant to discovery.

61. Because Defendant failed to provide Plaintiffs and members of their Class with rest periods as required by law, Plaintiffs and their Class are entitled to payment of additional wages as provided by law.

SIXTH CAUSE OF ACTION

UNFAIR COMPETITION AND UNFAIR BUSINESS PRACTICES

(*California Business and Professions Code* Sections 17000 et seq. and 17200 et seq.)

62. Plaintiffs, individually and on behalf of employees similarly situated, restate, re-allege, and incorporate by reference paragraphs 1 through 61 of this Complaint, as though fully set forth in the pleading of this Fifth Cause of Action.

63. Defendant is a "person" as defined under *California Business and Professions Code* § 17021.

64. Each of the directors, officers and/or agents of DOLLAR TREE are equally responsible for the acts of the others as set forth in *California Business and Professions Code* § 17095.

65. Defendant DOLLAR TREE operates stores in California that sell discounted household items and other merchandise to the "public" as defined in *Business and Professions Code* §§ 17022 and 17024.

66. Plaintiffs are informed and believe that for the last four years, Defendant has intentionally and improperly designated them and members of the Class as "managers" to avoid the payment of overtime wages and other benefits in violation of *California Labor Code* Sections 201, 203, 226 (a), 510, 512 and 1198, *California Penal Code* §§ 484 (larceny) and 532 (obtaining labor through false pretenses), IWC Wage Order No. 7-80 (revised), and the guidelines set forth by the Division of Labor Standards Enforcement and the Industrial Welfare Commission, in addition to the standard imposed by the United States Congress following enactment of the *Fair Labor Standards Act* (29 U.S.C. § 201 et seq.).

67. Defendant's failure to pay required overtime wages to Plaintiffs and members of their Class has resulted in Defendant DOLLAR TREE under-reporting to federal and state authorities wages earned by Class members and, therefore, under-paying state and federal taxes, employer matching funds, unemployment premiums, Social Security, Medicare, and workers' compensation premiums, in an amount according to the proof at trial.

68. Defendant's failure to maintain records of hours worked, failure to pay overtime wages, and their improper and arbitrary designation of Plaintiffs' Class of employees as "managerial" is either unfair and/or an offense punishable by both statutory fine and imprisonment for each violation. Defendant's acts constitute a continuing and ongoing unfair and unlawful activity prohibited by *California Business and Professions Code* sections 17200 et seq., and justify the issuance of an injunction, the making of restitution and the imposition of other equitable relief pursuant to *Business and Professions Code* § 17203, both as to DOLLAR TREE STORES, INC. and its managing agents and officers.

69. As set forth below, Plaintiffs are informed and believe that by misclassifying Class members as "managers" and failing to pay overtime wages to the members of the Class at each of DOLLAR TREE'S California stores, Defendant has engaged in business within the State of California of selling miscellaneous merchandise to the public, as defined in *Business and Professions Code* §§§ 17026, 17029, and 17073, for the purpose of injuring competitors and/or destroying competition in violation of *Business and Professions Code* § 17043.

70. Plaintiffs are informed and believe that Defendant has instructed and directed its directors, officers, employees, and/or agents to intentionally and unlawfully designate Class members as managerial employees to avoid payment of overtime wages and corresponding employment taxes as a means of gaining an unfair advantage over DOLLAR TREE'S competitors in violation of *Business and Professions Code* § 17047. Specifically:

a. DOLLAR TREE corporate and/or California regional headquarters limits the number of monthly payroll hours each store may allocate to employees to perform necessary non-exempt tasks such as stocking, customer service, and customer sales. Such hours allocated to hourly employees are woefully inadequate to permit the completion all necessary non-exempt duties in the stores by hourly employees. As a result, Class members are forced to work long hours performing non-exempt duties to maintain required company standards and avoid disciplinary action. And while Class members work these long hours, they are paid their straight salary, instead of legally mandated overtime compensation.

b. DOLLAR TREE requires strict adherence to a policy forbidding and/or highly discouraging hourly-paid workers to work overtime. Class members must perform all non-exempt tasks not completed by hourly workers during their scheduled hours. In so doing, they are paid nothing in excess of their straight monthly salary.

c. DOLLAR TREE frequently requires class members to cover for the hourly employees when they go on their lunch break, or when hourly employees call in sick or are otherwise unavailable to report for duty. This practice frequently causes the Class members to work in excess of eight (8) hours per day and forty (40) hours per week. In so doing, they are paid nothing in excess of their straight salary.

d. Corporate policy mandates that Class members work six-day work weeks at various times during the year and also requires class members to work more than eight (8) hours per week and forty (40) hours each week. In complying with this policy, Class members are paid nothing in excess of their straight monthly salary.

e. Plaintiffs, and all other Class members, have been told by area managers, district managers, regional managers, directors, officers and agents of Defendant that they are "exempt" salaried employees and are not entitled to overtime compensation.

71. As a result of these acts and omissions by Defendant, the Plaintiffs, on information and belief, allege that Defendant was able to unfairly compete with other stores (particularly other discount stores) in the State of California by not paying overtime wages in violation of *Business and Professions Code*, §§ 17000 et seq. and §§17200 et seq. Due to these unfair, fraudulent and/or unlawful business practices, DOLLAR TREE has gained a competitive advantage over other comparable stores doing business in the State of California.

72. The victims of these unfair and/or unlawful business practices include, but are not limited to, the Class members and other employees of DOLLAR TREE, competing stores in the State of California, and the consuming public. Plaintiffs are informed, believe and allege that Defendant performed the above-mentioned acts with the intent of gaining an unfair competitive advantage and thereby injuring Plaintiffs, employees, other competitors, and the consuming public.

73. Each failure to pay overtime wages in violation of *Business and Professions Code* § 17100 and other statutes is a crime punishable by both a statutory fine and imprisonment. These failures constitute continuing and ongoing unlawful activities prohibited by *Business and Professions Code* sections 17000 et seq. and 17200

et seq. and justify the issuance of an injunction. All such remedies are cumulative pursuant to *Business and Professions Code* § 17205.

74. Pursuant to *Business and Professions Code* § 17203, Plaintiffs, on behalf of themselves and all members of their Class, request restitution and/or disgorgement of all wages wrongfully retained by Defendant in violation of *Business and Professions Code* sections 17000 et seq. and sections 17200 et seq. Furthermore, Plaintiffs request attorneys' fees and costs pursuant to *California Code of Civil Procedure* § 1021.5, and from the common law doctrine from which this statute is derived, upon a showing of proof, among other things, that they have acted in the public interest and that a significant benefit has been conferred on the general public and/or a large class of persons, as set forth in the *Private Attorney General Act* and the common law of this State.

SEVENTH CAUSE OF ACTION

FRAUD AND DECEIT

75. Plaintiffs, individually and on behalf of each employee similarly situated, hereby restate, reallege, and incorporate by reference herein, paragraphs 1 through 74 of this Complaint, as though fully set forth in the pleadings of this Seventh Cause of Action.

76. Plaintiffs allege that the Defendant engaged in fraud and/or deceit against Plaintiffs and each member of Plaintiffs' Class during the entire class period.

77. Plaintiffs allege that Defendant DOLLAR TREE, by and through its officers, human resource directors, regional managers, district managers, area managers and others, during the entire class period has known that the Plaintiffs and members of their Class did not meet the legal requirements of exempt employees and knew that the Plaintiffs and members of their Class could not be ordered to work more than eight (8) hours per day or forty (40) hours per week without being paid overtime. Specifically:

a. Defendant regularly observed and required Plaintiffs and members of their Class to perform non-exempt work, through periodic inspections and visits of store locations by Area Managers, District Managers, and Regional Managers.

b. Defendant knew that Plaintiffs and members of their Class were required to perform the work necessary to restock shelves and process customer purchases. Despite this knowledge, Defendant refused to allocate sufficient labor hours for non-exempt employees to complete these duties.

c. Defendant knew that Plaintiffs and members of their Class regularly spent far less than fifty percent (50%) of their work time performing management duties, since most store management functions were mostly controlled at the district, regional and corporate levels, and the actual management duties performed at the store level--including the writing of weekly work schedules and occasional training and coaching or directing of staff-- only required a few hours per week to be adequately performed.

d. Defendant knew of the requirements of California State and Federal laws pertaining to the requirements of overtime wages and exempt status. More specifically, not only is Defendant, as anyone doing business in California, charged with knowing California labor law, Defendant had been previously sued in 2001 in California for misclassifying its managers as "exempt" from overtime and, therefore, had specific notice of the legal requirements necessary to justify classification of workers as "exempt". Indeed, Defendant participated in a class action settlement of a case entitled *Michael Williams v. Dollar Tree Stores Inc., et al.*, Orange County Superior Court, Case No. 01CC00329. Pursuant to that approved class action settlement, defendants, including Dollar Tree Stores Inc., paid $7,644,240 for the alleged misclassification of "managers" as exempt from overtime. Despite this, Defendant has continued to misclassify its "managers" so as to avoid payment of overtime wages.

78. Those officers, human resource directors, regional managers, district managers, area managers and others referred to in the preceding paragraph, who had the knowledge of the true status of the Plaintiffs and members of their Class included Gary Philbin (Senior Vice President of Stores), Rene Lefrancois (Vice President of West Coast Zone), James Fothergill (Chief People Officer), Cindy Warren (Director of Compensation), Betty Martin (Payroll Manager), Cheri Kiper (Manager of Retirement

Services and Personnel), David McDearmon (Director of Field Human Resources), Tim Lorenz, Chris Nygren and Jerry Sankey (Zone Human Resource Managers), Candace Camp (Regional Human Resources Manager).

79. The persons identified in Paragraph 78 did not merely possess the knowledge attributed to them in Paragraph 77. In addition, they and others devised a corporate policy to classify the Plaintiffs and members of their Class as exempt "managers" who would not be paid overtime, even though the duties they would perform were consistent with those of non-exempt non-managerial rank and file employees. The reason this policy was devised was in order to employ workers to do non-managerial tasks for longer than eight hours a day or forty hours a week without paying them overtime. This policy was devised and first implemented prior to the advent of the class period identified in this complaint, but remained in place when the class period commenced and remains in place to the present date.

80. The persons identified in Paragraph 78 instructed regional and area managers, who oversaw operation of more than a single store, to hire store managers as employees who were exempt from overtime but to instruct them to perform non-managerial tasks for most of the time they were on duty. Among those regional and area managers who were instructed to do this were Mike Cassalano and Rick Tellstrom. It was these two men who hired a number of store managers, including the Plaintiffs CRUZ and HANSON. CRUZ and HANSON were both informed by Cassalano and Tellstrom that they were exempt managers who would not be entitled to overtime and whose duties would mostly include the performance of non-managerial tasks.

81. Each week throughout the class period identified in this complaint, Defendant issued each Plaintiff and each member of the Plaintiffs' Class a pay check and itemized wage statement. The pay checks and wage statements together provided inaccurate information regarding time worked and money earned. These inaccuracies were not inadvertent. Instead, they were deliberate. They were designed not merely to deprive the Plaintiffs and their class of what they rightfully earned in the form of

overtime pay, but also to reinforce their incorrect understanding of their status as exempt managers.

82. Each week Defendant authored the checks and wage statements to Plaintiffs and members of their Class, Defendant knew the statements (particularly the assertion that no overtime pay was required to be paid to the class members) were false. The weekly paychecks and pay statements authored by Defendant and provided to Plaintiffs, and members of their class, were themselves fraudulent representations that the "managers" were exempt. These documents are also evidence of the broader fraudulent scheme by Defendant to convince its "managers" of their exempt status.

83. These statements were purported by Defendant to be facts and were made for the purpose of inducing Plaintiffs and members of their Class to work in excess of eight (8) hours per day and forty (40) hours per week without any expectation on their part that they were entitled to receive compensation for overtime worked.

84. Plaintiffs, and each member of their Class, reasonably believed and relied on Defendant's assertions that they were exempt employees who could be required to work overtime without compensation.

85. In reliance on the assertions and to the detriment and prejudice of Plaintiffs and each member of Plaintiffs' Class, Plaintiffs and members of their Class have worked more than eight (8) hours per day and more than forty (40) hours per week, in violation of IWC Wage Order 7-80 (revised) and the *Labor Code*, without being paid overtime.

86. As a direct result of the knowingly false assertions and the concealment of fact by the Defendant, Plaintiffs and members of their Class have earned, but have not been paid, overtime wages, plus interest, in an amount to be proven at trial.

87. In addition to causing actual damages, the suppression of true facts and assertion of false information was done with malice, oppression and/or fraud on the part of the Defendant for the purpose of depriving Plaintiffs and members of their Class of their legal property rights to overtime pay and to gain an unfair advantage over Defendant's competitors. Such acts were done with the authorization, ratification, and/or

advance knowledge of the officers and/or directors of DOLLAR TREE. Such acts, committed with malice, oppression, and/or fraud, justify the awarding of punitive damages to the Plaintiffs and each member of their Class in an amount commensurate with the enormity of the wrongfulness of the acts themselves, for the purpose of punishing the Defendant and deterring it from conducting itself in a similar fashion at any time in the future.

EIGHTH CAUSE OF ACTION

UNJUST ENRICHMENT/CONSTRUCTIVE TRUST

88. Plaintiffs, individually and on behalf of each employee similarly situated, restate, reallege, and incorporate by reference paragraphs 1 through 85 of this Complaint, as though fully set forth in the pleading of this Eighth Cause of Action.

89. By working for Defendant without appropriate pay, Plaintiffs and each member of their Class conferred a substantial benefit on Defendant.

90. At the time the wages earned by Plaintiffs and the members of their Class were due and payable by Defendant those unpaid wages became the property of Plaintiffs and each members of their Class. By failing to pay all earned wages to the Plaintiffs and each members of their Class when due, Defendant wrongfully and unjustly enriched itself at the expense of Plaintiffs and each members of their Class.

91. Since Defendant has unjustly enriched itself at the expense of Plaintiffs and the members of their Class, equity requires that Defendant be disgorged of that enrichment, and that it be transferred to Plaintiffs and each member of their Class.

NINTH CAUSE OF ACTION

REQUEST FOR PRELIMINARY AND PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF

92. Plaintiffs, individually and on behalf of each employee similarly situated, restate, reallege, and incorporate by reference paragraphs 1 through 89 of this complaint, as though fully set forth in the pleading of this Ninth Cause of Action.

93. Plaintiffs allege that if Defendant is not enjoined from the conduct set forth in the preceding paragraphs of this Complaint, Defendant will continue to fail to pay overtime wages to members of Plaintiffs' Class who do not meet the statutory and regulatory exemption requirements. In addition, Defendant will continue to avoid paying the appropriate taxes, insurance, and unemployment withholdings.

94. Plaintiffs request that the Court issue a preliminary and permanent injunction prohibiting the Defendant from requiring Class members, who do not meet the statutory and regulatory guidelines for exemption, from working more than eight (8) hours a day and/or forty (40) hours in any work week without payment to them of overtime wages.

95. Plaintiffs also request that the Court order the Defendant to pay restitution to himself and members of his Class in the form of illegally retained earned overtime wages and benefits, and to disgorge all illegally obtained profits arising from Defendant's failure to pay government mandated taxes, state disability insurance premiums, and unemployment taxes.

<u>TENTH CAUSE OF ACTION</u>

UNLAWFUL FAILURE TO PAY OVERTIME WAGES

(29 U.S. § 200 et seq.)

96. Plaintiffs, individually and on behalf of all employees similarly situated, hereby restate, reallege, and incorporate by reference paragraphs 1 through 93 of this Complaint, as though fully set forth in the pleading of this Tenth Cause of Action.

97. At all relevant times, and during the *three* (3) year period immediately preceding the filing of this Complaint, Plaintiffs and the members of their Class were protected by 29 U.S.C. § 207 (a)(1), which is also known as the *Fair Labor Standards Act*, or FLSA. 29 U.S.C. § 207 (a)(1) provides: "Except as otherwise provided in this section, no employer shall employ any of his employees…for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of

the hours above specified at a rate which is not less than one and one-half times the regular rate at which he is employed."

98. In the performance of their duties for Defendant, Plaintiffs and the members of their Class often labored in excess of forty hours per week without receiving overtime compensation for that labor as required by the *Fair Labor Standards Act*. The precise number of unpaid overtime hours will be proven at trial.

99. Defendant has intentionally and improperly designated certain groups of employees, including Plaintiffs and all members of their Class, as exempt "executive" or "administrative" personnel. Defendant has done this in order to avoid the payment of overtime wages and other benefits in violation of 29 U.S.C. § 207.

100. The job duties of Plaintiffs and each member of Plaintiffs' Class did not, and do not, fit the definition of either exempt executive or administrative employees, as set forth in federal statutory and common law, because:

a. Far less than 50% of their work hours have been spent on managerial or administrative (exempt) duties;

b. Far more than 50% of their work hours have been spent performing non-exempt duties, including, but not limited to stocking store shelves and processing sales of store product to customers at in-store cashier or check-out stations.

c. Plaintiffs and members of their Class have, during all relevant times, never possessed discretion or independent judgment. Instead, they have been required to follow exacting and comprehensive company-wide policies that dictate every aspect of operations, including, but not limited to when, where and how merchandise will be displayed; selection, purchasing and pricing of merchandise to be sold; how many hours employees may be scheduled; procedures for receiving, stocking, processing and assembling merchandise; and store layout and design.

d. Plaintiffs and members of their Class cannot set wages of employees, and cannot set policies or procedures which bind the corporation.

e. Plaintiffs and members of their Class work under the direct and close supervision of several Area, District and Regional Managers and cannot make independent decisions that affect their store or the company as a whole.

101. Since commencing their employment with Defendant, Plaintiffs and the members of their Class have been required to work between 41 to 60 hours per week. Furthermore, Plaintiffs and the members of their Class have been required to work six days per week at times.

102. Under the provisions of 29 U.S.C. § 207, Plaintiffs and each member of their Class should have received overtime wages in a sum to be proven at trial for all hours worked during the applicable limitations period immediately prior to the filing of this Complaint. Because Defendant failed to pay any overtime wages to Plaintiffs and each member of their Class, Plaintiffs and each member of his Class are entitled to recovery all overtime wages which should have been paid, in addition to an equal amount as liquidated damages, as prescribed in 29 U.S.C. § 216 (b).

103. Because Defendant has repeatedly and willfully violated § 207 of the *Fair Labor Standards Act*, Defendant is subject to a civil penalty not to exceed $1,000 for each violation. (See 29 U.S.C. 216 (e)). Plaintiffs and each member of their Class are entitled to recover all civil penalties arising from Defendant's repeated and willful violations of 29 U.S.C. § 207.

104. Plaintiffs, individually and on behalf of employees similarly situated, request recovery of overtime compensation, liquidated damages, reasonable attorney fees and costs, and the assessment of statutory penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray for relief and judgment against Defendant as follows:

FIRST CAUSE OF ACTION

1. For compensatory damages in an amount according to the proof representing the amount of unpaid overtime compensation owed to the Plaintiff and each member of his Class;

2. For interest on any overtime compensation due from the day such amounts were due, as permitted in accordance with *Labor Code* § 218.6, *Civil Code* § 3289, and other relevant laws of the State of California;

3. For reasonable attorney's fees and costs in accordance with *California Labor Code* § 1194, subdivision (a) and the *Private Attorney General's Act* (*Code of Civil Procedure* § 1021.5);

4. For all applicable statutory penalties, including those recoverable pursuant to *Labor Code* Sections 204 (a) and 2699 et seq.

5. For such other and further relief as the Court may deem just and appropriate.

SECOND CAUSE OF ACTION

6. For payment of all wages not paid upon termination or discharge;

7. For all applicable statutory penalties;

8. For payment of interest on all wages that were due upon termination or discharge pursuant to *California Labor Code* § 218.6, *California Civil Code* § 3289 and other relevant laws of the State of California;

9. For attorney fees and costs pursuant to *California Labor Code* § 218.5, *California Code of Civil Procedure* § 1021.5, and other relevant laws of the State of California.

10. For such other and further relief as the Court may deem just and appropriate.

THIRD CAUSE OF ACTION

11. For an order requiring Defendant to show cause, if any they have, why they should not be enjoined from further violation of *California Labor Code* § 226 (a) during and after the pendency of this action;

12. For payment to Plaintiffs and each member of Plaintiffs' Class the greater of the following: $ 50 for each initial failure to comply with *Labor Code* § 226 (a) and $100 for each subsequent failure, for a total amount not exceeding $ 4,000, or actual damages suffered as a result of Defendant's violation of *Labor Code* § 226 (a);

13. For payment of attorney fees, and costs as provided for by *California Labor Code* § 226(e) and all other applicable statutes.

14. For any Civil Penalties that may be recoverable pursuant to *Labor Code* Sections 226.3 and 2699 et seq.

15. For such other and further relief as the Court may deem just and appropriate.

FOURTH CAUSE OF ACTION

16. For recovery of statutory penalties, in the amount subject to proof, calculated at a rate of one additional hour of pay for each day a meal break was not provided, for each member of the Class.

FIFTH CAUSE OF ACTION

17. For recovery of statutory penalties, in the amount subject to proof, calculated at a rate of one additional hour of pay for each day a rest break was not provided, for each member of the Class.

SIXTH CAUSE OF ACTION

18. For a preliminary and permanent injunction prohibiting the Defendant from requiring Class members to work more than eight (8) hours a day or forty (40) hours

in any workweek without payment of overtime wages;

19. For an order requiring Defendant to show cause, if any they have, why it should not be enjoined as set forth herein, during the pendency of this action;

20. For a temporary restraining order, a preliminary injunction, and a permanent injunction, all enjoining Defendant from failing to pay overtime wages, withholding taxes, matching funds, Social Security, Medicare, unemployment and workers' compensation premiums as required by law and as it relates to their actual cost of doing business, such order being without bond pursuant to *Business and Professions Code* § 17081;

21. Restitution and disgorgement of all sums obtained in violation of *Business and Professions Code* sections 17000 et seq. and 17200 et seq.

22. For such other and further relief as the Court may deem just and appropriate.

<u>SEVENTH CAUSE OF ACTION</u>

23. Actual damages, subject to proof at trial;

24. Punitive damages.

25. For such other and further relief as the Court may deem just and appropriate.

<u>EIGHTH CAUSE OF ACTION</u>

26. For an Order requiring Defendant to restore to Plaintiffs and members of Plaintiffs' Class all wages and other property withheld unlawfully by Defendant.

27. For such other and further relief as the Court may deem just and appropriate.

NINTH CAUSE OF ACTION

28. For a preliminary and permanent injunction prohibiting the Defendant from requiring class members to work more than eight (8) hours a day and/or forty (40) hours in any workweek without payment of overtime wages;

29. For a preliminary and permanent injunction prohibiting the Defendant from continuing to issue to members of the class inaccurate itemized wage statements, and to correct all inaccurate statements previously issued during the four years prior to the filing of this Complaint;

30. For an order requiring Defendant to show cause, if any they have, why they should not be enjoined as set forth herein, during the pendency of this action;

31. For a temporary restraining order, a preliminary injunction, and a permanent injunction, all enjoining Defendant from failing to pay overtime wages, withholding taxes, matching funds, Social Security, Medicare, unemployment and workers' compensation premiums as required by law and as it relates to their actual cost of doing business, such order being without bond pursuant to *Business and Professions Code* section 17081;

32. Restitution and disgorgement of all sums obtained in violation of the *California Business and Professions Code* § 17200 et seq., all relevant sections of the *California Labor Code*, and all other relevant laws of the State of California.

33. For such other and further relief as the Court may deem just and appropriate.

TENTH CAUSE OF ACTION

34. For damages in the amount of all unpaid wages earned by Plaintiffs and each member of Plaintiffs' Class;

35. For liquidated damages in the amount of all unpaid wages earned by Plaintiffs and each member of Plaintiffs' Class, as provided for in the *Fair Labor Standards Act*;

36. For penalties in the amount of $ 1,000 for each of Defendant's repeated and willful failures to pay overtime wages as required the *Fair Labor Standards Act.*

37. For such other and further relief as the court may deem just and appropriate.

Dated: July 27, 2007

EDGAR LAW FIRM

By: ______________________
Donald S. Edgar, Esq.
Jeremy R. Fietz, Esq.
Rex Grady, Esq.

DEMAND FOR JURY TRIAL

Plaintiffs hereby respectfully demand a jury trial on all issues triable thereby.

Dated: July 27, 2007

EDGAR LAW FIRM

By: ______________________
Donald S. Edgar, Esq.
Jeremy R. Fietz, Esq.
Rex Grady, Esq.