

1 ROBERTO C. JIMENEZ (SB# 242623)
2 LAW OFFICE OF ROBERTO C. JIMENEZ
3 1440 Broadway, Suite 400
4 Oakland, CA 94612
5 Telephone: (510) 315-6869
6 Facsimile: (510) 315-7079

ENDORSED
FILED
ALAMEDA COUNTY

MAR 08 2011

CLERK OF THE SUPERIOR COURT
By H. Lovett Deputy

7 MICHAEL F. RAM (SB# 104805)
8 KARL OLSON (SB# 104760)
9 RAM & OLSON LLP
10 555 Montgomery Street, Suite 820
11 San Francisco, CA 94111
12 Telephone: (415) 433-4949
13 Facsimile: (415) 433-7311

14 *Attorneys for Plaintiff Felipe Diaz and California Plaintiff Class*

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ALAMEDA
16 UNLIMITED JURISDICTION

17 FELIPE DIAZ, INDIVIDUALLY AND ON)
18 BEHALF OF ALL OTHERS SIMILARLY)
19 SITUATED,)

20 Plaintiffs,)

21 vs.)

22 ALCO IRON & METAL CO., and DOES 1)
23 TO 30,)

24 Defendants.)

Case No.: HG10517616

FIRST AMENDED CLASS ACTION
COMPLAINT UNDER CAL. LABOR LAW

JURY TRIAL DEMANDED

BY FAX

25 PLAINTIFF COMPLAINS AND ALLEGES THAT:

26 PARTIES

27 1. Plaintiff Felipe Diaz (hereinafter "Plaintiff") is an individual, residing in Oakland,
28 California, and individually and on behalf of all other similarly situated, by and through his
attorneys, Law Office of Roberto C. Jimenez and Ram & Olson, LLP, upon personal information
as to himself and upon information and belief as to all other matters, alleges as follows:

Case No.: HG10517616

FIRST AMENDED COMPLAINT FOR CLASS ACTION UNDER CAL. LABOR LAW BY PLAINTIFF FELIPE DIAZ; JURY TRIAL
DEMANDED

1 1-2001, 4-2001, California Code of Regulation, Title 8, §§ 11010 & 11040; and (d) the Unfair
2 Competition Law, California Business and Profession Code §§ 17200 *et seq.*

3 10. Named Plaintiff's class action claims are brought on behalf of all defendant's
4 employees who worked in California. Through their class-wide claims, Named Plaintiff seeks
5 compensation for all damages permitted by California wage and hour laws, plus restitution and
6 disgorgement of all benefits defendant obtained from its unlawful practices, injunctive and
7 declaratory relief, interest, and attorneys' fees and costs.

8 FACTUAL SUMMARY

9 11. Plaintiff began to work for defendant on or about February 28, 1992.

10 12. Plaintiff performed his job responsibilities competently and conscientiously.

11 13. Defendant's three job locations located in San Leandro, Stockton and Vallejo employ
12 over 200 employees, who despite working at least an 8 hour shift, are only provided with a total
13 of two 30 minute breaks. All employees, including plaintiff, were also required to utilize one of
14 those 30 minute breaks to attend a mandatory 30 minute work meeting once a month during the
15 afternoon, for which they were uncompensated. All employees were also provided with
16 paychecks that listed their entire social security number after January 1, 2008.

17 14. Recently, one of defendant's job locations has begun to offer rest and meal periods as
18 required by law by finally allowing employees to have a rest period in the morning, a mid-day
19 meal period, and a late afternoon rest period.

20 15. The other two job locations, however, are still only providing two 30 breaks.

21 16. Plaintiff's last date of work was October 7, 2009.

22 17. To date, the rest and meal period violations with current employees continue.

23 CLASS ACTION ALLEGATIONS

24 18. **California Class (California Labor Code and Wage Order Claims):** plaintiff
25 brings his state wage and hour claims in this case in his individual capacity and as a class action
26 on behalf of himself and all similarly situated Alco Iron & Metal Co. workers during the
27 applicable statute of limitations period in California. The Class of Alco Iron & Metal Co.
28 employees in California that plaintiff seeks to represent is defined as follows:

1 All persons who are, were, or will be employed by Alco Iron & Metal Co. in California
2 as "employees" at any time since April 2006 (the "California Class Period").
3 "Employees" includes, but is not limited to, all persons working for Alco Iron & Metal
4 Co. in any capacity.

5 19. This action has been brought and may properly be maintained as a class action
6 because there is a well-defined community of interest in the litigation and the proposed class is
7 easily ascertainable:

8 a) **Numerosity:** The potential members of the class as defined are so numerous
9 that joinder of all the members of the class is impracticable. While the precise
10 number of Class Members has not been determined at this time, plaintiff is
11 informed and believe that Alco Iron & Metal Co. has employed hundreds of
12 people as non-exempt employees in California during the Class Period. Joinder
13 of all members of the proposed class is not practicable.

14 b) **Commonality:** There are questions of law and fact common to the plaintiff and
15 the Class that predominate over any questions affecting only individual members
16 of the Class. These common questions of law and fact include, without
17 limitation:

- 18 i. Whether Alco Iron & Metal Co. failed and continues to fail to fully
19 provide employees proper meal and rest breaks in violation of
20 California Labor Code §§ 226.7, 512 and Wage Orders 1-2001, 4-
21 2001 and California Business and Professions Code §§ 17200 *et*
22 *seq.*;
- 23 ii. Whether Alco Iron & Metal Co. failed and continues to fail to
24 make, keep, preserve and/or timely furnish records of all
25 employees' daily hours worked, including the start and end of each
26 work period, meal periods, and wages earned in violation of
27 California Labor Code §§ 226 and 1174;
- 28 iii. Whether Alco Iron & Metal Co. violated California Labor Code §
226 by listing the entire social security of each employee on their
paychecks after January 1, 2008;
- iv. Whether Alco Iron & Metal Co. conduct is "unlawful," "unfair" or
"fraudulent" under the California Business and Professions Code
§§ 17200 *et seq.*;
- v. Whether Alco Iron & Metal Co. should be enjoined from
continuing its unlawful practices;

- 1 vi. Whether Alco Iron & Metal Co. is liable to the California Class;
2 and
3 vii. Whether the Class can be made whole by payment of damages.

4 c) **Typicality:** Named Plaintiff claims are typical of the claims of the Class.
5 Plaintiff and Class Members sustained injuries and damages arising of and caused
6 by Alco Iron & Metal Co.'s common course of conduct in violation of law as
alleged in this Demand.

7 d) **Adequacy of Representation:** Named Plaintiff is a member of the Class and
8 will fairly and adequately represent and protect the interests of the Class
9 Members. Counsel who represents the Named Plaintiff is competent and
experienced in litigating wage and hour and other employment actions.

10 e) **Superiority of Class Action:** A class action is superior to other available
11 means for the fair and efficient adjudication of this controversy. Individual
12 joinder of all Class Members is not practicable, and questions of law and facts
13 common to the Class predominate over any questions affecting only individual
14 members of the Class. Each Class Member has been damaged and is entitled to
15 recovery by reasons of Alco Iron & Metal Co.'s illegal policies and/or practices of
16 permitting, encouraging, and/or requiring employees to work without being
provided proper meal and rest periods.

17 **FIRST CAUSE OF ACTION:**

18 **UNLAWFUL FAILURE TO PROVIDE MEAL AND REST PERIODS**

19 **(California Labor Code §§ 226.7 and 512, and Wage Orders 1-2001, 4-2001; Brought by**
20 **Named Plaintiff on Behalf of Himself and All Members of the California Class)**

21 20. Plaintiff hereby realleges and incorporates by reference paragraphs 1 to 19 of the
22 allegations of this complaint as if set forth in full.

23 21. Named Plaintiff and the Class members were regularly compelled to work in excess
24 of 5 hours a day without Alco Iron & Metal Co. providing half-hour meal periods in which they
25 were relieved of all duties, as required by Labor Code §§ 226.7 and 512 and Wage Orders 1-
2001, 4-2001.

26 22. Because Alco Iron & Metal Co. failed to authorize and permit uninterrupted off-duty
27 meal periods, they are liable to Named Plaintiff and Class members for 1 hour of additional pay
28 at the regular rate of compensation for each workday that the full and uninterrupted off-duty

1 meal periods were not provided, pursuant to Labor Code § 226.7 and Wage Orders 1-2001, 4-
2 2001.

3 23. Named Plaintiff and the Class members were regularly suffered, permitted, and
4 compelled to work over a four hour period (or major fraction thereof) without Alco Iron & Metal
5 Co. authorizing and permitting them to take paid 10-minute rest periods in which they were
6 relieved of all duties, as required by Labor Code § 226.7 and Wage Orders 1-2001, 4-2001.

7 24. Because Alco Iron & Metal Co. failed to authorize and permit uninterrupted off-duty
8 rest periods, they are liable to Named Plaintiff and Class members for 1 hour of additional pay at
9 the regular rate of compensation per each workday that the full and uninterrupted off-duty rest
10 periods were not provided, pursuant to Labor Code § 226.7 and Wage Orders 1-2001, 4-2001.

11 25. Named Plaintiff, individually and on behalf of Class members, requests recovery of
12 meal and rest period compensation pursuant to California Labor Code §§ 226.7 and Wage Orders
13 1-2001, 4-2001, as well as the assessment of any statutory penalties against defendants, in a sum
14 as provided by the Labor Code and/or other statutes. Further, Named Plaintiff and the Class
15 members are entitled to seek and recover reasonable attorneys' fees.

16 **SECOND CAUSE OF ACTION:**

17 **UNLAWFUL FAILURE TO KEEP REQUIRED PAYROLL RECORDS & PAY STUB**

18 **VIOLATIONS**

19 **(California Labor Code §§ 226, 1174, 1174.5 and Wage Orders 1-2001, 4-2001; Brought by**
20 **Named Plaintiff on Behalf of Himself and All Members of the California Class)**

21 26. Plaintiff hereby realleges and incorporates by reference paragraphs 1 to 25 of the
22 allegations of this complaint as if set forth in full.

23 27. Alco Iron & Metal Co. has violated California Labor Code §§ 226 and 1174 by
24 willfully failing to keep required payroll records accurately showing the hours Named Plaintiff
25 and Class members worked, the start and end of each work period, meal periods, gross wages
26 earned, and net wages earned. Alco Iron & Metal Co. further violated California Labor § 226
27 by listing the entire social security number on the paychecks of Named Plaintiff and Class
28

1 members after January 1, 2008, when only the last 4 digits of the social security number may be
2 listed.

3 28. Alco Iron & Metal Co. is liable for civil penalties pursuant to California Labor Code
4 §§ 226 and 1174.5.

5 **THIRD CAUSE OF ACTION:**

6 **UNFAIR COMPETITION**

7 **(California Business and Professions Code §§ 17200 – 17208; Brought by Named Plaintiff**
8 **on Behalf of Himself and All Members of the California Class)**

9 29. Plaintiff hereby realleges and incorporates by reference paragraphs 1 to 28 of the
10 allegations of this complaint as if set forth in full.

11 30. Alco Iron & Metal Co. is a “person” as defined under Business & Professions Code §
12 17021.

13 31. Alco Iron & Metal Co.’s willful failure to provide meal and rest periods, as alleged
14 above, constitutes unlawful and/or unfair and/or fraudulent activity prohibited by California
15 Business and Professions Code § 17200.

16 32. As a result of this unlawful and/or unfair and/or fraudulent acts, Alco Iron & Metal
17 Co. reaped and continues to reap unfair benefits and illegal profits at the expense of Named
18 Plaintiff and Class members. Alco Iron & Metal Co. should be enjoined from this activity and
19 made to disgorge these ill-gotten gains and restore to Named Plaintiff and the Class members the
20 wrongfully withheld compensation for each day that meal and rest periods were not provided to
21 the Class members, and to provide the Class members restitution for the violation, and for the
22 delay in receiving the compensation due, pursuant to Business and Professions Code § 17203.

23 **FOURTH CAUSE OF ACTION:**

24 **STATUTORY VIOLATION**

25 **(California Labor Code §§ 201, 203, 208, 218.5, 218.6; Brought by Named Plaintiff on**
26 **Behalf of Himself and All Members of the California Class)**

27 33. Plaintiff hereby realleges and incorporates by reference paragraphs 1 to 32 of the
28 allegations of this complaint as if set forth in full.

1 34. Defendant violated Labor Code § 201 by failing and refusing to pay Named Plaintiff
2 and the Class members all accrued compensation when defendant terminated them.

3 35. Named Plaintiff and the Class members are entitled to a statutory penalty up to 30
4 days' unpaid wages for all days for which compensation was not paid, under Labor Code § 203.

5 36. Named Plaintiff and the Class members are further entitled to statutory attorney fees
6 and interest under Labor Code §§ 218.5 and 218.6.

7 **DEMAND FOR JURY TRIAL**

8 37. Plaintiffs hereby demand trial by jury of the above cause.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Named Plaintiff on behalf of himself and all members of the proposed
11 California Class, prays judgment and relief against the defendants as follows:

- 12 1. Certifying this action as a Class Action on behalf of the California Class;
13 2. Designating Named Plaintiff Felipe Diaz as representative of the California Class;
14 3. Awarding damages, restitution, and statutory penalties to be paid by Defendants;
15 4. Awarding costs and expenses, including reasonable attorneys' fees and expert fees;
16 5. For damages according to proof, of not less than \$4,900,000.00;
17 6. Awarding pre-judgment and post-judgment interest, as provided by law; and Ordering
18 such other and further legal and equitable relief as the Court deems necessary, just and proper.

19
20 Respectfully submitted,

21 Dated:

By: Roberto C. Jimenez KO

22 Roberto C. Jimenez (SB# 242623)
23 LAW OFFICE OF ROBERTO C. JIMENEZ
24 1440 Broadway, Suite 400
25 Oakland, CA 94612
26 Telephone: (510) 315-6869
27 Facsimile: (510) 315-7079

28 MICHAEL F. RAM (SB# 104805)
KARL OLSON (SB# 104760)
RAM & OLSON LLP
555 Montgomery Street, Suite 820
San Francisco, CA 94111

Telephone: (415) 433-4949
Facsimile: (415) 433-7311

*Attorneys for Plaintiff Felipe Diaz and California
Plaintiff Class*

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