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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

APR 11 2017

BY Jessica Garcez
JESSICA GARCEZ, DEPUTY

12 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **IN AND FOR THE COUNTY OF SAN BERNARDINO**

14 ANITA COREY,

15 Plaintiff,

16 vs.

17 FAMILY DOLLAR, INC., and DOES
18 1 through 100, inclusive,

19 Defendant.

Case No.

CIVDS1706711

**COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF AND RESTITUTION**

[Jury Trial Demanded]

20 Plaintiff alleges as follows:

21 **INTRODUCTION**

22 1. This is an action seeking unpaid regular and overtime wages, including unpaid
23 compensation for interrupted and/or missed meal and/or rest periods, interest thereon, penalties,
24 and reasonable attorneys' fees and costs under, *inter alia*, California Labor Code §§ 200-204,
25 inclusive, 226, 226.7, 510, 512, 1174, 1174.5, 1194, 1197, 1197.1, and/or 1198, and California
26 Code of Civil Procedure § 1021.5. Plaintiff brings this action against Family Dollar, Inc. and/or
27 Does 1 through 100, inclusive, ("Defendant") for violations commencing April 11, 2013 (the
28 "limitations period").

29 2. During the limitations period, Defendant has had a consistent policy of willfully
30 (1) failing to pay Plaintiff all wages earned due (including overtime wages), (2) unlawfully

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1 denying Plaintiff statutorily-mandated meal and rest periods, (3) willfully failing to provide
2 Plaintiff with accurate semimonthly itemized wage statements reflecting the total number of
3 hours each worked, the applicable deductions, and the applicable hourly rates in effect during the
4 pay period, and (4) willfully failing to pay Plaintiff all wages due in a timely manner during her
5 employment and following separation from the company.

6 3. Plaintiff is informed and believes and, based thereon, alleges that officers of
7 Defendant knew of these facts and legal mandates yet, nonetheless, repeatedly authorized and/or
8 ratified the violation of the laws cited herein.

9 4. Despite Defendant's knowledge of Plaintiff's entitlement to overtime pay and
10 meal and/or rest periods for all applicable work periods, Defendant failed to provide same to
11 Plaintiff, in violation of California state statutes, the applicable California Industrial Welfare
12 Commission Wage Order(s), and Title 8 of the California Code of Regulations.

13
14 **JURISDICTION AND VENUE**

15 5. This Court has jurisdiction over Plaintiff's claims for unpaid wages and/or
16 penalties under, *inter alia*, the applicable Industrial Welfare Commission Wage Order(s), Title 8
17 of the California Code of Regulations, and the statutes cited above.

18 6. This Court also has jurisdiction over the Plaintiff's claims for injunctive relief and
19 restitution of ill-gotten benefits arising from Defendant's unfair and/or fraudulent business
20 practices under California Business & Professions Code § 17200, *et seq.*

21 7. Venue as to Defendant is proper in this judicial district pursuant to California
22 Code of Civil Procedure § 395(a). Defendant has location(s) within the County of San
23 Bernardino where Plaintiff worked, transacts business, has agents, and is otherwise within this
24 Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein have and
25 have had a direct effect on the Plaintiff within the State of California and within the County of
26 San Bernardino.

FACTUAL ALLEGATIONS

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2 14. At all relevant times, Defendant operated a retail store in the city of Trona,
3 County of San Bernardino, State of California, where Plaintiff worked as a non-exempt
4 employee, an employment position which did not meet any test for exemption from the payment
5 of overtime wages and/or the entitlement to meal or rest periods.

6 15. During the limitations period, Plaintiff was denied statutorily- permitted meal and
7 rest periods.

8 16. During the limitations period, Plaintiff regularly worked in excess of eight hours
9 in a workday and/or forty hours in a workweek.

10 17. At all relevant times, Defendant was aware of these violations, as well as the
11 entitlement of Plaintiff to overtime compensation by virtue of the additional hours beyond eight
12 per workday and/or 40 per workweek she worked, yet knowingly failed to adequately
13 compensate Plaintiff for all wages earned (including premium wages such as overtime wages
14 and/or compensation for missed meal and/or rest periods) under the California Labor Code and
15 the applicable IWC Wage Order(s), thereby enjoying a significant competitive edge over other
16 similar retailers.

17 18. Defendant has declined to pay these wages, even upon termination of Plaintiff's
18 employment, in blatant violation of California Labor Code § 201 and/or § 202.

19 19. California Labor Code §§ 201 and 202 require Defendant to pay severed
20 employees all wages due and owed thereto immediately upon discharge or within 72 hours of
21 resignation of their positions, in most circumstances. California Labor Code § 203 provides that
22 an employer who willfully fails to timely pay such wages to an employee must, as a penalty,
23 continue to pay the subject employee's wages until the back wages are paid in full or an action is
24 commenced, and the payment of such penalty shall continue for a period of time up to 30 days.

25 20. Furthermore, Defendant failed to provide Plaintiff with accurate semimonthly
26 itemized statements of the total number of hours worked, and all applicable hourly rates in effect,
27 during the pay period, in violation of California Labor Code § 226. In failing to provide the
28 required documents, Defendant has not only failed to pay Plaintiff the full amount of

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1 compensation due but Defendant has also, until now, effectively shielded itself from employee
2 scrutiny by concealing the magnitude and financial impact of the wrongdoing that such
3 documents might otherwise have led Plaintiff to discover.

4 21. Plaintiff is entitled to unpaid compensation, yet, to date, has not received such
5 compensation, despite having been terminated by and/or resigned from Defendant's employ.
6 More than 30 days have passed since Plaintiff left Defendant's employ.

7 22. As a consequence of Defendant's willful conduct in not paying Plaintiff
8 compensation for all hours worked in a prompt and timely manner, Plaintiff is entitled to up to
9 30 days wages as a penalty under California Labor Code §§ 201-204, together with attorneys'
10 fees and costs.

11 23. As a direct and proximate result of Defendant's unlawful conduct, as set forth
12 herein, Plaintiff has sustained damages, as described above, including compensation for loss of
13 earnings for hours worked on behalf of Defendant, in an amount to be established at trial. As a
14 further direct and proximate result of Defendant's unlawful conduct, as set forth herein, Plaintiff
15 is entitled to recover "waiting time" penalties (pursuant to California Labor Code §§ 201-204)
16 and penalties for failure to provide semimonthly statements of hours worked and all applicable
17 hourly rates (pursuant to California Labor Code § 226) in an amount to be established at trial. As
18 a further direct and proximate result of Defendant's unlawful conduct, as set forth herein,
19 Plaintiff is also entitled to recover costs and attorneys' fees pursuant to California Labor Code §
20 1194 and/or California Civil Code § 1021.5, among other authorities.

21 24. Plaintiff seeks injunctive relief prohibiting Defendant from engaging in the
22 complained-of illegal labor acts and practices in the future. Unless enjoined, Defendant's
23 unlawful conduct will continue unchecked, while other employees similarly situated to Plaintiff
24 bear the financial brunt of Defendant's unlawful conduct. As a further direct and proximate
25 result of Defendant's unlawful conduct, as set forth herein, Plaintiff is also entitled to recover
26 costs and attorneys' fees, pursuant to statute.

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1 **FIRST CAUSE OF ACTION**
2 **UNLAWFUL FAILURE TO PAY WAGES**
3 **(California Labor Code §§ 200-204, 510, 1194, and 1198; IWC Wage Order(s))**

4 25. Plaintiff incorporates in this cause of action each and every allegation of the
5 preceding paragraphs, with the same force and effect as though fully set forth herein.

6 26. During the limitations period, Plaintiff performed work for Defendant, oftentimes
7 in excess of eight hours in a workday and/or forty hours in a workweek. The number of hours
8 will be proven at trial.

9 27. During the limitations period, Defendant refused to compensate Plaintiff for all of
10 the wages earned, in violation of the applicable IWC Wage Order(s) and provisions of the
11 California Labor Code.

12 28. Moreover, during the limitations period, Plaintiff was terminated or resigned from
13 her position with Defendant, yet was not paid all wages due upon said termination or within 72
14 hours of said resignation of employment therefrom. Said non-payment of all wages due was the
15 direct and proximate result of a willful refusal to do so by Defendant.

16 29. More than thirty days have elapsed since Plaintiff was terminated or resigned
17 from Defendant's employ.

18 30. At all relevant times, Defendant was aware of, and was under a duty to comply
19 with, the overtime provisions of the California Labor Code including, but not limited to,
20 California Labor Code §§ 510, 1194, and 1198.

21 31. California Labor Code § 510(a), in pertinent part, provides:

22 Any work in excess of eight hours in one workday and any work in
23 excess of 40 hours in any one workweek and the first eight hours
24 worked on the seventh day of work in any one workweek shall be
25 compensated at the rate of no less than one and one-half times the
26 regular rate of pay for an employee

27 32. California Labor Code § 1194(a), in pertinent part, provides:

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

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33. California Labor Code § 1198, in pertinent part, provides:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

34. By refusing to compensate Plaintiff for overtime wages earned, Defendant violated those California Labor Code provisions cited herein as well as the applicable IWC Wage Order(s).

35. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, Plaintiff has sustained damages, including loss of earnings for hours of overtime worked on behalf of Defendant, in an amount to be established at trial. As a further direct and proximate result of Defendant's unlawful conduct, as set forth herein, Plaintiff is entitled to recover penalties (including "waiting time" penalties of up to thirty days' wages, pursuant to California Labor Code § 203) in amounts to be established at trial, as well as attorneys' fees and costs, and restitution, pursuant to statute.

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE MEAL AND REST PERIODS
(California Labor Code §§ 226.7 and 512)

36. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

37. At all relevant times, Defendant was aware of and was under a duty to comply with California Labor Code § 226.7 and § 512.

38. California Labor Code § 226.7 provides:

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

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

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39. Moreover, California Labor Code § 512(a) provides:
An employer may not employ an employee for a work 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. An employer may not employ 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.

40. Sections 11 and 12, respectively, of the applicable IWC Wage Order(s) mandate that employers provide all applicable meal and/or rest periods to non-exempt (including exempt-misclassified) employees.

41. Section 11 of the applicable IWC Wage Order(s) provides:

- (A) 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...
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes...
- (C) 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.

42. Moreover, Section 12 of the applicable IWC Wage Order(s) provides:

- (A) 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
- (B) If 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 each workday that the rest period is not provided.

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1 43. By failing to consistently provide uninterrupted thirty-minute meal periods within
2 the first five hours of work each day and/or uninterrupted net ten-minute rest periods to Plaintiff,
3 Defendant violated the California Labor Code and applicable IWC Wage Order provisions.

4 44. Plaintiff is informed and believes and, on that basis, alleges that Defendant has
5 never paid the one hour of compensation to Plaintiff for its violations of the California Labor
6 Code and applicable IWC Wage Order provisions.

7 45. As a direct and proximate result of Defendant's unlawful conduct, as set forth
8 herein, Plaintiff has sustained damages, including lost compensation resulting from missed meal
9 and/or rest periods, in an amount to be established at trial. As a further direct and proximate
10 result of Defendant's unlawful conduct, as set forth herein, Plaintiff is entitled to recover
11 "waiting time" and other penalties, in amounts to be established at trial, as well as attorneys' fees
12 and costs, and restitution, pursuant to statute.

13
14 **THIRD CAUSE OF ACTION**
15 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
16 **(California Labor Code § 226)**

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

19 47. California Labor Code § 226(a) provides:

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

48. Moreover, California Labor Code § 226(e) provides:

An employee suffering injury as a result of a knowing and
intentional failure by an employer to comply with subdivision (a)
is entitled to recover the greater of all actual damages or fifty
dollars (\$50) for the initial pay period in which a violation occurs

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

5 49. Plaintiff seeks to recover actual damages, costs, and attorneys' fees under these
6 provisions.

7 50. Defendant failed to provide timely, accurate itemized wage statements to Plaintiff
8 in accordance with California Labor Code § 226. Plaintiff is informed and believes and, on that
9 basis, alleges that none of the statements provided by Defendant accurately reflected actual gross
10 wages earned, net wages earned, or the appropriate deductions of Plaintiff.

11 51. As a direct and proximate result of Defendant's unlawful conduct, as set forth
12 herein, Plaintiff is entitled to recover penalties, in amounts to be established at trial, as well as
13 attorneys' fees and costs, pursuant to statute.

14 **FOURTH CAUSE OF ACTION**
15 **FAILURE TO PAY WAGES ON TERMINATION**
16 **(California Labor Code § 203)**

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

19 53. California Labor Code § 203 provides that:

20 If an employer willfully fails to pay, without abatement or reduction, in
21 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
22 employee who is discharged or who quits, the wages of the employee shall
23 continue as a penalty from the due date thereof at the same rate until paid or
24 until an action therefor is commenced; but the wages shall not continue for
25 more than 30 days.

26 54. Plaintiff was employed by Defendant during the limitations period and was
27 thereafter terminated or resigned from her position, yet was not paid all wages due upon said
28 termination or within 72 hours of said resignation of employment therefrom. Said non-payment
was the direct and proximate result of a willful refusal to do so by Defendant.

55. More than 30 days have elapsed since Plaintiff was terminated or resigned from
Defendant's employ.

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RELIEF SOUGHT

1
2 **WHEREFORE**, Plaintiff prays for judgment and the following specific relief against
3 Defendants, and each of them, jointly and separately, as follows:

4 1. That the Court declare, adjudge, and decree that Defendant willfully violated its
5 legal duties to pay all wages due (including overtime wages) under the California Labor Code
6 and the applicable California Industrial Welfare Commission Wage Order(s);

7 2. That the Court make an award to Plaintiff of one hour of wages at her regular rate
8 of compensation for each duty-free, uninterrupted meal period that was not provided;

9 3. That the Court make an award to Plaintiff of one hour of wages at her regular rate
10 of compensation for each workday that a duty-free, uninterrupted rest period was not provided;

11 4. That the Court make an award to Plaintiff of penalties, pursuant to Sections 203,
12 226, 1174.5, 1197.1, *et seq.*, in an amount to be proven at trial;

13 5. That the Court order Defendant to pay restitution to Plaintiff due to Defendant's
14 unlawful activities, pursuant to California Business and Professions Code §§ 17200-17208;

15 6. That the Court further enjoin Defendant, ordering it to cease and desist from
16 unlawful activities in violation of California Business and Professions Code § 17200, *et seq.*;

17 7. For interest on the amount of any and all economic losses, at the prevailing legal
18 rate;

19 8. For reasonable attorneys' fees, pursuant to, *inter alia*, California Labor Code §
20 1194 and/or California Code of Civil Procedure § 1021.5;

21 9. For costs of suit and any and all such other relief as the Court deems just and
22 proper; and

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

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JURY DEMAND

Plaintiff hereby demands a trial by jury.

Dated: April 11, 2017

SCOTT COLE & ASSOCIATES, APC

By:



Scott Edward Cole, Esq.
Attorneys for Plaintiff