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13 Attorneys for Plaintiff and the Class

14 **UNITED STATES DISTRICT COURT**
15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

16 RONIE RICHIE, an individual, on behalf of
17 herself, and those similarly situated and on
behalf of the general public,

18 Plaintiff,

19 v.

20 BLUE SHIELD OF CALIFORNIA is a
21 California Corporation, and DOE 1-100,

22 Defendants.
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CASE NO. CV 13 2693 EMC

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES, RESTITUTION AND
INJUNCTIVE RELIEF:**

**(1) FAILURE TO REIMBURSE FOR
BUSINESS EXPENSES IN VIOLATION
OF CAL. LAB. CODE §2802**

**(2) FAILURE TO PAY OVERTIME IN
VIOLATION OF FAIR LABOR
STANDARDS ACT, 29 U.S.C. §§ 201,
207, 216 (“FLSA”);**

**(3) UNFAIR COMPETITION IN
VIOLATION OF CAL. BUS. & PROF.
CODE § 17200 *et seq.***

DEMAND FOR JURY TRIAL

1 Comes now RONIE RICHIE (PLAINTIFF), on behalf of herself and all persons similarly
2 situated, allege as follows:

3 This class action is brought on behalf of all present and former Claims Processors against
4 BLUE SHIELD OF CALIFORNIA ("BLUE SHIELD" or "DEFENDANT") in California. All
5 allegations in this Complaint are based upon information and belief except for those allegations,
6 which pertain to the PLAINTIFF named herein and his counsel. Each allegation in this Complaint
7 has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for
8 further investigation and discovery.

9 **JURISDICTION AND VENUE**

10 1. The Court has federal subject matter jurisdiction over this case pursuant to the
11 provisions of the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 *et seq.*, including under §§
12 207, 216 and 217. Venue is appropriate in this district as the Plaintiff serviced retail stores on
13 behalf of the Defendant within this District, and all acts occurred herein.

14 2. Plaintiff is informed and believes and on that basis alleges that the putative class
15 includes hundreds of employees of defendant with average damages in excess of \$13,000 each, and
16 that the aggregate amount in controversy exceeds \$5,000,000, exclusive of interest, wait time
17 penalties, and costs. Therefore, the amount in controversy exceeds \$5,000,000, exclusive of
18 interest and costs, the sum specified by 28 U.S.C. 1332 (d) (1).

19 **COLLECTIVE ACTION DEFINITION**

20 3. The Collective Class consists of all persons who are current and former employees
21 of DEFENDANT and who held the position of Claims Processor while employed in California by
22 DEFENDANT and worked overtime times hours which were unpaid under FLSA, 29 USC §201, *et*
23 *seq.* and incurred business expenses, office expenses (e.g. phone and internet expenses) and
24 mileage during the period commencing in the date that is within four years prior to the filing of this
25 complaint and through the present date the "Class Period"), and who were not fully reimbursed
26 pursuant to the applicable laws. To the extent equitable tolling operates to toll claims by the Class
27 against the DEFENDANT, the Class period should be adjusted accordingly. Alternatively,
28 PLAINTIFF request that the Court certify the CLASS for above described positions as follows:

1 3.1. All present and former claims processors employed by DEFENDANT who incurred
2 expenses during the performance of their duties and who were not reimbursed for
3 those expenses; and

4 3.2 All present and former claims processors employed by DEFENDANT who incurred
5 Overtime as defined by FLSA 29 USC §201, *et seq.* for which they were not
6 reimbursed

7 **COLLECTIVE ACTION ALLEGATIONS**

8 4 PLAINTIFF at all material times mentioned herein, allege:

9 4.1 PLAINTIFF Ronie Richie at all material times mentioned herein, is:

10 (a) An individual who resides in the Oroville in the State of California;

11 (b) Was employed as a Claims Processor for DEFENDANT;

12 (c) Incurred expenses and did not receive reimbursement from Defendant

13 (d) Worked overtime hours under FLSA and did not receive reimbursement from
14 DEFENDANT and,

15 (e) Was a member of the Class as defined in paragraphs 3, 3.1 and 3.2 of this

16 Complaint.

17 5. This Class Action meets the statutory prerequisites for the maintenance of a Class
18 Action as set forth in Federal Rule of Procedure 23, in that:

19 (a) The persons who comprise the CLASS are so numerous that the joinder of
20 all such persons is impracticable and the disposition of their claims as a class will
21 benefit the parties and the Court;

22 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
23 that are raised in this Complaint are common to the CLASS and will apply
24 uniformly to every member of the CLASS, and as a practical matter be dispositive
25 of interests of the other members not party to the adjudication or substantially
26 impair or impede their ability to protect their interests.

27 (c) The parties opposing the CLASS have acted or refuse to act on grounds
28 generally applicable to the CLASS, thereby making appropriate final injunctive

1 relief or corresponding declaratory relief with respect to the CLASS as a whole; and
2 (d) Common questions of law and fact exist as to the members of the CLASS
3 and predominate over any question affecting only individual members, and a Class
4 Action is superior to other available methods for the fair and efficient adjudication
5 of the controversy, including consideration of

6 1) The interests of the members of the CLASS in individually controlling the
7 prosecution or defense of separate actions;

8 2) The extent and nature of any litigation concerning the controversy already
9 commenced by or against members of the CLASS;

10 3) The desirability or undesirability of concentrating the litigation of the
11 claims in the particular forum; and

12 4) The difficulties likely to be encountered in the management of a Class
13 Action.

14 6. This Court should permit this action to be maintained as a Class Action pursuant to
15 Federal Rule of Civil Procedure because:

16 (a) The questions of law and fact common to the CLASS predominate over any
17 question affecting only individual members;

18 (b) A Class Action is superior to any other available method for the fair and
19 efficient adjudication of the claims of the members of the CLASS;

20 (c) The members of the CLASS are so numerous that it is impractical to bring
21 all members of the CLASS before the Court;

22 (d) PLAINTIFFS, and the other CLASS members, will not be able to obtain
23 effective and economic legal redress unless the action is maintained as a Class
24 Action;

25 (e) There is a community of interest in obtaining appropriate legal and equitable
26 relief for the common law and statutory violations and other improprieties, and in
27 obtaining adequate compensation for the damages and injuries which BLUE
28 SHIELD actions have inflicted upon the CLASS;

1 (f) There is a community of interest in ensuring that the combined assets and
2 available insurance of BLUE SHIELD are sufficient to adequately compensate the
3 members of the CLASS for the injuries sustained;

4 (g) BLUE SHIELD has acted or refused to act on grounds generally applicable
5 to the CLASS, thereby making final injunctive relief appropriate with respect to the
6 CLASS as a whole.

7 **DEFENDANTS**

8 7. PLAINTIFFS are informed and believes thereupon alleges that at all times
9 mentioned herein that DEFENDANT is a corporation licensed to do business and actually doing
10 business in the State of California. BLUE SHIELD is California corporation.

11 8. DEFENDANT conduct and continues to conduct substantial business in the state of
12 California.

13 9. BLUE SHIELD owns and operates a business establishment within the State of
14 California, and specifically within this judicial district, for purposes of providing insurance to
15 residents of California.

16 10. DEFENDANT is subject to FLSA, California Labor Code section 2802 et seq.,
17 California Business and Professions Code section 17200 et seq., (Unfair Practices Act), and the
18 applicable wage order(s) issued by the industrial Welfare Commission of the State of California, as
19 to its employment relationship with its employees working in California and nationwide because it
20 currently maintains and at all relevant times maintains

21 **THE CONDUCT**

22 11. PLAINTIFF Ronie Richie was employed by BLUE SHIELD OF CALIFORNIA.
23 PLAINTIFF worked for DEFENDANT from October 15, 2001 until November 7, 2011. She held
24 the position of Claims Processor and worked from home on a telecommuting basis from 2005 until
25 November 2011. She began in the office in October 2001. She was paid on an hourly basis.

26 12. PLAINTIFF was also required to travel to meetings twice per month and was not
27 reimbursed for mileage. She also incurred other business expenses such as phone, internet, and
28 other office expenses.

1 13. Also as part of her job duties, PLAINTIFF would work overtime hours each day for
2 which she was not compensated fully.

3 14. DEFENDANT, knew, or should have known, that she incurred these expenses and
4 worked additional overtime hours for which she was not compensated.

5 **FIRST COUNT**

6 **FOR FAILURE TO REIMBURSE EMPLOYEES FOR BUSINESS EXPENSES**

7 **[Cal. Lab. Code §2802]**

8 **(By the Class and Against Defendant)**

9 15. PLAINTIFF, and the other members of the CLASS, realleges and incorporates by
10 this reference, as though fully set forth herein, the preceding paragraphs of this Amended
11 Complaint.

12 16. Cal. Lab. Code §2802 provides that employers shall reimburse employees for all
13 expenses incurred in the performance of their duties.

14 17. BLUE SHIELD required PLAINTIFF, and other members of the CLASS, to
15 purchase office supplies such as phone and internet service, and to drive to monthly regional
16 meetings.

17 18. PLAINTIFF, and other members of the CLASS, regularly incurred mileage
18 expenses as a result of the requirement to travel, and other home office expenses.

19 19. BLUE SHIELD intentionally and consistently failed to reimburse PLAINTIFF and
20 other members of the CLASS, for expenses incurred in the performance of their duties, in violation
21 of Cal. Lab. Code §2802.

22 20. Moreover, and as the Court in *Stuart v. RadioShack* (N.D. Cal. 2009) 641 F. Supp.
23 2d 901, recently held, , as the DEFENDANT employer of PLAINTIFF and other members of the
24 CLASS, had a duty of due diligence to determine whether or not PLAINTIFF and other members
25 of the CLASS incurred expenses during the course of their duties, and to reimburse them for those
26 expenses. BLUE SHIELD completely and utterly failed to do so. Rather, it burdened
27 PLAINTIFF, and other members of the CLASS, with a reimbursement policy that delayed
28 reimbursement by weeks, if not months.

1 21. PLAINTIFF, and other members of the CLASS, is entitled and seek to recover the
2 full amount of the expenses they incurred, plus interest, and reasonable attorneys' fees and costs of
3 suit.

4 **SECOND COUNT**

5 **FOR FAILURE TO PAY OVERTIME COMPENSATION**

6 [FLSA 29 USC §201, *et seq.*]

7 (By CLASS and against Defendant)

8 22. PLAINTIFF, and the other members of the CLASS, reallege and incorporate by this
9 reference, as though fully set forth herein, the preceding paragraphs of this Amended Complaint.

10 23. 29 U.S.C. § 207 (a)(1) provides in pertinent part:

11 Except as otherwise provided in this section, no employer shall employ any of his
12 employees who in any workweek is engaged in commerce or in the production of
13 goods for commerce, or is employed in an enterprise engaged in commerce or in the
14 production of goods for commerce, for a workweek longer than forty hours unless
15 such employee receives compensation for his employment in excess of the hours
16 above specified at a rate not less than one and one-half times the regular rate at
17 which he is employed

18 24. Defendant is engaged in commerce within the meaning of 29 U.S.C. § 203 (b)

19 25. At all times relevant hereto, from time to time, the PLAINTIFF, and other members
20 of the CLASS more than forty hours in a work week.

21 26. At all times relevant hereto, Defendant failed to pay PLAINTIFF, and other
22 members of the CLASS, the overtime compensation premium for the hours they have worked in
23 excess of the maximum hours permissible by law as required by FLSA

24 27. By virtue of Defendants' unlawful failure to pay the lawful rate of compensation to
25 the PLAINTIFF, and other members of the CLASS, for their overtime hours, the PLAINTIFF, and
26 other members of the CLASS, have suffered, and will continue to suffer, damages in amounts
27 which are presently unknown to them but which exceed the jurisdictional limits of this Court and
28 which will be ascertained according to proof at trial.

28 28. PLAINTIFF, and other members of the CLASS, are informed and believe, and
based upon that information and belief allege, that Defendant knew or should have known that
PLAINTIFF, and other members of the CLASS, were being required to report their overtime hours

1 as regular time, and thus, miscalculated the appropriate rate of pay under Cal. Lab. Code §510.

2 29. DEFENDANT acted and is acting intentionally, oppressively, and maliciously
3 toward the PLAINTIFF, and other members of the CLASS, with a conscious disregard of their
4 rights, or the consequences to them, with the intent of depriving them of property and legal rights
5 and otherwise causing them injury.

6 30. PLAINTIFF, and other members of the CLASS, request recovery of overtime
7 compensation according to proof, interest, attorney's fees and cost, as well as the assessment of any
8 statutory penalties against Defendants, in a sum as provided by the Cal. Lab. Code and/or other
9 statutes.

10 31. Further, PLAINTIFF, and other members of the CLASS, is entitled to seek and
11 recover reasonable attorneys' fees and costs pursuant to all applicable laws.

12 **THIRD COUNT**

13 **FOR UNLAWFUL BUSINESS PRACTICES**

14 **[Cal. Bus. and Prof. Code §§ 17200 *et seq.*]**

15 **(By The CLASS and against Defendant)**

16 32. The PLAINTIFFS realleges and incorporates by this reference, as though fully set
17 forth herein, paragraphs 1 through 21 of this Amended Complaint.

18 33. BLUE SHIELD is a "person" as that term is defined under California Business &
19 Professions Code § 17201.

20 34. Cal. Bus. and Prof. Code § 17200 defines unfair competition as "any unlawful,
21 unfair, or fraudulent business act or practice".

22 35. At all times relevant hereto, by and through the conduct described herein, BLUE
23 SHIELD has engaged in unfair and unlawful practices by failing to reimburse PLAINTIFF, and the
24 other members of the CLASS for mileage incurred during the performance of their duties, pursuant
25 to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of
26 Cal. Bus. & Prof. Code § 17200 *et seq.*, and has thereby deprived PLAINTIFF, and the other
27 members of the CLASS, of fundamental rights and privileges owed to them by law.

28 36. By and through the unfair and unlawful business practices described herein, BLUE

1 SHIELD has obtained valuable property, money, and services from the PLAINTIFF, and the other
2 members of the CLASS, and has deprived them of valuable rights and benefits guaranteed by law,
3 all to their detriment.

4 37. All the acts described herein as violations of, among other things, the Cal. Lab.
5 Code and Industrial Welfare Commission Wage Order, are unlawful and in violation of public
6 policy; and in addition are immoral, unethical, oppressive, and unscrupulous, and thereby
7 constitute unfair and unlawful business practices in violation of Cal. Bus. And Prof. Code § 17200
8 *et seq.*

9 38. PLAINTIFF, and the other members of the CLASS, are entitled to, and do, seek
10 such relief as may be necessary to restore to them the money and property which Defendant BLUE
11 SHIELD has acquired, or of which PLAINTIFF, and other members of The CLASS, have been
12 deprived, by means of the above described unfair and unlawful business acts and practices.

13 39. PLAINTIFF, and the other members of The CLASS, are further entitled to, and do,
14 seek a declaration that the above described business practices are unfair and unlawful and that
15 injunctive relief should be issued restraining BLUE SHIELD from engaging in any of the above
16 described unfair and unlawful business practices in the future.

17 40. PLAINTIFF, and the other members of the CLASS, have no plain, speedy, and/or
18 adequate remedy at law to redress the injuries which they have suffered as a consequence of the
19 unfair and unlawful business practices of BLUE SHIELD. As a result of the unfair and unlawful
20 business practices described above, PLAINTIFF, and the other members of the CLASS, have
21 suffered and will continue to suffer irreparable harm unless BLUE SHIELD is restrained from
22 continuing to engage in these unfair and unlawful business practices. In addition, BLUE SHIELD
23 should be required to disgorge the unpaid moneys to PLAINTIFF, and the other members of the
24 CLASS.
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PRAYER

WHEREFORE, PLAINTIFF prays for judgment against BLUE SHIELD in favor of PLAINTIFF and the CLASS as follows:

1. ON FIRST COUNT

A) For damages according to proof, as set forth in Cal. Lab. Code §2802, regarding reimbursement due;

B) For interest owed on all expenses paid by PLAINTIFF and other members of the CLASS, at the statutory rate of interest, and not previously reimbursed;

C) For reasonable attorneys' fees, expenses, and costs as proscribed by Cal. Lab. Code §2802.

2. ON THE SECOND COUNT

A) For compensatory damages, including lost wages, commissions, bonuses, and other losses, according to proof;

B) For general damages, according to proof;

C) For an award of interest, including prejudgment interest at the legal rate;

D) For statutory damages, including reasonable attorneys' fees and cost of suit.

3. ON THE THIRD COUNT

A) For restitution and disgorgement;

B) For injunctive relief ordering the continuing unfair business acts and practices to cease, or as the Court otherwise deems just and proper;

C) For other injunctive relief ordering DEFENDANT to notify The CLASS that they have not been paid the proper amounts required in accordance with California law.

4. ON ALL COUNTS

A) An Order conditionally certifying and then finally certifying the Collective Class, approving PLAINTIFF as the Representative of the CLASS, and permitting this case to

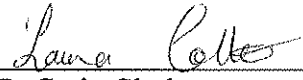
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proceed as a class action; and,

B) For such other and further relief as the Court deem just and proper.

Dated: December 2, 2013

CLARK LAW FIRM

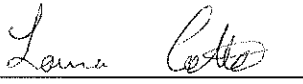
By: 
R. Craig Clark
James M. Treglio
Laura M. Cotter
Attorney for Plaintiffs

DEMAND FOR JURY TRIAL

PLAINTIFF demands jury trial on issues triable to a jury.

Dated: December 2, 2013

CLARK LAW FIRM

By: 
R. Craig Clark
James M. Treglio
Laura M. Cotter
Attorney for Plaintiffs

DECLARATION OF SERVICE

RONIE RICHIE v. BLUE SHIELD OF CALIFORNIA
United States District Court-Central District Case No. CV13 2693 EMC

I am employed in the county of San Diego, State of California. I am over the age of 18 and not a party to this action. My business address is 600 B Street, Suite 2130, San Diego, CA 92101. On December 2, 2013, I served the document(s) described as:

(1) FIRST AMENDED COMPLAINT;

on the following interested parties and in the manner as follows:

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Attorneys for Defendant
BLUE SHIELD OF CALIFORNIA

[X] BY ELECTRONIC ACCESS: pursuant to Electronic Filing General Order 08-02 and Local Rule 5-4, I hereby certify that the above documents were uploaded to the ECF website and will be posted on the Website by the close of the next business day and the webmaster will give e-mail notification to all parties.

[] BY U.S. MAIL: by placing the document(s) listed above in a sealed envelope for collection and mailing following our ordinary business practices. I am readily familiar with our ordinary business practices for collecting and processing mail for the United States Postal Service, and mail that I place for collection and processing is regularly deposited with the United States Postal Service that same day with postage prepaid.

[] BY PERSONAL SERVICE: by causing the document(s) listed above to be delivered by hand to offices of the addressee(s).

[] BY FACSIMILE: by causing to be transmitted via facsimile the document(s)

1 listed above to the addressee(s) at the facsimile number(s) set forth above.

2 **BY OVERNIGHT DELIVERY:** by enclosing the document(s) in an
3 envelope or package provided by an overnight delivery carrier and addressed
4 to the person(s) at the addresses listed above. I placed the envelope or
package for collection and overnight delivery at an office or a regularly
utilized drop box of the overnight delivery carrier.

5 I declare under penalty of perjury under the laws of the United States of
6 America that the foregoing is true and correct and that this Declaration was executed
on December 2, 2013, at San Diego, California.

7
8 /S/ Elizabeth Wilton
Elizabeth Wilton

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