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Attorneys for Plaintiffs and the Putative Class

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

JORGE URIAS, an individual, for himself and those similarly situated; MARIO PERALTA, an individual, for himself and those similarly situated; KEN DITTO, an individual, for himself and those similarly situated; ROES 1 through 30,000; and the Putative Class,

Plaintiffs,

vs.

ECOLAB INC., a Delaware Corporation; and  
DOES 1 through 100, inclusive,

Defendants.

CASE NO:

CLASS ACTION

COMPLAINT FOR:

- 1) WAGES OWED;
- 2) VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200;
- 3) VIOLATION OF CALIFORNIA LABOR CODE § 226

**TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORDS:**

COME NOW, Plaintiffs JORGE URIAS, MARIO PERALTA, and KEN DITTO, ROES 1

1 through 30,000 and the Putative Class herein (the “Plaintiffs”), and submit the following Complaint  
2 against defendant ECOLAB INC., DOES 1 through 100, and each of them, as follows:

3 **GENERAL ALLEGATIONS**

4 1. At all times herein mentioned, plaintiff JORGE URIAS is an individual, is a resident of the  
5 State of California and was working for the Defendants in the County of San Diego, State of California.

6 2. At all times herein mentioned, plaintiff MARIO PERALTA is an individual, is a resident of the  
7 State of California and was working for the Defendants in the County of San Diego, State of California.

8 3. At all times herein mentioned, plaintiff KEN DITTO is an individual, is a resident of the State  
9 of California and was working for the Defendants in the County of Ventura, State of California.

10 4. At all times herein mentioned ECOLAB INC. (herein referred to as “ECOLAB” or “Employer”)  
11 is a Delaware corporation doing business in the State of California.

12 5. Members of the class herein have performed work throughout California for which they were  
13 not paid and Defendants engage in business within California.

14 6. Plaintiffs are ignorant of the true names and capacities of Defendants DOES 1 through 100,  
15 inclusive, and by reason thereof sue said Defendants by their fictitious names. Plaintiffs will ask leave  
16 of Court to amend this complaint to allege the true names and capacity of said Doe Defendants when  
17 the same have been fully and finally ascertained.

18 **CLASS ACTION ALLEGATIONS**

19 7. This action is brought by the Plaintiffs referenced above on their own behalf and on behalf of all  
20 persons similarly situated. The class herein consists of all employees of ECOLAB INC. who are/were  
21 Institutional Route Managers or Route Sales Managers (“RSMs”) or Pureforce Sales and Service Route  
22 Managers (“SSRMs”); who have worked in California for Ecolab Inc. between September 9, 2012 and  
23 the present, who do/did not cross state lines in performance of their duties, have not received full and  
24 correct pay for all hours worked, have not received accurate itemized wages statements required  
25 pursuant to Labor Code section 226, and who have not fully and completely released all of the claims  
26 in the action entitled *Ross v. Ecolab Inc.*, USDC Case No. 13-5097-PJH. The class represents over 75  
27 persons and is so numerous that the joinder of each member of the class is impracticable.

28 8. This action is brought pursuant to the Ninth Circuit opinion in *Morris v. Ernst & Young, LLP*,

1 2016 WL 4433080 (9<sup>th</sup> Cir. Aug. 22, 2016) holding that a class action waiver violates the NLRA and  
2 “cannot be enforced.” The Ninth Circuit in rendering its opinion, noted that “The Board has concluded  
3 that an employer violates the NLRA “when it requires employees covered by the Act, as a condition of  
4 their employment, to sign an agreement that precludes them from filing joint, class, or collective claims  
5 addressing their wages, hours, or other working conditions against the employer in any forum, arbitral  
6 or judicial.” *Id.* at \*2. Accordingly, in this case to the extent any putative class member may have  
7 signed an agreement waiving his or her right to file a class action relating to wages, it is unenforceable.

8 9. There is a well-defined community of interest in the questions about law and fact affecting the  
9 class represented herein. The class members’ claims against Defendants involve questions of common  
10 or general interest, in that each class member was employed by Defendants and each was erroneously  
11 classified as exempt from overtime and not paid wages owed. These questions are such that proof of a  
12 state of facts common to the members of the class will entitled each member of the class to the relief  
13 requested in this complaint.

14 **JURISDICTION AND VENUE**

15 10. This Court has original jurisdiction for all state law claims asserted under California law pursuant  
16 to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2), in that the estimated damages involved in  
17 those claims will exceed \$5,000,000 and the parties to this action are residents of different states.

18 11. Venue is proper in this District pursuant to 28 U.S.C. Section 1391(b) because Defendants’  
19 obligations and liability arise, in part, in this District, Defendant conducts business in this District and  
20 the Plaintiffs performed work in this District.

21 12. The United States District Court for the Northern District has personal jurisdiction because  
22 Defendant conducts business within this District.

23 13. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), inasmuch as Defendant has  
24 offices, conducts business and can be found in the District, and the causes of action set forth herein have  
25 arisen and occurred in part in the District. Venue is further proper under 29 U.S.C. § 1132(e)(2) because  
26 Defendant has substantial business contacts within the State of California.

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**FIRST CAUSE OF ACTION**

**(Failure to Pay Wages – Against Ecolab Inc. and Does 1 through 100)**

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2  
3 14. Plaintiffs refer to paragraphs 1 through 13 and incorporate the same by reference as though fully  
4 set forth herein.

5 15. Plaintiffs and the class members are employees who worked or have been working for  
6 Defendants during the period of September 9, 2012 to the present. Plaintiffs and the class worked as  
7 non-exempt employees for Defendants as Route Managers, Route Sales Managers or Sales and Service  
8 Route Managers.

9 16. Plaintiffs and all members of the class regularly worked hours for which they were not paid the  
10 correct hourly wage. Specifically, Plaintiffs and each class member were misclassified as exempt  
11 employees and were not paid overtime or double-time in accordance with California law. Further, it is  
12 alleged that Defendants intentionally denied the class wages that should have been paid and violated  
13 California *Labor Code* section 510 and applicable IWC wage orders.

14 17. *Labor Code* section 200 defines “wages” as including all amounts for labor performed by  
15 employees of every description, whether the amount is fixed or ascertained by the standard of time, task,  
16 piece, commission basis, or other method of calculation.

17 18. California *Labor Code* section 202 provides that all wages shall become due and payable not  
18 later than 72 hours after the employee provides notice of his intention to quit. In this case, Defendants  
19 and each of them have refused and continue to refuse to pay Plaintiffs’ wages.

20 19. Defendants have willfully failed to pay without abatement or reduction, in accordance with  
21 *Labor Code* section 201 and 202, all of the wages of Plaintiffs. Defendants are aware that they owe the  
22 wages claimed, yet they have willfully failed to make payment. As a result, Plaintiffs seek wages and  
23 penalties pursuant to *Labor Code* section 203.

24 20. Plaintiffs herein have been available and ready to receive wages owed to them including  
25 overtime wages.

26 21. Plaintiffs have never refused to receive any payment, nor have Plaintiffs been absent from his or  
27 her regular place of residence.

28 22. Defendants’ failure to pay Plaintiffs’ wages due and owing Plaintiffs as alleged hereinabove was

1 willful in that Defendants have knowingly refused to pay any portion of the amount due and owing  
2 Plaintiffs.

3 23. Pursuant to *Labor Code* sections 218.5 and 1194, Plaintiffs request the Court to award Plaintiffs'  
4 reasonable attorneys' fees and costs incurred in this action. Plaintiffs also request all unpaid wages,  
5 waiting time penalties, and interest.

6 WHEREFORE, Plaintiffs demand judgment against Defendants and each of them, as follows:

- 7 1. For wages owed according to proof;
- 8 2. For prejudgment interest at the statutory rate;
- 9 3. For statutory penalties;
- 10 4. For attorneys' fees pursuant to *Labor Code* sections 218.5 and 1194;
- 11 5. For costs of suit; and
- 12 6. For any other and further relief that the Court considers just and proper.

13 **SECOND CAUSE OF ACTION**

14 **(Unfair Competition and Violation of Bus & Prof. Code § 17200 et seq.**

15 **Against Ecolab Inc. and Does 1 through 100)**

16 24. Plaintiffs refer to paragraphs 1 through 23 and incorporate the same by reference as though  
17 fully set forth herein.

18 25. This cause of action is being brought pursuant to *Business & Professions Code* section 17200  
19 et seq. and the California case law, including *Cortez v. Purolator Air Filtration Products Co.* (2000) 23  
20 Cal.4<sup>th</sup> 163.

21 26. It is alleged that Defendants willfully failed to pay employees' wages owed. The actions alleged  
22 herein, specifically Defendants' failure to pay both current employees and past employees' wages owed  
23 constitutes an unfair business practice under California *Business and Professions Code* section 17200  
24 et seq.

25 27. As a result of their conduct, Defendants profited from breaking the law. Plaintiffs seek  
26 disgorgement of this unlawfully obtained benefit.

27 28. California *Business & Professions Code* section 17203 provides in relevant part as follows:  
28

1 Any person who engages, has engaged, or proposes to engage in unfair competition may  
2 be enjoined in any court of competent jurisdiction. The court may make such orders or  
3 judgments, including the appointment of a receiver, as may be necessary to prevent the  
4 use of employment by any person of any practice which constitutes unfair competition,  
5 as defined in this chapter, or as may be necessary to restore to any person in interest any  
6 money or property, real or personal, which may have been acquired by means of such  
7 unfair competition. Any person may pursue representative claims or relief on behalf of  
8 others only if the claimant meets the standing requirements of Section 17204 and  
9 complies with Section 282 of the Code of Civil Procedure, but these limitations do not  
10 apply to claims brought under this chapter by the Attorney General or any district  
11 attorney, county counsel, city attorney, or city prosecutor in this state.

12 29. As a result of the alleged actions by Defendants and each of them, Plaintiffs herein have  
13 suffered injury in fact and have lost money as a result of such unfair competition.

14 30. In this case, it is requested that this Court order such restitution.

15 WHEREFORE, Plaintiffs demand judgment against defendants and each of them, as follows:

16 1. For an equitable order, ordering Defendants to pay all former and current non-exempt  
17 employees all wages, interest, and penalties they are owed;

18 2. For an appointment of a receiver to perform an accounting of all monies owed to  
19 these former and current employees;

20 3. For any and all injunctive relief this Court deems necessary pursuant to California  
21 *Business & Professions Code* section 17203;

22 4. For attorneys' fees and costs;

23 5. For prejudgment interest pursuant to *Civil Code* sections 3288 and 3291 on all  
24 amounts claimed; and

25 6. For any other and further relief that the Court considers just and proper.

26 **THIRD CAUSE OF ACTION**

27 **(Violation of *California Labor Code* § 226 –**

28 **Against Ecolab Inc. and Does 1 through 100)**

31. Plaintiffs refer to paragraphs 1 through 30 and incorporate the same by reference as though fully  
set forth herein.

32. *California Labor Code* section 226 provides:

1 Every employer shall, semimonthly or at the time of each payment of wages, furnish  
2 each of his or her employees, either as a detachable part of the check, draft, or voucher  
3 paying the employee's wages, or separately when wages are paid by personal check or  
4 cash, an itemized statement in writing showing (1) gross wages earned, (2) total hours  
5 worked by the employee, except for any employee whose compensation is solely based  
6 on a salary and who is exempt from payment of overtime under subdivision (a) of  
7 Section 515 or any applicable order of the Industrial Welfare Commission, (3) the  
8 number of piece-rate units earned and any applicable piece rate if the employee is paid  
9 on a piece- rate basis, (4) all deductions, provided, that all deductions made on written  
10 orders of the employee may be aggregated and shown as one item, (5) net wages  
11 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the  
12 name of the employee and his or her social security number, (8) the name and address  
13 of the legal entity that is the employer, and (9) all applicable hourly rates in effect  
14 during the pay period and the corresponding number of hours worked at each hourly  
15 rate by the employee.

16 33. In this case, Defendants have knowingly and intentionally failed to provide such wage deduction  
17 statements. The total hours worked per payroll period were not provided and the applicable hourly rate  
18 was not provided. The failure to provide such wage-deduction statements was not an accident.  
19 Defendants have failed and continue to fail to provide such wage deductions statements.

20 34. Plaintiffs have been damaged by Defendants' failure to provide proper wage statements. *Labor*  
21 *Code* section 226 relates that "[a]n employee is deemed to suffer injury" where the employer "fails to  
22 provide accurate and complete information" as required by the statute. Further, as set forth in *Wang v.*  
23 *Chinese Daily News, Inc.* (C.D. Cal.2006) 435 F.Supp.2d 1042, Plaintiffs have had to reconstruct the  
24 number of overtime hours worked and perform arithmetic computations to determine what they are  
25 owed (an employee suffers injury because (1) the employee might not be paid overtime to which she  
26 was entitled and (2) the absence of an hourly rate prevents an employee from challenging the overtime  
27 rate paid). *Id.*; see also *Cicairos v. Summit Logistics, Inc.*, 133 Cal.App.4th 949, 955, 35 Cal.Rptr.3d  
28 243 (2005) (explaining that Section 226 is violated if employees are required to perform "arithmetic  
computations" to determine their hourly rates).

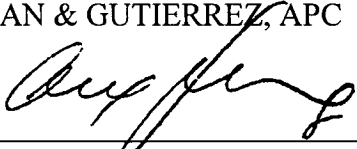
35. Pursuant to California *Labor Code* section 226.3, damages are appropriate according to proof at  
the time of trial.

36. Pursuant to *Labor Code* section 226(4), Plaintiffs request the Court to award Plaintiffs  
reasonable attorneys' fees and costs incurred by Plaintiffs in this action. Plaintiffs also request an  
injunction and/or order that the Defendants provide these wage statements to Plaintiffs and the class.

1 WHEREFORE, Plaintiffs demand judgment against Defendants and each of them as follows:

- 2 1. For an injunction ordering the defendants to provide the proper wage statements pursuant  
3 To California *Labor Code* section 226(g) to Plaintiffs;
- 4 2. For compensatory damages and penalties pursuant to California *Labor Code* sections 226  
5 and 226.3 *et seq.*
- 6 3. For reasonable attorney's fees, pursuant to law (*Labor Code* § 226(e));
- 7 4. For costs of suit; and
- 8 5. For any other and further relief that the Court considers proper.

9 Dated: September 9, 2016 HATHAWAY, PERRETT, WEBSTER, POWERS,  
10 CHRISMAN & GUTIERREZ, APC

11   
12 By \_\_\_\_\_  
13 ALEJANDRO P. GUTIERREZ  
14 Attorneys for Plaintiffs and the Putative Class  
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This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Ecolab Hit with Unpaid Wage Class Action](#)

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