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8
9 UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11

12 JUAN CAMPOS, an individual; EDDIE
13 GOMEZ, an individual,

14 Plaintiffs,

15 v.

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17 ECOLAB INC., a Delaware corporation;
18 and DOES 1 through 100, inclusive,

19 Defendants.
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Case No. 4:16-cv-04829-DMR

CLASS ACTION

**FIRST AMENDED COMPLAINT
FOR:**

- 1) **FAILURE TO PAY OVERTIME AND DOUBLETIME PREMIUM WAGES;**
- 2) **PAY STUB VIOLATIONS;**
- 3) **UNFAIR COMPETITION;**
- 4) **FAILURE TO TIMELY PAY FINAL WAGES;**
- 5) **FAILURE TO REIMBURSE BUSINESS EXPENSES;**
- 6) **CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004;**
- AND
- 7) **FLSA VIOLATIONS**

DEMAND FOR JURY TRIAL

1 Route Manager at any time between August 22, 2012 and the trial of this action (the
2 “Collective Period”), except for such time period as may be covered by an applicable
3 release.

4 5. During the California Class, California Aggrieved Employees, and
5 Collective Periods, Defendants failed to pay overtime compensation to Plaintiffs and
6 each member of the putative classes as required by federal and state law.

7 6. Indeed, with respect to the Route Sales Managers and Sales Service Route
8 Managers in California, the United States District Court for the Northern District of
9 California has already issued an order summarily adjudicating the exemptions that
10 Defendants have asserted to avoid the payment of California overtime wages. *See Ross*
11 *v. Ecolab Inc.*, No. 13-CV-5097-PJH, 2015 WL 5681323 (N.D. Cal. Sept. 28, 2015).
12 Despite the adverse decision in the *Ross* matter and subsequent settlement, *see Ross v.*
13 *Ecolab Inc.*, No. 13-CV-5097-PJH, Dkt. No. 152 (N.D. Cal. Aug. 31, 2016) (granting
14 final approval of settlement), as of the current date, Defendants have continued to fail to
15 pay overtime and doubletime premiums to its Route Sales Managers and Sales Service
16 Route Managers in California. As a result, all current Route Sales Managers and Sales
17 Service Route Managers, even those who participated in the *Ross* settlement, have
18 continued to work overtime and doubletime hours without any additional compensation
19 therefor. The within Plaintiffs seek relief for all such individuals.

20 7. The within Plaintiffs also seek relief for all Trainee Route Sales Managers,
21 Trainee Sales Service Route Managers, Route Sales Managers, and Sales Service Route
22 Managers who did not participate in the *Ross* settlement.

23 8. Plaintiff Gomez seeks injunctive relief to cause Defendants to begin paying
24 overtime and doubletime premiums to all Route Sales Managers and Sales Service
25 Route Managers in California as required by California law and the District Court’s
26 ruling in *Ross*. *Ross*, 2015 WL 5681323 (N.D. Cal. Sept. 28, 2015).

27 9. Plaintiff Gomez additionally seeks relief for all Trainee Route Sales
28 Managers and Trainee Sales Service Route Managers throughout the country who were

1 not paid overtime premiums under the FLSA.

2 10. In conclusion, the Plaintiffs seek relief for the California Class and the
3 California Aggrieved Employees under California wage-and-hour law and for the FLSA
4 Collective under the FLSA, to remedy Defendants' continued failure to pay all wages
5 due, pay appropriate overtime compensation, pay waiting-time penalties, and to provide
6 accurate wage statements.

7 **VENUE AND JURISDICTION**

8 11. Jurisdiction over Plaintiffs' federal claims is based upon (a) Section 16(b)
9 of the Fair Labor Standards Act, 29 U.S.C. § 216(b), which authorizes employees to
10 bring civil actions in courts of appropriate jurisdiction to recover damages for an
11 employer's failure to pay overtime wages as required by the FLSA; and (b) 29 U.S.C.
12 §§ 1331 and 1337.

13 12. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b). At all
14 times material herein, Defendant Ecolab Inc. has been actively conducting business in
15 the State of California and within the geographic area encompassing the Northern
16 District of the State of California, where it employs dozens of putative class members.

17 13. Jurisdiction over Plaintiffs' state law class action claims under the
18 California Labor Code and the claim under section 17200 of the California Business
19 and Professions Code are based upon this Court's supplemental jurisdiction under 28
20 U.S.C. § 1367(a), because the state law claims are so related to Plaintiffs' federal claims
21 that they form a part of the same case or controversy between Plaintiffs and Defendants.

22 **THE PARTIES**

23 14. At all times herein mentioned, Plaintiff Juan Campos was an employee of
24 Defendants, working in the state of California as a Route Sales Manager, from in or
25 about April 4, 2013 through on or about February 12, 2016, when his employment
26 terminated.

27 15. At all times herein mentioned, Plaintiff Eddie Gomez was an employee of
28 Defendants, working in the state of California as a Route Sales Manager, from in or

1 about June 26, 2014 through the present. At the beginning of his employment,
2 Defendants classified Plaintiff Gomez as a Trainee. In or about February 2015,
3 Defendants reclassified Plaintiff Gomez as a full-fledged Route Sales Manager.

4 16. Unless otherwise stated, at all times herein mentioned Plaintiff Campos
5 was an individual residing in the County of Los Angeles, State of California.

6 17. Unless otherwise stated, at all times herein mentioned Plaintiff Gomez was
7 an individual residing in the County of Los Angeles, State of California.

8 18. At all times herein mentioned, Plaintiffs are informed and believe and,
9 based on such information and belief, thereon allege that Ecolab Inc., is a Delaware
10 corporation that does business (and employs dozens of putative class members) in the
11 Northern District of California.

12 19. At all times material to this action, Defendants have been enterprises
13 engaged in commerce or in the production of goods for commerce as defined by section
14 203(s)(1) of the FLSA, and have had a gross volume of sales exceeding \$500,000.

15 20. At all times material to this action, Defendants have been an “employer” of
16 the named Plaintiffs, as defined by section 203(d) of the FLSA.

17 21. The true names and capacities, whether individual, corporate, associate,
18 representative or otherwise, of the defendants identified herein as Does 1 through 100,
19 inclusive, are unknown to Plaintiffs, who therefore sue these defendants by said
20 fictitious names. Plaintiffs will amend this Complaint to allege the true names and
21 capacities of Does 1 through 100 when they have been ascertained. Does 1 through 100
22 are in some manner legally responsible for the wrongs and injuries alleged herein.

23 22. Each of the Defendants acted as the agent or employee of the others and
24 each acted within the scope of that agency or employment.

25 **CALIFORNIA STATE LAW CLASS ACTION ALLEGATIONS**

26 23. Plaintiffs bring this action as a class action pursuant to Rule 23 of the
27 Federal Rules of Civil Procedure on behalf of the following defined class:

28 a. **California Class:** Each and every person who has worked for

1 Defendants in California as a Trainee Route Sales Manager,
2 Trainee Sales Service Route Manager, Route Sales Manager
3 and/or Sales Service Route Manager at any time between
4 August 22, 2012 and the trial of this action (the “California
5 Class Period”), except for such time period as may be covered
6 by the release in the matter of *Ross v. Ecolab, Inc.*, United
7 States District Court for the Northern District of California case
8 number C 13-05097 PJH.

9 24. Numerosity: The California Class represents over 25 persons and is so
10 numerous that the joinder of each member of the Class is impracticable.

11 25. Typicality: Plaintiffs’ claims are typical of the members of the California
12 Class. Plaintiffs are informed and believes that, like other Trainee Route Sales
13 Managers, Trainee Sales Service Route Managers, Route Sales Managers, and Sales
14 Service Route Managers, they routinely worked more than forty hours per week, and
15 more than eight (or even twelve) hours per day, during the California Class Period.
16 Plaintiffs had the same duties and responsibilities as other Class members. Plaintiffs
17 and the California Class were subject to Defendants’ policy and practice of improperly
18 treating and classifying Trainee Route Sales Managers, Trainee Sales Service Route
19 Managers, Route Sales Managers, and Sales Service Route Managers as “exempt” from
20 federal and state overtime laws, failing to pay appropriate overtime compensation,
21 failing to pay waiting time penalties, failing to provide accurate itemized wage
22 statements, and failing to maintain accurate records of hours worked.

23 26. Superiority: A class action is superior to other available methods for the
24 fair and efficient adjudication of the controversy, particularly in the context of wage-
25 and-hour litigation where individual plaintiffs lack the financial resources to vigorously
26 prosecute separate lawsuits in federal court against large corporate defendants such as
27 Ecolab. The members of the California Class that Plaintiffs represent have no plain,
28 speedy or adequate remedy at law against Defendants, other than by maintenance of this

1 class action, because Plaintiffs are informed and believe, and on such information and
2 belief allege, that the damage to each member of the California Class is relatively small
3 and that it would be economically infeasible to seek recovery against Defendants other
4 than by a class action.

5 27. Adequacy: Plaintiffs will fairly and adequately represent the interests of
6 the California Class, because Plaintiffs are members of the California Class, and
7 Plaintiffs' claims are typical of those in the California Class.

8 28. Commonality: Common questions of law and fact exist as to all members
9 of the California Class and predominate over any questions solely affecting individual
10 members of the Class. Indeed, the same class of Route Sales Managers and Sales
11 Service Route Managers was certified in the aforementioned *Ross* matter, but the
12 certification was as of in or about May 2012. Route Sales Managers and Sales Service
13 Route Managers who, like the representative Plaintiffs, began working for Ecolab in
14 California beyond the date of the certification of the class in the *Ross* matter were not
15 members of that class, and yet their claims are identical to those of the certified class.
16 The *Ross* court went on to summarily adjudicate Defendants' affirmative defenses on a
17 class-wide basis (and denied Defendants' motions for summary judgment also on a
18 class-wide basis). The common questions of law and fact that predominate include:

- 19 a. Whether Defendants improperly treated Plaintiffs and the
20 members of the California Class as exempt from overtime;
- 21 b. Whether Defendants unlawfully failed to pay appropriate
22 overtime compensation to the Plaintiffs and the members of the
23 California Class in violation of the California Labor Code §§
24 510 and 1194, California Industrial Wage Order No. 5-2001 (8
25 Cal. Code Regs. § 11050), and the FLSA;
- 26 c. Whether Plaintiff Campos and the members of the California
27 Class who are no longer employed by Defendants are entitled to
28 waiting time penalties pursuant to California Labor Code § 203;

- 1 d. Whether Defendants provided adequate itemized wage
2 statements to the Plaintiffs and the members of the California
3 Class pursuant to California Labor Code § 226;
- 4 e. Whether Defendants properly reimbursed members of the
5 California Class for necessary business expenditures such as
6 cell phones;
- 7 f. Whether Defendants' conduct violated the California Unfair
8 Practices Act set forth in the Business and Professions Code §
9 17200 *et seq.* by violating the state and federal laws as set forth
10 herein;
- 11 g. The proper measure of damages sustained by the Plaintiffs and
12 the California Class; and
- 13 h. Whether Defendants' actions were "willful" and/or "knowing
14 and intentional."

15 29. This case is maintainable as a class action under Fed. R. Civ. P. 23(b)(1)
16 because prosecution of actions by or against individual members of the California Class
17 would result in inconsistent or varying adjudications and create the risk of incompatible
18 standards of conduct for Defendants. Further, adjudication of each individual member's
19 claim as a separate action would be dispositive of the interest of other individuals not
20 party to this action, impeding their ability to protect their interests.

21 30. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(2)
22 because Defendants have acted or refused to act on grounds that apply generally to the
23 class, so that final injunctive relief or corresponding declaratory relief is appropriate
24 respecting the class as a whole. Specifically, the identical class of Route Sales
25 Managers and Sales Service Route Managers has been adjudicated to be entitled to
26 overtime pay under California law, and yet Defendants continue to fail to pay overtime
27 premiums to members of the California class.

28 31. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(3)

1 because questions of law and fact common to the California Class predominate over any
2 questions only affecting individual members of the California Class, and because a class
3 action is superior to other available methods for the fair and efficient adjudication of
4 this litigation. Defendants' common and uniform policies and practices denied the
5 members of the California Class the overtime and doubletime pay to which they are
6 entitled. The damages suffered by the individual California Class members are small
7 compared to the expense and burden of individual prosecution of this litigation. In
8 addition, class certification is superior because it will obviate the need for unduly
9 duplicative litigation that might result in inconsistent judgments about Defendants'
10 practices.

11 32. Plaintiffs intend to send notice to all members of the California Class to the
12 extent required by Rule 23. The names and addresses of the members of the California
13 Class are available from Defendants.

14 COLLECTIVE ACTION ALLEGATIONS

15 33. Plaintiff Gomez brings this action on behalf of himself and other similarly
16 situated employees as authorized under the FLSA, 29 U.S.C. § 216(b). The employees
17 similarly situated are as follows:

- 18 a. **FLSA Collective:** Each and every person who has worked for
19 Defendants as a Trainee Route Sales Manager and/or Trainee
20 Sales Service Route Manager at any time between August 22,
21 2013 and the trial of this action (the "Collective Period"),
22 except for such time period as may be covered by an applicable
23 release.

24 34. Upon information and belief, Defendants knew that Plaintiff Gomez and
25 the FLSA Collective performed work that required overtime pay. Defendants operated
26 under a scheme to deprive these employees of overtime compensation by failing to
27 properly compensate them for all hours worked. Specifically, Defendants compensated
28 Plaintiff Gomez and the FLSA Collective as exempt under the FLSA's commission

1 exemption even though during their Trainee period they did not earn bona fide
2 commissions and their primary duty was not to make sales.

3 35. Defendants are liable under the FLSA for failing to properly compensate
4 Plaintiff Gomez and the FLSA Collective, and as such, notice should be sent to the
5 Collective. There are numerous similarly situated current and former workers who have
6 been denied overtime pay by Defendants in violation of the FLSA who would benefit
7 from the issuance of Court-supervised notice of this lawsuit and the opportunity to join.
8 Those similarly situated workers are known to Defendants and should be readily
9 identifiable through Defendants' records.

10 **FIRST CAUSE OF ACTION**

11 ***Failure To Pay Overtime And Doubletime Premium Wages***

12 **(Action Brought By Plaintiffs On Behalf Of Themselves**

13 **And The California Class Against All Defendants)**

14 36. Plaintiffs incorporate by reference and re-allege each and every one of the
15 allegations contained in the preceding and foregoing paragraphs of this Complaint as if
16 fully set forth herein.

17 37. California law requires payment of overtime premium pay for all hours
18 worked by non-exempt employees in excess of eight in one day or 40 hours in one week
19 and for the first eight hours on the seventh-straight day of work in one workweek. Lab.
20 Code § 510. It further requires payment of doubletime premium pay for all hours
21 worked by non-exempt employees in excess of twelve hours in one day or in excess of
22 eight hours on the seventh-straight day of work in a single workweek. *Id.*

23 38. Plaintiffs and the California Class regularly worked hours for which they
24 were not paid overtime or doubletime premium wages, including for hours they worked
25 in excess of eight in a day, 40 in a week, and on the seventh straight day of work in a
26 workweek. By way of example, Plaintiffs regularly worked in excess of eight hours
27 each day due to the nature of the business and the fact that they regularly had to attend
28 to emergency service calls for their customers. Additionally, on a rotating basis,

1 Plaintiffs performed “weekend duty” work, which required them to be on call and
2 respond to customer calls and emergency service calls during the weekend. The
3 weekend duty time was not compensated by Defendants. Plaintiffs and the California
4 Class also regularly had to perform “installs” after hours, which resulted in workdays in
5 excess of 12 hours and no additional overtime premium pay. They also had to perform
6 preliminary and postliminary work at their homes, which added to their daily and
7 weekly tally of uncompensated overtime hours worked.

8 39. Plaintiffs and the California Class seek such overtime and doubletime
9 premium wages owed to them for the three-year period measured backward from the
10 date of the filing of the initial Complaint in this matter. (In the Unfair Business
11 Practices cause of action stated herein, Plaintiffs and the California Class seek
12 restitution of unpaid overtime and doubletime wages due for the four-year period
13 measured backward from the date of the filing of the initial Complaint in this matter.)

14 40. The exact amount of overtime and doubletime premium wages owed will
15 not be fully ascertained until discovery is completed. Until Defendants produce the
16 necessary documents for an accounting, Plaintiffs are unable to determine the exact
17 amount of overtime and doubletime premium wages owed. Additionally, Defendants
18 did not keep accurate records of the hours Plaintiffs and the other California Class
19 members worked.

20 41. Labor Code section 218.6 states, “[I]n any action brought for the
21 nonpayment of wages, the court shall award interest on all due and unpaid wages at the
22 rate of interest specified in subdivision (b) of Section 3289 of the Civil Code, which
23 shall accrue from the date that the wages were due and payable as provided in Part 1
24 (commencing with Section 200) of Division 2.” Interest is also available under Labor
25 Code section 1194. Plaintiffs seek such interest on all overtime and doubletime
26 premium wages owed to themselves and the California Class for the three-year period
27 measured backward from the date of the filing of the initial Complaint in this matter.

28 42. Pursuant to Labor Code section 1194, Plaintiffs request the Court to award

1 Plaintiffs' reasonable attorney's fees and costs incurred in this action.

2 **SECOND CAUSE OF ACTION**

3 ***Pay Stub Violations***

4 **(Action Brought By Plaintiffs On Behalf Of Themselves**
5 **And The California Class Against All Defendants)**

6 43. Plaintiffs incorporate by reference and re-allege each and every one of the
7 allegations contained in the preceding and foregoing paragraphs of this Complaint as if
8 fully set forth herein.

9 44. California Labor Code section 226 provides:

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

1 hours worked at each hourly rate by the employee.

2 45. In this case, Defendants have failed to provide such wage deduction
3 statements to Plaintiffs and the California Class in that their wage deduction statements
4 do not include, without limitation, their accurate gross wages earned, all
5 overtime/doubletime hours worked, net wages earned, or all applicable hourly rates in
6 effect during the pay period, and the corresponding number of hours worked at each
7 hourly rate by the employee. Plaintiffs' wage deduction statements show, rather, that
8 Plaintiffs worked 86.67 hours per week, regardless of how many actual hours they
9 worked. Defendants have intentionally failed to put the information required by section
10 226(a) on the paycheck stubs.

11 46. Pursuant to Labor Code section 226(e), damages are appropriate. At this
12 time, Plaintiffs believe and allege that they and the California Class are owed the
13 maximum allowable penalty under section 226(e) because Defendants intentionally
14 failed to provide adequate paycheck stubs. However, the exact amount of damages
15 under Labor Code section 226(e) will not be fully ascertained until discovery is
16 completed. Until Defendants produce the necessary documents for an accounting,
17 Plaintiffs are unable to determine the exact amount of damages under Labor Code
18 section 226(e).

19 47. Pursuant to Labor Code section 226(e), Plaintiffs request the court to
20 award Plaintiffs' reasonable attorney's fees and costs incurred by Plaintiffs in this
21 action.

22 **THIRD CAUSE OF ACTION**

23 ***Failure to Reimburse Necessary Work-Related Expenses***
24 **(Action Brought By Plaintiffs On Behalf Of Themselves**
25 **And The California Class Against All Defendants)**

26 48. Plaintiffs incorporate by reference and re-allege each and every one of the
27 allegations contained in the preceding and foregoing paragraphs of this Complaint as if
28 fully set forth herein.

1 49. California Labor Code section 2802 and interpreting case law provides that
2 California employees must be reimbursed for their employment-related expenses,
3 including cell phones, uniforms and other items used for business purposes.

4 50. Section 2802 of the California Labor Code states in pertinent part that:

5 An employer shall indemnify his or her employee for all
6 necessary expenditures or losses incurred by the employee in
7 direct consequence of the discharge of his or her duties, or of
8 his or her obedience to the directions of the employer, even
9 though unlawful, unless the employee, at the time of obeying
10 the directions, believed them to be unlawful.

11 51. Defendants violated, and are continuing to violate, section 2802 by
12 requiring Plaintiffs and the Putative Class to purchase their own cell phones for work-
13 related purposes, without reimbursement, and by failing to fully provide reimbursement
14 for the purchase of necessary work-related apparel. By this and similar acts, the
15 Defendants have violated section 2802.

16 52. Plaintiffs and the California Class incurred substantial expenses in order to
17 perform their jobs and for the benefit of the Defendants, which were not fully
18 reimbursed.

19 53. Plaintiffs and the California Class have sustained economic damages and
20 losses in the amount of the actual costs of purchases made for the necessary discharge
21 of their duties.

22 54. California Labor Code section 2802(c) provides that the employee may
23 recover all reasonable costs, including attorneys' fees, for enforcing the employee's
24 right under this section. Plaintiffs have incurred costs and attorneys' fees, and will
25 continue to incur costs and attorneys' fees to enforce their rights and the rights of
26 similarly situated employees of Defendants' under section 2802. Plaintiffs are entitled
27 to recover their reasonable attorneys' fees and costs in an exact amount to be proven at
28 trial.

1 55. Plaintiffs also seek prejudgment interest on all amounts found to be due
2 and owing under section 2802.

3 **FOURTH CAUSE OF ACTION**

4 *Unfair Competition*

5 **(Action Brought By Plaintiffs On Behalf Of Themselves**

6 **And The California Class Against All Defendants)**

7 56. Plaintiffs incorporate by reference and re-allege each and every one of the
8 allegations contained in the preceding and foregoing paragraphs of this Complaint as
9 though fully set forth herein.

10 57. This cause of action is being brought pursuant to California Business and
11 Professions Code section 17200 et seq. and California case law including *Cortez v.*
12 *Purolator Air Filtration Products Co.*, 23 Cal.App.4th 163 (2000).

13 58. It is alleged that Defendants have willfully failed to pay Plaintiffs and the
14 California Class the state-mandated overtime and doubletime premium wages and, as to
15 the FLSA Collective, the FLSA-mandated overtime premiums for all such hours
16 worked. It is also alleged that Defendants have violated California's expense
17 reimbursement laws. The failure to pay such wages and expenses under state and
18 federal law constitutes unfair business practices under California Business and
19 Professions Code section 17200.

20 59. As a result of the conduct of Defendants, Defendants profited from
21 breaking the law. Plaintiff and the California Class seek disgorgement of Defendants'
22 unlawfully obtained benefits (plus interest thereon) for the four-year period measured
23 backward from the date of filing of the initial Complaint in this matter.

24 60. California Business and Professions Code section 17203, under the
25 authority of which a restitutionary order may be made, provides:

26 Any person who engages, has engaged, or proposes to engage
27 in unfair competition may be enjoined in any court of
28 competent jurisdiction. The court may make such orders or

1 judgments, including the appointment of a receiver, as may be
2 necessary to prevent the use of employment by any person of
3 any practice which constitutes unfair competition, as defined in
4 this chapter, or as may be necessary to restore to any person in
5 interest any money or property, real or personal, which may
6 have been acquired by means of such unfair competition.

7 61. As a result of the alleged aforesaid actions, Plaintiff and the California
8 Class have suffered injury in fact and have lost money as a result of such unfair
9 competition.

10 62. Business and Professions Code section 17204 authorizes injunctive relief
11 to be sought by “any person acting for the interests of itself, its members, or the general
12 public.” *See Herr v. Nestle U.S.A., Inc.*, 109 Cal. App. 4th 779, 789 (2003). Plaintiff
13 Gomez, who has suffered (and continues to suffer) injury in fact, seeks injunctive relief
14 on his own behalf and on behalf of those members of the California Class who, like
15 him, remain employed by Defendants and continue to work overtime and doubletime
16 hours without any pay therefor. Plaintiff Gomez, who is currently employed by
17 Defendants, and such members of the California Class are under a real and/or
18 immediate threat of repeated injury due to Defendants’ failure to pay them overtime
19 wages under California law. As discussed herein, this Court has already summarily
20 adjudicated Defendants’ overtime exemptions under California law, and yet Defendants
21 continue to fail to pay overtime and doubletime wages to Plaintiff Gomez and the
22 California Class who remain employed by Defendants. Defendants continue to suffer
23 and permit Plaintiff Gomez and the California Class to work overtime hours, as those
24 terms are defined under Labor Code section 510 and the relevant IWC Wage Order, and
25 yet do not compensate them with overtime premiums as required by California law.
26 Plaintiff Gomez, therefore, seeks injunctive relief to enjoin Defendants’ ongoing unfair
27 trade practices, including without limitation Defendants’ continued failure to pay
28 overtime and doubletime premium wages as required by the California Labor Code and

1 the relevant IWC Wage Order.

2 63. In this case, it is requested that this Court order restitution of all unpaid
3 wages found to be owing for the four-year period prior to the filing of the initial
4 complaint in this matter, up through the present, and issue all other appropriate
5 equitable relief, including without limitation an order enjoining Defendants from
6 continuing to treat the California Class as exempt from California’s overtime laws and,
7 instead, to pay Plaintiff Gomez and members of the California Class overtime
8 premiums for all overtime hours worked.

9 **FIFTH CAUSE OF ACTION**

10 ***Failure To Timely Pay Wages At Termination***

11 **(Action Brought By Plaintiff Campos On Behalf Of Himself**

12 **And The California Class Against All Defendants)**

13 64. Plaintiff Campos incorporates by reference and re-alleges each and every
14 one of the allegations contained in the preceding and foregoing paragraphs of this
15 Complaint as if fully set forth herein.

16 65. Labor Code section 201 provides, in relevant part, “If an employer
17 discharges an employee, the wages earned and unpaid at the time of discharge are due
18 and payable immediately.” Lab. Code § 201(a). Labor Code section 202 provides, in
19 relevant part, “If an employee not having a written contract for a definite period quits
20 his or her employment, his or her wages shall become due and payable not later than 72
21 hours thereafter, unless the employee has given 72 hours previous notice of his or her
22 intention to quit, in which case the employee is entitled to his or her wages at the time
23 of quitting.” Lab. Code § 202(a). Defendants did not pay immediately all wages
24 earned and unpaid to Plaintiff Campos and the California Class upon their discharge or
25 resignation. Defendants have refused and continue to refuse to pay said wages.

26 66. Pursuant to Labor Code section 203, Defendants have willfully failed to
27 pay without abatement or reduction, in accordance with Labor Code sections 201 and
28 202 all of the overtime, vacation, and doubletime wages of the Plaintiff Campos and the

1 California Class, as herein alleged. (As for Plaintiff Campos, his employment with
2 Defendants ended in or about February 2016.) Defendants are aware that they owe the
3 wages claimed by Plaintiff Campos and the California Class, per the District Court's
4 ruling in *Ross* that Defendants' overtime exemptions are invalid, yet Defendants
5 willfully failed to make payment. As a result, Plaintiff Campos seeks wages and
6 waiting-time penalties pursuant to Labor Code section 203 on behalf of himself and the
7 California Class. These penalties consist of up to 30 days of pay for Plaintiff Campos
8 and the California Class at their regular rates of pay.

9 67. Plaintiff Campos and the California Class have been available and ready to
10 receive wages owed to them.

11 68. Plaintiff Campos and the California Class have never refused to receive
12 any payment, nor have they been absent from their regular places of residence.

13 69. Defendants' failure to pay wages due and owing Plaintiff Campos and the
14 California Class, as indicated in prior paragraphs, was willful; Defendants have
15 knowingly refused to pay any portion of the amount due and owing Plaintiff Campos
16 and the California Class.

17 **SIXTH CAUSE OF ACTION**

18 ***For Civil Penalties under the Private Attorneys General Act of 2004***

19 **(Action Brought By Plaintiff Campos On Behalf Of Himself**

20 **And The California Aggrieved Employees Against All Defendants)**

21 70. Plaintiff Campos incorporates by reference and re-alleges each and every
22 one of the allegations contained in the preceding and foregoing paragraphs of this
23 Complaint as if fully set forth herein.

24 71. It is alleged that Defendants intentionally denied Plaintiff Campos and his
25 similarly situated co-workers, i.e., the California Aggrieved Employees, wages that
26 should have been paid and have violated Labor Code provisions.

27 72. Pursuant to Labor Code sections 2698 *et seq.*, Plaintiff Campos is entitled
28 to recover civil penalties on behalf of himself and other persons who are or were

1 employed by the alleged violator and against whom one or more of the alleged
2 violations was committed. Plaintiff Campos is therefore pursuing civil penalties for
3 violations of the Labor Code sections set forth herein.

4 73. One or more of the alleged violations set forth herein was committed
5 against Plaintiff Campos, and Plaintiff Campos is therefore an “aggrieved employee”
6 under Labor Code Section 2699(c), which provides in relevant part, “(c) For purposes
7 of this part, ‘aggrieved employee’ means any person who was employed by the alleged
8 violator and against whom one or more of the alleged violations was committed.”

9 74. Labor Code section 200 defines “wages” as including all amounts for labor
10 performed by employers of every description, whether the amount is fixed or
11 ascertained by the standard of time, task, piece, commission basis, or other method of
12 calculation.

13 75. Labor Code section 201 requires immediate payment of all wages owed at
14 the termination of employment. It is alleged that within the last year, Defendants’
15 employees in California have been terminated and have not received all wages owed at
16 their termination.

17 76. Labor Code section 202 requires payment of all wages owed within 72
18 hours of the resignation of an employee, unless the employee gives more than 72-hours’
19 notice, in which case wages are owed at the employee’s resignation. It is alleged that
20 within the last year, Defendants’ employees in California have resigned and have not
21 received all overtime premium pay owed in a timely fashion after their resignation.

22 77. Plaintiff Campos seeks civil penalties on his own behalf and on behalf of
23 the California Aggrieved Employees under Labor Code section 256 for Defendants’
24 violations of Labor Code sections 201 and 202.

25 78. Labor Code section 204 makes wages due no less frequently than twice a
26 month for non-exempt employees for work performed each pay period. Defendants
27 have violated section 204 with respect to Plaintiff Campos and his similarly situated
28 coworkers by not paying them all wages due for work performed each pay period.
Plaintiff Campos seeks civil penalties on behalf of himself and the California Aggrieved

1 Employees under Labor Code section 210.

2 79. Labor Code section 219 provides that an employer may not circumvent by
3 way of private agreement the requirements of the wage-and-hour laws of the Labor
4 Code. To the extent that Defendants will argue that these employees agreed to forfeit
5 their travel time and/or other wages, Defendants will have violated Labor Code section
6 219. There is no civil penalty associated with violation of section 219, but Plaintiff
7 Campos seeks civil penalties on behalf of himself and the California Aggrieved
8 Employees under Labor Code section 2699, subd. (f).

9 80. Labor Code section 226, subdivision (a), requires a California employer to
10 include very specific information on an employee's paycheck stub. The required
11 information includes the total number of overtime hours worked and the correct rates of
12 pay. Lab. Code § 226(a). Subdivision (e) sets forth statutory penalties for the violation
13 of section 226(a). Plaintiff Campos seeks to recover said penalties on behalf of himself
14 and the California Aggrieved Employees.

15 81. Labor Code section 226.3 sets forth civil penalties for violation of section
16 226, subdivision (a). Plaintiff Campos seeks said penalties against Defendants on
17 behalf of himself and the California Aggrieved Employees for violation of section 226,
18 subdivision (a).

19 82. Labor Code section 510 provides that an employer shall pay overtime
20 premium wages to non-exempt employees who work over eight hours in a workday or
21 over 40 hours in a workweek and on the seventh-straight day of work in a workweek.
22 Defendants violated Labor Code section 510 by not paying overtime premium wages to
23 non-exempt employees who worked overtime hours as defined by that section.

24 83. Labor Code section 558 provides for civil penalties against an employer
25 who violates section 510. Plaintiff Campos seeks said penalties against Defendants on
26 behalf of himself and the California Aggrieved Employees for violation of section 510.

27 84. Labor Code section 1174 requires California employers to keep records
28 showing the hours worked and wages earned by their employees. In this case, as
alleged herein, Defendants did not maintain such information with respect to Plaintiff

1 Campos and the California Aggrieved Employees, and such failure to comply with
2 California law was willful inasmuch as Defendants knew all along that California law
3 did not permit them to classify Plaintiff Campos and the California Aggrieved
4 Employees as exempt from overtime premium pay. Plaintiff Campos, on behalf of
5 himself and the California Aggrieved Employees, seeks penalties under Labor Code
6 section 1174.5 for Defendants' failure to comply with section 1174.

7 85. Labor Code section 2802 requires employers to indemnify their employees
8 for necessary, work-related expenditures. In this case, as alleged herein, Plaintiff
9 Campos and the California Aggrieved Employees paid for work-related expenditures
10 such as cellular phones that Defendants required them to have, and yet Defendants did
11 not reimburse Plaintiff Campos or the California Aggrieved Employees for such
12 expenditures. Plaintiff Campos seeks penalties for Defendants' violations of section
13 2802 under Labor Code section 2699, subd. (f) against Defendants on behalf of
14 themselves and the California Aggrieved Employees.

15 86. Plaintiff Campos also seeks any civil penalties allowable under the Labor
16 Code that arise out of the same set of operative facts as the claims made in this
17 complaint.

18 87. Plaintiff Campos has fully complied with the statutory requirements of
19 Labor Code section 2699.3. Plaintiff Campos gave notice by a letter dated July 18,
20 2016 and delivered by electronic mail to the California Labor and Workforce
21 Development Agency (PAGAfilings@dir.ca.gov) and by certified mail to the employer
22 of the specific provisions of the Labor Code alleged to have been violated, including the
23 facts and theories to support the alleged violations. More than 65 days have passed
24 since Plaintiff gave such notice to the Labor and Workforce Development Agency, and
25 the Labor and Workforce Development Agency has not notified Plaintiff Campos or his
26 representative that it intends to investigate his allegations. Therefore, Plaintiff Campos
27 may now commence his civil action for penalties under this cause of action.

28 88. Defendants' failure to pay wages due and owing to Plaintiff Campos and
those similarly situated, as indicated in prior paragraphs, was willful. Defendants have

1 knowingly refused to pay any portion of the amount due and owing Plaintiff Campos
2 and his similarly situated employees. Further, Defendants have not taken any actions to
3 “cure” the Labor Code violations pursuant to California Labor Code section 2699 *et*
4 *seq.*

5 89. By failing to pay Plaintiff Campos and the current and past aggrieved
6 employees, Defendants have violated numerous California Labor Code provisions, all
7 as set forth hereinabove. Civil penalties are therefore appropriate.

8 **SEVENTH CAUSE OF ACTION**

9 ***FLSA Violations***

10 **(Action Brought By Plaintiff Gomez On Behalf Of Himself**

11 **And The FLSA Collective Against All Defendants)**

12 90. Plaintiff Gomez incorporates by reference and re-alleges each and every
13 one of the allegations contained in the preceding and foregoing paragraphs of this
14 Complaint as if fully set forth herein, except those paragraphs that are inconsistent with
15 this cause of action brought pursuant to the FLSA.

16 91. The FLSA regulates, among other things, the payment of overtime pay by
17 employers whose employees are engaged in commerce, or engaged in the production of
18 goods for commerce, or employed in an enterprise engaged in commerce or in the
19 production of goods for commerce. 29 U.S.C. § 207(a)(1).

20 92. At all relevant times, Defendants were an “employer” engaged in interstate
21 commerce and/or in the production of goods for commerce, within the meaning of the
22 FLSA, 29 U.S.C. § 203. At all relevant times, Plaintiff Gomez and each member of the
23 FLSA Collective worked for Defendants.

24 93. Plaintiff Gomez consents in writing to be a part of this action, pursuant to
25 29 U.S.C. § 216(b). As this case proceeds, it is likely that other individuals will sign
26 consent forms and join as plaintiffs.

27 94. Section 7(a)(1) of the FLSA, 29 U.S.C. § 207(a)(1), requires employers to
28 pay non-exempt employees who work longer than forty (40) hours in a workweek one

1 and one-half times the employee's regular rate of pay for the hours worked in the
2 workweek in excess of forty (40) hours. Defendants are, and were, subject to this
3 requirement to pay the FLSA Collective one and one-half times their regular rate of pay
4 for all hours worked in excess of forty (40) in a workweek. Defendants violated the
5 FLSA by refusing to pay the FLSA Collective overtime as required by law. Defendants
6 regularly worked Plaintiff Gomez and the FLSA Collective more than 40 hours each
7 workweek, and yet rather than pay overtime premiums, Defendants paid Plaintiff
8 Gomez and the FLSA Collective on a salary basis (or, in some cases, on an hourly basis
9 for a fixed number of straight-time and overtime hours each week, which was in effect a
10 subterfuge for paying a salary).

11 95. Defendants' violations of the FLSA as alleged herein have been done in a
12 willful and bad faith manner such that the FLSA Collective are entitled to damages
13 equal to the amount of overtime premium pay within the three years preceding the filing
14 of this complaint, plus periods of equitable tolling. As a result of the aforesaid willful
15 violations of the FLSA, overtime compensation has been unlawfully withheld by
16 Defendants from Plaintiff Gomez and similarly situated persons for which Defendants
17 is liable under 29 U.S.C. § 216(b), together with an additional equal amount as
18 liquidated damages, as well as interest, reasonable attorney's fees and costs.

19 96. Plaintiff Gomez, on behalf of himself and the FLSA Collective, seeks
20 damages in the amount of all unpaid overtime compensation owed to him and the FLSA
21 Collective, liquidated damages as provided by the FLSA, 29 U.S.C. § 216(b), interest,
22 and such other legal and equitable relief as the Court deems just and proper.

23 97. The employment and work records for the Plaintiff Gomez and the FLSA
24 Collective, such that they do exist, are in the exclusive possession, custody, and control
25 of Defendants, and Plaintiff Gomez is unable to state at this time the exact amount
26 owing to him and the FLSA Collective. Defendants are under a duty imposed by 29
27 U.S.C. § 211(c) and the regulations of the U.S. Department of Labor to maintain and
28 preserve Plaintiff Gomez's payroll and other employment records from which the

1 amounts of the Defendants' liability can be ascertained.

2 98. Plaintiff Gomez, on behalf of himself and the FLSA Collective, seeks
3 recovery of attorney's fees and costs to be paid by Defendants, as provided by the
4 FLSA, 29 U.S.C. § 216(b).

5 WHEREFORE, Plaintiffs, on behalf of themselves and all members of the
6 California Class, pray for relief as follows:

7 1. For overtime and doubletime premium wages owed under California law
8 according to proof;

9 2. For prejudgment interest pursuant to Labor Code sections 218.6 and 1194
10 and Civil Code sections 3288 and 3291 on all amounts claimed;

11 3. For attorney's fees and costs pursuant to Labor Code sections 218.5, 226,
12 and 1194;

13 4. For waiting-time penalties under Labor Code section 203;

14 5. For statutory penalties under Labor Code section 226;

15 6. For an equitable order, ordering Defendants to pay all Putative Class
16 members all wages and interest they are owed;

17 7. For an appointment of a receiver to perform an accounting of all monies
18 owed to these employees;

19 8. For any and all injunctive relief this Court deems necessary pursuant to
20 Business and Professions Code section 17203, including an injunction ordering
21 Defendants to begin paying overtime premiums to their Route Sales Managers and
22 Sales Service Route Managers in California;

23 9. For a declaratory judgment declaring that Defendants have willfully and
24 wrongfully violated their statutory and legal obligations and deprived Plaintiffs and all
25 others who are similarly situated of their rights, privileges, protections, compensation,
26 benefits, and entitlements under the law, as alleged herein;

27 10. For a complete and accurate accounting of all the compensation to which
28 the Plaintiffs and all others who are similarly situated are entitled;

1 11. For costs of suit; and

2 12. For any other and further relief that the Court considers just and proper.

3 WHEREFORE, Plaintiff Campos, on behalf of himself and all members of the
4 California Aggrieved Employees, prays for relief as follows:

5 13. For civil penalties for Plaintiff Campos and each aggrieved employee, for
6 each violation alleged aforesaid, to be distributed in accordance with Labor Code
7 section 2699;

8 14. For attorneys' fees and costs pursuant to Labor Code section 2699(g);

9 15. For costs of suit; and

10 16. For any other and further relief that the Court considers just and proper.

11 WHEREFORE, Plaintiff Gomez, on behalf of himself and all members of the
12 FLSA Collective, prays for relief as follows:

13 17. For designation of this action as a collective action on behalf of Plaintiff
14 Gomez and the FLSA Collective and prompt issuance of notice pursuant to 29 U.S.C. §
15 216(b) to all those similarly situated apprising them of the pendency of this action, and
16 permitting them to assert timely FLSA claims in this action by filing individual consent
17 forms pursuant to 29 U.S.C. § 216(b);

18 18. For judgment that Plaintiff Gomez and those similarly situated are non-
19 exempt employees entitled to protection under the FLSA;

20 19. For judgment against Defendants for violation of the overtime provisions
21 of the FLSA;

22 20. For judgment that Defendants' violations as described above were willful;

23 21. For an award in an amount equal to Plaintiff Gomez's and the FLSA
24 Collective's unpaid back wages at the applicable overtime rate;

25 22. For an award to Plaintiff Gomez and those similarly situated for the
26 amount of unpaid wages owed, liquidated damages and penalties where provided by
27 law, and interest thereon, subject to proof at trial;

28 23. For an award of reasonable attorney's fees and costs pursuant to 29 U.S.C.

1 § 216 and/or any other applicable laws;

2 24. For an award of prejudgment interest to the extent liquidated damages are
3 not awarded;

4 25. For leave to add additional plaintiffs by motion, the filing of written
5 consent forms, or any other method approved by the Court;

6 26. For costs of suit; and

7 27. For such other and further relief, in law or equity, as this Court may deem
8 appropriate and just.

9 DATED: September 22, 2016

STRAUSS & STRAUSS, APC

10 By _____
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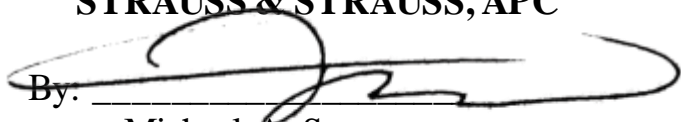
Michael A. Strauss
Attorneys for Plaintiff and Others
Similarly Situated
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DEMAND FOR JURY TRIAL

Plaintiffs Juan Campos and Eddie Gomez hereby demand a trial by jury.

DATED: September 22, 2016

STRAUSS & STRAUSS, APC

By: 

Michael A. Strauss
Attorneys for Plaintiff and Others
Similarly Situated

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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is STRAUSS & STRAUSS, APC, 121 N. Fir Street, Suite F, Ventura, California 93001. On September 22, 2016, I served the within **FIRST AMENDED COMPLAINT; DEMAND FOR JURY TRIAL** by placing the document in a sealed envelope with postage thereon fully prepaid, in the United States mail at Ventura, California addressed as set forth below:

CT Corporation System
818 W. Seventh St., Ste. 930
Los Angeles, CA 90017
Registered Agent for Defendant Ecolab Inc.

John Ybarra, Esq.
LITTLER MENDELSON
321 North Clark Street, Suite 1000
Chicago, IL 60654
Attorneys for Ecolab Inc.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made and, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Executed on September 22, 2016, at Ventura, California.



JACQUELINE VILLARREAL

Complaints and Other Initiating Documents[4:16-cv-04829-DMR Campos v. Ecolab, Inc.](#)

ADRMOP

U.S. District Court

California Northern District

Notice of Electronic Filing

The following transaction was entered by Strauss, Michael on 9/22/2016 at 12:56 PM and filed on 9/22/2016

Case Name: Campos v. Ecolab, Inc.**Case Number:** [4:16-cv-04829-DMR](#)**Filer:** Juan Campos
Eddie Gomez**Document Number:** [8](#)**Docket Text:****[AMENDED COMPLAINT and Demand for Jury Trial against Ecolab, Inc.. Filed by Juan Campos, Eddie Gomez. \(Strauss, Michael\) \(Filed on 9/22/2016\)](#)****4:16-cv-04829-DMR Notice has been electronically mailed to:**

Andrew Clayton Ellison andrew@palaylaw.com, ccm@palaylaw.com

Michael Anthony Strauss mike@strausslawyers.com, andrew@strausslawyers.com, jackie@strausslawyers.com, jhs@strausslawyers.com

4:16-cv-04829-DMR Please see [Local Rule 5-5](#); Notice has NOT been electronically mailed to:

The following document(s) are associated with this transaction:

Document description:Main Document**Original filename:**C:\fakepath\FAC - Campos v. Ecolab.pdf**Electronic document Stamp:**[STAMP CANDStamp_ID=977336130 [Date=9/22/2016] [FileNumber=13053004-0]
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b1804aba9900f97974e9a304f58fc3f9c5292a3ce6aca7833c130fd181c7]]

