



1 1. Plaintiff, Sean Roberts, is and was at all times relevant hereto a resident of  
2 the County of Los Angeles.

3 2. Defendant, Peter J. McNulty, is and was at all times relevant hereto a  
4 resident of the County of Los Angeles and doing business as the McNulty Law  
5 Firm.

6 3. Plaintiff was hired by Peter J. McNulty in February of 1998 as a receptionist,  
7 and promoted the next year to legal assistant to Peter J. McNulty, a position he held  
8 until terminated by Peter J. McNulty on May 1, 2015 while he was out on medical  
9 disability leave.

10 4. Plaintiff was frequently required to work in excess of 8 hours a day and 5  
11 days or 40 hours a week, but Defendant refused to compensate him for overtime  
12 hours worked.

13 5. Plaintiff was promised a compensatory bonus of \$40,000.00, but Defendant  
14 has refused to pay it.

15 6. On July 7th, 2014, Plaintiff advised Peter J. McNulty that he would be  
16 absent from work for medical reasons and thereafter and continuing through May  
17 1, 2015, Plaintiff provided medical certification from his physician that he was  
18 disabled and unable to return to work.

19 7. The California Legislature has commanded that “all wages... ..earned by  
20 any person in any employment are due and payable twice during each calendar  
21 month, on days designated in advance by the employer as the regular paydays”,  
22 and further that “[a]ny work in excess of eight hours in one workday and any work  
23 in excess of 40 hours in any one workweek...shall be compensated at the rate of no  
24 less than one and one-half times the regular rate of pay for an employee.” (Lab.  
25 Code §204 and §510(a).) The Industrial Welfare Commission (IWC), however, is  
26 statutorily authorized to “establish exemptions from the requirement that an  
27 overtime rate of compensation be paid... ..for executive, administrative, and  
28 professional employees, provided [inter alia] that the employee is primarily

1 engaged in duties that meet the test of the exemption, [and] customarily and  
2 regularly exercises discretion and independent judgment in performing those  
3 duties...” (Lab. Code §510(a).)

4 8. Plaintiff is not exempt because, as a Legal Assistant, any discretionary act  
5 would constitute the Unauthorized Practice of Law and Peter J. McNulty was  
6 under an affirmative duty to direct and supervise his activities.

7 9. Defendant has maintained only a partial record of hours worked by having  
8 the receptionist track employees entering and leaving, but these incomplete records  
9 would not reflect all of the late nights and weekends Plaintiff was required to work.  
10 Defendant did not maintain any system for tracking time spent by workers and he  
11 does not believe administrative staff are entitled to overtime. Prior to filing this  
12 action, Defendant was presented with the law requiring overtime pay, and he  
13 rejected all offers to mediate or resolve the issues set forth herein.

14 10. In addition, under Cal. Lab. Code §§ 226.7 and 512, based upon the actual  
15 hours worked by the employees, was entitled to be provided with at least two (2)  
16 rest period breaks each workday and one lunch break. Plaintiff was never  
17 permitted rest breaks, and was frequently required to attend working lunches to  
18 keep notes for Defendant.

19 11. Prior to the initiation of this suit, Plaintiff filed a complaint against  
20 Defendant with the California Department of Fair Employment and Housing  
21 ("DFEH") pursuant to section 12900, et seq., of the California Government Code,  
22 alleging the claims described herein. On May 4, 2015, the DFEH issued a "right to  
23 sue" letter. A true and correct copies of the "right to sue" letter is attached hereto  
24 as Exhibit A. All conditions precedent to the institution of this lawsuit have been  
25 fulfilled. This action is filed within one year of the date that the DFEH issued its  
26 right to sue letters.

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FIRST CAUSE OF ACTION

For Failure To Pay Earned Wages and Overtime Compensation  
[Cal. Lab. Code §§ 204, 210, 218, 510, 1194 and 1198]

- 11. Plaintiff incorporates paragraphs 1-11 as though fully set forth herein.
- 12. Cal. Lab. Code § 204 requires employers to pay employees for all hours worked as follows: “all wages... ..earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Cal. Lab. Code § 510 further provides that employees in California shall not be employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.
- 13. Cal. Lab. Code § 218 and §1194 establishes an employee’s right to recover unpaid wages overtime compensation, interest thereon, together with the costs of suit, and attorneys fees. Cal. Lab. Code § 1198 states that the employment of an employee for longer hours than those fixed by the Industrial Welfare Commission is unlawful.

SECOND CAUSE OF ACTION

For Failure To Provide Meal and Rest Periods  
[Cal. Lab. Code §§ 226.7 and 512]

- 14. Plaintiff incorporates paragraphs 1-13 as though fully set forth herein.
- 15. Cal. Lab. Code § 226.7 provides that employers shall authorize and permit employees to take rest periods at the rate of ten (10) minutes net rest time per four (4) hours of work.
- 16. Cal. Lab. Code § 226.7 provides that if an employer fails to provide and employee rest periods in accordance with this section, 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.

THIRD CAUSE OF ACTION  
For Failure to Provide Accurate Itemized Statements  
[Cal. Lab. Code § 226]

17 Plaintiff incorporates paragraphs 1-16 as though fully set forth herein.

18. Cal. Labor Code § 226 provides that an employer must furnish employees with “an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.”

19. At all times relevant herein, Defendant violated Labor Code § 226, in that he failed to properly and accurately itemize the number of hours worked by Plaintiff at the effective regular rates of pay and the effective overtime rates of pay.

20. Defendant knowingly and intentionally failed to comply with Labor Code § 226, causing damages to Plaintiff. These damages include, but are not limited to, unpaid wages for hours actually worked, the costs expended calculating the true hours worked and the amount of employment taxes which were not properly paid to state and federal tax authorities, plus reasonable attorney’s fees and costs pursuant to Labor Code § 226(g).

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FOURTH CAUSE OF ACTION  
For Unlawful Business Practices  
[Cal. Bus. And Prof. Code § 17200 et seq.]

21. Plaintiff incorporates paragraphs 1-20 as though fully set forth herein.

22. DEFENDANTS are “persons” as that term is defined under Cal. Bus. & Prof. Code §17021.

23. Cal. Bus. & Prof. Code § 17200 defines unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17200 applies to violations of labor laws and in the employment context.

24. At all times relevant hereto, by and through the conduct described herein, Defendant has engaged in unfair and unlawful’ practices by failing to pay Plaintiff wages due, and has failed to provide rest breaks, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. and Prof. Code § 17200 et seq., and has thereby deprived Plaintiff of fundamental rights and privileges and caused him economic injury as herein alleged. Defendant has engaged in unfair competition by withholding compensation for hours worked, bonuses due and by failing to keep accurate information and time records that accurately itemize the total hours worked in violation of California law. As herein alleged, Defendants’ conduct was unlawful in that, he uniformly violated California law and regulations, including but not limited to Labor Code §201, §202, §216, §204, §218, §226, §226.7, §510, §512, §1102.5, §1174, §1175, §1198, and 8 C.C.R. § 11040(7). His conduct also violated federal law.

25. By and through the unfair and unlawful business practices described herein, Defendants has obtained valuable property, money, and services from the Plaintiff, and has deprived Plaintiff of valuable rights and benefits guaranteed by law and contract, all to their detriment and to the benefit of Defendant so as to allow Defendant to unfairly compete against competitors who comply with the law.

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FIFTH CAUSE OF ACTION  
(Discrimination Based Upon Disability in Violation of FEHA)  
(Against All Defendants)

26. Plaintiff incorporates paragraphs 1-25 as though fully set forth herein.

27. Defendant has stated that Plaintiff abandoned his job, had no work place related disability and or committed misconduct justifying his termination.

28. In reality, Plaintiff provided timely notice to Defendant of a medical condition rendering him unable to work, requested disability leave and disability compensation, received disability compensation and provided timely certification of disability to Defendant.

29. Plaintiff has never abandoned his job, and in fact assisted Defendant where needed with critical information while on leave, committed the subject misconduct months before seeking leave. Took leave because of the extreme anxiety caused by Defendants illegal business practices, and when he sought to discuss accommodations or a return to work plan Defendant advised him on May 1, 2015 that he had been terminated. Was on disability leave and continues to be on disability. Plaintiff sought to discuss Defendants' termination and job related issues, but through his attorney he refused to engage in any interactive process.

SIXTH CAUSE OF ACTION  
For Violation of the Fair Labor Standards Act  
[29 U.S.C. § 201 et seq.]

30. Plaintiff incorporates paragraphs 1-29 as though fully set forth herein.

31. The Fair Labor Standards Act, 29 U.S.C. §201, et seq., states that an employee must be compensated for all hours worked, including all straight time compensation and overtime compensation. 29 C.F.R. §778.223 and 29 C.F.R. §778.315. This Court has concurrent jurisdiction over claims involving the Fair Labor Standards Act pursuant to 29 U.S.C. § 216.

32. Plaintiff regularly worked more than 40 hours per week, but was not paid

1 compensation for all hours worked, including overtime hours, and was not  
2 “exempt” from the requirements of the Fair Labor Standards Act.

3 33. Defendant violated the Fair Labor Standards Act by failing to pay Plaintiff  
4 for all hours worked, including overtime hours, as alleged herein above.

5 SEVENTH CAUSE OF ACTION

6 For Breach of Contract

7 34. Plaintiff incorporates paragraphs 1-29 as though fully set forth herein.

8 35. Defendant handled a case known as “VW” which involved substantial time  
9 by Plaintiff and great reward to Defendant. Defendant promised Plaintiff a bonus  
10 of \$40,000 when he received his multi-million dollar fee award.

11 36. Defendant kept track of his time and had Plaintiff input it. When Defendant  
12 received the fee motions from other attorneys that were substantially larger than his  
13 own, he berated Plaintiff, accused him of not inputting all his time, and instructed  
14 him to work all weekend re-writing his time sheets to “make them look more like”  
15 the ones submitted by other counsel in the case.

16 37. After a full work week, Plaintiff spent more than 30 hours of uncompensated  
17 time preparing new time sheets. Upon completion, Defendant again reminded him  
18 that there was a “pot of gold” waiting for him, making reference to the promised  
19 \$40,000 bonus.

20 38. Despite demand and having received the multi million dollar payout,  
21 Defendant refuses to pay the bonus due.

22 EIGHTH CAUSE OF ACTION

23 For Wrongful Termination in Violation of Public Policy

24 34. Plaintiff incorporates paragraphs 1- 38 as though fully set forth herein.

25 35. Defendant has terminated Plaintiff while on disability leave in order to avoid  
26 paying wages due. Defendant has raised multiple pretexts for this decision,  
27 including a State Bar investigation pending against him, but the reality is that his  
28 illegal practices caused Plaintiff to suffer significant anxiety leading to his



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Physicians certification of disability, and then while on out disability leave defendant added insult to injury by terminating him, presumably as a sacrificial lamb in order to mitigate the claims against him being investigated by the State Bar of California.

- Wherefore, Plaintiff prays for:
- A) For compensatory damages, including lost wages, commissions, bonuses, and other losses, during the period commencing on the date that is four years prior to the date of the filing of this Complaint, according to proof;
  - B) For general damages, according to proof;
  - C) For punitive damages, according to proof;
  - D) For an award of interest, including prejudgment interest at the legal rate;
  - E) For statutory damages, including reasonable attorneys' fees and cost of suit.

Dated: May 5, 2015 The Law Office of Jonathan W. Birdt

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Jonathan W. Birdt  
Attorney for Plaintiff