

Bryan Schwartz (SBN 209903)
BRYAN SCHWARTZ LAW
180 Grand Avenue, Suite 1550
Oakland, CA 94612
Tel.: 510-444-9300
FAX: 510-444-9301
Email: Bryan@BryanSchwartzLaw.com

Attorney for Individual and Representative Plaintiffs

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CV-09-1263-JSW

Before the Hon. Jeffrey S. White

CLASS AND COLLECTIVE ACTION

FIRST AMENDED COMPLAINT FOR
DAMAGES, RESTITUTION AND
INJUNCTIVE RELIEF

Rosalie Pearson and Dennis Newsham,
individually, on behalf of others similarly
situated, and on behalf of the general
public,

Plaintiffs,

vs.

Samsonite Company Stores, Inc.,
Samsonite Corporation, and DOES 1-50,
inclusive,

Defendants.

(1) Violation of Fair Labor Standards Act
29 U.S.C. Section 207

(2) Violation of California Labor Code
Sections 510, 1194, and 1198, and IWC
Wage Order(s)

(3) Failure to Provide Itemized Wage
Statements (California Labor Code
Section 226)

(4) Failure to Provide and/or Authorize
Meal and Rest Periods (California
Labor Code 512, 226.7, and IWC Wage
Order(s))

(5) Violation of California Business and
Professions Code Sections 17200 et seq.

(6) Breach of Contract in California

(7) Breach of Contract in New York

(8) Violation of New York Wage and Hour
Law (New York Labor Law Article 19,
§§ 650 et seq., and New York State
Department of Labor Regulations, 12
N.Y.C.R.R. Part 142)

(9) Retaliation for Protected Activity (New
York Labor Law §215; Fair Labor

Standards Act, 29 U.S.C. Section
215(a)(3))

DEMAND FOR JURY TRIAL

PRELIMINARY STATEMENT

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5 1. This is a collective and class action brought by Individual and Representative
6 Plaintiffs Rosalie "Lee" Pearson and Dennis Newsham, on their own behalf and on behalf of the
7 proposed class identified below. Plaintiffs and the putative class members were or are employed
8 by Defendant Sansonite Company Stores, Inc., and certain Doe Defendants, or their
9 predecessors-in-interest, as Store Managers. As Store Managers, Plaintiffs and the putative class
10 members are, were, or should have been classified as covered, non-exempt employees under
11 federal and state wage and hour laws, and entitled to overtime pay consistent with the
12 requirements of these laws. These employees are similarly situated under the Federal Rules of
13 Civil Procedure 23 and the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 216(b).

14 2. The Collective Class is made of all persons who are or have been employed by
15 Defendants as a Store Manager, at any time within the United States within three years prior to
16 this action's filing date, through the date of final disposition of this action (the "Collective Class
17 Period").

18 3. The California Class is made up of all persons who are or have been employed by
19 Defendants as a Store Manager in the State of California within the period four years prior to the
20 filing date of this Complaint (the "California Class Period").

21 4. The New York Class is made up of all persons who are or have been employed by
22 Defendants as a Store Manager in the State of New York within the period six years prior to the
23 filing date of this Complaint (the "New York Class Period," collectively with California the
24 "State Class Periods").

25 4. During the Collective Class Period and the State Class Periods, Defendants failed
26 to pay appropriate overtime compensation to each member of the Collective Class and Class as
27 required by federal and state law. Plaintiffs seek relief for the Class pursuant to the applicable
28

1 State Law, Rules, Regulations, and Wage Orders of the Industrial Welfare Commission ("IWC").
2 Plaintiffs also seek relief for the Collective Class under the Fair Labor Standards Act. All of the
3 relief sought is to remedy the Defendants' failure to pay all wages due, pay appropriate overtime
4 compensation, to provide or authorize meal and rest periods, and to maintain accurate time
5 records, in addition to injunctive relief. Plaintiffs also assert breach of contract claims, since they
6 were promised consideration of vacation time based on hours worked, and they did not accrue
7 and were not paid for vacation time for their overtime hours.

8 5. After filing this lawsuit, Plaintiff Newsham suffered retaliation when his rate of
9 pay was cut during Defendants' process of reclassifying Store Managers.

10 THE PARTIES

11 5. Individual and representative Plaintiff Rosalie "Lee" Pearson (the "California
12 Plaintiff") resides in San Francisco, California (San Francisco County). She has been employed
13 by Defendants since June 2006 as a Store Manager, working in San Francisco. Plaintiff Pearson
14 brings her claim on behalf of herself and the Collective and California Classes.

15 6. Individual and representative Plaintiff Dennis Newsham (the "New York
16 Plaintiff") resides in New York City, New York. He has been employed by Defendants since
17 April 2007 as a Store Manager, working in New York City. Plaintiff Newsham brings his claim
18 on behalf of himself and the Collective and New York Classes.

19 7. Upon information and belief, Defendant Samsonite Company Stores, Inc., is an
20 Indiana Corporation doing business in and maintaining offices in several states throughout the
21 United States, including a facility in San Francisco, California.

22 8. Upon information and belief, Defendant Samsonite Corporation is a Delaware
23 Corporation doing business in and maintaining offices in several states throughout the United
24 States, including a facility in San Francisco, California.

25 9. Defendants Does 1-50, inclusive, are sued herein under fictitious names. Their
26 true names and capacities are unknown to Plaintiffs. When their true names and capacities are
27 ascertained, Plaintiffs will amend this complaint by inserting their true names and capacities
28 herein. Plaintiffs are informed and believe and thereon allege that each of the fictitiously-named

1 Defendants is responsible in some manner for the occurrences herein alleged, and that the
 2 damages of Plaintiffs and the putative class members herein alleged were proximately caused by
 3 such Defendants.

4 9. Plaintiffs are informed, believe, and thereon allege that each of the Defendants
 5 herein was, at all times relevant to this action, the agent, employee, representative partner, and/or
 6 joint venturer of the remaining Defendants and was acting within the course and scope of the
 7 relationship. Plaintiffs are further informed, believe, and thereon allege that each of the
 8 Defendants herein gave consent to, ratified and authorized the acts alleged herein to the remaining
 9 Defendants.

10 JURISDICTION AND VENUE

11 10. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 as this case
 12 is being brought under the FLSA, 29 U.S.C. § 207 *et seq.* Each representative Plaintiff has signed
 13 a consent form to join this lawsuit, previously filed with this Court. This Court has original
 14 jurisdiction over all the state and federal claims under the Class Action Fairness Act, 28 U.S.C.
 15 §1332(d), because, upon information and belief, the amount in controversy exceeds
 16 \$5,000,000.00 and the parties are citizens of diverse jurisdictions. This Court also has
 17 supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.

18 11. Venue is proper in the United States District Court, Northern District of California
 19 pursuant to 28 U.S.C. § 1391, because Defendants operate a facility in San Francisco County,
 20 California, and because a substantial part of the events giving rise to the claims occurred in this
 21 district.

22 12. Pursuant to Civil L.R. 3-2 (c) and (d), this action is properly assigned to the
 23 Northern District of California because a substantial portion of the events giving rise to this
 24 dispute occurred in San Francisco County, California.

25 COLLECTIVE ACTION ALLEGATIONS

26 13. Plaintiffs bring this action on behalf of themselves and other employees similarly
 27 situated as authorized under FLSA, 29 U.S.C. § 216(b). The employees similarly situated are:

28 **Collective Class:** All persons who are or have been employed by Defendants as a

1 Store Manager, within the United States at any time three years
2 prior to the filing of this Complaint, to the final disposition of this
3 case.

4 14. Upon information and belief, Defendants suffered and permitted Plaintiffs and the
5 Collective Class to work more than forty hours per week without appropriate overtime
6 compensation.

7 15. Defendants' unlawful conduct has been widespread, repeated, and consistent.

8 16. Upon information and belief, Defendants knew that Plaintiffs and the Collective
9 Class, performed work that required overtime pay. Defendants have operated under a scheme to
10 deprive these employees of appropriate overtime compensation by failing to properly compensate
11 them for all hours worked.

12 17. Defendants misclassified Plaintiffs and members of the Collective Class with the
13 Job titles of Store Manager as "exempt" from federal and state overtime laws. Defendants
14 misrepresented to these employees that they were "exempt" and therefore were not entitled to
15 overtime pay for hours worked in excess of forty a week.

16 18. Defendants' conduct, as set forth in this Complaint, was willful and in bad faith,
17 and has caused significant damages to Plaintiffs, and the Collective Class.

18 19. Defendants are liable under the FLSA for failing to properly compensate Plaintiffs
19 and the Collective Class, and as such, notice should be sent to the Collective Class. There are
20 numerous similarly situated current and former employees of Defendants who have been denied
21 overtime pay in violation of the FLSA who would benefit from the issuance of a Court supervised
22 notice of the present lawsuit and the opportunity to join in the present lawsuit. Those similarly
23 situated employees are known to Defendants and are readily identifiable through Defendants'
24 records.

25 **CLASS ALLEGATIONS**

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

28 **Proposed California Class:** All employees of Defendants who were, are, or will

1 be employed in the State of California as a Store Manager at
2 any time within four years of the filing of this Complaint
3 until the final disposition of this case.

4 **Proposed New York Class:** All employees of Defendants who were, are, or will
5 be employed in the State of New York as a Store Manager
6 at any time within six years of the filing of this Complaint
7 until the final disposition of this case.

8 21. **Numerosity:** The Proposed Class is so numerous that joinder of all members is
9 impracticable. Plaintiff is informed and believes, and on that basis alleges, that during the
10 relevant time period, Defendants employed dozens of people who are geographically dispersed
11 and who satisfy the definition of the Proposed Class.

12 22. **Typicality:** Plaintiffs' claims are typical of the members of the Proposed
13 Classes. Plaintiffs are informed and believe that, like other Store Managers, they routinely
14 worked more than eight hours per day and more than 40 hours per week during the Class Period.
15 Plaintiffs had the same duties and responsibilities as other Class members and were subject to
16 Defendants' policy and practice of improperly treating and classifying these employees as
17 "exempt" from federal and state overtime law, misrepresenting to these employees that they were
18 exempt from federal and state overtime law, improperly failing to pay appropriate overtime
19 compensation for all hours worked, failing to provide or authorize meal and rest breaks in
20 compliance with state laws, failing to maintain accurate time records of hours worked by the
21 Proposed Classes, failing to issue accurate itemized wage statements to these individuals, and
22 failing to pay appropriate vacation guaranteed under contract for the number of hours they
23 actually worked.

24 23. **Superiority:** A class action is superior to other available methods of the fair and
25 efficient adjudication of the controversy, particularly in the context of wage and hour litigation
26 where individual plaintiffs lack the financial resources to vigorously prosecute separate lawsuits
27 in federal court against large corporate defendants and fear retaliation. Prosecuting hundreds of
28 identical, individual lawsuits nationwide does not promote judicial efficiency or equity and

1 consistency in judicial results.

2 24. Adequacy: Plaintiffs will fairly and adequately protect the interests of the
3 Proposed Class, and has retained counsel experienced in complex wage and hour class and
4 collective action litigation.

5 25. Commonality: Common questions of law and fact exist to all members of the
6 Proposed Class and predominate over any questions solely affecting individual members of the
7 Proposed Class, including but not limited to:

- 8 A. Whether Defendants improperly classified Plaintiffs and members of the
9 State Classes with the job title of Store Manager as exempt;
- 10 B. Whether Defendants unlawfully failed to fully pay appropriate overtime
11 compensation to members of the Proposed Classes in violation of federal
12 and state wage laws;
- 13 C. Whether Plaintiffs and State Class members who are no longer employed
14 with Defendants are entitled to penalties for failure to timely pay wages
15 upon termination of employment, pursuant to the applicable state laws;
- 16 D. Whether Defendants' policies and practices provide and/or authorize meal
17 and rest periods in compliance with applicable state laws;
- 18 E. Whether Defendants failed to keep accurate time records for all hours
19 worked by the Plaintiffs and the Proposed Class in violation of FLSA, 29
20 U.S.C. § 201 et seq., and state wage laws;
- 21 F. Whether Defendants provided adequate itemized wage statements to the
22 Plaintiffs and the Class pursuant to state wage laws;
- 23 G. Whether Defendants paid Plaintiffs and State Class members for the full
24 vacation time they earned, based, as promised, on their actual hours
25 worked, including overtime hours;
- 26 H. The proper measure of damages sustained by the Proposed Classes; and
- 27 I. Whether Defendants' actions were "willful."

28 26. This case is maintainable as a class action under Fed. R. Civ. P. 23(b)(1) because

1 prosecution of actions by or against individual members of the class would result in inconsistent
2 or varying adjudications and create the risk of incompatible standards of conduct for Defendants.
3 Further, adjudication of each individual member's claim as separate action would be dispositive
4 of the interest of other individuals not party to this action, impeding their ability to protect their
5 interests.

6 27. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(3) because
7 questions of law and fact common to the Proposed Classes predominate over any questions
8 affecting only individual members of the Proposed Class, and because a class action is superior to
9 other available methods for the fair and efficient adjudication of this litigation. Defendants'
10 common and uniform policies and practices denied the Proposed Classes the overtime pay to
11 which they are entitled. The damages suffered by the individual Proposed Class members are
12 small compared to the expense and burden of individual prosecution of this litigation. Proposed
13 Class members fear workplace retaliation and being "blackballed" from obtaining future
14 employment in the retail industry. In addition, class certification is superior because it will
15 obviate the need for unduly duplicative litigation that might result in inconsistent judgments about
16 Defendants' practices.

17 28. Plaintiff intends to send notice to all members of the Proposed Classes to the
18 extent required by Rule 23. The names and address of the Proposed Classes are available from
19 Defendants.

20 INDIVIDUAL CLAIM FOR RELIEF

21 29. On or about May 20, 2009, less than two months after engaging in protected
22 activity by filing this lawsuit alleging misclassification of his Store Manager position as exempt
23 from overtime laws, Dennis Newsham was notified that Defendants would be finally classifying
24 his position as non-exempt.

25 30. Plaintiff Newsham's regular rate of pay just prior to filing the lawsuit and
26 immediately thereafter was \$37.1274/hour. On May 20, 2009, Defendants notified him that his
27 pay rate would be \$31.27/hour going forward, as a result of his reclassification as a non-exempt
28 employee, though his job responsibilities remain unchanged.

1 31. With this cut in his regular rate of pay, Plaintiff Newsham suffered unlawful
2 retaliation for having engaged in protected activity.

3 32. As a result of this retaliatory pay cut, Plaintiff Newsham has suffered mental and
4 emotional distress.

5 **FIRST CLAIM FOR RELIEF**

6 **Failure to Pay Overtime Compensation in Violation of the Fair Labor Standards Act**

7 **(On Behalf of Plaintiffs and the Collective Class)**

8 33. Plaintiffs, on behalf of themselves and the collective class, allege and incorporate
9 by reference the allegations in the preceding paragraphs.

10 34. Plaintiffs consent in writing to be a party of this action, pursuant to 29 U.S.C. §
11 216(b). Plaintiffs' written consent forms were previously filed with this Court. Plaintiffs
12 anticipate that other individuals will continue to sign consent forms and join as plaintiffs.

13 35. At all relevant times, Defendants have been, and continue to be, "employers"
14 engaged in interstate commerce and/or in the production of goods for commerce, within the
15 meaning of the FLSA, 29 U.S.C. § 203. At all relevant times, Defendants have employed and
16 continues to employ employees, including Plaintiffs, and the Collective Class. At all relevant
17 times, upon information and belief, Defendants have had gross operating revenues in excess of
18 \$500,000.00.

19 36. The FLSA requires each covered employers such as Defendants to compensate all
20 non-exempt employees at a rate of not less than one and one-half times the regular rate of pay for
21 work performed in excess of forty hours per work week.

22 37. During their employment with Defendants, within the applicable statute of
23 limitations, Plaintiffs and the other Collective Class members worked in excess of forty hours per
24 workweek. Despite the hours worked by Plaintiffs and the Collective Class members, Defendants
25 willfully, in bad faith, and in knowing violation of the Federal Fair Labor Standards Act, failed
26 and refused to pay them the appropriate overtime compensation for all the hours worked in excess
27 of forty.
28

1 38. By failing to accurately record, report, and/or preserve records of hours worked by
2 Plaintiffs and the Collective Class, Defendants have failed to make, keep, and preserve records
3 with respect to each of its employees sufficient to determine their wages, hours, and other
4 conditions and practice of employment, in violation of the FLSA, 29 U.S.C. § 201, *et seq.*

5 39. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA,
6 within the meaning of 29 U.S.C. § 255(a).

7 40. Plaintiffs, on behalf of themselves and the Collective Class, seek damages in the
8 amount of their respective unpaid overtime compensation, liquidated damages from three years
9 immediately preceding the filing of this action, plus interests and costs as allowed by law,
10 pursuant to 29 U.S.C. §§ 216(b) and 255(a), and such other legal and equitable relief as the Court
11 deems just and proper.

12 41. Plaintiffs, on behalf of themselves and the Collective Class, seek recovery of their
13 attorneys' fees and costs to be paid by Defendants, as provided by the FLSA, 29 U.S.C. § 216(b).

14 **SECOND CLAIM FOR RELIEF**

15 **Failure to Pay Overtime Compensation in Violation of California Law**

16 **(On Behalf of the California Plaintiff and the California Class)**

17 42. Plaintiff Pearson, on behalf of herself and the California Class, alleges and
18 incorporates by reference the allegations in the preceding paragraphs.

19 43. At all relevant times herein, IWC Wage Order No. 7 (8 C.C.R. § 11070) and
20 California Labor Code §510 required an employer, like Defendants, to pay overtime premium(s)
21 for hours worked in excess of 8 in a given workday, 40 in a given workweek, or on the seventh
22 day worked in a single workweek. Pursuant to California Labor Code § 1198, it is unlawful to
23 employ persons for hours longer than the hours set by the Industrial Welfare Commission
24 ("IWC"), or under conditions prohibited by the applicable wage orders of the IWC.

25 44. Plaintiff Pearson is informed and believes, and thereon alleges, that members of
26 the Class worked in excess of eight hours per day and in excess of 40 hours per week, and
27 Defendants unlawfully failed to pay members of the Class the proper overtime compensation
28 required in violation of IWC Wage Order 7 (8 C.C.R. § 11070), and the California Labor Code §§

1 510 and 1198. Pursuant to California Labor Code § 1194, the Plaintiff Pearson and the other
2 Class members are entitled to recover their unpaid overtime compensation.

3 45. As a direct and proximate result of Defendants' unlawful conduct, as set forth
4 herein, Plaintiff Pearson and the Class have sustained damages, including loss of earnings for
5 hours of overtime worked on behalf of Defendants in an amount to be established at trial, plus
6 interest, attorneys' fees and costs.

7 THIRD CLAIM FOR RELIEF

8 Failure to Provide Accurate Itemized Wage Statements

9 (On Behalf of the California Plaintiff and the California Class)

10 46. Plaintiff Pearson, on behalf of herself and the California Class, alleges and
11 incorporates by reference the allegations in the preceding paragraphs.

12 47. California Labor Code § 226(a) provides that, at the time of each payment of
13 wages, an employer shall provide each employee with a wage statement itemizing, among other
14 things, the total hours worked by the employee in the pay period. California Labor Code § 226(e)
15 provides that an employee suffering injury as a result of a knowing and intentional failure by an
16 employer to comply with Labor Code § 226(a) may recover the greater of his or her actual
17 damages or a penalty of \$50 for the initial pay period in which a violation occurs and \$100 per
18 employee for each violation in a subsequent pay period (up to a maximum of \$4,000), in addition
19 to attorneys fees and costs.

20 48. Defendants knowingly and intentionally failed to provide timely, accurate,
21 itemized wage statements including, *inter alia*, hours worked, to Plaintiff Pearson and the
22 California Class in accordance with Labor Code § 226(a). Such failure caused injury to Plaintiff
23 Pearson and the California Class members, by, among other things, impeding them from knowing
24 the total hours worked and the amount of wages to which they are and were entitled. The
25 California Plaintiff and the California Class are therefore entitled to the damages and penalties
26 provided for under Labor Code § 226(e). Pursuant to Labor Code section 226(g), the California
27 Plaintiff and the California Class are also entitled to and seek injunctive relief requiring
28 Defendants to comply with Labor Code 226(a).

FIFTH CLAIM FOR RELIEF

Failure to Provide Rest Breaks and Meal Periods

(On Behalf of the California Plaintiff and the California Class)

49. Plaintiff Pearson, on behalf of herself and the California Class, alleges and incorporates by reference the allegations in the preceding paragraphs.

50. California Labor Code section 512 prohibits an employer from employing an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, or for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.

51. Section 11 of Wage Order No. 7 provides (and at all times relevant hereto provided) in relevant part that:

No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time. If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided. In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

52. Section 12 of Wage Order No. 7 provides (and at all times relevant hereto provided) in relevant part that:

Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The

1 authorized rest period time shall be based on the total hours worked daily at the
2 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.
3 However, a rest period need not be authorized for employees whose total daily
4 work time is less than three and one-half (3 1/2) hours. Authorized rest period time
5 shall be counted as hours worked for which there shall be no deduction from
6 wages. If an employer fails to provide an employee a rest period in accordance
7 with the applicable provisions of this order, the employer shall pay the employee
8 one (1) hour of pay at the employee's regular rate of compensation for each
9 workday that the rest period is not provided.

6 53. California Labor Code section 226.7 prohibits any employer from requiring any
7 employee to work during any meal or rest period mandated by an applicable IWC wage order,
8 and provides that an employer that fails to provide an employee with a required rest break or meal
9 period shall pay that employee one additional hour of pay at the employee's regular rate of
10 compensation for each work day that the employer does not provide a compliant meal or rest
11 period.

12 54. Defendants failed to provide Plaintiff Pearson and California Class members with
13 meal periods as required by law, and failed to authorize and permit the Plaintiff and Class
14 members to take rest periods as required by law. Plaintiff and the Class members are therefore
15 entitled to payment of the meal and rest period premiums as provided by law.

16 SIXTH CLAIM FOR RELIEF

17 **Unfair Practice under the Unfair Competition Act**

18 **(On Behalf of the California Plaintiff and the California Class)**

19 55. Plaintiff Pearson, on behalf of herself and the California Class, alleges and
20 incorporates by reference the allegations in the preceding paragraphs.

21 56. Section 17200 of the California Business and Professions Code — California's
22 Unfair Competition Law — prohibits unfair competition by prohibiting, *inter alia*, any unlawful
23 or unfair business acts or practices. The foregoing conduct by Defendants, as alleged, constitutes
24 unlawful business actions and practices in violation of Section 17200, *et seq.*

25 57. Pursuant to Business and Professions Code § 17200 *et seq.*, Plaintiff Pearson and
26 the California Class members are entitled to restitution of the overtime earnings, vacation time,
27 and other unpaid wages and premiums alleged herein that Defendants have improperly withheld
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1 and retained during a period that commences four years prior to the filing of this action, a
2 permanent injunction requiring Defendants to pay overtime and meal/rest premiums to all
3 workers as defined herein, in California, an award of attorneys' fees pursuant to Code of Civil
4 Procedure section 1021.5, and other applicable law, and costs.

5 **SEVENTH CLAIM FOR RELIEF**

6 **Breach of Oral and Written, Express and Implied Contract**

7 **(On Behalf of the California Plaintiff and the California Class)**

8 58. Plaintiff Pearson, on behalf of herself and the California Class, alleges and
9 incorporates by reference the allegations in the preceding paragraphs.

10 59. Plaintiff Pearson and the California Class members were promised as a condition
11 of their employment and in consideration for their labor that they would accrue vacation based on
12 their number of hours worked.

13 60. In violation of this contract, which was oral and written, express and implied,
14 Defendants have not paid the California Plaintiff and the California Class vacation time for their
15 overtime hours worked.

16 61. Plaintiff Pearson and the California Class members are entitled to payment or
17 crediting of the missing vacation time, plus interest, and any other relief available under the
18 common law of contracts, in an amount to be determined at trial.

19 **EIGHTH CLAIM FOR RELIEF**

20 **Failure to Pay Overtime Compensation in Violation of New York Law, on Behalf of New**

21 **York Named Plaintiff and the New York Class**

22 **(On Behalf of the New York Plaintiff and New York Class)**

23 62. Plaintiff Newsham, on behalf of himself and the New York Class, alleges and
24 incorporates by reference the allegations in the preceding paragraphs.

25 63. At all times relevant to this action, the New York Named Plaintiff and the New
26 York Rule 23 Class were employed by Defendants within the meaning of New York Labor Law,
27 Article 19.
28

1 64. By the course of conduct set forth above, Defendants have violated the New York
2 Labor Law Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor
3 Regulations, 12 N.Y.C.R.R. Part 142 ("New York Labor Law").

4 65. New York Labor Law requires employers, such as Defendants, to pay overtime
5 compensation to all non-exempt employees. The New York Labor Law also requires an employer
6 to pay employees for all hours worked at the agreed upon rate of pay.

7 66. Defendants have had a policy and practice of failing and refusing to pay proper
8 overtime pay to the New York Named Plaintiff and to the New York Rule 23 Class for their hours
9 worked.

10 67. As a result of Defendants' failure to pay wages earned and due, and their decision
11 to withhold wages earned and due to the New York Named Plaintiff and the New York Rule 23
12 Class, Defendants have violated and continues to violate the New York Labor Law.

13 68. The New York Named Plaintiff, on behalf of himself and the New York Rule 23
14 Class, seeks the amount of the underpayments based on Defendants' failure to pay one and one
15 half times the regular rate of pay for work performed in excess of forty per week, as provided by
16 the New York Labor Law, and such other legal and equitable relief from Defendants' unlawful
17 and willful conduct as the Court deems just and proper. The New York Named Plaintiff does not
18 seek liquidated damages on behalf of the New York Rule 23 Class.

19 69. The New York Named Plaintiff, on behalf of himself and the New York Rule 23
20 Class, seeks recovery of attorneys' fees and costs to be paid by Defendants as provided by the
21 New York Labor Law.

22 **NINTH CLAIM FOR RELIEF**

23 **Breach of Oral and Written, Express and Implied Contract**
24 **(On Behalf of the New York Plaintiff and the New York Class)**

1 70. Plaintiff Newsham, on behalf of himself and the New York Class, alleges and
2 incorporates by reference the allegations in the preceding paragraphs.

3 71. Plaintiff Newsham and the New York Class members were promised as a
4 condition of their employment and in consideration for their labor that they would accrue
5 vacation based on their number of hours worked.

6 72. In violation of this contract, which was oral and written, express and implied,
7 Defendants have not paid the New York Plaintiff and the New York Class vacation time for their
8 overtime hours worked.

9 73. Plaintiff Newsham and the New York Class members are entitled to payment or
10 crediting of the missing vacation time, plus interest, and any other relief available under the
11 common law of contracts, in an amount to be determined at trial.

12 **TENTH CLAIM FOR RELIEF**

13 **Retaliation for Filing a New York State Wage Complaint**

14 **(On Behalf of Dennis Newsham)**

15 74. Plaintiff Newsham alleges and incorporates by reference the allegations in the
16 preceding paragraphs.

17 75. Under New York Labor Law §215, “[n]o employer...shall discharge, penalize, or
18 in any other manner discriminate against any employee because such employee has made a
19 complaint to his employer....”

20 76. On March 24, 2009, Plaintiff Newsham engaged in protected activity under New
21 York’s Labor Laws by filing this lawsuit.

22 77. Less than two months after filing this suit stating that his position was
23 misclassified as exempt from overtime, Plaintiff Newsham was notified by Defendants (his
24 employers) that Defendants are reclassifying his position as non-exempt from overtime (as sought
25 in this lawsuit), but in the process, reducing his regular rate of pay from \$37.1274/hour to
26 \$31.27/hour.

27 78. Plaintiff Newsham’s pay cut is an adverse employment action prohibited by New
28 York Labor Law §215.

1 79. Plaintiff Newsham's reclassification, resulting in the pay cut, is a direct and
2 proximate result of his prior protected activity.

3 80. As a result of this retaliation, Plaintiff Newsham has suffered mental and
4 emotional distress.

5 81. As a result of the retaliation, Plaintiff Newsham is and will continue to be entitled
6 to backpay, compensatory and punitive damages, along with interest, attorneys' fees, and all other
7 relief available under New York Labor Law §215, in an amount to be determined at trial.

8 **ELEVENTH CLAIM FOR RELIEF**

9 **Retaliation for Filing a Fair Labor Standards Act Complaint**

10 **(On Behalf of Dennis Newsham)**

11 82. Plaintiff Newsham alleges and incorporates by reference the allegations in the
12 preceding paragraphs.

13 83. The FLSA, 29 U.S.C. §215(a)(3), makes it unlawful:

14 to discharge or in any other manner discriminate against any employee because
15 such employee has filed any complaint or instituted or caused to be instituted any
16 proceeding under or related to this chapter, or has testified or is about to testify to
17 in any such proceeding, or has served or is about to serve on an industry
committee.

18 84. The FLSA's anti-retaliation provision encourages reports of illegal activity,
19 protecting any employee who protests about the failure to pay overtime wages.
20

21 85. Because Plaintiff Dennis Newsham filed a lawsuit complaining of wage payment
22 and overtime violations, and therefore, engaged in protected activity under the FLSA, and was
23 retaliated against with a pay cut, he is entitled to relief including but not limited to reimbursement
24 of lost wages and benefits and interest thereon, damages, payment of reasonable attorney's fees,
25 and the posting of notices to employees.
26 .

27 **PRAYER FOR RELIEF**

1 86. WHEREFORE, Plaintiffs, on behalf of themselves and all members of the
2 Collective and State Classes, pray for relief as follows:

- 3 A. That the Court determine that this action may proceed as a class action
4 under Rule 23(b)(1) and (3) of the Federal Rules of Civil Procedure;
- 5 B. That Defendants are found to have violated the overtime, meal/rest period,
6 itemized wage statement/time records, and failure to timely pay wages
7 penalty provisions of the state wage laws cited above as to the respective
8 State Classes;
- 9 C. That Defendants are found to have violated the overtime provisions of the
10 Federal Fair Labor Standards Act as to Plaintiffs and the Collective Class;
- 11 D. That Defendants are found to have violated the FLSA by failing to
12 maintain accurate time records of all the hours worked by Plaintiffs and
13 the Collective Class;
- 14 E. That Defendants are found to have retaliated against Dennis Newsham for
15 having engaged in protected activity under New York and Federal
16 wage/hour laws, causing him wage loss, and emotional and mental
17 distress, along with other damages;
- 18 F. That Defendants' violations as described above are found to be willful;
- 19 G. An award to Plaintiffs and the Classes for the amount of unpaid wages
20 owed, liquidated damages and penalties where provided by state and
21 federal law, and interest thereon, subject to proof at trial;
- 22 H. That Defendants be ordered and enjoined to pay restitution to Plaintiffs
23 and the Classes due to Defendants' unlawful activities, pursuant to
24 California and New York state laws cited above;
- 25 I. That Defendants be required to compensate Plaintiffs and the State
26 Classes for vacation time accrued pursuant to the contract and implied
27 contract, based upon actual hours worked, including overtime hours;
- 28 J. That Defendants are required to pay Plaintiff Newsham backpay with

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interest and punitive damages for his retaliatory pay cut, among other relief;

K. That Defendants further be enjoined to cease and desist from unlawful activities in violation of state laws cited above;

L. That the Court grant declaratory relief stating that Defendants' scheme is unlawful;

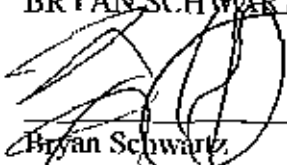
M. For an award of reasonable attorneys' fees and costs pursuant to 29 U.S.C. section 216 and/or other applicable state laws; and

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

DEMAND FOR JURY TRIAL

87. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs, individually and on behalf of all others similarly situated, demand a trial by jury.

Dated: May 29, 2009

BRYAN SCHWARTZ LAW

By: _____
Bryan Schwartz
ATTORNEY FOR PLAINTIFFS AND THE
RELATIVE CLASS

CERTIFICATE OF SERVICE

Pearson, et al. v. Samsonite Company Stores, Inc., et al.

On May 29, 2009, I caused the following document(s):

FIRST AMENDED COMPLAINT FOR DAMAGES, RESTITUTION, AND
INJUNCTIVE RELIEF

to be served via email to the following:

Samsonite Company Stores, Inc., and Samsonite Corporation

c/o Daniel Lee
Wilson, Elser, Moskowitz, Edelman & Dicker, LLP
daniel.lee@wilsonelser.com

and

c/o Martin K. Deniston
Wilson, Elser, Moskowitz, Edelman & Dicker, LLP
Martin.Deniston@wilsonelser.com

I hereby certify under the penalty of perjury of the laws of the United States of America, pursuant to 28 U.S.C. §1746, that the foregoing is true and correct.

Executed On: May 29, 2009

BRYAN SCHWARTZ LAW

/s/Bryan J. Schwartz

Bryan J. Schwartz (CA Bar 209903)
180 Grand Avenue, Ste. 1550
Oakland, California 94612
Telephone (510) 444-9300
ATTORNEY FOR PLAINTIFF