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John A. Clark, Executive Officer/Clerk
By [Signature] Deputy
S-2125

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES

11 MARK BRODY, on behalf)
12 of himself and others)
13 similarly situated,)
14 Plaintiffs,)
15 v.)
16 ASTRAZENECA)
17 PHARMACEUTICALS LP; and)
18 DOES 1 to 50, Inclusive,)
19 Defendants.)

CASE NO.: BC358803
CLASS ACTION COMPLAINT FOR:
1. Failure to Pay Overtime
2. Failure to Provide Required Meal Break Under Labor Code §226.7
3. Penalties Pursuant to Labor Code §203
4. Violation of Business & Professions Code §17200

19 Plaintiff MARK BRODY on behalf of himself and all others
20 similarly situated, complain of defendants, and each of them, as
21 follows:

22 I

23 INTRODUCTION

24 1. This is a Class Action, pursuant to Code of Civil Procedure
25 §382, on behalf of plaintiff and all individuals who hold or held
26 the position of "Sales Representative" or "Pharmaceutical Sales
27
28

1 Specialist" who are employed by, or formerly employed by **ASTRAZENECA**
2 **PHARMACEUTICALS LP**, and any subsidiaries or affiliated companies
3 (hereinafter referred to as "ASTRAZENECA" or "defendants") within
4 the State of California.

5 2. For at least four (4) years prior to the filing of this
6 action continuing to the present, defendants have had a consistent
7 policy of failing to pay overtime to all "sales representatives" for
8 all work over eight (8) hours per day or forty (40) per week.

9 3. For at least four (4) years prior to the filing of this
10 action and continuing to the present, defendants have had a
11 consistent policy of requiring sales representatives within the
12 State of California, including plaintiff, to work at least five (5)
13 hours without an uninterrupted meal period and failing to pay such
14 employees one (1) hour of pay at the employees regular rate of
15 compensation for each workday that the meal period is not provided
16 or provided after five (5) hours, as required by California state
17 wage and hour laws.

18 4. Plaintiff, on behalf of himself and all proposed class
19 members, bring this action pursuant to Labor Code §§201, 202, 203,
20 226.7, 510, 512, 1194, 1197, and 1199 seeking proper overtime
21 compensation, unpaid meal period compensation, injunctive and other
22 equitable relief, and reasonable attorneys' fees and costs.

23 5. Plaintiff, on behalf of himself and all proposed class
24 members, pursuant to Business & Professions Code §§17200-17208, also
25 seek injunctive relief, restitution, and disgorgement of all
26 benefits defendants enjoyed from their failure to pay overtime, and
27 meal period compensation.

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1 II

2 PARTIES

3 A. Plaintiffs

4 6. Venue as to each defendant is proper in this judicial
5 district, pursuant to Code of Civil Procedure §395. The unlawful
6 acts alleged herein have a direct effect on plaintiff and those
7 similarly situated within the State of California.

8 7. Plaintiff MARK BRODY is a resident of Santa Barbara County,
9 California.

10 8. As an "Sales Representative", plaintiff was regularly
11 required to:

12 (a) Work over eight (8) hours per day or forty (40) per
13 week without being provided premium overtime pay rates; and

14 (b) Work in excess of five (5) hours per day without
15 being provided a meal period and not being compensated one (1) hour
16 of pay at the regular rate of compensation for each workday that a
17 meal period was not provided or provided after five (5) hours, all
18 in violation of California labor laws, regulations, and Industrial
19 Welfare Commission Wage Orders.

20 9. Defendants willfully failed to compensate them for wages
21 at the termination of their employment with defendants.

22 B. Defendants

23 10. Defendant ASTRAZENECA is a Delaware Limited Partnership.
24 They employ several employees and do business in the State of
25 California. The limited partnership is located at 1800 Concord Pike,
26 Wilmington, DE 19850. Defendants employed plaintiff and similarly
27 situated persons as "sales representatives" within California.
28 Defendant's regional headquarters was in Woodland Hills, CA.

1 11. The true names and capacities, whether individual,
2 corporate, associate, or otherwise, of defendants sued herein as
3 DOES 1 to 50, inclusive, are currently unknown to plaintiff, who
4 therefore sue defendants by such fictitious names under Code of
5 Civil Procedure §474. Plaintiff is informed and believes, and based
6 thereon alleges, that each of the defendants designated herein as a
7 DOE are legally responsible in some manner for the unlawful acts
8 referred to herein. Plaintiff will seek leave of court to amend this
9 Complaint to reflect the true names and capacities of the defendants
10 designated hereinafter as DOES when such identities become known.

11 12. Plaintiff is informed and believes, and based thereon
12 alleges, that each defendant acted in all respects pertinent to this
13 action as the agent of the other defendants, carried out a joint
14 scheme, business plan or policy in all respects pertinent hereto,
15 and the acts of each defendant are legally attributable to the other
16 defendants. Furthermore, defendants in all respects acted as the
17 employer and/or joint employer of plaintiff and the proposed class.

18 13. The claims of the class members in the aggregate exceed
19 \$5,500,000.00.

20 III

21 FACTUAL BACKGROUND

22 14. Defendant hires "sales representatives" who work throughout
23 California. These employees work in non-exempt positions and on a
24 regular basis work over eight (8) hours per day or over forty (40)
25 hours per week without the proper overtime compensation. In
26 addition, plaintiff and the members of the class were regularly
27 required to work in excess of five (5) hours per day, without being
28 provided a meal period.

1 15. Plaintiff and the proposed class are, and at all times
2 pertinent hereto, have been non-exempt employees within the meaning
3 of the California Labor Code; and the implementing rules and
4 regulations of the IWC California Wage Orders.

5 16. Plaintiff and the class members did not sell tangible or
6 intangible items nor obtain orders nor contracts for products,
7 services nor use of facilities. Therefore, the outside sales
8 explanation would not be applicable.

9 17. Defendants' requirement that plaintiff and the members of
10 the class work over eight (8) hours per day and/or forty (40) hours
11 per week without the proper overtime compensation was willful and
12 deliberate. Defendants' willfully failed to pay overtime compen-
13 sation when each employee quit or was discharged.

14 18. Defendants' requirement that plaintiff and the class work
15 through meal periods without paying legal compensation for failure
16 to provide meal periods was willful and deliberate. Defendants
17 willfully failed to pay one hours wages in lieu of meal periods,
18 when each employee quit or was discharged.

19 19. Defendants have failed to comply with Industrial Welfare
20 Commission ("IWC") Wage Order 4-2001(7) by failing to maintain time
21 records showing when the employee begins and ends each work period,
22 meal periods, and total daily hours worked by itemizing in wage
23 statements all deductions from payment of wages and accurately
24 reporting total hours worked by plaintiff and the members of the
25 proposed class.

26 20. Plaintiff and the class are covered by California
27 Industrial Welfare Commission Occupational Wage Order No. 4-2001,
28 California Industrial Welfare Commission in No. 4 (Title 8 Cal. Code

1 of Reg. §§11040).

2 IV

3 CLASS ACTION ALLEGATIONS

4 21. Plaintiff brings this action on behalf of himself and all
5 others similarly situated as a Class Action pursuant to §382 of the
6 Code of Civil Procedure. Plaintiff seeks to represent a class
7 composed of and defined as follows:

8 All persons who are employed or have been
9 employed as "sales representatives" by defendants
10 in the State of California and for at least four
11 (4) years prior to the filing of this action.

12 22. Plaintiff reserves the right under Rule 1855(b), California
13 Rules of Court, to amend or modify the class description with
14 greater specificity or further division into subclasses or
15 limitation to particular issues.

16 23. This action has been brought and may properly be maintained
17 as a class action under the provisions of §382 of the Code of Civil
18 Procedure because there is a well-defined community of interest in
19 the litigation and the proposed class is easily ascertainable.

20 A. Numerosity

21 24. The potential members of the proposed class as defined are
22 so numerous that joinder of all the members of the proposed class is
23 impracticable. While the precise number of proposed class members
24 has not been determined at this time, plaintiff is informed and
25 believes that defendants currently employ, and during the relevant
26 time periods employed, over 1,000 "sales representatives".

27 25. Accounting for employee turnover during the relevant
28 periods necessarily increases this number substantially. Plaintiff
alleges defendants' employment records would provide information as

1 to the number and location of all proposed class members. Joinder
2 of all members of the proposed class is not practicable.

3 **B. Commonality**

4 26. There are questions of law and fact common to the proposed
5 class that predominate over any questions affecting only individual
6 class members. These common questions of law and fact include,
7 without limitation:

8 (a) Whether defendants failed to pay overtime
9 compensation as required by the Labor Code and Wage Orders;

10 (b) Whether defendants violated Labor Code §§226.7 and
11 512, IWC Wage Order 4-2001 or other applicable IWC Wage Orders, by
12 failing to provide meal periods on days they worked in excess of
13 five (5) hours and failing to compensate said employees one (1)
14 hours wages in lieu of meal periods;

15 (c) Whether defendants violated §§201-203 of the Labor
16 Code by failing to pay compensation due and owing at the time that
17 any proposed class member's employment with defendants terminated;

18 (d) Whether defendants violated §17200 et seq. of the
19 Business & Professions Code by failing to provide overtime wages and
20 meal period compensation to "sales representatives"; and

21 (e) Whether plaintiff and the members of the proposed
22 class are entitled to equitable relief pursuant to Business &
23 Professions Code §17200, et. seq.

24 **C. Typicality**

25 27. The claims of the named plaintiff are typical of the claims
26 of the proposed class. Plaintiff and all members of the proposed
27 class sustained injuries and damages arising out of and caused by
28 defendants' common course of conduct in violation of laws,

1 regulations that have the force and effect of law and statutes as
2 alleged herein.

3 **D. Adequacy of Representation**

4 28. Plaintiff will fairly and adequately represent and protect
5 the interests of the members of the proposed class. Counsel who
6 represents plaintiff is competent and experienced in litigating
7 large employment class actions.

8 **E. Superiority of Class Action**

9 29. A class action is superior to other available means for the
10 fair and efficient adjudication of this controversy. Individual
11 joinder of all proposed class members is not practicable, and
12 questions of law and fact common to the proposed class predominate
13 over any questions affecting only individual members of the proposed
14 class. Each member of the proposed class has been damaged and is
15 entitled to recovery by reason of defendants' illegal policy and/or
16 practice of failing to compensate class members at the legal
17 overtime rates, denying class members meal periods without legal
18 compensation.

19 30. Class action treatment will allow those similarly situated
20 persons to litigate their claims in the manner that is most
21 efficient and economical for the parties and the judicial system.
22 Plaintiff is unaware of any difficulties that are likely to be
23 encountered in the management of this action that would preclude its
24 maintenance as a class action.

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FIRST CAUSE OF ACTION

FAILURE TO PAY OVERTIME

(LABOR CODE §§1194, 1199)

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2
3
4
5 31. Plaintiff incorporates paragraphs 1 through 30 as though
6 fully set forth herein.

7 32. By their policy of requiring plaintiff to work in excess
8 of eight (8) hours in a workday and/or forty (40) hours in a
9 workweek without compensating plaintiff at the rate of time and one-
10 half (1 1/2). In engaging in such conduct, defendant wilfully
11 violated the provisions of Labor Code §1194.

12 33. As previously alleged, plaintiff and others were forced to
13 work on a regular and consistent basis, more than eight (8) hours a
14 day and/or forty (40) hours per week. Plaintiff was not compensated
15 for said work at premium rates.

16 34. As a result of the unlawful acts of defendants, plaintiff
17 has been deprived of overtime an amount to be determined at trial,
18 and are entitled to recovery of such amounts, plus interest and
19 penalties thereon, attorneys' fees, and costs, pursuant to Labor
20 Code §§1194 and 218.5.

SECOND CAUSE OF ACTIONFAILURE TO PROVIDE MEAL BREAK PER LABOR CODE §226.7

21
22
23
24 35. Plaintiff incorporates paragraphs 1 through 34 as though
25 fully set forth herein.

26 36. Labor Code §226.7 requires an employer to pay an additional
27 hour of compensation for each meal period the employer fails to
28 provide. Employees are entitled to a meal period of a least thirty

1 (30) minutes per five (5) hour work period. Plaintiff and the class
2 consistently worked over five (5) hour shifts. Pursuant to the
3 Code, plaintiff and the class are entitled to a meal period of not
4 less than thirty (30) minutes prior to exceeding five (5) hours of
5 employment.

6 37. Defendants failed to provide plaintiff and others with
7 timely meal breaks of not less than thirty (30) minutes as required
8 by the Labor Code during the relevant class period.

9 38. Pursuant to Labor Code §226.7, plaintiff is entitled to
10 damages in an amount equal to one (1) hour of wages per missed meal
11 break, in a sum to be proven at trial.

12 39. Pursuant to Labor Code §218.5 plaintiff requests that the
13 court award reasonable attorney's fees and costs incurred by him in
14 this action.

15 VII

16 THIRD CAUSE OF ACTION

17 WAITING TIME PENALTIES UNDER LABOR CODE §203

18 40. Plaintiff incorporates paragraphs 1 through 39 as though
19 fully set forth herein.

20 41. Numerous members of the proposed class are no longer
21 employed by defendants. They were either fired or quit defendants
22 employ.

23 42. The defendant's failure to pay wages, as alleged above was
24 willful in that defendants and each of them knew wages to be due but
25 failed to pay them, thus entitling plaintiff and the proposed class
26 to penalties under Labor Code §203, which provides that an
27 employee's wages shall continue as a penalty until paid for a period
28 of up to thirty (30) days from the time they were due.

1 43. Defendants have failed to pay plaintiff and others a sum
2 certain at the time of termination or within seventy-two (72) hours
3 of their resignation, and have failed to pay those sums for thirty
4 (30) days thereafter. Pursuant to the provisions of Labor Code
5 §203, plaintiff and the proposed class entitled to penalties in the
6 amount of plaintiff's and others daily wage multiplied by thirty
7 (30) days.

8 VIII

9 FOURTH CAUSE OF ACTION

10 UNFAIR COMPETITION PURSUANT TO

11 BUSINESS & PROFESSIONS CODE §17200

12 44. Plaintiff incorporates paragraphs 1 through 43 as though
13 fully set forth herein.

14 45. This is a Representative Private Attorney General Action
15 and Class Action for Unfair Business Practices. MARK BRODY on his
16 own behalf and on behalf of the general public, and on behalf of
17 others similarly situated, bring this claim pursuant to Business &
18 Professions Code §17200, et seq. The conduct of all defendants as
19 alleged in this Complaint has been and continues to be unfair,
20 unlawful, and harmful to plaintiff, the general public, and the
21 proposed class. Plaintiff seeks to enforce important rights
22 affecting the public interest within the meaning of Code of Civil
23 Procedure §1021.5.

24 46. Plaintiff is a "person" within the meaning of Business &
25 Professions Code §17204, and therefore has standing to bring this
26 cause of action for injunctive relief, restitution, and other
27 appropriate equitable relief.

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1 47. Business & Profession Code §17200, et seq. prohibits
2 unlawful and unfair business practices.

3 48. Wage and hour laws express fundamental public policies.
4 Providing employees with proper overtime compensation, meal and/or
5 rest breaks, and reimbursement of expenses are fundamental public
6 policies of this State and of the United States. Labor Code
7 §90.5(a) articulates the public policies of this State to enforce
8 vigorously minimum labor standards, to ensure that employees are not
9 required or permitted to work under substandard and unlawful
10 conditions, and to protect law-abiding employers and their employees
11 from competitors who lower their costs by failing to comply with
12 minimum labor standards.

13 49. Defendants have violated statutes and public policies.
14 Through the conduct alleged in this Complaint, defendants, and each
15 of them, have acted contrary to these public policies, have violated
16 specific provisions of the Labor Code, and have engaged in other
17 unlawful and unfair business practices in violation of Business &
18 Profession Code §17200, et seq., depriving plaintiff, and all
19 persons similarly situated, and all interested persons of rights,
20 benefits, and privileges guarantees to all employees under law.

21 50. Defendants' conduct, as alleged hereinabove, constitutes
22 unfair competition in violation of §17200 et. seq. of the Business
23 & Professions Code.

24 51. Defendants by engaging in the conduct herein alleged, by
25 not providing overtime compensation and proper breaks either knew or
26 in the exercise of reasonable care should have known that the
27 conduct was unlawful. As such it is a violation of §17200 et. seq.
28 of the Business & Professions Code.

1 52. As a proximate result of the above mentioned acts of
2 defendants, plaintiff and others similarly situated have been
3 damaged in a sum as may be proven.

4 53. Unless restrained by this Court, defendants will continue
5 to engage in the unlawful conduct as alleged above. Pursuant to
6 Business & Professions Code this Court should make such orders or
7 judgments, including the appointment of a receiver, as may be
8 necessary to prevent the use or employment, by defendants, their
9 agents or employees, of any unlawful or deceptive practice
10 prohibited by the Business & Professions Code, and/or, including but
11 not limited to, disgorgement of profits which may be necessary to
12 restore plaintiff and the proposed class members to the money
13 defendants have unlawfully failed to pay.

14
15 **RELIEF REQUESTED**

16 **WHEREFORE**, plaintiff prays for the following relief:

17 1. For overtime in an amount according to proof, with interest
18 thereon;

19 2. For compensatory damages in the amount of plaintiff's and
20 each class members' hourly wage for each meal period missed or taken
21 late from at least four (4) years prior to the filing of this action
22 to the present as may be proven;

23 3. For restitution of the expenses incurred on behalf of
24 defendants;

25 4. For penalties pursuant to Labor Code §203 for all employees
26 who quit or were fired equal to their daily wage times thirty (30)
27 days;

28 5. An award of prejudgment and post judgment interest;

1 6. An order enjoining defendant and its agents, servants, and
2 employees, and all persons acting under, in concert with, or for it
3 from providing plaintiff and each class member with proper overtime
4 compensation and meal breaks pursuant to Labor Code §§ 226.7, 512,
5 and IWC 4-2001;

6 7. For restitution for unfair competition pursuant to Business
7 & Professions Code §17200, including disgorgement or profits, in an
8 amount as may be proven;

9 8. An award providing for payment of costs of suit;

10 9. An award of attorneys' fees; and

11 10. Such other and further relief as this Court may deem proper
12 and just.

13
14 DEMAND FOR JURY TRIAL

15 Plaintiffs hereby demand trial of their claims by jury to the
16 extent authorized by law.

17
18 DATED: September 19, 2006

KINGSLEY & KINGSLEY, APC

19
20 By: 

ERIC B. KINGSLEY
Attorney For Plaintiffs