

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE WACHOVIA TOWER
1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 891-9800

1 Scott Edward Cole, Esq. (S.B. # 160744)
2 Molly A. DeSario, Esq. (S.B. #230763)
3 Stephen Noel Ilg, Esq. (S.B. #275599)
4 **SCOTT COLE & ASSOCIATES, APC**
5 1970 Broadway, Ninth Floor
6 Oakland, California 94612
7 Telephone: (510) 891-9800
8 Facsimile: (510) 891-7030
9 Web: www.scalaw.com

10 Attorneys for Representative Plaintiff
11 and the Plaintiff Class

12 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **IN AND FOR THE COUNTY OF LOS ANGELES**

14 THOMAS ALLEN, individually, and
15 on behalf of all others similarly
16 situated,

17 Plaintiff,

18 vs.

19 99 CENTS ONLY STORES, and
20 DOES 1 through 50, inclusive,

21 Defendants.

Case No.

CLASS ACTION

**COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF, AND RESTITUTION**

[Jury Trial Demanded]

22 Representative Plaintiff alleges as follows:

23 **PRELIMINARY STATEMENT**

24 1. This is a class action, brought on behalf of Thomas Allen (hereinafter
25 "Representative Plaintiff") and all other persons similarly situated ("Class Members") who are or
26 were employed as salaried managers by defendants 99 Cents Only Stores and Does 1 through 50,
27 inclusive (collectively "Defendant" or "99 Cents Only Stores") in any 99 Cents Only Stores
28 retail location in California within the applicable class period. The Representative Plaintiff, on
behalf of himself and the Class Members, seeks unpaid wages, including unpaid overtime
compensation, compensation for missed meal and rest periods, interest thereon and other

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1 penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs under,
2 *inter alia*, Title 8 of the California Code of Regulations, California Business and Professions
3 Code §§17200, *et seq.*, California Code of Civil Procedure §1021.5, and various provisions of
4 the California Labor Code.

5 2. The Class Period is designated as the time from March 18, 2007 through the date
6 of trial or settlement, based upon the allegation that the violations of California's wage and hour
7 laws, as described more fully below, have been ongoing throughout that time.

8 3. During the Class Period, Defendant has had a consistent policy of (1) permitting,
9 encouraging and/or requiring its allegedly overtime-exempt salaried managers, including the
10 Representative Plaintiff and Class Members, to work in excess of eight hours per day and in
11 excess of forty hours per week without paying them overtime compensation as required by
12 California's wage and hour laws, (2) unlawfully failing to provide the Representative Plaintiff
13 and Class Members statutorily-mandated meal and rest periods, and (3) willfully failing to
14 provide the Representative Plaintiff and the Class Members with accurate semi-monthly itemized
15 wage statements reflecting the total number of hours each worked, the applicable deductions, and
16 the applicable hourly rates in effect during the pay period.

17 4. In addition, Representative Plaintiff alleges, on information and belief, that
18 Defendant has had a consistent policy of willfully failing to pay compensation (including unpaid
19 overtime) in a prompt and timely manner to certain Class Members whose employment with
20 Defendant has terminated.

21
22 **INTRODUCTION**

23 5. Defendant 99 Cents Only Stores is a publicly traded company on the New York
24 Stock Exchange whose principal activity is operating retail stores which offer various discount
25 consumer products at \$0.99 or less. In 2010, Defendant reported over 1.3 billion dollars in
26 revenue.

27 6. Defendant operates more than 250 retail stores across Texas, Arizona, Nevada,
28 and California, including the one in which Representative Plaintiff worked as a salaried manager.

1 The Representative Plaintiff is informed and believes and, on that basis, alleges that within the
2 Class Period, Defendant employed numerous individuals in California in recent years who
3 occupied salaried manager positions at Defendant's retail locations in California, employment
4 positions which did not, and currently do not, meet any known test for exemption from the
5 payment of overtime wages and/or the entitlement to meal or rest periods.

6 7. Despite actual knowledge of these facts and legal mandates, Defendant has and
7 continues to enjoy an advantage over its competition and a resultant disadvantage to its workers
8 by electing not to pay premium (overtime, meal and rest period wages) and/or "penalty" (a.k.a.
9 "waiting time") wages to its salaried managers at its California retail locations.

10 8. Representative Plaintiff is informed and believes and, based thereon, alleges that
11 officers of Defendant knew of these facts and legal mandates yet, nonetheless, repeatedly
12 authorized and/or ratified the violation of the laws cited herein.

13 9. Despite Defendant's knowledge of Class Members' entitlement to overtime pay
14 and meal and/or rest periods for all applicable work periods, Defendant failed to provide the
15 same to the Class Members thereof, in violation of California state statutes, the applicable
16 California Industrial Welfare Commission Wage Order, and Title 8 of the California Code of
17 Regulations. This action is brought to redress and end this long-time pattern of unlawful conduct
18 once and for all.

19
20 **JURISDICTION AND VENUE**

21 10. This Court has jurisdiction over the Representative Plaintiff's and Class
22 Members' claims for unpaid wages and/or penalties under, *inter alia*, the applicable Industrial
23 Welfare Commission Wage Order, Title 8 of the California Code of Regulations, Labor Code
24 §§201-204, 226.7, 510, 512, 1194, 1198, and/or the California Code of Civil Procedure §1021.5.

25 11. This Court also has jurisdiction over the Representative Plaintiff's and Class
26 Members' claims for injunctive relief and restitution of ill-gotten benefits arising from
27 Defendant's unfair and/or fraudulent business practices under California Business & Professions
28 Code §17200, *et seq.*

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1 12. Venue as to Defendant is proper in this judicial district pursuant to Code of Civil
2 Procedure §395(a). Defendant maintains stores within the County of Los Angeles, transacts
3 business, has agents, and is otherwise within this Court's jurisdiction for purposes of service of
4 process. The unlawful acts alleged herein have and have had a direct effect on the Representative
5 Plaintiff and those similarly situated within the State of California and within the County of Los
6 Angeles. Defendant operates said facilities and has employed numerous Class Members in the
7 County of Los Angeles and throughout counties within the State of California.

8
9 **PLAINTIFF**

10 13. Representative Plaintiff Thomas Allen is a natural person who has been employed
11 as a salaried manager at 99 Cents Only Stores located in Sacramento, California, during the
12 Class Period. Representative Plaintiff is currently employed as a salaried manager at a 99 Cents
13 Only Stores retail location in Sacramento, California.

14 14. As used throughout this Complaint, the term "Class Members" refers to the
15 Representative Plaintiff herein as well as each and every person eligible for membership in the
16 class of persons as further described and defined herein.

17 15. At all times herein relevant, the Representative Plaintiff was and is now a person
18 within the class of persons further described and defined herein.

19 16. The Representative Plaintiff brings this action on behalf of himself and as a class
20 action, pursuant to California Code of Civil Procedure §382, on behalf of all persons similarly
21 situated and proximately damaged by the unlawful conduct described herein.

22
23 **DEFENDANTS**

24 17. Representative Plaintiff is informed and believes and, based thereon, alleges that
25 at all times herein relevant defendants 99 Cents Only Stores and Does 1 through 50 did business
26 within the state of California selling a variety of merchandise through its 99 Cents Only Stores
27 retail locations.

28 ///

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1 18. The defendants identified as Does 1 through 50, inclusive, are and were, at all
2 relevant times herein-mentioned, officers, directors, partners, and/or managing agents of some or
3 each of the remaining defendants. Representative Plaintiff is informed and believes and, on that
4 basis, alleges that at all relevant times herein mentioned, defendants 99 Cents Only Stores and
5 those identified as Does 1 through 50, inclusive, employed, and/or exercised control over the
6 wages, hours, and/or working conditions of the Representative Plaintiff and Class Members at
7 numerous California locations as identified in the preceding paragraph.

8 19. The Representative Plaintiff is unaware of the true names and capacities of those
9 defendants sued herein as Does 1 through 50, inclusive and, therefore, sues these defendants by
10 such fictitious names. The Representative Plaintiff will seek leave of Court to amend this
11 Complaint when such names are ascertained. The Representative Plaintiff is informed and
12 believes and, on that basis, alleges that each of the fictitiously-named defendants was responsible
13 in some manner for, gave consent to, ratified, and/or authorized the conduct herein alleged and
14 that the Representative Plaintiff's and Class Members' damages, as herein alleged, were
15 proximately caused thereby.

16 20. The Representative Plaintiff is informed and believes and, on that basis, alleges
17 that at all relevant times herein mentioned each of the defendants was the agent and/or employee
18 of each of the remaining defendants and, in doing the acts herein alleged, was acting within the
19 course and scope of such agency and/or employment.

20
21 **CLASS ACTION ALLEGATIONS**

22 21. Representative Plaintiff brings this action individually and as a class action on
23 behalf of all persons similarly situated and proximately damaged by 99 Cents Only Stores'
24 conduct including, but not necessarily limited to, the following Plaintiff Class:

25 "All persons who were employed as salaried managers by
26 Defendant in one or more of its 99 Cents Only Stores retail
27 locations in California at any time on or after March 18, 2007."

28 22. Defendant, its officers, and directors are excluded from the Plaintiff Class.

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

- a. Numerosity: A class action is the only available method for the fair and efficient adjudication of this controversy. The members of the Plaintiff Class are so numerous that joinder of all members is impractical, if not impossible, insofar as Representative Plaintiff is informed and believes and, on that basis, alleges that there are sufficient Class Members to meet the numerosity requirement. Membership in the Class will be determined upon analysis of employee and payroll, among other, records maintained by Defendant.

- b. Commonality: The Representative Plaintiff and the Class Members share a community of interests in that there are numerous common questions and issues of fact and law which predominate over any questions and issues solely affecting individual members, including, but not necessarily limited to:
 - 1) Whether defendant 99 Cents Only Stores violated IWC Wage Order and/or California Labor Code §510 by failing to pay overtime compensation to its salaried managers who worked in excess of forty hours per week and/or eight hours per day;
 - 2) Whether defendant 99 Cents Only Stores violated California Business and Professions Code §17200, *et seq.* by failing to pay overtime compensation to its salaried managers who worked in excess of forty hours per week and/or eight hours per day;
 - 3) Whether defendant 99 Cents Only Stores violated California Labor Code §1174 by failing to keep accurate records of employees' hours of work;
 - 4) Whether defendant 99 Cents Only Stores violated California Labor Code §§201-204 by failing to pay overtime wages due and owing at the time that certain Class Members' employment with Defendant terminated;
 - 5) Whether defendant 99 Cents Only Stores violated California Labor Code §226 by failing to provide the semimonthly itemized statements to Class Members of total hours worked by each and all applicable hourly rates in effect during the pay period; and
 - 6) Whether Class Members are entitled to "waiting time" penalties, pursuant to California Labor Code §203.

- c. Typicality: The Representative Plaintiff's claims are typical of the claims of Class Members. The Representative Plaintiff and Class Members sustained damages arising out of and caused by Defendant's common course of conduct in violation of law, as alleged herein.

- d. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes or may make it

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1 impractical for Class Members to seek redress individually for the wrongful
2 conduct alleged herein. Should separate actions be brought, or be required to
3 be brought, by each individual Class Member, the resulting multiplicity of
4 lawsuits would cause undue hardship and expense for the Court and the
litigants. The prosecution of separate actions would also create a risk of
inconsistent rulings which might be dispositive of the interests of other Class
Members who are not parties to the adjudications and/or may substantially
impede their ability to adequately protect their interests.

5 e. Adequacy of Representation: The Representative Plaintiff in this class action
6 is an adequate representative of the Plaintiff Class in that the Representative
7 Plaintiff's claims are typical of those of the Plaintiff Class and the
8 Representative Plaintiff has the same interest in the litigation of this case as
9 the Class Members. The Representative Plaintiff is committed to vigorous
10 prosecution of this case and has retained competent counsel who are
11 experienced in conducting litigation of this nature. The Representative
12 Plaintiff is not subject to any individual defenses unique from those
13 conceivably applicable to Class Members as a whole. The Representative
14 Plaintiff anticipates no management difficulties in this litigation.

11 COMMON FACTUAL ALLEGATIONS

12 24. As described herein, for years Defendant has knowingly failed to adequately
13 compensate those employees within the class definition identified above for all wages earned
14 (including premium wages such as overtime wages and/or compensation for missed meal and/or
15 rest periods) under the California Labor Code and the applicable IWC Wage Order, thereby
16 enjoying a significant competitive edge over other retailers.

17 25. Defendant has declined to pay these wages, even upon a Class Member's
18 termination or resignation from employment, in blatant violation of California Labor Code §201
19 and/or §202.

20 26. California Labor Code §§201 and 202 require Defendant to pay severed
21 employees all wages due and owed to the employee immediately upon discharge or within 72
22 hours of resignation of their positions, in most circumstances. California Labor Code §203
23 provides that an employer who willfully fails to timely pay such wages must, as a penalty,
24 continue to pay the subject employees' wages until the back wages are paid in full or an action is
25 commenced, and the payment of such penalty shall continue for a period of time up to 30 days.

26 27. Furthermore, despite its knowledge of the Representative Plaintiff's and the Class
27 Members' entitlement to compensation for all hours worked, Defendant violated California
28 Labor Code §1174(d) by failing to provide or require the use, maintenance, or submission of

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1 time records by members of the class. Defendant also failed to provide the Representative
2 Plaintiff and Class Members with accurate semimonthly itemized statements of the total number
3 of hours worked by each, and all applicable hourly rates in effect, during the pay period, in
4 violation of California Labor Code §226. In failing to provide the required documents,
5 Defendant has not only failed to pay its workers the full amount of compensation due but the
6 company has also, until now, effectively shielded itself from its employees' scrutiny by
7 concealing the magnitude and financial impact of its wrongdoing that such documents might
8 otherwise have led workers to discover.

9 28. Representative Plaintiff and all persons similarly situated are entitled to unpaid
10 compensation, yet, to date, have not received such compensation despite many of the same
11 having been terminated by and/or resigned from 99 Cents Only Stores. More than 30 days have
12 passed since certain Class Members have left Defendant's employ.

13 29. As a consequence of Defendant's willful conduct in not paying former employees
14 compensation for all hours worked in a prompt and timely manner, certain Class Members are
15 entitled to up to 30 days' wages as a penalty under California Labor Code §203, together with
16 attorneys' fees and costs.

17 30. As a direct and proximate result of Defendant's unlawful conduct, as set forth
18 herein, Representative Plaintiff and Class Members have sustained damages, as described above,
19 including compensation for loss of earnings for hours worked on behalf of Defendant, in an
20 amount to be established at trial. As a further direct and proximate result of Defendant's
21 unlawful conduct, as set forth herein, certain Class Members are entitled to recover "waiting
22 time" penalties (pursuant to California Labor Code §203) and penalties for failure to provide
23 semimonthly statements of hours worked and all applicable hourly rates (pursuant to California
24 Labor Code §226) in an amount to be established at trial. As a further direct and proximate result
25 of Defendant's unlawful conduct, as set forth herein, Representative Plaintiff and Class Members
26 are also entitled to recover costs and attorneys' fees pursuant to California Labor Code §1194
27 and/or California Civil Code §1021.5, among other authorities.

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1 31. Representative Plaintiff seeks injunctive relief prohibiting Defendant from
2 engaging in the complained-of illegal labor acts and practices in the future. Representative
3 Plaintiff also seeks restitution of costs incurred by Representative Plaintiff and Class Members
4 under California's Unfair Competition Law. Unless enjoined, Defendant's unlawful conduct will
5 continue unchecked, while Representative Plaintiff and Class Members bear the financial brunt
6 of Defendant's unlawful conduct. As a further direct and proximate result of Defendant's
7 unlawful conduct, as set forth herein, Representative Plaintiff and the Plaintiff Class are also
8 entitled to recover costs and attorneys' fees, pursuant to statute.

9
10 **FIRST CAUSE OF ACTION**
11 **UNLAWFUL FAILURE TO PAY OVERTIME WAGES**
12 **(Violation of IWC Wage Order 7 and California Labor Code §§ 510, 1194, and 1198)**

13 32. Representative Plaintiff incorporates in this cause of action each and every
14 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
15 herein.

16 33. During the Class Period, the Representative Plaintiff and the Class Members
17 worked, on many occasions, in excess of eight hours in a workday and/or 40 hours in a
18 workweek. The precise number of overtime hours will be proven at trial.

19 34. During the Class Period, Defendant refused to compensate the Representative
20 Plaintiff and Class Members for all of the overtime wages earned, in violation of the applicable
21 IWC Wage Order and provisions of the California Labor Code.

22 35. Moreover, during said time period, many of the Class Members herein were
23 employed by and thereafter terminated or resigned from their positions with Defendant yet were
24 not paid all wages due upon said termination or within 72 hours of said resignation of
25 employment therefrom. Said non-payment of all wages due was the direct and proximate result
26 of a willful refusal to do so by Defendant.

27 36. At all relevant times, Defendant was aware of, and was under a duty to comply
28 with, the overtime provisions of the California Labor Code including, but not limited to,
California Labor Code §§510, 1194, and 1198.

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37. California Labor Code §510(a), in pertinent part, provides:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee

38. California Labor Code §1194(a), in pertinent part, provides:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

39. California Labor Code §1198, in pertinent part, provides:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

40. By refusing to compensate the Representative Plaintiff and Class Members for overtime wages earned, Defendant violated those California Labor Code provisions cited herein as well as the applicable IWC Wage Order(s).

41. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, the Representative Plaintiff and the Plaintiff Class have sustained damages, including loss of earnings for hours of overtime worked on behalf of Defendant, in an amount to be established at trial, and are entitled to recover attorneys' fees and costs of suit.

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE MEAL AND REST PERIODS
(California Labor Code §§ 226.7 and 512)

42. Representative Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

43. At all relevant times, Defendant was aware of and was under a duty to comply with California Labor Code §226.7 and §512.

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1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 891-9800

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44. California Labor Code §226.7 provides:
- (a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
 - (b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

45. Moreover, California Labor Code §512(a) provides:
- An employer may not employ 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, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee 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, 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.

46. Sections 11 and 12, respectively, of the applicable IWC Wage Order mandate that employers provide all applicable meal and/or rest periods to non-exempt (including exempt-misclassified) employees.

47. Section 11 of the applicable IWC Wage Order provides:
- (A) 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...
 - (B) 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...
 - (C) 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.

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ATTORNEYS AT LAW
THE WACHOVIA TOWER
1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 891-9800

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48. Moreover, Section 12 of the applicable IWC Wage Order provides:

(A) 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 authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof

(B) If an employer fails to provide an employee a rest 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 rest period is not provided.

49. By failing to consistently provide uninterrupted thirty-minute meal periods within the first five hours of work each day and/or uninterrupted net ten-minute rest periods to Representative Plaintiff and the Class Members, Defendant violated the California Labor Code and applicable IWC Wage Order provisions.

50. Representative Plaintiff is informed and believes and, on that basis, alleges that Defendant has never paid the one hour of compensation to any Class Members due to its violations of the California Labor Code and applicable IWC Wage Order provisions.

51. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, Representative Plaintiff and Class Members have sustained damages, including lost compensation resulting from missed meal and/or rest periods, in an amount to be established at trial.

52. As a further direct and proximate result of Defendant's unlawful conduct, as set forth herein, certain Class Members are entitled to recover "waiting time" and other penalties, in amounts to be established at trial, as well as recovery of attorneys' fees and costs, pursuant to statute.

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OAKLAND, CA 94612
TEL: (510) 891-8800

1 **THIRD CAUSE OF ACTION**
2 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
3 **(California Labor Code §§ 226 and 1174)**

4 53. Representative Plaintiff incorporates in this cause of action each and every
5 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
6 herein.

7 54. California Labor Code §226(a) provides:

8 Each employer shall semimonthly, or at the time of each payment
9 of wages, furnish each of his or her employees either as a
10 detachable part of the check, draft or voucher paying the
11 employee's wages, or separately when wages are paid by personal
12 check or cash, an itemized wage statement in writing showing: (1)
13 gross wages earned; (2) total number of hours worked by each
14 employee whose compensation is based on an hourly wage; (3) all
15 deductions, provided that all deductions made on written orders of
16 the employee may be aggregated and shown as one item; (4) net
17 wages earned; (5) the inclusive date of the period for which the
18 employee is paid; (6) the name of the employee and his or her
19 social security number; and (7) the name and address of the legal
20 entity which is the employer.

21 55. Moreover, California Labor Code §226(e) provides:

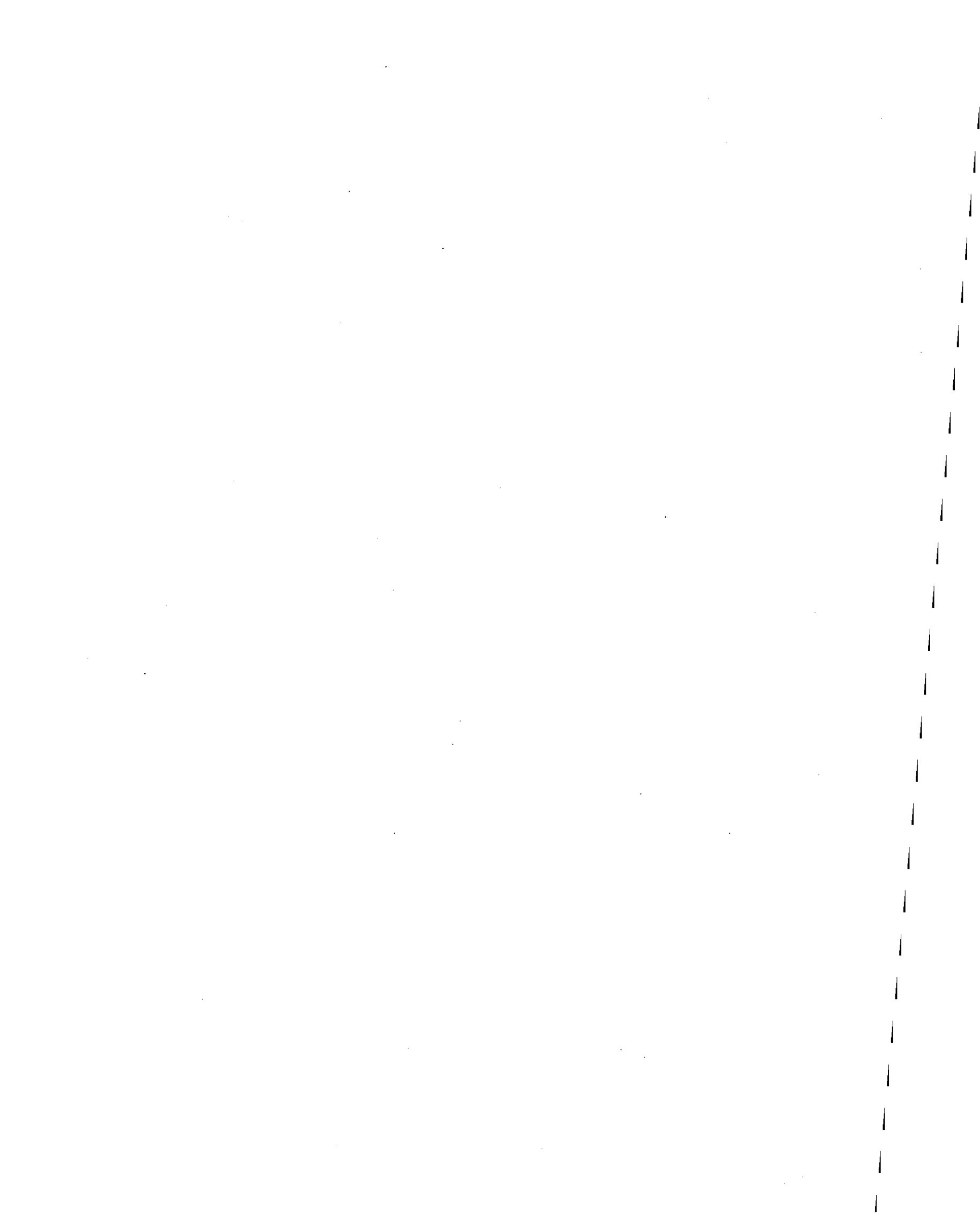
22 An employee suffering injury as a result of a knowing and
23 intentional failure by an employer to comply with subdivision (a)
24 is entitled to recover the greater of all actual damages or fifty
25 dollars (\$50) for the initial pay period in which a violation occurs
26 and one hundred dollars (\$100) per employee for each violation in
27 a subsequent pay period, not exceeding an aggregate penalty of
28 four thousand dollars (\$4,000), and is entitled to an award of costs
and reasonable attorney's fees.

29 56. Finally, California Labor Code §1174(d) provides:

30 Every person employing labor in this state shall. . . [k]eep, at a
31 central location in the state...payroll records showing the hours
32 worked daily by and the wages paid to...employees.... These
33 records shall be kept in accordance with rules established for this
34 purpose by the commission, but in any case shall be kept on file for
35 not less than two years.

36 57. Representative Plaintiff seeks to recover actual damages, costs, and attorneys'
37 fees under these provisions on behalf of himself and on behalf of all Class Members.

38 58. Defendant has failed to provide timely, accurate itemized wage statements to the
Representative Plaintiff and Class Members in accordance with California Labor Code §226.



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1 Representative Plaintiff is informed and believes and, on that basis, alleges that none of the
2 statements provided by Defendant accurately reflected actual gross wages earned, net wages
3 earned, or the appropriate deductions of such Class Members.

4 59. As a direct and proximate result of Defendant's unlawful conduct, as set forth
5 herein, the Representative Plaintiff and Class Members have sustained damages in an amount to
6 be established at trial, and are entitled to recover attorneys' fees and costs of suit.

7
8 **FOURTH CAUSE OF ACTION**
9 **FAILURE TO PAY WAGES ON TERMINATION**
10 **(California Labor Code § 203)**

11 60. Representative Plaintiff incorporates in this cause of action each and every
12 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
13 herein.

14 61. California Labor Code §203 provides that:

15 If an employer willfully fails to pay, without abatement or
16 reduction, in accordance with Sections 201, 201.5, 202, and 205.5,
17 any wages of an employee who is discharged or who quits, the
18 wages of the employee shall continue as a penalty from the due
19 date thereof at the same rate until paid or until an action therefor is
20 commenced; but the wages shall not continue for more than 30
21 days.

22 62. Numerous Class Members were employed by Defendant during the class period
23 and were thereafter terminated or resigned from their positions, yet they were not paid all
24 overtime wages due upon said termination or within 72 hours of said resignation of employment
25 therefrom. Said non-payment was the direct and proximate result of a willful refusal to do so by
26 Defendant.

27 63. More than thirty days has elapsed since certain Class Members were involuntarily
28 terminated or voluntarily resigned from Defendant's employ.

64. As a direct and proximate result of Defendant's willful conduct in failing to pay
said Class Members for all hours worked, affected Class Members are entitled to recover
"waiting time" penalties of up to thirty days' wages pursuant to California Labor Code §203 in
an amount to be established at trial, together with interest thereon, and attorneys' fees and costs.

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE WACHOVIA TOWER
1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 891-9800

FIFTH CAUSE OF ACTION
UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT
(California Business & Professions Code §§ 17200-17208)

65. Representative Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

66. Representative Plaintiff further brings this cause of action seeking equitable and statutory relief to stop Defendant's misconduct, as complained of herein, and to seek restitution of the amounts Defendant acquired through the unfair, unlawful, and fraudulent business practices described herein.

67. Defendant's knowing conduct, as alleged herein, constitutes an unlawful and/or fraudulent business practice, as set forth in California Business & Professions Code §§17200-17208. Specifically, Defendant conducted business activities while failing to comply with the legal mandates cited herein.

68. Defendant has clearly established a policy of accepting a certain amount of collateral damage, as represented by the damages to the Representative Plaintiff and to Class Members herein alleged, as incidental to its business operations, rather than accept the alternative costs of full compliance with fair, lawful, and honest business practices, ordinarily borne by its responsible competitors and as set forth in legislation and the judicial record.

RELIEF SOUGHT

1. **WHEREFORE, the Representative Plaintiff**, on behalf of himself and the proposed Plaintiff Class, prays for judgment and the following specific relief against Defendants, and each of them, jointly and separately, as follows:

2. That the Court declare, adjudge, and decree that this action is a proper class action and certify the proposed Class and/or any other appropriate subclasses under California Code of Civil Procedure §382;

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THE WACHOVIA TOWER
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- 1 3. That the Court declare, adjudge and decree that Defendant violated the overtime
2 provisions of the California Labor Code and the applicable California Industrial Welfare
3 Commission Wage Order as to the Representative Plaintiff and Class Members;
- 4 4. That the Court declare, adjudge, and decree that Defendant willfully violated its
5 legal duties to pay overtime under the California Labor Code and the applicable California
6 Industrial Welfare Commission Wage Orders;
- 7 5. That the Court make an award to the Representative Plaintiff and the Class
8 Members of one hour of pay at each employee's regular rate of compensation for each workday
9 that a meal period was not provided;
- 10 6. That the Court make an award to the Representative Plaintiff and the Class
11 Members of one hour of pay at each employee's regular rate of compensation for each workday
12 that a rest period was not provided;
- 13 7. That the Court declare, adjudge, and decree that the Representative Plaintiff and
14 Class Members were, at all times relevant hereto, and are still, entitled to be paid overtime for
15 work beyond eight hours in a day and 40 in a week;
- 16 8. That the Court make an award to the Representative Plaintiff and Class Members
17 of damages and/or restitution for the amount of unpaid overtime compensation, including interest
18 thereon, and penalties in an amount to be proven at trial;
- 19 9. That the Court order Defendant to pay restitution to the Representative Plaintiff
20 and the Class Members due to Defendant's unlawful activities, pursuant to California Business
21 and Professions Code §§17200-17208;
- 22 10. That the Court further enjoin Defendant, ordering it to cease and desist from
23 unlawful activities in violation of California Business and Professions Code §17200, *et seq.*
- 24 11. For all other Orders, findings and determinations identified and sought in this
25 Complaint;
- 26 12. For interest on the amount of any and all economic losses, at the prevailing legal
27 rate;
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13. For reasonable attorneys' fees, pursuant to California Labor Code §1194 and/or California Code of Civil Procedure §1021.5; and

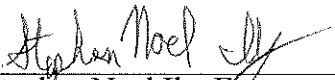
14. For costs of suit and any and all such other relief as the Court deems just and proper.

JURY DEMAND

Plaintiff and the Plaintiff Class hereby demand trial by jury on all issues triable of right by jury.

Dated: March 18, 2011

SCOTT COLE & ASSOCIATES, APC

By: 
Stephen Noel Ilg, Esq.
Attorneys for the Representative Plaintiff
and the Plaintiff Class

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE WACHOVIA TOWER
1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 891-9800