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Los Angeles Superior Court

JUL 21 2008

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8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF LOS ANGELES**

11 MARIO NUNEZ, individually, and on)
12 behalf of all others similarly situated,)
13 Plaintiffs,)
14 vs.)
15 AC SQUARE, INC. and DOES 1)
16 through 25, inclusive,)
17 Defendants.)

Case No.: EC394834
CLASS ACTION
**COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF AND RESTITUTION**

17 Representative Plaintiff alleges as follows:

19 **PRELIMINARY STATEMENT**

20 1. This is a class action, brought on behalf of Mario Nunez (the "Representative
21 Plaintiff") and all other persons who are or have been employed as Technicians by defendant AC
22 Square, Inc. and Does 1 through 25, inclusive (collectively "AC Square" or "Defendant") within the
23 State of California at any time on or after July 11, 2004.

24 2. Representative Plaintiff, individually, and on behalf of the plaintiff class, seeks
25 unpaid wages, including unpaid overtime compensation and interest thereon, reimbursement of
26 business expenses, meal and rest period compensation, waiting time penalties, injunctive and/or
27 other equitable relief and reasonable attorneys' fees and costs, under, *inter alia*, California Labor
28 Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1198, 1199 and 2802, CCP § 1021.5

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1 and under Business and Professions Code §§ 17200-17208.

2 3. The "class period" is designated as the time from July 11, 2004 through the
3 conclusion of trial on all issues presented in this action, based upon the allegation that Defendant's
4 violations of California wage and hour laws, as described in more detail below, have been ongoing
5 throughout this period. During the class period, Defendant has had a consistent policy of (1)
6 permitting, encouraging, and/or requiring their Technicians, including Representative Plaintiff and
7 class members, to work in excess of eight hours per day and in excess of forty hours per week
8 without paying them overtime compensation as required by California state wage and hour laws; (2)
9 requiring its Technicians, including Representative Plaintiff and class members to purchase tools,
10 equipment and other items and/or otherwise incur business expenses necessary for the performance
11 of their work for Defendant as a term and condition of their employment therewith and not
12 reimbursing these workers for same; (3) denying class members statutorily-mandated meal and rest
13 periods; (4) willfully failing to pay all compensation due in a prompt and timely manner to those
14 class members whose employment with Defendant have terminated; and (5) willfully failing to
15 provide class members with accurate semimonthly itemized statements of the total number of hours
16 each class member worked, the applicable deductions and the applicable hourly rates in effect during
17 the applicable pay periods.

18
19 **INTRODUCTION**

20 4. Nearly a hundred years ago, California enacted its first daily overtime law, thereby
21 setting California's first workday standard, long before the federal government enacted overtime
22 protections for workers.

23 5. According to findings of the California Legislature, numerous studies have linked
24 long work hours to increased rates of accident and injury and a loss of family cohesion when either
25 or both parents are kept away from home for extended periods of time, on either a daily or weekly
26 basis.

27 6. According to Defendant's public statements, Defendant is comprised of
28 highly skilled professionals with combined nationwide and international experience of 134 years in

1 the cable, satellite, wireless and telecommunications industries. According to the Defendant, its core
2 expertise includes: aerial and underground construction; audit; drop replacement; fiber and coax
3 construction, splicing, sweep and documentation; and network construction. Defendant's experience
4 also reportedly extends to satellite dish installation and the construction and installation of wireless
5 cell sites.

6 7. Representative Plaintiff is informed and believes and, based thereon, alleges that,
7 during the class period, Defendant has employed hundreds of individuals within the State of
8 California as Technicians, individuals who are entitled to premium (overtime) pay for excess hours
9 worked, reimbursement for business-related expenses and statutorily-mandated meal and rest
10 periods.

11 8. Despite actual knowledge of these facts and legal mandates, Defendant has enjoyed
12 an advantage over its competition and a resultant disadvantage to the plaintiff class by electing not
13 to pay premium (overtime) and/or "penalty" (a.k.a. "waiting time") wages to its Technicians. Nor
14 has Defendant provided them with reimbursement for business-related expenses or compensation
15 for missed meal and/or rest periods, and/or accurate and complete semimonthly itemized statements.

16 9. Representative Plaintiff is informed and believes and, based thereon, alleges that
17 officers of Defendant knew of the occurrence of the violations alleged in this action and the legal
18 mandates which govern such conduct, yet, nonetheless, repeatedly authorized and/or ratified the
19 violation of the laws cited herein.

20 10. Despite Defendant's knowledge of their entitlement to premium (overtime) pay for
21 excess hours worked, expense reimbursement as well as meal and/or rest periods for all applicable
22 work periods, Defendant failed to provide same to class members, in violation of the California
23 Labor Code and the applicable IWC Wage Order, among other laws and regulations. This action is
24 brought to redress and end this long-time pattern of unlawful conduct.

25
26 **JURISDICTION AND VENUE**

27 11. This Court has jurisdiction over Representative Plaintiff's and class members' claims
28 under California statutes and, by extension, the applicable IWC Wage Order. This Court also has

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1 jurisdiction over Representative Plaintiff's and class members' claims for injunctive relief, and
2 restitution of ill-gotten benefits arising from Defendant's unfair, unlawful and/or fraudulent business
3 practices under Business & Professions Code §§ 17200, *et seq.*

4 12. Venue as to Defendant is proper in this judicial district, pursuant to Code of Civil
5 Procedure § 395(a). Defendant is a corporation, maintaining offices, providing client services and
6 doing business in Los Angeles County, and is otherwise within this Court's jurisdiction for purposes
7 of service of process. The unlawful acts alleged herein have a direct effect on Representative
8 Plaintiff and those similarly situated within the State of California and within Los Angeles County.
9 Defendant employed numerous class members in Los Angeles County during the class period.

10
11 **PLAINTIFF(S)**

12 13. The Representative Plaintiff is a natural person and was, during the relevant time
13 period identified herein, employed by Defendant in California in the job position of "Technician."

14 14. As used throughout this Complaint, the terms "Plaintiff(s)" and/or "class" refer to the
15 Representative Plaintiff herein, as well as each and every person eligible for membership in the
16 plaintiff class, as further described and defined below.

17 15. At all times herein relevant, the Representative Plaintiff was a person within the class
18 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 on behalf of all persons similarly situated and proximately damaged by the unlawful conduct
21 described herein, pursuant to California Code of Civil Procedure § 382.

22
23 **DEFENDANT**

24 17. At all times herein relevant, defendant AC Square and Does 1 through 25, inclusive,
25 were and are corporations and/or other business entities, duly licensed, located and doing business
26 in, but not limited to, the State of California. Representative Plaintiff is informed and believes and,
27 on that basis, alleges that, at all relevant times herein mentioned, each person responsible for the acts
28 alleged herein was the agent and/or employee of Defendant and, in doing the acts herein alleged, was

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1 acting within the course and scope of such agency and/or employment.

2 18. Those defendants identified as Does 1 through 25, inclusive, are and were, at all
3 relevant times herein-mentioned, co-employers of some/each of the remaining defendants.

4 19. Representative Plaintiff is unaware of the true names and capacities of those
5 defendants sued herein as Does 1 through 25, inclusive and, therefore, sues these defendants by such
6 fictitious names. Representative Plaintiff will seek leave of court to amend this Complaint when
7 same are ascertained. Representative Plaintiff is informed and believes and, on that basis, alleges that
8 each of the fictitiously-named defendants is responsible in some manner for, gave consent to, ratified
9 and/or authorized the conduct herein alleged and that Representative Plaintiff's and the class
10 members' damages, as herein alleged, were proximately caused thereby.

11
12 **CLASS ACTION ALLEGATIONS**

13 20. The Representative Plaintiff brings this action on behalf of himself and as a class
14 action on behalf of all persons similarly situated and proximately damaged by Defendant's conduct,
15 as set forth herein, including, but not necessarily limited to the following class:

16 All persons who were employed in Technician positions by AC Square, Inc.
17 within the State of California at any time on or after July 7, 2004.

18 21. This action has been brought and may properly be maintained as a class action under
19 Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation
20 and the proposed class is easily ascertainable, to wit:

21
22 a. Numerosity: A class action is the only available method for the fair and
23 efficient adjudication of this controversy. The members of the class are so
24 numerous that joinder of all members is impractical, if not impossible, insofar
25 as Representative Plaintiff is informed and believes and, on that basis, alleges
that the total number of class members is well into the hundreds. Membership
in the plaintiff class will be determined upon analysis of employee and
payroll, among other potential records maintained by Defendant.

26 b. Commonality: The Representative Plaintiff and the class members share a
27 community of interests in that there are numerous common questions and
28 issues of fact and law which predominate over any questions and issues solely
affecting individual members, including, but not necessarily limited to:

- 1 i. whether Defendant violated IWC Wage Orders and/or Labor Code §
- 2 510 by failing to pay overtime compensation to Technicians who
- 3 worked in excess of forty hours per week and/or eight hours per day;
- 4
- 5 ii. whether Defendant violated Business and Professions Code § 17200
- 6 by failing to pay overtime compensation to Technicians who worked
- 7 in excess of forty hours per week and/or eight hours per day;
- 8
- 9 iii. whether Defendant violated California Labor Code § 2802 by
- 10 charging and/or otherwise requiring its Technicians to pay all or a
- 11 portion of the normal business expenses of Defendant, without
- 12 reimbursement;
- 13
- 14 iv. whether Defendant violated California law by failing to pay
- 15 compensation to class members for all time worked;
- 16
- 17 v. whether Defendant violated California Labor Code §§ 226.7 and/or
- 18 512 by failing to consistently provide uninterrupted meal and/or rest
- 19 periods to class members;
- 20
- 21 vi. whether Defendant violated California Business and Professions
- 22 Code § 17200 by engaging in unfair, unlawful and/or fraudulent
- 23 business practices toward class members;
- 24
- 25 vii. whether Defendant violated California Labor Code § 1174 by failing
- 26 to keep accurate records of class members' hours of work;
- 27
- 28 viii. whether Defendant violated California Labor Code §§ 201-204 by
- 29 failing to pay wages due and owing at the time that class members'
- 30 employment with it terminated;
- 31
- 32 ix. whether Defendant violated California Labor Code § 226 by failing
- 33 to provide the semimonthly itemized statements to class members of
- 34 total hours worked by each, and all applicable hourly rates in effect
- 35 during the pay period; and
- 36
- 37 x. whether class members are entitled to "waiting time" penalties,
- 38 pursuant to California Labor Code § 203.
- 39
- 40 c. Typicality: The Representative Plaintiff's claims are typical of the claims of
- 41 the plaintiff class. The Representative Plaintiff and all members of the class
- 42 sustained injuries and damages arising out of and caused by Defendant's
- 43 common course of conduct in violation of California law, as alleged herein.
- 44
- 45 d. Superiority of Class Action: Since the damages suffered by individual class
- 46 members, while not inconsequential, may be relatively small, the expense and
- 47 burden of individual litigation by each member makes or may make it
- 48 impracticable for members of the class to seek redress individually for the
- 49 wrongful conduct alleged herein. Should separate actions be brought or be
- 50 required to be brought by each individual member of the class, the resulting
- 51 multiplicity of lawsuits would cause undue hardship and expense for the
- 52 Court and the litigants. The prosecution of separate actions would also create
- 53 a risk of inconsistent rulings, which might be dispositive of the interests of
- 54 other class members who are not parties to the adjudications and/or may
- 55 substantially impede their ability to adequately protect their interests.

1
2 e. Adequacy of Representation: The Representative Plaintiff in this class action
3 is an adequate representative of the class, in that the Representative Plaintiff's
4 claims are typical of those of the class, and the Representative Plaintiff has
5 the same interests in the litigation of this case as the class members. The
6 Representative Plaintiff is committed to vigorous prosecution of this case,
7 and has retained competent counsel, experienced in litigation of this nature.
8 The Representative Plaintiff is not subject to any individual defenses unique
9 from those conceivably applicable to the class. The Representative Plaintiff
10 anticipates no management difficulties in this litigation.

11
12 **COMMON FACTUAL ALLEGATIONS**

13 22. As described herein, Defendant has, for years, knowingly failed to adequately
14 compensate its Technicians for all wages earned, including premium (overtime) wages,
15 compensation for missed meal and/or rest periods, as well as reimbursement to class members for
16 business-related expenses they have incurred, which are due under the California Labor Code and/or
17 the applicable California Wage Order, thereby enjoying a significant competitive edge over similar
18 service providers.

19 23. Even upon termination or resignation of employment by numerous class
20 members, Defendant has declined to pay all wages due, in blatant violation of California Labor Code
21 §§ 201 and/or 202.

22 24. Moreover, California Labor Code §§ 201 and 202 require Defendant to pay all
23 severed employees all wages due, immediately upon discharge or within 72 hours of resignation of
24 their positions, in most circumstances. California Labor Code § 203 provides that, if an employer
25 willfully fails to timely pay such wages, the employer must, as a penalty, continue to pay the subject
26 employees' wages until the back wages are paid in full or an action is commenced, for a period not
27 to exceed 30 days of wages.

28 25. Furthermore, despite its knowledge of the Representative Plaintiff's and the class
members' entitlement to compensation for all hours worked, Defendant violated California Labor
Code § 1174(d) by failing to provide or require the use, maintenance or submission of time records
by members of the class. Defendant also failed to provide Representative Plaintiff and class members
with accurate semimonthly itemized statements of the total number of hours worked by each and all
applicable hourly rates in effect during the pay period, in violation of California Labor Code § 226.

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1 In so doing, Defendant has not only failed to pay class members the full amount of compensation
2 due, Defendant has, until now, effectively shielded itself from its employees' scrutiny for its
3 unlawful conduct by concealing the magnitude (i.e., the full number of hours worked) and financial
4 impact of its wrongdoing.

5 26. Representative Plaintiff and all persons similarly situated are entitled to unpaid
6 compensation, yet, to date, have not received such compensation despite the termination of certain
7 class members' employment with Defendant.

8 27. More than 30 days have passed since Representative Plaintiff and/or certain class
9 members have left Defendant's employ.

10 28. As a consequence of Defendant's willful conduct in not paying compensation for all
11 hours worked, certain class members are entitled to 30 days wages, as a penalty under Labor Code
12 § 203, together with attorneys' fees and costs.

13 29. The Representative Plaintiff is informed and believes and, on that basis, alleges that
14 Defendant's failure to make available meal and/or rest periods entitled the plaintiff class to wages
15 therefor, yet said wages were not paid in accordance with California Labor Code § 204, in further
16 violation of the law (*inter alia*, California Labor Code § 226).

17 30. Furthermore, as a consequence of Defendant's willful conduct in not providing an
18 uninterrupted 30 minute meal period within the first five hours of class members' shifts, as required
19 under Labor Code § 512 and Section 11 of the applicable IWC Wage Order, class members are
20 entitled to one hour of wages for each day that they were denied at least one meal period, as provided
21 under Labor Code § 226.7, together with interest thereon and attorneys' fees and costs.

22 31. Furthermore, as a consequence of Defendant's willful conduct in not providing a ten
23 minute rest period once during each four hour segment of work, as prescribed by Section 12 of the
24 applicable IWC Wage Order, class members are entitled to one hour of wages for each day that they
25 were denied at least one rest period, as provided under Labor Code § 226.7, together with interest
26 thereon and attorneys' fees and costs.

27 32. As a direct and proximate result of Defendant's unlawful conduct, as set forth
28 herein, the plaintiff class has sustained damages, as described above, including compensation for

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1 missed meal and rest periods, and loss of earnings for hours worked on behalf of Defendant, in
2 amounts to be established, in a formulaic manner, at trial. As a further direct and proximate result
3 of Defendant's unlawful conduct, as set forth herein, Representative Plaintiff and/or certain class
4 members herein are entitled to recover "waiting time" penalties/wages (pursuant to California Labor
5 Code § 203) and penalties for failure to provide semimonthly statements of hours worked and all
6 applicable hourly rates (pursuant to Labor Code § 226) in an amount to be established, in a formulaic
7 manner, at trial. As a further direct and proximate result of Defendant's unlawful conduct, as set
8 forth herein, the plaintiff class is also entitled to recover costs and attorneys' fees, pursuant to
9 California Labor Code § 1194 and/or California Civil Code § 1021.5, among other authorities.

10 33. Representative Plaintiff, individually, and on behalf of the plaintiff class, seeks
11 injunctive relief, prohibiting Defendant from engaging in the illegal labor acts described herein in
12 the future as well as restitution of costs incurred by the plaintiff class under California's Unfair
13 Competition Law. Unless enjoined, Defendant's unlawful conduct will continue unchecked, while
14 the plaintiff class bears the financial brunt of Defendant's unlawful conduct. As a further direct and
15 proximate result of Defendant's unlawful conduct, as set forth herein, the plaintiff class is also
16 entitled to recover costs and attorneys' fees, pursuant to statute.

17
18 **FIRST CAUSE OF ACTION**
19 **UNLAWFUL FAILURE TO PAY REQUIRED OVERTIME**
20 **(California Labor Code § 510)**

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

23 35. During the class period, Representative Plaintiff and the class members worked in
24 excess of eight hours in a workday and/or forty hours in a workweek. The precise number of hours
25 will be proven at trial.

26 36. During said time period, Defendant refused to compensate Representative
27 Plaintiff and the class members for some and/or all of the overtime wages earned in violation of
28 applicable Wage Order(s) and the California Labor Code.

37. During said time period, particular class members herein were employed by and

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1 were thereafter terminated or resigned from their positions with Defendant, yet were not paid all
2 premium (overtime) and/or other wages due upon said termination or within seventy-two hours of
3 said resignation of employment therefrom. Said non-payment was the direct and proximate result
4 of a willful refusal to do so by Defendant.

5 38. At all relevant times, Defendant was aware of and was under a duty to comply with
6 various provisions of the California Labor Code. Some of these Labor Code provisions include(d):

7 a. Labor Code §203: "If an employer willfully fails to pay, without
8 abatement or reduction, in accordance with Sections 201, 201.5, 202, and
9 205.5, any wages of an employee who is discharged or who quits, the wages
10 of the employee shall continue as a penalty from the due date thereof at the
11 same rate until paid or until an action therefor is commenced; but the wages
12 shall not continue for more than 30 days."

13 b. Labor Code §510: "Any work in excess of eight hours in one workday
14 and any work in excess of 40 hours in any one workweek and the first eight
15 hours worked on the seventh day or work in any one workweek shall be
16 compensated at the rate of no less than one and one-half times the regular rate
17 of pay for an employee"

18 39. By refusing to compensate Representative Plaintiff and the class members for
19 overtime wages earned, Defendant violated those California Labor Code provisions cited herein, as
20 well as various IWC Wage Order provisions.

21 40. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
22 Representative Plaintiff and the class members have sustained damages, including loss of earnings
23 for hours of overtime worked on behalf of Defendant, in an amount to be established at trial. As a
24 further direct and proximate result of Defendant's unlawful conduct, as set forth herein, some class
25 members are entitled to recover "waiting time" penalties/wages, in an amount to be established at
26 trial, as well as costs and attorneys' fees, pursuant to statute.

27 **SECOND CAUSE OF ACTION**
28 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**
(California Labor Code § 2802)

41. 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.

42. During the class period, Defendant required class members to purchase tools,

1 equipment and other items and/or otherwise incur business expenses necessary for the performance
2 of their work for Defendant as a term and condition of their employment therewith and failed to
3 reimburse these workers for same.

4 43. Thus, Representative Plaintiff and the plaintiff class had expenditures and losses
5 which were incurred in direct consequence of the discharge of their duties, or of their obedience to
6 the directions of their employer, which have not yet been reimbursed by Defendant.

7 44. At all relevant times, Defendant was aware of and was under a duty to comply with
8 various provisions of California Labor Code, including but not limited to, Section 2802(a).

9 45. California Labor Code § 2802(a) provides:

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

13 46. By requiring members of the plaintiff class to incur uncompensated expenses in
14 direct consequence of the discharge of their duties, the plaintiff class was forced to contribute to the
15 capital and expenses of the Defendant's business which is legally a cash bond and which must be
16 refunded by Defendant to each class member.

17 47. California Labor Code § 2802 (b) and (c) provides for interest at the statutory post-
18 judgment rate of 10% simple interest per annum from the date of the expenditure, plus attorneys'
19 fees incurred in collection of those reimbursements.

20 48. Therefore, Representative Plaintiff, individually, and on behalf of the plaintiff class,
21 demands reimbursement for expenditures or losses incurred by plaintiff class in direct consequence
22 of the discharge of their duties, or of their obedience to the directions of Defendant, plus return of
23 all cash bonds or other coerced investments in Defendant's business, with interest at the statutory
24 rate, plus attorneys' fees.

25
26 **THIRD CAUSE OF ACTION**
27 **FAILURE TO PROVIDE MEAL AND REST PERIODS**
28 **(California Labor Code §§ 226.7 and 512)**

49. Representative Plaintiff incorporates in this cause of action each and every allegation

1 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

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

4 51. Specifically, California Labor Code § 226.7 provides:

5 (a) No employer shall require any employee to work during any
6 meal or rest period mandated by an applicable order of the
Industrial Welfare Commission.

7 (b) If an employer fails to provide an employee a meal period or
8 rest period in accordance with an applicable order of the
9 Industrial Welfare Commission, the employer shall pay the
10 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.

11 52. Moreover California Labor Code § 512 provides:

12 An employer may not employ an employee for a work period of more
13 than five hours per day without providing the employee with a meal
14 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
15 may be waived by mutual consent of both the employer and
employee. An employer may not employ an employee for a work
16 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
17 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.

18 53. Sections 11 and 12, respectively, of the applicable IWC Wage Order mandate that
19 Defendant provide all applicable meal and/or rest periods to members of the plaintiff class.

20 54. Section 11 of the applicable IWC Wage Order provides:

21 (A) No employer shall employ any person for a work period of more
22 than five (5) hours without a meal period of not less than 30
minutes....

23 (B) An employer may not employ an employee for a work period of
more than ten (10) hours per day without providing the employee
24 with a second meal period of not less than 30 minutes (C) If an
25 employer fails to provide an employee a meal period in accordance
with the applicable provisions of this order, the employer shall pay
26 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.

27 55. Moreover, Section 12 of the IWC Wage Order provides:

28 (A) Every employer shall authorize and permit all employees to take

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1 rest periods, which insofar as practicable shall be in the middle of
2 each work period. The authorized rest period time shall be based on
3 the total hours worked daily at the rate of ten (10) minutes net rest
4 time per four (4) hours or major fraction thereof (B) If an
5 employer fails to provide an employee a rest period in accordance
6 with the applicable provisions of this order, the employer shall pay
7 the employee one (1) hour of pay at the employee's regular rate of
8 compensation for each workday that the rest period is not provided.

9 56. By failing to consistently provide uninterrupted thirty-minute meal periods within the
10 first five hours of work each day and/or uninterrupted ten-minute net rest periods to Representative
11 Plaintiff and class members, Defendant violated California Labor Code and IWC Wage Order
12 provisions.

13 57. Representative Plaintiff is informed and believes and, based thereon, alleges that
14 Defendant has never paid the one hour of compensation to any class member due to its violations
15 of these California Labor Code and IWC Wage Order provisions.

16 58. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
17 the plaintiff class has sustained damages, including lost compensation resulting from missed meal
18 and/or rest periods, in an amount to be established, in a formulaic manner, at trial. As a further direct
19 and proximate result of Defendant's unlawful conduct, as set forth herein, the plaintiff class is
20 entitled to recover "waiting time" and other penalties, in amounts to be established at trial, as well
21 as costs and attorneys' fees, pursuant to statute.

22 **FOURTH CAUSE OF ACTION**
23 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
24 **(California Labor Code §§ 226, 1174)**

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

27 60. California Labor Code § 226(a) provides:

28 Each employer shall semimonthly, or at the time of each payment of
wages, furnish each of his or her employees either as a detachable
part of the check, draft or voucher paying the employee's wages, or
separately when wages are paid by personal check or cash, an
itemized wage statement in writing showing: (1) gross wages earned;
(2) total number of hours worked by each employee whose
compensation is based on an hourly wage; (3) all deductions;
provided, that all deductions made on written orders of the employee

1 may be aggregated and shown as one item; (4) net wages earned; (5)
2 the inclusive date of the period for which the employee is paid; (6)
3 the name of the employee and his or her social security number; and
4 (7) the name and address of the legal entity which is the employer.

5
6
7
8
9 61. Moreover, California Labor Code § 226(e) provides:

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

17
18
19 62. Finally, California Labor Code § 1174 provides:

20 Every person employing labor in this state shall: (d) Keep, at a central
21 location in the state... payroll records showing the hours worked daily
22 by and the wages paid to ... employees These records shall be kept
23 in accordance with rules established for this purpose by the
24 commission, but in any case shall be kept on file for not less than two
25 years.

26
27 63. Defendant failed to provide timely, accurate itemized wage statements to the
28 plaintiff class in accordance with Labor Code § 226(a). Specifically, Representative Plaintiff is
informed and believes and, based thereon, alleges that none of the statements provided by Defendant
to the plaintiff class has accurately reflected actual gross wages earned, net wages earned, or the
appropriate deductions therefor.

64. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
the plaintiff class seeks to recover penalties, in amounts to be established, in a formulaic manner,
at trial, as well as costs and attorneys' fees, pursuant to statute.

22
23 **FIFTH CAUSE OF ACTION**
24 **UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT**
25 **(California Business & Professions Code §§ 17200-17208)**

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

28 66. Representative Plaintiff brings this cause of action, seeking equitable and statutory
relief to stop the misconduct of Defendant, as complained of herein, and seeking restitution from

1 Defendant through the unfair, unlawful and fraudulent business practices described herein.

2 67. The knowing conduct of Defendant, as alleged herein, constitutes an unlawful, unfair
3 and/or fraudulent business practice, as set forth in California Business & Professions Code §§ 17200-
4 17208. Specifically, Defendant conducted business activities while failing to comply with the legal
5 mandates cited herein.

6 68. Defendant's knowing failure to adopt policies in accordance with and/or to adhere
7 to these laws, all of which are binding upon and burdensome to Defendant's competitors, engenders
8 an unfair competitive advantage for Defendant, thereby constituting an unfair business practice, as
9 set forth in California Business & Professions Code §§ 17200-17208.

10 69. Defendant has clearly established a policy of accepting a certain amount of collateral
11 damage, as represented by the damages to the plaintiff class herein alleged, as incidental to its
12 business operations, rather than accept the alternative costs of full compliance with fair, lawful and
13 honest business practices ordinarily borne by responsible competitors of Defendant and as set forth
14 in legislation and the judicial record.

15
16 **RELIEF SOUGHT**

17 **WHEREFORE, the Representative Plaintiff**, individually, and on behalf of the proposed
18 **plaintiff class**, prays for judgment and the following specific relief against **Defendant(s)**, jointly and
19 separately, as follows:

20 1. For an Order certifying the proposed class and/or any other appropriate subclass under
21 CCP § 382;

22 2. That the Court declare, adjudge and decree that Defendant violated the overtime
23 provisions of the Labor Code and/or the relevant Wage Order as to the Representative Plaintiff and
24 the Class;

25 3. That the Court declare, adjudge and decree that Defendant violated California Labor
26 Code §2802(a) by willfully failing to reimburse members of the plaintiff class for expenses made
27 on behalf of Defendant;

28 4. That the Court make an award to members of the plaintiff class of damages for the

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1 amount of unpaid compensation, including interest thereon, and penalties, in amounts to be proven,
2 in a formulaic manner, at trial;

3 5. That the Court declare, adjudge and decree that Defendant violated its legal duties
4 under California Labor Code §§ 226.7 and/or 512 and the relevant Sections of the applicable IWC
5 Wage Order to pay wages for missed meal and/or rest periods;

6 6. That the Court declare, adjudge and decree that Defendant violated the record keeping
7 provisions of California Labor Code §§ 226(a) and 1174(d) and the relevant Wage Order as to
8 members of the plaintiff class, and for willful failure to provide accurate semimonthly itemized
9 statements thereto;

10 7. That the Court declare, adjudge and decree that Defendant violated California Labor
11 Code §§ 201-204 for willful failure to pay all compensation owed at the time of termination of
12 employment to members of the plaintiff class;

13 8. That the Court declare, adjudge and decree that Defendant violated California
14 Business and Professions Code §§ 17200, *et. seq.* by failing to pay members of the plaintiff class all
15 compensation due and by failing to reimburse them for expenses made on behalf of Defendant;

16 9. For an Order requiring Defendant to pay restitution to members of the plaintiff class
17 as a result of Defendant's unfair, unlawful and/or fraudulent activities, pursuant to Business and
18 Professions Code §§ 17200, *et. seq.*;

19 10. For an injunction, enjoining Defendant to cease and desist from further unfair,
20 unlawful and/or fraudulent activities in violation of Business and Professions Code § 17200;

21 11. For punitive/exemplary damages in an amount appropriate and sufficient to punish
22 Defendant, and to deter others from engaging in similar misconduct in the future;

23 12. For all other Orders, findings, and determinations identified and sought in this
24 Complaint;

25 13. For interest on the amount of any and all economic losses, at the prevailing legal rate;

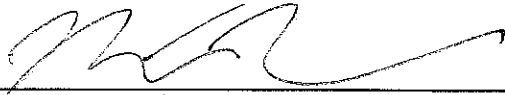
26 14. For reasonable attorneys' fees, pursuant to statute; and

27 15. For costs of suit and any and all such other relief as the Court deems just and proper.
28

1 Dated: July 11, 2008

2 **SCOTT COLE & ASSOCIATES, APC**

3
4 By:


Matthew R. Bainer, Esq.
Attorneys for the Representative Plaintiff
and the Plaintiff Class

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