

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE WORLD SAVINGS TOWER
1970 BROADWAY, SUITE 950
OAKLAND, CA 94612
TEL: (510) 891-9800

1 Scott Edward Cole, Esq. (S.B. #160744)
2 Clyde H. Charlton, Esq. (S.B. #127541)
3 Matthew R. Bainer, Esq. (S.B. #220972)
4 **SCOTT COLE & ASSOCIATES, APC**
5 1970 Broadway, Suite 950
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 ORANGE**

14 DANTE COLBERT, individually, and)
15 on behalf of all others similarly situated,)

16 Plaintiffs,)

17 vs.)

18 TBS COURIERS, INC., and DOES 1)
19 through 100, inclusive,)

20 Defendants.)
21 _____)

Case No.: 05 CC00269

CLASS ACTION

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

22 Representative Plaintiff alleges as follows:

23 **PRELIMINARY STATEMENT**

24 1. This is a class action, under Code of Civil Procedure § 382, seeking restitution
25 of all monies due to Representative Plaintiff and Class Members, penalties, injunctive and other
26 equitable relief and reasonable attorneys' fees and costs, under, *inter alia*, Industrial Welfare
27 Commission Wage Order(s), Labor Code §§ 200-203, inclusive, 218.5, 218.6 and 226.7, Business
28 & Professions Code § 17200, et seq. and Code of Civil Procedure § 1021.5. The Representative
Plaintiff brings this action, on behalf of himself and all other persons similarly situated (hereinafter
referred to as the "Class Members" and/or the "Plaintiff Class") who are or have been employed by
defendants TBS COURIERS, INC. and Does 1 through 100, inclusive (collectively "TBS" and/or

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Plaintiff brings this action, on behalf of himself and all other persons similarly situated (hereinafter
referred to as the "Class Members" and/or the "Plaintiff Class") who are or have been employed by
defendants TBS COURIERS, INC. and Does 1 through 100, inclusive (collectively "TBS" and/or

1 “Defendant[s]”) in any non-exempt courier/driver positions within the State of California, at any
2 time between November 10, 2001 and the present, and who have been denied meal and/or rest
3 periods. The Representative Plaintiff, on behalf of himself and the Class Members, also seeks
4 injunctive relief and restitution of all benefits TBS has enjoyed from its failure to provide meal
5 and/or authorize and permit rest periods under Business and Professions Code §§ 17200-17208.

6 2. The “Class Period” is designated as the time from November 10, 2001
7 through the trial date, based upon the allegation that the violations of California’s wage and hour
8 laws, as described more fully below, have been ongoing since that time. During the Class Period,
9 TBS has had a consistent policy toward its couriers/drivers of (1) permitting, encouraging, and/or
10 requiring the Representative Plaintiff and Class Members to work, oftentimes in excess of eight
11 hours per day, without consistently providing all meal and/or rest periods due, as required by
12 California state wage and hour laws.

13
14 **INTRODUCTION**

15 3. The Representative Plaintiff is informed and believes and, based thereon,
16 alleges that, within the Class Period, defendant TBS has employed thousands of individuals in
17 courier/driver positions in recent years alone at these facilities/locations within the State of
18 California.

19 4. Despite actual knowledge of these facts and legal mandates, TBS has enjoyed
20 an advantage over its competition and a resultant disadvantage to its workers by electing not to
21 provide all meal and/or authorize and permit all rest periods to its non-exempt employees.

22 5. The Representative Plaintiff is informed and believes and, based thereon,
23 alleges that officers of TBS knew of these facts and legal mandates, yet, nonetheless, repeatedly
24 directed, authorized and/or ratified the violation of the laws cited herein.

25 6. Despite TBS’s knowledge of the Plaintiff Class’ entitlement to meal and/or
26 rest periods for all applicable work periods, TBS failed to provide same to members of the Plaintiff
27 Class, in violation of the California Labor Code, Industrial Welfare Commission Wage Orders and
28 Title 8 of the California Code of Regulations. This action is brought to redress and end this long-

1 “Defendant[s]”) in any non-exempt courier/driver positions within the State of California, at any
2 time between November 10, 2001 and the present, and who have been denied meal and/or rest
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26 Class, in violation of the California Labor Code, Industrial Welfare Commission Wage Orders and
27 Title 8 of the California Code of Regulations. This action is brought to redress and end this long-
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1 time pattern of unlawful conduct.

2 **JURISDICTION AND VENUE**

3 7. This Court has jurisdiction over the Representative Plaintiff's and Class
4 Members' claims for unpaid wages and/or penalties under, *inter alia*, Industrial Welfare
5 Commission Wage Orders and Title 8 of the California Code of Regulations, Labor Code §§ 201-
6 203, 218, 218.5, 218.6, 226, 226.3, 226.7, 512, 558, 1174, 1174.5, Business & Professions Code §
7 17200, et seq. and Code of Civil Procedure § 1021.5.

8 8. This Court has further jurisdiction over the Representative Plaintiff's and
9 Class Members' claims for injunctive relief, and restitution of ill-gotten benefits arising from
10 defendant TBS's unlawful business practices under Business & Professions Code §§ 17203 and
11 17204.

12 9. Venue as to Defendant(s) is proper in this judicial district, pursuant to Code
13 of Civil Procedure § 395(a). Defendant TBS provides courier/delivery services in the County of
14 Orange, and transacts business, has agents, and is otherwise within this Court's jurisdiction for
15 purposes of service of process. The unlawful acts alleged herein have a direct effect on the
16 Representative Plaintiff and those similarly situated within the State of California and Orange
17 County. Defendant TBS provides said services and has employed numerous Class Members in
18 Orange County as well as in other counties within the State of California.

19
20 **PLAINTIFFS**

21 10. During a portion of the herein-relevant time period, plaintiff DANTE
22 COLBERT (the "Representative Plaintiff") was and is a natural person, and was, during the relevant
23 time period identified herein, employed by defendant TBS in a courier/driver position, an
24 employment position which was entitled and continues to enjoy an entitlement to various conditions
25 of employment such as meal and/or rest periods.

26 11. In said position, the Representative Plaintiff was frequently permitted to work
27 and did work, during the Class Period, shifts exceeding five hours without an uninterrupted,
28 unrestricted meal period of not less than thirty (30) minutes and was frequently permitted to work

1 time pattern of unlawful conduct.

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4 Members' claims for unpaid wages and/or penalties under, *inter alia*, Industrial Welfare
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26 11. In said position, the Representative Plaintiff was frequently permitted to work
27 and did work, during the Class Period, shifts exceeding five hours without an uninterrupted,
28 unrestricted meal period of not less than thirty (30) minutes and was frequently permitted to work

1 and did work four hours or a “major fraction” thereof, without being afforded net ten minute rest
2 periods. Representative Plaintiff is informed and believes and, on that basis, alleges that this
3 conduct of TBS is/was commonplace at every facility owned and/or operated thereby.

4 12. As used throughout this Complaint, the terms “Class Members” and/or the
5 “Plaintiff Class” refer to the named plaintiff herein as well as each and every person eligible for
6 membership in the Plaintiff Class, as further described and defined below.

7 13. The Plaintiff Class consists, generally, of all members who are/were employed
8 as non-exempt employees by TBS employed in courier/driver positions (as defined in paragraph 22
9 of this Complaint) within the State of California, and who (a) worked shifts exceeding four hours
10 or a major fraction thereof (i.e., of at least three and one-half hours), without being afforded net ten
11 minute rest periods during one or more work period(s) and/or (b) worked shifts exceeding five
12 hours, without being afforded an uninterrupted, unrestricted meal period of not less than thirty (30)
13 minutes.

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

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

19
20 **DEFENDANTS**

21 16. At all times herein relevant, defendants TBS COURIERS, INC. and Does 1
22 through 100, inclusive (collectively referred to as “TBS” and/or “Defendant[s]”) were business
23 entities, duly licensed and located and doing business in, but not limited to, the County of Orange,
24 in the State of California.

25 17. The Representative Plaintiff is informed and believes and, based thereon,
26 alleges that defendant TBS directly or indirectly employs and, since November 10, 2001, has
27 employed and/or exercised control over the wages, hours and/or working conditions of the
28 Representative Plaintiff and Class Members employed by TBS in various California counties,

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2 periods. Representative Plaintiff is informed and believes and, on that basis, alleges that this
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6 membership in the Plaintiff Class, as further described and defined below.

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8 as non-exempt employees by TBS employed in courier/driver positions (as defined in paragraph 22
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26 alleges that defendant TBS directly or indirectly employs and, since November 10, 2001, has
27 employed and/or exercised control over the wages, hours and/or working conditions of the
28 Representative Plaintiff and Class Members employed by TBS in various California counties,

1 including, but not necessarily limited to, Orange County.

2 18. Those defendants identified as Does 1 through 100, inclusive, are and were,
3 at all relevant times herein-mentioned, officers, directors, partners, and/or managing agents of
4 some/each of the remaining defendants. The Representative Plaintiff is informed and believes and,
5 on that basis, alleges that, at all relevant times herein mentioned, each of the defendants identified
6 as Does 1 through 100, inclusive, employed and/or exercised control over the wages, hours and/or
7 working conditions of the Representative Plaintiff and Class Members at various California
8 locations, as identified in the preceding paragraph.

9 19. The Representative Plaintiff is unaware of the true names and capacities of
10 those defendants sued herein as Does 1 through 100, inclusive and, therefore, sues these defendants
11 by such fictitious names. The Representative Plaintiff will seek leave of court to amend this
12 Complaint when same are ascertained. The Representative Plaintiff is informed and believes and,
13 on that basis, alleges that each of the fictitiously-named defendants is responsible in some manner
14 for, gave consent to, ratified and/or authorized the conduct herein alleged and that the Representative
15 Plaintiff's and Class Members' damages, as herein alleged, were proximately caused thereby.

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

20 21. There is no preemption of the claims brought in this Complaint because these
21 claims are based upon State law. There is no dispute over the terms of any collective bargaining
22 agreement ("CBA") and there is no need to interpret the terms of any CBA.

23
24 **CLASS ACTION ALLEGATIONS**

25 22. The Representative Plaintiff brings this action on behalf of himself and as a
26 class action on behalf of all persons or entities proximately damaged by Defendant's conduct,
27 including, but not necessarily limited to, the following Plaintiff Class:

28 All persons who are/were employed in any courier/driver positions

1 including, but not necessarily limited to, Orange County.

2 18. Those defendants identified as Does 1 through 100, inclusive, are and were,
3 at all relevant times herein-mentioned, officers, directors, partners, and/or managing agents of
4 some/each of the remaining defendants. The Representative Plaintiff is informed and believes and,
5 on that basis, alleges that, at all relevant times herein mentioned, each of the defendants identified
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25 22. The Representative Plaintiff brings this action on behalf of himself and as a
26 class action on behalf of all persons or entities proximately damaged by Defendant's conduct,
27 including, but not necessarily limited to, the following Plaintiff Class:

28 All persons who are/were employed in any courier/driver positions

1 in California by TBS Couriers, Inc. and who (1) did not receive all
2 uninterrupted, unrestricted meal periods and/or all rest periods due
3 for each period of work performed thereby at any time since
4 November 10, 2001 and (2) have not received all
5 compensation/restitution and associated penalties due as a result
6 thereof.

7 23. Defendant, its officers and directors are excluded from the Plaintiff Class.

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

11 A. Commonality: The Representative Plaintiff and the Class Members share a
12 community of interests in that there are numerous common questions and
13 issues of fact and law which predominate over any questions and issues
14 solely affecting individual members, including, but not necessarily limited
15 to:

- 16 1) whether defendant TBS violated Labor Code §§ 226.7 and/or 512 by
17 failing to consistently provide meal periods and authorized and
18 permitted rest periods to its non-exempt employees.
- 19 2) whether defendant TBS violated Labor Code §§ 201-203 by failing
20 to pay all “wages” and/or penalties due and owing at the time that
21 certain Class Members’ employment with Defendant terminated.
- 22 3) whether defendant TBS violated Business and Professions Code §
23 17200 by failing to consistently provide meal and/or rest periods to
24 its non-exempt employees.

25 B. Typicality: The Representative Plaintiff’s claims are typical of the claims of
26 the Plaintiff Class. The Representative Plaintiff and all members of the
27 Plaintiff Class sustained damages arising out of and caused by defendant
28 TBS’s common course of conduct in violation of law, as alleged herein.

C. 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.
Membership in the Class will be determined upon analysis of employee and
payroll, among other, records maintained by TBS.

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
impractical for members of the Plaintiff Class to seek redress individually for
the wrongful conduct alleged herein. Should separate actions be brought or
be required to be brought by each individual member of the Plaintiff Class,
the resulting multiplicity of 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

1 in California by TBS Couriers, Inc. and who (1) did not receive all
2 uninterrupted, unrestricted meal periods and/or all rest periods due
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24 its non-exempt employees.

25 B. Typicality: The Representative Plaintiff’s claims are typical of the claims of
26 the Plaintiff Class. The Representative Plaintiff and all members of the
27 Plaintiff Class sustained damages arising out of and caused by defendant
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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

1 protect their interests.

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

12 COMMON FACTUAL ALLEGATIONS

13 25. As described herein, TBS has, for years, knowingly failed to authorize and
14 permit net ten minute rest periods for work shifts exceeding four hours or a major fraction thereof
15 (and at least three and one-half hours) and/or uninterrupted, unrestricted meal period of not less than
16 thirty minutes for work shifts exceeding five hours to those non-exempt employees within the class
17 definition identified above, thereby enjoying a significant competitive edge over other corporations
18 within its industry. Even upon termination or resignation of the employment of numerous Class
19 Members, TBS has declined to compensate these employees therefor, in blatant violation of
20 California Labor Code §§ 201 and or 202.

21 26. In so doing, TBS has not only failed to pay its workers the full amount of
22 compensation due, it has, until now, effectively shielded itself from its employees' scrutiny for its
23 unlawful conduct by concealing the magnitude and financial impact of its wrongdoing.

24 27. Moreover, California Labor Code §§ 201 and 202 require defendant TBS to
25 pay its employees all wages due immediately upon discharge. California Labor Code § 203 provides
26 that, if an employer willfully fails to timely pay such wages, the employer must, as a penalty,
27 continue to pay the subject employees' wages until the back wages are paid in full or an action is
28 commenced. The penalty cannot exceed 30 days of wages.

29 28. The Representative Plaintiff is informed and believes and, on that basis,
30 alleges that many members of the Plaintiff Class are entitled to unpaid compensation, yet, to date
31 and despite the termination of their employment with TBS, have not received such compensation.

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4 Plaintiff's claims are typical of those of the Plaintiff Class and the
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27 continue to pay the subject employees' wages until the back wages are paid in full or an action is
28 commenced. The penalty cannot exceed 30 days of wages.

29 28. The Representative Plaintiff is informed and believes and, on that basis,
30 alleges that many members of the Plaintiff Class are entitled to unpaid compensation, yet, to date
31 and despite the termination of their employment with TBS, have not received such compensation.

1 29. More than 30 days have passed since Plaintiff and particular other Class
2 Members has/have left defendant TBS's employ.

3 30. As a consequence of defendant TBS's willful conduct in not paying full
4 compensation to these terminated Class Members, Plaintiff and these particular Class Members are
5 entitled to 30 days wages as a penalty under Labor Code § 203, together with interest thereon and
6 attorneys' fees and costs.

7 31. As a direct and proximate result of Defendant's unlawful conduct, as set forth
8 herein, the Representative Plaintiff and members of the Plaintiff Class have sustained damages, as
9 described above, including a loss of compensation, in amounts to be established at trial. As a further
10 direct and proximate result of Defendant's unlawful conduct, as set forth herein, many Class
11 Members herein are entitled to recover "waiting time" penalties/wages (pursuant to California Labor
12 Code § 203), in an amount to be established at trial. As a further direct and proximate result of
13 Defendant's unlawful conduct, as set forth herein, the Representative Plaintiff and Class Members
14 are entitled to recover costs and attorneys' fees, pursuant to statute.

15
16 **FIRST CAUSE OF ACTION**
17 **FAILURE TO PROVIDE MEAL AND/OR PERMIT REST PERIODS**
 (California Labor Code §§ 226.7 and 512)

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

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

23 34. California Labor Code § 226.7 provides:

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

26 (b) If an employer fails to provide an employee a meal period or
27 rest period in accordance with an applicable order of the Industrial
28 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.

1 29. More than 30 days have passed since Plaintiff and particular other Class
 2 Members has/have left defendant TBS's employ.

3 30. As a consequence of defendant TBS's willful conduct in not paying full
 4 compensation to these terminated Class Members, Plaintiff and these particular Class Members are
 5 entitled to 30 days wages as a penalty under Labor Code § 203, together with interest thereon and
 6 attorneys' fees and costs.

7 31. As a direct and proximate result of Defendant's unlawful conduct, as set forth
 8 herein, the Representative Plaintiff and members of the Plaintiff Class have sustained damages, as
 9 described above, including a loss of compensation, in amounts to be established at trial. As a further
 10 direct and proximate result of Defendant's unlawful conduct, as set forth herein, many Class
 11 Members herein are entitled to recover "waiting time" penalties/wages (pursuant to California Labor
 12 Code § 203), in an amount to be established at trial. As a further direct and proximate result of
 13 Defendant's unlawful conduct, as set forth herein, the Representative Plaintiff and Class Members
 14 are entitled to recover costs and attorneys' fees, pursuant to statute.

15
 16 **FIRST CAUSE OF ACTION**
 17 **FAILURE TO PROVIDE MEAL AND/OR PERMIT REST PERIODS**
 18 **(California Labor Code §§ 226.7 and 512)**

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

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

24 34. California Labor Code § 226.7 provides:

- 25 (a) No employer shall require any employee to work during any
 26 meal or rest period mandated by an applicable order of the Industrial
 27 Welfare Commission.
- 28 (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.

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35. Moreover, California Labor Code § 512 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.

36. By failing to consistently provide uninterrupted and unrestricted meal periods and to authorize and permit uninterrupted rest periods to its non-exempt employees, Defendant violated California Labor Code §§ 226.7 and/or 512.

37. As a direct and proximate result of Defendant’s unlawful conduct, as set forth herein, the Representative Plaintiff and the Class Members have sustained damages, including loss of compensation/wages, in an amount to be established at trial. As a further direct and proximate result of Defendant’s unlawful conduct, as set forth herein, the Representative Plaintiff and the Class Members are entitled to recover various penalties, in an amount to be established at trial, as well as costs and attorneys’ fees, pursuant to statute.

38. Plaintiff is informed and believes, and based thereon alleges, that he was compensated at an hourly rate of \$10.00 per hour during the applicable period covered by this action and, as such, is owed \$20.00 in meal and/or rest period compensation for each of the days he worked for TBS between November 10, 2001 and the date his employment with TBS was terminated.

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

39. The 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.

40. The Representative Plaintiff further brings this cause of action on behalf of

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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.

36. By failing to consistently provide uninterrupted and unrestricted meal periods and to authorize and permit uninterrupted rest periods to its non-exempt employees, Defendant violated California Labor Code §§ 226.7 and/or 512.

37. As a direct and proximate result of Defendant’s unlawful conduct, as set forth herein, the Representative Plaintiff and the Class Members have sustained damages, including loss of compensation/wages, in an amount to be established at trial. As a further direct and proximate result of Defendant’s unlawful conduct, as set forth herein, the Representative Plaintiff and the Class Members are entitled to recover various penalties, in an amount to be established at trial, as well as costs and attorneys’ fees, pursuant to statute.

38. Plaintiff is informed and believes, and based thereon alleges, that he was compensated at an hourly rate of \$10.00 per hour during the applicable period covered by this action and, as such, is owed \$20.00 in meal and/or rest period compensation for each of the days he worked for TBS between November 10, 2001 and the date his employment with TBS was terminated.

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

39. The 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.

40. The Representative Plaintiff further brings this cause of action on behalf of

1 the general public, seeking equitable and statutory relief to stop the misconduct of Defendant, as
2 complained of herein, and to compel the payment of restitution by Defendant as a result of the
3 unfair, unlawful and fraudulent business practices described herein.

4 41. The knowing conduct of Defendant, as alleged herein, constitutes an unlawful
5 and/or fraudulent business practice, as set forth in California Business & Professions Code §§
6 17200-17208. Specifically, Defendant conducted business activities while failing to comply with
7 the legal mandates cited herein.

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

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

17 44. As a direct and proximate result of Defendant's unlawful conduct, as set forth
18 herein, the Representative Plaintiff and the Class Members have sustained damages, including loss
19 of earnings/wages, in an amount to be established at trial, and are entitled to restitution in such an
20 amount.

21
22 **RELIEF SOUGHT**

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

26 1. For an Order certifying the proposed Plaintiff Class and/or any other
27 appropriate subclass(es) under Code of Civil Procedure § 382;

28 2. That defendants are found to have violated Labor Code § 512 for willful

1 the general public, seeking equitable and statutory relief to stop the misconduct of Defendant, as
2 complained of herein, and to compel the payment of restitution by Defendant as a result of the
3 unfair, unlawful and fraudulent business practices described herein.

4 41. The knowing conduct of Defendant, as alleged herein, constitutes an unlawful
5 and/or fraudulent business practice, as set forth in California Business & Professions Code §§
6 17200-17208. Specifically, Defendant conducted business activities while failing to comply with
7 the legal mandates cited herein.

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

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

17 44. As a direct and proximate result of Defendant's unlawful conduct, as set forth
18 herein, the Representative Plaintiff and the Class Members have sustained damages, including loss
19 of earnings/wages, in an amount to be established at trial, and are entitled to restitution in such an
20 amount.

21
22 **RELIEF SOUGHT**

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

26 1. For an Order certifying the proposed Plaintiff Class and/or any other
27 appropriate subclass(es) under Code of Civil Procedure § 382;

28 2. That defendants are found to have violated Labor Code § 512 for willful

- 1 failure to provide meal periods;
- 2 3. That defendants are found to have violated Labor Code § 226.7 for willful
3 failure to authorize and permit rest periods;
- 4 4. That defendants are found to have violated California Labor Code §§ 201 and
5 202 for willful failure to pay all compensation owed at the time of termination or within 72 hours
6 of resignation of employment to particular Class Members;
- 7 5. That defendants are found to have violated Business & Professions Code §
8 17200 by failing to pay the Representative Plaintiff and Class Members all compensation for meal
9 and/or rest periods denied, and by failing to pay “waiting time” penalties to particular Class
10 Members;
- 11 6. An award to the Representative Plaintiff and the Plaintiff Class of damages
12 for the amount of unpaid compensation, including interest thereon, and penalties, in an amount to
13 be proven at trial;
- 14 7. That defendants be ordered and enjoined to pay restitution to the
15 Representative Plaintiff and the Plaintiff Class due to Defendants’ unlawful activities, pursuant to
16 Business & Professions Code §§ 17200-08, et seq.;
- 17 8. That defendants further be enjoined to cease and desist from unlawful
18 activities in violation of Business & Professions Code § 17200;
- 19 9. For all other Orders, findings and determinations identified and sought in this
20 Complaint;
- 21 10. For Interest on the amount of any and all economic losses, at the prevailing
22 legal rate;
- 23 11. For reasonable Attorneys’ Fees, pursuant to California Labor Code §§ 218.5
24 and/or California Civil Code § 1021.5; and
- 25 12. For Costs of suit and any and all such other relief as the Court deems just and
26 proper.
- 27 ///
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- 1 failure to provide meal periods;
- 2 3. That defendants are found to have violated Labor Code § 226.7 for willful
3 failure to authorize and permit rest periods;
- 4 4. That defendants are found to have violated California Labor Code §§ 201 and
5 202 for willful failure to pay all compensation owed at the time of termination or within 72 hours
6 of resignation of employment to particular Class Members;
- 7 5. That defendants are found to have violated Business & Professions Code §
8 17200 by failing to pay the Representative Plaintiff and Class Members all compensation for meal
9 and/or rest periods denied, and by failing to pay “waiting time” penalties to particular Class
10 Members;
- 11 6. An award to the Representative Plaintiff and the Plaintiff Class of damages
12 for the amount of unpaid compensation, including interest thereon, and penalties, in an amount to
13 be proven at trial;
- 14 7. That defendants be ordered and enjoined to pay restitution to the
15 Representative Plaintiff and the Plaintiff Class due to Defendants’ unlawful activities, pursuant to
16 Business & Professions Code §§ 17200-08, et seq.;
- 17 8. That defendants further be enjoined to cease and desist from unlawful
18 activities in violation of Business & Professions Code § 17200;
- 19 9. For all other Orders, findings and determinations identified and sought in this
20 Complaint;
- 21 10. For Interest on the amount of any and all economic losses, at the prevailing
22 legal rate;
- 23 11. For reasonable Attorneys’ Fees, pursuant to California Labor Code §§ 218.5
24 and/or California Civil Code § 1021.5; and
- 25 12. For Costs of suit and any and all such other relief as the Court deems just and
26 proper.
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SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE WORLD SAVINGS TOWER
1970 BROADWAY, SUITE 950
OAKLAND, CA 94612
TEL: (510) 891-9800

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Dated: March 7, 2006

SCOTT COLE & ASSOCIATES, APC

By: /s/ Matthew R. Bainer
Matthew R. Bainer, Esq.
Attorneys for the Representative Plaintiff
and the Plaintiff Class

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE WORLD SAVINGS TOWER
1970 BROADWAY, SUITE 950
OAKLAND, CA 94612
TEL: (510) 891-9800