

1 Scott Edward Cole, Esq. (S.B. #160744)
Andrew Weaver, Esq. (S.B. #318935)
2 **SCOTT COLE & ASSOCIATES, APC**
1970 Broadway, Ninth Floor
3 Oakland, California 94612
Telephone: (510) 891-9800
4 Facsimile: (510) 891-7030
Email: scole@scalaw.com
5 Email: aweaver@scalaw.com
Web: www.scalaw.com

6 Attorneys for Representative Plaintiff
7 and the Plaintiff Class

8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SANTA CLARA**

11 NICHOLAS ROBINSON, individually,) **Case No. 18CV329653**
and on behalf of all others similarly)
12 situated,) **CLASS ACTION**
13 Plaintiff,) **COMPLAINT FOR DAMAGES,**
14 vs.) **INJUNCTIVE RELIEF AND RESTITUTION**
15 INTREPID SECURITY SOLUTIONS)
and DOES 1 through 100, inclusive,) **[Jury Trial Demanded]**
16 Defendants.)
17)
18)
19)

20 Representative Plaintiff alleges as follows:

22 **INTRODUCTION**

23 1. This is a class action seeking unpaid regular and overtime wages, including unpaid
24 compensation for meal and/or rest period violations, interest thereon, reimbursement of business
25 expenses, liquidated damages and other penalties, injunctive and other equitable relief, and
26 reasonable attorneys' fees and costs under, *inter alia*, California Labor Code §§ 200-204, inclusive,
27 226, 226.7, 226.8, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1198, California Business and
28 Professions Code §§ 17200, *et seq.* and California Code of Civil Procedure § 1021.5. Plaintiff

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

1 Nicholas Robinson (“Representative Plaintiff” or “Plaintiff”) brings this action on behalf of
2 himself and all other persons similarly situated (“Class Members” and/or the “Plaintiff Class”)
3 who are or have been employed by defendants Intrepid Security Solutions, and/or Does 1 through
4 100, inclusive (collectively “Defendant”) as Patrol Officers and/or Security Guards/Officers
5 within the State of California within the applicable class period.

6 2. The class period is designated as the time from June 7, 2014 through trial, based
7 upon the allegation that the violations of California’s wage and hour laws, as described more fully
8 below, have been ongoing throughout that time.

9 3. During the class period, Defendant has had a consistent policy of (1) permitting,
10 encouraging and/or requiring Plaintiff to work in excess of eight hours per day and/or in excess of
11 forty hours per week without paying him overtime compensation as required by California’s wage
12 and hour laws, (2) unlawfully denying Plaintiff and Class Members statutorily-mandated meal and
13 rest periods, (3) willfully failing to provide Plaintiff and Class Members with accurate
14 semimonthly itemized wage statements reflecting the total number of hours each worked, the
15 applicable deductions, and the applicable hourly rates in effect during the pay period, and (4)
16 willfully failing to pay compensation in a prompt and timely manner to Plaintiff and those Class
17 Members whose employment with Defendant has terminated.

18 4. Defendant operates a security service within California for which Representative
19 Plaintiff worked as a Security Officer. The Representative Plaintiff is informed and believes and,
20 on that basis, alleges that, within the Class Period, Defendant employed hundreds of individuals
21 in California in recent years to perform security services, employment positions which did not,
22 and currently do not, meet any known test for exemption from the payment of overtime wages
23 and/or the entitlement to meal or rest periods.

24 5. Despite actual knowledge of these facts and legal mandates, Defendant has and
25 continues to enjoy an advantage over its competition and a resultant disadvantage to its workers
26 by electing not to pay all wages due (regular and overtime wages, missed meal and rest period
27 compensation) and/or all penalties dues (including “waiting time” penalties) to its California based
28 patrol officers and/or security guards/officers.

1 6. Representative Plaintiff is informed and believes and, based thereon, alleges that
2 Defendant's officers knew of these facts and legal mandates yet, nonetheless, repeatedly
3 authorized and/or ratified the violation of the laws cited herein.

4 7. Despite Defendant's knowledge of Class Members' entitlement to meal and/or rest
5 periods for all applicable work periods, Defendant failed to provide the same to Class Members,
6 in violation of California state statutes, the applicable California Industrial Welfare Commission
7 Wage Order, and Title 8 of the California Code of Regulations. This action is brought to redress
8 and end this prolonged pattern of unlawful conduct once and for all.

9 **JURISDICTION AND VENUE**

10 8. This Court has jurisdiction over the Representative Plaintiff's and Class Members'
11 claims for unpaid wages, expenses and/or penalties under, *inter alia*, the applicable Industrial
12 Welfare Commission Wage Order, Title 8 of the California Code of Regulations, various sections
13 of the California Labor Code, and/or the California Code of Civil Procedure § 1021.5.

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

18 10. Venue as to Defendant is proper in this judicial district pursuant to California Code
19 of Civil Procedure § 395(a). Defendant provides security services within the County of Santa Clara
20 (where Plaintiff and numerous Class Members worked), transacts business, has agents, and is
21 otherwise within this Court's jurisdiction for purposes of service of process. The unlawful acts
22 alleged herein have and have had a direct effect on Representative Plaintiff and those similarly
23 situated within the State of California and within the County of Santa Clara.

24
25 **PLAINTIFF**

26 11. Representative Plaintiff Nicholas Robinson is a natural person who was employed
27 by Defendant as a Security Officer during the Class Period.
28

CLASS ACTION ALLEGATIONS

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

"All persons employed by Defendant as patrol officers and/or security guards/officers in California at any time on or after June 7, 2014."

18. Defendant's officers and directors are excluded from the Plaintiff Class.

19. 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 violated California Business and Professions Code § 17200, *et seq.* by failing to provide meal and/or rest breaks to Class Members working eligible shifts;
- 2) Whether Defendant violated California Labor Code § 1174 by failing to keep accurate records of employees' hours of work;
- 3) Whether Defendant violated California Labor Code §§ 201-204 by failing to pay wages due and owing at the time that certain Class Members' employment with Defendant terminated;
- 4) Whether Defendant violated California Labor Code § 226 by failing to provide semimonthly itemized statements to Class Members of total hours worked by each and all applicable hourly rates in effect during the pay period; and

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

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

e. 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 Class Members to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought, or be required to be brought, by each individual Class Member, 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 protect their interests.

COMMON FACTUAL ALLEGATIONS

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

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

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

7 23. Furthermore, despite its knowledge of the Representative Plaintiff's and the Class
8 Members' entitlement to compensation for all hours worked, Defendant violated California Labor
9 Code § 1174(d) by failing to provide or require the use, maintenance, or submission of time records
10 by members of the Plaintiff Class. Defendant also failed to provide the Representative Plaintiff
11 and Class Members with accurate semimonthly itemized statements of the total number of hours
12 worked by each, and all applicable hourly rates in effect, during the pay period, in violation of
13 California Labor Code § 226. In failing to provide the required documents, Defendant has not only
14 failed to pay its workers the full amount of compensation due but the company has also, until now,
15 effectively shielded itself from its employees' scrutiny by concealing the magnitude and financial
16 impact of its wrongdoing that such documents might otherwise have led workers to discover.

17 24. Representative Plaintiff and all persons similarly situated are entitled to unpaid
18 compensation, yet, to date, have not received such compensation despite many of the same having
19 been terminated by and/or resigned from Defendant's employ. More than 30 days have passed
20 since certain Class Members have left Defendant's employ.

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

25 26. As a direct and proximate result of Defendant's unlawful conduct, as set forth
26 herein, Representative Plaintiff and Class Members have sustained damages, as described above,
27 including compensation for loss of earnings for hours worked on behalf of Defendant, in an amount
28 to be established at trial. As a further direct and proximate result of Defendant's unlawful conduct,

1 as set forth herein, certain Class Members are entitled to recover “waiting time” penalties (pursuant
2 to California Labor Code § 203) and penalties for failure to provide semimonthly statements of
3 hours worked and all applicable hourly rates (pursuant to California Labor Code § 226) in an
4 amount to be established at trial. As a further direct and proximate result of Defendant’s unlawful
5 conduct, as set forth herein, Representative Plaintiff and Class Members are also entitled to recover
6 costs and attorneys’ fees pursuant to California Code of Civil Procedure § 1021.5, among other
7 authorities.

8 27. Representative Plaintiff seeks injunctive relief prohibiting Defendant from
9 engaging in the complained-of illegal labor acts and practices in the future. Representative Plaintiff
10 also seeks restitution of costs incurred by Representative Plaintiff and Class Members under
11 California’s Unfair Competition Law. Unless enjoined, Defendant’s unlawful conduct will
12 continue unchecked, while Representative Plaintiff and Class Members bear the financial brunt of
13 Defendant’s unlawful conduct. As a further direct and proximate result of Defendant’s unlawful
14 conduct, as set forth herein, Representative Plaintiff and the Plaintiff Class are also entitled to
15 recover costs and attorneys’ fees, pursuant to statute.

16
17 **FIRST CAUSE OF ACTION**
18 **UNLAWFUL FAILURE TO PAY WAGES**
19 **(California Labor Code §§ 200-204, 510, 558, 1194, and 1198; IWC Wage Order(s))**

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

22 29. During the limitations period, Plaintiff performed work for Defendant, oftentimes
23 in excess of eight hours in a workday and/or forty hours in a workweek. The number of hours will
24 be proven at trial.

25 30. During the limitations period, Defendant refused to compensate Plaintiff for all of
26 the wages earned, in violation of the applicable IWC Wage Order(s) and provisions of the
27 California Labor Code.
28

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

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

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

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

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

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

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

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

23 35. By refusing to compensate Plaintiff for overtime wages earned, Defendant violated
24 those California Labor Code provisions cited herein as well as the applicable IWC Wage Order(s).

25 36. Defendant's conduct, as heretofore detailed, represents underpayment of wages
26 pursuant to California Labor Code § 558 for which Plaintiffs seek damages and/or penalties
27 according to proof.

28 37. As a direct and proximate result of Defendant's unlawful conduct, as set forth
herein, Plaintiff has sustained damages, including loss of earnings for hours of overtime worked
on behalf of Defendant, in an amount to be established at trial. As a further direct and proximate
result of Defendant's unlawful conduct, as set forth herein, Plaintiff is entitled to recover penalties
in amounts to be established at trial, as well as attorneys' fees and costs, and restitution, pursuant
to statute.

1 employee with a second meal period of not less than 30
2 minutes...

3 (C) If an employer fails to provide an employee a meal period in
4 accordance with the applicable provisions of this order, the
5 employer shall pay the employee one (1) hour of pay at the
6 employee's regular rate of compensation for each workday that
7 the meal period is not provided.

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

9 (A) Every employer shall authorize and permit all employees to
10 take rest periods, which insofar as practicable shall be in the middle
11 of each work period. The authorized rest period time shall be based
12 on the total hours worked daily at the rate of ten (10) minutes net
13 rest time per four (4) hours or major fraction thereof

14 (B) If an employer fails to provide an employee a rest period in
15 accordance with the applicable provisions of this order, the
16 employer shall pay the employee one (1) hour of pay at the
17 employee's regular rate of compensation for each workday that the
18 rest period is not provided.

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

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

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

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

SCOTT COLE & ASSOCIATES, APC
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THE WACHOVIA TOWER
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THIRD CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
(California Labor Code §§ 226 and 1174)

49. 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.

50. California Labor Code § 226(a) provides:

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

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

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

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

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

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

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

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

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 55. 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 56. 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 57. California Labor Code § 203 provides that:
15 If an employer willfully fails to pay, without abatement or reduction, in
16 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
17 employee who is discharged or who quits, the wages of the employee shall
18 continue as a penalty from the due date thereof at the same rate until paid or
19 until an action therefor is commenced; but the wages shall not continue for
20 more than 30 days.

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

26 59. More than 30 days have elapsed since certain Class Members were involuntarily
27 terminated or voluntarily resigned from Defendant's employ.

28 60. 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

1 time” penalties of up to thirty days’ wages pursuant to California Labor Code § 203 in an amount
2 to be established at trial, together with interest thereon, and attorneys’ fees and costs.

3
4 **FIFTH CAUSE OF ACTION**
5 **UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT**
6 **(California Business & Professions Code §§ 17200-17208)**

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

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

14 63. Defendant’s knowing conduct, as alleged herein, constitutes an unlawful and/or
15 fraudulent business practice, as set forth in California Business & Professions Code §§ 17200-
16 17208. Specifically, Defendant conducted business activities while failing to comply with the legal
17 mandates cited herein.

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

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE WACHOVIA TOWER
1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 891-9600

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

RELIEF SOUGHT

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

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

8 2. That the Court declare, adjudge, and decree that Defendant willfully violated its
9 legal duties to pay all wages due under the California Labor Code and the applicable California
10 Industrial Welfare Commission Wage Orders;

11 3. That the Court make an award to the Representative Plaintiff and the Class
12 Members of one hour of pay at each employee's regular rate of compensation for each workday
13 that a meal period was not provided;

14 4. That the Court make an award to the Representative Plaintiff and the Class
15 Members of one hour of pay at each employee's regular rate of compensation for each workday
16 that a rest period was not provided;

17 5. That the Court Order Defendant to pay restitution to the Representative Plaintiff
18 and the Class Members due to Defendant's unlawful activities, pursuant to California Business
19 and Professions Code §§ 17200-17208;

20 6. That the Court further enjoin Defendant, ordering it to cease and desist from
21 unlawful activities in violation of California Business and Professions Code § 17200, *et seq.*

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

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

26 9. That the Court make an award to Plaintiffs of penalties, pursuant to California
27 Labor Code §§ 203, 226, 558, and 1174.5, in an amount to be proven at trial;

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THE WACHOVIA TOWER
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OAKLAND, CA 94612
TEL: (510) 891-9800

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10. For reasonable attorneys' fees, pursuant to California Code of Civil Procedure § 1021.5; and

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

JURY DEMAND

Representative Plaintiff, on behalf of himself and the Plaintiff Class, hereby demands a trial by jury.

Dated: June 7, 2018

SCOTT COLE & ASSOCIATES, APC

By:



Andrew Weaver, Esq.
Attorneys for Representative Plaintiff
and the Plaintiff Class