

AUG 26 2005

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CASE MANAGEMENT CONFERENCE SET

JAN 27 2006 - 9 00 AM

6 Attorneys for Representative Plaintiff
7 and the Plaintiff Class

DEPARTMENT 212

8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

11 EMANUEL DAVIS, individually, and
12 on behalf of all others similarly situated,

13 Plaintiffs,

14 vs.

15 AMERICAN COMMERCIAL
16 SECURITY SERVICES, INC., and
17 DOES 1 through 100, inclusive,

18 Defendants.

Case No.: **CGC 05 4444 21**

CLASS ACTION

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

19 Representative Plaintiff alleges as follows:

21 **PRELIMINARY STATEMENT**

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

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1 AMERICAN COMMERCIAL SECURITY SERVICES, INC. and Does 1 through 100, inclusive
2 (collectively "ACSS" and/or "Defendant[s]") in any none-exempt security guard positions within
3 the State of California, at any time between August 26, 2001 and the present, and who have been
4 denied meal and/or rest periods. The Representative Plaintiff, on behalf of himself and the Class
5 Members, also seeks injunctive relief and restitution of all benefits ACSS has enjoyed from its
6 failure to provide meal and/or rest periods under Business and Professions Code §§ 17200-17208.

7 2. The "Class Period" is designated as the time from August 26, 2001 through the trial
8 date, based upon the allegation that the violations of California's wage and hour laws, as described
9 more fully below, have been ongoing since that time. During the Class Period, ACSS has had a
10 consistent policy toward its Security Guards of (1) permitting, encouraging, and/or requiring the
11 Representative Plaintiff and Class Members to work, oftentimes in excess of eight (8) hours per day,
12 without consistently providing all meal and/or rest periods due, as required by California state wage
13 and hour laws.

14 INTRODUCTION

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

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

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

24 6. Despite ACSS's knowledge of the Plaintiff Class' entitlement to meal and/or rest
25 periods for all applicable work periods, ACSS failed to provide same to members of the Plaintiff
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-
28

1 time pattern of unlawful conduct.
2

3 **JURISDICTION AND VENUE**

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

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

12 9. Venue as to Defendant(s) is proper in this judicial district, pursuant to Code of Civil
13 Procedure § 395(a). Defendant ACSS provides security services in the County of San Francisco,
14 and transacts business, has agents, and is otherwise within this Court's jurisdiction for purposes of
15 service of process. The unlawful acts alleged herein have a direct effect on the Representative
16 Plaintiff and those similarly situated within the State of California and San Francisco County.
17 Defendant ACSS provides said services and has employed numerous Class Members in San
18 Francisco 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 EMANUEL DAVIS (the
22 "Representative Plaintiff") was and is a natural person, and was, during the relevant time period
23 identified herein, employed by defendant ACSS in a security guard position, an employment position
24 which was entitled and continues to enjoy an entitlement to various conditions of employment such
25 as meal and/or rest periods.

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

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1 four hours or a "major fraction" thereof, without being afforded net ten minute rest periods.
2 Representative Plaintiff is informed and believes and, on that basis, alleges that this conduct of
3 ACSS 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 "Plaintiff
5 Class" refer to the named plaintiff herein as well as each and every person eligible for membership
6 in the Plaintiff Class, as further described and defined below.

7 13. The Plaintiff Class consists, generally, of all members who are/were employed as
8 non-exempt employees by ACSS employed in security guard 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 hours,
12 without being afforded an uninterrupted, unrestricted meal period of not less than thirty (30) minutes.

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

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

18
19 **DEFENDANTS**

20 16. At all times herein relevant, defendants AMERICAN COMMERCIAL SECURITY
21 SERVICES, INC. and Does 1 through 100, inclusive (collectively referred to as "ACSS" and/or
22 "Defendant[s]") were business entities, duly licensed and located and doing business in, but not
23 limited to, the County of San Francisco, in the State of California.

24 17. The Representative Plaintiff is informed and believes and, based thereon, alleges that
25 defendant ACSS directly or indirectly employs and, since August 26, 2001, has employed and/or
26 exercised control over the wages, hours and/or working conditions of the Representative Plaintiff
27 and Class Members employed by ACSS in various California counties, including, but not necessarily
28 limited to, San Francisco County.

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

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

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

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

22
23 **CLASS ACTION ALLEGATIONS**

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

27 ////
28 ////

1 All persons who are/were employed in any security guard positions
2 in California by AMERICAN COMMERCIAL SECURITY
3 SERVICES, INC. and who (1) did not receive all uninterrupted,
4 unrestricted meal periods and/or all rest periods due for each period
5 of work performed thereby at any time since August 26, 2001 and (2)
6 have not received all compensation/restitution and associated
7 penalties due as a result thereof.

8 23. Defendants, their officers and directors are excluded from the Plaintiff Class.

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

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

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

26 B. Typicality: The Representative Plaintiff's claims are typical of the claims of
27 the Plaintiff Class. The Representative Plaintiff and all members of the
28 Plaintiff Class sustained damages arising out of and caused by defendant
ACSS'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,
insofar as the Representative Plaintiff is informed and believes and, on that
basis, alleges that the total number of class members is, at least, in the
thousands of individuals. Membership in the Class will be determined upon
analysis of employee and payroll, among other, records maintained by ACSS.

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

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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 protect their interests.

E. 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 interests 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, experienced in conducting litigation of this nature. The Representative Plaintiff is not subject to any individual defenses unique from those conceivably applicable to the Plaintiff Class as a whole. The Representative Plaintiff anticipates no management difficulties in this litigation.

COMMON FACTUAL ALLEGATIONS

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

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

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

28. The Representative Plaintiff is informed and believes and, on that basis, alleges that many members of the Plaintiff Class are entitled to unpaid compensation, yet, to date and despite

1 the termination of their employment with ACSS, have not received such compensation.

2 29. More than 30 days have passed since certain Class Members have left defendant
3 ACSS's employ.

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

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

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

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

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

25 34. California Labor Code § 226.7 provides:

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

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

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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.

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 provide 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.

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

38. 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.

39. The Representative Plaintiff further brings this cause of action on behalf of the general public, seeking equitable and statutory relief to stop the misconduct of Defendant, as complained of herein, and to compel the payment of restitution by Defendant as a result of the unfair, unlawful and fraudulent business practices described herein.

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

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

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

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

18
19 **RELIEF SOUGHT**

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

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

25 2. That defendants are found to have violated Labor Code § 512 for willful failure to
26 provide meal periods;

27 3. That defendants are found to have violated Labor Code § 226.7 for willful failure to
28 provide rest periods;

1 4. That defendants are found to have violated California Labor Code §§ 201 and 202
2 for willful failure to pay all compensation owed at the time of termination or within 72 hours of
3 resignation of employment to particular Class Members;

4 5. That defendants are found to have violated Business & Professions Code § 17200 by
5 failing to pay the Representative Plaintiff and Class Members all compensation for meal and/or rest
6 periods denied, and by failing to pay "waiting time" penalties to particular Class Members;

7 6. An award to the Representative Plaintiff and the Plaintiff Class of damages for the
8 amount of unpaid compensation, including interest thereon, and penalties, in an amount to be proven
9 at trial;

10 7. That defendants be ordered and enjoined to pay restitution to the Representative
11 Plaintiff and the Plaintiff Class due to Defendants' unlawful activities, pursuant to Business &
12 Professions Code §§ 17200-08, et seq.;

13 8. That defendants further be enjoined to cease and desist from unlawful activities in
14 violation of Business & Professions Code § 17200;

15 9. For all other Orders, findings and determinations identified and sought in this
16 Complaint;

17 10. For Interest on the amount of any and all economic losses, at the prevailing legal rate;

18 11. For reasonable Attorneys' Fees, pursuant to California Labor Code §§ 218.5 and/or
19 California Civil Code § 1021.5; and

20 12. For Costs of suit and any and all such other relief as the Court deems just and proper.

21
22 Dated: August 26, 2005

23
24 **SCOTT COLE & ASSOCIATES, APC**

25
26 By: 

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