

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

ENDORSED  
FILED  
ALAMEDA COUNTY

MAR 17 2004

CLERK OF THE SUPERIOR COURT  
By Dorothy L. Leo, Deputy

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 ALAMEDA**

11 MAURICE DUNBAR, individually, and  
12 on behalf of all others similarly situated,

13 Plaintiffs,

13 vs.

14 ALBERTSON'S, INC., and DOES 1  
15 through 25, inclusive,

16 Defendants.

Case No.: **RG04146326**

CLASS ACTION

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

18 Representative Plaintiff alleges as follows:

20 **PRELIMINARY STATEMENT**

21 1. This is a class action, under Code of Civil Procedure § 382, seeking unpaid wages,  
22 including unpaid overtime compensation and interest thereon, rest and meal period penalties, waiting  
23 time penalties, injunctive and other equitable relief and reasonable attorneys' fees and costs, under,  
24 *inter alia*, California Code of Civil Procedure § 382, Labor Code §§ 201, 202, 203, 218.5, 226,  
25 226.7, 512, 1174 and 1194, and CCP § 1021.5, on behalf of Plaintiff and all other persons who are  
26 or have been employed by defendant ALBERTSON'S, INC. and DOES 1 through 25, inclusive  
27 (collectively "ALBERTSON'S") in any of ALBERTSON'S' retail supermarkets in the State of  
28 California at any time after the commencement of the pay period including March 17, 2000

1 (Overtime Class) and/or at any time after the commencement of the pay period including January  
2 1, 2001 (Meal and Rest Period Class) in allegedly-overtime exempt "Grocery Manager" positions  
3 ("Grocery Managers"). The Representative Plaintiff, on behalf of himself and the Class Members,  
4 also seeks injunctive relief and restitution of all benefits ALBERTSON'S has enjoyed from its  
5 failure to pay overtime compensation under Business and Professions Code §§ 17200-17208.

6 2. The "Overtime Class Period" (applicable to members of the "Overtime Class") is  
7 designated as the time from at least the commencement of the pay period including March 17, 2000  
8 through the trial date and the "Meal and Rest Class Period" (applicable to members of the "Meal and  
9 Rest Period Class") is designated as the time from at least the commencement of the pay period  
10 including March 17, 2000 through the trial date and each period is based upon the allegation that  
11 these respective violations of California's wage and hour laws, as described more fully below, have  
12 been ongoing since at least these dates. During the "Overtime Class Period" and the "Meal and Rest  
13 Class Period," ALBERTSON'S has had a consistent policy of (1) permitting, encouraging, and/or  
14 requiring their allegedly-overtime exempt Grocery Managers, including Representative Plaintiff and  
15 Class Members, to work in excess of eight hours per day and in excess of forty hours per week  
16 without paying them overtime compensation as required by California state wage and hour laws; (2)  
17 unlawfully denying the Representative Plaintiff and the California Class Members statutorily-  
18 mandated meal and rest periods; (3) willfully failing to pay compensation (including unpaid  
19 overtime) owing in a prompt and timely manner to the Representative Plaintiff and/or those Class  
20 Members whose employment with ALBERTSON'S terminated; and (4) willfully failing to provide  
21 Plaintiff and the California Class Members with accurate semimonthly itemized statements of the  
22 total number of hours each of them worked, the applicable deductions and the applicable hourly rates  
23 in effect during the pay period.

24  
25 **INTRODUCTION**

26 3. Nearly a hundred years ago, California enacted its first daily overtime law, thereby  
27 setting California's first workday standard, long before the federal government enacted overtime  
28 protections for workers.

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

5           5.       Since its inception, defendant ALBERTSON'S has offered a wide range of  
6 merchandise to the public, including food items, housewares, seasonal goods, candy, toys, health and  
7 beauty care, gifts, party goods, stationery, magazines, personal accessories, and other consumer  
8 items. Representative Plaintiff is informed and believes and, based thereon, alleges that, within the  
9 class period, ALBERTSON'S has operated numerous retail supermarkets throughout the State of  
10 California. In so doing, ALBERTSON'S has employed scores, if not hundreds, of individuals in  
11 recent years alone in Grocery Manager positions, employment positions which have not and  
12 currently do not meet the test for exemption from the payment of overtime wages.

13           6.       Despite actual knowledge of these facts and legal mandates, ALBERTSON'S has  
14 enjoyed an advantage over its competition and a resultant disadvantage to its workers by electing  
15 not to pay premium (overtime) and/or "penalty" (a.k.a. "waiting time") wages to Grocery Managers  
16 nor has it provided them with statutorily-mandated meal and rest periods or accurate and complete  
17 semimonthly itemized statements.

18           7.       Representative Plaintiff is informed and believes and, based thereon, alleges that  
19 officers of ALBERTSON'S knew of these facts and legal mandates, yet, nonetheless, repeatedly  
20 authorized and/or ratified the violation of the laws cited herein.

21           8.       Despite ALBERTSON'S' knowledge of the Plaintiff Class' entitlement to premium  
22 (overtime) pay for excess hours worked and to meal and rest periods, ALBERTSON'S failed to  
23 provide or require the use, maintenance or submission of accurate and complete time records by  
24 members of the Plaintiff Classes, in violation of California Labor Code §1174[d]). This action is  
25 brought to redress and end this long-time pattern of unlawful conduct.

26       ////

27       ////

28       ////

**JURISDICTION AND VENUE**

1  
2           9.       This Court has jurisdiction over Representative Plaintiff's and Class Members' claims  
3 for unpaid overtime wages under Labor Code § 1194, for penalties for failure to provide meal and  
4 rest periods under Labor Code §§ 226.7 and 512, for penalties for failure to pay wages of discharged  
5 employees under Labor Code § 203 and for penalties for failure to provide itemized statements of  
6 actual hours worked and all applicable hourly rates under Labor Code § 226.

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

10           11.       Venue as to each Defendant is proper in this judicial district, pursuant to Code of  
11 Civil Procedure § 395(a). Defendant ALBERTSON'S operates retail supermarkets in Alameda  
12 County, and transacts business, has agents, and is otherwise within this Court's jurisdiction for  
13 purposes of service of process. The unlawful acts alleged herein have a direct effect on  
14 Representative Plaintiff and those similarly situated within the State of California and within  
15 Alameda County. Defendant ALBERTSON'S operates said retail supermarkets and has employed  
16 numerous Class Members in Alameda County.

**PLAINTIFFS**

17  
18  
19           12.       During a portion of the herein-relevant time period, the Representative Plaintiff  
20 identified herein was and is a natural person, and was, during the relevant time period identified  
21 herein, employed by defendant ALBERTSON'S as an allegedly-overtime-exempt Grocery Manager,  
22 an employment position which was mis-classified as salaried/exempt from overtime pay.

23           13.       As used throughout this Complaint, the terms "Plaintiffs" and/or "Class(es)" refer to  
24 the named plaintiff herein as well as each and every person eligible for membership in one or more  
25 of the Plaintiff Classes, as further described and defined below.

26           14.       The Plaintiff Classes consist, generally, of all members who are/were employed as  
27 Grocery Managers of ALBERTSON'S, and were classified thereby as overtime-exempt employees,  
28 and who: (1) worked (a) in excess of eight hours per workday and/or in excess of forty hours per

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

1 work week at any time between the commencement of the pay period including March 17, 2000 and  
2 the present and (b) did not receive premium (overtime) pay for all excess hours worked thereby in  
3 any given workday/workweek and/or (2) did not receive all wages due as a result of Defendant's  
4 failure to consistently provide meal and rest periods at any time after January 1, 2001.

5 15. At all times herein relevant, the Representative Plaintiff was and now is a person  
6 within each of the Classes of persons further described and defined herein.

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

### 11 DEFENDANTS

12 17. At all times herein relevant, defendants ALBERTSON'S, INC. and Does 1 through  
13 25, inclusive (collectively referred to as "ALBERTSON'S" and/or "Defendant") were corporations,  
14 duly licensed and located and doing business in, but not limited to, the County of Alameda, in the  
15 State of California.

16 18. Those defendants identified as Does 1 through 25, inclusive, are and were, at all  
17 relevant times herein-mentioned, officers, directors and/or managing agents of some/each of the  
18 remaining defendants.

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

26 20. Representative Plaintiff is informed and believes and, on that basis, alleges that, at  
27 all relevant times herein mentioned, each of the defendants was the agent and/or employee of each  
28 of the remaining defendants and, in doing the acts herein alleged, was acting within the course and

1 scope of such agency and/or employment.

2  
3 **CLASS ACTION ALLEGATIONS**

4 21. Representative Plaintiff MAURICE DUNBAR brings this action on behalf of himself  
5 and as a class action on behalf of all persons or entities similarly situated and proximately damaged  
6 by ALBERTSON'S' conduct as set forth herein, including, but not necessarily limited to the  
7 following Classes:

8 **Overtime Class:**

9 All persons who are/were employed as Grocery Managers by  
10 ALBERTSON'S, INC., in one or more of ALBERTSON'S'  
11 California retail supermarkets and were classified thereby as  
12 overtime-exempt employees, who: (1) worked in excess of eight  
13 hours per workday and/or in excess of forty hours per workweek at  
14 any time between March 17, 2000 and the present and (2) did not  
15 receive premium (overtime) pay for all excess hours worked thereby  
16 in any given workday/workweek.

17 **Meal and Rest Period Class:**

18 All persons who are/were employed as Grocery Managers by  
19 ALBERTSON'S, INC., in one or more of ALBERTSON'S'  
20 California retail supermarkets were denied statutorily-mandated meal  
21 and/or rest periods at any time between January 1, 2001 and the  
22 present and did not receive wages due, including wages pursuant to  
23 California Labor Code §§ 226.7 and/or 512.

24 22. Defendants, their officers and directors are excluded from each of the Classes.

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

28 a. **Numerosity:** A class action is the only available method for the fair and  
efficient adjudication of this controversy. The members of the classes 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 the total membership in each of the classes is in the hundreds of  
individuals. Membership in the Classes will be determined upon analysis of  
employee and payroll, among other, records maintained by ALBERTSON'S.

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  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- i. whether defendant ALBERTSON'S violated IWC Wage Orders and/or Labor Code § 510 by failing to pay overtime compensation to Grocery Managers who worked in excess of forty hours per week and/or eight hours per day.
  - ii. whether defendant ALBERTSON'S violated Business and Professions Code § 17200 by failing to pay overtime compensation to Grocery Managers who worked in excess of forty hours per week and/or eight hours per day.
  - iii. whether defendant ALBERTSON'S violated Labor Code §§ 226.7 and/or 512 by failing to consistently provide meal and rest periods to its Grocery Managers.
  - iv. whether defendant ALBERTSON'S violated Labor Code § 1174 by failing to keep accurate records of employees' hours of work.
  - v. whether defendant ALBERTSON'S violated Labor Code §§ 201-203 by failing to pay overtime wages due and owing at the time that certain Class Members' employment with Defendant terminated.
  - vi. whether defendant ALBERTSON'S violated Labor Code § 226 by failing to provide the semimonthly itemized statements to Class Members of total hours worked by each and all applicable hourly rates in effect during the pay period.
  - vii. whether Representative Plaintiff and the Classes are entitled to "waiting time" penalties, pursuant to Labor Code § 203.
- c. Typicality: The Representative Plaintiff's claims are typical of the claims of the Classes. The Representative Plaintiff and all members of the Classes sustained injuries and damages arising out of and caused by defendant ALBERTSON'S' common course of conduct in violation of law, as alleged herein.
- d. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes or may make it impractical for members of the Classes 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 Classes, 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.
- e. Adequacy of Representation: The Representative Plaintiff in this class action is an adequate representative of the Classes, in that the Representative Plaintiff's claims are typical of those of the Classes 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 litigation of this nature. The Representative Plaintiff is not subject to any individual

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

defenses unique from those conceivably applicable to the Classes as a whole. The Representative Plaintiff anticipates no management difficulties in this litigation.

**COMMON FACTUAL ALLEGATIONS**

24. As described herein, ALBERTSON'S has, for years, knowingly failed to adequately compensate Grocery Managers within the class definitions identified above for premium (overtime) wages due, thereby enjoying a significant competitive edge over other retail supermarket chains. Even upon termination or resignation of the employment of numerous class members, ALBERTSON'S has declined to pay these wages, in blatant violation of California Labor Code §§ 201 and/or 202.

25. Furthermore, despite its knowledge of the Representative Plaintiff's and the Class Members' entitlement to premium (overtime) pay for excess hours worked, ALBERTSON'S violated California Labor Code §1174[d] by failing to provide or require the use, maintenance or submission of time records by members of the Plaintiff Classes. ALBERTSON'S also failed to provide Representative Plaintiff and members of the Classes with accurate semimonthly itemized statements of the total number of hours worked by each and all applicable hourly rates in effect during the pay period in violation of California Labor Code § 226. In so doing, ALBERTSON'S 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 (i.e., the full number of hours worked) and financial impact of its wrongdoing.

26. California Labor Code §§ 201 and 202 require defendant ALBERTSON'S 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 until an action is commenced. The penalty cannot exceed 30 days of wages.

27. Representative Plaintiff and all persons similarly situated are entitled to unpaid compensation, yet, to date, have not received such compensation.

////





1 in violation of applicable Wage Order(s) and the California Labor Code.

2 34. During said time period, particular Class Members herein were employed by and  
3 were thereafter terminated or resigned from their positions with ALBERTSON'S, yet were not  
4 paid all premium (overtime) and/or other wages due upon said termination or within seventy-two  
5 hours of said resignation of employment therefrom. Said non-payment was the direct and  
6 proximate result of a willful refusal to do so by Defendant.

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

- 10 a. Labor Code §203: "If an employer willfully fails to pay, without  
11 abatement or reduction, in accordance with Sections 201, 201.5, 202, and  
12 205.5, any wages of an employee who is discharged or who quits, the  
13 wages of the employee shall continue as a penalty from the due date  
14 thereof at the same rate until paid or until an action therefor is  
15 commenced; but the wages shall not continue for more than 30 days."
- 16 b. Labor Code § 226: "Every employer shall semimonthly or at the time  
17 of each payment of wages, furnish each of his or her employees, either as a  
18 detachable part of the check, draft, or voucher paying the employee's  
19 wages, or separately when wages are paid by personal check or cash, an  
20 itemized statement in writing showing . . . (2) total hours worked by the  
21 employee . . . and (9) all applicable hourly rates in effect during the pay  
22 period and the corresponding number of hours worked at each hourly rate  
23 by the employee."
- 24 c. Labor Code §510: "Any work in excess of eight hours in one workday  
25 and any work in excess of 40 hours in any one workweek and the first  
26 eight hours worked on the seventh day or work in any one workweek shall  
27 be compensated at the rate of no less than one and one-half times the  
28 regular rate of pay for an employee . . . ."
- 29 d. Labor Code § 1194: "Notwithstanding any agreement to work for a  
30 lesser wage, any employee receiving less than the legal minimum wage or  
31 the legal overtime compensation applicable to the employee is entitled to  
32 recover in a civil action the unpaid balance of the full amount of this  
33 minimum wage or overtime compensation, including interest thereon,  
34 reasonable attorney's fees, and costs of suit.
- 35 e. Labor Code §1198: "[t]he maximum hours of work and the standard  
36 conditions of labor fixed by the commission shall be the maximum hours  
37 of work and the standard conditions of labor for employees. The  
38 employment of any employee for longer hours than those fixed by the  
39 order or under conditions of labor prohibited by the order is unlawful."

////

////

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

1 f. Labor Code §1199: "Every employer or other person acting either  
2 individually or as an officer, agent, or employee of another person is guilty  
3 of a misdemeanor and is punishable by a fine of not less than one hundred  
4 dollars (\$100) or by imprisonment for not less than 30 days, or by both,  
5 who . . . (a) Requires or causes any employee to work for longer hours  
6 than those fixed, or under conditions of labor prohibited by an order of the  
7 commission. . . [or] (c) Violates or refuses or neglects to comply with any  
8 provision of this chapter or any order or ruling of the commission."

6 36. By refusing to compensate Representative Plaintiff and the Class Members for  
7 overtime wages earned, Defendants violated those California Labor Code provisions cited herein,  
8 as well as various IWC Wage Order provisions.

9 37. As a direct and proximate result of Defendant's unlawful conduct, as set forth  
10 herein, Representative Plaintiff and the Class Members have sustained damages, including loss  
11 of earnings for hours of overtime worked on behalf of Defendant, in an amount to be established  
12 at trial. As a further direct and proximate result of Defendant's unlawful conduct, as set forth  
13 herein, some Class Members are entitled to recover "waiting time" penalties/wages, in an amount  
14 to be established at trial, as well as costs and attorneys' fees, pursuant to statute.

15  
16 **SECOND CAUSE OF ACTION**  
17 **UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT**  
18 **(California Business & Professions Code §§ 17200-17208)**

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

21 39. Representative Plaintiff further brings this cause of action on behalf of the general  
22 public, seeking equitable and statutory relief to stop the misconduct of Defendant, as complained  
23 of herein, and to seek restitution from Defendant through the unfair, unlawful and fraudulent  
24 business practices described herein.

25 40. The knowing conduct of Defendant, as alleged herein, constitutes an unlawful  
26 and/or fraudulent business practice, as set forth in California Business & Professions Code §§  
27 17200-17208. Specifically, Defendant conducted business activities while failing to comply with  
28 the legal mandates cited herein.

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

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

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

10  
11 **THIRD CAUSE OF ACTION**  
12 **FAILURE TO PROVIDE MEAL AND REST PERIODS**  
13 **(California Labor Code §§ 226.7 and § 512)**

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

17 44. California Labor Code § 512 provides:  
18 An employer may not employ an employee for a work period of  
19 more than five hours per day without providing the employee with  
20 a meal period of not less than 30 minutes, except that if the total  
21 work period per day of the employee is no more than six hours, the  
22 meal period may be waived by mutual consent of both the  
23 employer and employee. An employer may not employ an  
24 employee for a work period of more than 10 hours per day without  
25 providing the employee with a second meal period of not less than  
26 30 minutes, except that if the total hours worked is no more than  
27 12 hours, the second meal period may be waived by mutual  
28 consent of the employer and the employee only if the first meal  
period was not waived.

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

/////  
/////  
/////

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

- 1           46.   Specifically, California Labor Code § 226.7 provides:
- 2                   (a) No employer shall require any employee to work during any
- 3                   meal or rest period mandated by an applicable order of the
- 4                   Industrial Welfare Commission.
- 5                   (b) If an employer fails to provide an employee a meal period or
- 6                   rest period in accordance with an applicable order of the Industrial
- 7                   Welfare Commission, the employer shall pay the employee one
- 8                   additional hour of pay at the employee's regular rate of
- 9                   compensation for each work day that the meal or rest period is not
- 10                   provided.
- 11           47.   One or more Industrial Welfare Commission Wage Orders mandates that
- 12           Defendant authorize and permit ten minutes of "net rest time" for every four hours of work "or
- 13           major fraction thereof" for non-exempt employees such as Representative Plaintiff and members
- 14           of the Plaintiff Classes.
- 15           48.   By failing to consistently provide meal and rest periods to Representative Plaintiff
- 16           and Class Members, Defendant violated these California Labor Code provisions.
- 17           49.   As a direct and proximate result of Defendant's unlawful conduct, as set forth
- 18           herein, Representative Plaintiff and the Class Members have sustained damages, including loss
- 19           of earnings, in an amount to be established at trial. As a further direct and proximate result of
- 20           Defendant's unlawful conduct, as set forth herein, Representative Plaintiff and the Class
- 21           Members are entitled to recover various penalties, in an amount to be established at trial, as well
- 22           as costs and attorneys' fees, pursuant to statute.

**FOURTH CAUSE OF ACTION**  
**FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**  
**(California Labor Code § 226)**

- 23           50.   Representative Plaintiff incorporates in this cause of action each and every
- 24           allegation of the preceding paragraphs, with the same force and effect as though fully set forth
- 25           herein.
- 26           //////
- 27           //////
- 28           //////

1 51. California Labor Code § 226(a) provides:

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

15 52. California Labor Code § 226(e) provides:

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

24 53. Representative Plaintiff seeks to recover actual damages (including prospective  
25 damages associated with filing restatements of earnings with taxing and/or other authorities),  
26 costs and attorneys' fees under this section on behalf of himself and the Plaintiff Classes.

27 54. Defendant ALBERTSON'S failed to provide timely, accurate and complete  
28 itemized wage statements to Representative Plaintiff and the Plaintiff Classes in accordance with  
Labor Code § 226(a). Plaintiffs have suffered injuries due to this unlawful conduct insofar as  
they have lost use of the compensation due, were forced to bring this action to redress these  
violations, were forced to file inaccurate wage information with government agencies and,  
should this action be successful, may be required to restate earnings for prior years and/or incur  
time and costs in so doing.

55. None of the statements provided by Defendant has accurately reflected total  
number of hours worked, actual gross wages earned, net wages earned, or the appropriate  
deductions.

RELIEF SOUGHT

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

5           1.       For an Order certifying the proposed and/or any other appropriate subclasses  
6 under Code of Civil Procedure § 382;

7           2.       That defendant ALBERTSON'S is found to have violated the overtime provisions  
8 of the Labor Code as to the Representative Plaintiff and the Classes;

9           3.       That defendant ALBERTSON'S is found to have violated Labor Code §§ 226.7  
10 and 512 for willful failure to provide meal periods, including second meal periods, and rest  
11 periods;

12           4.       That defendant ALBERTSON'S is found to have violated the record keeping  
13 provisions of Labor Code §§ 226(a) and 1174(d) as to Representative Plaintiff and the Classes  
14 and for willful failure to provide accurate semimonthly itemized statements thereto;

15           5.       That defendant ALBERTSON'S is found to have violated Labor Code §§ 201 and  
16 202 for willful failure to pay all compensation owed at the time of termination of employment to  
17 particular members of the Plaintiff Classes;

18           6.       That defendant ALBERTSON'S is found to have violated Business and  
19 Professions Code § 17200 by failing to pay Representative Plaintiff and Class Members overtime  
20 compensation, "waiting time" penalties and/or by failing to provide accurate and complete  
21 itemized wage statements;

22           7.       An award to Representative Plaintiff and the Classes of damages for the amount  
23 of unpaid overtime compensation, the amount of wage due as a result of Defendant's failure to  
24 provide meal and rest periods, the amount of prospective damages associated with filing  
25 restatements of earnings with taxing and/or other authorities, and related damages, including  
26 interest thereon, and penalties in an amount to be proven at trial;

27           8.       That defendant ALBERTSON'S be ordered to pay restitution to Representative  
28 Plaintiff and the Plaintiff Classes due to defendant ALBERTSON'S' unlawful activities,

SCOTT COLE & ASSOCIATES, APC  
ATTORNEYS AT LAW  
THE WORLD SAVINGS TOWER  
1970 BROADWAY, SUITE 550  
OAKLAND, CA 94612  
TEL: (510) 891-9800

1 pursuant to Business and Professions Code §§ 17200-08;

2 9. That defendant ALBERTSON'S further be enjoined to cease and desist from  
3 unlawful activities in violation of Business and Professions Code § 17200;

4 10. For all other Orders, findings and determinations identified and sought in this  
5 Complaint;

6 11. For Interest on the amount of any and all economic losses, at the prevailing legal  
7 rate;

8 12. For reasonable Attorneys' Fees, pursuant to California Labor Code §§218.5 and  
9 1194 and/or California Civil Code §1021.5; and

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

12

13 Dated: March 17, 2004

14 **SCOTT COLE & ASSOCIATES, APC**

15 By: 

16 Scott Edward Cole, Esq.  
17 Clyde H. Charlton, Esq.  
18 Matthew R. Bainer, Esq.

19 Attorneys for the Representative Plaintiff  
20 and the Plaintiff Classes

21

22

23

24

25

26

27

28