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## Firm Resume

Cole & Van Note (“CVN”) is a boutique and veteran class action firm known for aggressive representation and big results in the areas of employment, environmental and consumer litigation. Founded in 1992, CVN has been devoted primarily to such matters, having litigated several hundred class actions against businesses of all types and in every industry. The members of CVN have vast experience prosecuting class/complex actions, in a sole counsel capacity as well as in various leadership positions, oftentimes among many firms, in California and nationwide litigation. They have published numerous scholarly articles addressing various substantive issues as well as class action procedure, speak regularly at public events and/or to legal audiences, and have served as consulting experts in class action litigation. The firm has recovered well in excess of one billion dollars for millions of workers, citizens and consumers, been involved in several record-setting settlements and judgments and achieved the correction of numerous unlawful employment and consumer fraud practices—efforts led by the following shareholders:

Scott Edward Cole, founder and principal attorney at CVN, graduated from the University of San Francisco School of Law in 1992, practices in all California courts and has extensive experience prosecuting cases within California and nationwide. Mr. Cole has authored numerous scholarly publications and serves as highly-regarded guest lecturer on issues surrounding class action procedures. Mr. Cole has been responsible for shaping employment, environmental and consumer rights laws in trial and appellate courts for decades, authored the book “Fallout” and serves as a mediator of employment law disputes.

Credentials: Admitted, California State Bar, December 1992; University of San Francisco School of Law, J.D., 1992; President, University of San Francisco Labor & Employment Law Society; San Francisco State University, B.A., Speech Communications (Individual Major in Rhetoric), 1989, Minor Study in Business Administration, 1989; Member, California State Bar Labor and Employment Law Section, 1993-present; Admitted, United States District Court (Northern District), 1992; Admitted, United States Court of Appeals (9th Circuit), 1993; Admitted, United States District Court (Eastern District), 1995; Admitted, United States District Court (Central District), 2005; Admitted, United States District Court (Southern District), 2005; National Association of Securities Dealers (Registered Representative (Series 7), 1987-1989); Member/Referral Attorney, Animal Legal Defense Fund (1998-2000); Member, Board of Directors, American Synergy Center (2001); Member, Association of Trial Lawyers of America (2005-present); Member, California Employment Lawyers Association (2005-present); Member, American Bar Association (2007-present); Member, Alameda County Bar Association (2008-

present); Vice Chair (2009 & 2010), Alameda County Bar Association's Labor & Employment Law Section Executive Committee; Member, National Employment Lawyers Association (2009-present); U.S. Delegate to the InterAmerican Meeting of Labor and Trade Union Lawyers, Havana, Cuba, March 2012. Mr. Cole is also the author of "Fallout," a story (and screenplay in development) based upon his experiences litigating after the 1994 release of chemical toxics by the Unocal Corporation.

Laura Van Note is an aggressive and skilled advocate and serves as the firm's hiring and career outreach shareholder. A 2013 graduate of the University of Missouri, Kansas City School of Law, her practice has focused primarily on group and individual representation of workers in employment and civil rights litigation. With a near-perfect track record for results, Ms. Van Note appears in all California courts, is also licensed in Missouri and Kansas and maintains various professional affiliations.

Credentials: University of Missouri, Kansas City School of Law (2013, Order of the Barrister, Dean's List), Captain of the National Trial Advocacy Team, President of the American Constitutional Society for Law and Policy, Teaching Assistant to the Directory of Advocacy; Graduate, University of Missouri, Kansas City (Bachelor of Arts in History, Minor in French); Member, State Bar of California (Admitted 2016), State Bar of Missouri (Admitted 2013), State Bar of Kansas (Admitted 2015); Admitted, Federal District Courts in California, Missouri, and Kansas.

*(Associate counsel and non-shareholders not listed here)*

**CVN Scholarly Publications (Partial List Only):**

Scott Edward Cole & Matthew Roland Bainer, *The Quest for Class Certification*, Employment Law Strategist (Sept. & Oct. 2003).

Scott Edward Cole & Matthew Roland Bainer, *To Be or Not to Be a Penalty: Defining the Recovery Under California's Meal and Rest Period Provisions*, Golden Gate U. L. Rev. (Spring 2005).

Scott Edward Cole & Matthew Roland Bainer, *To Certify or Not to Certify: A Circuit-By-Circuit Primer of the Varying Standards for Class Certification in Actions under the Federal Labors Standards Act*, B.U. Pub. Int. L.J. (Spring 2004).

Scott Edward Cole, *Kullar v. Footlocker Retail, Inc.: A New Standard for Class Action Settlement Approval*, CELA Bulletin (April 2009).

Matthew Roland Bainer, *Ninth Circuit Provides Much Needed Guidance on Evidentiary Burdens in Overtime Misclassification Litigation*, CELA Bulletin (May 2009).

Kevin Robert Allen, *Putting the "Rest" Back in Rest Break*, Alameda County Bar Association - Labor & Employment Section News (Autumn 2009).

Michael Scott Lubofsky, *Barristers to Blogs: Softening Ethical Restrictions in the Digital Age*, Los Angeles Daily Journal (June 14, 2010).

**Representative Class Action/Complex Litigation Matters:**

Our firm has represented, directly or indirectly, millions of individuals in hundreds of legal matters, including nearly 400 class actions and/or complex litigation cases. The firm has experience in environmental, commercial and personal injury matters but, today, is largely devoted to the prosecution of class action matters in the areas of wage and hour, consumer and personal privacy and consumer fraud law, only a small sampling of which are listed below:

Augustus/Davis v. ABM Security Services, Inc (aka American Comm. Security Service, Inc.  
San Francisco County Superior Court Case No. CGC-05-444421  
(Consolidated with Los Angeles County Superior Court Case No. BC336416)

Our firm filed a claim against American Commercial Security Services, Inc. for violations of California law for denial of meal and rest periods toward security guards. The action achieved class certification status in 2009. Following summary judgment proceedings, a judgment of over \$89 million was entered against the defendant along with a successful interim motion for tens of millions in attorneys' fees. The judgment hinged on the issue of whether "on-duty" rest breaks were legally sufficient. After the Court of Appeal ruled against Plaintiffs on the issue, the case went to the California Supreme Court where Plaintiffs prevailed and, in so doing, created a new legal standard clarifying that any form of "on-duty" rest breaks are invalid. After 12 years of litigation and appellate work, this matter settled for \$110 million.

Brandt, et al. v. California State Automobile Association, et al.

United States District Court, District of Nevada, Case No. 3:03-CV-00310

This wage and hour class action was brought on behalf of all Nevada claims adjusters working for CSAA between January 1997 and the present. This lawsuit alleged that, during these years, CSAA mis-classified these workers as exempt "administrators" and refused to pay them for overtime hours worked and fraudulently promised to pay them overtime compensation upon settlement of a companion case (*Thomas v. Cal. State Auto. Assoc.*, below). CVN served as co-counsel, *pro hac vice*, for the proposed class of employees in this matter.

Bulow, et al. v. Wells Fargo Investments, LLC

United States District Court, Northern District of California, Case No. 3:06-CV-7924

This matter was filed as a nation-wide class action against Wells Fargo Investments, on behalf of its Financial Consultants to recover overtime pay, compensation for denied meal and rest periods (California only) and reimbursement for business related service and supply expenses (California only). This matter settled for \$6.9 million.

Cano, et al. v. United Parcel Service, Inc.

Alameda County Superior Court Case No. RG03089266

This wage and hour complex litigation matter involved the alleged mis-classification of overtime non-exempt Operations Management Specialists, Operational Excellence Specialists and/or Industrial Engineering Specialist at this company's California facilities. This action settled in 2004 for \$4.5 million.

Chaidez, et al. v. Odwalla, Inc.

San Mateo County Superior Court Case No. CIV430598

This wage and hour complex litigation matter involved the alleged misclassification of overtime non-exempt California Route Sales Representatives. CVN served as primary counsel for this proposed class of employees. This action settled for \$2.2 million.

Chang, et al. v. Tower Mart

Sacramento County Superior Court, Case No. 34-2009-00044408-CU-OE-GDS

Our firm filed this lawsuit, alleging violations of California law for failure to pay overtime to Tower Mart's California store managers. It is also alleged that the company denied these managers meal and rest periods. This matter settled for \$1.5 million.

Chatellier, et al. v. The White House/Black Market Stores Inc.

Santa Clara County Superior Court Case No. 1-04-CV-030489

This lawsuit involved claims against this retail clothing store for violations of California law for failure to pay overtime to its Store Managers as well as for the alleged denial of meal and rest periods. The settlement achieved in this action represented one of the highest per-workweek wage and hour settlements of its time.

Christman, et al. v. Good Guys, Inc.

San Diego County Superior Court Case No. GIS21939

This legal action alleged violations of California law for unpaid overtime wages and for failure to provide rest and meal periods on behalf of multiple employee classifications. This action settled for up to \$1.05 million.

CKE Overtime Cases

Los Angeles County Superior Court Case No. BC283274 (JCCP No. 4274)

This class action was brought against fast food chain Carl's Jr. for violations of California's overtime laws on behalf of the company's California restaurant chain Managers. The coordinated litigation settled for up to \$9.0 million in 2004.

Dailey, et al. v. Performant Financial Corporation

Alameda County Superior Court Case No. RG10493644

Our firm filed this class action in 2010, on behalf of the company's non-exempt employees seeking wages for alleged violations of California law for unpaid overtime and denial of meal and/or rest periods. After defeating the defendant's summary judgment motion and filing its motion for class certification, CVN settled this case for \$1.2 million.

Davis, et al. v. Universal Protection Security Systems, Inc., et al.

San Francisco County Superior Court Case No. CGC-09-495528

Our firm filed a claim in 2009 against Universal Protection Security Systems, Inc. for violations of California law for denial of meal and rest periods toward security guards. This case settled in 2013 for \$4 million.

DeNeveu, et al. v. Ross Stores, Inc.

Alameda County Superior Court Case No. RG10504571

Our firm filed this class action in December 2009, alleging violations of California law for failure to pay overtime to Ross's salaried Store Manager positions. It was also alleged that the company denied these managers rest and meal periods.

Despres (Cornn), et al. v. United Parcel Service, Inc.

United States District Court, Northern District of California, Case No. 3:03-CV-02001

This wage and hour class action litigation was brought to remedy violations of meal and rest period regulations on behalf of the company's California ground delivery drivers. CVN served as co-counsel for the certified class of drivers. This action settled for \$87 million, an unprecedented settlement amount for such claims.

Escow-Fulton, et al. v. Sports and Fitness Clubs of America dba 24 Hour Fitness USA, Inc.

San Diego County Superior Court Case No. GIC881669

(Consolidated with Case No. GIC873193)

Our firm filed this class action against this health and fitness company on behalf of the company's California "Group X" Instructors to recover regular and overtime pay, related penalties and un-reimbursed expenses. The action achieved class certification status in 2009. In 2011, the parties agreed to settle the class' expense reimbursement claims for \$10 million. The parties then filed cross-motions for summary adjudication and on August 2, 2011, the court issued an Order finding 24 Hour Fitness' session rate compensation scheme to be an invalid piece rate. The parties then agreed to settle the class' unpaid wage claims for \$9 million, and the summary adjudication order was vacated pursuant to settlement. This resolution helped change how the fitness industry pays workers.

Fakhro, et al. v. Turner's Outdoors, Inc.

Los Angeles County Superior Court Case No. BC388874

This lawsuit alleged violations of California law for failure to pay overtime to the company's California Store Managers. It was also alleged that the company denied these managers rest and meal periods. The Court approved a classwide settlement in 2009.

Gilhuly v. Kmart Corporation

United States District Court, Northern District of California, Case No. 4:10-CV-0360

Our firm filed this class action in December 2009, alleging violations of California law for failure to pay wages, including unpaid overtime compensation, to Kmart's Sales Coach, Operations Manager and Merchandise Manager positions. It was also alleged that the company denied these managers rest and meal periods.

Grindstaff, et al. v. Kohl's Department Stores, Inc.

Los Angeles County Superior Court Case No. BC341954  
(Consolidated with Case No. BC327426)

This action alleged violations of California law for failure to pay overtime to assistant store managers. It was also alleged that the company denied its assistant store managers rest and meal periods. This action settled in 2008 for \$6 million.

Grootboom v. Security Industry Specialists, Inc.

Alameda County Superior Court Case No. RG09435440

This class action was filed on behalf of the company's California-based security guards to recover unpaid wages and compensation for missed meal and rest periods in violation of California law. This action settled in 2009 for \$775,000.

Holm, et al. v. Borders, Inc.

San Francisco County Superior Court Case No. CGC-05-445357

Our firm served as counsel for the proposed class against this retail chain for violation of California law for failure to pay Inventory and/or Sales Managers overtime wages. It was also alleged that the proposed class had been denied rest and meal periods. This matter settled in 2007 for \$3.5 million.

In Re Walgreen Co. Wage and Hour Litigation

United States District Court, Central District of California, Case No. 2:11-CV-07664

Our firm served as court-appointed Lead Counsel after a very-adversarial hearing process in this consolidated action of nine lawsuits against Walgreen Co. bringing a variety of wage and hour claims on behalf of retail store workers in California. Mr. Cole led the consolidated litigation and the ultimate negotiations toward a \$23 million settlement

Ingraham v. Orchard Supply Hardware, Corp.

San Mateo County Superior Court Case No. 457004

Our firm filed this matter on behalf of all company employees who were forced to maintain at great expense, as a condition of employment, a company-issued uniform. This class action also seeks recovery of unpaid wages, compensation for the improper denial of overtime pay and for missed meal and rest periods. This matter resolved in 2008 on behalf of approximately 22,000 class members for \$1.75 million.

In Re Tosco SFR Litigation

Contra Costa County Superior Court Case No. C97-01637

During incidents on April 16, 1997 and, again, on January 7, 1998, the Tosco (old Unocal) Refinery in Rodeo, California released toxic chemicals airborne into the environment. These harmful substances traveled airborne into neighboring communities, seriously affecting the health of citizens and local workers. CVN served as Lead Counsel in this complex litigation and represented thousands of members of the community in that role. CVN settled this matter for \$2.5 million, the funds from which were disbursed to over 2,000 claimants who participated in the settlement.

### In Re Unocal Refinery Litigation

Contra Costa County Superior Court Case No. C94-04141

In response to Unocal's 16-day airborne release of chemicals over the County of Contra Costa in 1994, CVN filed a class action against the corporation on behalf of thousands of victims and Mr. Cole thereafter served as one of a handful of attorneys (among dozens of law firms of record) on the Plaintiffs' Steering Committee. After hard-fought litigation, the matter eventually settled for \$80 million. This case is the context for Mr. Cole's book "Fallout," published in 2018 (2605 Media LLC).

### In Re Westley Tire Fire Litigation

Santa Clara County Superior Court Case No. CV 801282

On September 22, 1999, lightning struck and ignited a pile of approximately 7 million illegally stored waste tires in Westley, California, a town about 70 miles east of San Francisco. Over the subsequent five weeks, the fire spewed smoke and carcinogens over a large portion of the State of California. CVN served as the (sole) Lead and (shared) Liaison Counsel over a Plaintiffs' Steering/Management Committee in the consolidated actions against the owners and operators of this tire pile and related entities. These cases sought compensation for those individuals and businesses suffering personal and/or property damages as a result of these toxic substances and the fire's fallout. In 2001, CVN reached a settlement with one defendant (CMS Generation Co.) for \$9 million. In 2003, the Court granted final approval of the settlement. In 2005, two of the remaining defendants settled for an aggregate amount of roughly \$1.4 million.

### Kelly, et al. v. Walgreen Co.

San Francisco County Superior Court Case No. CGC-07-464347

Our firm filed an action against this retailer on behalf of employees who were allegedly subject to security searches for which they were not compensated, in violation of California law. Also alleged was that the company denied these employees rest and meal periods. The action settled for \$7.5 million with CVN serving in the lead role.

### Kullar v. Foot Locker, Inc.

San Francisco County Superior Court Case No. CGC-05-447044

This action was brought against this sporting retailer on behalf of California employees who were allegedly forced to purchase shoes of a distinctive color or design as a term and condition of their employment and in violation of state law. The Court approved a \$2.0 million settlement that resolved this action. After two separate appeals by an objector challenging the settlement, the Court of Appeal affirmed the trial court's judgment. This case has now established what's known as the "Kullar standard" for court approval of class action settlements.

Kurihara v. Best Buy Co., Inc.

United States District Court, Northern District of California, Case No. 3:06-CV-01884

We filed an action against this retailer on behalf of employees who were allegedly subject to security searches for which they were not compensated, in violation of California law. Also alleged was that the company denied these employees rest and meal periods. In 2007, the Court certified a class of over 16,000 Best Buy employees. The action settled for \$5 million in 2010.

Lyons v. Elephant Bar Restaurant

Alameda County Superior Court Case No. RG08422299

Our firm filed an action against this restaurant chain challenging violations of California law for denial of meal and rest periods on behalf of the restaurant's hourly, non-exempt employees.

Mambuki, et al. v. Securitas Security Services USA, Inc.

Santa Clara County Superior Court Case No. 1-05-CV-047499 (JCCP No. 4460)

Our firm filed a claim against this defendant for violations of California law (for denial of meal and rest periods) on behalf of the company's California-based security guards. This coordinated proceeding settled in 2008 for \$15 million.

McFann, et al. v. Volt Telecommunications Group, Inc.

Riverside County Superior Court Case No. RIC475410

(Los Angeles County Superior Court JCCP No. 4533)

Our firm filed this action on behalf of company field technicians to recover reimbursement for business-related expenses and for unpaid wages. The Court approved an Arbitration Award entered pursuant to a \$3.45 million class wide settlement in 2009.

Menchyk v. Beverages & More, Inc.

Alameda County Superior Court Case No. RG05196918

Our firm filed this action for violations of California law for unpaid overtime wages and for failure to provide meal and rest periods. Although a small putative class (98 class members), it settled for \$1.2 million, representing one of the highest per-workweek settlements in California at the time.

Moore v. Albertsons Inc.

United States District Court, Northern District of California, Case No. 3:04-CV-03731

Our firm filed this action for violations of California's overtime laws on behalf of the company's California Drug Managers. This action settled for \$2.35 million, again representing one of highest per-workweek settlements in the state at the time.

Nunez v. AC Square, Inc., et al.

San Mateo County Superior Court Case No. CIV479622  
(Consolidated with Case Nos. 464144 and 473571)

Our firm filed this class action on behalf of all California Technicians employed by AC Square (during the applicable claims period) to recover unpaid wages including overtime pay, meal and rest period compensation, related penalties and un-reimbursed expenses. This action settled for \$800,000.

O'Brien v. Edward D. Jones & Co., LP.

United States District Court, Northern District of Ohio, Case No. 1:08-CV-00529

We filed a nation-wide (and New York State) class action against this financial securities company on behalf of the company's financial services representatives to recover overtime pay and related penalties. CVN served on a Lead Counsel Committee in this action, which settled in 2007 for \$19 million.

O'Hara, et al. v. Factory 2-U Stores, Inc.

Alameda County Superior Court Case No. 834123-5

This class action, filed in 2000, alleged mis-classification of Factory 2-U's California Store Managers and Assistant Store Managers as exempt from overtime pay. In 2001, the Alameda County Superior Court certified two sub-classes (Managers and Assistant Managers) and granted final approval to a settlement of the action for \$2 million.

Onyeige, et al. v. Union Telecard Alliance, LLC

U.S.D.C. Northern District of California, Case No. 3:05-CV-03971  
(U.S.D.C., District of New Jersey, MDL No. 1550)

Our firm filed an action against Union Telecard Alliance, LLC alleging negligent misrepresentation and deceptive advertising practices related to its marketing of pre-paid telephone calling cards. This action settled for \$22 million.

Ramirez, et al. v. The Coca Cola Company, et al.

San Bernardino County Superior Court Case No. RCV 056388 (JCCP No. 4280)

This is one of two companion actions CVN prosecuted against this soft drink giant for violations of California's overtime laws. This action was brought on behalf of over 4,000 hourly workers at the company's bottling, distribution and sales centers who were allegedly forced to work "off-the-clock" for Coca Cola and/or whose time records were ordered modified by the company. This well-publicized action settled for \$12 million and on very favorable terms for the claimants. CVN filed the first action on these issues and ultimately worked with co-counsel for the proposed class of workers.

Rowe, et al v. California Commerce Casino, Inc.

Los Angeles County Superior Court Case No. BC321283  
(Consolidated with Case Nos. BC288079 and BC320171)

Our firm filed a claim against this casino for violations of California law for failure to pay overtime to their dealers. Additionally, it was alleged that the casino demanded that its dealers pay a portion of their wages into a "tip pool" from which the supervisors (who had authority over the dealers) drew extra income. CVN and its co-counsel settled the action, in part, and obtained certification of the remaining claims following an adversarial proceeding.

Schweinsburg v. Paragon Systems, Inc.

United States District Court, Central District of California, Case No. 2:09-CV-08139

Our firm filed a claim in 2009 against Paragon Systems, Inc., for violations of California law for denial of meal and rest periods toward non-exempt security guards. This case settled for the policy limit of \$885,410.

Thomas, et al. v. Cal. State Auto. Assoc., et al.

Alameda County Superior Court Case No. CH217752

Our firm filed this class action litigation on behalf of all California claims adjusters working for CSAA after mid-January 1997. This lawsuit alleged that, during those years, CSAA misclassified these workers as exempt "administrators" and refused to pay them for overtime hours worked. This lawsuit settled for \$8 million. CVN commenced this action and served as co-counsel for the nearly 1,200 claims representatives.

Tierno v. Rite Aid Corporation

United States District Court, Northern District of California, Case No. 3:05-CV-02520

Our firm filed this oft-cited action against Rite Aid Corporation on behalf of its salaried California Store Managers. It was alleged that defendant, purportedly the nation's third largest drug store chain, failed to pay overtime to those workers and denied them their meal and rest periods. In 2006, the federal court certified the class in this action, and approved a \$6.9 million non-reversionary settlement in 2009.

Torres, et al. v. ABC Security Services, Inc.

Alameda County Superior Court Case No. RG04158744

Our firm filed this litigation, alleging violations of California law for denial of meal and rest periods on behalf of the company's security guards. This action received class certification status in 2006 and settled for \$495,000.

Witriol, et al. v. LexisNexis., et al.

U.S.D.C., Southern District of California, Case No. 3:06-CV-02360

Our firm filed an action against this company for its allegedly- unlawful disclosure of private credit, financial and/or other personal information. This action settled for up to \$2.8 million.

Whitten v. Tilly's, Inc.

Los Angeles County Superior Court Case No. BC548252

Our firm filed this action on behalf of California retail employees who were allegedly subject to security searches for which they were not compensated. It was also alleged that the company failed to provide these workers with meal and rest breaks. The case settled in 2017 for \$2.8 million.

**Notable Appellate Experience:**

CVN has substantial appellate experience, highlighted by the examples below. This is only a short list so, for other and/or unreported cases/opinions, please contact our firm.

Augustus, et al. v. ABM Security Services, Inc. (2016) 2 Cal.5th 257 (Case No. S224853)

Baddie v. Berkeley Farms, Inc. (9th Cir. 1995) 64 F.3d 487 (Case No. 93-17187)

Dunbar v. Albertson's, Inc. (2006) 141 Cal.App.4th 1422 (First Dist., Division 1, Case No., A111153)

Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116 (Case No. A119697)

Montano v. The Wet Seal Retail, Inc. (2015) Not Reported in Cal.App.4th (2015 Cal. App. LEXIS 1199, Second District, Division 4, Case No. B244107)

O'Hara v. Factory 2-U Stores, Inc. (2003) Not Reported in Cal.Rptr.3d, 2003 WL 22451991 (First District, Division 4, Case No. A101452)

Taylor v. Park Place Asset Management, et al. (1999) (First Dist., Division 5, Case No. A086407)

Whiteway v. Fedex Kinko's Office and Print Services (9th Cir. 2009) 319 Fed.Appx. 688 (Case No. 07-16696)

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