

ENDORSED

2015 NOV 24 A 2:08

DATE RECORDED: 11/24/15
BY: T. NGO

COPY

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

1 Matthew R. Bainer, Esq. (S.B. #220972)
2 Sonny Hoang, Esq. (S.B. #301447)
3 SCOTT COLE & ASSOCIATES, APC
4 1970 Broadway, Ninth Floor
5 Oakland, California 94612
6 Telephone: (510) 891-9800
7 Facsimile: (510) 891-7030
8 Email: mbainer@scalaw.com
9 Email: shoang@scalaw.com
10 Web: www.scalaw.com

11 Attorneys for Representative Plaintiff
12 and the Plaintiff Class

13 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF SANTA CLARA**

15 BEN GOLDBERG, individually, and
16 on behalf of all others similarly
17 situated,
18 Plaintiff,
19 vs.
20 INFOBJECTS, INC., and DOES 1
21 through 100, inclusive,
22 Defendants.

23 **Case No. 115CV287730**
24 **CLASS ACTION**
25 **COMPLAINT FOR DAMAGES,**
26 **INJUNCTIVE RELIEF, AND RESTITUTION**
27 **[Jury Trial Demanded]**

28 Representative Plaintiff alleges as follows:

PRELIMINARY STATEMENT

1. This is a class action, under California Code of Civil Procedure § 382, brought on behalf of Ben Goldberg (hereinafter "Representative Plaintiff" and/or "Plaintiff Goldberg") and all other persons similarly situated ("Class Members") who are or were employed as non-exempt employees by defendants InfoObjects, Inc. and Does 1 through 100, inclusive (collectively "Defendant" and/or "InfoObjects") in any California location within the applicable class period. The Representative Plaintiff, on behalf of himself and the Class Members, seeks unpaid wages, including unpaid overtime compensation and interest thereon, liquidated damages and other

FAXED

1 penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs under,
2 inter alia, Title 8 of the California Code of Regulations, California Business and Professions
3 Code §§ 17200-17208, California Code of Civil Procedure § 1021.5, and various provisions of
4 the California Labor Code.

5 2. The Class Period is designated as the time from November 4, 2011 through the
6 date of trial, based upon the allegation that the violations of California's wage and hour laws, as
7 described more fully below, have been ongoing throughout that time.

8 3. During the class Period, Defendant has had a consistent policy of, *inter alia*,
9 (1) requiring its non-exempt employees, including Plaintiff and Class Members, to conduct
10 duties for and/or under the direction of InfoObjects without paying these employees wages
11 (including overtime wages) for all compensable time, and (2) willfully failing to provide Plaintiff
12 and Class members with accurate semimonthly itemized statements of the total numbers of hours
13 each of them worked, the applicable deductions, and the applicable hourly rates in effect during
14 the applicable pay period.

15 INTRODUCTION

16 4. Plaintiff is informed and believes and, based thereon, alleges that within the Class
17 Period, Defendant operated a technology services firm in the State of California. In doing so,
18 Defendant has employed hundreds of individuals as non-exempt employees, positions which are
19 entitled to all regular and/or overtime pay, as well as other benefits of employment as set forth
20 herein.

21 5. Despite actual knowledge of these facts and legal mandates, InfoObjects has and
22 continues to enjoy an advantage over its competition and a resultant disadvantage to its workers
23 by not providing all regular and/or overtime pay when due and/or when certain Class Members'
24 employment with InfoObjects terminated, and by willfully failing to provide Plaintiff and Class
25 Members with accurate semimonthly itemized wage statements.

26 6. Plaintiff is informed and believes and, based thereon, alleges that officers of
27 InfoObjects knew of these facts and legal mandates yet, nonetheless, repeatedly authorized
28 and/or ratified the violation of the laws cited herein.

1 7. Despite InfoObjects' knowledge of Plaintiff's and Class members' entitlement to
2 these benefits of employment, InfoObjects failed to provide same, for all applicable work
3 periods, in violation of California state statutes and California Industrial Welfare Commission
4 Wage Order No. 4 and Title 8 of the California Code of Regulations. This action is brought to
5 redress and end this long-time pattern of unlawful conduct once and for all.

6 **JURISDICTION AND VENUE**

7 8. This Court has jurisdiction over the Representative Plaintiff's and Class
8 Members' claims for unpaid wages and/or penalties under, *inter alia*, Industrial Welfare
9 Commission Wage Order No. 4 and Title 8 of the California Code of Regulations, California
10 Labor Code §§ 200-204, inclusive, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174,
11 1174.5, 1194, 1194.2, 1198, 2802, California Business and Professions Code §§ 17200-17208,
12 and California Code of Civil Procedure § 1021.5.

13 9. This Court has further jurisdiction over the Representative Plaintiff's and Class
14 Members' claims for injunctive relief, and restitution of ill-gotten benefits arising from
15 Defendant InfoObjects unlawful business practices under California Business & Professions
16 Code §§ 17203 and 17204.

17 10. Venue as to Defendant(s) is proper in this Court pursuant to California Code of
18 Civil Procedure § 395(a). Defendant InfoObjects maintains facilities and offices in the County of
19 Santa Clara, and transacts business, has agents, and is otherwise within this Court's jurisdiction
20 for purposes of service of process. The unlawful acts alleged herein have a direct effect on the
21 Representative Plaintiff and those similarly situated within the State of California and within the
22 County of Santa Clara. Defendant InfoObjects operates said facilities and has employed
23 numerous Class Members in the County of Santa Clara as well as in other counties within the
24 State of California.

25 **PLAINTIFF**

26 11. Representative Plaintiff Ben Goldberg is a natural person and was, during the
27 relevant time period identified herein, employed by Defendant InfoObjects as a non-exempt
28 employee at various InfoObjects' service locations.

1 12. At all time herein relevant, Representative Plaintiff Ben Goldberg was and is now
2 an individual within the Class of persons further described and defined herein.

3 13. As used throughout this Complaint, the term “Class Members” and/or the
4 “Plaintiff Class” refers to the Representative Plaintiff Ben Goldberg as well as each and every
5 person eligible for membership in the class of persons further described and defined herein.

6 14. Plaintiff brings this action on behalf of himself and as a class action, pursuant to
7 California Code of Civil Procedure § 382, on behalf of all persons similarly situated and
8 proximately damaged by unlawful conduct described herein.

9 **DEFENDANTS**

10 15. At all times herein relevant, Defendant InfoObjects, Inc. was/is a California
11 corporation and/or other form of business entity, duly licensed, located and doing business in,
12 but not limited to, the County of Santa Clara in the State of California.

13 16. Plaintiff is informed and believes and, based thereon, alleges that Defendant
14 InfoObjects directly or indirectly employs and has employed and/or exercised control over the
15 wages, hours, and working conditions of Plaintiff and Class members within various California
16 counties, including, but not limited to, the County of Santa Clara.

17 17. Those defendants identified as Does 1 through 100, inclusive, are and were, at all
18 relevant time herein-mentioned, business affiliates, successors- and/or predecessors-in-interest,
19 officers, directors, partners, and/or managing agents of some or each of the remaining
20 defendants. Plaintiff is informed and believes and, on that basis, alleges that, at all relevant times
21 herein-mentioned, each of the defendants identified as Does 1 through 100, inclusive, employed
22 and/or exercised control over the wages, hours, and/or working conditions of Plaintiff and Class
23 members at various California locations, as identified in the preceding paragraph.

24 18. Plaintiff is unaware of the true names and capacities of the defendants sued herein
25 as Does 1 through 100, inclusive, and therefore sues these defendants by such fictitious names.
26 Plaintiff will seek leave to amend this Complaint when such names are ascertained. Plaintiff is
27 informed and believes and, on that basis, alleges that each of the fictitiously-named defendants
28 is/was responsible in some manner for, gave consent to, ratified and/or authorized the conduct

1 herein-alleged and that Plaintiff's and Class Members' damages, as herein-alleged, were
2 proximately caused thereby.

3 19. Plaintiff is informed and believes and, on that basis, alleges that, at all relevant
4 time herein-mentioned, each of the Defendants was the agent and/or employee of each of the
5 remaining Defendants and, in doing the acts herein alleged, was acting within the course and
6 scope of such agency and/or employment.

7 **CLASS ACTION ALLEGATIONS**

8 20. Plaintiff brings this action on behalf of himself and as a class action on behalf of
9 the following Plaintiff Class:

10 *All persons who are and/or were employed as non-exempt employees by*
11 *InfoObjects between November 4, 2011 and the present.*

12 21. Defendant and its officers and directors are excluded from the Plaintiff Class.

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

16 a. Numerosity: A class action is the only available method for the fair and
17 efficient adjudication of this controversy. The members of the Plaintiff
18 Class are so numerous that joinder of all members is impractical, if not
19 impossible, insofar as the Plaintiff is informed and believe and, on that
20 basis, alleges that the total number of Class Members is, at least, in the
21 hundreds of individuals. Membership in the Class will be determined by
22 and upon analysis of employee and payroll records, among other records
23 maintained by Defendant.

24 b. Commonality: Plaintiff and the Class Members share a community of
25 interests in that there are numerous common questions and issues of fact
26 and law which predominate over any questions and issues solely affecting
27 individual members, including, but not necessarily limited to:

- 28
- 1) Whether Defendant violated applicable IWC Wage Order(s) and/or California Labor Code § 510 by failing to pay all (including overtime) compensation to its non-exempt retail employees who worked in excess of forty hours per week and/or eight hours per day;
 - 2) Whether Defendant violated California Labor Code § 1174 by failing to keep accurate records of Plaintiff's and Class Members' hours of work;
 - 3) Whether Defendant violated California Labor Code §§ 200-204 by failing to pay all wages due and owed during the pendency of

1 employment and/or at the time of the termination of employment
with Defendant of Plaintiff and/or Class Members;

- 2 4) Whether Defendant violated California Labor Code § 226 by
3 failing to provide Plaintiff and Class Members with semimonthly
4 itemized statements including total hours worked and all applicable
5 hourly rates in effect during the pay period; and
6 5) Whether Defendant violated California Business and Professions
Code §§ 17200-17208 by engaging in unfair, unlawful and/or
fraudulent business practices.

7 c. Typicality: Plaintiff's claims are typical of the claims of the Plaintiff
8 Class. Plaintiff and all members of the Plaintiff Class sustained damages
arising out of and caused by Defendant's common course of conduct in
violation of law, as alleged herein.

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

14 e. Superiority of Class Action: Since the damages suffered by individual
15 Class Members, while not inconsequential, may be relatively small, the
16 expense and burden of individual litigation by each member makes or may
17 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
18 member of the Plaintiff Class, the resulting multiplicity of lawsuits would
19 cause undue hardship and expense for the Court and the litigants. The
20 prosecution of separate actions would also create a risk of inconsistent
21 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.

22 COMMON FACTUAL ALLEGATIONS

23 23. Defendant InfoObjects has, for years, knowingly failed to properly compensate
24 Plaintiff and the Plaintiff Class for all wages earned and due (including, but not necessarily
25 limited to, overtime wages and/or compensation for missed meal and/or rest period). Defendant
26 has declined to pay these wages, even upon a Class Member's termination or resignation from
27 employment, in blatant violation of California Labor Code §§ 201-204, inclusive. More than 30
28 days have passed since certain Class Members have left Defendant's employ.

1 24. Defendant also failed to provide Plaintiff and Class Members with accurate
2 semimonthly itemized statements of the total number of hours worked by each, and all applicable
3 hourly rates, in violation of California Labor Code § 226. In doing so, Defendant has not only
4 failed to pay its workers the full amount of compensation due, it has until now, effectively
5 shielded itself from its employees’ scrutiny for its unlawful conduct by concealing the magnitude
6 (e.g., the full numbers of hours worked) and financial impact of its wrongdoing.

7 25. As a direct and proximate result of Defendant’s unlawful conduct, as set forth
8 herein, Plaintiff and Class Members have sustained damages, as described above, including loss
9 of earnings for uncompensated hours worked on behalf of Defendant in an amount to be
10 established at trial. As a further direct and proximate result of Defendant’s unlawful conduct, as
11 set forth herein, Plaintiff and Class Members are entitled to recover penalties/wages for failure to
12 provide semimonthly itemized wage statements of hours worked and all applicable hourly rates
13 in an amount to be established at trial. As further direct and proximate result of Defendant’s
14 unlawful conduct, as set forth herein, Plaintiff and Class Members are also entitled to recover
15 attorneys’ fees, litigation costs, and restitution of ill-gotten gains, pursuant to statute.

16 26. Representative Plaintiff seeks injunctive relief prohibiting Defendant from
17 engaging in the complained-of illegal labor acts and practices in the future. Representative
18 Plaintiff also seeks restitution of costs incurred by Representative Plaintiff and Class Members
19 under California’s Unfair Competition Law. Unless enjoined, Defendant’s unlawful conduct will
20 continue unchecked, while Representative Plaintiff and Class Members bear the financial brunt
21 of Defendant’s unlawful conduct.

22 27. Plaintiff complied with the procedures for bringing suit specified in California
23 Labor Code § 2699.3. By letter dated November 4, 2015, Plaintiff gave notice, by certified mail,
24 to the Labor and Workforce Development Agency (“LWDA”) and Defendant of the specific
25 provisions of the California Labor Code alleged to have been violated, including the facts and
26 theories to support these violations.

27
28

FIRST CAUSE OF ACTION
UNLAWFUL FAILURE TO PAY WAGES
(California Labor Code §§ 200-204, 510, 1194, and 1198; IWC Wage Order)

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

28. 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.

29. During the Class Period and continuing through the present, Representative Plaintiff and the Class Members performed work for InfoObjects, oftentimes in excess of eight hours in a workday and/or forty hours in a workweek. The precise number of hours will be proven at trial.

30. During the Class Period, Defendant refused to compensate Representative Plaintiff and the Class Members for all of the wages earned, in violation of the applicable IWC Wage Order and provisions of the California Labor Code.

31. At all relevant times, Defendant was aware of, and was under a duty to comply with, the wage (including overtime wage) provisions of the California Labor Code including, but not limited to, California Labor Code §§ 200-204, 510, 1194, and 1198.

32. California Labor Code § 510, in pertinent part, provides:

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

33. California Labor Code § 1194, in pertinent part, provides:

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

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

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for

1 longer hours than those fixed by the order or under conditions of labor
2 prohibited by the order is unlawful.

3 35. By refusing to properly compensate Representative Plaintiff and the Class
4 Members for wages earned (either at these Class Members' regular rate of pay and/or at their
5 applicable overtime rates) and/or at a level sufficient to satisfy California's minimum wage
6 provisions, InfoObjects violated the California Labor Code, as well as Title 8 of the California
7 Code of Regulations and the applicable IWC Wage Order.

8 36. As a direct and proximate result of Defendant's unlawful conduct, as set forth
9 herein, Plaintiff and the Plaintiff Classes have sustained damages, including loss of earnings for
10 hours of overtime worked on behalf of InfoObjects, in an amount to be established at trial.

11 37. Moreover, during the Class Period, many of the Class Members herein were
12 employed by and thereafter terminated or resigned from their positions with InfoObjects, yet
13 were not paid all wages due upon said termination or within 72 hours of said resignation of
14 employment therefrom. Said non-payment of all wages due was the direct and proximate result
15 of a willful refusal to do so by InfoObjects.

16 38. More than thirty days have elapsed since certain Class Members were
17 involuntarily terminated or voluntarily resigned from Defendant's employ.

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

22 **SECOND CAUSE OF ACTION**
23 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
24 **(California Labor Code §§ 226 and 1174; IWC Wage Order)**

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

28 41. California Labor Code § 226(a), in pertinent part, provides:
Every 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

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

when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer.... and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee....

42. California Labor Code § 226(e)(1) 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 to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

43. 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 three years.

44. Moreover, Section 7 of the applicable IWC Wage Order mandates that employers shall provide keep accurate records.

45. Section 7 of the applicable IWC Wage Order, in pertinent part, provides:

(A) Every employer shall keep accurate information with respect to each employee including the following: (1) Full name, home address, occupation and social security number. (2) Birth date, if under 18 years, and designation as a minor. (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded.... (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee. (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request....

(B) Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer,

1 provided all deductions made on written orders of the employee may be
2 aggregated and shown as one item.

3 46. Representative Plaintiff seeks to recover actual damages, costs, and attorneys'
4 fees under these provisions on behalf of herself and on behalf of all Class Members.

5 47. Defendant has failed to provide timely, accurate itemized wage statements to
6 Representative Plaintiff and the Class Members in accordance with the California Labor Code
7 and the applicable IWC Wage Order. Representative Plaintiff is informed and believes and, on
8 that basis, alleges that none of the statements provided by Defendant accurately reflected actual
9 gross wages earned, net wages earned, or the appropriate deductions of such Class Members.

10 48. As a direct and proximate result of Defendant's unlawful conduct, as set forth
11 herein, Representative Plaintiff and the Class Members have sustained damages in an amount to
12 be established at trial, and are entitled to recover attorneys' fees and costs of suit.

13 **THIRD CAUSE OF ACTION**
FAILURE TO PAY WAGES ON TERMINATION
(California Labor Code § 203)

14 49. 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 50. California Labor Code § 203(a), in pertinent part, provides:

18 If an employer willfully fails to pay, without abatement or reduction, in
19 accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any
20 wages of an employee who is discharged or who quits, the wages of the
21 employee shall continue as a penalty from the due date thereof at the same
22 rate until paid or until an action therefor is commenced; but the wages
23 shall not continue for more than 30 days....

24 51. Representative Plaintiff and numerous Class Members were employed by
25 InfoObjects during the Class Period, employment which was thereafter voluntarily or
26 involuntarily severed, yet were not paid all wages due immediately upon the involuntary
27 termination or within seventy-two hours of the voluntary termination of their respective
28 employment positions with Defendant. Said non-payment and/or untimely payment was the
direct and proximate result of a willful refusal to do so by InfoObjects.

1 52. More than thirty days has elapsed since Representative Plaintiff and these
2 particular Class Members were terminated and/or resigned from Defendant’s employ.

3 53. As a direct and proximate result of Defendant’s willful conduct in failing to pay
4 said Class Members for all hours worked, Representative Plaintiff and certain Class Members are
5 entitled to recover “waiting time” penalties of thirty days’ wages, pursuant to California Labor
6 Code § 203, in an amount to be established at trial, together with attorneys’ fees and costs.

7
8 **FOURTH CAUSE OF ACTION**
9 **UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT**
10 **(California Business & Professions Code §§ 17200-17208)**

11 54. 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 55. Representative Plaintiff further brings this cause of action seeking equitable and
15 statutory relief to stop Defendant’s misconduct, as complained of herein, and to seek restitution
16 of the amounts Defendant acquired through the unfair, unlawful, and fraudulent business
17 practices described herein.

18 56. Defendant’s knowing conduct, as alleged herein, constitutes an unlawful and/or
19 fraudulent business practice, as set forth in California Business & Professions Code §§ 17200-
20 17208. Specifically, Defendant conducted business activities while failing to comply with the
21 legal mandates cited herein.

22 57. Defendant has clearly established a policy of accepting a certain amount of
23 collateral damage, as represented by the damages to the Representative Plaintiff and to the Class
24 Members herein alleged, as incidental to its business operations, rather than accept the
25 alternative costs of full compliance with fair, lawful, and honest business practices, ordinarily
26 borne by its responsible competitors and as set forth in legislation and the judicial record.
27
28

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

**FIFTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT CLAIM
(California Labor Code §§ 2699)**

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

58. 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.

59. The Private Attorneys General Act of 2004, California Labor Code § 2699(a), states:

Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees....

60. Representative Plaintiff (and each and every other Class Member) is an “aggrieved employee” as defined by California Labor Code § 2699(c) because she was employed by Defendant and was one of many employees against whom violations of the law were committed.

61. Representative Plaintiff has met and/or will meet all of the requirements set forth in California Labor Code § 2699.3 necessary to commence a civil action against Defendant for violations of (and/or recovery under) California Labor Code §§ 200-204, inclusive, 226(a), 226.7, 510, 512, 1174(c) and (d), 1194, 1198, and/or 2802.

62. Representative Plaintiff brings this action on behalf of herself and all Class Members alleging violations of the California Labor Code sections cited in the preceding paragraph.

63. As a direct and proximate result of Defendant’s unlawful conduct, as set forth herein, Representative Plaintiff and Class Members have sustained damages, including loss of earnings, in an amount to be established at trial.

64. As a further direct and proximate result of Defendant’s unlawful conduct, as set forth herein, Representative Plaintiff and Class Members are entitled to recover various penalties

1 as provided by California Labor Code § 2699 in an amount to be established at trial, as well as
2 costs and attorneys' fees, pursuant to statute.

3
4 **RELIEF SOUGHT**

5 **WHEREFORE**, the Representative Plaintiff, on behalf of herself and the proposed
6 Plaintiff Class, prays for judgment and the following specific relief against Defendants, and each
7 of them, jointly and separately, as follows:

8 1. That the Court declare, adjudge, and decree that this action is a proper class action
9 and certify the proposed Class and/or any other appropriate subclasses pursuant to California
10 Code of Civil Procedure § 382;

11 2. That the Court declare, adjudge and decree that Defendant willfully violated its
12 legal duties to pay wages, including overtime wages and/or the applicable minimum wage, under
13 the California Labor Code, including at §§ 200-204, 510, 1194, and 1198 and the applicable
14 California IWC Wage Order as to the Representative Plaintiff and the Plaintiff Class, as
15 applicable;

16 3. That the Court declare, adjudge and decree that Defendant violated the record
17 keeping provisions of California Labor Code §§ 226 and 1174 and section 7 of the applicable
18 IWC Wage Order as to Representative Plaintiff and members of the Class, and willfully failed to
19 provide accurate semi-monthly itemized wage statements thereto;

20 4. That the Court declare, adjudge and decree that Defendant violated California
21 Labor Code § 203 by willfully failing to pay all compensation owed at the time of the
22 termination of the employment of Representative Plaintiff and other terminated Class Members
23 or within the statutorily-permitted grace period for payment of said wages;

24 5. That the Court declare, adjudge and decree that Defendant violated California
25 Business and Professions Code §§ 17200-17208, by failing to pay Representative Plaintiff and
26 Class Members all wages due, in a timely manner and/or by failing to provide Class Members
27 with accurate and complete itemized wage statements;

28

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

1 6. That the Court make an award to the Representative Plaintiff and the Class of
2 damages and/or restitution for the amount of unpaid wages, including minimum wages and/or
3 overtime compensation, including interest thereon, and penalties in an amount to be proven at
4 trial;

5 7. That the Court order Defendant to pay restitution to Representative Plaintiff and
6 the Class due to Defendant's unlawful activities, pursuant to California Business and Professions
7 Code §§ 17200-17208;

8 8. That the Court further enjoin Defendant, ordering it to cease and desist from
9 unlawful activities in violation of California Business and Professions Code §§ 17200-17208;

10 9. That the Court make an award to the Representative Plaintiff and Class Members
11 of civil penalties under California Labor Code § 2699 for each applicable violation;

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


14 11. For Interest on the amount of all economic losses, at the prevailing legal rate;

15 12. For reasonable attorneys' fees, pursuant to California Labor Code § 1194 and/or
16 California Civil Code § 1021.5; and

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

19
20 Dated: November 4, 2015

SCOTT COLE & ASSOCIATES, APC

21
22
23 By: 
24 Matthew R. Bainer, Esq.
25 Attorneys for Representative Plaintiff
26 and the Plaintiff Class
27
28

JURY DEMAND

1
2 Representative Plaintiff, on behalf of himself and the Plaintiff Class, hereby demands a
3 trial by jury.
4

5 Dated: November 4, 2015

SCOTT COLE & ASSOCIATES, APC

6
7 By: 

8 Matthew R. Bainer, Esq.
9 Attorneys for Representative Plaintiff
10 and the Plaintiff Class
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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