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10 Attorneys for Representative Plaintiff
11 and the Plaintiff Class

12 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **IN AND FOR THE COUNTY OF ALAMEDA**

14 DANNY KELLEY, individually, and on)
15 behalf of all others similarly situated,)

16 Plaintiffs,)

17 vs.)

18 THE SLEEP TRAIN, INC., and DOES 1)
19 through 100, inclusive,)

20 Defendants.)

Case No.: **RG08387747**

CLASS ACTION

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

21 Representative Plaintiff alleges as follows:

22 **PRELIMINARY STATEMENT**

23 1. This is a class action, under Code of Civil Procedure § 382, brought on behalf of
24 Danny Kelley ("Representative Plaintiff") and all other persons who are or have been employed in
25 Sales Associate positions by defendants The Sleep Train, Inc. and Does 1 through 100, inclusive
26 ("Sleep Train" and/or "Defendant"), within the State of California, at any time between May 15,
27 2004 and the present. Specifically, Representative Plaintiff represents Sales Associates who were
28 denied meal and/or rest periods and/or unpaid wages.

2. Representative Plaintiff, individually, and on behalf of all other class members seeks
unpaid wages, meal and rest period compensation, "waiting time" penalties, and other penalties,

ENDORSED
FILED
ALAMEDA COUNTY
MAY 15 2008
CLERK OF THE SUPERIOR COURT
By Alphonsine Oates, Deputy

1 injunctive and other equitable relief and reasonable attorneys' fees and costs, under *inter alia*,
2 Industrial Welfare Commission Wage Order(s), California Labor Code §§ 201-204, inclusive, 218,
3 218.6, 226, 226.7, 512, 558, and 1174; Business and Professions Code §§ 17200-17208 and
4 California Code of Civil Procedure § 1021.5.

5 3. The class period is designated as the time from at least the commencement of the pay
6 period including May 15, 2004 through the conclusion of trial on all issues presented in this action,
7 based upon the allegation that the Defendant's violations of California wage and hour laws, as
8 described more fully below, have been ongoing since at least that date. During the class period, Sleep
9 Train has had a consistent policy toward its Sales Associates of: (1) permitting, encouraging, and/or
10 requiring Representative Plaintiff and class members to work without consistently providing all meal
11 and/or rest periods due as required by California state wage and hour laws; (2) willfully failing to
12 pay compensation owing (compensation for working through paid and/or unpaid meal and/or rest
13 periods) in a prompt and timely manner for Representative Plaintiff and/or class members whose
14 employment with Sleep Train was terminated; (3) willfully failing to provide Representative Plaintiff
15 and class members with *accurate* semimonthly itemized statements of the total number of hours each
16 of them worked, the applicable deductions and applicable hourly rates in effect during the pay
17 period.

18 INTRODUCTION

19
20 4. Founded in 1985, Sleep Train is the largest mattress retailer on the West Coast, with
21 over seventy stores in California alone.

22 5. Representative Plaintiff is informed and believes and, based thereon, alleges that,
23 within the class period, defendant Sleep Train employed numerous individuals in California alone
24 in Sales Associate positions who were not fully compensated for all labor performed and/or for
25 working through statutorily-mandated paid and/or unpaid meal and/or rest periods.

26 6. Despite actual knowledge of these facts and legal mandates, Defendant has enjoyed
27 an advantage over its competition and a resultant disadvantage to its workers by electing not to
28 properly compensate and/or provide and/or authorize and permit all meal and/or rest periods to its

1 employees.

2 7. Representative Plaintiff is informed and believes and, based thereon, alleges that
3 Sleep Train, its offices and/or agents knew of these facts and legal mandates alleged here, yet,
4 nonetheless, repeatedly directed, authorized and/or ratified the violation of the laws cited herein.

5 8. Despite Defendant's knowledge of the plaintiff class' entitlement to applicable unpaid
6 wages and meal and/or rest periods for all applicable work periods, Sleep Train failed to provide the
7 same to members of the plaintiff class, in violation of the California Labor Code, Industrial Welfare
8 Commission Wage Order(s). This action is brought to redress and end this long-time pattern of
9 unlawful conduct.

10
11 **JURISDICTION AND VENUE**

12 9. This Court has jurisdiction over the Representative Plaintiffs' and class members'
13 claims for unpaid wages and/or penalties under, *inter alia*, Industrial Welfare Commission Wage
14 Order(s), California Labor Code §§ 200-204, inclusive, 218.6, 226, 226.7, 512, and 1174; Business
15 and Professions Code §§ 17200, *et seq.*, and California Code of Civil Procedure § 1021.5.

16 10. This Court has further jurisdiction over the Representative Plaintiffs' and class
17 members' claims for injunctive relief, and restitution of ill-gotten benefits arising from Sleep Train's
18 unlawful business practices under Business & Professions Code §§ 17203 and 17204.

19 11. Venue as to the Defendant(s) is proper in this judicial district, pursuant to Code of
20 Civil Procedure § 395(a). Sleep Train maintains retail locations within the County of Alameda, and
21 Sleep Train transacts business, has agents, and is otherwise within this Court's jurisdiction for
22 purposes of service of process. The unlawful acts alleged herein have a direct effect on the
23 Representative Plaintiff and those similarly situated within the State of California and within the
24 County of Alameda. Defendant has employed numerous class members in the County of Alameda
25 during the applicable class period as well as other counties within the State of California.

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PLAINTIFFS

12. Representative Plaintiff identified herein is a natural person and was, during the relevant time period identified herein, employed by Sleep Train as a Sales Associate.

13. As used throughout this Complaint, the terms “class members” and/or the “plaintiff class” refer to the Representative Plaintiff herein as well as each and every person eligible for membership in the class of persons as further described and defined herein.

14. The plaintiff class consists, generally, of all members who are/were employed as Sales Associates by Sleep Train (as defined by paragraph 21 of this Complaint) within the State of California, at any time between May 15, 2004 and the present.

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

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

DEFENDANT(S)

17. At all times herein relevant, defendant The Sleep Train Inc. and Does 1 through 100, inclusive (“Sleep Train” and/or “Defendant”) are business entities, duly licensed, located and doing business in, but not limited to, Alameda County in the State of California.

18. Those Defendants identified as Does 1 through 100, inclusive, are and were, at all relevant times herein-mentioned, officers, directors, partners, and/or managing agents of some or each of the remaining Defendants. Representative Plaintiff is informed and believes and, on that basis, alleges that, at all relevant times herein mentioned, the named defendant and those identified as Does 1 through 100, inclusive, employed and/or exercised control over the hours and/or working conditions of the Representative Plaintiff and class members at various California locations, as identified in the preceding paragraph.

19. Representative Plaintiff is unaware of the true names and capacities of those Defendants sued herein as Does 1 through 100, inclusive and, therefore, sue these Defendants by

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1 such fictitious names. Representative Plaintiff will seek leave of court to amend this Complaint when
2 such names are ascertained. Representative Plaintiff is informed and believes and, on that basis,
3 alleges that each of the fictitiously-named Defendants were responsible in some manner for, gave
4 consent to, ratified and/or authorized the conduct herein alleged and that the Representative
5 Plaintiffs' and class members' damages, as herein alleged, were proximately caused thereby.

6 20. Representative Plaintiff is informed and believes and, on that basis, alleges that, at
7 all relevant times herein mentioned, each of the Defendants was the agent and/or employee of each
8 of the remaining Defendants and, in doing the acts herein alleged, was acting within the course and
9 scope of such agency and/or employment.

10

11 **CLASS ACTION ALLEGATIONS**

12 21. Representative Plaintiff brings this action, individually, and as a class action on behalf
13 of all persons or entities proximately damaged by Defendant's conduct, including, but not necessarily
14 limited to, the following plaintiff class:

15 All persons who are/were employed by Sleep Train as a Sales
16 Associate in one or more of its California locations at any time since
May 15, 2004.

17 22. Defendant, its officers and directors are excluded from the plaintiff class.

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

21 A. Numerosity: A class action is the only available method for the fair and
22 efficient adjudication of this controversy. The members of the class are so
23 numerous that the joinder of all members is impractical, if not impossible,
24 insofar as Representative Plaintiff is informed and believes and, on that basis,
alleges that, the total number of class members is into the hundreds.
Membership in the class will be determined upon analysis of employee and
payroll, among other, records maintained by Sleep Train.

25 B. Commonality: The Representative Plaintiff and the class members share a
26 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:

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- 1) whether Sleep Train violated Labor Code §§ 226.7 and/or 512 by failing to consistently provide meal and rest periods to the Representative Plaintiff and the plaintiff class.
- 2) whether Sleep Train violated California Business and Professions Code §§ 17200, *et seq.*, by consistently failing to provide meal and/or rest periods to Representative Plaintiff and class members and engaging in unfair, unlawful and/or fraudulent business practices;
- 3) whether the defendant violated Labor Code §§ 201-204 by failing to pay all wages due and owing at the time that class members' employment with Sleep Train terminated;
- 4) whether Sleep Train violated California Labor Code § 1174 by failing to keep accurate records of employees' hours of work;
- 5) whether Sleep Train violated California Labor Code § 226 by failing to provide semimonthly itemized statements to class members of total hours worked by each, and all applicable hourly rates in effect during the pay period; and
- 6) whether Representative Plaintiff and class members are entitled to "waiting time" penalties pursuant to California Labor Code §§ 203 and/or 204.

C. Typicality: Representative Plaintiff's claims are typical of the claims of the plaintiff class. Representative Plaintiff and all members of the plaintiff class sustained damages arising out of and caused by Sleep Train'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 plaintiff class to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought or be required to be brought by each individual member of the plaintiff class, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions 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: Representative Plaintiff in this class action is an adequate representative of the plaintiff class, in that Representative Plaintiff's claims are typical of those of the plaintiff class and Representative Plaintiff have the same interest in the litigation of this case as the class members. Representative Plaintiff is committed to the vigorous prosecution of this case and has retained competent counsel, experienced in conducting litigation of this nature. Representative Plaintiff is not subject to any individual defenses unique from those conceivably applicable to the plaintiff class as a whole. Representative Plaintiff anticipates no management difficulties in this litigation.

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COMMON FACTUAL ALLEGATIONS

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24. As described herein, Sleep Train has, for years, knowingly failed to adequately compensate those employees within the class definition identified above for all wages earned, including premium (compensation for missed meal and/or rest periods) wages, and for failure to provide rest periods for work shifts exceeding four hours or a major fraction thereof (and at least three and one-half hours) and/or uninterrupted, unrestricted meal periods of not less than thirty minutes for work shifts exceeding five hours to those employees as are due under the California Labor Code and applicable California Wage Orders, thereby enjoying a significant competitive edge over its competitors.

25. Even upon termination or resignation of the employment of numerous class members, Sleep Train has declined to compensate these employees therefor, in blatant violation of California Labor Code §§ 201 and/or 202.

26. California Labor Code §§ 201 and 202 require defendant Sleep Train to pay severed employees all wages owed to the employee immediately upon discharge or within 72 hours of resignation of their positions, in most circumstances. California Labor Code § 203 provides that, if an employer willfully fails to timely pay such wages, the employer must, as a penalty, continue to pay the subject employees' wages until the back wages are paid in full or an action is commenced, and shall continue to accrue for a period of time up to 30 days.

27. Furthermore, despite its knowledge of the Representative Plaintiff's and the class members' entitlement to all compensation owed, Sleep Train failed to provide Representative Plaintiff and class members 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, Sleep Train 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 (the full number of hours worked) and financial impact of its wrongdoing.

28. Representative Plaintiff and all persons similarly situated are entitled to unpaid compensation, yet, to date, have not received such compensation despite many of the same having

1 | been terminated by and/or resigned from Sleep Train. More than 30 days have passed since certain
2 | class members have left defendant Sleep Train's employ.

3 | 29. As a consequence of Sleep Train's willful conduct in not paying former employees
4 | compensation for all hours worked in a prompt and timely manner, certain class members are entitled
5 | to up to 30 days wages as a penalty under Labor Code § 203, together with interest thereon and
6 | attorneys' fees and costs.

7 | 30. As a consequence of Sleep Train's willful conduct in not providing an uninterrupted
8 | 30 minute meal period within the first five hours of class members' shifts as required under Labor
9 | Code § 512 and Section 11 of applicable IWC Wage Orders, class members are entitled to one hour
10 | of wages for each day that they were denied at least one meal period, as provided under Labor Code
11 | § 226.7, together with interest thereon and attorneys' fees and costs.

12 | 31. As a consequence of Sleep Train's willful conduct in not providing a ten (10) minute
13 | rest period during each four (4) hour segment of work, as required under Section 12 of applicable
14 | IWC Wage Orders, class members are entitled to one hour of wages for each day that they were
15 | denied at least one rest period, as provided under Labor Code § 226.7, together with interest thereon
16 | and attorneys' fees and costs.

17 | 32. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
18 | Representative Plaintiff and class members have sustained damages, as described above, including
19 | a loss of compensation in amounts to be established at trial. As a further direct and proximate result
20 | of Defendant's unlawful conduct, as set forth herein, Representative Plaintiff and/or certain class
21 | members herein are entitled to recover "waiting time" penalties (pursuant to California Labor Code
22 | § 203) and penalties for failure to provide semimonthly statements of hours worked and all
23 | applicable hourly rates (pursuant to Labor Code § 226) in an amount to be established at trial. As a
24 | further direct and proximate result of Defendant's unlawful conduct, as set forth herein,
25 | Representative Plaintiff and class members are entitled to recover costs and attorneys' fees, pursuant
26 | to statute.

27 | 33. Representative Plaintiff seeks injunctive relief, prohibiting Sleep Train from engaging
28 | in the complained-of illegal labor acts and practices in the future. Representative Plaintiff also seeks

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1 restitution of costs by Representative Plaintiff and class members and any benefits derived by the
2 Defendant from the unlawful conduct under California's Unfair Competition Law. Unless enjoined,
3 Defendant's unlawful conduct will continue unchecked, while the Representative Plaintiff and class
4 members bear the financial brunt of Defendant's unlawful conduct. As a further direct and proximate
5 result of Defendant's unlawful conduct, as set forth herein, Representative Plaintiff and the plaintiff
6 class are also entitled to recover costs and attorneys' fees, pursuant to statute.

7
8 **FIRST CAUSE OF ACTION**
9 **FAILURE TO PROVIDE MEAL AND REST PERIODS**
10 **(California Labor Code §§ 226.7 and 512)**

11 34. Representative Plaintiff incorporates in this cause of action each and every allegation
12 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

13 35. At all relevant times, Defendant was aware of and was under a duty to comply with
14 California Labor Code §§ 226.7 and 512.

- 15 36. California Labor Code § 226.7 provides:
- 16 (a) No employer shall require any employee to work during any
17 meal or rest period mandated by an applicable order of the
18 Industrial Welfare Commission.
 - 19 (b) If an employer fails to provide an employee a meal period or
20 rest period in accordance with an applicable order of the
21 Industrial Welfare Commission, the employer shall pay the
22 employee one additional hour of pay at the employee's regular
23 rate of compensation for each work day that the meal or rest
24 period is not provided.

25 37. Moreover, California Labor Code § 512 provides:

26 An employer may not employ an employee for a work period of more
27 than five hours per day without providing the employee with a meal
28 period of not less than 30 minutes, except that if the total work period
per day of the employee is no more than six hours, the meal period
may be waived by mutual consent of both the employer and
employee. An employer may not employ an employee for a work
period of more than 10 hours per day without providing the employee
with a second meal period of not less than 30 minutes, except that if
the total hours worked is no more than 12 hours, the second meal
period may be waived by mutual consent of the employer and the
employee only if the first meal period was not waived.

38. Sections 11 and 12, respectively, of IWC Wage Order No. 7 mandate that employers
provide all applicable meal and/or rest periods to employees.

1 39. Section 11 of the IWC Wage Order provides:
2
3 (A) No employer shall employ any person for a work period of more
4 than five (5) hours without a meal period of not less than 30 minutes
5 (B) An employer may not employ an employee for a work period
6 of more than ten (10) hours per day without providing the employee
7 with a second meal period of not less than 30 minutes (C) If an
8 employer fails to provide an employee a meal period in accordance
9 with the applicable provisions of this order, the employer shall pay
10 the employee one (1) hour of pay at the employee's regular rate of
11 compensation for each workday that the meal period is not provided.
12
13 40. Moreover, Section 12 of the IWC Wage Order provides:
14
15 (A) Every employer shall authorize and permit all employees to take
16 rest periods, which insofar as practicable shall be in the middle of
17 each work period. The authorized rest period time shall be based on
18 the total hours worked daily at the rate of ten (10) minutes net rest
19 time per four (4) hours or major fraction thereof (B) If an
20 employer fails to provide an employee a rest period in accordance
21 with the applicable provisions of this order, the employer shall pay
22 the employee one (1) hour of pay at the employee's regular rate of
23 compensation for each workday that the rest period is not provided.
24
25 41. By failing to consistently provide (1) meal breaks within the first five hours of a work
26 shift; (2) uninterrupted thirty-minute meal periods; and/or (3) ten-minute rest periods to class
27 members, Defendant violated California Labor Code and IWC Wage Order provisions.
28
29 42. Even where Defendant's records specifically illustrate no meal and/or rest periods
30 were provided to Representative Plaintiff and class members, Sleep Train refuses to properly
31 compensate these employees with one hour of compensation for these respective violations as
32 mandated by California law.
33
34 43. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
35 class members have sustained damages, including loss of earnings, in an amount to be established
36 at trial. As a further direct and proximate result of Defendant's unlawful conduct, as set forth herein,
37 class members are entitled to recover various penalties, in an amount to be established at trial, as
38 well as costs and attorneys' fees, pursuant to statute.
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SECOND CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
(California Labor Code §§ 226, 1174)

44. 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.

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

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

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

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

47. Finally, California Labor Code § 1174 provides:

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

48. As a direct and proximate result of the Defendant's unlawful conduct, as alleged herein, Representative Plaintiff seeks to recover actual damages, costs and attorneys' fees under this section on behalf of himself and the class members.

49. Defendant failed to provide timely, accurate itemized wage statements to Representative Plaintiff and the class members in accordance with Labor Code § 226(a) and the applicable California Wage Order(s). None of the statements provided by Defendant have accurately

1 reflected actual gross wages earned, net wages earned, or the appropriate deductions of such class
2 members.

3
4 **THIRD CAUSE OF ACTION**
5 **FAILURE TO PAY WAGES ON TERMINATION**
6 **(Violation of California Labor Code §§ 203-204)**

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

9 51. California Labor Code § 203 provides, in part:

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

16 52. California Labor Code § 204 provides, in part:

17 Labor performed between the 1st and 15th days, inclusive, of any
18 calendar month shall be paid for between the 16th and the 26th day
19 of the month during which the labor was performed, and labor
20 performed between the 16th and the last day, inclusive, of any
21 calendar month, shall be paid for between the 1st and 10th day of the
22 following month.

23 53. Representative Plaintiff and numerous class members were employed by Sleep Train
24 during the class period, employment which was thereafter voluntarily or involuntarily severed, yet
25 were not paid timely wages, including those due immediately upon the involuntary termination or
26 within seventy-two hours of the voluntary termination of their respective employment positions with
27 the defendant. Said non-payment and/or untimely payment was the direct and proximate result of a
28 willful refusal to do so by Sleep Train.

54. More than thirty days has elapsed since Representative Plaintiff and some class
members were terminated and/or resigned from the Defendant's employ.

55. As a direct and proximate result of the Defendant's willful conduct in failing to pay
said class members for all hours worked, Representative Plaintiff and certain class members are
entitled to recover "waiting time" penalties of thirty days' wages, pursuant to California Labor Code

1 § 203, in an amount to be established at trial, together with attorneys' fees and costs.

2
3 **FOURTH CAUSE OF ACTION**
4 **UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT**
5 **(California Business & Professions Code §§ 17200-17208)**

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

8 57. Representative Plaintiff further brings this cause of action seeking equitable and
9 statutory relief to stop the misconduct of Defendant, as complained of herein, and to compel the
10 payment of restitution by Defendant as a result of the unfair, unlawful and fraudulent business
11 practices described herein.

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

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

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

25 61. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
26 Representative Plaintiff and the class members have sustained damages, including loss of
27 earnings/wages, in an amount to be established at trial, and are entitled to restitution in such an
28 amount.

//

RELIEF SOUGHT

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

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

7 2. That the Court declare, adjudge and decree that defendant Sleep Train violated the
8 record keeping provisions of California Labor Code §§ 226(a) and 1174(d) and the relevant Wage
9 Order(s) as to Representative Plaintiff and the class members, and for willful failure to provide
10 accurate semimonthly itemized statements thereto;

11 3. That the Court declare, adjudge and decree that Sleep Train violated California Labor
12 Code §§ 201-204 for willful failure to pay all compensation owed at the time of termination of
13 employment of some class members;

14 4. That the Court declare, adjudge and decree that Sleep Train violated California
15 Business and Professions Code § 17200, *et seq.*, by failing to pay Representative Plaintiff and class
16 members “waiting time” penalties and/or by failing to provide accurate itemized statements;

17 5. That the Court make an award to Representative Plaintiff and plaintiff class of
18 damages for the amount of unpaid compensation, including interest thereon, and penalties in an
19 amount to be proven at trial;

20 6. That the Court declare, adjudge and decree that Sleep Train willfully violated its legal
21 duties under the California Labor Code §§ 226.7 and/or 512 and the IWC Wage Orders to pay wages
22 for missed meal and/or rest periods;

23 7. For an Order requiring Sleep Train to pay restitution to Representative Plaintiff and
24 the plaintiff class of all profits and gains resulting from defendant Sleep Train’s unfair, unlawful
25 and/or fraudulent activities, pursuant to Business and Professions Code §§ 17200-08;

26 8. For an injunction, enjoining Sleep Train to cease and desist from unfair, unlawful
27 and/or fraudulent activities in violation of Business and Professions Code § 17200, *et seq.*;

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- 9. For punitive/exemplary damages in an amount appropriate and sufficient to punish Defendant, and each of them, and to deter others from engaging in similar misconduct in the future;
- 10. For all other Orders, findings, and determinations identified and sought in this Complaint;
- 11. For interest on the amount of any and all economic losses, at the prevailing legal rate;
- 12. For reasonable attorneys' fees, pursuant to statute; and
- 13. For costs of suit and any and all such other relief as the Court deems just and proper.

Dated: May 15, 2008

SCOTT COLE & ASSOCIATES, APC

By: 
Matthew R. Bainer, Esq.
Attorneys for Representative Plaintiff
and the Plaintiff Class