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ALAN SLATER, Clerk of the Court

BY E. BLOMBERG DEPUTY

1 Scott Edward Cole, Esq. (S.B. #160744)  
Clyde H. Charlton, Esq. (S.B. #127541)  
2 Matthew R. Bainer, Esq. (S.B. #220972)  
**SCOTT COLE & ASSOCIATES, APC**  
3 1970 Broadway, Suite 950  
Oakland, California 94612  
4 Telephone: (510) 891-9800  
Facsimile: (510) 891-7030  
5 web: www.scalaw.com

6 Attorneys for Representative Plaintiffs  
and the Plaintiff Classes

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

11 EDWARD NORDSTROM, EVERETT  
MARTINEZ individually, and on behalf  
12 of all others similarly situated,

13 Plaintiffs,

14 vs.

15 DASHERS INSURANCE SERVICES,  
INC., and DOES 1 through 25, inclusive,

16 Defendants.

Case No.:

**05 CC 00286**

**CLASS ACTION**

**JUDGE STEPHEN J. SUNDVOLD**

**DEPT. CX105  
COMPLAINT FOR DAMAGES,  
INJUNCTIVE RELIEF AND RESTITUTION**

19 Representative Plaintiffs allege as follows:

21 **PRELIMINARY STATEMENT**

22 1. This is a class action, under Code of Civil Procedure § 382, seeking unpaid wages,  
23 including unpaid overtime compensation and interest thereon and rest and meal period  
24 compensation, reimbursement of all sums unlawfully deducted from pay, record-keeping penalties,  
25 waiting time penalties, injunctive and other equitable relief and reasonable attorneys' fees and costs,  
26 under, *inter alia*, California Code of Civil Procedure § 382, Labor Code §§ 201- 203, 218.5, 221,  
27 226, 226.7, 510, 512, 1174, 1194, 1198 and 1199, and CCP § 1021.5, on behalf of Plaintiffs and all  
28 other persons who are or have been employed by defendant DASHERS INSURANCE SERVICES,

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

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

1 INC., and DOES 1 through 25, inclusive (collectively "Dashers" and/or "Defendant[s]") in any of  
2 Dashers' insurance sales offices in the State of California, at any time after the commencement of  
3 the pay period including November 30, 2001, in allegedly overtime-exempt insurance sales agent  
4 positions ("Agents"). This class action is also brought on behalf of all Dashers' employees from  
5 whose "commission" paychecks Dashers unilaterally deducted and retained amounts of earned  
6 wages. The Representative Plaintiffs, on behalf of themselves and the Class Members, also seek  
7 injunctive relief and restitution of all benefits Dashers has enjoyed from its unfair, unlawful and/or  
8 fraudulent business practices, as set forth herein, under Business and Professions Code §§ 17200-  
9 17208.

10 2. The "Class Period" is designated as the time from at least the commencement of the  
11 pay period including November 30, 2001 through the trial date, based upon the allegation that  
12 Dashers' violations of California wage and hour laws, as described more fully below, have been  
13 ongoing since at least this date. During the Class Period, Dashers has had a consistent policy of (1)  
14 permitting, encouraging, and/or requiring its allegedly overtime-exempt Agents, including  
15 Representative Plaintiffs and Class Members, to work in excess of eight hours per day and in excess  
16 of forty hours per week without paying them overtime compensation as required by California's  
17 wage and hour laws; (2) unlawfully denying Representative Plaintiffs and Class Members their  
18 statutorily-mandated meal and rest periods; (3) unlawfully deducting amounts earned by  
19 Representative Plaintiffs and the Class Members from their monthly "commission" paychecks, (4)  
20 willfully failing to pay all compensation in a prompt and timely manner owing to the Representative  
21 Plaintiffs and/or those Class Members whose employment with Dashers terminated; and (5) willfully  
22 failing to provide Representative Plaintiffs and the Class Members with accurate semi-monthly  
23 itemized statements of the total number of hours each of them worked, the applicable deductions and  
24 the applicable hourly rates in effect during the pay period.

25  
26 **INTRODUCTION**

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

1 protections for workers.

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

6 5. Since its inception, defendant Dashers has offered auto insurance products to the  
7 public. Representative Plaintiffs are informed and believe and, based thereon, allege that, within the  
8 class period, Dashers has operated numerous insurance sales offices throughout the State of  
9 California. In so doing, Dashers has employed scores of individuals in recent years alone in sales  
10 agent positions, employment positions which have not and currently do not meet the test for  
11 exemption from the payment of overtime wages.

12 6. Moreover, during the Class Period, Dashers has unlawfully deducted and retained  
13 monies from the "commission" paychecks issued to employees whose compensation includes flat  
14 rate payments for every insurance product sold, including but not limited to sales agents and  
15 managers.

16 7. Despite actual knowledge of these facts and legal mandates, Dashers has enjoyed an  
17 advantage over its competition and a resultant disadvantage to its workers by electing not to pay  
18 premium (overtime, meal and rest period) wages and/or record-keeping and "waiting time" penalties  
19 to sales agents in accordance with California law, and by unlawfully deducting sums from its  
20 employees' "commission" paychecks, retaining such monies for Dashers' own use.

21 8. Representative Plaintiffs are informed and believe and, based thereon, allege that  
22 officers of Dashers knew of these facts and legal mandates, yet, nonetheless, repeatedly authorized  
23 and/or ratified the violation of the laws cited herein.

24 9. Despite Dashers' knowledge of the Plaintiff Classes' entitlement to premium  
25 (overtime) pay for excess hours worked and meal and rest periods, as well as undiluted  
26 "commission" compensation, Dashers failed to provide or require the use, maintenance or  
27 submission of accurate and complete time records by members of the Plaintiff Classes, in violation  
28 of California Labor Code §1174[d]. This action is brought to redress and end this long-time pattern

SCOTT COLE & ASSOCIATES, APC  
ATTORNEYS AT LAW  
THE WORLD SAVINGS TOWER  
1970 BROADWAY, SUITE 930  
OAKLAND, CA 94612  
TEL: (510) 891-9800

1 of unlawful conduct.

2  
3 **JURISDICTION AND VENUE**

4 10. This Court has jurisdiction over Representative Plaintiffs' and Class Members' claims  
5 for unpaid overtime wages under Labor Code §§ 510 and 1194, for compensation for failure to  
6 provide them with meal and rest periods under Labor Code §§ 226.7 and 512, for reimbursement of  
7 all sums wrongfully deducted from their paychecks under Labor Code § 221, for penalties for failure  
8 to pay wages of discharged employees under Labor Code § 203 and for penalties for failure to  
9 provide itemized statements of actual hours worked, all applicable hourly rates and all applicable  
10 deductions under Labor Code § 226.

11 11. This Court has jurisdiction over Representative Plaintiffs' and Class Members' claims  
12 for injunctive relief and restitution of ill-gotten benefits arising from defendant Dashers' unfair,  
13 unlawful and/or fraudulent business practices under Business & Professions Code §§ 17203 and  
14 17204.

15 12. Venue as to Defendant is proper in this judicial district, pursuant to Code of Civil  
16 Procedure § 395(a). Defendant Dashers operates insurance sales offices in Orange County, and  
17 transacts business, has agents, and is otherwise within this Court's jurisdiction for purposes of  
18 service of process. Defendant Dashers has employed numerous Class Members in Orange County.  
19 The unlawful acts alleged herein have a direct effect on the Representative Plaintiffs and those  
20 similarly situated within the State of California and within Orange County.

21  
22 **PLAINTIFFS**

23 13. The Representative Plaintiffs are natural persons and were, during the relevant time  
24 period identified herein, employed by defendant Dashers as allegedly overtime-exempt insurance  
25 sales Agents, employment positions which were mis-classified as salaried/exempt from overtime  
26 pay.

27 14. As used throughout this Complaint, the terms "Plaintiffs" and/or "Classes" refer to  
28 the named Plaintiffs herein as well as each and every person eligible for membership in the Plaintiff

1 Classes, as further described and defined below.

2 15. The Plaintiff Class referred to herein as "Class 'A'" consists, generally, of all persons  
3 who are/were employed by Dashers as insurance sales Agents in the State of California during the  
4 Class Period, and were classified thereby as overtime-exempt employees.

5 16. The Plaintiff Class referred to herein as "Class 'B'" consists, generally, of all persons  
6 who are/were employed by Dashers in the State of California during the Class Period, from whose  
7 "commission" paycheck(s) Dashers deducted and retained amounts of earned compensation.

8 17. At all times herein relevant, the Representative Plaintiffs were and now are persons  
9 within the Class of persons further described and defined herein.

10 18. The Representative Plaintiffs bring this action on behalf of themselves and as a class  
11 action, pursuant to California Code of Civil Procedure §382, on behalf of all persons similarly  
12 situated and proximately damaged by the unlawful conduct described herein.

13  
14 **DEFENDANT**

15 19. At all times herein relevant, defendant DASHERS INSURANCE SERVICES, INC.,  
16 and Does 1 through 25, inclusive (collectively referred to as "Dashers" and/or "Defendant") were  
17 corporations, duly licensed, located and doing business in, but not limited to, the County of Orange,  
18 in the State of California.

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

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

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

1 22. Representative Plaintiffs are informed and believe and, on that basis, allege that, at  
2 all relevant times herein mentioned, each of the defendants was the agent and/or employee of each  
3 of the remaining defendants and, in doing the acts herein alleged, was acting within the course and  
4 scope of such agency and/or employment.  
5

6 **CLASS ACTION ALLEGATIONS**

7 23. Representative Plaintiffs EDWARD NORDSTROM and EVERETT MARTINEZ  
8 bring this action on behalf of themselves and as a class action on behalf of all persons similarly  
9 situated and proximately damaged by Dashers' conduct as set forth herein, including, but not  
10 necessarily limited to, the following Classes:

11 Class "A":  
12 All persons who are/were employed in insurance sales agent positions  
13 ("Agents") by DASHERS INSURANCE SERVICES, INC., at one or  
14 more of Dashers' California insurance sales offices, at any time  
between November 30, 2001 and the present, and are/were classified  
thereby as overtime-exempt employees.

15 Class "B":  
16 All persons who are/were employed by DASHERS INSURANCE  
17 SERVICES, INC., at one or more of Dashers' California insurance  
sales offices, at any time between November 30, 2001 and the  
present, from whose "commission" paycheck(s) Dashers deducted  
and retained amounts of earned compensation.

18 24. Defendants, their officers and directors are excluded from the Classes.

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

22 a. Numerosity: A class action is the only available method for the fair and  
23 efficient adjudication of this controversy. The members of the Classes are so  
24 numerous that joinder of all members is impractical, if not impossible.  
25 Membership in each of the Classes is more than one hundred individuals.  
Membership in the Classes will be determined upon analysis of employee and  
payroll, among other, records maintained by Dashers.

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

28 i. whether defendant Dashers violated IWC Wage Orders and/or Labor

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Code § 510 by failing to pay overtime compensation to sales Agents who worked in excess of forty hours per week and/or eight hours per day.

- ii. whether defendant Dashers violated Labor Code §§ 226.7 and/or 512 by violating California wage and hour laws failing to consistently provide meal and rest periods to its sales Agents.
- iii. whether defendant Dashers violated IWC Wage Orders and Labor Code Section 221 by unlawfully deducting and retaining amounts of earned compensation from its employees' "commission" paychecks.
- iv. whether defendant Dashers violated Labor Code § 1174 by failing to keep accurate records of its employees' hours of work.
- v. whether defendant Dashers violated Labor Code §§ 201-203 by failing to pay overtime wages and other compensation due and owing at the time that certain Class Members' employment with Defendant terminated.
- vi. whether Representative Plaintiffs and certain Class Members are entitled to "waiting time" penalties, pursuant to Labor Code § 203.
- vii. whether defendant Dashers violated Labor Code § 226 by failing to provide complete and accurate semimonthly itemized statements to Class Members of the total hours worked by each, all applicable hourly rates in effect during the pay period, and all applicable deductions.
- viii. whether defendant Dashers violated Business and Professions Code § 17200 et seq. by engaging in unfair, unlawful and/or fraudulent business practices, thereby entitling Plaintiffs and the Class Members to injunctive relief and restitution.

- c. Typicality: The Representative Plaintiffs' claims are typical of the claims of the Classes. The Representative Plaintiffs and all members of the Classes sustained injuries and damages arising out of and caused by defendant Dashers' common course of conduct in violation of law, as alleged herein.
- d. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes or may make it impractical for members of the Classes to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought or be required to be brought by each individual member of the 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: The Representative Plaintiffs in this class action are adequate representatives of the Classes, in that the Representative Plaintiffs' claims are typical of those of the Class Members and the Representative Plaintiffs have the same interests in the litigation of this case

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as the Class Members. The Representative Plaintiffs are committed to vigorous prosecution of this case, and have retained competent counsel, experienced in litigation of this nature. The Representative Plaintiffs are not subject to any individual defenses unique from those conceivably applicable to the Classes as a whole. The Representative Plaintiffs anticipate no management difficulties in this litigation.

**COMMON FACTUAL ALLEGATIONS**

26. As described herein, Dashers has, for years, knowingly failed to adequately compensate its sales Agents for premium (overtime) wages due. Dashers has also engaged in a pattern and practice of unlawfully deducting amounts of earned wages from Class Members' "commission" paychecks and has violated other California wage and hour laws as set forth herein, thereby enjoying a significant competitive edge over other auto insurance companies. Even upon termination or resignation of the employment of numerous Class Members, Dashers has declined to pay these earned wages and compensation, in blatant violation of California Labor Code §§ 201 and/or 202.

27. Furthermore, despite its knowledge of the Representative Plaintiffs' and the Class Members' entitlement to premium (overtime) pay for excess hours worked, Dashers violated California Labor Code § 1174[d] by failing to provide or require the use, maintenance or submission of time records by members of the Misclassified Agent Class. Dashers also failed to provide Representative Plaintiffs and members of the Plaintiff Classes with accurate semimonthly itemized statements of the total number of hours worked by each, the applicable hourly rates in effect during the pay period and all applicable deductions, in violation of California Labor Code § 226. In so doing, Dashers has not only failed to pay its workers the full amount of compensation due, it has, until now, effectively shielded itself from its employees' scrutiny for its unlawful conduct by concealing the magnitude (i.e., the full number of hours worked) and financial impact of its wrongdoing.

28. As a direct and proximate result of Dashers' unlawful conduct, as set forth herein, Representative Plaintiffs and Class Members have sustained damages, as described above, including, but not limited to loss of earnings for hours of overtime worked on behalf of Defendants and meal and rest period violations, as well as lost wages resulting from Dashers' unlawful paycheck



1 deductions, in amounts be established at trial. As a further direct and proximate result of  
2 Defendant's unlawful conduct, as set forth herein, Representative Plaintiffs and certain Class  
3 Members herein are entitled to recover "waiting time" penalties/wages (pursuant to California Labor  
4 Code § 203) and Class Members are entitled to penalties for Dashers' failure to provide accurate  
5 semimonthly statements of hours worked, all hourly rates and all applicable deductions (pursuant  
6 to Labor Code § 226), in amounts to be established at trial. As a further direct and proximate result  
7 of Defendant's unlawful conduct, as set forth herein, Representative Plaintiffs and the Plaintiff Class  
8 are also entitled to recover interest, costs and attorneys' fees, pursuant to statute. As a further direct  
9 and proximate result of Defendant's unfair, unlawful and/or fraudulent conduct, Representative  
10 Plaintiffs and Class Members are entitled to injunctive relief and restitution under Business and  
11 Professions Code §§ 17200, et seq.

12  
13 **FIRST CAUSE OF ACTION**  
14 **UNLAWFUL FAILURE TO PAY REQUIRED OVERTIME**  
15 **California Labor Code §§ 510, 1194**  
16 **(Class "A" Only)**

17 29. Representative Plaintiffs incorporate in this cause of action each and every allegation  
18 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

19 30. During the time period beginning as of the commencement of the pay period  
20 including November 30, 2001 and continuing through the present, Representative Plaintiffs and the  
21 Class Members regularly worked in excess of eight hours in a workday and/or forty hours in a  
22 workweek. The precise number of hours will be proven at trial.

23 31. During said time period, defendant Dashers refused to compensate Representative  
24 Plaintiffs and the Class Members for some and/or all of the overtime wages earned in violation of  
25 applicable Wage Order(s) and the California Labor Code.

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

- 28 a. Labor Code § 226: "Every employer shall semimonthly or at the time of  
each payment of wages, furnish each of his or her employees, either as a

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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 statement in writing showing . . . (2) total hours worked by the employee . . . 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."

- b. Labor Code §510: "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 or 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 . . . ."
- c. Labor Code § 1194: "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.
- d. Labor Code §1198: "[t]he 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 longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."
- e. Labor Code §1199: "Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who . . . (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission. . . [or] (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission."

33. By refusing to compensate Representative Plaintiffs and the Class Members for overtime wages earned, Defendant violated those California Labor Code provisions cited herein, as well as various IWC Wage Order provisions.

34. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, Representative Plaintiffs and the Class Members have sustained damages, including loss of earnings for hours of overtime worked on behalf of Defendant, in an amount to be established at trial. As a further direct and proximate result of Defendant's unlawful conduct, as set forth herein, Representative Plaintiffs and Class Members are entitled to recover interest, costs and attorneys' fees pursuant to statute.

**SECOND CAUSE OF ACTION**

**FAILURE TO PROVIDE MEAL AND REST PERIODS**  
**California Labor Code §§ 226.7 and § 512**  
**(Class "A" Only)**

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4 35. Representative Plaintiffs incorporate in this cause of action each and every allegation  
5 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

6 36. California Labor Code § 512 provides:

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

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

20 38. Specifically, California Labor Code § 226.7 provides:

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

24 (b) If an employer fails to provide an employee a meal period or rest  
25 period in accordance with an applicable order of the Industrial  
26 Welfare Commission, the employer shall pay the employee one  
27 additional hour of pay at the employee's regular rate of compensation  
28 for each work day that the meal or rest period is not provided.

39. Applicable Industrial Welfare Commission Wage Orders mandate that Defendant  
authorize and permit ten minutes of "net rest time" for every four hours of work "or major fraction  
thereof" for non-exempt employees such as Representative Plaintiffs and members of Plaintiff Class  
"A."

40. By failing to consistently provide meal and rest periods to Representative Plaintiffs  
and Class Members, Defendant violated these California Labor Code provisions.

41. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,  
Representative Plaintiffs and the Class Members have sustained damages, including loss of earnings,

SCOTT COLE & ASSOCIATES, APC  
ATTORNEYS AT LAW  
THE WORLD SAVINGS TOWER  
1970 BROADWAY, SUITE 990  
OAKLAND, CA 94612  
TEL: (510) 891-9800

1 in an amount to be established at trial. As a further direct and proximate result of Defendant's  
2 unlawful conduct, as set forth herein, Representative Plaintiffs and the Class Members are entitled  
3 to recover various penalties, in an amount to be established at trial, as well as costs and attorneys'  
4 fees, pursuant to statute.

5  
6 **THIRD CAUSE OF ACTION**  
7 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**  
8 **California Labor Code § 226**  
9 **(Class "A" and Class "B")**

10 42. Representative Plaintiffs incorporate in this cause of action each and every allegation  
11 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

12 43. California Labor Code § 226(a) provides:

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

25 44. California Labor Code § 226(e) provides:

26 An employee suffering injury as a result of a knowing and intentional  
27 failure by an employer to comply with subdivision (a) is entitled to  
28 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.

45. Representative Plaintiffs seek to recover actual damages (including prospective  
damages associated with filing restatements of earnings with taxing and/or other authorities), costs  
and attorneys' fees under this section on behalf of themselves and the Plaintiff Classes.

46. Defendant Dashers failed to provide timely, accurate and complete itemized wage  
statements to Representative Plaintiffs and the Plaintiff Classes in accordance with Labor Code §

SCOTT COLE & ASSOCIATES, APC  
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THE WORLD SAVINGS TOWER  
1970 BROADWAY, SUITE 950  
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1 226(a). Plaintiffs and the Plaintiff Classes have suffered injuries due to this unlawful conduct insofar  
2 as they have lost use of the compensation due, were forced to bring this action to redress these  
3 violations, were forced to file inaccurate wage information with government agencies and, should  
4 this action be successful, may be required to restate earnings for prior years and/or incur time and  
5 costs in so doing.

6 47. None of the statements provided by Defendant to the Representative Plaintiffs and  
7 the Class Members has accurately reflected the total number of hours worked, actual gross wages  
8 earned, net wages earned, or the appropriate deductions.

9 48. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,  
10 Representative Plaintiffs and the Class Members are entitled to recover various penalties, in an  
11 amount to be established at trial, as well as costs and attorneys' fees, pursuant to statute.

12  
13 **FOURTH CAUSE OF ACTION**  
14 **WILLFUL FAILURE TO PAY WAGES ON DISCHARGE**  
15 **California Labor Code §§ 201-204**  
16 **(Class "A" and Class "B")**

17 49. Representative Plaintiffs incorporate in this cause of action each and every  
18 allegation of the preceding paragraphs, with the same force and effect as though fully set forth  
19 herein.

20 50. During the time period beginning as of the commencement of the pay period  
21 including November 30, 2001 and continuing through the present, Representative Plaintiffs and  
22 certain Class Members were employed by and were thereafter terminated or resigned from their  
23 positions with Dashers, yet were neither paid all premium overtime and meal and rest period  
24 compensation nor reimbursed all amounts unlawfully deducted from their pay upon said  
25 termination or within 72 hours of said resignation of employment therefrom. Said non-payment  
26 was the direct and proximate result of Defendant's willful refusal to do so.

27 51. California Labor Code §§ 201 and 202 require defendant Dashers to pay its  
28 employees all wages due immediately upon discharge. California Labor Code § 203 provides  
that, if an employer willfully fails to timely pay such wages, the employer must, as a penalty,

1 continue to pay the subject employees' wages until the back wages are paid in full or until an  
2 action is commenced, up to 30 days of wages.

3 52. At all relevant times, Defendant was aware of and was under a duty to comply  
4 with Labor Code §201-203. Labor Code § 203 which provides that:

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

12 53. Representative Plaintiffs and all Class Members similarly situated are entitled to  
13 unpaid compensation, yet, to date, have not received such compensation.

14 54. More than 30 days have passed since Representative Plaintiffs and certain Class  
15 Members have left defendant Dashers' employ.

16 55. As a direct and proximate result of defendant Dashers' willful misconduct in not  
17 paying compensation for all hours worked, not paying for denied meal and rest periods and not  
18 reimbursing its employees for all sums unlawfully deducted from their paychecks, Representative  
19 Plaintiffs and certain Class Members are entitled to 30 days wages as a penalty under Labor Code  
20 section 203, together with interest thereon and attorneys' fees and costs.

21  
22 **SIXTH CAUSE OF ACTION**  
23 **UNLAWFUL DEDUCTIONS FROM WAGES**  
24 **California Labor Code §§ 221**  
25 **(Class "A" and Class "B")**  
26

27 56. Representative Plaintiffs incorporate in this cause of action each and every allegation  
28 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

57. During the time period beginning as of the commencement of the pay period  
including November 30, 2001 and continuing through the present, Defendant Dashers has repeatedly  
deducted and retained monies from the Representative Plaintiffs' and the Class Members' earned  
wages, in violation of the provisions of Labor Code §221 and the applicable Wage Orders.

58. At all relevant times, Defendant was aware of and was under a duty to comply with

1 various provisions of the California Labor Code § 221 which provides:

2 It shall be unlawful for any employer to collect or receive from an  
3 employee any part of wages theretofore paid by said employer to said  
4 employee.

5 59. By collecting from its employees' wages amounts previously paid to its employees,  
6 as alleged herein, Defendant willfully violated California Labor Code § 221.

7 60. Dashers' unlawful wage deductions were made for the exclusive benefit of Dashers;  
8 neither Representative Plaintiffs nor Class Members received any benefit from the deductions taken  
9 by Dashers.

10 61. As a direct and proximate result of Defendant's unlawful conduct, as set forth  
11 herein, the Representative Plaintiffs and the Class Members are entitled to recover damages and  
12 interest thereon in amounts to be established at trial, as well as costs and attorneys' fees pursuant to  
13 statute.

14 **SEVENTH CAUSE OF ACTION**  
15 **UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT**  
16 **California Business & Professions Code §§ 17200-17208**  
17 **(Class "A" and Class "B")**

18 62. Representative Plaintiffs incorporate in this cause of action each and every allegation  
19 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

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

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

28 65. Defendant's knowing failure to adopt policies in accordance with and/or adhere to  
these laws, all of which are binding upon and burdensome to Defendant's competitors, engenders

1 an unfair competitive advantage for Defendant, thereby constituting an unfair business practice, as  
2 set forth in California Business & Professions Code §§ 17200-17208.

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

8  
9 **RELIEF SOUGHT**

10 **WHEREFORE, the Representative Plaintiffs**, on behalf of themselves and the proposed  
11 **Classes**, pray for judgment and the following specific relief against **Defendants, and each of them**,  
12 (“Dashers”) jointly and separately, as follows:

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

15 2. For a finding that defendant Dashers violated the overtime provisions of the Labor  
16 Code as to the Representative Plaintiffs and Plaintiff Class “A;”

17 3. For a finding that defendant Dashers violated Labor Code §§ 226.7 and 512 by failing  
18 to provide meal periods, including second meal periods, and rest periods to the Representative  
19 Plaintiffs and Plaintiff Class “A;”

20 4. For a finding that defendant Dashers violated Labor Code § 221 by routinely  
21 and unlawfully deducting amounts from the Representative Plaintiffs’ and the Class Members’  
22 earned compensation and failing to re-pay the sums deducted.

23 5. For a finding that defendant Dashers violated the record keeping provisions of Labor  
24 Code §§ 226(a) and 1174(d) as to Representative Plaintiffs and all Class Members and for willful  
25 failure to provide accurate semimonthly itemized statements thereto;

26 6. For a finding that defendant Dashers violated Labor Code §§ 201 and 202 for willful  
27 failure to pay all compensation owed at the time of termination of employment to Representative  
28 Plaintiffs and certain members of the Plaintiff Classes;



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

- 1           7.       For a finding that defendant Dashers violated Business and Professions Code § 17200
- 2 by engaging in unfair, unlawful and/or fraudulent business practices as described in the Complaint;
- 3           8.       An award to Representative Plaintiffs and the Plaintiff Class "A" of damages for the
- 4 amount of unpaid overtime compensation and the amount of wages due as a result of Defendant's
- 5 failure to provide meal and rest periods;
- 6           9.       An award to Representative Plaintiffs and the Plaintiff Classes of damages for the
- 7 cumulative amount of unlawful pay deductions in violation of Labor Code § 221 and for violations
- 8 of Labor Code §§ 203 and 226, including prospective damages associated with filing restatements
- 9 of earnings with taxing and/or other authorities and related damages, including interest thereon, and
- 10 penalties in an amount to be proven at trial;
- 11          10.      An Order that defendant Dashers pay restitution to Representative Plaintiffs and the
- 12 Plaintiff Classes of all profits and gains resulting from defendant Dashers' unfair, unlawful and/or
- 13 fraudulent business activities, pursuant to Business and Professions Code §§ 17200-08;
- 14          11.      An Order that defendant Dashers further be enjoined to cease and desist from all
- 15 unlawful activities in violation of Business and Professions Code § 17200, et seq.;
- 16          12.      For all other Orders, findings and determinations identified and sought in this
- 17 Complaint;
- 18          13.      For interest on the amount of any and all economic losses, at the prevailing legal rate;
- 19          14.      For reasonable attorneys' fees, pursuant to California Labor Code §§ 218.5 and 1194
- 20 and/or California Civil Code § 1021.5; and
- 21          15.      For costs of suit and any and all such other relief as the Court deems just and proper.
- 22        ///
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1 Dated: November 30, 2005

2 **SCOTT COLE & ASSOCIATES, APC**

3 By: Clyde H. Charlton  
4 Scott Edward Cole, Esq.  
5 Clyde H. Charlton, Esq.  
6 Matthew R. Bainer, Esq.

7 Attorneys for the Representative Plaintiffs  
8 and the Plaintiff Classes  
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SCOTT COLE & ASSOCIATES, APC  
ATTORNEYS AT LAW  
THE WORLD SAVINGS TOWER  
1970 BROADWAY, SUITE 950  
OAKLAND, CA 94612  
TEL: (510) 891-9800