

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

1 Scott Edward Cole, Esq. (S.B. # 160744)
2 Molly A. Kuehn, Esq. (S.B. #230763)
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 Web: www.scalaw.com

6 Timothy P. Rumberger, Esq. (S.B. #145984)
7 **LAW OFFICES OF TIMOTHY P. RUMBERGER**
8 2161 Shattuck Avenue, Suite 200
9 Berkeley, California 94704-1313
10 Telephone: (510)841-5500
11 Facsimile: (510)521-9700
12 e-mail: tim@rumbergerlaw.com

10 Attorneys for Representative Plaintiffs
11 and the Plaintiff Class

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

15 MICHAEL PIERCE, PATRICK GOULD,
16 individually, and on behalf of all others
17 similarly situated,

17 Plaintiffs,

18 vs.

19 ROSETTA STONE, LTD., and DOES 1
20 through 50, inclusive,

21 Defendants.

) Case No. RG10511660

) **CLASS ACTION**

) **FIRST AMENDED COMPLAINT FOR**
) **DAMAGES, INJUNCTIVE RELIEF, AND**
) **RESTITUTION**

22 Representative Plaintiffs allege as follows:
23
24

24 **PRELIMINARY STATEMENT**

25 1. This is a class action, brought on behalf of Michael Pierce and Patrick Gould
26 (hereinafter "Representative Plaintiffs") and all other persons similarly situated ("Class Members")
27 who are or were employed as salaried managers by defendants Rosetta Stone, Ltd. and Does 1
28 through 50, inclusive (collectively "Defendant" and/or "Rosetta Stone") in any Rosetta Stone retail

1 location in California within the applicable class period. The Representative Plaintiffs, on behalf of
2 themselves and the Class Members, seek unpaid wages, including unpaid overtime compensation,
3 compensation for missed meal and rest periods, interest thereon and other penalties, injunctive and
4 other equitable relief, and reasonable attorneys' fees and costs under, inter alia., Title 8 of the
5 California Code of Regulations, California Business and Professions Code §§17200, et seq.,
6 California Code of Civil Procedure §1021.5, and various provisions of the California Labor Code.

7 2. The Class Period is designated as the time from April 27, 2006 through the date of
8 trial or settlement, based upon the allegation that the violations of California's wage and hour laws,
9 as described more fully below, have been ongoing throughout that time.

10 3. During the Class Period, Rosetta Stone has had a consistent policy of (1) permitting,
11 encouraging and/or requiring its allegedly overtime-exempt salaried managers, including the
12 Representative Plaintiffs and Class Members, to work in excess of eight hours per day and in excess
13 of forty hours per week without paying them overtime compensation as required by California's
14 wage and hour laws, (2) unlawfully failing to provide the Representative Plaintiffs and Class
15 Members statutorily-mandated meal and rest periods, and (3) willfully failing to provide the
16 Representative Plaintiffs and the Class Members with accurate semi-monthly itemized wage
17 statements reflecting the total number of hours each worked, the applicable deductions, and the
18 applicable hourly rates in effect during the pay period.

19 4. In addition, Representative Plaintiffs allege, on information and belief, that Rosetta
20 Stone has had a consistent policy of willfully failing to pay compensation (including unpaid
21 overtime) in a prompt and timely manner to certain Class Members whose employment with Rosetta
22 Stone has terminated.

23
24 **INTRODUCTION**

25 5. Rosetta Stone, Ltd. is a subsidiary of Rosetta Stone Inc., which is a publically traded
26 company on the New York Stock Exchange whose principal activity is to develop, market and
27 support a suite of language learning software products. With current world-wide distribution of 31
28

1 languages in more than 150 countries, Rosetta Stone boasts annual sales of over a quarter of a billion
2 dollars U.S.

3 6. Rosetta Stone operates numerous stores throughout California, including those in
4 which Representative Plaintiffs have worked as managers. The Representative Plaintiffs are
5 informed and believe and, on that basis, allege that within the Class Period, Rosetta Stone employed
6 hundreds of individuals in California in recent years who occupied salaried manager positions at its
7 Rosetta Stone retail locations, employment positions which did not, and currently do not, meet any
8 known test for exemption from the payment of overtime wages and/or the entitlement to meal or rest
9 periods.

10 7. Despite actual knowledge of these facts and legal mandates, Rosetta Stone has and
11 continues to enjoy an advantage over its competition and a resultant disadvantage to its workers by
12 electing not to pay premium (overtime, meal and rest period wages) and/or “penalty” (a.k.a. “waiting
13 time”) wages to its salaried managers at its California Rosetta Stone retail locations.

14 8. Representative Plaintiffs are informed and believe and, based thereon, allege that
15 officers of Rosetta Stone knew of these facts and legal mandates yet, nonetheless, repeatedly
16 authorized and/or ratified the violation of the laws cited herein.

17 9. Despite Rosetta Stone’s knowledge of Class Members’ entitlement to overtime pay
18 and meal and/or rest periods for all applicable work periods, Rosetta Stone failed to provide the same
19 to the Class Members thereof, in violation of California state statutes, the applicable California
20 Industrial Welfare Commission Wage Order, and Title 8 of the California Code of Regulations. This
21 action is brought to redress and end this long-time pattern of unlawful conduct once and for all.

22
23 **JURISDICTION AND VENUE**

24 10. This Court has jurisdiction over the Representative Plaintiffs’ and Class Members’
25 claims for unpaid wages and/or penalties under, *inter alia.*, the applicable Industrial Welfare
26 Commission Wage Order, Title 8 of the California Code of Regulations, Labor Code §§201-204,
27 226.7, 510, 512, 1194, 1198, and/or the California Code of Civil Procedure §1021.5.

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1 11. This Court also has jurisdiction over the Representative Plaintiffs' and Class
2 Members' claims for injunctive relief and restitution of ill-gotten benefits arising from Rosetta
3 Stone's unfair and/or fraudulent business practices under California Business & Professions Code
4 §17200, *et seq.*

5 12. Venue as to Defendant is proper in this judicial district pursuant to Code of Civil
6 Procedure §395(a). Rosetta Stone maintains stores within the County of Alameda, transacts business,
7 has agents, and is otherwise within this Court's jurisdiction for purposes of service of process. The
8 unlawful acts alleged herein have and have had a direct effect on the Representative Plaintiffs and
9 those similarly situated within the State of California and within the County of Alameda. Rosetta
10 Stone operates said facilities and has employed numerous Class Members in the County of Alameda
11 and throughout counties within the State of California.

12
13 **PLAINTIFFS**

14 13. Representative Plaintiff Michael Pierce is a natural person who was employed by
15 Rosetta Stone as a salaried manager at the Century City Mall Rosetta Stone boutique in Los Angeles,
16 California, during the Class Period; Representative Plaintiff Patrick Gould is a natural person
17 employed by Rosetta Stone as a salaried manager at a Rosetta Stone boutique in the San Francisco
18 area, California during the Class Period.

19 14. As used throughout this Complaint, the term "Class Members" refers to the
20 Representative Plaintiffs herein as well as each and every person eligible for membership in the class
21 of persons as further described and defined herein.

22 15. At all times herein relevant, the Representative Plaintiffs were and are now persons
23 within the class of persons further described and defined herein.

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

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1 **DEFENDANTS**

2 17. Representative Plaintiffs are informed and believe and, based thereon, allege that at
3 all times herein relevant, defendants Rosetta Stone, Ltd. and Does 1 through 50, did business within
4 the state of California selling language-learning software and related items to members of the public
5 through its Rosetta Stone retail locations.

6 18. The defendants identified as Does 1 through 50, inclusive, are and were, at all
7 relevant times herein-mentioned, officers, directors, partners, and/or managing agents of some or
8 each of the remaining defendants. Representative Plaintiffs are informed and believe and, on that
9 basis, allege that at all relevant times herein mentioned, defendants Rosetta Stone and those
10 identified as Does 1 through 50, inclusive, employed, and/or exercised control over the wages, hours,
11 and/or working conditions of the Representative Plaintiffs and Class Members at numerous
12 California locations as identified in the preceding paragraph.

13 19. The Representative Plaintiffs are unaware of the true names and capacities of those
14 defendants sued herein as Does 1 through 50, inclusive and, therefore, sue these defendants by such
15 fictitious names. The Representative Plaintiffs will seek leave of Court to amend this Complaint
16 when such names are ascertained. The Representative Plaintiffs are informed and believe and, on
17 that basis, allege that each of the fictitiously-named defendants was responsible in some manner for,
18 gave consent to, ratified, and/or authorized the conduct herein alleged and that the Representative
19 Plaintiffs' and Class Members' damages, as herein alleged, were proximately caused thereby.

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

24
25 **CLASS ACTION ALLEGATIONS**

26 21. Representative Plaintiffs bring this action individually and as a class action on behalf
27 of all persons similarly situated and proximately damaged by Rosetta Stone's conduct including, but
28 not necessarily limited to, the following Plaintiff Class:

1 "All persons who were employed as salaried managers by Defendant
2 in one or more of its Rosetta Stone retail locations in California at
any time on or after April 27, 2006"

3 22. Rosetta Stone, its officers, and directors are excluded from the Plaintiff Class.

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

7 a. Numerosity: A class action is the only available method for the fair and efficient
8 adjudication of this controversy. The members of the Plaintiff Class are so
9 numerous that joinder of all members is impractical, if not impossible, insofar as
10 Representative Plaintiffs are informed and believe and, on that basis, allege that
there are sufficient Class Members to meet the numerosity requirement. Membership in the Class will be determined upon analysis of employee and payroll, among other, records maintained by Rosetta Stone.

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

- 14 1) Whether defendant Rosetta Stone violated IWC Wage Order and/or
15 Labor Code §510 by failing to pay overtime compensation to its salaried
managers who worked in excess of forty hours per week and/or eight
hours per day;
- 16 2) Whether defendant Rosetta Stone violated California Business and
17 Professions Code §17200, *et seq.* by failing to pay overtime
18 compensation to its salaried managers who worked in excess of forty
hours per week and/or eight hours per day;
- 19 3) Whether defendant Rosetta Stone violated California Labor Code §1174
20 by failing to keep accurate records of employees' hours of work;
- 21 4) Whether defendant Rosetta Stone violated California Labor Code
22 §§201-204 by failing to pay overtime wages due and owing at the time
that certain Class Members' employment with Defendant terminated;
- 23 5) Whether defendant Rosetta Stone violated California Labor Code §226
24 by failing to provide the semimonthly itemized statements to Class
Members of total hours worked by each and all applicable hourly rates
in effect during the pay period; and
- 25 6) Whether Class Members are entitled to "waiting time" penalties,
26 pursuant to California Labor Code §203.

27 c. Typicality: The Representative Plaintiffs' claims are typical of the claims of
28 Class Members. The Representative Plaintiffs and Class Members sustained
damages arising out of and caused by Defendants' common course of conduct in
violation of law, as alleged herein.

- 1 d. Superiority of Class Action: Since the damages suffered by individual Class
2 Members, while not inconsequential, may be relatively small, the expense and
3 burden of individual litigation by each member makes or may make it
4 impractical for Class Members to seek redress individually for the wrongful
5 conduct alleged herein. Should separate actions be brought, or be required to be
6 brought, by each individual Class Member, the resulting multiplicity of lawsuits
7 would cause undue hardship and expense for the Court and the litigants. The
8 prosecution of separate actions would also create a risk of inconsistent rulings
9 which might be dispositive of the interests of other Class Members who are not
10 parties to the adjudications and/or may substantially impede their ability to
11 adequately protect their interests.
- 12 e. Adequacy of Representation: The Representative Plaintiffs in this class action
13 are adequate representatives of the Plaintiff Class in that the Representative
14 Plaintiffs' claims are typical of those of the Plaintiff Class and the
15 Representative Plaintiffs have the same interest in the litigation of this case as
16 the Class Members. The Representative Plaintiffs are committed to vigorous
17 prosecution of this case and have retained competent counsel who are
18 experienced in conducting litigation of this nature. The Representative Plaintiffs
19 are not subject to any individual defenses unique from those conceivably
20 applicable to Class Members as a whole. The Representative Plaintiffs
21 anticipate no management difficulties in this litigation.

COMMON FACTUAL ALLEGATIONS

22 24. As described herein, for years Rosetta Stone has knowingly failed to adequately
23 compensate those employees within the class definition identified above for all wages earned
24 (including premium wages such as overtime wages and/or compensation for missed meal and/or rest
25 periods) under the California Labor Code and the applicable IWC Wage Order, thereby enjoying a
26 significant competitive edge over other retailers.

27 25. Rosetta Stone has declined to pay these wages, even upon a Class Member's
28 termination or resignation from employment, in blatant violation of California Labor Code §201
and/or §202.

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

35 ///

1 27. Furthermore, despite its knowledge of the Representative Plaintiffs' and the Class
2 Members' entitlement to compensation for all hours worked, Defendant violated California Labor
3 Code §1174(d) by failing to provide or require the use, maintenance, or submission of time records
4 by members of the class. Rosetta Stone also failed to provide the Representative Plaintiffs and Class
5 Members with accurate semimonthly itemized statements of the total number of hours worked by
6 each, and all applicable hourly rates in effect, during the pay period, in violation of California Labor
7 Code §226. In failing to provide the required documents, Defendant has not only failed to pay its
8 workers the full amount of compensation due but the company has also, until now, effectively
9 shielded itself from its employees' scrutiny by concealing the magnitude and financial impact of its
10 wrongdoing that such documents might otherwise have led workers to discover.

11 28. Representative Plaintiffs and all persons similarly situated are entitled to unpaid
12 compensation, yet, to date, have not received such compensation despite many of the same having
13 been terminated by and/or resigned from Rosetta Stone. More than 30 days have passed since certain
14 Class Members have left Defendant's employ.

15 29. As a consequence of Defendant's willful conduct in not paying former employees
16 compensation for all hours worked in a prompt and timely manner, Representative Plaintiffs Michael
17 Pierce and Patrick Gould and certain Class Members are entitled to up to 30 days wages as a penalty
18 under Labor Code §203, together with attorneys' fees and costs.

19 30. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
20 Representative Plaintiffs and Class Members have sustained damages, as described above, including
21 compensation for loss of earnings for hours worked on behalf of Defendant, in an amount to be
22 established at trial. As a further direct and proximate result of Defendant's unlawful conduct, as set
23 forth herein, certain Class Members are entitled to recover "waiting time" penalties (pursuant to
24 California Labor Code §203) and penalties for failure to provide semimonthly statements of hours
25 worked and all applicable hourly rates (pursuant to Labor Code §226) in an amount to be established
26 at trial. As a further direct and proximate result of Defendant's unlawful conduct, as set forth herein,
27 Representative Plaintiffs and Class Members are also entitled to recover costs and attorneys' fees
28

1 pursuant to California Labor Code §1194 and/or California Civil Code §1021.5, among other
2 authorities.

3 31. Representative Plaintiffs seek injunctive relief prohibiting Defendant from engaging
4 in the complained-of illegal labor acts and practices in the future. Representative Plaintiffs also seek
5 restitution of costs incurred by Representative Plaintiffs and Class Members under California's
6 Unfair Competition Law. Unless enjoined, Defendant's unlawful conduct will continue unchecked,
7 while Representative Plaintiffs and Class Members bear the financial brunt of Defendant's unlawful
8 conduct. As a further direct and proximate result of Defendant's unlawful conduct, as set forth
9 herein, Representative Plaintiffs and the Plaintiff Class are also entitled to recover costs and
10 attorneys' fees, pursuant to statute.

11
12 **FIRST CAUSE OF ACTION**
13 **UNLAWFUL FAILURE TO PAY OVERTIME WAGES**
14 **(Violation of IWC Wage Order 7 and Labor Code §§ 510, 1194, and 1198)**

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

17 33. During the Class Period, the Representative Plaintiffs and the Class Members
18 worked, on many occasions, in excess of 8 hours in a workday and/or 40 hours in a workweek. The
19 precise number of overtime hours will be proven at trial.

20 34. During the Class Period, Defendant refused to compensate the Representative
21 Plaintiffs and Class Members for all of the overtime wages earned, in violation of the applicable
22 IWC Wage Order and provisions of the California Labor Code.

23 35. Moreover, during said time period, many of the Class Members herein were
24 employed by and thereafter terminated or resigned from their positions with Rosetta Stone, including
25 Representative Michael Pierce, yet were not paid all wages due upon said termination or within 72
26 hours of said resignation of employment therefrom. Said non-payment of all wages due was the
27 direct and proximate result of a willful refusal to do so by Rosetta Stone.

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1 36. At all relevant times, Defendant was aware of, and was under a duty to comply with,
2 the overtime provisions of the California Labor Code including, but not limited to, California Labor
3 Code §§510, 1194, and 1198.

4 37. California Labor Code §510(a), in pertinent part, provides:

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

10 38. California Labor Code §1194(a), in pertinent part, provides:

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

17 39. California Labor Code §1198, in pertinent part, provides:

18 The maximum hours of work and the standard conditions of labor
19 fixed by the commission shall be the maximum hours of work and the
20 standard conditions of labor for employees. The employment of any
21 employee for longer hours than those fixed by the order or under
22 conditions of labor prohibited by the order is unlawful.

23 40. By refusing to compensate the Representative Plaintiffs and Class Members for
24 overtime wages earned, Defendant violated those California Labor Code provisions cited herein as
25 well as the applicable IWC Wage Order(s).

26 41. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
27 the Representative Plaintiffs and the Plaintiff Class have sustained damages, including loss of
28 earnings for hours of overtime worked on behalf of Rosetta Stone, in an amount to be established at
trial, and are entitled to recover attorneys' fees and costs of suit.

29
30 **SECOND CAUSE OF ACTION**
31 **FAILURE TO PROVIDE MEAL AND REST PERIODS**
32 **(California Labor Code §§ 226.7 and 512)**

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

1 43. At all relevant times, Rosetta Stone was aware of and was under a duty to comply
2 with California Labor Code §226.7 and §512.

3 44. California Labor Code §226.7 provides:

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

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

10 45. Moreover, California Labor Code §512(a) provides:

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

17 46. Sections 11 and 12, respectively, of the applicable IWC Wage Order mandate that
18 employers provide all applicable meal and/or rest periods to non-exempt (including exempt-
19 misclassified) employees.

20 47. Section 11 of the applicable IWC Wage Order provides:

21 (A) No employer shall employ any person for a work period of more
22 than five (5) hours without a meal period of not less than 30
minutes...

23 (B) An employer may not employ an employee for a work period of
24 more than ten (10) hours per day without providing the employee
with a second meal period of not less than 30 minutes...

25 (C) If an employer fails to provide an employee a meal period in
26 accordance with the applicable provisions of this order, the
27 employer shall pay the employee one (1) hour of pay at the
employee's regular rate of compensation for each workday that
the meal period is not provided.

28 ///

1 48. Moreover, Section 12 of the applicable IWC Wage Order provides:

2 (A) Every employer shall authorize and permit all employees to
3 take rest periods, which insofar as practicable shall be in the middle
4 of each work period. The authorized rest period time shall be based
5 on the total hours worked daily at the rate of ten (10) minutes net rest
6 time per four (4) hours or major fraction thereof

7 (B) If an employer fails to provide an employee a rest period in
8 accordance with the applicable provisions of this order, the employer
9 shall pay the employee one (1) hour of pay at the employee's regular
10 rate of compensation for each workday that the rest period is not
11 provided.

12 49. By failing to consistently provide uninterrupted thirty-minute meal periods within the
13 first five hours of work each day and/or uninterrupted net ten-minute rest periods to Representative
14 Plaintiffs and the Class Members, Defendant violated the California Labor Code and applicable IWC
15 Wage Order provisions.

16 50. Representative Plaintiffs are informed and believe and, on that basis, allege that
17 Defendant has never paid the one hour of compensation to any Class Members due to its violations
18 of the California Labor Code and applicable IWC Wage Order provisions.

19 51. As a direct and proximate result of Rosetta Stone unlawful conduct, as set forth
20 herein, Representative Plaintiffs and Class Members have sustained damages, including lost
21 compensation resulting from missed meal and/or rest periods, in an amount to be established at trial.

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

25 **THIRD CAUSE OF ACTION**
26 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
27 **(California Labor Code §§ 226 and 1174)**

28 53. Representative Plaintiffs incorporate 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.

54. 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

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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.

55. 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.

56. Finally, 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 two years.

57. Representative Plaintiffs seek to recover actual damages, costs, and attorneys' fees under these provisions on behalf of themselves and on behalf of all Class Members.

58. Defendant has failed to provide timely, accurate itemized wage statements to the Representative Plaintiffs and Class Members in accordance with Labor Code §226. Representative Plaintiffs are informed and believes and, on that basis, allege that none of the statements provided by Defendant accurately reflected actual gross wages earned, net wages earned, or the appropriate deductions of such Class Members.

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

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

60. Representative Plaintiffs incorporate 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.

61. California Labor Code §203 provides that:

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

62. Numerous Class Members, including Representative Plaintiffs Michael Pierce and Patrick Gould, were employed by Rosetta Stone during the class period and were thereafter terminated or resigned from their positions, yet they were not paid all premium (overtime) wages due upon said termination or within 72 hours of said resignation of employment therefrom. Said non-payment was the direct and proximate result of a willful refusal to do so by Rosetta Stone.

63. More than thirty days has elapsed since certain Class Members were involuntarily terminated or voluntarily resigned from Defendant's employ.

64. As a direct and proximate result of Defendant's willful conduct in failing to pay said Class Members for all hours worked, affected Class Members are entitled to recover "waiting time" penalties of up to thirty days' wages pursuant to Labor Code §203 in an amount to be established at trial, together with interest thereon, and attorneys' fees and costs.

FIFTH CAUSE OF ACTION
UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT
(California Business & Professions Code §§ 17200-17208)

65. Representative Plaintiffs incorporate 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.

66. Representative Plaintiffs further bring this cause of action seeking equitable and statutory relief to stop Defendant's misconduct, as complained of herein, and to seek restitution of

1 the amounts Defendant acquired through the unfair, unlawful, and fraudulent business practices
2 described herein.

3 67. Defendant's knowing conduct, as alleged herein, constitutes an unlawful and/or
4 fraudulent business practice, as set forth in California Business & Professions Code §§17200-17208.
5 Specifically, Defendant conducted business activities while failing to comply with the legal
6 mandates cited herein.

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

12
13 **RELIEF SOUGHT**

14 1. **WHEREFORE, the Representative Plaintiffs**, on behalf of themselves and the
15 proposed Plaintiff Class, pray for judgment and the following specific relief against Defendants, and
16 each of them, jointly and separately, as follows:

17 2. That the Court declare, adjudge, and decree that this action is a proper class action
18 and certify the proposed Class and/or any other appropriate subclasses under Code of Civil
19 Procedure §382;

20 3. That the Court declare, adjudge, and decree that Defendants violated the overtime
21 provisions of the California Labor Code and the applicable California Industrial Welfare
22 Commission Wage Order as to the Representative Plaintiffs and Class Members;

23 4. That the Court declare, adjudge, and decree that Defendant willfully violated its legal
24 duties to pay overtime under the California Labor Code and the applicable California Industrial
25 Welfare Commission Wage Orders;

26 5. That the Court make an award to the Representative Plaintiffs and the Class
27 Members of one hour of pay at each employee's regular rate of compensation for each workday that
28 a meal period was not provided;

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

1 6. That the Court make an award to the Representative Plaintiffs and the Class Members
2 of one hour of pay at each employee's regular rate of compensation for each workday that a rest
3 period was not provided;

4 7. That the Court declare, adjudge, and decree that the Representative Plaintiffs and
5 Class Members were, at all times relevant hereto, and are still, entitled to be paid overtime for work
6 beyond 8 hours in a day and 40 in a week;

7 8. That the Court make an award to the Representative Plaintiffs and Class Members of
8 damages and/or restitution for the amount of unpaid overtime compensation, including interest
9 thereon, and penalties in an amount to be proven at trial;

10 9. That the Court order Defendant to pay restitution to the Representative Plaintiffs and
11 the Class Members due to Defendant's unlawful activities, pursuant to California Business and
12 Professions Code §§17200-17208;

13 10. That the Court further enjoin Defendant, ordering it to cease and desist from unlawful
14 activities in violation of California Business and Professions Code §17200, *et seq.*

15 11. For all other Orders, findings and determinations identified and sought in this
16 Complaint;

17 12. For interest on the amount of any and all economic losses, at the prevailing legal rate;

18 13. For reasonable attorneys' fees, pursuant to California Labor Code §1194 and/or
19 California Code of Civil Procedure §1021.5; and;

20 14. For costs of suit and any and all such other relief as the Court deems just and proper.
21

22 Dated: May 20, 2010

23 **SCOTT COLE & ASSOCIATES, APC**

24
25
26 By: _____

27 Scott Edward Cole, Esq.
28 Attorneys for the Representative Plaintiffs
and the Plaintiff Class