

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 Matthew R. Bainer, Esq. (S.B. # 220972)
3 Kevin R. Allen, Esq. (S.B. #237994)
4 **SCOTT COLE & ASSOCIATES, APC**
5 1970 Broadway, Ninth Floor
6 Oakland, California 94612
7 Telephone: (510) 891-9800
8 Facsimile: (510) 891-7030
9 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 Plaintiff
11 And the Plaintiff Class

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

15 ELIZABETH SMITH, individually,
16 and on behalf of all others similarly
17 situated,

17 Plaintiffs,

18 vs.

19 BLACK ANGUS STEAKHOUSES,
20 LLC, and DOES 1 through 50,
21 inclusive,

21 Defendants.

) **Case No. RG10525123**

) **CLASS ACTION**

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

) **JURY TRIAL DEMANDED**

22
23 Representative Plaintiff alleges as follows:

25 **PRELIMINARY STATEMENT**

26 1. This is a class action, brought on behalf of ELIZABETH SMITH (hereinafter
27 "Representative Plaintiff") and all other persons similarly situated ("Class Members") who are or
28 were employed as salaried managers by defendants BLACK ANGUS STEAKHOUSES, LLC and

1 Does 1 through 50, inclusive (collectively “Defendant” and/or “BLACK ANGUS”) in any BLACK
2 ANGUS retail location in California within the applicable class period. The Representative Plaintiff,
3 on behalf of herself and the Class Members, seeks unpaid wages, including unpaid overtime
4 compensation and interest thereon, liquidated damages and other penalties, injunctive and other
5 equitable relief, and reasonable attorneys’ fees and costs under, *inter alia*, Title 8 of the California
6 Code of Regulations, California Business and Professions Code §§17200, *et seq.*, California Code of
7 Civil Procedure §1021.5, and various provisions of the California Labor Code.

8 2. The Class Period is designated as the time from July 13, 2006 through the date of
9 trial, based upon the allegation that the violations of California’s wage and hour laws, as described
10 more fully below, have been ongoing throughout that time.

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

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

24
25 **INTRODUCTION**

26 5. Founded by Stuart Anderson in 1964 with over 100 restaurants, BLACK ANGUS is
27 headquartered in Los Altos, California, boasting annual sales (in 2007) of over \$413 million.

28 ///

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1 6. BLACK ANGUS operates numerous restaurants throughout California. The
2 Representative Plaintiff is informed and believes and, on that basis, alleges that within the Class
3 Period, BLACK ANGUS employed hundreds of individuals in California in recent years who
4 occupied salaried manager positions at its BLACK ANGUS retail locations, employment positions
5 which did not, and currently do not, meet any known test for exemption from the payment of
6 overtime wages and/or the entitlement to meal or rest periods.

7 7. Despite actual knowledge of these facts and legal mandates, BLACK ANGUS has
8 and continues to enjoy an advantage over its competition and a resultant disadvantage to its workers
9 by electing not to pay premium (overtime) and/or “penalty” (a.k.a. “waiting time”) wages to its
10 salaried retail location managers.

11 8. Representative Plaintiff is informed and believes and, based thereon, alleges that
12 officers of BLACK ANGUS knew of these facts and legal mandates yet, nonetheless, repeatedly
13 authorized and/or ratified the violation of the laws cited herein.

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

19

20

JURISDICTION AND VENUE

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

25 11. This Court also has jurisdiction over the Representative Plaintiff’s and Class
26 Members’ claims for injunctive relief and restitution of ill-gotten benefits arising from BLACK
27 ANGUS’ unfair and/or fraudulent business practices under California Business & Professions Code
28 §17200, *et seq.*

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

8
9 **PLAINTIFFS**

10 13. Representative Plaintiff ELIZABETH SMITH is a natural person who was employed
11 by BLACK ANGUS as a salaried manager at BLACK ANGUS in Vallejo, California, during the
12 Class Period.

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

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

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

21
22 **DEFENDANTS**

23 17. Representative Plaintiff is informed and believes and, based thereon, alleges that at all
24 times herein relevant, defendants BLACK ANGUS and Does 1 through 50, did business within the
25 state of California as a restaurant chain serving American cuisine, specializing in steak and related
26 items to members of the public through its BLACK ANGUS restaurant locations.

27 18. The defendants identified as Does 1 through 50, inclusive, are and were, at all
28 relevant times herein-mentioned, officers, directors, partners, and/or managing agents of some or

1 each of the remaining defendants. Representative Plaintiff is informed and believes and, on that
2 basis, alleges that at all relevant times herein mentioned, defendants BLACK ANGUS and those
3 identified as Does 1 through 50, inclusive, employed, and/or exercised control over the wages, hours,
4 and/or working conditions of the Representative Plaintiff and Class Members at numerous California
5 locations as identified in the preceding paragraph.

6 19. The Representative Plaintiff is unaware of the true names and capacities of those
7 defendants sued herein as Does 1 through 50, inclusive and, therefore, sue these defendants by such
8 fictitious names. The Representative Plaintiff will seek leave of court to amend this Complaint when
9 such names are ascertained. The Representative Plaintiff is informed and believes and, on that basis,
10 alleges that each of the fictitiously-named defendants were responsible in some manner for, gave
11 consent to, ratified, and/or authorized the conduct herein alleged and that the Representative
12 Plaintiff's and Class Members' damages, as herein alleged, were proximately caused thereby.

13 20. The Representative Plaintiff is informed and believes and, on that basis, alleges that at
14 all relevant times herein mentioned each of the defendants was the agent and/or employee of each of
15 the remaining defendants and, in doing the acts herein alleged, was acting within the course and
16 scope of such agency and/or employment.

17
18 **CLASS ACTION ALLEGATIONS**

19 21. Representative Plaintiff brings this action individually and as a class action on behalf
20 of all persons similarly situated and proximately damaged by BLACK ANGUS' conduct including,
21 but not necessarily limited to, the following Plaintiff Class:

22 "All persons who were employed as salaried managers by Defendant
23 at one or more of its BLACK ANGUS retail locations or areas in
California at any time on or after July 13, 2006"

24 22. BLACK ANGUS, its officers and directors are excluded from the Plaintiff Class.

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

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- a. Numerosity: A class action is the only available method for the fair and efficient adjudication of this controversy. The members of the Plaintiff Class are so numerous that joinder of all members is impractical, if not impossible, insofar as Representative Plaintiff are informed and believes 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 BLACK ANGUS.
- b. Commonality: The Representative Plaintiff and the Class Members share 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:
- 1) Whether defendant BLACK ANGUS violated the applicable IWC Wage Order and/or California 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;
 - 2) Whether defendant BLACK ANGUS violated California Business and Professions Code §17200, *et seq.* 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;
 - 3) Whether defendant BLACK ANGUS violated California Labor Code §1174 by failing to keep accurate records of employees' hours of work;
 - 4) Whether defendant BLACK ANGUS violated California Labor Code §§201-204 by failing to pay overtime wages due and owing at the time that certain Class Members' employment with Defendant terminated;
 - 5) Whether defendant BLACK ANGUS violated California Labor Code §226 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
 - 6) Whether Class Members are entitled to "waiting time" penalties, pursuant to California Labor Code §203.
- c. Typicality: The Representative Plaintiff's claims are typical of the claims of Class Members. The Representative Plaintiff and Class Members sustained damages arising out of and caused by Defendants' 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 Class Members to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought, or be required to be brought, by each individual Class Member, 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

1 Members who are not parties to the adjudications and/or may substantially
2 impede their ability to adequately protect their interests.

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

13 COMMON FACTUAL ALLEGATIONS

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

19 25. BLACK ANGUS has declined to pay these wages, even upon a Class Member's
20 termination or resignation from employment, in blatant violation of California Labor Code §201
21 and/or §202.

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

28 27. Furthermore, despite its knowledge of the Representative Plaintiff's and the Class
Members' entitlement to compensation for all hours worked, Defendant violated California Labor
Code §1174(d) by failing to provide or require the use, maintenance, or submission of time records
by members of the class. BLACK ANGUS also failed to provide the Representative Plaintiff and
Class Members with accurate semimonthly itemized statements of the total number of hours worked

1 by each, and all applicable hourly rates in effect, during the pay period, in violation of California
2 Labor Code §226. In failing to provide the required documents, Defendant has not only failed to pay
3 its workers the full amount of compensation due but the company has also, until now, effectively
4 shielded itself from its employees' scrutiny by concealing the magnitude and financial impact of its
5 wrongdoing that such documents might otherwise have led workers to discover.

6 28. Representative Plaintiff and all persons similarly situated are entitled to unpaid
7 compensation, yet, to date, have not received such compensation despite many of the same having
8 been terminated by and/or resigned from BLACK ANGUS. More than 30 days have passed since
9 certain Class Members have left Defendant's employ.

10 29. As a consequence of Defendant's willful conduct in not paying former employees
11 compensation for all hours worked in a prompt and timely manner, Representative Plaintiff
12 ELIZABETH SMITH and certain Class Members are entitled to up to 30 days wages as a penalty
13 under California Labor Code §203, together with attorneys' fees and costs.

14 30. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
15 Representative Plaintiff and Class Members have sustained damages, as described above, including
16 compensation for loss of earnings for hours worked on behalf of Defendant, in an amount to be
17 established at trial. As a further direct and proximate result of Defendant's unlawful conduct, as set
18 forth herein, certain Class Members are entitled to recover "waiting time" penalties (pursuant to
19 California Labor Code §203) and penalties for failure to provide semimonthly statements of hours
20 worked and all applicable hourly rates (pursuant to California Labor Code §226) in an amount to be
21 established at trial. As a further direct and proximate result of Defendant's unlawful conduct, as set
22 forth herein, Representative Plaintiff and Class Members are also entitled to recover costs and
23 attorneys' fees pursuant to California Labor Code §1194 and/or California Civil Code §1021.5,
24 among other authorities.

25 31. Representative Plaintiff seeks injunctive relief prohibiting Defendant from engaging
26 in the complained-of illegal labor acts and practices in the future. Representative Plaintiff also seeks
27 restitution of costs incurred by Representative Plaintiff and Class Members under California's Unfair
28 Competition Law. Unless enjoined, Defendant's unlawful conduct will continue unchecked, while

1 Representative Plaintiff and Class Members bear the financial brunt of Defendant's unlawful
2 conduct. As a further direct and proximate result of Defendants unlawful conduct, as set forth herein,
3 Representative Plaintiff and the Plaintiff Class are also entitled to recover costs and attorneys' fees,
4 pursuant to statute.

5
6 **FIRST CAUSE OF ACTION**
7 **UNLAWFUL FAILURE TO PAY OVERTIME WAGES**
8 **(Violation of IWC Wage Order 7 and Labor Code §§ 510, 1194, and 1198)**

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

11 33. During the Class Period, the Representative Plaintiff and the Class Members worked,
12 on many occasions, in excess of eight hours in a workday and/or 40 hours in a workweek. The
13 precise number of overtime hours will be proven at trial.

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

17 35. Moreover, during said time period, many of the Class Members herein were
18 employed by and thereafter terminated or resigned from their positions with BLACK ANGUS, yet
19 were not paid all wages due upon said termination or within 72 hours of said resignation of
20 employment therefrom. Said non-payment of all wages due was the direct and proximate result of a
21 willful refusal to do so by BLACK ANGUS.

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

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

26 Any work in excess of eight hours in one workday and any work in
27 excess of 40 hours in any one workweek and the first eight hours
28 worked on the seventh day of work in any one workweek shall be

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1 compensated at the rate of no less than one and one-half times the
2 regular rate of pay for an employee

3 38. California Labor Code §1194(a), in pertinent part, provides:
4 Notwithstanding any agreement to work for a lesser wage, any
5 employee receiving less than the legal minimum wage or the legal
6 overtime compensation applicable to the employee is entitled to
7 recover in a civil action the unpaid balance of the full amount of this
8 minimum wage or overtime compensation, including interest thereon,
9 reasonable attorneys' fees, and costs of suit.

10 39. California Labor Code §1198, in pertinent part, provides:
11 The maximum hours of work and the standard conditions of labor
12 fixed by the commission shall be the maximum hours of work and the
13 standard conditions of labor for employees. The employment of any
14 employee for longer hours than those fixed by the order or under
15 conditions of labor prohibited by the order is unlawful.

16 40. By refusing to compensate the Representative Plaintiff and Class Members for
17 overtime wages earned, Defendant violated those California Labor Code provisions cited herein as
18 well as the applicable IWC Wage Order.

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

23 **SECOND CAUSE OF ACTION**
24 **FAILURE TO PROVIDE MEAL AND REST PERIODS**
25 **(California Labor Code §§ 226.7 and 512)**

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

28 43. At all relevant times, BLACK ANGUS was aware of and was under a duty to comply
with California Labor Code §§ 226.7 and 512.

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- 1 44. California Labor Code §226.7 provides:
- 2 (a) No employer shall require any employee to work during any meal or rest
- 3 period mandated by an applicable order of the Industrial Welfare
- 4 Commission.
- 5 (b) If an employer fails to provide an employee a meal period or rest period in
- 6 accordance with an applicable order of the Industrial Welfare Commission,
- 7 the employer shall pay the employee one additional hour of pay at the
- 8 employee's regular rate of compensation for each work day that the meal or
- 9 rest period is not provided.

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

8 An employer may not employ an employee for a work period of more

9 than five hours per day without providing the employee with a meal

10 period of not less than 30 minutes, except that if the total work period

11 per day of the employee is no more than six hours, the meal period

12 may be waived by mutual consent of both the employer and

13 employee. An employer may not employ an employee for a work

14 period of more than 10 hours per day without providing the employee

15 with a second meal period of not less than 30 minutes, except that if

16 the total hours worked is no more than 12 hours, the second meal

17 period may be waived by mutual consent of the employer and the

18 employee only if the first meal period was not waived.

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

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

- 20 (A) No employer shall employ any person for a work period of more than five (5)
- 21 hours without a meal period of not less than 30 minutes...
- 22 (B) If an employer may not employ an employee for a work period of more than
- 23 ten (10) hours per day without providing the employee with a second meal
- 24 period of not less than 30 minutes...
- 25 (C) If an employer fails to provide an employee a meal period in accordance with
- 26 the applicable provisions of this order, the employer shall pay the employee
- 27 one (1) hour of pay at the employee's regular rate of compensation for each
- 28 workday that the meal period is not provided.

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

- 27 (A) Every employer shall authorize and permit all employees to take rest periods,
- 28 which insofar as practicable shall be in the middle of each work period. The
- authorized rest period time shall be based on the total hours worked daily at

1 the rate of ten (10) minutes net rest time per four (4) hours or major fraction
2 thereof

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

7 49. By failing to consistently provide uninterrupted thirty-minute meal periods within the
8 first five hours of work each day and/or uninterrupted net ten-minute rest periods to Representative
9 Plaintiff and the Class Members, (and/or requiring specious meal-period waivers) Defendant
10 violated the California Labor Code and applicable IWC Wage Order provisions.

11 50. Representative Plaintiff is informed and believes and, on that basis, alleges that
12 Defendant has never paid the one hour of compensation to any Class Members due to its violations
13 of the California Labor Code and applicable IWC Wage Order provisions.

14 51. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
15 Representative Plaintiff and Class Members have sustained damages, including lost compensation
16 resulting from missed meal and/or rest periods, in an amount to be established at trial.

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

20 **THIRD CAUSE OF ACTION**
21 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
22 **(California Labor Code §§ 226 and 1174)**

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

25 54. California Labor Code §226(a) provides:

26 Each employer shall semimonthly, or at the time of each payment of
27 wages, furnish each of his or her employees either as a detachable
28 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)

1 the name of the employee and his or her social security number; and
2 (7) the name and address of the legal entity which is the employer.

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

4 An employee suffering injury as a result of a knowing and intentional
5 failure by an employer to comply with subdivision (a) is entitled to
6 recover the greater of all actual damages or fifty dollars (\$50) for the
7 initial pay period in which a violation occurs and one hundred dollars
8 (\$100) per employee for each violation in a subsequent pay period,
and is entitled to an award of costs and reasonable attorney's fees.

9 56. Finally, California Labor Code §1174(d) provides:

10 Every person employing labor in this state shall: (d) Keep, at a central
11 location in the state...payroll records showing the hours worked daily
12 by and the wages paid to...employees...These records shall be kept in
13 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.

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

16 58. Defendant has failed to provide timely, accurate itemized wage statements to the
17 Representative Plaintiff and Class Members in accordance with California Labor Code §226.
18 Representative Plaintiff is informed and believes and, on that basis, alleges that none of the
19 statements provided by Defendant accurately reflected actual gross wages earned, net wages earned,
20 or the appropriate deductions of such Class Members.

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

24
25 **FOURTH CAUSE OF ACTION**
26 **FAILURE TO PAY WAGES ON TERMINATION**
(California Labor Code § 203)

27 60. Representative Plaintiff incorporates 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.

1 61. California Labor Code §203 provides that:

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

8 62. Numerous Class Members were employed by BLACK ANGUS during the class
9 period and were thereafter terminated or resigned from their positions, yet they were not paid all
10 premium (overtime) wages due upon said termination or within 72 hours of said resignation of
11 employment therefrom. Said non-payment was the direct and proximate result of a willful refusal to
12 do so by BLACK ANGUS.

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

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

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

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

24 66. Representative Plaintiff further brings this cause of action seeking equitable and
25 statutory relief to stop Defendant's misconduct, as complained of herein, and to seek restitution of
26 the amounts Defendant acquired through the unfair, unlawful, and fraudulent business practices
27 described herein.

28 67. Defendant's knowing conduct, as alleged herein, constitutes an unlawful and/or
fraudulent business practice, as set forth in California Business & Professions Code §§17200-17208.

1 Specifically, Defendant conducted business activities while failing to comply with the legal
2 mandates cited herein.

3 68. Defendant's knowing failure to adopt policies in accordance with and/or to adhere to
4 these laws, all of which are binding upon and burdensome to its competitors, engenders an unfair
5 competitive advantage for BLACK ANGUS, thereby constituting an unfair business practice under
6 California Business & Professions Code §§ 17200-17208.

7 69. Defendant has clearly established a policy of accepting a certain amount of collateral
8 damage, as represented by the damages to the Representative Plaintiff 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 **WHEREFORE, the Representative Plaintiff**, on behalf of herself and the proposed
15 Plaintiff Class, prays for judgment and the following specific relief against Defendants, and each of
16 them, jointly and separately, as follows:

17 1. 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 California Code of
19 Civil Procedure §382;

20 2. 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 Plaintiff and Class Members;

23 3. 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 Order;

26 4. That the Court make an award to the Representative Plaintiff and the Class Members
27 of one hour of pay at each employee's regular rate of compensation for each workday that a meal
28 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 5. That the Court make an award to the Representative Plaintiff 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 6. That the Court declare, adjudge, and decree that the Representative Plaintiff and Class
5 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 7. That the Court make an award to the Representative Plaintiff 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 8. That the Court order Defendant to pay restitution to the Representative Plaintiff and
11 the Class Members due to Defendant's unlawful activities, pursuant to California Business and
12 Professions Code §§17200-17208;

13 9. 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 10. For all other Orders, findings and determinations identified and sought in this
16 Complaint;


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

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

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

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22 Dated: September 22, 2010

SCOTT COLE & ASSOCIATES, APC

23
24 By: 
25 Kevin R. Allen, Esq.
26 Attorneys for the Representative Plaintiff
27 and the Plaintiff Class
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