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1 Scott Edward Cole, Esq. (S.B. #160744)
2 Matthew R. Bainer, Esq. (S.B. #220972)
3 Carrie S. Lin, Esq. (S.B. #241849)
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

CASE MANAGEMENT CONFERENCE SET BY: ELIAS BUTI
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Attorneys for Representative Plaintiff
and the Plaintiff Class

DEPARTMENT 212

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

MICHAEL EGAN, individually, and on
behalf of all others similarly situated,

Case No.: **080-08-471917**

Plaintiffs,

CLASS ACTION

v.

BANK OF THE WEST and DOES 1
through 100, inclusive,

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

Defendants.

Representative Plaintiff alleges as follows:

PRELIMINARY STATEMENT

1. This is a class action, brought on behalf of Michael Egan ("Representative Plaintiff") and all other persons similarly situated ("Class Members") who are or have been misclassified as exempt Branch Managers by defendant Bank of the West and Does 1 through 100, inclusive ("Bank of the West" and/or "Defendant") in any branch in the state of California within the applicable class period. On his own behalf and on behalf of all Class Members, Representative Plaintiff seeks unpaid wages, including unpaid overtime compensation and interest thereon, liquidated damages and other penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs, under, *inter alia*, Title 8 of the California Code of Regulations, California Business and Professions Code §§ 17200, *et seq.*, California Code of Civil Procedure § 1021.5, and various provisions of the California

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

1 Labor Code.

2 2. The "Class Period" is designated as the time from February 7, 2004 through the trial
3 date, based upon the allegation that the violations of California's wage and hour laws, as described
4 more fully below, have been ongoing throughout that time.

5 3. During this Class Period, Bank of the West has had a consistent policy of (1)
6 permitting, encouraging and/or requiring its allegedly overtime-exempt Branch Managers, including
7 the Representative Plaintiff and Class Members, to work in excess of eight (8) hours per day and in
8 excess of forty (40) hours per week without paying them overtime compensation as required by
9 California's wage and hour laws, (2) unlawfully denying the Representative Plaintiff and Class
10 Members statutorily-mandated meal and rest periods, and (3) willfully failing to provide the
11 Representative Plaintiff and the Class Members with accurate semi-monthly itemized wage
12 statements reflecting the total number of hours each worked, the applicable deductions and the
13 applicable hourly rates in effect during the pay period. In addition, Representative Plaintiff alleges,
14 on information and belief, that Bank of the West has had a consistent policy of willfully failing to
15 pay compensation (including unpaid overtime) in a prompt and timely manner to Class Members
16 whose employment with Bank of the West has terminated.

17
18 **INTRODUCTION**

19 4. Bank of the West is a subsidiary of BancWest Corporation, a multi-billion dollar
20 holding company that is owned by BNP Paribas, an international leader in banking and financial
21 services and a global financial services institution.

22 5. Representative Plaintiff is informed and believes and, on that basis, alleges that Bank
23 of the West provides regional banking services to individuals, small businesses, and middle-market
24 commercial customers, as well as commercial banking services to large corporate customers.

25 6. Representative Plaintiff is informed and believes and, on that basis, alleges that within
26 the Class Period, Bank of the West served millions of households and businesses in hundreds of
27 communities by operating nearly 700 commercial and retail banking locations in 19 western and
28 mid-western states. In California alone, Bank of the West employed hundreds of individuals in recent

1 years who occupied the Branch Manager position, an employment position which has not, and
2 currently does not, meet any test for exemption from the payment of overtime wages or the
3 entitlement to meal or rest periods.

4 7. Despite actual knowledge of these facts and legal mandates, Bank of the West has
5 enjoyed an advantage over its competition and a resultant disadvantage to its workers by electing not
6 to pay premium (overtime) and/or "penalty" (a.k.a. "waiting time") wages to Branch Managers.

7 8. Representative Plaintiff is informed and believes and, based thereon, alleges that
8 officers of Bank of the West knew of these facts and legal mandates, yet, nonetheless, repeatedly
9 authorized and/or ratified the violation of the laws cited herein.

10 9. Despite Bank of the West's knowledge of Class Members' entitlement to premium
11 (overtime) pay, and meal and/or rest periods for all applicable work periods, Bank of the West failed
12 to provide same to the members thereof, in violation of California state statutes, any applicable
13 California Industrial Welfare Commission Order, and Title 8 of the California Code of Regulations.
14 This action is brought to redress and end this long-time pattern of unlawful conduct once and for all.

15
16 **JURISDICTION AND VENUE**

17 10. This Court has jurisdiction over the Representative Plaintiff's and Class Members'
18 claims for unpaid wages and/or penalties under, *inter alia*, any applicable Industrial Welfare
19 Commission Wage Order, Title 8 of the California Code of Regulations, Labor Code §§ 201-204,
20 226.7, 510, 512, 1194 and 1198, and/or California Code of Civil Procedure § 1021.5.

21 11. This Court also has jurisdiction over the Representative Plaintiff's and Class
22 Members' claims for injunctive relief and restitution of ill-gotten benefits arising from Bank of the
23 West's unfair and/or fraudulent business practices under California Business & Professions Code
24 §§ 17200, *et seq.*

25 12. Venue as to Bank of the West is proper in this judicial district, pursuant to Code of
26 Civil Procedure § 395(a). Bank of the West maintains offices within the City and County of San
27 Francisco, transacts business, has agents, and is otherwise within this Court's jurisdiction for
28 purposes of service of process. The unlawful acts alleged herein have a direct effect on the

1 Representative Plaintiff and those similarly situated within the State of California and within the City
2 and County of San Francisco. Bank of the West operates said facilities and has employed numerous
3 Class Members in the City and County of San Francisco as well as in other counties within the State
4 of California.

5
6 **PLAINTIFFS**

7 13. Representative Plaintiff Michael Egan is a natural person who is employed by Bank
8 of the West as a Branch Manager.

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

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

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

17
18 **DEFENDANTS**

19 17. At all times herein relevant, Bank of the West was, and is, a full service regional bank
20 doing business within the state of California, which provides, *inter alia*, personal, small business and
21 commercial banking services.

22 18. Those defendants identified as Does 1 through 100, inclusive, are and were, at all
23 relevant times herein-mentioned, officers, directors, partners, and/or managing agents of some or
24 each of the remaining defendants. Representative Plaintiff is informed and believes and, on that
25 basis, alleges that at all relevant times herein mentioned, Bank of the West and those identified as
26 Does 1 through 100, inclusive, employed and/or exercised control over the wages, hours and/or
27 working conditions of the Representative Plaintiff and Class Members at various California
28 locations, as identified in the preceding paragraph.

1 19. The Representative Plaintiff is unaware of the true names and capacities of those
2 defendants sued herein as Does 1 through 100, inclusive and, therefore, sues these defendants by
3 such fictitious names. The Representative Plaintiff will seek leave of court to amend this Complaint
4 when such names are ascertained. The Representative Plaintiff is informed and believes and, on that
5 basis, alleges that each of the fictitiously-named defendants was responsible in some manner for,
6 gave consent to, ratified and/or authorized the conduct herein alleged and that the Representative
7 Plaintiff's and Class Members' damages, as herein alleged, were proximately caused thereby.

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

12
13 CLASS ACTION ALLEGATIONS

14 21. Representative Plaintiff brings this action individually, and as a class action on behalf
15 of all persons similarly situated and proximately damaged by Bank of the West's conduct, including,
16 but not necessarily limited to, the following Plaintiff Class:

17 All persons who were employed as a Branch Manager by Bank of the
18 West in one or more of its California branch locations at any time on
or after February 7, 2004.

19 22. Bank of the West, its officers and directors are excluded from the Plaintiff Class.

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

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

27 b. Commonality: The Representative Plaintiff and the Class Members share a
28 community of interests in that there are numerous common questions and
issues of fact and law which predominate over any questions and issues solely

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THE WACHOVIA TOWER
1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL.: (510) 891-9800

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affecting individual members, including, but not necessarily limited to:

- i. whether Bank of the West violated the applicable California Wage Order(s) and/or Labor Code § 510 by failing to pay overtime compensation to Bank of the West Branch Managers who worked in excess of 40 hours per week and/or eight (8) hours a day;
 - ii. whether Bank of the West violated California Business and Professions Code § 17200 by failing to pay overtime compensation to its Branch Managers who worked in excess of forty (40) hours per week and/or eight (8) hours a day;
 - iii. whether Bank of the West violated, and continues to violate, California Labor Code §§ 226.7 and/or 512 by failing to consistently provide meal and/or rest periods to Class Members;
 - iv. whether Bank of the West violated, and continues to violate, California Labor Code § 1174 by failing to keep accurate records of its California Branch Managers' hours of work;
 - v. whether Bank of the West violated, and continues to violate California Labor Code §§ 201-204 by failing to pay overtime wages due and owing at the time particular Class Members' employment with Bank of the West terminated; and
 - vi. whether Bank of the West violated, and continues to violate, California Labor Code § 226 by failing to provide semi-monthly itemized wage statements to Class Members of total hours worked and all applicable hourly rates in effect during the pay period.
- 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 Bank of the West's common course of conduct in violation of law, as alleged herein.
- d. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes or may make it impractical for 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 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 Plaintiff in this class action is an adequate representative of the Plaintiff Class, in that the Representative Plaintiff's claims are typical of those of the Plaintiff Class and the Representative Plaintiff has the same interest in the litigation of this case as the Class Members. The Representative Plaintiff is committed to vigorous prosecution of this case and has retained competent counsel, experienced in conducting litigation of this nature. The Representative Plaintiff is not subject to any individual defenses unique from those conceivably applicable to Class

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THE WACHOVIA TOWER
1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 891-9800

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Members as a whole. The Representative Plaintiff anticipates no management difficulties in this litigation.

COMMON FACTUAL ALLEGATIONS

24. As described herein, Bank of the West has, for years, knowingly failed to adequately compensate those employees within the class definition identified above for all wages earned, including premium wages such as overtime wages and/or compensation for missed meal and/or rest periods, as are due under the California Labor Code and California Wage Order No. 5, thereby enjoying a significant competitive edge over other banking institutions.

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

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

27. Furthermore, despite its knowledge of the Representative Plaintiff's and the Class Members' entitlement to compensation for all hours worked, Bank of the West 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. Bank of the West also failed to provide Representative Plaintiff and Class Members with accurate semimonthly itemized statements of the total number of hours worked by each and all applicable hourly rates in effect during the pay period, in violation of California Labor Code § 226. In failing to provide the required documents, Bank of the West has not only failed to pay its workers the full amount of compensation due, but the company has also, until now, effectively shielded itself from its employees' scrutiny by concealing the magnitude and financial impact of its wrongdoing that such documents might otherwise have led workers to discover.

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THE WACHOVIA TOWER
1970 BROADWAY, NINTH FLOOR
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TEL: (510) 891-9800

1 28. Representative Plaintiff and all persons similarly situated are entitled to unpaid
2 compensation, yet, to date, have not received such compensation despite many of the same having
3 been terminated by and/or resigned from Bank of the West. More than 30 days have passed since
4 certain Class Members have left Bank of the West's employ.

5 29. As a consequence of Bank of the West's willful conduct in not paying former
6 employees compensation for all hours worked in a prompt and timely manner, certain Class
7 Members are entitled to up to 30 days wages, as a penalty under Labor Code § 203, together with
8 attorneys' fees and costs.

9 30. As a consequence of Bank of the West's willful conduct in not providing an
10 uninterrupted 30 minute meal period within the first five hours of Class Members' shifts, as required
11 under Labor Code § 512 and Section 11 of IWC Wage Order No. 5, Class Members are entitled to
12 one hour of wages for each day that they were denied at least one meal period, as provided under
13 Labor Code § 226.7, together with interest thereon and attorneys' fees and costs.

14 31. As a consequence of defendant Bank of the West's willful conduct in not providing
15 a ten (10) minute rest period during each four hour segment of work, as required under Section 12
16 of IWC Wage Order No. 5, Class Members are entitled to one hour of wages for each day that they
17 were denied at least one rest period, as provided under Labor Code § 226.7, together with interest
18 thereon and attorneys' fees and costs.

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

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

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

10
11 **FIRST CAUSE OF ACTION**
12 **UNLAWFUL FAILURE TO PAY OVERTIME WAGES**
13 **(Violation of California Wage Order 7 and California Labor Code §§ 510, 1194, and 1198)**

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

16 35. During the Class Period, the Representative Plaintiff and the Class Members worked,
17 on many occasions, in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek.
18 The precise number of overtime hours will be proven at trial.

19 36. During said time period, Bank of the West refused to compensate the Representative
20 Plaintiff and Class Members for all of the overtime wages earned, in violation of the applicable
21 Wage Order, and provisions of the California Labor Code.

22 37. Moreover, during said time period, many of the Class Members herein were employed
23 by and thereafter terminated or resigned from their positions with Bank of the West, yet were not
24 paid all wages due upon said termination or within seventy-two (72) hours of said resignation of
25 employment therefrom. Said non-payment of all wages due was the direct and proximate result of
26 a willful refusal to do so by Bank of the West.

27 38. At all relevant times, Bank of the West was aware of, and was under a duty to comply
28 with, the overtime provisions of the California Labor Code, including, but not limited to, the
following:

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- a. 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 of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee”
- b. 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.
- c. 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.”

39. By refusing to compensate the Representative Plaintiff and Class Members for overtime wages earned, Bank of the West violated those California Labor Code provisions cited herein, as well as any applicable California Industrial Welfare Commission Wage Order.

40. As a direct and proximate result of Bank of the West’s unlawful conduct, as set forth herein, the Representative Plaintiff and the Plaintiff Class have sustained damages, including loss of earnings for hours of overtime worked on behalf of Bank of the West, in an amount to be established at trial, and are entitled to recover attorneys’ fees and costs of suit.

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

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

42. At all relevant times, Bank of the West was aware of and was under a duty to comply with California Labor Code §§ 226.7 and 512.

43. California Labor Code § 226.7 provides:

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

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

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(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the 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.

44. Moreover, California Labor Code § 512 provides:

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

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

46. Section 11 of the applicable IWC Wage Order provides:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes (C) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the 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.

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

(A) Every employer shall authorize and permit all employees to take rest periods, 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 the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

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1 47. By failing to consistently provide uninterrupted thirty-minute meal periods within the
2 first five hours of work each day and/or uninterrupted ten-minute net rest periods to Representative
3 Plaintiff and the Class Members, Bank of the West violated California Labor Code and the IWC
4 Wage Order provisions.

5 48. Representative Plaintiff is informed and believes and, on that basis, alleges that Bank
6 of the West has never paid the one hour of compensation to any Class Members due to its violations
7 of the California Labor Code and the IWC Wage Order provisions.

8 49. As a direct and proximate result of Bank of the West's unlawful conduct, as set forth
9 herein, Representative Plaintiff and Class Members have sustained damages, including lost
10 compensation resulting from missed meal and/or rest periods, in an amount to be established at trial.
11 As a further direct and proximate result of Bank of the West's unlawful conduct, as set forth herein,
12 certain Class Members are entitled to recover "waiting time" and other penalties, in amounts to be
13 established at trial, as well as costs and attorneys' fees, pursuant to statute.

14
15 **THIRD CAUSE OF ACTION**
16 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
17 **(California Labor Code §§ 226 and 1174)**

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

21 51. California Labor Code § 226(a) provides:

22 Each employer shall semimonthly, or at the time of each payment of
23 wages, furnish each of his or her employees either as a detachable
24 part of the check, draft or voucher paying the employee's wages, or
25 separately when wages are paid by personal check or cash, an
26 itemized wage statement in writing showing: (1) gross wages earned;
27 (2) total number of hours worked by each employee whose
28 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.

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52. 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.

53. Finally, California Labor Code § 1174 provides:

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

54. Representative Plaintiff seeks to recover actual damages, costs and attorneys' fees under these provisions on behalf of himself and on behalf of all Class Members.

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

56. As a direct and proximate result of Bank of the West's unlawful conduct, as set forth herein, the Representative Plaintiff 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.

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

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

58. 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

1 employee shall continue as a penalty from the due date thereof at the
2 same rate until paid or until an action therefor is commenced; but the
wages shall not continue for more than 30 days.”

3 59. Numerous Class Members were employed by Bank of the West during the class
4 period and were thereafter terminated or resigned from their positions, yet they were not paid all
5 premium (overtime) wages due upon said termination or within seventy-two (72) hours of said
6 resignation of employment therefrom. Said non-payment was the direct and proximate result of a
7 willful refusal to do so by Bank of the West.

8 60. More than thirty days has elapsed since Representative Plaintiff and numerous class
9 members were involuntarily terminated or voluntarily resigned from Bank of the West’s employ.

10 61. As a direct and proximate result of Bank of the West’s willful conduct in failing to
11 pay said Class Members for all hours worked, the Representative Plaintiff and numerous class
12 members are entitled to recover “waiting time” penalties of up to thirty days’ wages pursuant to
13 Labor Code § 203, in an amount to be established at trial, together with interest thereon and
14 attorneys’ fees and costs.

15
16 **FIFTH CAUSE OF ACTION**
17 **UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT**
(California Business & Professions Code §§ 17200-17208)

18 62. Representative Plaintiff incorporates 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 Plaintiff further brings this cause of action seeking equitable and
21 statutory relief to stop the misconduct of Bank of the West, as complained of herein, and to seek
22 restitution from Bank of the West of amounts acquired through the unfair, unlawful and fraudulent
23 business practices described herein.

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

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1 65. Bank of the West's knowing failure to adopt policies in accordance with and/or to
2 adhere to these laws, all of which are binding upon and burdensome to its competitors, engenders
3 an unfair competitive advantage for Bank of the West, thereby constituting an unfair business
4 practice, as set forth in California Business & Professions Code §§ 17200-17208.

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

10
11 **RELIEF SOUGHT**

12 **WHEREFORE, the Representative Plaintiff**, on behalf of himself and the proposed
13 **Plaintiff Class**, prays for judgment and the following specific relief against **Defendants, and each**
14 **of them**, jointly and separately, as follows:

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

18 2. That the Court declare, adjudge and decree that Bank of the West violated the
19 overtime provisions of the California Labor Code and the applicable California Industrial Welfare
20 Commission Wage Order as to the Representative Plaintiff and Class Members;

21 3. That the Court declare, adjudge and decree that Bank of the West willfully violated
22 its legal duties to pay overtime under the California Labor Code and the applicable California
23 Industrial Welfare Commission Wage Order;

24 4. That the Court declare, adjudge and decree that the Representative Plaintiff and Class
25 Members were, at all times relevant hereto, and are still, entitled to be paid overtime for work
26 beyond 40 hours in a week;

27 5. That the Court make an award to the Representative Plaintiff and Class Members of
28 damages and/or restitution for the amount of unpaid overtime compensation, including interest

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

1 thereon, and penalties in an amount to be proven at trial;

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

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

8 8. That the Court order Bank of the West to pay restitution to the Representative
9 Plaintiff and the Class Members due to Bank of the West's unlawful activities, pursuant to California
10 Business and Professions Code §§ 17200-17208;

11 9. That the Court further enjoin Bank of the West, ordering it to cease and desist from
12 unlawful activities in violation of California Business and Professions Code §§ 17200, *et seq.*;

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

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

16 12. For reasonable Attorneys' Fees, pursuant to California Labor Code §§ 1194 and/or
17 California Code of Civil Procedure § 1021.5; and

18 13. For Costs of suit and any and all such other relief as the Court deems just and proper.
19

20 Dated: February 7, 2008

21 **SCOTT COLE & ASSOCIATES, APC**

22 By: 

23 Matthew R. Bainer, Esq.
24 Attorneys for the Representative Plaintiff
25 and the Plaintiff Class
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27
28