

ENDORSED  
FILED  
ALAMEDA COUNTY

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BY ALPHONSE GATES

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 www.scalaw.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**

14 MONICA GONZALES, individually,  
15 and on behalf of all others similarly  
16 situated,

17 Plaintiffs,

18 vs.

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

21 Defendants.

Case No.:

RG08381652

CLASS ACTION

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

22 Representative Plaintiff alleges as follows:

23 **PRELIMINARY STATEMENT**

24 1. This is a class action, under Code of Civil Procedure § 382, seeking restitution of all  
25 monies due to Representative Plaintiff and Class Members, penalties, injunctive and other equitable  
26 relief and reasonable attorneys' fees and costs, under, *inter alia*, Industrial Welfare Commission  
27 Wage Order 4-2001, Labor Code §§ 200-204, inclusive, 218.6, 226, 226.7, 512 and 1174, Business  
28 & Professions Code §§ 17200, *et seq.*, and Code of Civil Procedure § 1021.5. The Representative  
Plaintiff brings this action on behalf of herself and all other persons similarly situated (hereinafter  
referred to as the "Class Members" and/or the "Plaintiff Class") who were employed by defendant  
Bank of the West and Does 1 through 100, inclusive (collectively "Bank of the West" and/or

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

1 “Defendant[s]”), in non-exempt position at any of Defendant’s branches within the State of  
2 California, at any time since April 14, 2004, and who have been denied meal and/or rest periods. The  
3 Representative Plaintiff, on behalf of herself and the Class Members, also seeks injunctive relief and  
4 restitution of all benefits Defendant has enjoyed from Defendant’s failure to provide meal and/or rest  
5 periods under Business and Professions Code §§ 17200-17208.

6 2. The “Class Period” is designated as the time from April 14, 2004 through the date of  
7 trial, based upon the allegation that the violations of California’s wage and hour laws, as described  
8 more fully below, have been ongoing during this time. During the Class Period, Defendant had a  
9 consistent policy toward Class Members of (1) permitting, encouraging, and/or requiring the  
10 Representative Plaintiff and Class Members to work, without providing meal and/or rest periods, as  
11 required by California state wage and hour laws.

12  
13 **INTRODUCTION**

14 3. The Representative Plaintiff is informed and believes and, based thereon, alleges that,  
15 within the Class Period, Defendant employed thousands of individuals in non-exempt positions in  
16 recent years alone within the State of California.

17 4. Despite actual knowledge of these facts and legal mandates, Defendant enjoyed an  
18 advantage over its competition and a resultant disadvantage to its workers by electing not to provide  
19 all meal and/or rest periods to its non-exempt employees.

20 5. The Representative Plaintiff is informed and believes and, based thereon, alleges that  
21 officers of Defendant knew of these facts and legal mandates, yet, nonetheless, repeatedly directed,  
22 authorized and/or ratified the violation of the laws cited herein.

23 6. Despite Defendant’s knowledge of the Plaintiff Class’ entitlement to meal and/or rest  
24 periods for all applicable work periods, Defendant failed to provide same to members of the Plaintiff  
25 Class, in violation of the California Labor Code, Industrial Welfare Commission Wage Order 4-2001  
26 and Title 8 of the California Code of Regulations. This action is brought to redress and end this long-  
27 time pattern of unlawful conduct.

28 ///

SCOTT COLE & ASSOCIATES, AIC  
ATTORNEYS AT LAW  
THE WACHOVIA TOWER  
1970 BROADWAY, NINTH FLOOR  
OAKLAND, CA 94612  
TEL: (510) 881-8300

## JURISDICTION AND VENUE

1  
2 7. This Court has jurisdiction over the Representative Plaintiff's and Class Members'  
3 claims for unpaid wages and/or penalties under, *inter alia*, Industrial Welfare Commission Wage  
4 Order 4-2001 and Title 8 of the California Code of Regulations, Labor Code §§ 200-204, inclusive,  
5 218.6, 226, 226.7, 512 and 1174, Business & Professions Code §§ 17200, *et seq.*, and Code of Civil  
6 Procedure § 1021.5.

7 8. This Court has further jurisdiction over the Representative Plaintiff's and Class  
8 Members' claims for injunctive relief, and restitution of ill-gotten benefits arising from Defendant's  
9 unlawful business practices under Business & Professions Code §§ 17203.

10 9. Venue as to Defendant(s) is proper in this judicial district, pursuant to Code of Civil  
11 Procedure § 395(a). Defendant maintained branches and provided banking services in the County  
12 of Alameda, and transacted business, had agents, and was otherwise within this Court's jurisdiction  
13 for purposes of service of process. The unlawful acts alleged herein have a direct effect on the  
14 Representative Plaintiff and those similarly situated within the State of California and Alameda  
15 County. Defendant provided said services and have employed numerous Class Members in Alameda  
16 County as well as in other counties within the State of California.

## PLAINTIFFS

17  
18  
19 10. During the herein-relevant time period, plaintiff Monica Gonzales (the  
20 "Representative Plaintiff") was and is a natural person, and was, during the relevant time period,  
21 employed by Defendant in a non-exempt position, an employment position which was entitled to  
22 various conditions of employment such as meal and/or rest periods.

23 11. In said position, the Representative Plaintiff was frequently permitted to work and  
24 did work, during the Class Period, shifts exceeding five hours without an uninterrupted, unrestricted  
25 meal period of at least 30 minutes and was frequently permitted to work and did work four hours or  
26 a "major fraction" thereof, without being afforded net ten minute rest periods. Representative  
27 Plaintiff is informed and believes and, on that basis, alleges that this conduct of Defendant was  
28 commonplace at every facility owned and/or operated thereby.



1 alleges that, at all relevant times herein mentioned, each of the defendants identified as Does 1  
2 through 100, inclusive, employed and/or exercised control over the wages, hours and/or working  
3 conditions of the Representative Plaintiff and Class Members at various California locations, as  
4 identified in the preceding paragraph.

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

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

16 21. There is no preemption of the claims brought in this Complaint because these claims  
17 are based upon state law. There is no dispute over the terms of any collective bargaining agreement  
18 ("CBA") and there is no need to interpret the terms of any CBA.

19  
20 **CLASS ACTION ALLEGATIONS**

21 22. The Representative Plaintiff brings this action on behalf of herself and as a class  
22 action on behalf of all persons or entities proximately damaged by Defendant's conduct, including,  
23 but not necessarily limited to, the following Plaintiff Class:

24 All persons who were employed since April 14, 2004 by defendant  
25 Bank of the West in non-exempt positions in any Bank branch within  
the State of California.

26 23. Defendants, their officers and directors are excluded from the Plaintiff Class.

27 24. This action has been brought and may properly be maintained as a class action  
28 because there is a well-defined community of interest in the litigation and the proposed Class

1 Members are easily ascertainable.

2 A. Commonality: The Representative Plaintiff and the Class Members share a  
3 community of interests in that there are numerous common questions and  
4 issues of fact and law which predominate over any questions and issues solely  
5 affecting individual members, including, but not necessarily limited to:

- 6 1) whether Defendant violated Labor Code §§ 226.7 and/or 512 by  
7 failing to consistently provide meal and rest periods to their non-  
8 exempt employees;
- 9 2) whether Defendant violated Labor Code §§ 201-204 by failing to pay  
10 all "wages" due and owing each pay period and/or at the time that  
11 certain Class Members' employment with Defendant terminated and  
12 whether Representative Plaintiff and Class Members are entitled to  
13 penalties pursuant to Labor Code §§ 203 and/or 204;
- 14 3) whether Defendant violated Business and Professions Code § 17200,  
15 *et seq.*, by failing to consistently provide meal and/or rest periods to  
16 its non-exempt employees;
- 17 4) whether Defendant violated California Labor Code § 226 by failing  
18 to provide the semimonthly itemized statements to Class Members of  
19 total hours worked by each, and all applicable hourly rates in effect  
20 during the pay period;
- 21 5) whether Defendant violated Labor Code § 1174 by failing to keep  
22 accurate records of employees' hours of work; and
- 23 6) whether Representative Plaintiff and Class Members are entitled to  
24 "waiting time" penalties/wages pursuant to California Labor Code §§  
25 203 and/or 204.

26 B. Typicality: The Representative Plaintiff's claims are typical of the claims of  
27 the Plaintiff Class.

28 C. 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 the Representative Plaintiff is informed and believes and, on that  
basis, alleges that the total number of class members is, at least, in the  
thousands of individuals. Membership in the Plaintiff Class will be  
determined upon analysis of employee and payroll, among other, records  
maintained by Defendant.

D. Superiority of Class Action: Since the damages suffered by individual Class  
Members, while not inconsequential, may be relatively small, the expense  
and burden of individual litigation by each member makes or may make it  
impractical for members of the Plaintiff Class to seek redress individually for  
the wrongful conduct alleged herein. Should separate actions be brought or  
be required to be brought by each individual member of the Plaintiff Class,  
the resulting multiplicity of lawsuits would cause undue hardship and  
expense for the Court and the litigants. The prosecution of separate actions  
would also create a risk of inconsistent rulings, which might be dispositive  
of the interests of other Class Members who are not parties to the

1 adjudications and/or may substantially impede their ability to adequately  
2 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 Plaintiff has the same interests 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, experienced in  
9 conducting litigation of this nature. The Representative Plaintiff is not subject  
10 to any individual defenses unique from those conceivably applicable to the  
11 Plaintiff Class as a whole. The Representative Plaintiff anticipates no  
12 management difficulties in this litigation.

### 13 COMMON FACTUAL ALLEGATIONS

14 25. As described herein, Defendant has, for years, knowingly failed to provide net ten  
15 minute rest periods for work shifts exceeding four hours or a major fraction thereof and/or  
16 uninterrupted, unrestricted meal period of at least 30 minutes for work shifts exceeding five hours  
17 to those non-exempt employees within the class definition identified above, thereby enjoying a  
18 significant competitive edge over other companies within its industry. Even upon termination or  
19 resignation of the employment of numerous Class Members, Defendant has declined to compensate  
20 these employees therefor, in blatant violation of California Labor Code §§ 201 and/or 202.

21 26. Moreover, California Labor Code §§ 201 and 202 require Defendant to pay its  
22 employees all wages due immediately upon discharge. California Labor Code § 203 provides that,  
23 if an employer willfully fails to timely pay such wages, the employer must, as a penalty, continue to  
24 pay the subject employees' wages until the back wages are paid in full or an action is commenced.  
25 The penalty cannot exceed 30 days of wages.

26 27. Furthermore, despite its knowledge of the Representative Plaintiff and Class  
27 Members' entitlement to compensation for all hours worked, Defendant violated California Labor  
28 Code § 1174(d) by failing to provide or require the use, maintenance or submission of time records  
by members of the Classes. Defendant 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 doing so, Defendant has not only failed to pay its workers the full amount of

1 compensation due, it has, until now, effectively shielded itself from its employees' scrutiny for its  
2 unlawful conduct by concealing the magnitude (the full number of hours worked) and financial  
3 impact of its wrongdoing.

4 28. The Representative Plaintiff is informed and believes and, on that basis, alleges that  
5 many members of the Plaintiff Class are entitled to unpaid compensation, yet, to date and despite  
6 the termination of their employment with Defendant, have not received such compensation.

7 29. More than 30 days have passed since certain Class Members have left Defendant's  
8 employ.

9 30. As a consequence of Defendant's willful conduct in not paying full compensation to  
10 these terminated Class Members, these particular Class Members are entitled to 30 days wages as  
11 a penalty under Labor Code § 203, together with interest thereon and attorneys' fees and costs.

12 31. The Representative Plaintiff is informed and believes and, on that basis, alleges that  
13 Defendant's failure to make available meal and/or rest periods entitled the Plaintiff Class to wages  
14 therefor, yet said wages were not paid in accordance with California Labor Code § 204, in further  
15 violation of the law (*inter alia*, California Labor Code § 226).

16 32. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,  
17 the Representative Plaintiff and members of the Plaintiff Class have sustained damages, as described  
18 above, including a loss of compensation, in amounts to be established at trial. As a further direct and  
19 proximate result of Defendant's unlawful conduct, as set forth herein, many Class Members herein  
20 are entitled to recover "waiting time" penalties/wages (pursuant to California Labor Code § 203),  
21 in an amount to be established at trial. As a further direct and proximate result of Defendant's  
22 unlawful conduct, as set forth herein, the Representative Plaintiff and Class Members are entitled  
23 to recover costs and attorneys' fees, pursuant to statute.

24  
25 **FIRST CAUSE OF ACTION**  
26 **FAILURE TO PROVIDE MEAL AND/OR REST PERIODS**  
**(California Labor Code §§ 226.7 and 512)**

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



1 herein.

2 34. At all relevant times, Defendant was aware of and was under a duty to comply with  
3 California Labor Code §§ 226.7 and 512.

4 35. California Labor Code § 226.7 provides:

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

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

13 36. Moreover, California Labor Code § 512 provides:

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

25 37. By failing to consistently provide uninterrupted and unrestricted meal periods and to  
26 provide uninterrupted rest periods to its non-exempt employees, Defendant violated California Labor  
27 Code §§ 226.7 and/or 512.

28 38. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,  
the Representative Plaintiff and the Class Members have sustained damages, including loss of  
compensation/wages, in an amount to be established at trial. As a further direct and proximate result  
of Defendant's unlawful conduct, as set forth herein, the Representative Plaintiff and the Class  
Members are entitled to recover various penalties, in an amount to be established at trial, as well as  
costs and attorneys' fees, pursuant to statute.

///  
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///



1 Members.

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

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44. The 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.

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

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

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

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

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49. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, the Representative Plaintiff and the Class Members have sustained damages, including loss of earnings/wages, in an amount to be established at trial, and are entitled to restitution in such an amount as well as injunctive relief.

RELIEF SOUGHT

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

5           1.       For an Order certifying the proposed Plaintiff Class and/or any other appropriate  
6 subclass(es) under Code of Civil Procedure § 382;

7           2.       That defendants are found to have violated Labor Code § 226.7 for failure to  
8 authorize and permit rest periods;

9           3.       That defendants are found to have violated Labor Code §§ 226.7 and/or 512 for  
10 failure to provide meal periods;

11           4.       An award to the Representative Plaintiff and the Plaintiff Class of damages for the  
12 amount of unpaid compensation, including interest thereon, and penalties, in an amount to be proven  
13 at trial;

14           5.       That defendants are found to have violated California Labor Code §§ 201 and 202  
15 for willful failure to pay all compensation owed at the time of termination or within 72 hours of  
16 resignation of employment to particular Class Members;

17           6.       That defendants are found to have violated Business & Professions Code § 17200,  
18 *et seq.*, by failing to pay the Representative Plaintiff and Class Members all compensation for meal  
19 and/or rest periods denied, and by failing to pay “waiting time” penalties to particular Class  
20 Members;

21           7.       That defendants be ordered and enjoined to pay restitution to the Representative  
22 Plaintiff and the Plaintiff Class due to Defendants’ unlawful activities, pursuant to Business &  
23 Professions Code §§ 17200, *et seq.*;

24           8.       That defendants further be enjoined to cease and desist from unlawful activities in  
25 violation of Business & Professions Code § 17200, *et seq.*;

26           9.       For all other Orders, findings and determinations identified and sought in this  
27 Complaint;

28       ///

SCOTT COLE & ASSOCIATES, APC  
ATTORNEYS AT LAW  
THE WACHOVIA TOWER  
1970 BRIGADIER, NINTH FLOOR  
OAKLAND, CA 94612  
TEL: (510) 881-8800

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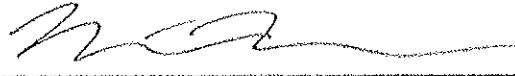
- 10. For Interest on the amount of any and all economic losses, at the prevailing legal rate;
- 11. For reasonable attorneys' fees, pursuant to statute(s); and
- 12. For costs of suit and any and all such other relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff and the Plaintiff Class hereby demand trial by jury on all issues triable of right by jury.

Dated: April 14, 2008

**SCOTT COLE & ASSOCIATES, APC**

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