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11 and the Plaintiff Class

ENDORSED
FILED
ALAMEDA COUNTY

MAR - 4 2009

CLERK OF THE SUPERIOR COURT
By BARBARA LAMOTTE
Deputy

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

14 WANAUMA GRAHAM, individually,
15 and on behalf of all others similarly
16 situated,

17 Plaintiffs,

18 vs.

19 T-MOBILE USA, INC., and DOES 1
20 through 100, inclusive,

21 Defendants.

Case No.: *RG* 09489459

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, brought on behalf of Wanauma Graham (the "Representative
25 Plaintiff") and all other persons who are or have been employed in non-exempt retail management
26 positions (the "Class Members" and/or the "Plaintiff Class") by defendant T-Mobile USA, Inc. and
27 Does 1 through 100, inclusive (collectively "Defendant") within the State of California at any time
28 on or after March 4, 2005 (the "Class Period").

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1 2. Representative Plaintiff, individually, and on behalf of the Plaintiff Class, seeks
2 reimbursement of business expenses, unpaid wages, meal and rest period compensation, waiting time
3 and/or other penalties, injunctive and/or other equitable relief, and reasonable attorneys' fees and
4 costs, under, *inter alia*, California Labor Code §§ 201-204, 226, 226.7, 512, 1174, 1198 and 2802,
5 Code of Civil Procedure § 1021.5 and Business and Professions Code §§ 17200, *et seq.*

6 3. During the Class Period, Defendant has had a consistent policy of (1) requiring its
7 retail management employees, including Representative Plaintiff and Class Members to purchase
8 tools, equipment and other items and/or otherwise incur business expenses necessary for the
9 performance of their work for Defendant as a term and condition of their employment therewith and
10 failing to reimburse these workers for same, (2) denying Class Members statutorily-mandated meal
11 and rest periods, (3) denying Class Members their full wages for all hours worked, (4) willfully
12 failing to pay all compensation due in a prompt and timely manner to Class Members, including
13 those whose employment with Defendant has terminated, and (5) willfully failing to provide Class
14 Members with accurate semimonthly itemized statements of the total number of hours each of them
15 worked, the applicable deductions and the applicable hourly rates in effect during the applicable pay
16 periods.

18 INTRODUCTION

19 4. According to Defendant's public statements, for years T-Mobile USA (the US
20 operating entity of T-Mobile International AG, the mobile communications subsidiary of Deutsche
21 Telekom AG, one of the largest telecommunications companies in the world) has served the public
22 as a national provider of wireless voice, messaging, and data services capable of reaching over 268
23 million people.

24 5. Representative Plaintiff is informed and believes and, on that basis, alleges that,
25 during the class period, Defendant has employed hundreds, if not thousands, of individuals within
26 the State of California alone as retail management workers, non-exempt employees who are entitled
27 to hourly wages for all hours worked and reimbursement for business-related expenses incurred
28 thereby and who are entitled to statutorily-mandated meal and rest periods.

1 those similarly situated within the State of California and Alameda County. Defendant operates said
2 facilities and has employed numerous Class Members in the County of Alameda, as well as in other
3 counties within the State of California.

4
5 **PLAINTIFFS**

6 12. During the herein-relevant time period, plaintiff Wanauma Graham (the
7 “Representative Plaintiff”) is a natural person, and was, during the relevant time period identified
8 herein, employed by Defendant in a non-exempt retail management position which was entitled to,
9 and continues to enjoy an entitlement to, various conditions of employment, including meal and rest
10 periods, regular payment of all hourly wages due and expense reimbursement.

11 13. In said position, Representative Plaintiff was frequently permitted to work and did
12 work, during the Class Period, shifts exceeding five hours without uninterrupted, unrestricted meal
13 periods of not less than thirty minutes, was frequently permitted to work and did work four hours
14 or a “major fraction” thereof, without being afforded uninterrupted net ten minute rest periods and
15 was required to work “off the clock.” Representative Plaintiff is informed and believes and, on that
16 basis, alleges that this conduct of Defendant is/was commonplace at every California retail store
17 operated thereby.

18 14. As used throughout this Complaint, the terms “Class Members” and/or the “Plaintiff
19 Class” refer to the named plaintiff herein as well as each and every person eligible for membership
20 in the Plaintiff Class, as further described and defined below.

21 15. At all times herein relevant, Representative Plaintiff was/is a person within the
22 Plaintiff Class further described and defined herein.

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

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DEFENDANT

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2 17. At all times herein relevant, defendant T-Mobile USA, Inc. and Does 1 through 100,
3 inclusive were business entities, duly licensed and located and doing business in, but not limited to,
4 the County of Alameda, in the State of California.

5 18. The Representative Plaintiff is informed and believes and, on that basis, alleges that,
6 since March 4, 2005, Defendant directly or indirectly employed and/or exercised control over the
7 wages, hours and/or working conditions of the Representative Plaintiff and Class Members
8 employed by Defendant in various California counties, including, but not necessarily limited to,
9 Alameda County.

10 19. Those defendant parties identified as Does 1 through 100, inclusive, are and were,
11 at all relevant times herein-mentioned, officers, directors, partners, and/or managing agents of
12 Defendant and/or some/each of the remaining defendants. The Representative Plaintiff is informed
13 and believes and, on that basis, alleges that, at all relevant times herein mentioned, each of the
14 defendants identified as Does 1 through 100, inclusive, employed and/or exercised control over the
15 wages, hours and/or working conditions of Representative Plaintiff and the Class Members at
16 various California locations, as identified in the preceding paragraph.

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

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

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CLASS ACTION ALLEGATIONS

22. Representative Plaintiff brings this action on behalf of herself and as a class action on behalf of the following Plaintiff Class:

All persons who were employed since March 4, 2005 by defendant T-Mobile USA, Inc. in an hourly management position in any of its retail stores within the State of California.

23. Defendant, its officers and directors, are excluded from the Plaintiff Class.

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

a. Commonality: 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:

- i. Whether Defendant violated California Labor Code § 2802 by charging and/or otherwise requiring Class Members to pay all or a portion of normal business expenses of Defendant, without reimbursement;
- ii. Whether Defendant violated California law by failing to pay compensation to Class Members for all hours worked;
- iii. Whether Defendant violated California Labor Code §§ 201-204 by failing to pay all wages due and owed following each payroll cycle and/or at the time that Class Members' employment with Defendant terminated;
- iv. Whether the Representative Plaintiff and Class Members are entitled to penalties pursuant to California Labor Code §§ 203 and/or 204;
- v. Whether Defendant violated California Labor Code § 220 by failing to provide accurate semimonthly itemized wage statements to Class Members of total hours worked for each and all applicable hourly rates in effect during each relevant pay period;
- vi. Whether Defendant violated California Labor Code §§ 226.7 and/or 512 by failing to consistently provide uninterrupted meal and/or rest periods to Class Members;
- vii. Whether Defendant violated California Labor Code § 1174 by failing to keep accurate records of employees' hours of work; and
- viii. Whether Defendant violated California Business and Professions Code §§ 17200, *et seq.* by engaging in unfair, unlawful and/or fraudulent business practices.

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- b. Typicality: The Representative Plaintiff's claims are typical of the claims of the Plaintiff Class.
- 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 hundreds (if not thousands) of individuals. Membership in the Plaintiff Class will be determined upon analysis of employee and payroll, among other, records required by law to be maintained by Defendant.
- d. Adequacy of Representation: The Representative Plaintiff in this class action is an adequate representative of the class, insofar as the Representative Plaintiff's claims are typical of those of the Plaintiff Class, and the Representative Plaintiff has the same interests 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, very experienced in litigation of this nature. The Representative Plaintiff is not subject to any individual defenses unique from those conceivably applicable to the class. The Representative Plaintiff anticipates no management difficulties in this litigation.
- e. 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 impracticable 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 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.

COMMON FACTUAL ALLEGATIONS

25. As described herein, Defendant has, for years, knowingly failed to adequately compensate its retail management employees for all wages earned, including compensation for missed meal and/or rest periods and reimbursements for the incurrence of business-related expenses, thereby enjoying a significant competitive edge over other retailers.

26. Even upon termination or resignation of the employment of numerous Class Members, Defendant has declined to pay all wages due, in blatant violation of California Labor Code §§ 201 and/or 202.

1 27. Defendant also failed to provide Representative Plaintiff and the Class Members with
2 accurate semimonthly itemized wage statements of the total number of hours worked by each, and
3 all applicable hourly rates in effect during the pay period in violation of California Labor Code §
4 226. In so doing, Defendant has not only failed to pay its workers the full amount of compensation
5 due, it has also, until now, effectively shielded itself from its employees' scrutiny for its unlawful
6 conduct by concealing the magnitude (i.e., the full number of hours worked) and financial impact
7 of its wrongdoing.

8 28. California Labor Code §§ 201 and 202 require Defendant to pay its employees all
9 wages due immediately upon discharge and/or within seventy-two hours of the resignation of their
10 employment. California Labor Code § 203 provides that, if an employer willfully fails to timely pay
11 such wages, the employer must, as a penalty, continue to pay the subject employees' wages until the
12 back wages are paid in full or an action is commenced, up to a maximum of thirty days of wages.

13 29. Representative Plaintiff and all persons similarly situated are entitled to unpaid
14 compensation, yet, to date, have not received such compensation, despite the termination/resignation
15 of certain Class Members' employment with Defendant.

16 30. More than thirty days have passed since Representative Plaintiff and/or certain Class
17 Members have left Defendant's employ.

18 31. As a consequence of Defendant's willful refusal to pay compensation for all hours
19 worked, certain Class Members are entitled to thirty days wages, as a penalty under California Labor
20 Code § 203, together with attorneys' fees and costs.

21 32. Furthermore, as a consequence of Defendant's willful refusal to provide an
22 uninterrupted thirty minute meal period within the first five hours of Class Members' shifts, as
23 required under California Labor Code § 512 and Section 11 of the applicable IWC Wage Order,
24 Class Members are entitled to one hour of wages for each day that they were denied at least one meal
25 period, as provided under California Labor Code § 226.7, together with interest thereon, penalties,
26 attorneys' fees and costs.

27 33. Furthermore, as a consequence of Defendant's willful refusal to provide a ten minute
28 rest period once during each four hour (or major fraction thereof) segment of work, as prescribed by

1 Section 12 of the applicable IWC Wage Order, Class Members are entitled to one hour of wages for
2 each day that they were denied at least one rest period, as provided under California Labor Code §
3 226.7, together with interest thereon, penalties, attorneys' fees and costs.

4 34. The Representative Plaintiff is informed and believes and, on that basis, alleges that
5 Defendant's failure to provide meal and/or rest periods entitled the Plaintiff Class to wages therefor,
6 yet said wages were not paid in accordance with California law, in further violation of the law.

7 35. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
8 Representative Plaintiff and Class Members have sustained damages, as described above, including
9 loss of earnings for uncompensated meal and rest periods and for work performed "off the clock,"
10 on behalf of Defendant, in an amount to be established at trial. As a further direct and proximate
11 result of Defendant's unlawful conduct, as set forth herein, Representative Plaintiff and Class
12 Members are entitled to recover various penalties, in an amount to be established at trial, as well as
13 interest, costs and attorneys' fees, pursuant to statute.

14 36. Representative Plaintiff, individually, and on behalf of the Plaintiff Class, seeks
15 injunctive relief, prohibiting Defendant from engaging in the illegal labor acts described herein in
16 the future as well as restitution of costs incurred by the Plaintiff Class under California's Unfair
17 Competition Law. Unless enjoined, Defendant's unlawful conduct will continue unchecked, while
18 the Plaintiff Class bears the financial brunt of Defendant's unlawful conduct.

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20
21 **FIRST CAUSE OF ACTION**
22 **UNLAWFUL FAILURE TO PAY WAGES DUE**
(Violation of IWC Wage Order and California Labor Code)

23 37. 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 38. At all relevant times, Defendant was aware of and was under a duty to comply with
26 various provisions of the applicable California IWC Wage Order as well as California Labor Code
27 §§ 200-204, 510 and 1198.

28

1 39. During the Class Period, Representative Plaintiff and Class Members were employed
2 by and did perform work for Defendant, often times while working “off-the-clock,” in excess of
3 eight hours in a workday and/or in excess of forty hours in a workweek. The precise number of hours
4 will be proven at trial.

5 40. During said time period, Defendant refused to compensate Representative Plaintiff
6 and Class Members for some and/or all wages due, including overtime wages and compensation for
7 missed meal and/or rest periods, in violation of the applicable California Wage Order(s) and/or the
8 California Labor Code.

9 41. By refusing to compensate Representative Plaintiff and Class Members for all wages
10 earned, Defendant violated the California Labor Code and the applicable IWC Wage Order.

11 42. Moreover, during said time period, Representative Plaintiff and many of the Class
12 Members herein were employed by and were thereafter terminated or resigned from their positions
13 with Defendant, yet were not paid all wages due upon said termination or within seventy-two hours
14 of said resignation of employment therefrom. Said non-payment of all wages due was the direct and
15 proximate result of a willful refusal to do so by Defendant.

16 43. More than thirty days has elapsed since Representative Plaintiff and certain Class
17 Members were terminated and/or resigned from the Defendant’s employ.

18 44. As a direct and proximate result of Defendant’s unlawful conduct, as set forth herein,
19 Representative Plaintiff and Class Members have sustained damages, including loss of earnings for
20 hours worked on behalf of Defendant (including premium pay for overtime hours worked), in an
21 amount to be established at trial. As a further direct and proximate result of Defendant’s unlawful
22 and willful conduct, as set forth herein, Representative Plaintiff and certain Class Members are
23 entitled to recover “waiting time” penalties/wages, pursuant to California Labor Code § 203, in an
24 amount to be established at trial, costs and attorneys’ fees, pursuant to statute.

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

45. 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.

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

47. 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.

(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.

48. Moreover, California Labor Code § 512 provides:

(a) 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.

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

50. Representative Plaintiff is informed and believes and, on that basis, alleges that Defendant has never paid compensation to any Class Member due to Defendant's violations of these California Labor Code provisions.

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

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

5 **THIRD CAUSE OF ACTION**
6 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**
7 **(California Labor Code §§ 2820)**

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

10 53. During the Class Period, Defendant required Class Members to purchase tools,
11 equipment and/or other items, and/or otherwise incur business expenses necessary for the
12 performance of their work for Defendant as a term and condition of their employment therewith and
13 failed to reimburse Class Members for same.

14 54. Thus, Representative Plaintiff and the Plaintiff Class have expenditures and losses
15 which were incurred in direct consequence of the discharge of their duties and/or of their obedience
16 to the directions of their employer, which have not yet been reimbursed by Defendant.

17 55. At all relevant times, Defendant was aware of and was under a duty to comply with
18 various provisions of California's Labor Code, including but not limited to, Section 2802 thereof.

19 56. California Labor Code § 2802 provides:

20 (a) An employer shall indemnify his or her employee for all
21 necessary expenditures or losses incurred by the employee in direct
22 consequence of the discharge of his or her duties, or of his or her
23 unless the employee, at the time of obeying the directions, believed
24 them to be unlawful.

25 57. By requiring members of the Plaintiff Class to incur uncompensated expenses in
26 direct consequence of the discharge of their duties, the Plaintiff Class was forced to contribute to the
27 capital and expenses of the Defendant's business which is legally a cash bond and which must be
28 refunded by Defendant to each Class Member.

58. Therefore, Representative Plaintiff, individually, and on behalf of the Plaintiff Class,
demands reimbursement for expenditures or losses incurred by Plaintiff Class in direct consequence

1 of the discharge of their duties and/or of their obedience to the directions of Defendant, plus return
2 of all cash bonds or other coerced investments in Defendant's business, with interest at the statutory
3 rate, plus costs and attorneys' fees, pursuant to statute.

4
5 **FOURTH CAUSE OF ACTION**
6 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
7 **(California Labor Code §§ 226 and 1174)**

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

10 60. California Labor Code § 226 provides:

11 (a) Every employer shall, semimonthly or at the time of each
12 payment of wages, furnish each of his or her employees, either as a
13 detachable part of the check, draft, or voucher paying the employee's
14 wages, or separately when wages are paid by personal check or cash,
15 an accurate itemized statement in writing showing (1) gross wages
16 earned, (2) total hours worked by the employee, except for any
17 employee whose compensation is solely based on a salary and who is
18 exempt from payment of overtime under subdivision (a) of Section
19 515 or any applicable order of the Industrial Welfare Commission, (3)
20 the number of piece-rate units earned and any applicable piece rate if
21 the employee is paid on a piece-rate basis, (4) all deductions,
22 provided that all deductions made on written orders of the employee
23 may be aggregated and shown as one item, (5) net wages earned, (6)
24 the inclusive dates of the period for which the employee is paid, (7)
25 the name of the employee and his or her social security number,
26 except that by January 1, 2008, only the last four digits of his or her
27 social security number or an employee identification number other
28 than a social security number may be shown on the itemized
statement, (8) the name and address of the legal entity that is the
employer, and (9) all applicable hourly rates in effect during the pay
period and the corresponding number of hours worked at each hourly

61. Moreover, California Labor Code § 226 further provides:

(c) 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.

1 62. Finally, California Labor Code § 1174 provides:

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

6 63. Defendant failed to provide timely, accurate itemized wage statements to
7 Representative Plaintiff and Class Members in accordance with California Labor Code § 226(a) and
8 failed to maintain accurate records in violation of Labor Code § 1174(d). Specifically, Representative
9 Plaintiff is informed and believes and, on that basis, alleges that none of the statements provided by
10 Defendant to the Plaintiff Class has accurately reflected actual gross wages earned, net wages earned,
11 or the appropriate deductions therefor.

12 64. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
13 Representative Plaintiff and Class Members are entitled to recover penalties, in an amount to be
14 established at trial, as well as costs and attorneys' fees, pursuant to statute.

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

18 65. 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 66. Representative Plaintiff further brings this cause of action on behalf of the general
21 public, seeking equitable and statutory relief to stop the misconduct of Defendant, as complained of
22 herein, and to compel the payment of restitution by Defendant as a result of the unfair, unlawful,
23 and/or fraudulent business practices described herein. The knowing conduct of Defendant, as alleged
24 herein, constitutes an unfair, unlawful and/or fraudulent business practice, as set forth in California
25 Business & Professions Code §§ 17200, *et seq.* Specifically, Defendant conducted business activities
26 while failing to comply with the legal mandates cited herein.

27 67. Defendant's knowing failure to adopt policies in accordance with and/or adhere to
28 the laws referenced in this Complaint, all of which are binding upon and burdensome to Defendant's

1 competitors, engenders an unfair competitive advantage for Defendant, thereby constituting an unfair
2 business practice, as set forth in California Business & Professions Code §§ 17200, *et seq.*

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

8 69. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
9 Defendant has been unjustly enriched in an amount equaling or exceeding the amount of damages,
10 penalties, interest, fees and costs payable to the Representative Plaintiff and the Plaintiff Class
11 herein. Representative Plaintiff and the Plaintiff Class are entitled to restitution of all of Defendant's
12 ill-gotten gains, according to proof, and to injunctive relief to halt Defendant's unfair, unlawful
13 and/or fraudulent business practices.

14
15 **RELIEF SOUGHT**

16 **WHEREFORE, the Representative Plaintiff**, on behalf of herself and the proposed
17 **Plaintiff Class**, prays for judgment and the following specific relief against **Defendant(s)**, jointly
18 and separately, as follows:

- 19 1. For an Order certifying the proposed Plaintiff Class and/or any other appropriate
20 subclass(es) under California Code of Civil Procedure § 382;
- 21 2. That Defendant(s) is/are found to have violated each of the provisions of the
22 California Labor Code cited herein as to the Representative Plaintiff and the Plaintiff Class;
- 23 3. That Defendant(s) is/are found to have violated California Labor Code §§ 200-204,
24 510 and 1198 and various provisions of the applicable IWC Wage Order(s) by failing and/or refusing
25 to compensate Representative Plaintiff and Class Members for some and/or all wages due.
- 26 4. That Defendant(s) is/are found to have violated California Labor Code § 2802(a) by
27 willfully failing to reimburse members of the Plaintiff Class for expenses made on behalf of
28 Defendant(s);

1 5. That Defendant(s) is/are found to have violated California Labor Code §§ 226.7
2 and/or 512 for willful failure to provide meal and/or rest periods, and violated the relevant Sections
3 of the applicable IWC Wage Order to pay wages for these violations;

4 6. That Defendant(s) is/are found to have violated California Labor Code §§ 201-203
5 for willful failure to pay all compensation owed at the time of termination of employment to certain
6 members of the Plaintiff Class;

7 7. That Defendant(s) is/are found to have violated the record keeping provisions of
8 California Labor Code §§ 226(a) and 1174(d) and Section 7 of the applicable IWC Wage Order by
9 willfully failing to maintain and/or provide accurate semimonthly itemized wage statements for
10 Representative Plaintiff and Class Members;

11 8. That Defendant(s) is/are found to have violated California Business & Professions
12 Code § 17200, *et seq.* by failing to pay the Representative Plaintiff and the Class Members all wages
13 due and compensation for meal and/or rest periods denied, by failing to reimburse them for expenses
14 made on behalf of Defendant(s) and by failing to pay penalties to particular Class Members;

15 9. For an Order requiring Defendant(s) to pay restitution to members of the Plaintiff
16 Class as a result of the unfair, unlawful and/or fraudulent activities detailed herein, pursuant to
17 California Business and Professions Code §§ 17200, *et seq.*;

18 10. That Defendant(s) further be enjoined to cease and desist from unlawful activities in
19 violation of California Business & Professions Code § 17200, *et seq.*;

20 11. That the Court make an award to the Representative Plaintiff and the Plaintiff Class
21 of damages in the amount of unpaid compensation, unlawful deductions, interest, and penalties, in
22 amounts to be proven at trial;

23 12. For punitive/exemplary damages in an amount appropriate and sufficient to punish
24 Defendant(s), and to deter others from engaging in similar misconduct in the future;

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

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

28 15. For reasonable attorneys' fees, pursuant to statute; and

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

JURY DEMAND

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

Dated: March 4, 2009

SCOTT COLE & ASSOCIATES, APC

By: 
Molly A. Kuehn, Esq.
Attorneys for the Representative Plaintiff
and the Plaintiff Class