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SEP 10 2004

D-30
Assigned to Judge
Charles W. Dwyer

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 BY D.M. SWAIN, DEPUTY

* Complex

6 Attorneys for Representative Plaintiff
 7 and the Plaintiff Class(es)

8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **IN AND FOR THE COUNTY OF LOS ANGELES**

11 DONALD W. ROWE, individually, and
 12 on behalf of all others similarly situated,

13 Plaintiffs,

14 vs.

15 CALIFORNIA COMMERCE CASINO,
 16 INC., dba COMMERCE CASINO, and
 17 DOES 1 through 25, inclusive,

18 Defendants.

Case No.: 04-10000-4-21283
 RECEIVED: 09-10-04 10:12:00 AM
 CLASS ACTION
 RECEIVED: 09-10-04 10:12:00 AM

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

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19 Representative Plaintiff alleges as follows:

20 **PRELIMINARY STATEMENT**

21 1. This is a class action, under Code of Civil Procedure § 382, seeking unpaid wages,
 22 including unpaid overtime compensation and interest thereon, reimbursement of tips/gratuities,
 23 "waiting time" penalties, injunctive and other equitable relief and reasonable attorneys' fees and
 24 costs, under, *inter alia*, California Code of Civil Procedure § 382, Labor Code §§ 201, 202, 203,
 25 218.5, 226, 351, 1174 and 1194, and CCP § 1021.5, on behalf of Plaintiff and all other persons who
 26 are or have been employed as Casino Dealers by defendant CALIFORNIA COMMERCE CASINO
 27 and DOES 1 through 25, inclusive (collectively "COMMERCE CASINO") at its Commerce
 28 California gaming facility at any time after the commencement of the pay period including

1 September 9, 2000. The Representative Plaintiff, on behalf of himself and the Class Members, also
 2 seeks injunctive relief and restitution of all benefits COMMERCE CASINO has enjoyed from its
 3 failure to pay overtime compensation under Business and Professions Code §§ 17200-17208.

4 2. The class period is designated as the time from at least the commencement of the pay
 5 period including September 9, 2000 through the trial date and is based upon the allegation that these
 6 violations of California's wage and hour laws, as described more fully below, have been ongoing
 7 since at least this date. During the class period, COMMERCE CASINO has had a consistent policy
 8 of (1) permitting, encouraging, and/or requiring its Casino Dealers, including Representative Plaintiff
 9 and Class Members, to work in excess of eight hours per day and in excess of forty hours per week
 10 without paying them overtime compensation as required by California state wage and hour laws; (2)
 11 unlawfully demanding that the Representative Plaintiff and the Class Members contribute a portion
 12 of their daily wages to an illegal "tip-pool" in order to provide compensation to workers holding
 13 supervisory authority over them; (3) willfully failing to pay compensation (including unpaid
 14 overtime) owing in a prompt and timely manner to those Class Members whose employment with
 15 COMMERCE CASINO terminated; and (4) willfully failing to provide Plaintiff and the California
 16 Class Members with accurate semimonthly itemized statements of the total number of hours each
 17 of them worked, the full amount of gratuities earned, the applicable deductions and the applicable
 18 hourly rates in effect during the pay period.

19
 20 INTRODUCTION

21 3. Nearly a hundred years ago, California enacted its first daily overtime law, thereby
 22 setting California's first workday standard, long before the federal government enacted overtime
 23 protections for workers.

24 4. According to findings of the California Legislature, numerous studies have linked
 25 long work hours to increased rates of accident and injury and a loss of family cohesion when either
 26 or both parents are kept away from home for extended periods of time, on either a daily or weekly
 27 basis.

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1 5. Since its inception, defendant COMMERCE CASINO has offered gaming services
 2 and hospitality to the public, primarily through the services of its Casino Dealers, such as the
 3 Representative Plaintiff and Class Members. Representative Plaintiff is informed and believes and,
 4 based thereon, alleges that, within the class period, COMMERCE CASINO has employed hundreds,
 5 if not thousands, of individuals in recent years alone in Casino Dealer positions, employment
 6 positions which have not and currently do not meet the test for exemption from the payment of
 7 overtime wages and which do, on a regular basis, receive gratuities from COMMERCE CASINO
 8 patrons.

9 6. Despite actual knowledge of these facts and legal mandates, COMMERCE CASINO
 10 has enjoyed an advantage over its competition and a resultant disadvantage to its workers by electing
 11 not to pay all premium (overtime) and/or "penalty" (a.k.a. "waiting time") wages to Casino Dealers
 12 nor has it provided them with accurate and complete semimonthly itemized statements.

13 7. Representative Plaintiff is informed and believes and, based thereon, alleges that
 14 officers of COMMERCE CASINO knew of these facts and legal mandates, yet, nonetheless,
 15 repeatedly authorized and/or ratified the violation of the laws cited herein.

16 8. Despite COMMERCE CASINO's knowledge of the its Casino Dealers' entitlement
 17 to premium (overtime) pay for excess hours worked and retention of all gratuities earned,
 18 COMMERCE CASINO failed to provide or require the use, maintenance or submission of accurate
 19 and complete time records by members of the Plaintiff Classes, in violation of California Labor Code
 20 §1174(d)). This action is brought to redress and end this long-time pattern of unlawful conduct.

21
 22 JURISDICTION AND VENUE

23 9. This Court has jurisdiction over Representative Plaintiff's and Class Members' claims
 24 for unpaid overtime wages under Labor Code § 1194, for reimbursement of all gratuities wrongfully
 25 withheld under Labor Code § 351, for penalties for failure to pay wages of discharged employees
 26 under Labor Code § 203 and for penalties for failure to provide itemized statements of actual hours
 27 worked and all applicable hourly rates under Labor Code §§ 226 and 353.

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1 10. This Court has jurisdiction over Representative Plaintiff's and Class Members' claims
 2 for injunctive relief, and restitution of ill-gotten benefits arising from defendant COMMERCE
 3 CASINO's unlawful business practices under Business & Professions Code §§ 17203 and 17204.

4 11. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
 5 Civil Procedure § 395(a). Defendant COMMERCE CASINO operates its Casino facility in Los
 6 Angeles County, and transacts business, has agents, and is otherwise within this Court's jurisdiction
 7 for purposes of service of process. The unlawful acts alleged herein have a direct effect on
 8 Representative Plaintiff and those similarly situated within the State of California and within Los
 9 Angeles County. Defendant COMMERCE CASINO operates its Casino facility and has employed
 10 numerous Class Members in Los Angeles County.

11
 12 PLAINTIFFS

13 12. During a portion of the herein-relevant time period, the Representative Plaintiff
 14 identified herein was and is a natural person, and was, during the relevant time period identified
 15 herein, employed by defendant COMMERCE CASINO as a Casino Dealer, an employment position
 16 which has not and currently does not meet the test for exemption from the payment of overtime
 17 wages and which does, on a regular basis, receive gratuities from COMMERCE CASINO patrons.

18 13. As used throughout this Complaint, the terms "Plaintiffs" and/or "Class(es)" refer to
 19 the named plaintiff herein as well as each and every person eligible for membership in one or more
 20 of the Plaintiff Classes, as further described and defined below.

21 14. The Plaintiff Classes consist, generally, of all members who are/were employed as
 22 Casino Dealers for COMMERCE CASINO, and who: (1) worked (a) in excess of eight hours per
 23 workday and/or in excess of forty hours per work week at any time between the commencement of
 24 the pay period including September 9, 2000 and the present and (b) did not receive premium
 25 (overtime) pay for all excess hours worked thereby in any given workday/workweek and/or (2) did
 26 not receive all gratuities due as a result of Defendant's unlawful "tip-pooling" scheme imposed
 27 thereby upon its Casino Dealers.

28 //

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1 15. At all times herein relevant, the Representative Plaintiff was and now is a person
2 within each of the Classes of persons further described and defined herein.

3 16. The Representative Plaintiff brings this action on behalf of himself and as a class
4 action, pursuant to California Code of Civil Procedure §382, on behalf of all persons or entities
5 similarly situated and proximately damaged by the unlawful conduct described herein.
6

7 DEFENDANTS

8 17. At all times herein relevant, defendants COMMERCE CASINO, INC. and Does 1
9 through 25, inclusive (collectively referred to as "COMMERCE CASINO" and/or "Defendant")
10 were corporations, duly licensed and located and doing business in, but not limited to, the County
11 of Los Angeles, in the State of California.

12 18. Those defendants identified as Does 1 through 25, inclusive, are and were, at all
13 relevant times herein-mentioned, officers, directors and/or managing agents of some/each of the
14 remaining defendants.

15 19. Representative Plaintiff is unaware of the true names and capacities of those
16 defendants sued herein as Does 1 through 25, inclusive and, therefore, sues these defendants by such
17 fictitious names. Representative Plaintiff will seek leave of court to amend this Complaint when
18 same are ascertained. Representative Plaintiff is informed and believes and, on that basis, alleges
19 that each of the fictitiously-named defendants is responsible in some manner for, gave consent to,
20 ratified and/or authorized the conduct herein alleged and that Representative Plaintiff's and Class
21 Members' damages, as herein alleged, were proximately caused thereby.

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

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CLASS ACTION ALLEGATIONS

21. Representative Plaintiff DONALD W. ROWE brings this action on behalf of himself and as a class action on behalf of all persons or entities similarly situated and proximately damaged by COMMERCE CASINO's conduct, as set forth herein, including, but not necessarily limited to the following Classes:

Overtime Class:

All persons who are/were employed as Casino Dealers by COMMERCE CASINO, INC. and were classified thereby as [overtime] non-exempt employees; who: (1) worked in excess of eight hours per workday and/or in excess of forty hours per workweek at any time between September 9, 2000 and the present and (2) did not receive premium (overtime) pay for all excess hours worked thereby in any given workday/workweek.

"Tip-Pooling" Class:

All persons who are/were employed as Casino Dealers by COMMERCE CASINO, INC. and were required to share ["tip-pool"] tips/gratuities with other COMMERCE CASINO, INC. employees.

22. Defendants, their officers and directors are excluded from each of the Classes.

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

a. Numerosity: A class action is the only available method for the fair and efficient adjudication of this controversy. The members of the classes are so numerous that joinder of all members is impractical, if not impossible, insofar as Representative Plaintiff is informed and believes and, on that basis, alleges that the total membership in each of the classes is in the hundreds, if not thousands of individuals. Membership in the Classes will be determined upon analysis of employee and payroll, among other, records maintained by COMMERCE CASINO.

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

- i. whether defendant COMMERCE CASINO violated IWC Wage Orders and/or Labor Code § 510 by failing to pay overtime compensation to Casino Dealers who worked in excess of forty hours per week and/or eight hours per day.
- ii. whether defendant COMMERCE CASINO violated Business and Professions Code § 17200 by failing to pay overtime compensation to Casino Dealers who worked in excess of forty hours per week and/or eight hours per day.
- iii. whether defendant COMMERCE CASINO violated Labor Code §

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351 by unlawfully requiring Casino Dealers to share tips/gratuities with other employees of COMMERCE CASINO;

iv. whether defendant COMMERCE CASINO violated Labor Code § 1174 by failing to keep accurate records of employees' hours of work.

v. whether defendant COMMERCE CASINO violated Labor Code §§ 201-203 by failing to pay overtime wages due and owing at the time that certain Class Members' employment with Defendant terminated.

vi. whether defendant COMMERCE CASINO violated Labor Code §§ 226 and 353 by failing to provide the semimonthly itemized statements to Class Members of total hours worked by each and all applicable hourly rates in effect during the pay period.

vii. whether Representative Plaintiff and the Classes are entitled to "waiting time" penalties, pursuant to Labor Code § 203.

c. Typicality: The Representative Plaintiff's claims are typical of the claims of the Classes. The Representative Plaintiff and all members of the Classes sustained injuries and damages arising out of and caused by defendant COMMERCE CASINO'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 members of the Classes 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 Classes, 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 Classes, in that the Representative Plaintiff's claims are typical of those of the Classes 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, experienced in litigation of this nature. The Representative Plaintiff is not subject to any individual defenses unique from those conceivably applicable to the Classes as a whole. The Representative Plaintiff anticipates no management difficulties in this litigation.

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COMMON FACTUAL ALLEGATIONS

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24. As described herein, COMMERCE CASINO has, for years, knowingly failed to adequately compensate Casino Dealers within the class definition(s) identified above for premium (overtime) wages due, thereby enjoying a significant competitive edge over other service companies within its industry. Even upon termination or resignation of the employment of numerous class members, COMMERCE CASINO has declined to pay these wages, in blatant violation of California Labor Code §§ 201 and/or 202.

25. Furthermore, despite its knowledge of the Representative Plaintiff's and the Class Members' entitlement to premium (overtime) pay for excess hours worked and entitlement to receipt of all gratuities received from COMMERCE CASINO patrons, COMMERCE CASINO violated California Labor Code § 174[d] by failing to provide or require the use, maintenance or submission of time records by members of the Plaintiff Classes. COMMERCE CASINO also failed to provide Representative Plaintiff and members of the Classes 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 and 353. In so doing, COMMERCE CASINO has not only failed to pay its workers the full amount of compensation due, it has, until now, effectively shielded itself from its employees' scrutiny for its unlawful conduct by concealing the magnitude (i.e., the full number of hours worked) and financial impact of its wrongdoing.

26. California Labor Code §§ 201 and 202 require defendant COMMERCE CASINO to pay its employees all wages due immediately upon discharge. 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 until an action is commenced. The penalty cannot exceed 30 days of wages.

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

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2025 RELEASE UNDER E.O. 14176

1 28. More than 30 days have passed since certain Class Members have left defendant
2 COMMERCE CASINO's employ.

3 29. As a consequence of defendant COMMERCE CASINO's willful conduct in not
4 paying full compensation to these terminated Class Members, these particular Class Members are
5 entitled to 30 days wages as a penalty under Labor Code § 203, together with interest thereon and
6 attorneys' fees and costs.

7 30. As a direct and proximate result of COMMERCE CASINO's unlawful conduct, as
8 set forth herein, particular Class Members have sustained damages, as described above, including,
9 but not limited to a loss of earnings for hours of overtime worked on behalf of Defendants, in an
10 amount to be established at trial. As a further direct and proximate result of Defendant's unlawful
11 conduct, as set forth herein, certain Class Members herein are entitled to recover "waiting time"
12 penalties/wages (pursuant to California Labor Code § 203) and penalties for failure to provide
13 semimonthly statements of actual hours worked and all applicable hourly rates (pursuant to Labor
14 Code § 226 and 353) in an amount to be established at trial. As a further direct and proximate result
15 of Defendant's unlawful conduct, as set forth herein, particular Class Members are also entitled to
16 recover costs and attorneys' fees for this particular violation, pursuant to statute.

17
18 **FIRST CAUSE OF ACTION**
19 **UNLAWFUL FAILURE TO PAY REQUIRED OVERTIME**
(California Labor Code § 510)

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

23 32. During the time period beginning as of the commencement of the pay period
24 including September 9, 2000 and continuing through the present, Representative Plaintiff and the
25 Class Members worked in excess of eight hours in a workday and/or forty hours in a workweek.
26 The precise number of hours will be proven at trial.

27 33. During said time period, defendant COMMERCE CASINO refused to
28 compensate Representative Plaintiff and the Class Members for some and/or all of the overtime

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1 wages earned in violation of applicable Wage Order(s) and the California Labor Code.

2 34. During said time period, particular Class Members herein were employed by and
3 were thereafter terminated or resigned from their positions with COMMERCE CASINO, yet
4 were not paid all premium (overtime) and/or other wages due upon said termination or within
5 seventy-two hours of said resignation of employment therefrom. Said non-payment was the
6 direct and proximate result of a willful refusal to do so by Defendant.

7 35. At all relevant times, Defendant was aware of and was under a duty to comply
8 with various provisions of the California Labor Code. Some of these Labor Code provisions
9 include(d):

- 10 a. Labor Code §203: "If an employer willfully fails to pay, without
11 abatement or reduction, in accordance with Sections 201, 201.5, 202, and
12 205.5, any wages of an employee who is discharged or who quits, the
13 wages of the employee shall continue as a penalty from the due date
14 thereof at the same rate until paid or until an action therefor is
15 commenced; but the wages shall not continue for more than 30 days."
- 16 b. Labor Code §510: "Any work in excess of eight hours in one workday
17 and any work in excess of 40 hours in any one workweek and the first
18 eight hours worked on the seventh day or work in any one workweek shall
19 be compensated at the rate of no less than one and one-half times the
20 regular rate of pay for an employee"
- 21 c. Labor Code § 1194: "Notwithstanding any agreement to work for a
22 lesser wage, any employee receiving less than the legal minimum wage or
23 the legal overtime compensation applicable to the employee is entitled to
24 recover in a civil action the unpaid balance of the full amount of this
25 minimum wage or overtime compensation, including interest thereon,
26 reasonable attorney's fees, and costs of suit."
- 27 d. Labor Code §1198: "[T]he maximum hours of work and the standard
28 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."
- e. Labor Code §1199: "Every employer or other person acting either
individually or as an officer, agent, or employee of another person is guilty
of a misdemeanor and is punishable by a fine of not less than one hundred
dollars (\$100) or by imprisonment for not less than 30 days, or by both,
who . . . (a) Requires or causes any employee to work for longer hours
than those fixed, or under conditions of labor prohibited by an order of the
commission. . . [or] (c) Violates or refuses or neglects to comply with any
provision of this chapter or any order or ruling of the commission."

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1 36. By refusing to compensate Representative Plaintiff and the Class Members for
 2 overtime wages earned; Defendants violated those California Labor Code provisions cited herein,
 3 as well as various IWC Wage Order provisions.

4 37. As a direct and proximate result of Defendant's unlawful conduct, as set forth
 5 herein, Representative Plaintiff and the Class Members have sustained damages, including loss
 6 of earnings for hours of overtime worked on behalf of Defendant, in an amount to be established
 7 at trial. As a further direct and proximate result of Defendant's unlawful conduct, as set forth
 8 herein, some Class Members are entitled to recover "waiting time" penalties/wages, in an amount
 9 to be established at trial, as well as costs and attorneys' fees, pursuant to statute.

11 **SECOND CAUSE OF ACTION**
 12 **UNLAWFUL "TIP-POOLING"**
 13 **(California Labor Code § 351)**

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

17 39. At all relevant times, Defendant was aware of and was under a duty to comply
 18 with California Labor Code § 351. Specifically, California Labor Code § 351 provides:

19 No employer or agent shall collect, take, or receive any gratuity or
 20 a part thereof that is paid, given to, or left for an employee by a
 21 patron, or deduct any amount from wages due an employee on
 22 account of a gratuity, or require an employee to credit the amount,
 23 or any part thereof, of a gratuity against and as a part of the wages
 24 due the employee from the employer. Every gratuity is hereby
 25 declared to be the sole property of the employee or employees to
 26 whom it was paid, given, or left for. An employer that permits
 27 patrons to pay gratuities by credit card shall pay the employees the
 28 full amount of the gratuity that the patron indicated on the credit
 card slip, without any deductions for any credit card payment
 processing fees or costs that may be charged to the employer by the
 credit card company. Payment of gratuities made by patrons using
 credit cards shall be made to the employees not later than the next
 regular payday following the date the patron authorized the credit
 card payment.

29 40. By requiring Casino Dealers to share gratuities earned thereby with other
 30 employees of COMMERCE CASINO, Defendant violated this California Labor Code provision.

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1 41. As a direct and proximate result of Defendant's unlawful conduct, as set forth
 2 herein, Representative Plaintiff and the Class Members have sustained damages, including loss
 3 of earnings, in an amount to be established at trial. As a further direct and proximate result of
 4 Defendant's unlawful conduct, as set forth herein, Representative Plaintiff and the Class
 5 Members are entitled to recover various penalties, in an amount to be established at trial, as well
 6 as costs and attorneys' fees, pursuant to statute.

7
 8 **THIRD CAUSE OF ACTION**
 9 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
 10 **(California Labor Code §§ 226 and 353)**

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

14 43. At all relevant times, Defendant was aware of and was under a duty to comply
 15 with California Labor Code §§ 353 and 226.

16 44. Specifically, California Labor Code § 353 provides:

17 Every employer shall keep accurate records of all gratuities
 18 received by him, whether received directly from the employee or
 19 indirectly by means of deductions from the wages of the employee
 20 or otherwise. Such records shall be open to inspection at all
 21 reasonable hours by the department.

22 45. Moreover, California Labor Code § 226(a) provides:

23 Each employer shall semimonthly, or at the time of each payment
 24 of wages, furnish each of his or her employees either as a
 25 detachable part of the check, draft or voucher paying the
 26 employee's wages, or separately when wages are paid by personal
 27 check or cash, an itemized wage statement in writing showing: (1)
 28 gross wages earned; (2) total number of hours worked by each
 employee whose compensation is based on an hourly wage; (3) all
 deductions; provided, that all deductions made on written orders of
 the employee may be aggregated and shown as one item; (4) net
 wages earned; (5) the inclusive date of the period for which the
 employee is paid; (6) the name of the employee and his or her
 social security number; and (7) the name and address of the legal
 entity which is the employer.

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1 46. Finally, California Labor Code § 226(e) provides:

2 An employee suffering injury as a result of a knowing and
3 intentional failure by an employer to comply with subdivision (a) is
4 entitled to recover the greater of all actual damages or fifty dollars
5 (\$50) for the initial pay period in which a violation occurs and one
6 hundred dollars (\$100) per employee for each violation in a
7 subsequent pay period, not exceeding an aggregate penalty of four
8 thousand dollars (\$4,000), and is entitled to an award of costs and
9 reasonable attorney's fees.

10 47. Representative Plaintiff seeks to recover actual damages (including prospective
11 damages associated with filing restatements of earnings with taxing and/or other authorities),
12 costs and attorneys' fees under this section on behalf of himself and the Plaintiff Classes.

13 48. Defendant COMMERCE CASINO failed to provide timely, accurate and
14 complete itemized wage statements to Representative Plaintiff and the Plaintiff Classes in
15 accordance with Labor Code §§ 226 and 353. Plaintiffs have suffered various forms of "injury"
16 due to this unlawful conduct, including, but not necessarily limited to their lost use of the
17 compensation due, being forced to bring this action to redress these violations and/or being
18 forced to file inaccurate wage information with government agencies and, should this action be
19 successful, may be required to restate earnings for prior years and/or incur time and costs in so
20 doing.

21 49. None of the statements provided by Defendant has accurately reflected total
22 number of hours worked, total gratuities earned, actual gross wages earned, net wages earned, or
23 the appropriate deductions.

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

27 50. 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
herein.

51. Representative Plaintiff further brings this cause of action on behalf of the general
public, seeking equitable and statutory relief to stop the misconduct of Defendant, as complained

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1 of herein, and to seek restitution from Defendant through the unfair, unlawful and fraudulent
2 business practices described herein.

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

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

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

16
17 RELIEF SOUGHT

18 WHEREFORE, the Representative Plaintiff, on behalf of himself and the proposed
19 Classes, prays for judgment and the following specific relief against Defendants, and each of
20 them, jointly and separately, as follows:

21 1. For an Order certifying the proposed and/or any other appropriate subclasses
22 under Code of Civil Procedure § 382;

23 2. That defendant COMMERCE CASINO is found to have violated the overtime
24 provisions of the Labor Code as to the Representative Plaintiff and the Classes;

25 3. That defendant COMMERCE CASINO is found to have violated Labor Code §§
26 351 for unlawfully requiring Casino Dealers to share tips/gratuities with other employees of
27 COMMERCE CASINO;

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TEL (415) 931-9800

1 4. That defendant COMMERCE CASINO is found to have violated the record
2 keeping provisions of Labor Code §§§ 226(a), 353 and 1174(d) as to Representative Plaintiff and
3 the Classes and for willful failure to provide accurate semimonthly itemized statements thereto;

4 5. That defendant COMMERCE CASINO is found to have violated Labor Code §§
5 201 and 202 for willful failure to pay all compensation owed at the time of termination of
6 employment to particular members of the Plaintiff Classes;

7 6. That defendant COMMERCE CASINO is found to have violated Business and
8 Professions Code § 17200 by failing to pay Representative Plaintiff and Class Members overtime
9 compensation, "waiting time" penalties, by subjecting Casino Dealers to an unlawful "tip-
10 pooling" system, and/or by failing to provide accurate and complete itemized wage statements;

11 7. An award to Representative Plaintiff and the Classes of damages for the amount
12 of unpaid overtime compensation, the amount of gratuities withheld, the amount of prospective
13 damages associated with filing restatements of earnings with taxing and/or other authorities, and
14 related damages, including interest thereon, and penalties in an amount to be proven at trial;

15 8. That defendant COMMERCE CASINO be ordered to pay restitution to
16 Representative Plaintiff and the Plaintiff Classes due to defendant COMMERCE CASINO's
17 unlawful activities, pursuant to Business and Professions Code §§ 17200-08;

18 9. That defendant COMMERCE CASINO further be enjoined to cease and desist
19 from unlawful activities in violation of Business and Professions Code § 17200;

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

22 11. For Interest on the amount of any and all economic losses, at the prevailing legal
23 rate;

24 12. For reasonable Attorneys' Fees, pursuant to California Labor Code §§218.5 and
25 1194 and/or California Civil Code §1021.5; and

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

28 //

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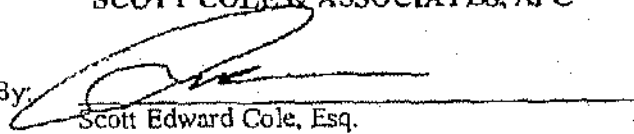
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Dated: September 9, 2004

SCOTT COLE & ASSOCIATES, APC

By



Scott Edward Cole, Esq.
Clyde H. Charlton, Esq.
Matthew R. Bainer, Esq.

Attorneys for the Representative Plaintiff
and the Plaintiff Class(es)

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12/15/04 10:00 AM

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA)
3 COUNTY OF LOS ANGELES) ss

4 I am a resident of the State of California, over the age of eighteen years, and not a
5 party to the within action. My business address is Winston & Strawn LLP, 333 South Grand
6 Avenue, Suite 3800, Los Angeles, CA 90017. On December 14, 2004, I served the within
7 documents:

8 NOTICE OF RELATED CASE

9 I sent such document from facsimile machine on December 14, 2004. I certify that
10 said transmission was completed and that all pages were received and that a report
11 was generated by facsimile machine which confirms said transmission and receipt. I,
12 thereafter, mailed a copy to the interested party(ies) in this action by placing a true
13 copy thereof enclosed in sealed envelop(s) addressed to the parties listed below.



15 by placing the document(s) listed above in a sealed envelope with postage thereon
16 fully prepaid, in the United States mail at Los Angeles, addressed as set forth below.



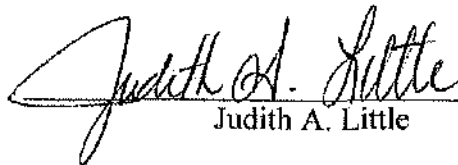
18 by personally delivering the document(s) listed above to the person(s) at the
19 address(es) set forth below.

20 Scott Edward Cole, Esq.
21 Clyde H. Charlton, Esq.
22 Matthew R. Bainer, Esq.
23 Scott Cole & Associates, APC
24 1970 Broadway, Ste. 950
25 Oakland, CA 94612
26 Telephone: (510) 891-9800
27 Facsimile: (510) 891-7030

28 I am readily familiar with the firm's practice of collection and processing
correspondence for mailing. Under that practice it would be deposited with the U.S. Postal
Service on that same day with postage thereon fully prepaid in the ordinary course of business. I
am aware that on motion of the party served, service is presumed invalid if postal cancellation
date or postage meter date is more than on day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the
above is true and correct.

Executed on December 14, 2004, 2004, at Los Angeles, California.


Judith A. Little