

FILED
Superior Court Of California,
Sacramento
Dennis Jones, Executive
Officer
11/26/2008
epasalo
By JP, Deputy
Case Number:
34-2008-00028362-CU-OE-GDS

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

Department
Assignments
Case Management 39
Law and Motion 54
Minors Compromise 22

11 PATRICIA MORGAN, individually, and
12 on behalf of all others similarly situated,

13 Plaintiffs,

14 vs.

15 KOBRA ASSOCIATES, INC., and DOES
16 1 through 100, inclusive,

17 Defendants.

Case No.:

CLASS ACTION

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

18 Representative Plaintiff alleges as follows:

20 **PRELIMINARY STATEMENT**

21 1. This is a class action, seeking unpaid wages, including unpaid minimum wages,
22 overtime compensation and interest thereon, meal and rest period compensation, waiting time
23 penalties, liquidated damages and other penalties, injunctive and other equitable relief and reasonable
24 attorneys' fees and costs, under, *inter alia*, Industrial Welfare Commission Wage Order(s), Labor
25 Code §§ 200-203, inclusive, 218.5, 218.6, 226.7, 510, 512, 1174, 1194, 1197 and 1198; Business
26 & Professions Code § 17200, *et. seq.* and Code of Civil Procedure §1021.5. Representative Plaintiff
27 brings this action, on behalf of herself and all other persons similarly situated (hereinafter referred
28 to as the "Class Members" and/or the "Plaintiff Class") who are or have been employed by

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1 defendants Kobra Associates, Inc. and Does 1 through 100, inclusive (collectively “Kobra” and/or
2 “Defendant[s]”) in any non-exempt position and who work(ed) on the night shift in any of the Jack
3 in the Box fast food restaurants owned and operated by the defendants within the State of California,
4 at any time between December 1, 2004 and the present. Representative Plaintiff, on behalf of herself
5 and the Class Members, also seek injunctive relief and restitution of all benefits Kobra has enjoyed
6 from its failure to pay overtime and/or minimum wages and to provide meal and/or rest periods to
7 Plaintiff and the Plaintiff Class under Business and Professions Code §§ 17200-17208.

8 2. The “Class Period” is designated as the time from December 1, 2004 through the
9 present, based upon the allegation that the violations of California’s wage and hour laws, as
10 described more fully below, have been ongoing since that time. During the Class Period, Kobra has
11 had a consistent policy toward its California non-exempt night-shift employees of permitting,
12 encouraging, and/or requiring the Representative Plaintiff and Class Members to work through paid
13 and/or unpaid meal and/or rest “breaks” and work in excess of eight hours per day and/or forty hours
14 per week (without premium compensation therefor), in violation of California wage and hour laws.
15 Further, these violations have resulted in violations of the California minimum wage laws.

16 INTRODUCTION

17
18 3. Representative Plaintiff is informed and believes and, based thereon, alleges that,
19 within the Class Period, defendant Kobra owns and operates a large number of Jack In the Box fast
20 food restaurants within the State of California. In so doing, Defendant has employed hundreds of
21 individuals in non-exempt, night-shift positions in recent years alone at these facilities/locations
22 within the State of California.

23 4. During the class period referenced herein, Kobra has enjoyed an advantage over its
24 competition and a resultant disadvantage to its workers by electing not to provide meal and/or rest
25 periods to its non-exempt night-shift restaurant employees.

26 5. Despite Kobra’s knowledge of the Plaintiff Class’ entitlement to overtime pay,
27 minimum wages, and meal and/or rest periods for all applicable work periods, Kobra failed to
28 provide same to members of the Plaintiff Class, in violation of the California Labor Code, Industrial

1 Welfare Commission Wage Orders and Title 8 of the California Code of Regulations. This action
2 is brought to redress and end this long-time pattern of unlawful conduct.

3
4 **JURISDICTION AND VENUE**

5 6. This Court has jurisdiction over the Representative Plaintiff's and the Class
6 Members' claims for unpaid wages and/or penalties under, *inter alia*, Industrial Welfare Commission
7 Wage Order(s), Labor Code §§ 200-203, inclusive, 218.5, 218.6, 226, 226.7, 510, 512, 1174, 1194,
8 1197 and 1198; Business & Professions Code § 17200, *et. seq.* and Code of Civil Procedure §1021.5.

9 7. This Court has further jurisdiction over the Representative Plaintiff's and the Class
10 Members' claims for injunctive relief, and restitution of ill-gotten benefits arising from defendant
11 Kobra's unlawful business practices under Business & Professions Code §§ 17203 and 17204.

12 8. Venue as to Defendant(s) is proper in this judicial district, pursuant to California
13 Code of Civil Procedure § 395(a). Defendant Kobra maintains facilities and offices in the County
14 of Sacramento, and transacts business, has agents, and is otherwise within this Court's jurisdiction
15 for purposes of service of process. The unlawful acts alleged herein have a direct effect on the
16 Representative Plaintiff and those similarly situated within the State of California and within
17 Sacramento County. Defendant Kobra operates said facilities and has employed numerous Class
18 Members in Sacramento County as well as in other counties within the State of California.

19
20 **PLAINTIFF**

21 9. Plaintiff Patricia Morgan (the "Representative Plaintiff") is a natural person, and was,
22 during a portion of the relevant time period identified herein, employed by defendant Kobra as a non-
23 exempt, night-shift employee, who was entitled and continues to enjoy an entitlement to various
24 conditions of employment such as overtime pay, minimum wages and meal and/or rest periods.

25 10. In said position, the Representative Plaintiff was permitted to work and did work,
26 during the Class Period, shifts exceeding five hours without being afforded an opportunity to take
27 uninterrupted, unrestricted meal periods of not less than thirty (30) minutes and was frequently
28 permitted to work and did work four hours or a "major fraction" thereof, without being afforded the

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1 opportunity to enjoy net ten minute rest periods. Specifically, Kobra engaged in the systematic denial
2 of meal and rest periods to Representative Plaintiff and Class Members whereby the Representative
3 Plaintiff and Class Members, without waiver on their part, were consistently required to work
4 without such meal and rest breaks as a result of Kobra's corporate policies of under-staffing each of
5 it's Jack in the Box fast-food restaurants and restricting Class Members to the premises.

6 11. Representative Plaintiff is informed and believes and, on that basis, alleges that
7 Kobra's policy of denying meal and rest periods is/was enforced at every facility owned and/or
8 operated thereby in which night-shift employees worked.

9 12. As used throughout this Complaint, the terms "Class Members" and/or the "Plaintiff
10 Class" refer to the named Plaintiff herein as well as each and every person eligible for membership
11 in the Plaintiff Class, as further described and defined below.

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

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

17
18 **DEFENDANTS**

19 15. At all times herein relevant, defendant Kobra Associates, Inc. and Does 1 through
20 100, inclusive (collectively referred to as "Kobra" and/or "Defendant[s]") were business entities,
21 duly licensed and located and doing business in, but not limited to, the County of Sacramento, in the
22 State of California.

23 16. Representative Plaintiff is informed and believes and, based thereon, alleges that
24 defendant Kobra directly or indirectly employs and, since December 1, 2004, has employed and/or
25 exercised control over the wages, hours and/or working conditions of the Representative Plaintiff
26 and Class Members at Kobra's Jack in the Box fast food restaurants in various California counties,
27 including, but not necessarily limited to, Sacramento County.

28 ///

1 17. Those defendants identified as Does 1 through 100, inclusive, are and were, at all
2 relevant times herein-mentioned, officers, directors, partners, and/or managing agents of some/each
3 of the remaining defendants. Representative Plaintiff is informed and believes and on that basis,
4 alleges that, at all relevant times herein mentioned, each of the defendants identified as Does 1
5 through 100, inclusive, employed and/or exercised control over the wages, hours and/or working
6 conditions of the Representative Plaintiff and Class Members at various California locations, as
7 identified in the preceding paragraph.

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

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

19 20. There is no preemption of the claims brought in this Complaint, there is no dispute
20 over the terms of any collective bargaining agreement ("CBA") and there is no need to interpret the
21 terms of any CBA.

22
23 **CLASS ACTION ALLEGATIONS**

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

27 ///

28 ///

1 All persons who are/were employed in Jack in the Box fast food
2 restaurants as non-exempt employees and who worked the night-shift
3 at any California Jack in the Box fast food restaurant(s) owned and
4 operated by Kobra Associates, Inc., at any time since December 1,
5 2004.

6 22. Defendants, their officers and directors are excluded from the Plaintiff Class.

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

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

- 14 1) whether defendant Kobra engaged in systematic under-staffing of its
15 fast-food restaurants which resulted in a denial of meal and rest
16 periods to the Class Members.
- 17 2) whether defendant Kobra categorically prevented the Class Members
18 from leaving the premises, thereby denying them unrestricted meal
19 periods.
- 20 3) whether defendant Kobra violated California laws by failing to pay
21 overtime compensation and/or minimum wage levels to non-exempt
22 night-shift employees who worked in excess of 40 hours per week.
- 23 4) whether defendant Kobra violated California Wage Order No. 5-2001
24 and Labor Code § 510 by failing to pay overtime compensation to
25 Kobra's non-exempt night-shift employees who worked in excess of
26 40 hours per week and/or eight (8) hours a day.
- 27 5) whether defendant Kobra violated California Labor Code §§ 226.7
28 and/or 512 by failing to consistently provide meal and rest periods to
its non-exempt night-shift employees.
- 6) whether defendant Kobra's practice of requiring its non-exempt
night-shift employees to work during unpaid breaks resulted in a
violation of California minimum wage and/or overtime laws.
- 7) whether defendant Kobra violated California Labor Code § 1174 by
failing to keep accurate records of its non-exempt night-shift
employees' hours of work.
- 8) whether defendant Kobra violated California Labor Code §§ 201-202
by failing to pay overtime wages due and owing at the time that Class
Members' employment with Defendant terminated.
- 9) whether defendant Kobra violated California Labor Code § 226 by
failing to provide accurate itemized wage statements to Class
Members.

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10) whether Representative Plaintiff and the Class Members are entitled to "waiting time" penalties/wages pursuant to California Labor Code § 203.

11) whether defendant Kobra violated California Business and Professions Code § 17200 by failing to pay overtime compensation to non-exempt night-shift employees who worked in excess of (40) hours per week and/or eight (8) hours a day, failing to pay minimum wages, failing to provide meal and/or rest periods and by otherwise engaging in unfair, unlawful and/or fraudulent business practices.

B. Typicality: Representative Plaintiff's claims are typical of the claims of the Plaintiff Class. Representative Plaintiff and all members of the Plaintiff Class sustained damages arising out of and caused by defendant Kobra's common course of conduct in violation of law, as alleged herein.

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. Membership in the Class will be determined upon analysis of employee and payroll, among other, records maintained by Kobra.

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 adjudications and/or may substantially impede their ability to adequately protect their interests.

E. Adequacy of Representation: The Representative Plaintiff in this class action is an adequate representative of the Plaintiff Class, in that the Representative Plaintiff's claims are typical of those of the Plaintiff Class and the Representative Plaintiff has the same 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 conducting litigation of this nature. The Representative Plaintiff is not subject to any individual defenses unique from those conceivably applicable to the Plaintiff Class as a whole. The Representative Plaintiff anticipates no management difficulties in this litigation.

COMMON FACTUAL ALLEGATIONS

24. As described herein, Kobra has, for years, knowingly failed to pay all compensation owing to those non-exempt restaurant employees within the class definitions identified above by

1 failing to pay minimum wages and/or overtime wages due to said Class Members, and has violated
2 California wage and hour laws as provided herein. Kobra has also failed to provide net ten minute
3 rest periods for work shifts exceeding four hours or a major fraction thereof (i.e., at least three and
4 one-half hours) and/or uninterrupted, unrestricted meal periods of not less than thirty minutes for
5 work shifts exceeding five hours to the Class Members. Kobra has thereby enjoyed a significant
6 competitive edge over other corporations within its industry.

7 25. Even upon termination or resignation of the employment of numerous Class
8 Members, Kobra has declined to pay these wages, in blatant violation of the law (including, for
9 members of the Plaintiff Class, California Labor Code §§ 201 and/or 202).

10 26. Moreover, California Labor Code §§ 201 and 202 require defendant Kobra to pay all
11 Class Members all wages due, immediately upon discharge. California Labor Code § 203 provides
12 that, if an employer willfully fails to timely pay such wages, the employer must, as a penalty,
13 continue to pay the subject employees' wages until the back wages are paid in full or an action is
14 commenced, for a period not to exceed 30 days of wages.

15 27. Furthermore, despite its knowledge of the Representative Plaintiff's and the Class
16 Members' entitlement to minimum wages, to premium (overtime) pay for excess hours worked and
17 compensation for work performed "off-the-clock," Kobra failed to provide Representative Plaintiff
18 and members of the Plaintiff Class with accurate semimonthly itemized wage statements of the total
19 number of hours worked by each, in violation of California Labor Code § 226. In so doing, Kobra
20 has not only failed to pay its workers the full amount of compensation due, it has, until now,
21 effectively shielded itself from its employees' scrutiny for its unlawful conduct by concealing the
22 magnitude (the full number of hours worked) and financial impact of its wrongdoing.

23 28. Representative Plaintiff and all persons similarly situated in the Plaintiff Classes are
24 entitled to unpaid compensation, yet, to date, have not received such compensation despite the
25 termination of their employment with Kobra.

26 29. More than 30 days have passed since the Representative Plaintiff and certain Class
27 Members have left defendant Kobra's employ.

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1 30. As a consequence of defendant Kobra’s willful conduct in not paying compensation
 2 for all hours worked, certain Class Members are entitled to 30 days wages as penalty under Labor
 3 Code § 203, together with interest thereon and attorneys’ fees and costs.

4 31. As a direct and proximate result of Kobra’s unlawful conduct, as set forth herein,
 5 Representative Plaintiff and Class Members have sustained damages, as described above, including
 6 loss of earnings for unpaid minimum wages and unpaid hours of overtime worked on behalf of
 7 Defendant, in an amount to be established at trial. As a further direct and proximate result of
 8 Defendant’s unlawful conduct, as set forth herein, Representative Plaintiff and many Class Members
 9 herein are entitled to recover damages for Defendant’s meal and/or rest period violations, “waiting
 10 time” penalties/wages (pursuant to California Labor Code § 203) and penalties for failure to provide
 11 semimonthly statements of hours worked (pursuant to Labor Code § 226), in amounts to be
 12 established at trial. As a further direct and proximate result of Defendant’s unlawful conduct, as set
 13 forth herein, Representative Plaintiff and Class Members are also entitled to recover costs and
 14 attorneys’ fees, pursuant to California Labor Code § 1194 and/or California Civil Code § 1021.5,
 15 among other authorities.

16
 17 **FIRST CAUSE OF ACTION**
 18 **UNLAWFUL FAILURE TO PAY WAGES DUE**
 19 **(INCLUDING MINIMUM AND OVERTIME WAGES)**
 20 **(Violation of Fair Labor Standards Act and California Labor Code)**

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

23 33. Representative Plaintiff is informed and believes and, based thereon, alleges that
 24 Kobra has permitted, encouraged and/or required Class Members, as part of their employment, to
 25 work “off-the-clock,” work in excess of eight hours per day and/or forty hours a week (without
 26 premium compensation therefor) and work through paid and/or unpaid meal and/or rest “breaks,”
 27 in violation of California Labor codes:

28 A. **Labor Code § 510:** “Any work in excess of eight hours in
 one workday and any work in excess of 40 hours in any one
 workweek and the first eight hours worked on the seventh day

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

3 B. Labor Code § 1198: “[t]he maximum hours of work and the
4 standard conditions of labor fixed by the commission shall be
5 the maximum hours of work and the standard conditions of
6 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.”

7 34. Indeed, in the performance of their duties for Defendant, Class Members often did
8 work over eight hours a day and/or forty hours per week, yet they did not receive overtime
9 compensation required by California Labor Code § 510 for the work, labor and services they
10 provided to defendant Kobra. The precise number of hours will be proven at trial.

11 35. Violations of these statutes have further resulted in violations of California minimum
12 wage laws. These laws provide:

13 A. IWC Wage Order 5-2001(4)(A): Every employer shall pay to each
14 employee wages . . . not less than eight dollars (\$8.00) per hour for all hours
worked, effective January 1, 2008...

15 B. Labor Code § 1194: Notwithstanding any agreement to work for a lesser
16 wage, any employee receiving less than the legal minimum wage or the legal
17 overtime compensation applicable to the employee is entitled to recover in
a civil action the unpaid balance of the full amount of this minimum wage or
overtime compensation, including interest thereon, reasonable attorney’s fees,
and costs of suit.

18 C. Labor Code § 1197: The minimum wage for employees fixed by the
19 commission is the minimum wage to be paid to employees, and the payment
20 of a less wage than the minimum so fixed is unlawful.

21 36. As a result of the foregoing, Representative Plaintiff seeks judgment against
22 Defendant on her own behalf, and on behalf of those Class Members similarly situated (whether or
23 not said Class Members elect to file written consents to joinder in this action), for all unpaid wages,
24 including minimum and overtime wages owed by Defendant to Representative Plaintiff and the Class
25 Members, together with an award of an additional equal amount as liquidated damages, and costs,
26 interest, and reasonable attorneys’ fees, as provided for under California Labor Code §§ 510 and
27 1194, together with an award of “waiting time” penalties (under California Labor Code § 203), costs,
28 interest, and reasonable attorneys’ fees.

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

37. 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.

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

39. 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.

40. Moreover, California Labor Code § 512 provides, in part:

(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.

41. By failing to consistently provide uninterrupted and unrestricted meal periods and to provide uninterrupted rest periods to its non-exempt night-shift restaurant employees, Defendant violated California Labor Code §§ 226.7 and/or 512, and §§ 11 and 12 of the applicable IWC Wage Orders. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, 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, 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.

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
(California Labor Code §§ 226, 1174)

42. 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.

43. California Labor Code § 226(a) provides:

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

44. The IWC Wage Orders also establish this requirement in § 7(B) thereof (8 Cal. Code Regs. § 11010 *et. seq.*).

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

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

46. Finally, California Labor Code § 1174 provides:

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

47. Representative Plaintiff seeks to recover actual damages, costs and attorneys' fees under this section on behalf of herself and the Class Members.

48. Defendant Kobra failed to provide timely, accurate itemized wage statements to Representative Plaintiff and the Class Members in accordance with Labor Code § 226(a) and the IWC Wage Orders. None of the statements provided by Defendant has accurately reflected actual gross wages earned, net wages earned, or the appropriate deductions of such Class Members.

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

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

6 50. Representative Plaintiff further brings this cause of action on behalf of the
7 general public, seeking equitable and statutory relief to stop the misconduct of Defendant, as
8 complained of herein, and to compel the payment of restitution by Defendant as a result of the unfair,
9 unlawful and fraudulent business practices described herein.

10 51. The knowing conduct of Defendant, as alleged herein, constitutes an unlawful and/or
11 fraudulent business practice, as set forth in California Business & Professions code §§ 17200-17208.
12 Specifically, Defendant conducted business activities while failing to comply with the legal mandates
13 cited herein. Defendant's knowing failure to adopt policies in accordance with and/or adhere to
14 these laws, all of which are bidding upon and burdensome to Defendant's competitors, engenders an
15 unfair competitive advantage for Defendant, thereby constituting unfair business practices, as set
16 forth in California Business & Professions Code §§ 17200-17208.

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

22 53. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
23 Representative Plaintiff and the Class Members are entitled to injunctive relief and to restitution of
24 earnings/wages, in an amount to be established at trial.

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RELIEF SOUGHT

WHEREFORE, the Representative Plaintiff, on behalf of herself and the proposed Plaintiff Class, pray for judgment and the following specific relief against Defendant, as follows:

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

2. That the Court declare, adjudge and decree that defendant Kobra Associates, Inc. violated the overtime and minimum wage provisions of the California Labor Code and the Industrial Welfare Commission Wage Orders as to the Representative Plaintiff and the Plaintiff Class;

3. That the Court declare, adjudge and decree that a) Representative Plaintiff and the Class Members were at all times relevant hereto, and are, entitled to be paid overtime for work beyond 8 hours per day and/or 40 hours per a week; and b) the amounts to which Representative Plaintiff and the Class Members are entitled is to be doubled as liquidated damages and issued as an award thereto;

4. That the Court declare, adjudge and decree that defendant Kobra Associates, Inc. violated California Labor Code §§ 226.7 and 512 and applicable IWC Wage Orders for willful failure to provide meal periods (including second meal periods) and/or rest periods to Class Members;

5. That the Court declare, adjudge and decree that defendant Kobra Associates, Inc. violated the record keeping provisions of California Labor Code §§ 226(a) and 1174(d) and Section 5 of the Wage Orders as to the Representative Plaintiff and the Class Members, and for willful failure to provide accurate semimonthly itemized wage statements thereto;

6. That the Court declare, adjudge and decree that defendant Kobra Associates, Inc. violated California Labor Code §§ 201-203 for willful failure to pay all compensation owed at the time of termination of employment to Representative Plaintiff and some Class Members;

7. That the Court declare, adjudge and decree that defendant Kobra Associates, Inc. violated California Business and Professions Code § 17200 *et. seq.* by engaging in unfair, unlawful and/or fraudulent conduct, including but not limited to failing to pay Representative Plaintiff and Class Members minimum wages and/or overtime compensation, meal and rest period compensation

1 and "waiting time" penalties and/or by failing to provide accurate itemized statements;

2 8. That the Court make an award to Representative Plaintiff and members of the
3 Plaintiff Class of damages for the amount of unpaid overtime compensation, including interest
4 thereon, and penalties in an amount to be proven at trial;

5 9. That the Court make an award to Representative Plaintiff and Class Members of
6 damages for the amount of unpaid minimum wages, including interest thereon, and penalties to be
7 proven at trial;

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

12 11. That the Court order defendant Kobra Associates, Inc. to pay restitution to
13 Representative Plaintiff and the Class Members due to defendant Kobra Associate's unlawful, unfair
14 and/or fraudulent activities, pursuant to Business and Professions Code §§ 17200-17208;

15 12. That the Court further enjoin defendant Kobra Associates, Inc., ordering it to cease
16 and desist from unlawful, unfair and/or fraudulent activities in violation of Business and Professions
17 Code § 17200 *et. seq.*;

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

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

21 15. For reasonable attorneys' fees, pursuant to California Labor Code §§ 218.5 and 1194,
22 California Civil Code § 1021.5 and/or other applicable statutes; and

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

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1 Dated: November 25, 2008

2 **SCOTT COLE & ASSOCIATES, APC**

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4 By:



5 Kevin R. Allen, Esq.
6 Attorneys for the Representative Plaintiff
7 and the Plaintiff Class

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