

1 Scott Edward Cole, Esq. (S.B. #160744)
2 Molly A. Kuehn, Esq. (S.B. #230763)
3 **SCOTT COLE & ASSOCIATES, APC**
4 1970 Broadway, Ninth Floor
5 Oakland, California 94612
6 Telephone: (510) 891-9800
7 Facsimile: (510) 891-7030
8 Web: www.scalaw.com

9 Attorneys for Representative Plaintiff
10 and the Plaintiff Class

FILED
Superior Court Of California,
Sacramento
05/19/2009
avlaivavich
By _____, Deputy
Case Number:
34-2009-00044408

11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF SACRAMENTO**

13 WARREN CHANG, individually, and on)
14 behalf of all others similarly situated,)

15 Plaintiffs,)

16 vs.)

17 TOWER MART, TOWER ENERGY)
18 GROUP, and DOES 1 through 100,)
19 inclusive,)

20 Defendants.)

Case No.:

CLASS ACTION

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

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BY FAX

21 Representative Plaintiff alleges as follows:

22 **PRELIMINARY STATEMENT**

23 1. This is a class action, brought on behalf of Warren Chang ("Representative Plaintiff")
24 and all other persons similarly situated ("Class Members") who are or have been misclassified as
25 exempt Store Managers by defendant Tower Mart, Tower Energy Group, and Does 1 through 100,
26 inclusive ("Tower Mart" and/or "Defendant") in any store in the state of California within the
27 applicable class period. On his own behalf and on behalf of all Class Members, Representative
28 Plaintiff seeks unpaid wages, including unpaid overtime compensation and interest thereon,
liquidated damages and other penalties, injunctive and other equitable relief, and reasonable
attorneys' fees and costs, under, *inter alia*, Title 8 of the California Code of Regulations, California

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

1 Business and Professions Code §§ 17200, *et seq.*, California Code of Civil Procedure § 1021.5, and
2 various provisions of the California Labor Code.

3 2. The "Class Period" is designated as the time from May 19, 2005 through the trial
4 date, based upon the allegation that the violations of California's wage and hour laws, as described
5 more fully below, have been ongoing throughout that time.

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

18
19 **INTRODUCTION**

20 4. Tower Mart is the fastest growing discount grocery store and gasoline operation in
21 Northern California. Tower Mart's parent company, Tower Energy Group, is a leading independent
22 petroleum wholesaler, distributing unbranded and branded fuel products to the Western, Mid-
23 Atlantic, and East Coast states of the U.S.

24 5. Representative Plaintiff is informed and believes and, on that basis, alleges that
25 Tower Mart provides discount groceries, household goods, and gasoline at dozens of retail locations
26 in Northern California.

27 6. Representative Plaintiff is informed and believes and, on that basis, alleges that within
28 the Class Period, Tower Mart employed scores of individuals as Store Managers, an employment

1 position which has not, and currently does not, meet any test for exemption from the payment of
2 overtime wages or the entitlement to meal or rest periods.

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

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

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

14 JURISDICTION AND VENUE

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

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

23 12. Venue as to Tower Mart is proper in this county, pursuant to Code of Civil Procedure
24 § 395(a). Tower Mart maintains offices within the City and County of Sacramento, transacts
25 business, has agents, and is otherwise within this Court's jurisdiction for purposes of service of
26 process. The unlawful acts alleged herein have a direct effect on the Representative Plaintiff and
27 those similarly situated within the State of California and within the City and County of Sacramento.
28

1 Tower Mart operates said facilities and has employed numerous Class Members in the City and
2 County of Sacramento as well as in other counties within the State of California.

3
4 **PLAINTIFFS**

5 13. Representative Plaintiff Warren Chang is a natural person who is employed by Tower
6 Mart as a Store Manager.

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

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

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

15
16 **DEFENDANTS**

17 17. At all times herein relevant, Tower Mart was, and is, a discount grocery store and
18 gasoline chain doing business within the state of California, which provides, *inter alia*, discount
19 groceries, household goods and gasoline at dozens of locations in Northern California.

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

27 19. Representative Plaintiff is unaware of the true names and capacities of those
28 defendants sued herein as Does 1 through 100, inclusive and, therefore, sues these defendants by

1 such fictitious names. Representative Plaintiff will seek leave of court to amend this Complaint if
2 and when such names are ascertained. Representative Plaintiff is informed and believes and, on that
3 basis, alleges that each of the fictitiously-named defendants was responsible in some manner for,
4 gave consent to, ratified and/or authorized the conduct herein alleged and that the Representative
5 Plaintiff's and Class Members' damages, as herein described, were actually and proximately caused
6 thereby.

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

11 CLASS ACTION ALLEGATIONS

12
13 21. Representative Plaintiff brings this action as an individual, and as a class action on
14 behalf of all persons similarly situated and proximately damaged by Tower Mart's conduct,
15 including, but not necessarily limited to, the following Plaintiff Class:

16 All persons who were employed as a Store Manager by Tower Mart
17 in one or more of its California retail locations at any time on or after
May 19, 2005.

18 22. Tower Mart's officers and directors are excluded from the Plaintiff Class.

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

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

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

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- i. whether Tower Mart violated the applicable California Wage Order(s) and/or Labor Code § 510 by failing to pay overtime compensation to Tower Mart Store Managers who worked in excess of 40 hours per week and/or eight hours a day;
 - ii. whether Tower Mart violated California Business and Professions Code § 17200 by failing to pay overtime compensation to its Store Managers who worked in excess of 40 hours per week and/or eight hours a day;
 - iii. whether Tower Mart violated, and continues to violate, California Labor Code §§ 226.7 and/or 512 by failing to consistently provide meal and/or rest periods to Class Members;
 - iv. whether Tower Mart violated, and continues to violate, California Labor Code § § 226 and/or 1174 by failing to keep accurate records of its California Store Managers' actual hours of work; and
 - v. whether Tower Mart violated, and continues to violate California Labor Code §§ 201-204 by failing to pay overtime wages due and owing at the time particular Class Members' employment with Tower Mart terminated.
- c. Typicality: The Representative Plaintiff's claims are typical of the claims of Class Members. The Representative Plaintiff and Class Members sustained damages arising out of and caused by Tower Mart's common course of conduct, as alleged herein.
- d. Adequacy of Representation: The Representative Plaintiff in this class action is an adequate representative of the Plaintiff Class, in that the Representative Plaintiff's claims are typical of those of the Plaintiff Class and the Representative Plaintiff has the same interest in the litigation of this case as the Class Members. The Representative Plaintiff is committed to vigorous prosecution of this case and has retained competent counsel, experienced in conducting litigation of this nature. The Representative Plaintiff is not subject to any individual defenses unique from those conceivably applicable to the Class as a whole. Moreover, 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 impractical for Class Members to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought or be required by each individual Class Member, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings, which might be dispositive of the interests of other Class Members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests.

COMMON FACTUAL ALLEGATIONS

1
2 24. As described herein, Tower Mart has, for years, knowingly failed to adequately
3 compensate those employees within the class definition identified above for all wages earned,
4 including overtime wages and/or compensation for missed meal and/or rest periods, as are due under
5 the California Labor Code and IWC Wage Order No. 4, thereby enjoying a significant competitive
6 edge over other discount grocery stores.

7 25. Tower Mart has declined to pay these wages even upon Class Members' termination
8 or resignation from employment, in blatant violation of California Labor Code §§ 201 and/or 202.

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

14 27. Furthermore, despite its knowledge of the Representative Plaintiff's and the Class
15 Members' entitlement to compensation for all hours worked, Tower Mart violated California Labor
16 Code § 1174(d) by failing to provide or require the use, maintenance or submission of time records
17 by members of the Class. Tower Mart also failed to provide Representative Plaintiff and Class
18 Members with accurate semimonthly itemized statements of the total number of hours worked by
19 each and all applicable hourly rates in effect during the pay period, in violation of California Labor
20 Code § 226. In so doing, Tower Mart has not only failed to pay Class Members the full amount of
21 compensation due, it has, until now, effectively shielded itself from its employees' scrutiny for its
22 unlawful conduct by concealing the magnitude (the full number of hours worked) and financial
23 impact of its wrongdoing.

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

27 29. More than 30 days have passed since Representative Plaintiff and certain Class
28 Members have left defendant Tower Mart's employ.

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

5 31. As a consequence of defendant Tower Mart's willful conduct in not providing an
6 uninterrupted 30 minute meal period within the first five hours of Class Members' shifts as required
7 under Labor Code § 512 and section 11 of IWC Wage Order No. 7-2001, certain Class Members are
8 entitled to one hour of wages for each day that Class Members were denied at least one meal period,
9 as provided under Labor Code § 226.7, together with interest thereon and attorneys' fees and costs.

10 32. As a consequence of defendant Tower Mart's willful conduct in not providing a ten
11 minute rest period once during each four hours of work as prescribed by section 12 of IWC Wage
12 Order No. 7, certain Class Members are entitled to one hour of wages for each day that Class
13 Members were denied at least one rest period, as provided under Labor Code § 226.7, together with
14 interest thereon and attorneys' fees and costs.

15 33. As a direct and proximate result of Tower Mart's unlawful conduct, as set forth
16 herein, Representative Plaintiff and Class Members have sustained damages, as described above,
17 including loss of earnings for hours worked on behalf of Defendant, in an amount to be established
18 at trial. As a further direct and proximate result of Defendant's unlawful conduct, as set forth herein,
19 Representative Plaintiff and many Class Members herein are entitled to recover "waiting time"
20 penalties/wages (pursuant to California Labor Code § 203) and penalties for failure to provide
21 semimonthly statements of hours worked and all applicable hourly rates (pursuant to Labor Code §
22 226) in an amount to be established at trial. As a further direct and proximate result of Defendant's
23 unlawful conduct, as set forth herein, Representative Plaintiff and Class Members are also entitled
24 to recover costs and attorneys' fees, pursuant to California Labor Code § 1194 and/or California
25 Civil Code § 1021.5, among other authorities.

26 34. Plaintiff seeks injunctive relief prohibiting Defendant from engaging in the illegal
27 labor acts described herein. Plaintiff also seeks restitution under California's Unfair Competition
28 Law. Unless enjoined, Defendant's unlawful conduct will continue unchecked, while Plaintiff and

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

1 members of the Class bear the financial brunt of Defendant's unlawful conduct. As a further direct
2 and proximate result of Defendant's unlawful conduct, as set forth herein, Representative Plaintiff
3 and the Plaintiff Class are also entitled to recover attorneys' fees and costs.

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FIRST CAUSE OF ACTION
UNLAWFUL FAILURE TO PAY OVERTIME WAGES
(Violation of California Wage Order 4 and California Labor Code §§ 510, 1194 and 1198)

35. 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.

36. During the Class Period, the Representative Plaintiff and the Class Members worked, on many occasions, in excess of eight hours in a workday and/or forty hours in a workweek. The precise number of overtime hours will be proven at trial.

37. During said time period, Tower Mart refused to compensate the Representative Plaintiff and Class Members for all of the overtime wages earned, in violation of the applicable Wage Order and provisions of the California Labor Code.

38. Moreover, during said time period, many of the Class Members herein were employed by and thereafter terminated or resigned from their positions with Tower Mart, yet were not paid all wages due upon said termination or within 72 hours of said resignation of employment therefrom. Said non-payment of all wages due was the direct and proximate result of a willful refusal to do so by Tower Mart.

39. At all relevant times, Tower Mart was aware of, and was under a duty to comply with, the overtime provisions of the California Labor Code, including, but not limited to, the following:

- a. Labor Code § 510: "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee..."
- b. Labor Code § 1194: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

1 c. Labor Code § 1198: “[t]he maximum hours of work and the standard
2 conditions of labor fixed by the commission shall be the maximum hours of
3 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.”

4 40. By refusing to compensate the Representative Plaintiff and the Class Members for
5 overtime wages earned, Tower Mart violated those California Labor Code provisions cited herein,
6 as well as any applicable California Industrial Welfare Commission Wage Order.

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

11
12 **SECOND CAUSE OF ACTION**
13 **FAILURE TO PROVIDE MEAL AND REST PERIODS**
14 **(California Labor Code §§ 226.7 and 512)**

15 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.

16 43. At all relevant times, Tower Mart was aware of and was under a duty to comply with
17 California Labor Code §§ 226.7 and 512.

18 44. California Labor Code § 226.7 provides:

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

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

25 45. Moreover, California Labor Code § 512 provides:

26 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
27 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
28 employee. An employer may not employ an employee for a work

1 period of more than 10 hours per day without providing the employee
2 with a second meal period of not less than 30 minutes, except that if
3 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.

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

7 47. Section 11 of the applicable IWC Wage Order provides:

8 (A) No employer shall employ any person for a work period of more
9 than five (5) hours without a meal period of not less than 30 minutes
10 (B) An employer may not employ an employee for a work period
11 of more than ten (10) hours per day without providing the employee
12 with a second meal period of not less than 30 minutes (C) If an
13 employer fails to provide an employee a meal period in accordance
14 with the applicable provisions of this order, the employer shall pay
15 the employee one (1) hour of pay at the employee's regular rate of
16 compensation for each workday that the meal period is not provided.

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

18 (A) Every employer shall authorize and permit all employees to take
19 rest periods, which insofar as practicable shall be in the middle of
20 each work period. The authorized rest period time shall be based on
21 the total hours worked daily at the rate of ten (10) minutes net rest
22 time per four (4) hours or major fraction thereof (B) If an
23 employer fails to provide an employee a rest period in accordance
24 with the applicable provisions of this order, the employer shall pay
25 the employee one (1) hour of pay at the employee's regular rate of
26 compensation for each workday that the rest period is not provided.

27 48. By failing to consistently provide uninterrupted 30 minute meal periods within the
28 first five hours of work each day and/or uninterrupted 10 minute net rest periods to Representative
Plaintiff and the Class Members, Tower Mart violated the California Labor Codes and the IWC
Wage Order provisions.

49. Representative Plaintiff is informed and believes and, on that basis, alleges that
Tower Mart has never paid the one hour of compensation to any Class Member due to its violations
of the California Labor Code and IWC Wage Order provisions.

50. As a direct and proximate result of Tower Mart's unlawful conduct, as set forth
herein, the Representative Plaintiff and the Class Members have sustained damages, including lost
compensation resulting from missed meal and/or rest periods, in an amount to be established at trial.

1 As a further direct and proximate result of Tower Mart's unlawful conduct, as set forth herein,
2 certain Class Members are entitled to recover "waiting time" and other penalties, in amounts to be
3 established at trial, as well as attorneys' fees and costs.
4

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

8 51. 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 52. California Labor Code § 226(a) provides:

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

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

24 An employee suffering injury as a result of a knowing and intentional
25 failure by an employer to comply with subdivision (a) is entitled to
26 recover the greater of all actual damages or fifty dollars (\$50) for the
27 initial pay period in which a violation occurs and one hundred dollars
28 (\$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.

54. 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.

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

28

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

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

7 64. Representative Plaintiff further brings this cause of action seeking equitable and
8 statutory relief to stop the misconduct of Tower Mart, as complained of herein, and to seek
9 restitution from Tower Mart of amounts acquired through the unfair, unlawful and/or fraudulent
10 business practices described herein.

11 65. The knowing conduct of Tower Mart, as alleged herein, constitutes an unlawful
12 and/or fraudulent business practice, as set forth in California Business & Professions Code §§ 17200-
13 17208. Specifically, Tower Mart conducted business activities while failing to comply with the legal
14 mandates cited herein.

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

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

24 **RELIEF SOUGHT**

25 **WHEREFORE, the Representative Plaintiff, on behalf of himself and the proposed**
26 **Plaintiff Class, prays for judgment and the following specific relief against Defendants, and each**
27 **of them, jointly and separately, as follows:**
28

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

4 2. That the Court declare, adjudge and decree that Tower Mart violated the overtime
5 provisions of the California Labor Code and the applicable California Industrial Welfare
6 Commission Wage Order as to the Representative Plaintiff and Class Members;

7 3. That the Court declare, adjudge and decree that Tower Mart willfully violated its legal
8 duties to pay overtime under the California Labor Code and the applicable California Industrial
9 Welfare Commission Wage Order;

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

13 5. That the Court make an award to the Representative Plaintiff and Class Members of
14 damages and/or restitution for the amount of unpaid overtime compensation, including interest
15 thereon, and penalties in an amount to be proven at trial;

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

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

22 8. That the Court order Tower Mart to pay restitution to the Representative Plaintiff and
23 the Class Members due to Tower Mart's unlawful activities, pursuant to California Business and
24 Professions Code §§ 17200-17208;

25 9. That the Court further enjoin Tower Mart, ordering it to cease and desist from
26 unlawful activities in violation of California Business and Professions Code §§ 17200, *et seq.*;

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

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

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- 11. For interest on the amount of any and all economic losses, at the prevailing legal rate;
- 12. For reasonable Attorneys' Fees, pursuant to California Labor Code §§ 1194 and/or California Code of Civil Procedure § 1021.5; and,
- 13. For Costs of suit and any and all such other relief as the Court deems just and proper.

Dated: May 19, 2009

SCOTT COLE & ASSOCIATES, APC

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