

COPY

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

1 Scott Edward Cole, Esq. (S.B. # 160744)
2 Hannah R. Salassi, Esq. (S.B. #230117)
3 Stephen Noel Ilg, Esq. (S.B. #275599)
4 **SCOTT COLE & ASSOCIATES, APC**
5 1970 Broadway, Ninth Floor
6 Oakland, California 94612
7 Telephone: (510) 891-9800
8 Facsimile: (510) 891-7030
9 Email: scole@scalaw.com
10 Email: hsalassi@scalaw.com
11 Email: silg@scalaw.com
12 Web: www.scalaw.com

13 Attorneys for Representative Plaintiff
14 and the Plaintiff Class

15 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **IN AND FOR THE COUNTY OF SAN MATEO**

17 ANITA C. RAGANO, individually and
18 on behalf of all others similarly situated,

19 Plaintiffs

20 vs.

21 MICHAELS STORES, INC., and DOES
22 1 through 100, inclusive,

23 Defendants.

Case No.

CLASS ACTION

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

[Jury Trial Demanded]

CIV 506818

24 Representative Plaintiff alleges as follows:

25 PRELIMINARY STATEMENT

26 1. This is a class action seeking unpaid wages, including meal and rest period
27 compensation, interest thereon, and other penalties, injunctive and other equitable relief, and
28 reasonable attorneys' fees and costs under, *inter alia*, California Labor Code §§ 200-204, inclusive,
226, 226.7, 510, 512, 1174, 1194, 1197 and/or 1198, California Business and Professions Code §§
17200, *et seq.* and California Code of Civil Procedure § 1021.5. Plaintiff Anita C. Ragano
("Plaintiff") brings this action on behalf of herself and all other persons similarly situated ("Class

(ENDORSED)
FILED
SAN MATEO COUNTY

JUL 5 - 2011

Clerk of the Superior Court
By G. Lacey
DEPUTY CLERK

1 Members” and/or the “Plaintiff Class”) who are or have been employed by Defendant Michaels
2 Stores, Inc. and/or Does 1 through 100, inclusive (collectively “Defendant” and/or “Michaels”) as
3 non-exempt retail store employees within the State of California at any time after July 5, 2007.

4 2. Specifically, Plaintiff represents (1) non-exempt retail employees who were required,
5 as a result of security searches or otherwise, to remain at work, under the control of Michaels, after
6 completion of these workers’ ordinary duties, for which they were not compensated, and/or (2) all
7 non-exempt retail employees unlawfully denied full meal and/or rest periods and who were not
8 compensated therefor.

9 3. The “Class Period” is designated as the time from July 5, 2007 through the date of
10 trial and is based upon the allegation that Defendant’s violations of California’s wage and hour laws,
11 as described more fully below, have been ongoing during that time.

12 4. During the Class Period, Defendant has had a consistent policy of, *inter alia*, (1)
13 requiring its non-exempt retail store employees, including Plaintiff and Class Members, to remain at
14 work, under the control of Michaels, after completion of these workers’ ordinary duties, without
15 paying these employees’ wages (including overtime wages) for all compensable time, (2) requiring
16 its non-exempt retail store employees, including Plaintiff and Class Members, to submit to
17 mandatory security checks of their persons and/or belongings without paying them compensation
18 (including unpaid overtime and/or compensation for working through paid and/or unpaid meal
19 and/or rest periods), (3) willfully failing to pay compensation owing in a prompt and timely manner
20 to Plaintiff and/or Class Members whose employment with Michaels was terminated, (4) willfully
21 failing to provide Plaintiff and Class Members with accurate semimonthly itemized statements of the
22 total number of hours each of them worked, the applicable deductions and the applicable hourly rates
23 in effect during the applicable pay period, and (5) willfully failing to provide meal periods and/or
24 rest periods to Plaintiff and/or Class Members.

25
26 **INTRODUCTION**

27 5. Plaintiff is informed and believes and, based thereon, alleges that, within the Class
28 Period, Defendant Michaels operated at least 130 retail establishments across the State of California.

1 In doing so, Michaels has employed thousands of individuals as non-exempt retail employees in
2 recent years alone to work at locations within the State of California, employment positions which
3 enjoy an entitlement to full, uninterrupted and statutorily-mandated meal and rest periods, as well as
4 other benefits of employment as set forth herein.

5 6. Despite actual knowledge of these facts and legal mandates, Michaels has and
6 continues to enjoy an advantage over its competition and a resultant disadvantage to its workers by
7 electing not to sufficiently offer meal and rest periods to its California non-exempt retail employees,
8 by not providing them all regular and/or overtime pay (as a result thereof) when due and/or when
9 certain Class Members' employment with Michaels terminated, and by willfully failing to provide
10 Plaintiff and Class Members with accurate semi-monthly itemized wage statements.

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

14 8. Despite Michaels' knowledge of Plaintiff's and Class Members' entitlement to these
15 benefits of employment, Michaels failed to provide same, for all applicable work periods, in
16 violation of California state statutes, California Industrial Welfare Commission Wage Order No. 7,
17 and Title 8 of the California Code of Regulations. This action is brought to redress and end this long-
18 time pattern of unlawful conduct.

19
20 **JURISDICTION AND VENUE**

21 9. This Court has jurisdiction over the Representative Plaintiff's and Class Members'
22 claims for unpaid wages, penalties and other forms of relief sought herein under, *inter alia*,
23 Industrial Welfare Commission Wage Order No. 7, Title 8 of the California Code of Regulations,
24 Labor Code §§ 201-204, inclusive, 226, 226.7, 510, 512, 1174, 1194 and/or 1198, and California
25 Code of Civil Procedure § 1021.5.

26 10. This Court also has jurisdiction over the Representative Plaintiff's and Class
27 Members' claims for injunctive relief and restitution of ill-gotten benefits arising from Defendant's
28

1 unfair, unlawful and/or fraudulent business practices under California Business & Professions Code
2 § 17200, *et seq.*

3 11. Venue as to Defendant is proper in this judicial district pursuant to California Code of
4 Civil Procedure § 395(a). Defendant Michaels maintains locations within San Mateo County,
5 transacts business, has agents, and is otherwise within this Court's jurisdiction for purposes of
6 service of process. The unlawful acts alleged herein have a direct effect on the Plaintiff and those
7 similarly situated within the State of California and County of San Mateo. Defendant operates
8 facilities and has employed numerous Class Members in the County of San Mateo, as well as within
9 other counties across the State of California.

10
11 **PLAINTIFF**

12 12. Plaintiff is a natural person and was, during the relevant time period identified herein,
13 employed by Defendant Michaels as a non-exempt "Floor Manager" at several of Defendant's
14 California retail stores.

15 13. At all times herein relevant, Plaintiff was and is now a person within the Class of
16 persons further described and defined herein.

17 14. As used throughout this Complaint, the term "Class Members" and/or the "Plaintiff
18 Class" refers to the named Plaintiff herein as well as each and every person eligible for membership
19 in the class of persons further described and defined herein.

20 15. At all times herein relevant, Plaintiff is/was persons within the class(es) of persons
21 further described and defined herein.

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

25
26
27
28

DEFENDANTS

1
2 17. At all times herein relevant, Defendant Michaels Stores, Inc. was/is a corporation
3 and/or other form of business entity, duly licensed, located and doing business in, but not limited to,
4 the County of San Mateo, in the State of California.

5 18. Plaintiff is informed and believes and, based thereon, alleges that Defendant Michaels
6 directly or indirectly employs and, since July 5, 2007, has employed and/or exercised control over
7 the wages, hours and working conditions of Plaintiff and Class Members within various California
8 counties, including, but not limited to, the County of San Mateo.

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

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

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

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

CLASS ACTION ALLEGATIONS

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

All persons who are and/or were employed as non-exempt retail employees by Michaels Stores, Inc., in one or more of Michaels' California retail stores between July 5, 2007 and the present.

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

24. This action has been brought and may properly be maintained as a class action under California Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation and the proposed Class is 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 Plaintiff Class are so numerous that joinder of all members is impractical, if not impossible, insofar as the Plaintiff is informed and believes and, on that basis, alleges that the total number of Class Members is, at least, in the hundreds of individuals. Membership in the Class will be determined by and upon analysis of employee and payroll records, among other records maintained by Michaels.

b. Commonality: 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:

- 1) Whether defendant Michaels violated California Labor Code §§ 226.7 and/or 512 by failing to consistently provide duty-free meal and/or rest periods to its non-exempt retail employees;
- 2) Whether defendant Michaels violated applicable IWC Wage Order(s) and/or California Labor Code § 510 by failing to pay all (including overtime) compensation to its non-exempt retail employees who worked in excess of forty hours per week and/or eight hours per day;
- 3) Whether defendant Michaels violated California Labor Code § 1174 by failing to keep accurate records of Plaintiff and Class Members' hours of work;
- 4) Whether defendant Michaels violated California Labor Code §§ 201-204 by failing to pay all wages due and owed during the pendency of employment and/or at the time of the termination of employment with Defendant of Plaintiff and/or Class Members;
- 5) Whether defendant Michaels violated California Labor Code § 226 by failing to provide Plaintiff and Class Members with semimonthly itemized statements including total hours worked and all applicable hourly rates in effect during the pay period; and

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 6) Whether Michaels violated Business and Professions Code §§ 17200, *et seq.* by engaging in unfair, unlawful and/or fraudulent business practices.
- c. Typicality: Plaintiff's claims are typical of the claims of the Plaintiff Class. Plaintiff and all members of the Plaintiff Class sustained damages arising out of and caused by Defendant's common course of conduct in violation of law, as alleged herein.
- d. Adequacy of Representation: Plaintiff in this class action is an adequate representative of the Plaintiff Class in that Plaintiff's claims are typical of those of the Plaintiff Class and the Plaintiff has the same interest in the litigation of this case as the Class Members. Plaintiff is committed to vigorous prosecution of this case and has retained competent counsel who is experienced in conducting litigation of this nature. Plaintiff is not subject to any individual defenses unique from those conceivably applicable to Class Members as a whole. 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 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.

COMMON FACTUAL ALLEGATIONS

25. Defendant Michaels has, for years, knowingly failed to properly compensate Plaintiff and the Plaintiff Class for all wages earned and due (including, but not necessarily limited to, overtime wages and/or compensation for missed meal and/or rest periods). Moreover, Defendant has failed to provide Plaintiff and the Plaintiff Class with net ten minute rest periods for work shifts exceeding four hours or a major fraction thereof, and has failed to provide uninterrupted, unrestricted meal periods of at least 30 minutes for work shifts exceeding five hours. Defendant has declined to pay these wages, even upon a Class Member's termination or resignation from employment, in blatant violation of California Labor Code §§ 201-204, inclusive. More than 30 days have passed since certain Class Members have left Defendant's employ.

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

7 27. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
8 Plaintiff and Class Members have sustained damages, as described above; including loss of earnings
9 for uncompensated hours worked, missed meal periods, and missed rest periods, in an amount to be
10 established at trial. As a further direct and proximate result of Defendant's unlawful conduct, as set
11 forth herein, Plaintiff and Class Members are entitled to recover penalties/wages (pursuant to
12 California Labor Code §§ 201-204) for failure to provide semimonthly itemized wage statements of
13 hours worked and all applicable hourly rates (pursuant to California Labor Code § 226) in an amount
14 to be established at trial. As a further direct and proximate result of Defendant's unlawful conduct,
15 as set forth herein, Plaintiff and Class Members are also entitled to recover attorneys' fees, litigation
16 costs, and restitution of ill-gotten gains, pursuant to statute.

17
18
19
20
21
22
23
24
25
26
27
28

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

28 28. 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.

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

30 30. 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

1 employee one additional hour of pay at the employee's
2 regular rate of compensation for each work day that the meal
or rest period is not provided.

3 31. Moreover, California Labor Code § 512 provides:

4 An employer may not employ an employee for a work period of more than five hours
5 per day without providing the employee with a meal period of not less than 30
6 minutes, except that if the total work period per day of the employee is no more than
7 six hours, the meal period may be waived by mutual consent of both the employer
8 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.

9 32. By failing to consistently provide uninterrupted and unrestricted meal and rest periods
10 to Class Members, Defendant violated California Labor Code §§ 226.7 and/or 512, and §§ 11 and 12
11 of the IWC Wage Order No. 7.

12 33. Section 11 of this Wage Order provides:

13 (A) No employer shall employ any person for a work period of more than
14 five (5) hours without a meal period of not less than 30 minutes

15 (B) An employer may not employ an employee for a work period of more
16 than ten (10) hours per day without providing the employee with a second
meal period of not less than 30 minutes

17 (C) If an employer fails to provide an employee a meal period in
18 accordance with the applicable provisions of this order, the employer shall
pay the employee one (1) hour of pay at the employee's regular rate of
compensation for each workday that the meal period is not provided.

19 34. Moreover, Section 12 of this Wage Order provides:

20 (A) Every employer shall authorize and permit all employees to take rest
21 periods, which insofar as practicable shall be in the middle of each work
22 period. The authorized rest period time shall be based on the total hours
worked daily at the rate of ten (10) minutes net rest time per four (4) hours or
major fraction thereof

23 (B) If an employer fails to provide an employee a rest period in
24 accordance with the applicable provisions of this order, the employer shall
25 pay the employee one (1) hour of pay at the employee's regular rate of
compensation for each workday that the rest period is not provided.

26 35. By failing to consistently provide (1) meal breaks within the first five hours of a work
27 shift, (2) uninterrupted thirty-minute meal periods, and/or (3) ten-minute rest periods to Class
28 Members, Defendant violated California Labor Code and IWC Wage Order provisions.

1 36. Even where Defendant's records specifically illustrate that no meal and/or rest
2 periods were provided to Plaintiff and Class Members, Michaels refuses to properly compensate
3 these employees with one hour of compensation for these respective violations as mandated by
4 California law.

5 37. Plaintiff is informed and believes and, on that basis, alleges that Defendant has never
6 paid the one hour of compensation to any Class Member due to its violations of the California Labor
7 Code and applicable IWC Wage Order provisions.

8 38. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
9 Plaintiff and Class Members have sustained damages, including lost compensation resulting from
10 missed meal and/or rest periods, in an amount to be established at trial. As a further direct and
11 proximate result of Defendant's unlawful conduct, as set forth herein, certain Class Members are
12 entitled to recover "waiting time" and other penalties, in amounts to be established at trial, as well as
13 attorneys' fees and costs, and restitution, pursuant to statute.

14
15 **SECOND CAUSE OF ACTION**
16 **UNLAWFUL FAILURE TO PAY WAGES**
(Violation of IWC Wage Order and Labor Code §§ 200-204, 510, 1194, and 1198)

17 39. Plaintiff incorporates in this cause of action each and every allegation of the
18 preceding paragraphs, with the same force and effect as though fully set forth herein.

19 40. During the Class Period and continuing through the present, Plaintiff and Class
20 Members performed work for Michaels, oftentimes in excess of eight hours in a workday and/or
21 forty hours in a workweek. The precise number of hours will be proven at trial.

22 41. During the Class Period, Defendant refused to compensate Plaintiff and Class
23 Members for all of the wages earned, in violation of the applicable IWC Wage Order and provisions
24 of the California Labor Code.

25 42. Moreover, during the Class Period, many of the Class Members herein were
26 employed by and thereafter terminated or resigned from their positions with Michaels, yet were not
27 paid all wages due upon said termination or within 72 hours of said resignation of employment
28

1 therefrom. Said non-payment of all wages due was the direct and proximate result of a willful refusal
2 to do so by Michaels.

3 43. At all relevant times, Defendant was aware of, and was under a duty to comply with,
4 the wage (including overtime wage) provisions of the California Labor Code including, but not
5 limited to, California Labor Code §§ 200-204, 510, 1194 and 1198.

6 44. California Labor Code § 510, in pertinent part, provides:

7 Any work in excess of eight hours in one workday and any work in excess of
8 40 hours in any one workweek and the first eight hours worked on the
9 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 ...

10 45. California Labor Code § 1194, in pertinent part, provides:

11 Notwithstanding any agreement to work for a lesser wage, any employee
12 receiving less than the legal minimum wage or the legal overtime
13 compensation applicable to the employee is entitled to recover in a civil
14 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.

15 46. Finally, California Labor Code § 1198, in pertinent part, provides:

16 The maximum hours of work and the standard conditions of labor fixed by
17 the commission shall be the maximum hours of work and the standard
18 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.

19 47. Numerous Class Members were employed by Michaels during the class period and
20 were thereafter terminated or resigned from their positions, yet they were not paid all premium
21 (overtime) wages due upon said termination or within 72 hours of said resignation of employment
22 therefrom. Said non-payment was the direct and proximate result of a willful refusal to do so by
23 Michaels.

24 48. More than thirty days have elapsed since certain Class Members were involuntarily
25 terminated or voluntarily resigned from Defendant's employ.

26 49. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
27 Plaintiff and the Plaintiff Class have sustained damages, including loss of earnings for hours of
28 overtime worked on behalf of Michaels, in an amount to be established at trial. As a further direct

1 and proximate result of Defendant's unlawful conduct, as set forth herein, Plaintiff and the Plaintiff
2 Class are entitled to recover penalties (including "waiting time" penalties of up to thirty days' wages,
3 pursuant to California Labor Code § 203) in amounts to be established at trial, as well as attorneys'
4 fees and costs, and restitution, pursuant to statute.

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

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

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

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

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

24 An employee suffering injury as a result of a knowing and intentional failure
25 by an employer to comply with subdivision (a) is entitled to recover the
26 greater of all actual damages or fifty dollars (\$50) for the initial pay period in
27 which a violation occurs and one hundred dollars (\$100) per employee for
28 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.

53. Finally, California Labor Code § 1174(d) provides:

Every person employing labor in this state shall ... [k]eep, 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.

54. Defendant has failed to provide timely, accurate itemized wage statements to the
Plaintiff and Class Members in accordance with California Labor Code § 226. Plaintiff is informed
and believes and, on that basis, alleges that none of the statements provided by Defendant accurately

1 reflected actual gross wages earned, net wages earned, or the appropriate deductions for any Class
2 Member.

3 55. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
4 Plaintiff and the Plaintiff Class are entitled to recover penalties, in amounts to be established at trial,
5 as well as attorneys' fees and costs, pursuant to statute.

6
7 **FOURTH CAUSE OF ACTION**
8 **UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT**
9 **(California Business & Professions Code §§ 17200-17208)**

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

12 57. Plaintiff further bring this cause of action seeking equitable and injunctive relief to
13 stop Defendant's misconduct, as complained of herein, and to seek restitution of the amounts
14 Defendant acquired through the unfair, unlawful, and fraudulent business practices described herein.

15 58. Defendant's knowing conduct, as alleged herein, constitutes an unlawful and/or
16 fraudulent business practice, as set forth in California Business & Professions Code §§ 17200-
17 17208. Specifically, Defendant conducted business activities while failing to comply with the legal
18 mandates cited herein.

19 59. Defendant's knowing failure to adopt policies in accordance with and/or adhere to
20 these laws, all of which are binding upon and burdensome to its competitors, engenders an unfair
21 competitive advantage for Michaels, thereby constituting an unfair business practice under
22 California Business & Professions Code §§ 17200-17208.

23 60. Defendant has clearly established a policy of accepting a certain amount of collateral
24 damage, as represented by the damages to the Plaintiff and to Class Members herein alleged, as
25 incidental to its business operations, rather than accept the alternative costs of full compliance with
26 fair, lawful, and honest business practices, ordinarily borne by its responsible competitors and as set
27 forth in legislation and the judicial record.
28

RELIEF SOUGHT

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

5 1. That the Court declare, adjudge, and decree that this action is a proper class action
6 and certify the proposed Class and/or any other appropriate subclasses pursuant to California Code
7 of Civil Procedure § 382;

8 2. That the Court make an award to Plaintiff and Class Members of one hour of wages at
9 each employee's regular rate of compensation for each meal period that was not provided;

10 3. That the Court make an award to Plaintiff and Class Members of one hour of wages at
11 each employee's regular rate of compensation for each workday that a rest period was not provided;

12 4. That the Court declare, adjudge, and decree that Defendants violated the wage
13 (including overtime wage) provisions of the California Labor Code and the applicable California
14 Industrial Welfare Commission Wage Order as to the Plaintiff and Class Members;

15 5. That the Court declare, adjudge, and decree that Plaintiff and Class Members were, at
16 all times relevant herein, and are still, entitled to be paid overtime for work beyond eight hours in a
17 day and forty hours in a week;

18 6. That the Court make an award to the Plaintiff and Class Members of damages and/or
19 restitution for the amount of unpaid overtime compensation, including interest thereon, and penalties
20 in an amount to be proven at trial;

21 7. That the Court order Defendant to pay restitution to Plaintiff and Class Members due
22 to Defendant's unlawful activities, pursuant to California Business and Professions Code §§ 17200-
23 17208;

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

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

28 10. For interest on the amount of any and all economic losses at the prevailing legal rate;

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

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE WACHOVIA TOWER
1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 891-9500

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

11. For reasonable attorneys' fees, pursuant to California Labor Code §§1194 and/or California Code of Civil Procedure § 1021.5; and,

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

JURY DEMAND

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

Dated: July 5, 2011

SCOTT COLE & ASSOCIATES, APC

By: Stephen Noel Ilg
Stephen Noel Ilg, Esq.
Attorneys for Representative Plaintiff and
the Plaintiff Class