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**LOS ANGELES  
SUPERIOR COURT**

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

Coordination Proceeding  
Special Title (C.R.C. Rule 3.550)

JUDICIAL COUNCIL COORDINATION  
PROCEEDING NO. 4634

NATIONAL STORES, INC., CASES

CLASS ACTION

Included actions:

COORDINATED COMPLAINT FOR  
DAMAGES, INJUNCTIVE RELIEF, AND  
RESTITUTION

*Nettis v. National Stores, Inc., et al.*

Alameda County Superior Court  
Case No.: RG10498628

DEMAND FOR JURY TRIAL

*Avila v. National Stores, Inc., et al.*

Assigned To Hon. Emilie H. Elias  
Department 324

Los Angeles County Superior  
Court Case No.: BC430295

**[FILED BY ORDER OF THE COURT]**

*O'Neal v. National Stores, Inc., et al.*

Los Angeles County Superior  
Court Case No.: BC435441

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8 Attorneys for Representative Plaintiffs  
9 Paul Avila, Pradeep Joshi, Jason Franks, and Iliana Davis

10 Representative Plaintiffs allege as follows:

11 **PRELIMINARY STATEMENT**

12 1. This is a class action, brought on behalf of representative plaintiffs Jennifer Nettis,  
13 Edwin O’Neal, Paul Avila, Pradeep Joshi, Jason Franks, and Iliana Davis (hereinafter  
14 “Representative Plaintiffs”) and all other persons similarly situated (“Class Members”) who are or  
15 have been (a) misclassified as exempt Store Managers (“Misclassification Class”), and (b) denied  
16 meal and rest periods and payment for all hours worked, including overtime hours, as non-exempt  
17 Store Managers subsequent to defendant’s reclassification of the Store Manager position as non-  
18 exempt (“Non-Exempt Class”), by defendant National Stores, Inc., dba Factory 2-U, and Does 1  
19 through 100, inclusive (collectively “National Stores” or “Defendant”), in any store in the state of  
20 California within the applicable class periods. Additionally, the above classes each contain a  
21 subclass consisting of those Class Members whose employment with National Stores ended during  
22 the statutory class periods.

23 2. On their own behalf and on behalf of the Class Members, Representative Plaintiffs  
24 seek unpaid wages (including overtime wages), unpaid compensation for interrupted and/or missed  
25 meal and/or rest periods and interest thereon, liquidated damages and other penalties, injunctive and  
26 other equitable relief, and reasonable attorneys’ fees and costs, under, *inter alia*, Title 8 of the  
27 *California Code of Regulations, California Business and Professions Code* §§ 17200, *et seq.*,  
28 *California Code of Civil Procedure* § 1021.5, and various provisions of the *California Labor Code*.

1 3. The class period is designated as the time from January 21, 2006, through trial, based  
2 upon the allegation that the violations of California's wage and hour laws, as described more fully  
3 below, have been ongoing throughout that time.

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

16  
17 **INTRODUCTION**

18 5. National Stores operates more than 200 retail stores nationwide that sell clothing and  
19 home décor under the names Factory 2-U, Fallas Paredes, Fallas Discount Stores and Fallas Kids.  
20 As of February 10, 2010, National Stores, Inc. operates more than 85 retail stores within the state of  
21 California, with approximately 47 of them being Factory 2-U retail stores.

22 6. Representative Plaintiffs are informed and believe and, on that basis, allege that  
23 within the class period, National Stores employed scores of individuals as Store Managers, an  
24 employment position which has not, and currently does not, meet any test for exemption from the  
25 payment of overtime wages or the entitlement to meal or rest periods.

26 7. Indeed, Representative Plaintiffs and Class Members spent more than 50% of their  
27 work day engaged in non-managerial duties such as unloading trucks, stocking merchandise,  
28

1 operating cash registers, maintaining the inventory and sales floor, assisting customers, and other  
2 clerical duties.

3 8. Representative Plaintiffs are further informed and believe and, on that basis allege,  
4 that within the class period, National Stores employed hundreds of Store Managers as non-exempt  
5 employees, but failed to provide statutorily mandated meal and rest periods and regularly required  
6 them to work “off-the-clock,” often in excess of eight hours in a day and/or forty hours in a week.

7 9. Despite actual knowledge of these facts and legal mandates, National Stores has  
8 enjoyed an advantage over its competition and a resultant disadvantage to its workers by electing not  
9 to pay overtime and/or “penalty” (a.k.a. “waiting time”) wages to Store Managers and by failing to  
10 provide statutorily mandated meal and rest periods to the same.

11 10. National Stores is aware of these violations with regard to its treatment of Store  
12 Mangers yet, nonetheless, repeatedly authorized and/or ratified the violation of the laws cited herein.

13 11. Indeed, National Stores acquired its Factory 2-U division from Factory 2-U Stores,  
14 Inc. following Factory 2-U Stores’ long history of failing to pay overtime compensation to its Store  
15 Managers.

16 12. In December 2000, in an action styled *O’Hara v. Factory 2-U Stores, Inc.* (Alameda  
17 County Superior Court Case No. 834123-5), Factory 2-U Stores was sued by a putative class of  
18 Store Managers and Assistant Store Managers for failure to pay overtime compensation. In  
19 December 2002, the court granted final approval to a multimillion-dollar settlement of that action.

20 13. In January 2004, Factory 2-U filed a voluntary petition for chapter 11 bankruptcy.

21 14. On or before August 23, 2004, Factory 2-U announced the potential sale of its assets  
22 to National Stores, pending an auction and approval of the sale by the bankruptcy court.

23 15. On August 23, 2004, in an action styled *Bray, et al. v. Factory 2-U Stores, Inc.*, (D.  
24 Del. Bankr. Adv. Proc. No. 04-55054), Factory 2-U was again sued by a putative class of California  
25 Store Managers and Assistant Stores Managers for its alleged failure to amend its employment  
26 practices following the settlement of the previous action. The complaint in this adversary  
27 proceeding alleged that Factory 2-U failed to pay its Store Managers and Assistant Store Managers  
28 overtime compensation and failed to provide meal and rest periods. The complaint also alleged

1 violation of California's Unfair Competition Law to the detriment of plaintiffs and the putative class  
2 therein.

3 16. In September 2004, Factory 2-U Stores completed the sale of its assets to National  
4 Stores.

5 The timing of these lawsuits and the due diligence that National Stores must have conducted prior to  
6 its purchase of Factory 2-U suggests that National Stores had actual knowledge of the violations  
7 alleged herein at the time of its acquisition and has had such knowledge throughout the class period  
8 until today. Nevertheless, National Stores has continued its illegal practices with regard to  
9 Representative Plaintiffs and the proposed Class Members, which include, among others, Factory 2-  
10 U Store Managers and Store Managers in its other divisions.

11 17. Representative Plaintiffs are informed and believe and, on that basis, allege that on or  
12 around January 17, 2010, National Stores reclassified the Store Manager position as non-exempt;  
13 however, even after reclassifying the position as non-exempt, National Stores continued to fail to  
14 pay members of the Misclassification Class for all overtime hours worked and for missed meal and  
15 rest breaks.

16 18. Indeed, National Stores suffered Representative Plaintiffs and members of the Non-  
17 Exempt Class to work "off-the-clock," so as to avoid having to pay them overtime wages, and as a  
18 result Representative Plaintiffs and said Class Members were not paid either regular or overtime  
19 wages for such "off-the-clock" work.

20 19. Representative Plaintiffs and members of the Non-Exempt Class were, and are,  
21 routinely required to work without the mandated meal and rest breaks required by the *California*  
22 *Labor Code* and applicable IWC Wage Order(s), and Defendant has failed to compensate them for  
23 missed breaks.

24 20. Despite National Stores' knowledge of Class Members' entitlement to overtime pay  
25 and meal and/or rest periods for all applicable work periods, National Stores willfully and knowingly  
26 failed to provide the same, in violation of California state statutes, the applicable California  
27 Industrial Welfare Commission Wage Order, and Title 8 of the *California Code of Regulations*. This  
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1 coordinated action is brought to redress and end this long-time pattern of unlawful conduct once and  
2 for all.

3  
4 **JURISDICTION AND VENUE**

5 21. This Court has jurisdiction over the Representative Plaintiffs' and Class Members'  
6 claims for unpaid wages and/or penalties under, *inter alia*, any applicable Industrial Welfare  
7 Commission Wage Order, Title 8 of the *California Code of Regulations*, various sections of the  
8 *California Labor Code*, and/or *California Code of Civil Procedure* § 1021.5.

9 22. This Court also has jurisdiction over the Representative Plaintiffs' and Class  
10 Members' claims for injunctive relief and restitution of ill-gotten benefits arising from National  
11 Stores' unfair and/or fraudulent business practices under *California Business & Professions Code* §§  
12 17200, *et seq.*

13 23. Venue as to Defendant is proper in this judicial district, pursuant to *California Code*  
14 *of Civil Procedure* § 395(a). National Stores is a corporation, with Corporate Offices located at  
15 15001 S. Figueroa St., Gardena, California 90248. Further, Defendant operates retail stores and does  
16 business in Los Angeles County, and is otherwise within this Court's jurisdiction for purposes of  
17 service of process. The unlawful acts alleged herein have had a direct effect on Representative  
18 Plaintiffs and those similarly situated within the State of California and within Los Angeles County.  
19 National Stores also employed numerous Class Members in Los Angeles County during the class  
20 period.

21  
22 **PLAINTIFFS**

23 24. Representative Plaintiff Jennifer Nettis is a natural person and was employed by  
24 National Stores as a Store Manager within California during the statutory class period. During the  
25 times she held this position, National Stores classified her as exempt and, at other times, as non-  
26 exempt.

27 25. Representative Plaintiff Edwin O'Neal is a natural person and was, and still is,  
28 employed by National Stores as a Store Manager within California during the statutory class period.

1 During the times he held this position, National Stores classified him as exempt and, at other times,  
2 as non-exempt.

3 26. Representative Plaintiff Paul Avila is a natural person and was employed by National  
4 Stores as a Store Manager within California during the statutory class period. During the times he  
5 held this position, National Stores classified him as exempt.

6 27. Representative Plaintiff Jason Franks is a natural person and was employed by  
7 National Stores as a Store Manger within California during the statutory class period. During the  
8 times he held this position, National Stores classified him as exempt.

9 28. Representative Plaintiff Pradeep Joshi is a natural person and was employed by  
10 National Stores as a Store Manager within California during the statutory class period. During the  
11 times he held this position, National Stores classified him as exempt.

12 29. Representative Plaintiff Iliana Davis is a natural person and was employed by  
13 National Stores as a Store Manager within California during the statutory class period. During the  
14 times she held this position, National Stores classified her as exempt.

15 30. As used throughout this Complaint, the term "Class Members" refers to the  
16 Representative Plaintiffs herein as well as each and every person eligible for membership in the  
17 classes of persons as further described and defined herein.

18 31. At all times herein relevant, the Representative Plaintiffs were and are now persons  
19 within the classes of persons further described and defined herein.

20 32. The Representative Plaintiffs bring this action on behalf of themselves and as a class  
21 action, pursuant to *California Code of Civil Procedure* § 382, on behalf of all persons similarly  
22 situated and proximately damaged by the unlawful conduct described herein.

23

24

**DEFENDANTS**

25 33. Defendant National Stores, Inc. is a corporation organized in California with its  
26 principal headquarters at 15001 S. Figueroa St., Gardena, California.

27 34. Those defendants identified as Does 1 through 100, inclusive, are and were, at all  
28 relevant times herein-mentioned, officers, directors, partners, and/or managing agents of some or



1 each of the remaining defendants. Representative Plaintiffs are informed and believe and, on that  
2 basis, allege that at all relevant times herein mentioned, National Stores, Inc. and those defendants  
3 identified as Does 1 through 100, inclusive, employed and/or exercised control over the wages, hours  
4 and/or working conditions of the Representative Plaintiffs and Class Members at various California  
5 locations, as identified in the preceding paragraph.

6 35. The Representative Plaintiffs are unaware of the true names and capacities of those  
7 defendants sued herein as Does 1 through 100, inclusive and, therefore, sue these defendants by such  
8 fictitious names. Representative Plaintiffs will seek leave of court to amend this Complaint if and  
9 when such names are ascertained. Representative Plaintiffs are informed and believe and, on that  
10 basis, allege that each of the fictitiously-named defendants was responsible in some manner for, gave  
11 consent to, ratified and/or authorized the conduct herein alleged and that the Representative  
12 Plaintiffs' and Class Members' damages, as herein described, were actually and proximately caused  
13 thereby.

14 36. Representative Plaintiffs are informed and believe and, on that basis, allege that, at all  
15 relevant times herein mentioned, each of the defendants was the agent and/or employee of each of  
16 the remaining defendants and, in doing the acts herein alleged, was acting within the course and  
17 scope of such agency and/or employment.

18  
19 **CLASS ACTION ALLEGATIONS**

20 37. The Representative Plaintiffs bring this action individually, and as a class action on  
21 behalf of all persons similarly situated and proximately damaged by Defendant's conduct, including,  
22 but not necessarily limited to, the following "Plaintiff Classes":

23 Misclassification Class: All persons who were employed as exempt Store Managers  
24 by Defendant in one or more of its California retail locations at any time on or after  
January 21, 2006.

25 Terminated Misclassification Sub-Class:  
26 All members of the Misclassification Class whose employment ended during the  
class period.

27 Non-Exempt Class: All persons who were employed as non-exempt Store Managers  
28 by Defendant in one or more of its California retail locations at any time on or after  
January 21, 2006.

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Terminated Non-Exempt Sub-Class:

All members of the Non-Exempt Class whose employment ended during the class period.

38. Defendants, their officers and directors are excluded from the Plaintiff Classes.

39. 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 Classes are easily ascertainable.

a. Numerosity: A class action is the only available method for the fair and efficient adjudication of this controversy. The members of the Plaintiff Classes are so numerous that joinder of all members is impractical, if not impossible, insofar as Representative Plaintiffs are informed and believe and, on that basis, allege that, the total number of Class Members is well into the hundreds of individuals. Membership in the Classes will be determined upon analysis of employee and payroll, among other, records that National Stores is legally required to maintain.

b. Commonality: The Representative Plaintiffs and the Class Members share a 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:

- 1) whether National Stores violated the applicable California Wage Order(s) and/or *California Labor Code* § 510 by failing to pay overtime compensation to Class Members who worked in excess of 40 hours per week and/or eight hours a day;
- 2) whether National Stores violated *California Business and Professions Code* § 17200, *et seq.*, by failing to pay overtime compensation to Class Members who worked in excess of 40 hours per week and/or eight hours a day;
- 3) whether National Stores 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;
- 4) whether National Stores violated, and continues to violate, *California Labor Code* §§ 226 and/or 1174 by failing to keep accurate records of Class Members' actual hours of work; and
- 5) whether National Stores violated, and continues to violate *California Labor Code* §§ 201-204 by failing to pay overtime wages due and owing at the time Terminated Sub-Class members' employment with Factory-2-U ended.

c. Typicality: The Representative Plaintiffs' claims are typical of the claims of Class Members. The Representative Plaintiffs and Class

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1 Members sustained damages arising out of and caused by National  
2 Stores' common course of conduct, as alleged herein.

3 d. Adequacy of Representation: The Representative Plaintiffs in this  
4 class action are adequate representatives of the Plaintiff Classes, in  
5 that the Representative Plaintiffs' claims are typical of those of the  
6 Plaintiff Classes and the Representative Plaintiffs have the same  
7 interest in the litigation of this case as the Class Members. The  
8 Representative Plaintiffs are committed to vigorous prosecution of  
9 this case and have retained competent counsel, experienced in  
10 conducting litigation of this nature. The Representative Plaintiffs are  
11 not subject to any individual defenses unique from those conceivably  
12 applicable to the Classes in the aggregate. Moreover, the  
13 Representative Plaintiffs anticipate no management difficulties in this  
14 litigation.

15 e. Superiority of Class Action: Since the damages suffered by individual  
16 Class Members, while not inconsequential, may be relatively small,  
17 the expense and burden of individual litigation by each member  
18 makes or may make it impractical for Class Members to seek redress  
19 individually for the wrongful conduct alleged herein. Should separate  
20 actions be brought or be required by each individual Class Member,  
21 the resulting multiplicity of lawsuits would cause undue hardship and  
22 expense for the Court and the litigants. The prosecution of separate  
23 actions would also create a risk of inconsistent rulings, which might  
24 be dispositive of the interests of other Class Members who are not  
25 parties to the adjudications and/or may substantially impede their  
26 ability to adequately protect their interests.

27 40. The various claims asserted in this action are additionally or alternatively certifiable  
28 under the provisions of *California Code of Civil Procedure* § 382 because:

a. The prosecution of separate actions by hundreds of individual Class Members  
creates a risk of varying adjudications with respect to individual Class  
Members, thus establishing incompatible standards of conduct for  
defendants; and

b. The prosecution of separate actions by individual Class Members would also  
create the risk of adjudications with respect to them that, as a practical  
matter, would be dispositive of the interests of the other Class Members who  
are not a party to such adjudications and would substantially impair or  
impede the ability of such non-party Class Members to protect their interests.

### COMMON FACTUAL ALLEGATIONS

41. As described herein, Defendant has, for years, knowingly failed to adequately  
compensate those employees within the class definitions identified above for all wages earned,  
including overtime wages and/or compensation for missed meal and/or rest periods, as are due under

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1 the *California Labor Code* and applicable IWC Wage Order(s), thereby enjoying a significant  
2 competitive edge over other retail stores.

3 42. National Stores has declined to pay these wages even upon Class Members'  
4 termination or resignation from employment, in blatant violation of *California Labor Code* §§ 201  
5 and/or 202.

6 43. Members of the Terminated Sub-Classes, whose employment with National Stores  
7 ended during the class period, were routinely not paid, upon termination, all wages due to them, in  
8 violation of *California Labor Code* §§ 201-203. Specifically, members of the Terminated Sub-  
9 Classes were not paid for regular hours worked, overtime hours worked, or for missed meal and rest  
10 breaks. During the class period, and continuing to the present, National Stores has had a consistent  
11 policy of failing to provide members of the Terminated Sub-Classes all wages due to them upon  
12 termination.

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

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

28

1           46.     The Representative Plaintiffs are informed and believe and, on that basis, allege that  
2 members of the Terminated Sub-Classes are entitled to unpaid compensation, yet, to date and despite  
3 the termination of their employment with Defendant, have not received such compensation.

4           47.     More than 30 days have passed since certain Terminated Sub-Class Members have  
5 left National Stores' employ.

6           48.     As a consequence of National Stores' willful conduct in not paying compensation for  
7 all hours worked, Terminated Sub-Class members are entitled to 30 days wages, as "waiting time"  
8 penalties under *California Labor Code* § 203, together with interest thereon and attorneys' fees and  
9 costs.

10          49.     As a consequence of National Stores' willful conduct in not providing an  
11 uninterrupted 30 minute meal period within the first five hours of Class Members' shifts as required  
12 under *California Labor Code* § 512 and Section 11 of the applicable IWC Wage Order(s), Class  
13 Members are entitled to one hour of wages for each day that they were denied at least one meal  
14 period, as provided under *California Labor Code* § 226.7, together with interest thereon and  
15 attorneys' fees and costs.

16          50.     As a consequence of National Stores' willful conduct in not providing a ten minute  
17 rest period once during each four hours of work as prescribed by Section 12 of the applicable IWC  
18 Wage Order(s), Class Members are entitled to one hour of wages for each day that Class Members  
19 were denied at least one rest period, as provided under *California Labor Code* § 226.7, together with  
20 interest thereon and attorneys' fees and costs.

21          51.     As a direct and proximate result of National Stores' unlawful conduct, as set forth  
22 herein, Representative Plaintiffs and Class Members have sustained damages, as described above,  
23 including loss of earnings for hours worked on behalf of Defendant, in an amount to be established  
24 at trial. As a further direct and proximate result of Defendant's unlawful conduct, as set forth herein,  
25 Representative Plaintiffs and Class Members are entitled to recover penalties for failure to provide  
26 semimonthly statements of hours worked and all applicable hourly rates (pursuant to *California*  
27 *Labor Code* § 226) in an amount to be established at trial. As a further direct and proximate result of  
28 Defendant's unlawful conduct, as set forth herein, Representative Plaintiffs and Class Members are

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1 also entitled to recover costs and attorneys' fees, pursuant to *California Labor Code* § 1194 and/or  
2 *California Code of Civil Procedure* § 1021.5, among other authorities.

3 Representative Plaintiff O'Neal seeks injunctive relief prohibiting Defendant from engaging in the  
4 illegal labor acts described herein. Unless enjoined, Defendant's unlawful conduct will continue  
5 unchecked, while Representative Plaintiffs and Class Members bear the financial brunt of  
6 Defendant's unlawful conduct. All the Representative Plaintiffs also seek restitution of costs  
7 incurred by Representative Plaintiffs and Class Members under California's Unfair Competition  
8 Law. As a further direct and proximate result of Defendant's unlawful conduct, as set forth herein,  
9 Representative Plaintiffs and the Plaintiff Classes are also entitled to recover attorneys' fees and  
10 costs.

11 52. National Stores committed the acts alleged herein knowingly and willfully, with the  
12 wrongful and deliberate intention of injuring Representative Plaintiffs and members of the Plaintiff  
13 Classes, with improper motives amounting to malice, and in conscious disregard for Representative  
14 Plaintiffs and Class Members' rights. Representative Plaintiffs and Class Members are thus entitled  
15 to recover nominal, actual, compensatory, punitive, and exemplary damages in amounts to be proven  
16 at trial.

17 53. Representative Plaintiffs complied with the procedures for bringing suit specified in  
18 *California Labor Code* § 2699.3. By letter dated April 6, 2010, Representative Plaintiff O'Neal  
19 gave written notice, by certified mail, to the Labor and Workforce Development Agency ("LWDA")  
20 and Defendant of the specific provisions of the *California Labor Code* alleged to have been violated,  
21 including the facts and theories to support the alleged violations.

22  
23 **FIRST CAUSE OF ACTION**  
24 **UNLAWFUL FAILURE TO PAY OVERTIME WAGES**  
25 **(Violation of California Wage Order 4 and *California Labor Code* §§ 510, 1194 and 1198)**  
26 **(By All Representative Plaintiffs Against All Defendants)**

27 54. Representative Plaintiffs incorporate in this cause of action each and every allegation  
28 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

1           55.     During the class period, the Representative Plaintiffs and Class Members worked, on  
2 many occasions, in excess of eight hours in a workday and/or forty hours in a workweek. The  
3 precise number of overtime hours will be proven at trial.

4           56.     During said time period, National Stores refused to compensate the Representative  
5 Plaintiffs and Class Members for all of the overtime wages earned, in violation of the applicable  
6 Wage Order(s) and provisions of the *California Labor Code*.

7           57.     Additionally, by requiring Representative Plaintiffs and Non-Exempt Class members  
8 to work "off-the-clock," and by thus failing to properly record all hours worked thereby, National  
9 Stores has failed to pay them for all hours worked, and has failed to properly take this time into  
10 account in calculating the amount of overtime hours worked, and thus the amount of overtime pay  
11 due to Representative Plaintiffs and members of the Non-Exempt Class.

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

17           59.     At all relevant times, National Stores was aware of, and was under a duty to comply  
18 with, the overtime provisions of the *California Labor Code*, including, but not limited to, the  
19 following:

- 20           a.     Labor Code § 510: "Any work in excess of eight hours in one  
21 workday and any work in excess of 40 hours in any one workweek  
22 and the first eight hours worked on the seventh day of work in any  
23 one workweek shall be compensated at the rate of no less than one  
24 and one-half times the regular rate of pay for an employee."  
25           b.     Labor Code § 1194: "Notwithstanding any agreement to work for a  
26 lesser wage, any employee receiving less than the legal minimum  
27 wage or the legal overtime compensation applicable to the employee  
28 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."  
          c.     Labor Code § 1198: "The maximum hours of work and the standard  
conditions of labor fixed by the commission shall be the maximum  
hours of work and the standard conditions of labor for employees.  
The employment of any employee for longer hours than those fixed

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1 by the order or under conditions of labor prohibited by the order is  
2 unlawful.”

3 60. By refusing to compensate the Representative Plaintiffs and Class Members for  
4 overtime wages earned, National Stores violated those *California Labor Code* provisions cited  
5 herein, as well as any applicable California Industrial Welfare Commission Wage Order(s).

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

10 **SECOND CAUSE OF ACTION**  
11 **FAILURE TO PROVIDE MEAL AND REST PERIODS**  
12 **(California Labor Code §§ 226.7 and 512)**  
13 **(By All Representative Plaintiffs Against All Defendants)**

14 62. Representative Plaintiffs incorporate in this cause of action each and every allegation  
15 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

16 63. At all relevant times, National Stores was aware of and was under a duty to comply  
17 with *California Labor Code* §§ 226.7 and 512.

18 64. *California Labor Code* § 226.7 provides:

- 19 a. No employer shall require any employee to work during any meal or  
20 rest period mandated by an applicable order of the Industrial Welfare  
21 Commission.  
22 b. If an employer fails to provide an employee a meal period or rest  
23 period in accordance with an applicable order of the Industrial  
24 Welfare Commission, the employer shall pay the employee one  
25 additional hour of pay at the employee’s regular rate of compensation  
26 for each work day that the meal or rest period is not provided.

27 65. Moreover, *California Labor Code* § 512 provides:

28 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.



1           66.     Sections 11 and 12, respectively, of the applicable IWC Wage Order(s) mandate that  
2 employers provide all applicable meal and/or rest periods to non-exempt (including exempt-  
3 misclassified) employees.

4           67.     Section 11 of the applicable IWC Wage Order provides:

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

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

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

22           68.     By failing to consistently provide uninterrupted 30-minute meal periods within the  
23 first five hours of work each day and/or uninterrupted 10-minute net rest periods to Representative  
24 Plaintiffs and Class Members, National Stores violated the *California Labor Code* and the IWC  
25 Wage Order provisions.

26           69.     Representative Plaintiffs are informed and believe and, on that basis, allege that  
27 National Stores has never paid the one-hour of compensation to any Class Member due to its  
28 violations of the *California Labor Code* and IWC Wage Order provisions.

          70.     As a direct and proximate result of National Stores' unlawful conduct, as set forth  
herein, the Representative Plaintiffs and Class Members have sustained damages, including lost  
compensation resulting from missed meal and/or rest periods, in an amount to be established at trial.  
As a further direct and proximate result of Defendant's unlawful conduct, as set forth herein,  
Terminated Sub-Class members are entitled to recover "waiting time" and other penalties, in  
amounts to be established at trial, as well as attorneys' fees and costs.

**THIRD CAUSE OF ACTION**  
**FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**  
**(California Labor Code §§ 226 and 1174)**  
**(By All Representative Plaintiffs Against All Defendants)**

71. Representative Plaintiffs incorporate 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.

72. *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 accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, ... (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number..., [and] (8) the name and address of the legal entity which is the employer[.]

73. 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.

74. 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.

75. National Stores failed to accurately record the regular and overtime hours worked by Representative Plaintiffs and Class Members and, thereby, failed to properly calculate the total wages due thereto.

76. Representative Plaintiffs seek to recover actual damages, costs and attorneys' fees under these provisions on behalf of themselves and on behalf of all Class Members.

77. National Stores failed to provide timely, accurate itemized wage statements to the Representative Plaintiffs and Class Members in accordance with *California Labor Code* § 226.

Representative Plaintiffs are informed and believe and, on that basis, allege that none of the

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1 statements provided by National Stores have accurately reflected actual gross wages earned, net  
2 wages earned, or the appropriate deductions from the wages of such Class Members.

3 78. As a direct and proximate result of National Stores' unlawful conduct, as set forth  
4 herein, the Representative Plaintiffs and Class Members have sustained damages in an amount to be  
5 established at trial, and are entitled to recover attorneys' fees and costs.

6  
7 **FOURTH CAUSE OF ACTION**  
8 **FAILURE TO PAY WAGES ON TERMINATION**  
9 **(California Labor Code § 203)**

10 **(By All Representative Plaintiffs and Members of the Terminated Sub-Class Against All**  
11 **Defendants)**

12 79. Representative Plaintiffs incorporate in this cause of action each and every allegation  
13 of the preceding paragraphs, with the same force and effect as though fully set forth herein.

14 80. *California Labor Code* § 203(a) provides that:

15 "If an employer willfully fails to pay, without abatement or reduction, in accordance  
16 with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is  
17 discharged or who quits, the wages of the employee shall continue as a penalty from  
18 the due date thereof at the same rate until paid or until an action therefor is  
19 commenced; but the wages shall not continue for more than 30 days."

20 81. Members of the Terminated Sub-Classes were employed by National Stores during  
21 the class period and were thereafter terminated or resigned from their positions, yet were not paid all  
22 overtime and/or regular wages due upon said termination or within 72 hours of said resignation of  
23 employment therefrom. Said non-payment was the direct and proximate result of a willful refusal to  
24 do so by National Stores.

25 82. More than 30 days have elapsed since Terminated Sub-Class members were  
26 involuntarily terminated or voluntarily resigned from National Stores' employ.

27 83. As a direct and proximate result of National Stores' willful conduct in failing to pay  
28 said Class Members for all hours worked, the Terminated Sub-Class Members are entitled to recover  
"waiting time" penalties of up to 30 days' wages pursuant to *California Labor Code* § 203, in an  
amount to be established at trial, together with attorneys' fees and costs.

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**FIFTH CAUSE OF ACTION**  
**FAILURE TO PAY WAGES AT THE AGREED RATE**  
**(California Labor Code §§ 204 and 223)**  
**(By All Representative Plaintiffs Against All Defendants)**

84. Representative Plaintiffs incorporate 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.

85. National Stores suffered Representative Plaintiffs and members of the Non-Exempt Class to work “off-the-clock,” thereby failing to properly calculate and record the number of hours worked thereby, and National Stores failed to pay them all regular wages due for such time worked “off-the-clock,” as well as overtime wages due as a result of such hours worked “off-the-clock.”

86. National Stores’ conduct described herein violates *California Labor Code* §§ 204 and 223, as well as the applicable IWC Wage Order(s). Representative Plaintiffs and members of the Non-Exempt Class are thus entitled to recover, and hereby claim, in addition to the unpaid balance of wages National Stores owes them, all interest, penalties, attorneys’ fees, expenses and costs of suit as permitted by the Labor Code provisions identified more specifically above.

**SIXTH CAUSE OF ACTION - AS TO BOTH CLASSES**  
**UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT**  
**(California Business & Professions Code §§ 17200-17208)**  
**(By All Representative Plaintiffs, on Behalf of Themselves and the Plaintiff Class, and the General Public Against All Defendants)**

87. Representative Plaintiffs incorporate 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.

88. Representative Plaintiffs further bring this cause of action seeking equitable and statutory relief to stop the misconduct of National Stores, as complained of herein, and to seek restitution from National Stores of amounts acquired through the unfair, unlawful and/or fraudulent business practices described herein.

89. The knowing conduct of National Stores, as alleged herein, constitutes an unlawful and/or fraudulent business practice, as set forth in *California Business & Professions Code* §§ 17200-17208. Specifically, National Stores conducted business activities while failing to comply with the legal mandates cited herein. National Stores’ actions are thus substantially injurious to Representative Plaintiffs and Class Members, causing them injury in fact and loss of money.



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

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

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

10          8.       That the Court order National Stores to pay restitution to the Representative Plaintiffs  
11 and Class Members due to National Stores' unlawful activities, pursuant to *California Business and*  
12 *Professions Code* §§ 17200-17208;

13          9.       That the Court further enjoin National Stores, ordering it to cease and desist from  
14 unlawful activities in violation of *California Business and Professions Code* §§ 17200, *et seq.*;

15          10.       For all penalties permitted by *California's Private Attorney General's Act (PAGA)*,  
16 Labor Code § 2698, *et seq.*;

17          11.       For punitive/exemplary damages in an amount appropriate and sufficient to punish  
18 National Stores, and to deter others from engaging in similar misconduct in the future;

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

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

22          14.       For reasonable attorneys' fees and applicable penalties, pursuant to *California Labor*  
23 *Code* § 1194 and/or *California Code of Civil Procedure* § 1021.5; and,

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

25

26

**JURY DEMAND**

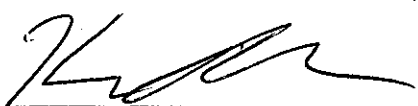
27           Representative Plaintiffs, on behalf of themselves and the Plaintiffs Classes, hereby demand  
28 a trial by jury.

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Dated: November 24, 2010

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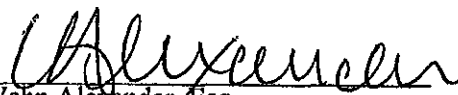
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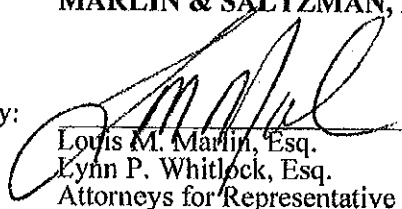
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