

2012 JAN -6 PM 3:50

SAN DIEGO COUNTY, CA

1 Matthew R. Bainer, Esq. (S.B. #220972)
2 Molly A. DeSario, 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 Email: mbainer@scalaw.com
9 Email: mdesario@scalaw.com
10 Web: www.scalaw.com

11 Attorneys for Representative Plaintiff
12 and the Plaintiff Class

13 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF SAN DIEGO**

15 EMILY MILFORD, individually, and) Case No. 37-2012-00090271-CU-OE-CTL
16 on behalf of all others similarly)
17 situated,) **CLASS ACTION**
18 Plaintiffs,) **COMPLAINT FOR DAMAGES,**
19 vs.) **INJUNCTIVE RELIEF AND RESTITUTION**
20) **[Jury Trial Demanded]**
21 SEARS, ROEBUCK AND)
22 COMPANY, and DOES 1 through)
23 100, inclusive,)
24 Defendants.)

25 Representative Plaintiff alleges as follows:

26 **PRELIMINARY STATEMENT**

27 1. This is a class action seeking unpaid wages, compensation for missed meal and rest
28 periods, interest thereon, related penalties, injunctive and other equitable relief, 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 Emily Milford ("Plaintiff" or "Representative Plaintiff") brings this action on behalf of herself and all other persons similarly situated ("Class

Handwritten mark: "M.R.B."

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

1 Members" and/or the "Plaintiff Class") who have been employed by defendants Sears, Roebuck and
2 Company, and/or Does 1 through 100, inclusive (collectively "Defendant" and/or "Sears") as non-
3 exempt hourly associates within the State of California at any time after January 6, 2008.

4 2. The "Class Period" is designated as the time from January 6, 2008 through the date
5 of trial and is based upon the allegation that Defendant's violations of California's wage and hour
6 laws, as described more fully below, have been ongoing during that time.

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

19 20 INTRODUCTION

21 4. Plaintiff is informed and believes and, based thereon, alleges that, within the Class
22 Period, Sears operated numerous retail establishments throughout California. In doing so, Sears has
23 employed hundreds, if not thousands, of individuals in non-exempt hourly associate positions, which
24 are entitled to full and uninterrupted meal and rest periods, as well as other benefits of employment
25 as set forth herein.

26 5. Despite actual knowledge of these facts and legal mandates, Sears has and
27 continues to enjoy an advantage over its competition and a resultant disadvantage to its workers by
28 failing to offer all required meal and rest periods to its California non-exempt hourly associates, by

1 not providing all regular and/or overtime pay when due and/or when certain Class Members'
2 employment with Sears terminated, and by willfully failing to provide accurate semi-monthly
3 itemized wage statements.

4 6. Plaintiff is informed and believes and, based thereon, alleges that officers and
5 directors of Sears knew of these facts and legal mandates yet, nonetheless, repeatedly authorized
6 and/or ratified the violation of the laws cited herein.

7 7. Despite Sears' knowledge of Plaintiff's and Class Members' entitlement to these
8 benefits of employment, Sears failed to provide same, for all applicable work periods, in violation of
9 the California Labor Code, the California Business and Professions Code, California Industrial
10 Welfare Commission Wage Order No. 7, and Title 8 of the California Code of Regulations. This
11 action is brought to redress and end this ongoing pattern of unlawful conduct once and for all.

12
13 **JURISDICTION AND VENUE**

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

19 9. 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 Defendant's
21 unfair, unlawful, and/or fraudulent business practices under California Business & Professions Code
22 §§ 17200, *et seq.*

23 10. Venue as to Defendant is proper in this judicial district pursuant to California Code
24 of Civil Procedure § 395(a). Defendant Sears maintains locations within San Diego County, 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 Plaintiff and those persons
27 similarly situated within the State of California and County of San Diego. Defendant operates
28 facilities and has employed numerous Class Members in the County of San Diego.

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE WACHOVIA TOWER
1970 BROADWAY, NINETEEN FLOOR
OAKLAND, CA 94612
TEL: (916) 882-8800

1 **PLAINTIFF**

2 11. Plaintiff is a natural person and was, during the Class Period identified herein,
3 employed by Defendant Sears as a non-exempt hourly associate at one or more of Defendant's
4 California retail stores.

5 12. During the Class Period identified herein, Plaintiff was a person within the Class of
6 persons further described and defined herein.

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

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

13 **DEFENDANTS**

14 15. At all times herein relevant, Defendant Sears was a corporation, duly licensed,
16 located and doing business in, but not limited to, the County of San Diego, in the State of California.

17 16. Plaintiff is informed and believes and, based thereon, alleges that Defendant Sears
18 has, since January 6, 2008, directly or indirectly employed and/or exercised control over the wages,
19 hours, and working conditions of Plaintiff and Class Members within various California counties,
20 including, but not limited to, the County of San Diego.

21 17. Those Defendants identified as Does 1 through 100, inclusive, were, at all times
22 herein-mentioned, business affiliates, successors- and/or predecessors-in-interest, officers, directors,
23 partners, and/or managing agents of some or each of the remaining defendants. Plaintiff is informed
24 and believes and, on that basis, alleges that, at all times herein-mentioned, each of the defendants
25 identified as Does 1 through 100, inclusive, employed, and/or exercised control over the wages,
26 hours, and/or working conditions of Plaintiff and Class Members at various California locations, as
27 identified in the preceding paragraph.

28 ///

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

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

12
13 **CLASS ACTION ALLEGATIONS**

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

16 *All persons who are and/or were employed as non-exempt hourly*
17 *associates by Sears, Roebuck and Company, in one or more of Sears'*
18 *California retail stores between January 6, 2008 and the present.*

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

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

23 a. Numerosity: A class action is the only available method for the fair and
24 efficient adjudication of this controversy. The members of the Plaintiff Class
25 are so numerous that joinder of all members is impractical, if not impossible,
26 insofar as the Plaintiff are informed and believe and, on that basis, allege that
27 the total number of Class Members is, at least, in the hundreds, if not
28 thousands, of individuals. Membership in the Class will be determined by
and upon analysis of employee and payroll records, among other records
maintained by Sears.

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
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

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

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE WACHOVIA TOWER
1570 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 301-9900

1 COMMON FACTUAL ALLEGATIONS

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

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

17 25. As a direct and proximate result of Defendant's unlawful conduct, as set forth
18 herein, Plaintiff and Class Members have sustained damages, as described above, including loss of
19 earnings for uncompensated hours worked, missed meal periods, and missed rest periods, in an
20 amount to be established at trial. As a further direct and proximate result of Defendant's unlawful
21 conduct, as set forth herein, Plaintiff and Class Members are entitled to recover penalties/wages for
22 failure to pay wages owed upon termination (pursuant to California Labor Code §§ 201-204), for
23 failure to provide semimonthly itemized wage statements of hours worked and all applicable hourly
24 rates (pursuant to California Labor Code § 226) in an amount to be established at trial. As a further
25 direct and proximate result of Defendant's unlawful conduct, as set forth herein, Plaintiff and Class
26 Members are also entitled to recover attorneys' fees, litigation costs, and restitution of ill-gotten
27 gains, pursuant to statute.

28 ///

1 26. Representative Plaintiff complied with the procedures for bringing suit specified in
2 California Labor Code § 2699.3. By letter dated January 6, 2012, Representative Plaintiff gave
3 written notice, by certified mail, to the Labor and Workforce Development Agency (“LWDA”) and
4 Defendant of the specific provisions of the California Labor Code alleged to have been violated,
5 including the facts and theories to support those violations.

6
7 **FIRST CAUSE OF ACTION**
8 **FAILURE TO PROVIDE MEAL AND REST PERIODS**
9 **(California Labor Code §§ 226.7 and 512)**

10 27. 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 28. At all relevant times, Defendant was aware of and was under a duty to comply with
13 California Labor Code §§ 226.7 and 512.

14 29. California Labor Code §226.7 provides:

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

23 30. Moreover, California Labor Code § 512 provides:

24 An employer may not employ an employee for a work period of more than
25 five hours per day without providing the employee with a meal period of not
26 less than 30 minutes, except that if the total work period per day of the
27 employee is no more than six hours, the meal period may be waived by
28 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.

29 31. By failing to consistently provide uninterrupted and unrestricted meal and rest
30 periods to Class Members, Defendant violated California Labor Code §§ 226.7 and/or 512, and §§
31 11 and 12 of IWC Wage Order No. 7.

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

32. Section 11 of Wage Order No. 7 provides:

- a. No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes....
- b. An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes....
- c. If an employer fails to provide an employee a meal period in 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.

33. Moreover, Section 12 of Wage Order No. 7 provides:

- a. Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work 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
- b. If an employer fails to provide an employee a rest period in 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 rest period is not provided.

34. By failing to consistently (1) provide meal breaks within the first five hours of a work shift, (2) provide uninterrupted thirty-minute meal periods, and/or (3) authorize and permit ten-minute rest periods to Class Members, Defendant violated the California Labor Code and §§ 11 and 12 of IWC Wage Order No. 7.

35. Even where Defendant's records specifically evidence that no meal and/or rest periods were provided to Plaintiff and Class Members, Scars refuses to provide these employees with one hour of compensation for these respective violations as mandated by California law. Plaintiff is informed and believes and, on that basis, alleges that Defendant has never paid the one hour of compensation to any Class Member.

36. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, Plaintiff 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

1 proximate result of Defendant's unlawful conduct, as set forth herein, certain Class Members are
2 entitled to recover "waiting time" and other penalties, in an amount to be established at trial, as well
3 as attorneys' fees and costs, and restitution, pursuant to statute.

4
5 **SECOND CAUSE OF ACTION**
6 **UNLAWFUL FAILURE TO PAY WAGES**
7 **(Violation of IWC Wage Order and Labor Code §§ 200-204, 510, 1194, and 1198)**

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

10 38. During the Class Period and continuing through the present, the Plaintiff and Class
11 Members performed work for Sears, oftentimes in excess of eight hours in a workday and/or forty
12 hours in a workweek. The precise number of hours will be proven at trial.

13 39. During the Class Period, Defendant refused to compensate the Plaintiff and Class
14 Members for all of the wages earned, in violation of the applicable IWC Wage Order and provisions
15 of the California Labor Code.

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

19 41. California Labor Code § 510 provides, in pertinent part:

20 Any work in excess of eight hours in one workday and any work in excess
21 of 40 hours in any one workweek and the first eight hours worked on the
22 seventh day of work in any one workweek shall be compensated at the rate
23 of no less than one and one-half times the regular rate of pay for an
24 employee...

25 42. California Labor Code § 1194 provides, in pertinent part:

26 Notwithstanding any agreement to work for a lesser wage, any employee
27 receiving less than the legal minimum wage or the legal overtime
28 compensation applicable to the employee is entitled to recover in a civil
29 action the unpaid balance of the full amount of this minimum wage or
30 overtime compensation, including interest thereon, reasonable attorney's
31 fees, and costs of suit.

32 ///

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE WACHOVIA TOWER
1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 881-9800

1 43. Finally, California Labor Code § 1198 provides, in pertinent part:

2 The maximum hours of work and the standard conditions of labor fixed by
3 the commission shall be the maximum hours of work and the standard
4 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.

5 44. As a direct and proximate result of Defendant's unlawful conduct, as set forth
6 herein, Plaintiff and the Plaintiff Class have sustained damages, including loss of earnings for hours
7 of overtime worked on behalf of Sears, in an amount to be established at trial. As a further direct and
8 proximate result of Defendant's unlawful conduct, as set forth herein, Plaintiff and the Plaintiff Class
9 are entitled to recover penalties (including "waiting time" penalties of up to thirty days' wages,
10 pursuant to California Labor Code § 203) in an amount to be established at trial, as well as attorneys'
11 fees and costs, and restitution, pursuant to statute.

12
13 **THIRD CAUSE OF ACTION**
14 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
15 **(California Labor Code §§ 226 and 1174)**

16 45. 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.

17 46. California Labor Code § 226(a) provides:

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

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

26 An employee suffering injury as a result of a knowing and intentional
27 failure by an employer to comply with subdivision (a) is entitled to recover
28 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.

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

2 Every person employing labor in this state shall ... Keep, at a central
3 location in the state ... payroll records showing the hours worked daily by
4 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.

5 49. Defendant has failed to provide timely, accurate itemized wage statements to the
6 Plaintiff and Class Members in accordance with California Labor Code § 226. Plaintiff is informed
7 and believes and, on that basis, alleges that none of the statements provided by Defendant accurately
8 reflected actual gross wages earned, net wages earned, or the appropriate deductions for any Class
9 Member.

10 50. As a direct and proximate result of Defendant's unlawful conduct, as set forth
11 herein, Plaintiff and the Plaintiff Class are entitled to recover penalties, in an amount to be
12 established at trial, as well as attorneys' fees and costs, pursuant to statute.

13
14 **FOURTH CAUSE OF ACTION**
15 **FAILURE TO PAY WAGES ON TERMINATION**
16 **(California Labor Code § 203)**

17 51. 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.

18 52. California Labor Code §203 provides that:

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

23 53. Numerous Class Members, including Representative Plaintiff, were employed by
24 Sears during the Class Period and were thereafter involuntarily terminated or voluntarily resigned
25 from their positions, yet were not paid all wages due upon said termination or within 72 hours of said
26 resignation of employment therefrom. Said non-payment was the direct and proximate result of a
27 willful refusal to do so by Sears.

28 ///

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE WACHOVIA TOWER
1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 891-8800

1 54. More than thirty days has elapsed since certain Class Members were involuntarily
2 terminated or voluntarily resigned from Defendant's employ.

3 55. As a direct and proximate result of Defendant's willful conduct in failing to pay said
4 Class Members for all hours worked, affected Class Members are entitled to recover "waiting time"
5 penalties of up to thirty days' wages pursuant to California Labor Code §203 in an amount to be
6 established at trial, together with interest thereon, and attorneys' fees and costs.

7
8

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

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

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

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

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

25 ///
26 ///
27 ///
28 ///

**SIXTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT CLAIM
(California Labor Code §§ 2699)**

68. 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.

69. California Labor Code § 2699(a) states:

Notwithstanding any other provision of the law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees...

70. Plaintiff is an "aggrieved employee," as defined by California Labor Code § 2699(c), because she was employed by Defendant and was one of many employees against whom violations of law were committed.

71. Plaintiff has met and/or will meet all of the requirements set forth in California Labor Code § 2699.3 necessary to maintain a civil action against Defendants for violations of California Labor Code §§ 200-204, inclusive, 226, 226.7, 510, 512, 1174, 1194, 1197, and/or 1198.

72. Plaintiff brings this action on behalf of herself and all Class Members alleging violations of California Labor Code §§ 200-204, inclusive, 226, 226.7, 510, 512, 1174, 1194, 1197; and/or 1198.

73. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, Class Members have sustained damages, including loss of earnings, in an amount to be established at trial.

74. As a further direct and proximate result of Defendant's unlawful conduct, as set forth herein, Class Members are entitled to recover various penalties as provided by California Labor Code § 2699, in an amount to be established at trial, as well as costs and attorneys' fees, pursuant to statute.

///

///

///

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

RELIEF SOUGHT

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

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

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

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

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

5. That the Court declare, adjudge, and decree that Plaintiff and Class Members were, at all times relevant herein, entitled to overtime pay for work beyond eight hours in a day and/or forty hours in a week;

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

7. That the Court order Defendant to pay restitution to Plaintiff and Class Members as a result of Defendant's unlawful activities, pursuant to California Business and Professions Code §§ 17200-17208;

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

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

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

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

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

Dated: January 6, 2012

SCOTT COLE & ASSOCIATES, APC

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

JURY DEMAND

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

Dated: January 6, 2012

SCOTT COLE & ASSOCIATES, APC

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