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ORIGINAL FILED
Superior Court of California
County of Los Angeles

UCT 27 2011

John A. Clarke, Executive Officer/ Clerk
By: Moses Soto, Deputy

7 Attorneys for Representative Plaintiff
8 and the Plaintiff Class

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

12 ELIZABETH MONTANO,
13 individually and on behalf of all others
14 similarly situated,

14 Plaintiff,

15 vs.

16 THE WET SEAL RETAIL, INC., and
17 DOES 1 through 100, inclusive,

18 Defendants.

Case No.

BC 472230

CLASS ACTION

COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF, AND RESTITUTION

[Jury Trial Demanded]

BY FAX

19
20 Representative Plaintiff alleges as follows:

22 PRELIMINARY STATEMENT

23 1. This is a class action seeking unpaid wages, including meal and rest period
24 compensation, interest thereon, penalties, injunctive and other equitable relief, and reasonable
25 attorneys' fees and costs under, *inter alia*, California Labor Code §§ 200-204, inclusive, 226, 226.7,
26 510, 512, 1174, 1194, 1197, 1198 and 2699, California Business and Professions Code §§ 17200, *et*
27 *seq.*, and California Code of Civil Procedure § 1021.5. Plaintiff Elizabeth Montano ("Plaintiff")
28 brings this action on behalf of herself and all other persons similarly situated ("Class Members")

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1 and/or the "Plaintiff Class") who are or have been employed by defendants The Wet Seal Retail, Inc.
2 and/or Does 1 through 100, inclusive (collectively "Defendant" and/or "Wet Seal") as non-exempt
3 retail store employees within the State of California at any time after October 27, 2007.

4 2. The "Class Period" is designated as the time from October 27, 2007 through the
5 date of trial and is based upon the allegation that Defendant's violations of California's wage and
6 hour 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 retail employees, including Plaintiff and Class Members, to remain at work,
9 under the control of Wet Seal, 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 retail employees, 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 during meal and/or rest periods), (3) willfully failing to pay
14 compensation owing in a prompt and timely manner to those Class Members whose employment
15 with Wet Seal has terminated, (4) willfully failing to provide Plaintiff and Class Members with
16 accurate semimonthly itemized statements of the total number of hours each of them worked, the
17 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, Wet Seal operated numerous retail establishments throughout California. In doing so, Wet
23 Seal has employed hundreds, if not thousands, of individuals in non-exempt retail 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, Wet Seal 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 retail employees, by

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1 not providing all regular and/or overtime pay when due and/or when certain Class Members'
2 employment with Wet Seal 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 Wet Seal 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 Wet Seal's knowledge of Plaintiff's and Class Members' entitlement to
8 these benefits of employment, Wet Seal failed to provide same for all applicable work periods in
9 violation of the California Labor Code, the California Business and Professions Code, California
10 Industrial Welfare Commission Wage Order No. 7, and Title 8 of the California Code of
11 Regulations. This action is brought to redress and end this ongoing pattern of unlawful conduct once
12 and for all.

13
14 **JURISDICTION AND VENUE**

15 8. This Court has jurisdiction over the Representative Plaintiff's and Class Members'
16 claims for unpaid wages, penalties and other forms of relief sought herein under, *inter alia*,
17 Industrial Welfare Commission Wage Order No. 7, Title 8 of the California Code of Regulations,
18 Labor Code §§ 201-204, inclusive, 226, 226.7, 510, 512, 1174, 1194, 1198, and/or 2699, and
19 California Code of Civil Procedure § 1021.5.

20 9. This Court also has jurisdiction over the Representative Plaintiff's and Class
21 Members' claims for injunctive relief and restitution of ill-gotten benefits arising from Defendant's
22 unfair, unlawful, and/or fraudulent business practices under California Business & Professions Code
23 §§ 17200, *et seq.*

24 10. Venue as to Defendant is proper in this judicial district pursuant to California Code
25 of Civil Procedure § 395(a). Defendant Wet Seal operates retail facilities and has employed
26 numerous Class Members within Los Angeles County, transacts business, has agents, and is
27 otherwise within this Court's jurisdiction for purposes of service of process. The unlawful acts
28 alleged herein have a direct effect on Plaintiff and those persons similarly situated within the State of

1 California and the County of Los Angeles. Defendant operates facilities and has employed numerous
2 Class Members in the County of Los Angeles.

3
4 **PLAINTIFF(S)**

5 11. Plaintiff is a natural person and was, during the Class Period, employed by
6 Defendant Wet Seal as a non-exempt employee at one or more of Defendant's California retail
7 stores.

8 12. During the Class Period, Plaintiff was a person within the Class of persons further
9 described and defined herein.

10 13. As used throughout this Complaint, the term "Class Members" and/or the "Plaintiff
11 Class" refers to the named Plaintiff as well as each and every person eligible for membership in the
12 class of persons further described and defined herein. At all times herein relevant, Plaintiff is/was a
13 person within the class of persons further described and defined herein.

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

17
18 **DEFENDANT(S)**

19 15. At all times herein relevant, Defendant Wet Seal was a corporation, duly licensed,
20 located and doing business in, but not limited to, the County of Los Angeles, in the State of
21 California.

22 16. Plaintiff is informed and believes and, based thereon, alleges that Defendant Wet
23 Seal has, since October 27, 2007, directly or indirectly employed and/or exercised control over the
24 wages, hours, and working conditions of Plaintiff and Class Members within various California
25 counties, including, but not limited to, the County of Los Angeles.

26 17. Those Defendants identified as Does 1 through 100, inclusive, were, at all times
27 herein-mentioned, business affiliates, successors- and/or predecessors-in-interest, officers, directors,
28 partners, and/or managing agents of some or each of the remaining defendants. Plaintiff is informed

1 and believes and, on that basis, alleges that, at all times herein-mentioned, each of the defendants
2 identified as Does 1 through 100, inclusive, employed, and/or exercised control over the wages,
3 hours, and/or working conditions of Plaintiff and Class Members at various California locations, as
4 identified in the preceding paragraph.

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

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

16
17 **CLASS ACTION ALLEGATIONS**

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

20 *All persons who are and/or were employed as non-exempt employees by The Wet*
21 *Seal Retail, Inc. in one or more of its California retail stores between October 27,*
22 *2007 and the present.*

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

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

27 a. Numerosity: A class action is the only available method for the fair and
28 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 Plaintiff is informed and believes and, on that basis, alleges that the

1 total number of Class Members is, at least, in the hundreds, if not thousands
2 of individuals. Membership in the Class will be determined by and upon
3 analysis of employee and payroll records, among other records maintained by
4 Defendant.

5 b. Commonality: Plaintiff and the Class Members share a community of
6 interests in that there are numerous common questions and issues of fact and
7 law which predominate over any questions and issues solely affecting
8 individual members, including, but not necessarily limited to:

- 9 1) Whether defendant violated California Labor Code §§ 226.7 and/or
10 512 by failing to consistently provide duty-free meal and/or rest
11 periods to Plaintiff and the Class Members;
- 12 2) Whether defendant violated applicable IWC Wage Order(s) and/or
13 California Labor Code § 510 by failing to pay all (including
14 overtime) compensation to its non-exempt retail employees who
15 worked in excess of forty hours per week and/or eight hours per day;
- 16 3) Whether defendant violated California Labor Code § 1174 by failing
17 to keep accurate records of Class Members' hours of work;
- 18 4) Whether defendant violated California Labor Code §§ 201-204 by
19 failing to pay all wages due and owed during the pendency of
20 employment and/or at the time of the termination of employment with
21 Defendant of Plaintiff and/or Class Members;
- 22 5) Whether defendant violated California Labor Code § 226 by failing to
23 provide Plaintiff and the Class Members with semimonthly itemized
24 statements including total hours worked and all applicable hourly
25 rates in effect during the pay period; and
- 26 6) Whether defendant violated California Business and Professions
27 Code §§ 17200, *et seq.* by engaging in unfair, unlawful and/or
28 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 is an adequate representative of the
Plaintiff Class in that Plaintiff's claims are typical of those of the Plaintiff
Class, and 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

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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

23. Wet Seal has, for years, knowingly failed to properly compensate Plaintiff and the Class Members for all wages earned and due (including, but not necessarily limited to, overtime wages and/or compensation for missed meal and/or rest periods), thereby enjoying a significant competitive edge over other companies within its industry. Moreover, Defendant has failed to provide 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 the wages due as a result of these violations, 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 has passed since certain Class Members have left Defendant's employ.

24. Defendant also failed to provide Plaintiff and Class Members with accurate semimonthly itemized statements of the total number of hours worked by each, and all applicable hourly rates in effect during each pay period, in violation of California Labor Code §§ 226 and/or 1174(d). In doing so, Defendant has not only failed to pay its workers the full amount of compensation due, it has, until now, effectively shielded itself from its employees' scrutiny for its unlawful conduct by concealing the magnitude (e.g., the full number of hours worked) and financial impact of its wrongdoing.

25. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, Plaintiff and Class Members have sustained damages, as described above, including loss of earnings for uncompensated hours worked, missed meal periods, and missed 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, Plaintiff and Class Members are entitled to recover penalties/wages for failure to pay wages owed upon termination (pursuant to California Labor Code §§ 201-204), for failure to provide semimonthly itemized wage statements of hours worked and all applicable hourly

1 rates (pursuant to California Labor Code § 226) in an amount to be established at trial. As a further
2 direct and proximate result of Defendant's unlawful conduct, as set forth herein, Plaintiff and Class
3 Members are also entitled to recover attorneys' fees, litigation costs, and restitution of ill-gotten
4 gains, pursuant to statute.

5 26. Plaintiff complied with the procedures for bringing suit specified in California Labor
6 Code § 2699.3. By letter dated October 27, 2011, Plaintiff gave written notice, by certified mail, to
7 the Labor and Workforce Development Agency ("LWDA") and Defendant of the specific provisions
8 of the California Labor Code alleged to have been violated, including the facts and theories to
9 support those violations.

10
11 **FIRST CAUSE OF ACTION**
12 **FAILURE TO PROVIDE MEAL AND REST PERIODS**
13 **(California Labor Code §§ 226.7 and 512)**

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

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

18 29. 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 30. 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

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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.

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

32. Section 11 of IWC 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 IWC 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 California's 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, Wet Seal 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.

1 compensation applicable to the employee is entitled to recover in a civil
2 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.

3
4 43. Finally, California Labor Code § 1198, in pertinent part, provides:

5 The maximum hours of work and the standard conditions of labor fixed by
6 the commission shall be the maximum hours of work and the standard
7 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.

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

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

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

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

21 Each employer shall semi-monthly, or at the time of each payment of
22 wages, furnish each of his or her employees either as a detachable part of
23 the check, draft or voucher paying the employee's wages, or separately
24 when wages are paid by personal check or cash, an itemized wage
statement in writing showing: (1) gross wages earned; (2) total number of
25 hours worked by each employee whose compensation is based on an hourly
26 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.

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

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

Every person employing labor in this state shall ... 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.

49. Defendant has failed to provide timely, accurate itemized wage statements to 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 reflected actual gross wages earned, net wages earned, or the appropriate deductions for any Class Member.

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

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

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.

52. California Labor Code §203 provides that:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall 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.

53. Numerous Class Members were employed by Defendant during the Class Period and were thereafter involuntarily terminated or voluntarily resigned from their positions, yet were

1 not paid all wages due upon said termination or within 72 hours of said resignation of employment
2 therefrom. Said non-payment was the direct and proximate result of a willful refusal to do so by
3 Defendant.

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

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

10
11 **FIFTH CAUSE OF ACTION**
12 **UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT**
13 **(California Business & Professions Code §§ 17200-17208)**

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

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

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

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

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

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2
3 60. Plaintiff incorporates in this cause of action each and every allegation of the
4 preceding paragraphs, with the same force and effect as though fully set forth herein.

5 61. California Labor Code § 2699(a) states:

6 Notwithstanding any other provision of the law, any provision of this code
7 that provides for a civil penalty to be assessed and collected by the Labor
8 and Workforce Development Agency or any of its departments, divisions,
9 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 herself or herself and other current or
former employees...

10 62. Plaintiff (and each and every other Class Member) is an "aggrieved employee," as
11 defined by California Labor Code § 2699(c), because she was employed by Defendant and was one
12 of many employees against whom violations of law were committed.

13 63. Plaintiff has met and/or will meet all of the requirements set forth in California
14 Labor Code § 2699.3 necessary to maintain a civil action against Defendants for violations of
15 (and/or recovery under) California Labor Code §§ 200-204, inclusive, 226, 226.7, 510, 512, 1174,
16 1194, 1194.2, 1197, and/or 1198.

17 64. Plaintiff brings this action on behalf of herself and all Class Members alleging
18 violations of the California Labor Code sections cited in the preceding paragraph.

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

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

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1 RELIEF SOUGHT

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 workday a meal period 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 a rest period was not authorized and
12 permitted;

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

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

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

22 7. That the Court order Defendant to pay restitution to Plaintiff and Class Members as a
23 result of Defendant's unlawful activities, pursuant to California Business and Professions Code
24 §§ 17200-17208;

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

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

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- 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: October 27, 2011

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: October 27, 2011

SCOTT COLE & ASSOCIATES, APC

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