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10 Attorneys for Representative Plaintiff
11 and the Plaintiff Classes

12 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **IN AND FOR THE COUNTY OF SANTA CLARA**

14 ROSIE GRINDSTAFF, individually, and
15 on behalf of all others similarly situated,

16 Plaintiff,

17 vs.

18 KOHL'S DEPARTMENT STORES,
19 INC. and DOES 1 through 25, inclusive,

20 Defendants.

21 Case No.: **105CV035987**

22 **CLASS ACTION**

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

25 Representative Plaintiff alleges as follows:

26 **PRELIMINARY STATEMENT**

27 1. This is a class action, under Code of Civil Procedure § 382, seeking unpaid wages,
28 including unpaid overtime compensation and interest thereon, rest and meal period compensation,
waiting time penalties, injunctive and other equitable relief and reasonable attorneys' fees and costs,
under, *inter alia*, Industrial Welfare Commission Wage Orders, California Code of Civil Procedure
§ 382, Labor Code §§ 201, 202, 203, 218.5, 226, 226.7, 512, 1174 and 1194, and CCP § 1021.5, on
behalf of Plaintiff and all other persons who are or have been employed by defendant KOHL'S
DEPARTMENT STORES, INC., and DOES 1 through 25, inclusive (collectively "Kohl's" and/or

(ENDORSED)

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1 "Defendant[s]") in any of Kohl's retail stores in the State of California at any time after the
2 commencement of the pay period including February 18, 2001 (Overtime Class and Meal and Rest
3 Period Class) in allegedly-overtime exempt "Assistant Store Manager" positions. The
4 Representative Plaintiff, on behalf of herself and the Class Members, also seeks injunctive relief and
5 restitution of all benefits Kohl's has enjoyed from its failure to pay overtime compensation and its
6 denial of meal and rest periods under Business and Professions Code §§ 17200-17208.

7 2. The "Overtime Class Period" (applicable to members of the "Overtime Class") is
8 designated as the time from at least the commencement of the pay period including February 18,
9 2001 through the trial date and the "Meal and Rest Class Period" (applicable to members of the
10 "Meal and Rest Period Class") is designated as the time from at least the commencement of the pay
11 period including February 18, 2001 through the trial date and each period is based upon the
12 allegation that these respective violations of California's wage and hour laws, as described more
13 fully below, have been ongoing since at least these dates. During the "Overtime Class Period" and
14 the "Meal and Rest Class Period," Kohl's has had a consistent policy of (1) permitting, encouraging,
15 and/or requiring their allegedly-overtime exempt Assistant Store Managers, including Representative
16 Plaintiff and Class Members, to work in excess of eight hours per day and in excess of forty hours
17 per week without paying them overtime compensation as required by California state wage and hour
18 laws; (2) unlawfully denying the Representative Plaintiff and the Class Members statutorily-
19 mandated meal and rest periods; (3) willfully failing to pay compensation (including unpaid
20 overtime) owing in a prompt and timely manner to the Representative Plaintiff and/or those Class
21 Members whose employment with Kohl's terminated; and (4) willfully failing to provide Plaintiff
22 and the Class Members with accurate semimonthly itemized statements of the total number of hours
23 each of them worked, the applicable deductions and the applicable hourly rates in effect during the
24 pay period.

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INTRODUCTION

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2 3. Nearly a hundred years ago, California enacted its first daily overtime law, thereby
3 setting California's first workday standard, long before the federal government enacted overtime
4 protections for workers.

5 4. According to findings of the California Legislature, numerous studies have linked
6 long work hours to increased rates of accident and injury and a loss of family cohesion when either
7 or both parents are kept away from home for extended periods of time, on either a daily or weekly
8 basis.

9 5. Since its inception, defendant Kohl's has offered a variety of retail products and
10 merchandise to the public. Representative Plaintiff is informed and believes and, based thereon,
11 alleges that, within the class period, Kohl's has operated numerous retail stores throughout the State
12 of California. In so doing, Kohl's has employed scores, if not hundreds, of individuals in recent
13 years alone in Assistant Store Manager positions, employment positions which have not and
14 currently do not meet the test for exemption from the payment of overtime wages.

15 6. Despite actual knowledge of these facts and legal mandates, Kohl's has enjoyed an
16 advantage over its competition and a resultant disadvantage to its workers by electing not to pay
17 premium (overtime) and/or "penalty" (a.k.a. "waiting time") wages to its Assistant Store Managers,
18 nor has it provided them with statutorily-mandated meal and rest periods or accurate and complete
19 semimonthly itemized statements.

20 7. Representative Plaintiff is informed and believes and, based thereon, alleges that
21 officers of Kohl's knew of these facts and legal mandates, yet, nonetheless, repeatedly authorized
22 and/or ratified the violation of the laws cited herein.

23 8. Despite Kohl's knowledge of the Plaintiff Class' entitlement to premium (overtime)
24 pay for excess hours worked and to meal and rest periods, Kohl's failed to provide or require the use,
25 maintenance or submission of accurate and complete time records by members of the Plaintiff
26 Classes, in violation of California Labor Code §1174[d]. This action is brought to redress and end
27 this long-time pattern of unlawful conduct.
28

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JURISDICTION AND VENUE

1
2 9. This Court has jurisdiction over Representative Plaintiff's and Class Members' claims
3 for unpaid overtime wages under Labor Code § 1194, for compensation for failure to provide meal
4 and rest periods under Labor Code §§ 226.7 and 512, for penalties for failure to pay wages of
5 discharged employees under Labor Code § 203 and for penalties for failure to provide itemized
6 statements of actual hours worked and all applicable hourly rates under Labor Code § 226.

7 10. This Court has jurisdiction over Representative Plaintiff's and Class Members' claims
8 for injunctive relief and restitution of ill-gotten benefits arising from defendant Kohl's unlawful
9 business practices under Business & Professions Code §§ 17203 and 17204.

10 11. Venue as to Defendant is proper in this judicial district, pursuant to Code of Civil
11 Procedure § 395(a). Defendant Kohl's operates retail stores in Santa Clara County and transacts
12 business, has agents, and is otherwise within this Court's jurisdiction for purposes of service of
13 process. The unlawful acts alleged herein have a direct effect on Representative Plaintiff and those
14 similarly situated within the State of California and within Santa Clara County. Defendant Kohl's
15 operates retail stores and has employed numerous Class Members in Santa Clara County.

PLAINTIFF

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18 12. During a portion of the herein-relevant time period, the Representative Plaintiff
19 identified herein was and is a natural person, and was, during the relevant time period identified
20 herein, employed by defendant Kohl's as an allegedly-overtime-exempt Assistant Store Manager,
21 an employment position which was mis-classified as salaried/exempt from overtime pay.

22 13. As used throughout this Complaint, the terms "Plaintiff" and/or "Class(es)" refer to
23 the named plaintiff herein as well as each and every person eligible for membership in one or more
24 of the Plaintiff Classes, as further described and defined below.

25 14. The Plaintiff Classes consist, generally, of all members who are/were employed as
26 Assistant Store Managers of Kohl's and were classified thereby as overtime-exempt employees, and
27 who: (1) worked (a) in excess of eight hours per workday and/or in excess of forty hours per work
28 week at any time between the commencement of the pay period including February 18, 2001 and the

1 present and (b) did not receive premium (overtime) pay for all excess hours worked thereby in any
2 given workday/workweek and/or (2) did not receive all wages due as a result of Defendant's failure
3 to consistently provide meal and rest periods at any time after February 18, 2001.

4 15. At all times herein relevant, the Representative Plaintiff was and now is a person
5 within each of the Class of persons further described and defined herein.

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

9
10 DEFENDANT

11 17. At all times herein relevant, defendant KOHL'S DEPARTMENT STORES, INC.,
12 and Does 1 through 25, inclusive (collectively referred to as "Kohl's" and/or "Defendant[s]") were
13 corporations, duly licensed and located and doing business in, but not limited to, the County of Santa
14 Clara, in the State of California.

15 18. Those defendants identified as Does 1 through 25, inclusive, are and were, at all
16 relevant times herein-mentioned, officers, directors and/or managing agents of some/each of the
17 remaining defendants.

18 19. Representative Plaintiff is unaware of the true names and capacities of those
19 defendants sued herein as Does 1 through 25, inclusive and, therefore, sues these defendants by such
20 fictitious names. Representative Plaintiff will seek leave of court to amend this Complaint when
21 same are ascertained. Representative Plaintiff is informed and believes and, on that basis, alleges
22 that each of the fictitiously-named defendants is responsible in some manner for, gave consent to,
23 ratified and/or authorized the conduct herein alleged and that Representative Plaintiff's and Class
24 Members' damages, as herein alleged, were proximately caused thereby.

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

CLASS ACTION ALLEGATIONS

21. Representative Plaintiff ROSIE GRINDSTAFF brings this action on behalf of herself and as a class action on behalf of all persons or entities similarly situated and proximately damaged by Kohl's conduct as set forth herein, including, but not necessarily limited to, the following Classes:

Overtime Class:

All persons who are/were employed as Assistant Store Managers by KOHL'S DEPARTMENT STORES, INC. in one or more of its California retail stores and were classified thereby as overtime-exempt employees, who: (1) worked in excess of eight hours per workday and/or in excess of forty hours per workweek at any time between February 18, 2001 and the present and (2) did not receive premium (overtime) pay for all excess hours worked thereby in any given workday/workweek.

Meal and Rest Period Class:

All persons who are/were employed as Assistant Store Managers by KOHL'S DEPARTMENT STORES, INC. in one or more of its California retail stores and were denied statutorily-mandated meal and/or rest periods at any time between February 18, 2001 and the present and did not receive wages due, including wages pursuant to California Labor Code §§ 226.7 and/or 512.

22. Defendants, their officers and directors are excluded from each of the Classes.

23. This action has been brought and may properly be maintained as a class action under 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 classes are so numerous that joinder of all members is impractical, if not impossible, insofar as Representative Plaintiff is informed and believes and, on that basis, alleges that the total membership in each of the classes is in the hundreds of individuals. Membership in the Classes will be determined upon analysis of employee and payroll, among other, records maintained by Kohl's.

b. **Commonality:** The Representative 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:

i. whether defendant Kohl's violated IWC Wage Orders and/or Labor Code § 510 by failing to pay overtime compensation to Assistant Store Managers who worked in excess of forty hours per week and/or eight hours per day.

ii. whether defendant Kohl's violated Business and Professions Code § 17200 by failing to pay overtime compensation to Assistant Store Managers who worked in excess of forty hours per week and/or eight

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hours per day.

- iii. whether defendant Kohl's violated Labor Code §§ 226.7 and/or 512 by failing to consistently provide meal and rest periods to its Assistant Store Managers.
- iv. whether defendant Kohl's violated Labor Code § 1174 by failing to keep accurate records of employees' hours of work.
- v. whether defendant Kohl's violated Labor Code §§ 201-203 by failing to pay overtime wages due and owing at the time that certain Class Members' employment with Defendant terminated.
- vi. whether defendant Kohl's violated Labor Code § 226 by failing to provide the required semimonthly itemized statements to Class Members of total hours worked by each and all applicable hourly rates in effect during the pay period.
- vii. whether Representative Plaintiff and the Classes are entitled to "waiting time" penalties, pursuant to Labor Code § 203.
- viii.

c. Typicality: The Representative Plaintiff's claims are typical of the claims of the Classes. The Representative Plaintiff and all members of the Classes sustained injuries and damages arising out of and caused by defendant Kohl's common course of conduct in violation of law, as alleged herein.

d. 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 Classes 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 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.

e. Adequacy of Representation: The Representative Plaintiff in this class action is an adequate representative of the Classes, in that the Representative Plaintiff's claims are typical of those of the Classes and the Representative Plaintiff has the same interests in the litigation of this case as the Class Members. The Representative Plaintiff is committed to vigorous prosecution of this case, and has retained competent counsel, experienced in litigation of this nature. The Representative Plaintiff is not subject to any individual defenses unique from those conceivably applicable to the Classes as a whole. The Representative Plaintiff anticipates no management difficulties in this litigation.

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COMMON FACTUAL ALLEGATIONS

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2 24. As described herein, Kohl's has, for years, knowingly failed to adequately compensate
3 Assistant Store Managers within the class definitions identified above for premium (overtime) wages
4 due, thereby enjoying a significant competitive edge over other retail clothing chains. Even upon
5 termination or resignation of the employment of numerous class members, Kohl's has declined to
6 pay these wages, in blatant violation of California Labor Code §§ 201 and/or 202.

7 25. Furthermore, despite its knowledge of the Representative Plaintiff's and the Class
8 Members' entitlement to premium (overtime) pay for excess hours worked, Kohl's violated
9 California Labor Code §1174[d] by failing to provide or require the use, maintenance or submission
10 of time records by members of the Plaintiff Classes. Kohl's also failed to provide Representative
11 Plaintiff and members of the Classes with accurate semimonthly itemized statements of the total
12 number of hours worked by each and all applicable hourly rates in effect during the pay period in
13 violation of California Labor Code § 226. In so doing, Kohl's has not only failed to pay its workers
14 the full amount of compensation due, it has, until now, effectively shielded itself from its employees'
15 scrutiny for its unlawful conduct by concealing the magnitude (i.e., the full number of hours worked)
16 and financial impact of its wrongdoing.

17 26. California Labor Code §§ 201 and 202 require defendant Kohl's to pay its employees
18 all wages due immediately upon discharge. California Labor Code § 203 provides that, if an
19 employer willfully fails to timely pay such wages, the employer must, as a penalty, continue to pay
20 the subject employees' wages until the back wages are paid in full or until an action is commenced.
21 The penalty cannot exceed 30 days of wages.

22 27. Representative Plaintiff and all persons similarly situated are entitled to unpaid
23 compensation, yet, to date, have not received such compensation.

24 28. More than 30 days have passed since certain class members have left defendant
25 Kohl's employ.

26 29. As a consequence of defendant Kohl's willful conduct in not paying compensation
27 for all hours worked and not paying for denied meal and rest periods, certain class members are
28 entitled to 30 days wages as a penalty under Labor Code § 203, together with interest thereon and

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1 attorneys' fees and costs.

2 30. As a direct and proximate result of Kohl's unlawful conduct, as set forth herein,
3 Representative Plaintiff and particular Class Members have sustained damages, as described above,
4 including, but not limited to, loss of earnings for hours of overtime worked on behalf of Defendants,
5 in an amount to be established at trial. As a further direct and proximate result of Defendant's
6 unlawful conduct, as set forth herein, certain Class Members herein are entitled to recover "waiting
7 time" penalties/wages (pursuant to California Labor Code § 203) and penalties for failure to provide
8 accurate semimonthly statements of actual hours worked and all applicable hourly rates (pursuant
9 to Labor Code § 226) in an amount to be established at trial. As a further direct and proximate result
10 of Defendant's unlawful conduct, as set forth herein, Representative Plaintiff and the Classes are also
11 entitled to recover costs and attorneys' fees, pursuant to statute.

12
13 **FIRST CAUSE OF ACTION**
14 **UNLAWFUL FAILURE TO PAY REQUIRED OVERTIME**
(California Labor Code § 510)

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

17 32. During the time period beginning as of the commencement of the pay period
18 including February 18, 2001 and continuing through the present, Representative Plaintiff and the
19 Class Members worked in excess of eight hours in a workday and/or forty hours in a workweek. The
20 precise number of hours will be proven at trial.

21 33. During said time period, defendant Kohl's refused to compensate Representative
22 Plaintiff and the Class Members for some and/or all of the overtime wages earned in violation of
23 applicable Wage Order(s) and the California Labor Code.

24 34. During said time period, particular Class Members herein were employed by and were
25 thereafter terminated or resigned from their positions with Kohl's, yet were not paid all premium
26 (overtime) and/or other wages due upon said termination or within seventy-two hours of said
27 resignation of employment therefrom. Said non-payment was the direct and proximate result of a
28 willful refusal to do so by Defendant.

1 35. At all relevant times, Defendant was aware of and was under a duty to comply with
2 various provisions of the California Labor Code. Some of these Labor Code provisions include(d):

- 3 a. Labor Code §203: “If an employer willfully fails to pay, without
4 abatement or reduction, in accordance with Sections 201, 201.5, 202, and
5 205.5, any wages of an employee who is discharged or who quits, the wages
6 of the employee shall continue as a penalty from the due date thereof at the
7 same rate until paid or until an action therefor is commenced; but the wages
8 shall not continue for more than 30 days.”
- 9 b. Labor Code § 226: “Every employer shall semimonthly or at the time of
10 each payment of wages, furnish each of his or her employees, either as a
11 detachable part of the check, draft, or voucher paying the employee’s wages,
12 or separately when wages are paid by personal check or cash, an itemized
13 statement in writing showing . . . (2) total hours worked by the employee . .
14 . and (9) all applicable hourly rates in effect during the pay period and the
15 corresponding number of hours worked at each hourly rate by the employee.”
- 16 c. Labor Code §510: “Any work in excess of eight hours in one workday
17 and any work in excess of 40 hours in any one workweek and the first eight
18 hours worked on the seventh day of work in any one workweek shall be
19 compensated at the rate of no less than one and one-half times the regular rate
20 of pay for an employee”
- 21 d. Labor Code § 1194: “Notwithstanding any agreement to work for a lesser
22 wage, any employee receiving less than the legal minimum wage or the legal
23 overtime compensation applicable to the employee is entitled to recover in
24 a civil action the unpaid balance of the full amount of this minimum wage or
25 overtime compensation, including interest thereon, reasonable attorney’s fees,
26 and costs of suit.
- 27 e. Labor Code §1198: “[t]he maximum hours of work and the standard
28 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 by the order or under
conditions of labor prohibited by the order is unlawful.”
- f. Labor Code §1199: “Every employer or other person acting either
individually or as an officer, agent, or employee of another person is guilty
of a misdemeanor and is punishable by a fine of not less than one hundred
dollars (\$100) or by imprisonment for not less than 30 days, or by both, who
. . . (a) Requires or causes any employee to work for longer hours than those
fixed, or under conditions of labor prohibited by an order of the commission.
. . . [or] (c) Violates or refuses or neglects to comply with any provision of
this chapter or any order or ruling of the commission.”

25 36. By refusing to compensate Representative Plaintiff and the Class Members for
26 overtime wages earned, Defendants violated those California Labor Code provisions cited herein,
27 as well as various IWC Wage Order provisions.

28 37. As a direct and proximate result of Defendant’s unlawful conduct, as set forth herein,

1 Representative Plaintiff and the Class Members have sustained damages, including loss of earnings
2 for hours of overtime worked on behalf of Defendant, in an amount to be established at trial. As a
3 further direct and proximate result of Defendant's unlawful conduct, as set forth herein, some Class
4 Members are entitled to recover "waiting time" penalties/wages, in an amount to be established at
5 trial, as well as costs and attorneys' fees, pursuant to statute.

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

10 38. 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 39. Representative Plaintiff further brings this cause of action on behalf of the general
13 public, seeking equitable and statutory relief to stop the misconduct of Defendant, as complained of
14 herein, and to seek restitution from Defendant through the unfair, unlawful and fraudulent business
15 practices described herein.

16 40. The knowing conduct of Defendant, 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 mandates
19 cited herein.

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

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

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

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

44. California Labor Code § 512 provides:

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.

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

46. Specifically, California Labor Code § 226.7 provides:

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

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

47. One or more Industrial Welfare Commission Wage Orders mandates that Defendant authorize and permit ten minutes of "net rest time" for every four hours of work "or major fraction thereof" for non-exempt employees such as Representative Plaintiff and members of the Plaintiff Classes.

48. By failing to consistently provide meal and rest periods to Representative Plaintiff and Class Members, Defendant violated these California Labor Code provisions.

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

1 unlawful conduct, as set forth herein, Representative Plaintiff and the Class Members are entitled
2 to recover compensation and various penalties, in an amount to be established at trial, as well as
3 costs and attorneys' fees, pursuant to statute.

4
5 **FOURTH CAUSE OF ACTION**
6 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
7 **(California Labor Code § 226)**

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

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

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

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

24 An employee suffering injury as a result of a knowing and intentional
25 failure by an employer to comply with subdivision (a) is entitled to
26 recover the greater of all actual damages or fifty dollars (\$50) for the
27 initial pay period in which a violation occurs and one hundred dollars
28 (\$100) per employee for each violation in a subsequent pay period,
not exceeding an aggregate penalty of four thousand dollars (\$4,000),
and is entitled to an award of costs and reasonable attorney's fees.

53. Representative Plaintiff seeks to recover actual damages (including prospective
damages associated with filing restatements of earnings with taxing and/or other authorities), costs
and attorneys' fees under this section on behalf of himself and the Plaintiff Classes.

54. Defendant Kohl's failed to provide timely, accurate and complete itemized wage
statements to Representative Plaintiff and the Plaintiff Classes in accordance with Labor Code §
226(a). Plaintiffs have suffered injuries due to this unlawful conduct insofar as they have lost use
of the compensation due, were forced to bring this action to redress these violations, were forced to

1 file inaccurate wage information with government agencies and, should this action be successful,
2 may be required to restate earnings for prior years and/or incur time and costs in so doing.

3 55. None of the statements provided by Defendant has accurately reflected total number
4 of hours worked, actual gross wages earned, net wages earned, or the appropriate deductions.

5
6 **RELIEF SOUGHT**

7 **WHEREFORE, the Representative Plaintiff, on behalf of herself and the proposed**
8 **Classes, prays for judgment and the following specific relief against Defendants, and each of them,**
9 **("Kohl's") jointly and separately, as follows:**

10 1. For an Order certifying the proposed and/or any other appropriate subclasses under
11 Code of Civil Procedure § 382;

12 2. That defendant Kohl's is found to have violated the overtime provisions of the Labor
13 Code as to the Representative Plaintiff and the Classes;

14 3. That defendant Kohl's is found to have violated Labor Code §§ 226.7 and 512 for
15 willful failure to provide meal periods, including second meal periods, and rest periods;

16 4. That defendant Kohl's is found to have violated the record keeping provisions of
17 Labor Code §§ 226(a) and 1174(d) as to Representative Plaintiff and the Classes and for willful
18 failure to provide accurate semimonthly itemized statements thereto;

19 5. That defendant Kohl's is found to have violated Labor Code §§ 201 and 202 for
20 willful failure to pay all compensation owed at the time of termination of employment to particular
21 members of the Plaintiff Classes;

22 6. That defendant Kohl's is found to have violated Business and Professions Code
23 § 17200 by failing to pay Representative Plaintiff and Class Members overtime compensation,
24 "waiting time" penalties and/or by failing to provide accurate and complete itemized wage
25 statements;

26 7. An award to Representative Plaintiff and the Classes of damages for the amount of
27 unpaid overtime compensation, the amount of wage due as a result of Defendant's failure to provide
28 meal and rest periods, the amount of prospective damages associated with filing restatements of

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1 earnings with taxing and/or other authorities, and related damages, including interest thereon, and
2 penalties in an amount to be proven at trial;

3 8. That defendant Kohl's be ordered to pay restitution to Representative Plaintiff and
4 the Plaintiff Classes due to defendant Kohl's unlawful activities as set forth herein, pursuant to
5 Business and Professions Code §§ 17200-08;

6 9. That defendant Kohl's further be enjoined to cease and desist from unlawful activities
7 in violation of Business and Professions Code § 17200;

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

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

11 12. For reasonable Attorneys' Fees, pursuant to California Labor Code §§218.5 and 1194
12 and/or California Civil Code §1021.5; and

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

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15 Dated: February 18, 2005

16 SCOTT COLE & ASSOCIATES, APC

17 By: Clyde H. Charlton
18 Scott Edward Cole, Esq.
19 Clyde H. Charlton, Esq.
20 Matthew R. Bainer, Esq.

21 Attorneys for the Representative Plaintiff
22 and the Plaintiff Classes
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