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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 JOHN HICKS individually, and on
15 behalf of all others similarly situated,

16 Plaintiffs,

17 vs.

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

20 Defendants

Case No.: 006-02345

CLASS ACTION

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

Demand for Jury Trial

21 Representative Plaintiff alleges as follows:

22 **PRELIMINARY STATEMENT**

23 1. This is a class action, seeking unpaid wages, including unpaid overtime compensation
24 and interest thereon, meal period compensation, waiting time penalties, liquidated damages and other
25 penalties, injunctive and other equitable relief and reasonable attorneys' fees and costs, under, *inter*
26 *alia*, the Fair Labor Standards Act §§ 6 and 7, 29 U.S.C. §§ 206 and 207 and under California Code
27 of Civil Procedure § 382, Labor Code §§ 201, 202, 203, 218.5, 226, 226.7, 510, 512, 558, 1174 and
28 1194, and CCP § 1021.5. This action further invokes the supplemental jurisdiction of this Court to
consider claims arising under California law (e.g. Title 8 of the California Code of Regulations,
Labor Code §§ 200-203, inclusive, 218.5, 226, 226.7, 512, 1174, 1194, 2698 and 2699, Business and

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1 Professions Code § 17200 et seq. and Code of Civil Procedure § 1021.5)
2 2. This action is brought on behalf of Plaintiff and all other persons who are or have
3 been employed by defendant MACY'S DEPARTMENT STORES, INC. and DOES 1 through 25,
4 inclusive (collectively "MACY'S") in any of MACY'S' retail stores within the State of California
5 and/or the United States, any time after commencement of the pay period from April 4, 2002 in any
6 in-store non-exempt position. The Representative Plaintiff also seeks penalties pursuant to
7 California Labor Code §§ 2698 and 2699 (the Labor Code Private Attorneys General Act of 2004),
8 injunctive relief and restitution of all benefits MACY'S has enjoyed from its failure to pay overtime
9 compensation under California Business and Professions Code §§ 17200-17208. In some
10 circumstances, these violations also resulted in minimum wage violations, pursuant to California
11 Labor Code § 1197.
12 3. The "Class Period" (applicable to members of the "Overtime Class") is designated
13 as the time from at least the commencement of the pay period including April 4, 2002 through the
14 trial date based upon the allegation that these violations of Federal and California wage and hour
15 laws, as described more fully below, have been ongoing since at least these dates. During the Class
16 Period MACY'S has had a consistent policy of (1) requiring their in-store employees, including
17 Representative Plaintiff and Class Members, to perform labor in a variety of forms, including
18 attending mandatory meetings, without paying those employees for all wages earned therefrom; (2)
19 requiring their in-store employees, including Representative Plaintiff and Class Members, to submit
20 to mandatory security checks of their persons and belongings without paying them straight time
21 and/or overtime compensation as required by both Federal and California wage and hour laws; (3)
22 unlawfully denying Representative Plaintiff and Class Members uninterrupted thirty-minute
23 statutorily-mandated meal periods; (4) unlawfully denying Representative Plaintiff and Class
24 Members uninterrupted ten minute rest-periods; (5) willfully failing to pay compensation (including
25 unpaid overtime) owing in a prompt and timely manner to the Representative Plaintiff and/or those
26 Class Members whose employment with MACY'S terminated; and (6) willfully failing to provide
27 Plaintiff and the Class Members with accurate semimonthly itemized statements of the total number
28 of hours each of them worked, the applicable deductions and the applicable hourly rates in effect

1 during the pay period.

2
3 **INTRODUCTION**

4 4. The Fair Labor Standards Act of 1938, as amended (hereinafter referred to as "the
5 Act" or the "FLSA") provides for minimum standards for both wages and overtime entitlement, and
6 details administrative procedures by which covered work time must be compensated. The enactment
7 of the provisions of the FLSA provide the Federal Courts with substantial authority to stamp out
8 abuses of child labor, equal pay, portal-to-portal activities as well as the wage provisions at issue in
9 this Complaint.

10 5. According to Congressional findings, the existence of labor conditions detrimental
11 to the maintenance of the minimum standard of living engenders unfair commercial competition,
12 labor disputes, burdens in commerce and the free flow of goods in commerce and interferes with the
13 orderly and fair marketing of goods.

14 6. California's Industrial Welfare Commission Wage Orders and Labor Code provide
15 even more expansive protection to hourly workers including, but not necessarily limited to,
16 entitlements to overtime pay and work performed beyond eight hours per day and substantial
17 penalties for the denial of meal periods.

18 7. Both Federal and California studies have linked long work hours to increased rates
19 of accident and injury and a loss of family cohesion when either or both parents are kept away from
20 home for extended periods of time, on either a daily or weekly basis.

21 8. Since its inception, the MACY'S retail stores (currently owned and operated by
22 defendant MACY'S DEPARTMENT STORES, INC.) has offered a wide range of merchandise to
23 the public, including men's and women's apparel, shoes, home wares, furniture, seasonal items, and
24 other household items. Representative Plaintiff is informed and believes and, based thereon, alleges
25 that, within the class period, MACY'S has operated numerous retail facilities throughout California.
26 In so doing, MACY'S has employed hundreds, if not thousands, of individuals in recent years alone
27 in positions which were not fully compensated for all labor performed.

28 ///

1 9. Despite actual knowledge of these facts and legal mandates, MACY'S has enjoyed
2 an advantage over its competition and a resultant disadvantage to its workers by electing not to
3 compensate its employees for time spent submitting to its security checks and for attending work
4 related meetings.

5 10. Representative Plaintiff is informed and believes and, based thereon, alleges that
6 officers of MACY'S knew of these facts and legal mandates, yet, nonetheless, repeatedly authorized
7 and/or ratified the violation of the laws cited herein.

8 11. Despite MACY'S' knowledge of the Plaintiff Class' entitlement to full pay for all
9 hours worked and at the State's mandated minimum wage level, MACY'S failed to provide same
10 to members of the Plaintiff Class, in violation of the FLSA and California State statutes, industrial
11 Welfare Commission Orders and Title 8 of the California Code of Regulations. This action is
12 brought to redress and end this long-time pattern of unlawful conduct.

13
14 **JURISDICTION AND VENUE**

15 12. This Court has jurisdiction of this action pursuant to the provisions of the Fair Labor
16 Standards Act of 1938 ("FLSA"), 29 U.S.C. §§201 et seq., including under 29 U.S.C. §§207, 216,
17 and 217. This Court also has jurisdiction in light of the existence of a controversy arising under the
18 laws of the United States (28 U.S.C. §1331) and supplemental jurisdiction to consider claims arising
19 under California state law, pursuant to 28 U.S.C. §1367.

20 13. This Court has jurisdiction over Representative Plaintiff's and Class Members' claims
21 for injunctive relief, and restitution of ill-gotten benefits derived from defendant MACY'S' unlawful
22 business practices under Business & Professions Code §§ 17203 and 17204.

23 14. Venue as to each Defendant is proper in this Court pursuant to FLSA § 216(b) and
24 Code of Civil Procedure § 395(a). Defendant MACY'S operates retail facilities in the Northern
25 District of California, and transacts business, has agents, and is otherwise within this Court's
26 jurisdiction for purposes of service of process. The unlawful acts alleged herein have a direct effect
27 on Representative Plaintiff and those similarly situated within the United States, the State of
28 California and the Northern District of California. Defendant MACY'S operates said retail stores

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1 and has employed numerous Class Members in Alameda County.

2
3 **PLAINTIFFS**

4 15. The Representative Plaintiff identified herein was and is a natural person, and was,
5 during the relevant time period identified herein, employed by defendant MACY'S as a non-exempt
6 retail employee, an employment position which was entitled and continues to enjoy an entitlement
7 to full pay for all hours worked, including overtime pay, a minimum wage for all hours worked as
8 fixed by law and various conditions of employment such as meal and rest periods.

9 16. As used throughout this Complaint, the terms "Class Members" and/or "Plaintiff
10 Class" refer to the named plaintiff herein as well as each and every person eligible for membership
11 in the Plaintiff Class, as further described and defined below.

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

14
15 **DEFENDANTS**

16 18. At all times herein relevant, defendants MACY'S DEPARTMENT STORES, INC.
17 (referred to as "MACY'S" and/or "Defendant") was a corporation or other business entities, duly
18 licensed and located and doing business in, but not limited to, the Northern District of California,
19 in the State of California.

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

24
25 **CLASS ACTION ALLEGATIONS**

26 20. Representative Plaintiff, JOHN HICKS, brings this action individually and as a class
27 action on behalf of all persons similarly situated and proximately damaged by MACY'S' conduct,
28 including, but not necessarily limited to, the following Plaintiff Class:

1 All persons who are/were employed by MACY'S DEPARTMENT
2 STORES, INC., in one or more of MACY'S' California retail stores
3 in a non-exempt employment position between April 4, 2002 and the
4 present.

5 21. Defendants, their officers and directors are excluded from the Class.

6 22. This action has been brought and may properly be maintained as a class action under
7 Code of Civil Procedure § 382, Federal Rule of Civil Procedure Rule 23 and/or a collective action
8 under 29 U.S.C. § 216(b) because there is a well-defined community of interest in the litigation and
9 the proposed class is easily ascertainable.

10 a. Numerosity: A class action is the only available method for the fair and
11 efficient adjudication of this controversy. The members of the class are so
12 numerous that joinder of all members is impractical, if not impossible, insofar
13 as Representative Plaintiff is informed and believes and, on that basis, alleges
14 that the total number of Class Members exceeds 1000 individuals. Membership
15 in the Plaintiff Class will be determined upon analysis of
16 employee and payroll, among other, records maintained by MACY'S.

17 b. Commonality: The Representative Plaintiff and the Class Members share a
18 community of interests in that there are numerous common questions and
19 issues of fact and law which predominate over any questions and issues solely
20 affecting individual members, thereby making a class action superior to other
21 available methods for the fair and efficient adjudication of the controversy.
22 Consequently, class certification is proper under 29 U.S.C. § 216(b) and
23 California Code of Civil Procedure § 382. These common questions include,
24 but are not necessarily limited to:

- 25 i. whether defendant MACY'S violated the FLSA and/or California
26 laws by failing to pay compensation to MACY'S employees for all
27 time worked;
- 28 ii. whether defendant MACY'S violated California Wage Order Nos. 7-
98, 7-2000, 7-2001 and Labor Code § 510 by failing to pay overtime
compensation to MACY'S employees who worked in excess of 40
hours per week and/or eight (8) hours a day;
- iii. whether defendant MACY'S violated California Business and
Professions Code § 17200 by failing to pay MACY'S employees for
all time worked;
- iv. whether defendant MACY'S violated California Labor Code §§ 226.7
and/or 512 by failing to consistently provide uninterrupted thirty-
minute meal periods to its employees;
- v. whether defendant MACY'S failed, and continues to fail, to provide
uninterrupted thirty minute meal periods to the Plaintiff and the Class
Members in violation of Section 11 of the applicable California Wage
Orders;

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- vi. whether defendant MACY'S violated California Labor Code § 1174 by failing to keep accurate records of employees' hours of work.
- vii. whether defendant MACY'S violated California Labor Code §§ 201-203 by failing to pay wages due and owing at the time that Class Members' employment with Defendant terminated;
- viii. whether Defendant MACY'S violated California Labor Code § 226 by failing to provide the semimonthly itemized statements to Class Members of total hours worked by each, and all applicable hourly rates in effect during the pay period;
- ix. whether Representative Plaintiff and the Class Members are entitled to "waiting time" penalties/wages pursuant to California Labor Code § 203; and
- x. whether Plaintiff and the Class Members are entitled to seek recovery of penalties for the California Labor Code and Wage Order violations alleged herein, pursuant to Labor Code §§ 2698 and 2699 and, if so, for what time period.

c. Typicality: The Representative Plaintiff's claims are typical of the claims of the Plaintiff Class. The Representative Plaintiff and all members of the Class sustained injuries and damages arising out of and caused by defendant MACY'S' common course of conduct in violation of state and federal 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 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 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. Moreover, the Representative Plaintiff is informed and believes, and based thereon alleges, that Defendant, in refusing to compensate the Class Members for all time worked, has acted and refused to act on grounds generally applicable to all claims, thereby making appropriate injunctive and monetary relief for all members of the class. Consequently, Class certification is proper under FRCP Rule 23, 29 U.S.C. § 216(b) and California Code of Civil Procedure § 382.

e. Adequacy of Representation: The Representative Plaintiff in this class action is an adequate representative of the Plaintiff Class, in that the Representative Plaintiff's claims are typical of those of the Plaintiff Class 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 Class as a whole. The Representative Plaintiff anticipates no management difficulties

1 in this litigation.
2

3 **COMMON FACTUAL ALLEGATIONS**

4 23. As described herein, MACY'S has, for years, knowingly failed to adequately
5 compensate those employees within the class definitions identified above for all wages earned,
6 including premium (overtime) wages, and due under the FLSA (29 U.S.C. §§ 206 and 207), the
7 California Labor Code and applicable California Wage Orders, and has knowingly failed to provide
8 said workers with mandatory uninterrupted thirty minute meal periods, thereby enjoying a significant
9 competitive edge over other retail grocery chains.

10 24. Even upon termination or resignation of the employment of numerous Class
11 Members, MACY'S has declined to pay these wages, in blatant violation of California Labor Code
12 §§ 201 and/or 202.

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

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

28 ///

1 27. Representative Plaintiff and all persons similarly situated in Plaintiff Class are
2 entitled to unpaid compensation, yet, to date, have not received such compensation despite the
3 termination of their employment with MACY'S.

4 28. More than 30 days have passed since Representative Plaintiff and certain Class
5 Members have left defendant MACY'S' employ.

6 29. As a consequence of defendant MACY'S' willful conduct in not paying compensation
7 for all hours worked, certain Class Members are entitled to 30 days wages as penalty under Labor
8 Code section 203, together with interest thereon and attorneys' fees and costs.

9 30. As a direct and proximate result of MACY'S' unlawful conduct, as set forth herein,
10 Representative Plaintiff and Class Members have sustained damages, as described above, including
11 loss of earnings for hours worked on behalf of Defendants, in an amount to be established at trial.
12 As a further direct and proximate result of Defendant's unlawful conduct, as set forth herein,
13 Representative Plaintiff and many Class Members herein are entitled to recover "waiting time"
14 penalties/wages (pursuant to California Labor Code § 203) and penalties for failure to provide
15 semimonthly statements of hours worked and all applicable hourly rates (pursuant to Labor Code §
16 226) in an amount to be established at trial. As a further direct and proximate result of Defendant's
17 unlawful conduct, as set forth herein, Representative Plaintiff and Class Members are also entitled
18 to recover costs and attorneys' fees, pursuant to 29 U.S.C. § 216(b), California Labor Code §§ 218.5
19 and 1194 and/or California Civil Code § 1021.5, among other authorities.

20 31. Furthermore, Plaintiff brings this action on behalf of himself and other Class
21 Members pursuant to California Labor Code §§ 2698 and 2699 and seeks recovery of all civil
22 penalties resulting from the violations alleged herein as follows:

23 a. Where civil penalties are specifically provided in the Labor Code for each of
24 the violations alleged herein, Plaintiff seeks recovery of such penalties; and

25 b. Where civil penalties are not established in the Labor Code for each of the
26 violations alleged herein, Plaintiffs seek recovery of penalties as set forth in Labor Code § 2699.

27 ///

28 ///

**FIRST CAUSE OF ACTION
UNLAWFUL FAILURE TO PAY OVERTIME WAGES
(Violation of Fair Labor Standards Act)**

32. 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.

33. At all relevant times hereto, MACY'S has been, and is, an employer engaged in commerce, as those terms are defined in 29 U.S.C. § 203(b), (d). As such, MACY'S employed Class Members as non-exempt retail employees, employment which engaged the employees in commerce, as those terms are defined in 29 U.S.C. §§ 203(b), (e), (g) and 29 U.S.C. § 207(a)(1). At all times relevant hereto, MACY'S has been an "enterprise engaged in commerce or in the production of goods for commerce," as defined under 29 U.S.C. § 203(s)(1).

34. Representative Plaintiff is informed and believes, and thereon alleges, that MACY'S has required the Class Members, as part of their employment, to work without additional compensation, such as overtime, in excess of the forty hours per week maximum under 29 U.S.C. § 207(a)(1). That Section provides the following:

Except as otherwise provided in this section, no employer shall employ any of his employees ... for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate which is not less than one and one-half times the regular rate at which he is employed.

Indeed, in the performance of their duties for Defendant, Class Members often did work over forty hours per week, yet they did not receive overtime compensation required by the FLSA, 29 U.S.C. §§ 206 and 207 for the work, labor and services they provided to the defendant MACY'S. The precise number of hours will be proven at trial.

35. The Representative Plaintiff proposes to take appropriate proceedings to Class Members aggrieved by Defendant's unlawful conduct notified of the pendency of this action and join this action as plaintiffs, pursuant to 29 U.S.C. § 216(b), by filing written consents to joinder with the Court.

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1 36. Defendant's violations of the FLSA were willful.

2 37. As a result of the foregoing, Representative Plaintiff seeks judgment against
3 Defendant on his own behalf, and on behalf of those Class Members similarly situated who file
4 written consents to joinder in this action, for all unpaid wages, including overtime wages owed by
5 Defendant to the Representative Plaintiff and the Class Members, pursuant to 29 U.S.C. §§ 206, 207,
6 together with an award of an additional equal amount as liquidated damages, and costs, interest, and
7 reasonable attorneys' fees, as provided for under 29 U.S.C. § 216(b).

8

9

10

SECOND CAUSE OF ACTION
UNLAWFUL FAILURE TO PAY WAGES DUE
(Wage Order Nos. 5-98, 5-2000; Labor Code §§ 201, 202, 510, 1198 and 1199)

11

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

13

39. During the time period beginning April 4, 2002 and continuing through the present,
14 Representative Plaintiff and the Class Members were employed by and did perform work for
15 MACY'S, oftentimes in excess of eight hours in a workday and/or forty hours in a workweek. The
16 precise number of hours will be proven at trial.

17

40. During said time period, MACY'S refused to compensate Representative Plaintiff
18 and Class Members for some and/or all of the wages, including overtime wages earned and/or the
19 wage level required by the applicable minimum wage laws, in violation of Wage Order Nos. 5-98
20 and 5-2000 and the California Labor Code.

21

41. Moreover, during said time period, many of the Class Members herein were employed
22 by and were thereafter terminated or resigned from their positions with MACY'S, yet were not paid
23 all wages due upon said termination or within seventy-two (72) hours of said resignation of
24 employment therefrom. Said non-payment of all wages due was the direct and proximate result of
25 a willful refusal to do so by Defendant.

26

42. At all relevant times, Defendant was aware of and was under a duty to comply with
27 various provisions of the California Labor Code and/or Wage Orders issued by the Industrial Welfare
28 Commission. The more recent versions of these provisions include, but are not limited to:

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- a. Labor Code § 203: “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.”

- b. Labor Code § 510: “Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day or work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee....”

- c. Labor Code § 1198: “[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

- d. 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.”

- e. Wage Order 5-2000(3): “[E]mployees shall be employed more than eight (8) hours in any workday or more than forty (40) hours in any workweek unless the employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours worked over forty (40) hours in the workweek. [. . .] Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than: (1) One and one-half (1 ½) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours on the seventh (7th) consecutive day of work in a workweek....”

43. At all relevant times, Defendant was aware of and was under a duty to comply with various additional provisions of the California Labor Code and/or Wage Orders issued by the Industrial Welfare Commission, as cited and discussed elsewhere in this Complaint.

44. By refusing to compensate Representative Plaintiff and Class Members for all wages earned, Defendant violated those California Labor Code and IWC Wage Order provisions, cited herein.

45. As a direct and proximate result of Defendant’s unlawful conduct, as set forth herein, Representative Plaintiff and Class Members have sustained damages, including loss of earnings for

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

5
6 **THIRD CAUSE OF ACTION**
7 **VIOLATION OF MINIMUM WAGE REQUIREMENT**
8 **(Wage Order Nos. 5-98(4) and 5-2000(4); Labor Code § 1197)**

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

11 47. California Labor Code § 1197 provides:

12 The minimum wage for employees fixed by the commission is the
13 minimum wage to be paid to employees, and the payment of a less
14 wage than the minimum so fixed is unlawful.

15 48. At all relevant times, Defendant was aware of and was under a duty to comply with
16 California Labor Code § 1197 as well as various additional provisions of the California Labor Code
17 and/or Wage Order Nos. 5-98(4) and 5-2000(4) issued by the Industrial Welfare Commission, as
18 cited and/or discussed elsewhere in this Complaint.

19 49. By failing to pay the minimum wage fixed by law for each hour of work by its non-
20 exempt retail employees, Defendant violated those California Labor Code and IWC Wage Order
21 provisions, cited herein.

22 50. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
23 Representative Plaintiff and Class Members have sustained damages, including loss of earnings, in
24 an amount to be established at trial. As a further direct and proximate result of Defendant's unlawful
25 conduct, as set forth herein, Representative Plaintiffs and the Class Members are entitled to recover
26 various penalties, in an amount to be established at trial, as well as costs and attorneys' fees, pursuant
27 to statute.

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

51. 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.

52. 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.

53. 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.

54. 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.

55. Industrial Wage Commission Wage Order No. 7-2001(11) and (12) also mandate that employers provide all applicable meal and/or rest periods to their workers.

56. IWC Wage Order No. 7-2001(11) 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.

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57. IWC Wage Order No. 7-2001(12) 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.

58. By failing to consistently provide uninterrupted meal and rest periods to Representative Plaintiff and the Class Members, Defendant violated these California Labor Code and IWC Wage Order provisions.

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

FIFTH CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
(California Labor Code §§ 226, 1174)

60. 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.

61. California Labor Code § 226(a) provides:

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

1 62. The IWC Wage Orders also establish this requirement in § 7(B) thereof (8 Cal. Code
2 Regs. § 11010 et. seq.).

3 63. Moreover, California Labor Code § 226(e) provides:

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

11 64. Finally, California Labor Code § 1174 provides:

12 Every person employing labor in this state shall: (d) Keep, at a central
13 location in the state... payroll records showing the hours worked daily
14 by and the wages paid to ... employees These records shall be kept
15 in accordance with rules established for this purpose by the
16 commission, but in any case shall be kept on file for not less than two
17 years.

18 65. Representative Plaintiff seeks to recover actual damages, costs and attorneys' fees
19 under this section on behalf of himself and the Class Members.

20 66. Defendant MACY'S failed to provide timely, accurate itemized wage statements to
21 Representative Plaintiff and the Class Members in accordance with Labor Code § 226(a) and the
22 IWC Wage Orders. None of the statements provided by Defendant has accurately reflected actual
23 gross wages earned, net wages earned, or the appropriate deductions of such Class Members.

24
25 **SIXTH CAUSE OF ACTION**
26 **UNFAIR BUSINESS PRACTICES**
27 **(California Business & Professions Code §§ 17200-17208)**

28 67. 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.

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

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69. The knowing conduct of Defendant, as alleged herein, constitutes an unlawful, unfair and/or fraudulent business practice, as set forth in California Business & Professions Code §§ 17200-17208. Specifically, Defendant conducted business activities while failing to comply with the legal mandates cited herein.

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

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

RELIEF SOUGHT

WHEREFORE, the Representative Plaintiff, on behalf of himself 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 under FRCP Rule 23, 29 U.S.C. § 216 and Code of Civil Procedure § 382;

2. That the Court declare, adjudge and decree that defendant MACY'S violated the overtime provisions of the FLSA, the California Labor Code and the Industrial Wage Commission Wage Orders as to the Representative Plaintiff and the Plaintiff Class;

3. That the Court declare, adjudge and decree that defendants have violated the minimum wage provisions of California Labor Code § 1197 and IWC Wage Order Nos. 5-98(4) and 5-2000(4) as to Representative Plaintiff and/or Plaintiff Class;

///

1 4. That the Court declare, adjudge and decree that defendant MACY'S willfully
2 violated its legal duties under the FLSA, the California Labor Code and the IWC Wage Orders to
3 pay overtime;

4 5. That the Court declare, adjudge and decree that a) Representative Plaintiff and Class
5 Members were at all times relevant hereto, and are, entitled to be paid overtime for work beyond 8
6 hours per day or 40 hours per a week; and b) the amounts to which Representative Plaintiff and Class
7 Members are entitled is to be doubled as liquidated damages and issue an award thereto;

8 6. That the Court declare, adjudge and decree that defendant MACY'S violated
9 California Labor Code §§ 226.7 and 512 and applicable IWC Wage Orders for willful failure to
10 provide meal periods (including second meal periods) to the Class Members;

11 7. That the Court declare, adjudge and decree that defendant MACY'S violated the
12 record keeping provisions of California Labor Code §§ 226(a) and 1174(d) and section 7 of the
13 Wage Orders as to Representative Plaintiff and the Class Members, and for willful failure to provide
14 accurate semimonthly itemized statements thereto;

15 8. That the Court declare, adjudge and decree that defendant MACY'S violated
16 California Labor Code §§ 201, 202 and 203 for willful failure to pay all compensation owed at the
17 time of termination of employment to Representative Plaintiff and some Class Members;

18 9. That the Court declare, adjudge and decree that defendant MACY'S violated
19 California Business and Professions Code § 17200 et. seq. by failing to pay Representative Plaintiff
20 and Class Members overtime compensation, "waiting time" penalties and/or by failing to provide
21 accurate itemized statements;

22 10. That the Court make an award to Representative Plaintiff and Plaintiff Class of
23 damages for the amount of unpaid compensation, including interest thereon, and penalties in an
24 amount to be proven at trial;

25 11. That the Court make an award to the Representative Plaintiff and members of the
26 Class of one (1) hour of pay at each employee's regular rate of compensation for each workday that
27 a meal period was not provided;

28 ///

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1 12. That the Court make an award of penalties to Representative Plaintiff and Class
2 Members as authorized by Labor Code §§ 2698 and 2699 (the Labor Code Private Attorneys General
3 Act of 2004);

4 13. That the Court order defendant MACY'S to pay restitution to Representative Plaintiff
5 and Plaintiff Class due to defendant MACY'S' unlawful, unfair and/or fraudulent activities, pursuant
6 to Business and Professions Code §§ 17200-08;

7 14. That the Court further enjoin defendant MACY'S, ordering it to cease and desist from
8 unlawful, unfair and/or fraudulent activities in violation of Business and Professions Code § 17200
9 et. seq.;

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

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

13 17. For reasonable attorneys' fees, pursuant to 29 U.S.C. § 216(b), California Labor Code
14 §§ 218.5 and 1194 and/or California Civil Code § 1021.5; and


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

17 **JURY DEMAND**

18 Representative Plaintiff and the Plaintiff Class hereby demand trial by jury on all issues
19 triable of right by jury.

21 Dated: April 4, 2006

22 **SCOTT COLE & ASSOCIATES, APC**

23 By: 
24 _____
25 Matthew R. Bainer, Esq.

26 Attorneys for the Representative Plaintiff
27 and the Plaintiff Class
28