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**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ALAMEDA**

11 SARAH THAYER-OGDEN,  
12 SHAUNNA MATTSON individually,  
13 and on behalf of all others similarly  
14 situated,

Plaintiff,

vs.

15 POTTERY BARN KIDS, INC., and  
16 DOES 1 through 25, inclusive,

Defendants.

Case No.: **RG05199128**

**CLASS ACTION**

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

19 Representative Plaintiffs allege as follows:

**PRELIMINARY STATEMENT**

22 1. This is a class action, under Code of Civil Procedure § 382, seeking unpaid wages,  
23 including unpaid overtime compensation and interest thereon, rest and meal period compensation,  
24 waiting time penalties, injunctive and other equitable relief and reasonable attorneys' fees and costs,  
25 under, *inter alia*, Industrial Welfare Commission Wage Orders, California Code of Civil Procedure  
26 § 382, Labor Code §§ 201, 202, 203, 218.5, 226, 226.7, 512, 1174 and 1194, and CCP § 1021.5, on  
27 behalf of Plaintiffs and all other persons who are or have been employed by defendant POTTERY  
28 BARN KIDS, INC., and DOES 1 through 25, inclusive (collectively "Pottery Barn Kids" and/or

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

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

## 21 22 INTRODUCTION

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

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

1 basis.

2 5. Since its inception, defendant Pottery Barn Kids has offered a variety of retail  
3 products and merchandise to the public. Representative Plaintiffs are informed and believe and,  
4 based thereon, allege that, within the class period, Pottery Barn Kids has operated numerous retail  
5 stores throughout the State of California. In so doing, Pottery Barn Kids has employed scores, if not  
6 hundreds, of individuals in recent years alone in Assistant Store Manager positions, employment  
7 positions which have not and currently do not meet the test for exemption from the payment of  
8 overtime wages.

9 6. Despite actual knowledge of these facts and legal mandates, Pottery Barn Kids has  
10 enjoyed an advantage over its competition and a resultant disadvantage to its workers by electing not  
11 to pay premium (overtime) and/or "penalty" (a.k.a. "waiting time") wages to its Assistant Store  
12 Managers, nor has it provided them with statutorily-mandated meal and rest periods or accurate and  
13 complete semimonthly itemized statements.

14 7. Representative Plaintiffs are informed and believe and, based thereon, allege that  
15 officers of Pottery Barn Kids knew of these facts and legal mandates, yet, nonetheless, repeatedly  
16 authorized and/or ratified the violation of the laws cited herein.

17 8. Despite Pottery Barn Kids' knowledge of the Plaintiff Class' entitlement to premium  
18 (overtime) pay for excess hours worked and to meal and rest periods, Pottery Barn Kids failed to  
19 provide or require the use, maintenance or submission of accurate and complete time records by  
20 members of the Plaintiff Class, in violation of California Labor Code §1174[d]. This action is  
21 brought to redress and end this long-time pattern of unlawful conduct.

22  
23 **JURISDICTION AND VENUE**

24 9. This Court has jurisdiction over Representative Plaintiffs' and Class Members' claims  
25 for unpaid overtime wages under Labor Code § 1194, for compensation for failure to provide meal  
26 and rest periods under Labor Code §§ 226.7 and 512, for penalties for failure to pay wages of  
27 discharged employees under Labor Code § 203 and for penalties for failure to provide itemized  
28 statements of actual hours worked and all applicable hourly rates under Labor Code § 226.

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1           10.     This Court has jurisdiction over Representative Plaintiffs' and Class Members' claims  
2 for injunctive relief, and restitution of ill-gotten benefits arising from defendant Pottery Barn Kids'  
3 unlawful business practices under Business & Professions Code §§ 17203 and 17204.

4           11.     Venue as to Defendant is proper in this judicial district, pursuant to Code of Civil  
5 Procedure § 395(a). Defendant Pottery Barn Kids operates retail stores in Alameda County, and  
6 transacts business, has agents, and is otherwise within this Court's jurisdiction for purposes of  
7 service of process. The unlawful acts alleged herein have a direct effect on Representative Plaintiffs  
8 and those similarly situated within the State of California and within Alameda County. Defendant  
9 Pottery Barn Kids operates retail stores and has employed numerous Class Members in Alameda  
10 County.

**PLAINTIFFS**

13           12.     The Representative Plaintiffs identified herein are natural persons who were, during  
14 the relevant time period, employed by defendant Pottery Barn Kids as allegedly-overtime-exempt  
15 Assistant Store Managers, an employment position which was mis-classified as salaried/exempt from  
16 overtime pay.

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

20           14.     The Plaintiff Class consists, generally, of all members who are/were employed as  
21 Assistant Store Managers of Pottery Barn Kids and were classified thereby as overtime-exempt  
22 employees, at any time between the commencement of the pay period including February 18, 2001  
23 and the present.

24           15.     At all times herein relevant, the Representative Plaintiffs were and now are persons  
25 within the Class of persons further described and defined herein.

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

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DEFENDANT

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17. At all times herein relevant, defendant POTTERY BARN KIDS, INC., and Does 1 through 25, inclusive (collectively referred to as "Pottery Barn Kids" and/or "Defendant[s]") were corporations, duly licensed and located and doing business in, but not limited to, the County of Alameda, in the State of California.

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

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

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

CLASS ACTION ALLEGATIONS

21. Representative Plaintiffs SARAH THAYER-OGDEN and SHAUNNA MATTSON bring this action on behalf of themselves and as a class action on behalf of all persons similarly situated and proximately damaged by Pottery Barn Kids' conduct as set forth herein, including, but not necessarily limited to, the following Class:

All persons who are/were employed by POTTERY BARN KIDS, INC. in one or more of its California retail stores as Assistant Store Managers, at any time between February 18, 2001 and the present, who were classified thereby as overtime-exempt.

1 22. Defendants, their officers and directors are excluded from the Class.

2 23. This action has been brought and may properly be maintained as a class action under  
3 Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation  
4 and the proposed class is easily ascertainable.

5 a. Numerosity: A class action is the only available method for the fair and  
6 efficient adjudication of this controversy. The members of the Class are so  
7 numerous that joinder of all members is impractical, if not impossible, insofar  
8 as Representative Plaintiffs are informed and believe and, on that basis,  
allege that the total membership in the class is in the hundreds of individuals.  
Membership in the Class will be determined upon analysis of employee and  
payroll, among other records maintained by Pottery Barn Kids.

9 b. Commonality: The Representative Plaintiffs and the Class Members share  
10 a community of interests in that there are numerous common questions and  
11 issues of fact and law which predominate over any questions and issues solely  
affecting individual members, including, but not necessarily limited to:

12 i. whether defendant Pottery Barn Kids violated IWC Wage Orders  
13 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.

14 ii. whether defendant Pottery Barn Kids violated Business and  
15 Professions Code § 17200 by failing to pay overtime compensation  
to Assistant Store Managers who worked in excess of forty hours per  
16 week and/or eight hours per day.

17 iii. whether defendant Pottery Barn Kids violated Labor Code §§ 226.7  
18 and/or 512 by failing to consistently provide meal and rest periods to  
its Assistant Store Managers.

19 iv. whether defendant Pottery Barn Kids violated Labor Code § 1174 by  
failing to keep accurate records of employees' hours of work.

20 v. whether defendant Pottery Barn Kids violated Labor Code §§ 201-  
21 203 by failing to pay overtime wages due and owing at the time that  
certain Class Members' employment with Defendant terminated.

22 vi. whether defendant Pottery Barn Kids violated Labor Code § 226 by  
23 failing to provide the required semimonthly itemized statements to  
Class Members of total hours worked by each and all applicable  
24 hourly rates in effect during the pay period.

25 vii. whether Representative Plaintiffs and/or certain Class Members are  
entitled to "waiting time" penalties, pursuant to Labor Code § 203.

26 c. Typicality: The Representative Plaintiffs' claims are typical of the claims of  
27 the Class. The Representative Plaintiffs and all members of the Class  
28 sustained injuries and damages arising out of and caused by defendant Pottery  
Barn Kids' common course of conduct in violation of law, as alleged herein.

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- 1
- 2 d. Superiority of Class Action: Since the damages suffered by individual Class
- 3 Members, while not inconsequential, may be relatively small, the expense
- 4 and burden of individual litigation by each member makes or may make it
- 5 impractical for members of the Class to seek redress individually for the
- 6 wrongful conduct alleged herein. Should separate actions be brought or be
- 7 required to be brought by each individual member of the Class, the resulting
- 8 multiplicity of lawsuits would cause undue hardship and expense for the
- 9 Court and the litigants. The prosecution of separate actions would also create
- 10 a risk of inconsistent rulings, which might be dispositive of the interests of
- 11 other Class Members who are not parties to the adjudications and/or may
- 12 substantially impede their ability to adequately protect their interests.
- 13
- 14 e. Adequacy of Representation: The Representative Plaintiffs in this class
- 15 action are adequate representatives of the Class, in that the Representative
- 16 Plaintiffs' claims are typical of those of the other Class Members and the
- 17 Representative Plaintiffs have the same interests in the litigation of this case
- 18 as the Class Members. The Representative Plaintiffs are committed to the
- 19 vigorous prosecution of this case and have retained competent counsel,
- 20 experienced in litigation of this nature. The Representative Plaintiffs are not
- 21 subject to any individual defenses unique from those conceivably applicable
- 22 to the Class as a whole. The Representative Plaintiffs anticipate no
- 23 management difficulties in this litigation.

### 24 COMMON FACTUAL ALLEGATIONS

25 24. As described herein, Pottery Barn Kids has, for years, knowingly failed to adequately

26 compensate Assistant Store Managers within the class definitions identified above for premium

27 (overtime) wages due, thereby enjoying a significant competitive edge over other retail stores. Even

28 upon termination or resignation of the employment of numerous class members, Pottery Barn Kids

has declined to pay these wages, in blatant violation of California Labor Code §§ 201 and/or 202.

29 25. Furthermore, despite its knowledge of the Representative Plaintiffs' and the Class

Members' entitlement to premium (overtime) pay for excess hours worked, Pottery Barn Kids

violated California Labor Code §1174[d] by failing to provide or require the use, maintenance or

submission of time records by members of the Plaintiff Class. Pottery Barn Kids also failed to

provide Representative Plaintiffs and members of the Class with accurate semimonthly itemized

statements of the total number of hours worked by each and all applicable hourly rates in effect

during the pay period in violation of California Labor Code § 226. In so doing, Pottery Barn Kids

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

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1 magnitude (i.e., the full number of hours worked) and financial impact of its wrongdoing.

2 26. California Labor Code §§ 201 and 202 require defendant Pottery Barn Kids to pay  
3 its employees all wages due immediately upon discharge. California Labor Code § 203 provides  
4 that, if an employer willfully fails to timely pay such wages, the employer must, as a penalty,  
5 continue to pay the subject employees' wages until the back wages are paid in full or until an action  
6 is commenced. The penalty cannot exceed 30 days of wages.

7 27. Representative Plaintiffs and all persons similarly situated are entitled to unpaid  
8 compensation, yet, to date, have not received such compensation.

9 28. More than 30 days have passed since certain class members have left defendant  
10 Pottery Barn Kids' employ.

11 29. As a consequence of defendant Pottery Barn Kids' willful conduct in not paying  
12 compensation for all hours worked and not paying for denied meal and rest periods, certain class  
13 members are entitled to 30 days' wages as a penalty under Labor Code § 203, together with interest  
14 thereon and attorneys' fees and costs.

15 30. As a direct and proximate result of Pottery Barn Kids' unlawful conduct, as set forth  
16 herein, Representative Plaintiffs and/or particular Class Members have sustained damages, as  
17 described above, including, but not limited to, loss of earnings for hours of overtime worked on  
18 behalf of Defendants, in an amount to be established at trial. As a further direct and proximate result  
19 of Defendant's unlawful conduct, as set forth herein, certain Class Members herein are entitled to  
20 recover "waiting time" penalties/wages (pursuant to California Labor Code § 203) and penalties for  
21 failure to provide accurate semimonthly statements of actual hours worked and all applicable hourly  
22 rates (pursuant to Labor Code § 226) in an amount to be established at trial. As a further direct and  
23 proximate result of Defendant's unlawful conduct, as set forth herein, Representative Plaintiffs and  
24 the Class are also entitled to recover costs and attorneys' fees, pursuant to statute.

25 ///  
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28 ///



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

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

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

33. During said time period, defendant Pottery Barn Kids refused to compensate Representative Plaintiffs and the Class Members for some and/or all of the overtime wages earned in violation of applicable Wage Order(s) and the California Labor Code.

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

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

- 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 § 226: “Every 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 statement in writing showing . . . (2) total hours worked by the employee . . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.”
- c. 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 of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate

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- 1 of pay for an employee . . . .”
- 2 d. Labor Code § 1194: “Notwithstanding any agreement to work for a lesser
- 3 wage, any employee receiving less than the legal minimum wage or the legal
- 4 overtime compensation applicable to the employee is entitled to recover in
- 5 a civil action the unpaid balance of the full amount of this minimum wage or
- 6 overtime compensation, including interest thereon, reasonable attorney’s fees,
- 7 and costs of suit.”
- 8 e. Labor Code §1198: “[t]he maximum hours of work and the standard
- 9 conditions of labor fixed by the commission shall be the maximum hours of
- 10 work and the standard conditions of labor for employees. The employment
- 11 of any employee for longer hours than those fixed by the order or under
- 12 conditions of labor prohibited by the order is unlawful.”
- 13 f. Labor Code §1199: “Every employer or other person acting either
- 14 individually or as an officer, agent, or employee of another person is guilty
- 15 of a misdemeanor and is punishable by a fine of not less than one hundred
- 16 dollars (\$100) or by imprisonment for not less than 30 days, or by both, who
- 17 . . . (a) Requires or causes any employee to work for longer hours than those
- 18 fixed, or under conditions of labor prohibited by an order of the commission.
- 19 . . . [or] (c) Violates or refuses or neglects to comply with any provision of
- 20 this chapter or any order or ruling of the commission.”

21 36. By refusing to compensate Representative Plaintiffs and the Class Members for  
22 overtime wages earned, Defendants violated those California Labor Code provisions cited herein,  
23 as well as various IWC Wage Order provisions.

24 37. As a direct and proximate result of Defendant’s unlawful conduct, as set forth herein,  
25 Representative Plaintiffs and the Class Members have sustained damages, including loss of earnings  
26 for hours of overtime worked on behalf of Defendant, in an amount to be established at trial. As a  
27 further direct and proximate result of Defendant’s unlawful conduct, as set forth herein, some Class  
28 Members are entitled to recover “waiting time” penalties/wages, in an amount to be established at  
trial, as well as costs and attorneys’ fees, pursuant to statute.

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

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

39. Representative Plaintiffs further bring this cause of action on behalf of the general  
public, seeking equitable and statutory relief to stop the misconduct of Defendant, as complained of

1 herein, and to seek restitution from Defendant through the unfair, unlawful and fraudulent business  
2 practices described herein.

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

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

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

16  
17 **THIRD CAUSE OF ACTION**  
18 **FAILURE TO PROVIDE MEAL AND REST PERIODS**  
**(California Labor Code §§ 226.7 and § 512)**

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

21 44. California Labor Code § 512 provides:

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

1 California Labor Code § 512 as well as California Labor Code § 226.7.

2 46. Specifically, California Labor Code § 226.7 provides:

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

5 (b) If an employer fails to provide an employee a meal period or rest  
6 period in accordance with an applicable order of the Industrial  
Welfare Commission, the employer shall pay the employee one  
7 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.

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

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

14 49. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,  
15 Representative Plaintiffs and the Class Members have sustained damages, including loss of earnings,  
16 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 Plaintiffs and the Class Members are entitled  
18 to recover compensation and various penalties, in an amount to be established at trial, as well as  
19 costs and attorneys' fees, pursuant to statute.

20  
21 **FOURTH CAUSE OF ACTION**  
22 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**  
23 **(California Labor Code § 226)**

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

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

26 Each employer shall semimonthly, or at the time of each payment of  
27 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  
28 separately when wages are paid by personal check or cash, an  
itemized wage statement in writing showing: (1) gross wages earned;

1 (2) total number of hours worked by each employee whose  
2 compensation is based on an hourly wage; (3) all deductions;  
3 provided, that all deductions made on written orders of the employee  
4 may be aggregated and shown as one item; (4) net wages earned;  
5 (5) the inclusive date of the period for which the employee is paid; (6)  
6 the name of the employee and his or her social security number; and  
7 (7) the name and address of the legal entity which is the employer.

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

6 An employee suffering injury as a result of a knowing and intentional  
7 failure by an employer to comply with subdivision (a) is entitled to  
8 recover the greater of all actual damages or fifty dollars (\$50) for the  
9 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.

53. Representative Plaintiffs seek to recover actual damages (including prospective  
11 damages associated with filing restatements of earnings with taxing and/or other authorities), costs  
12 and attorneys' fees under this section on behalf of themselves and the Plaintiff Class.

54. Defendant Pottery Barn Kids failed to provide timely, accurate and complete itemized  
14 wage statements to Representative Plaintiffs and the Plaintiff Class in accordance with Labor Code  
15 § 226(a). Plaintiffs have suffered injuries due to this unlawful conduct insofar as they have lost use  
16 of the compensation due, were forced to bring this action to redress these violations, were forced to  
17 file inaccurate wage information with government agencies and, should this action be successful,  
18 may be required to restate earnings for prior years and/or incur time and costs in so doing.

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

**RELIEF SOUGHT**

23 **WHEREFORE, the Representative Plaintiffs, on behalf of themselves and the proposed**  
24 **Class, pray for judgment and the following specific relief against Defendants, and each of them,**  
25 **("Pottery Barn Kids") jointly and separately, as follows:**

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

28

1           2.       That defendant Pottery Barn Kids is found to have violated the overtime provisions  
2 of the Labor Code as to the Representative Plaintiffs and the Plaintiff Class;

3           3.       That defendant Pottery Barn Kids is found to have violated Labor Code §§ 226.7 and  
4 512 for willful failure to provide meal periods, including second meal periods, and rest periods;

5           4.       That defendant Pottery Barn Kids is found to have violated the record keeping  
6 provisions of Labor Code §§ 226(a) and 1174(d) as to Representative Plaintiffs and the Plaintiff  
7 Class by willfully failing to provide accurate semimonthly itemized statements thereto;

8           5.       That defendant Pottery Barn Kids is found to have violated Labor Code §§ 201 and  
9 202 by willfully failing to pay all compensation owed at the time of termination of employment to  
10 particular members of the Plaintiff Class;

11          6.       That defendant Pottery Barn Kids is found to have violated Business and Professions  
12 Code § 17200 by failing to pay Representative Plaintiffs and Class Members overtime compensation,  
13 “waiting time” penalties and/or by failing to provide accurate and complete itemized wage  
14 statements;

15          7.       An award to Representative Plaintiffs and the Class Members of damages for the  
16 amount of unpaid overtime compensation, the amount of wages due as a result of Defendant’s failure  
17 to provide meal and rest periods, the amount of prospective damages associated with filing  
18 restatements of earnings with taxing and/or other authorities, and related damages, including interest  
19 thereon, and penalties in an amount to be proven at trial;

20          8.       That defendant Pottery Barn Kids be ordered to pay restitution to Representative  
21 Plaintiffs and the Plaintiffs Class due to defendant Pottery Barn Kids’ unlawful activities as set forth  
22 herein, pursuant to Business and Professions Code §§ 17200-08;

23          9.       That defendant Pottery Barn Kids further be enjoined to cease and desist from  
24 unlawful activities in violation of Business and Professions Code § 17200;

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

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

28          12.       For reasonable Attorneys’ Fees, pursuant to California Labor Code §§218.5 and 1194

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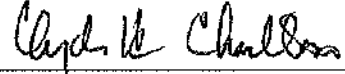
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and/or California Civil Code §1021.5; and

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

Dated: May 4, 2005

SCOTT COLE & ASSOCIATES, APC

By:   
Scott Edward Cole, Esq.  
Clyde H. Charlton, Esq.  
Matthew R. Bainer, Esq.

Attorneys for the Representative Plaintiffs  
and the Plaintiff Class