

SW EMPLOYMENT LAW, APC

Jacob N. Whitehead, Esq. SBN 266123

reception@jnwpc.com

Meghan N. Higday, Esq. SBN 334626

mhigday@swemploymentlaw.com

7700 Irvine Center Drive, Suite 930

Irvine, CA 92618

Tel. (949) 674-4922

Assigned for all Purposes

Judge Peter Wilson

CX-102

Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

TOPANGA JACKSON, an individual;)
CONNER WARD, an individual; MAUSA)
ZAMANI, an individual; DAVID STARK, an)
individual; ARTURO CONCHAS, an individual;)
ETHAN SHIN, an individual; DAMIAM)
ARTEAGA, an individual; LARRY SNIDER, an)
individual; WILLIAM MARKWOOD, an)
individual; CAMERON FORTUNE-MORTON,)
an individual; JOHN BAKER, an individual;)
CASEY HAROLD, an individual; HAYLEY)
KINGABY, an individual; ALEXIS PRADO, an)
individual; ADONIS FELIX, an individual;)
STEVEN WILLIAMSON, an individual;)
DALLAS HOVDE, an individual; CHANCE)
SMITH JR., an individual; LUPE RAMIREZ, an)
individual; JONATHAN MYERS, an individual;)
JOHN HOTTON, an individual; GILBERT)
GOMEZ, an individual; ALISSA CARREIRO,)
an individual; STACEY ELIAS, an individual;)
SARA GAVES, an individual; TEMPLE HUNG,)
an individual; SAVANNAH KOLB, an)
individual; STEVEN PEREZ, an individual;)
EVERETT SENA, an individual; IVY)
PETERSON, an individual; LUCY)
MUNTEANU, an individual; JASMINE)
PULLMAN, an individual; FELIPE AMAYA,)
an individual; SABRINA GORDON, an)
individual; ANNETTE ROMO, an individual;)
BRANDALYN KEKIC, an individual;)
RICHARD VASQUEZ, an individual;)
ENRIQUE DE LA RIVA, an individual; CODY)
HANSEN, an individual; DEVIN REYES, an)

Case No.: 30-2022-01241751-CU-OE-CXC

COMPLAINT FOR

- 1) FAILURE TO PROVIDE MEAL PERIODS (Labor Code §§ 226.7, 512, and 1198);**
- 2) FAILURE TO PROVIDE REST PERIODS (Labor Code §§ 226.7, 1198, IWC No. 4-2001);**
- 3) FAILURE TO PAY OVERTIME (Labor Code §§ 510, 1194);**
- 4) FAILURE TO MAINTAIN ACCURATE RECORDS (Labor Code §1174(d));**
- 5) FAILURE TO PAY ALL WAGES WHEN DUE (Labor Code § 204);**
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (Labor Code § 226, 226.3);**
- 7) FAILURE TO REIMBURSE WORK EXPENSES (Labor Code § 2802);**
- 8) FAILURE TO TIMELY PAY WAGES UPON TERMINATION (Labor Code §§ 201-203);**
- 9) UNFAIR BUSINESS PRACTICES (In Violation of Bus. & Prof. Code §17200);**

{JURY TRIAL DEMANDED}

individual; JOHN VAZQUEZ, an individual;)
REINA PARTIDA, an individual; SEAN)
JOYNER, an individual; JAMES GODOY, an)
individual; GABRIELA BANUELOS, an)
individual; MIKE MAGDALENO, an)
individual; MARTIN HERNANDEZ, an)
individual; CLAUDIA ESQUIVEL, an)
individual; NATHAN BALLENGER, an)
individual; DONTE ROBY, an individual;)
JOHANNA APODACA, an individual;)
KATELYN USTACH, an individual; SYMIRIA)
HARRIS, an individual; FERNANDO)
CALDERON, an individual; BRANDON)
PARRA, an individual; CHRISTIAN MURPHY,)
an individual; JOSE CERVANTES, an)
individual; BILL HAMMOND, an individual;)
Plaintiffs,)
v.)
HOME DEPOT U.S.A., INC., a Delaware)
corporation, and DOES 1-50, inclusive,)
Defendants.)

1 Plaintiffs TOPANGA JACKSON, an individual; CONNER WARD, an individual; MAUSA
2 ZAMANI, an individual; DAVID STARK, an individual; ARTURO CONCHAS, an individual;
3 ETHAN SHIN, an individual; DAMIAM ARTEAGA, an individual; LARRY SNIDER, an individual;
4 WILLIAM MARKWOOD, an individual; CAMERON FORTUNE-MORTON, an individual; JOHN
5 BAKER, an individual; CASEY HAROLD, an individual; HAYLEY KINGABY, an individual;
6 ALEXIS PRADO, an individual; ADONIS FELIX, an individual; STEVEN WILLIAMSON, an
7 individual; DALLAS HOVDE, an individual; CHANCE SMITH JR., an individual; LUPE
8 RAMIREZ, an individual; JONATHAN MYERS, an individual; JOHN HOTTON, an individual;
9 GILBERT GOMEZ, an individual; ALISSA CARREIRO, an individual; STACEY ELIAS, an
10 individual; SARA GAVES, an individual; TEMPLE HUNG, an individual; SAVANNAH KOLB, an
11 individual; STEVEN PEREZ, an individual; EVERETT SENA, an individual; IVY PETERSON, an
12 individual; LUCY MUNTEANU, an individual; JASMINE PULLMAN, an individual; FELIPE
13 AMAYA, an individual; SABRINA GORDON, an individual; ANNETTE ROMO, an individual;
14 BRANDALYN KEKIC, an individual; RICHARD VASQUEZ, an individual; ENRIQUE DE LA
15 RIVA, an individual; CODY HANSEN, an individual; DEVIN REYES, an individual; JOHN
16 VAZQUEZ, an individual; REINA PARTIDA, an individual; SEAN JOYNER, an individual; JAMES
17 GODOY, an individual; GABRIELA BANUELOS, an individual; MIKE MAGDALENO, an
18 individual; MARTIN HERNANDEZ, an individual; CLAUDIA ESQUIVEL, an individual;
19 NATHAN BALLENGER, an individual; DONTÉ ROBY, an individual; JOHANNA APODACA, an
20 individual; KATELYN USTACH, an individual; SYMIRIA HARRIS, an individual; FERNANDO
21 CALDERON, an individual; BRANDON PARRA, an individual; CHRISTIAN MURPHY, an
22 individual; JOSE CERVANTES, an individual; BILL HAMMOND, an individual (hereinafter,
23 “Plaintiffs”) hereby bring this Complaint (“Complaint”) against Defendant HOME DEPOT U.S.A.,
24 INC. (“HOME DEPOT” or “Defendant”), and DOES 1-50. Plaintiffs hereby allege as follows:
25
26
27

1 **THE PARTIES**

2 **Plaintiffs**

3 1. Plaintiff, TOPANGA JACKSON was at all times relevant to this Complaint, an
4 employee of Defendant. She was at all relevant times a resident of Fresno, California. She was an
5 employee working in Defendant's Home Depot Home Improvement retail stores located in Fresno,
6 California, in the County of Fresno as an hourly compensated, nonexempt Paint Specialist from June
7 18, 2020 to January 6, 2021.

8 2. Plaintiff, CONNER WARD was at all times relevant to this Complaint, an employee
9 of Defendant. He was at all relevant times a resident of Lake Forest, California. He was an employee
10 working in Defendant's Home Depot Home Improvement retail stores located in Lake Forest,
11 California, in the County of Orange as an hourly compensated, nonexempt Lumber Associate from
12 December 17, 2020 to April 9, 2021.

13 3. Plaintiff, MAUSA ZAMANI was at all times relevant to this Complaint, an employee
14 of Defendant. She was at all relevant times a resident of Hayward, California. She was an employee
15 working in Defendant's Home Depot Home Improvement retail stores located in Hayward, California,
16 in the County of Alameda as an hourly compensated, nonexempt Department Supervisor from January
17 15, 2015 to June 15, 2019.

18 4. Plaintiff, DAVID STARK was at all times relevant to this Complaint, an employee of
19 Defendant. He was at all relevant times a resident of San Diego, California. He was an employee
20 working in Defendant's Home Depot Home Improvement retail stores located in San Diego,
21 California, in the County of San Diego as an hourly compensated, nonexempt Picker from November
22 1, 2019 to June 3, 2020.

23 5. Plaintiff, ARTURO CONCHAS was at all times relevant to this Complaint, an
24 employee of Defendant. He was at all relevant times a resident of Temecula, California. He was an
25 employee working in Defendant's Home Depot Home Improvement retail stores located in Lemon
26 Grove, San Jose and Temecula, California, in the Counties of San Diego, Santa Clara and Riverside
27

1 as an hourly compensated, nonexempt Professional Account Sales Associate from February 3, 2003
2 to February 3, 2019.

3 6. Plaintiff, ETHAN SHIN was at all times relevant to this Complaint, an employee of
4 Defendant. He was at all relevant times a resident of Irvine, California. He was an employee working
5 in Defendant's Home Depot Home Improvement retail stores located in Irvine, California, in the
6 County of Orange as an hourly compensated, nonexempt Professional Account Sales Associate from
7 November 30, 2020 to September 24, 2021.

8 7. Plaintiff, DAMIAN ARTEAGA was at all times relevant to this Complaint, an
9 employee of Defendant. He was at all relevant times a resident of Fullerton, California. He was an
10 employee working in Defendant's Home Depot Home Improvement retail stores located in Fullerton,
11 California, in the County of Orange as an hourly compensated, nonexempt Delivery Associate from
12 August 12, 2020 to September 30, 2021.

13 8. Plaintiff, LARRY SNIDER was at all times relevant to this Complaint, an employee of
14 Defendant. He was at all relevant times a resident of Camarillo, California. He was an employee
15 working in Defendant's Home Depot Home Improvement retail stores located in Camarillo,
16 California, in the County of Ventura as an hourly compensated, nonexempt Pro Department Supervisor
17 from March 5, 2019 to August 19, 2021.

18 9. Plaintiff, WILLIAM MARKWOOD was at all times relevant to this Complaint, an
19 employee of Defendant. He was at all relevant times a resident of Fountain Valley, California. He was
20 an employee working in Defendant's Home Depot Home Improvement retail stores located in
21 Huntington Beach, California, in the County of Orange as an hourly compensated, nonexempt
22 Assistant Store Manager from November 18, 2018 to November 22, 2019.

23 10. Plaintiff, CAMERON FORTUNE-MORTON was at all times relevant to this
24 Complaint, an employee of Defendant. He was at all relevant times a resident of Los Angeles,
25 California. He was an employee working in Defendant's Home Depot Home Improvement retail stores
26 located in Alhambra, California, in the County of Los Angeles as an hourly compensated, nonexempt
27 Sales Associate from September 18, 2019 to November 4, 2021.

1 11. Plaintiff, JOHN BAKER was at all times relevant to this Complaint, an employee of
2 Defendant. He was at all relevant times a resident of Thousand Oaks, California. He was an employee
3 working in Defendant's Home Depot Home Improvement retail stores located in Thousand Oaks,
4 California, in the County of Ventura as an hourly compensated, nonexempt Frontline Associate and
5 Cashier from April 1, 2019 to August 1, 2021.

6 12. Plaintiff, CASEY HAROLD was at all times relevant to this Complaint, an employee
7 of Defendant. He was at all relevant times a resident of Highland, California. He was an employee
8 working in Defendant's Home Depot Home Improvement retail stores located in Redlands, California,
9 in the County of San Bernardino as an hourly compensated, nonexempt Flooring Associate from May
10 16, 2019 to May 11, 2020.

11 13. Plaintiff, HAYLEY KINGABY was at all times relevant to this Complaint, an
12 employee of Defendant. She was at all relevant times a resident of Rocklin, California. She was an
13 employee working in Defendant's Home Depot Home Improvement retail stores located in Lincoln,
14 California, in the County of Placer as an hourly compensated, nonexempt Head Cashier from
15 November 21, 2017 to September 12, 2020.

16 14. Plaintiff, ALEXIS PRADO was at all times relevant to this Complaint, an employee of
17 Defendant. She was at all relevant times a resident of Le Grand, California. She was an employee
18 working in Defendant's Home Depot Home Improvement retail stores located in Madera, California,
19 in the County of Madera as an hourly compensated, nonexempt Lot Associate from February 2, 2018
20 to May 15, 2019.

21 15. Plaintiff, ADONIS FELIX was at all times relevant to this Complaint, an employee of
22 Defendant. He was at all relevant times a resident of Indio, California. He was an employee working
23 in Defendant's Home Depot Home Improvement retail stores located in Indio, California, in the
24 County of Riverside as an hourly compensated, nonexempt Garden Associate from February 24, 2021
25 to June 15, 2021.

26 16. Plaintiff, STEVEN WILLIAMSON was at all times relevant to this Complaint, an
27 employee of Defendant. He was at all relevant times a resident of Bellflower, California. He was an

1 employee working in Defendant's Home Depot Home Improvement retail stores located in Lakewood,
2 California, in the County of Los Angeles as an hourly compensated, nonexempt Flooring Specialist
3 from May 10, 2021 to October 31, 2021.

4 17. Plaintiff, DALLAS HOVDE was at all times relevant to this Complaint, an employee
5 of Defendant. He was at all relevant times a resident of Fresno, California. He was an employee
6 working in Defendant's Home Depot Home Improvement retail stores located in Fresno, California,
7 in the County of Fresno as an hourly compensated, nonexempt Customer Service Representative from
8 March 5, 2018 to July 15, 2021.

9 18. Plaintiff, CHANCE SMITH JR. was at all times relevant to this Complaint, an
10 employee of Defendant. He was at all relevant times a resident of Cloverdale, California. He was an
11 employee working in Defendant's Home Depot Home Improvement retail stores located in Crescent
12 City, California, in the County of Del Norte as an hourly compensated, nonexempt Department
13 Supervisor from August 30, 2019 to November 5, 2021.

14 19. Plaintiff, LUPE RAMIREZ was at all times relevant to this Complaint, an employee of
15 Defendant. She was at all relevant times a resident of Hesperia, California. She was an employee
16 working in Defendant's Home Depot Home Improvement retail stores located in Victorville,
17 California, in the County of San Bernardino as an hourly compensated, nonexempt Service Desk
18 Associate from July 22, 2015 to November 2, 2020.

19 20. Plaintiff, JONATHAN MYERS was at all times relevant to this Complaint, an
20 employee of Defendant. He was at all relevant times a resident of San Diego, California. He was an
21 employee working in Defendant's Home Depot Home Improvement retail stores located in San Diego,
22 California, in the County of San Diego as an hourly compensated, nonexempt Order Fulfillment
23 Associate from June 9, 2015 to November 17, 2020.

24 21. Plaintiff, JOHN HUTTON was at all times relevant to this Complaint, an employee of
25 Defendant. He was at all relevant times a resident of Modesto, California. He was an employee
26 working in Defendant's Home Depot Home Improvement retail stores located in Modesto, California,
27

1 in the County of Stanislaus as an hourly compensated, nonexempt Garden Associate from February
2 14, 2012 to November 22, 2021.

3 22. Plaintiff, GILBERT GOMEZ was at all times relevant to this Complaint, an employee
4 of Defendant. He was at all relevant times a resident of Santa Ana, California. He was an employee
5 working in Defendant's Home Depot Home Improvement retail stores located in Tustin, California,
6 in the County of Orange as an hourly compensated, nonexempt Department Supervisor from
7 November 19, 2018 to October 12, 2021.

8 23. Plaintiff, ALISSA CARREIRO was at all times relevant to this Complaint, an
9 employee of Defendant. She was at all relevant times a resident of Artesia, California. She was an
10 employee working in Defendant's Home Depot Home Improvement retail stores located in Cypress,
11 California, in the County of Orange as an hourly compensated, nonexempt Pro Sales Associate from
12 March 17, 2021 to November 8, 2021.

13 24. Plaintiff, STACEY ELIAS was at all times relevant to this Complaint, an employee of
14 Defendant. She was at all relevant times a resident of San Bernardino, California. She was an employee
15 working in Defendant's Home Depot Home Improvement retail stores located in San Bernardino,
16 California, in the County of San Bernardino as an hourly compensated, nonexempt Lot Attendant from
17 January 29, 2019 to November 22, 2021.

18 25. Plaintiff, SARA GAVES was at all times relevant to this Complaint, an employee of
19 Defendant. She was at all relevant times a resident of Manteca, California. She was an employee
20 working in Defendant's Home Depot Home Improvement retail stores located in Lodi, California, in
21 the County of San Joaquin as an hourly compensated, nonexempt Line Manager from April 26, 2016
22 to March 2, 2020.

23 26. Plaintiff, TEMPLE HUNG was at all times relevant to this Complaint, an employee of
24 Defendant. He was at all relevant times a resident of Fremont, California. He was an employee
25 working in Defendant's Home Depot Home Improvement retail stores located in Newark, California,
26 in the County of Alameda as an hourly compensated, nonexempt Pro Desk Sales Associate from
27 January 13, 2016 to September 22, 2021.

1 27. Plaintiff, SAVANNAH KOLB was at all times relevant to this Complaint, an employee
2 of Defendant. She was at all relevant times a resident of California City, California. She was an
3 employee working in Defendant's Home Depot Home Improvement retail stores located in Tehachapi,
4 California, in the County of Kern as an hourly compensated, nonexempt Sales Associate from
5 February 24, 2017 to June 19, 2021.

6 28. Plaintiff, STEVEN PEREZ was at all times relevant to this Complaint, an employee of
7 Defendant. He was at all relevant times a resident of Fresno, California. He was an employee working
8 in Defendant's Home Depot Home Improvement retail stores located in Fresno and Camarillo,
9 California, in the Counties of Fresno and Ventura as an hourly compensated, nonexempt Special
10 Services Associate from April 6, 2019 to September 17, 2021.

11 29. Plaintiff, EVERETT SENA was at all times relevant to this Complaint, an employee of
12 Defendant. She was at all relevant times a resident of Adelanto, California. She was an employee
13 working in Defendant's Home Depot Home Improvement retail stores located in North Victorville,
14 California, in the County of San Bernardino as an hourly compensated, nonexempt Sales Associate
15 from November 5, 2019 to November 28, 2021.

16 30. Plaintiff, IVY PETERSON was at all times relevant to this Complaint, an employee of
17 Defendant. She was at all relevant times a resident of Bakersfield, California. She was an employee
18 working in Defendant's Home Depot Home Improvement retail stores located in Bakersfield,
19 California, in the County of Kern, as well as Austin, Texas, as an hourly compensated, nonexempt
20 Team Leader from May 14, 2018 to July 1, 2019.

21 31. Plaintiff, LUCY MUNTEANU was at all times relevant to this Complaint, an employee
22 of Defendant. She was at all relevant times a resident of Whitter, California. She was an employee
23 working in Defendant's Home Depot Home Improvement retail stores located in Anaheim Hills,
24 California, in the County of Orange as an hourly compensated, nonexempt Special Services Associate
25 from December 6, 2018 to November 30, 2021.

26 32. Plaintiff, JASMINE PULLMAN was at all times relevant to this Complaint, an
27 employee of Defendant. She was at all relevant times a resident of Cypress, California. She was an

1 employee working in Defendant's Home Depot Home Improvement retail stores located in Huntington
2 Beach, California, in the County of Orange as an hourly compensated, nonexempt Sales Specialist
3 from April 10, 2013 to October 8, 2021.

4 33. Plaintiff, FELIPE AMAYA was at all times relevant to this Complaint, an employee of
5 Defendant. He was at all relevant times a resident of Los Angeles, California. He was an employee
6 working in Defendant's Home Depot Home Improvement retail stores located in Hollywood,
7 California, in the County of Los Angeles as an hourly compensated, nonexempt Sales Associate from
8 February 23, 2006 to June 30, 2021.

9 34. Plaintiff, SABRINA GORDON was at all times relevant to this Complaint, an
10 employee of Defendant. She was at all relevant times a resident of Los Molinos, California. She was
11 an employee working in Defendant's Home Depot Home Improvement retail stores located in Chico
12 and Red Bluff, California, in the Counties of Butte and Tehama as an hourly compensated, nonexempt
13 Department Supervisor from July 13, 2016 to April 12, 2021.

14 35. Plaintiff, ANNETTE ROMO was at all times relevant to this Complaint, an employee
15 of Defendant. She was at all relevant times a resident of Tracy, California. She was an employee
16 working in Defendant's Home Depot Home Improvement retail stores located in Tracy, California, in
17 the County of San Joaquin as an hourly compensated, nonexempt Supervisor from May 20, 2005 to
18 May 20, 2021.

19 36. Plaintiff, BRANDALYN KEKIC was at all times relevant to this Complaint, an
20 employee of Defendant. She was at all relevant times a resident of Cressey, California. She was an
21 employee working in Defendant's Home Depot Home Improvement retail stores located in Modesto,
22 California, in the County of Stanislaus as an hourly compensated, nonexempt Cashier from January 3,
23 2018 to May 15, 2019.

24 37. Plaintiff, RICHARD VASQUEZ was at all times relevant to this Complaint, an
25 employee of Defendant. He was at all relevant times a resident of Fresno, California. He was an
26 employee working in Defendant's Home Depot Home Improvement retail stores located in Fresno,
27

1 California, in the County of Fresno as an hourly compensated, nonexempt Hardware Associate from
2 August 27, 2020 to November 23, 2021.

3 38. Plaintiff, ENRIQUE DE LA RIVA was at all times relevant to this Complaint, an
4 employee of Defendant. He was at all relevant times a resident of Maywood, California. He was an
5 employee working in Defendant's Home Depot Home Improvement retail stores located in Huntington
6 Park, California, in the County of Los Angeles as an hourly compensated, nonexempt Sales Associate
7 from August 18, 2006 to June 17, 2021.

8 39. Plaintiff, CODY HANSEN was at all times relevant to this Complaint, an employee of
9 Defendant. He was at all relevant times a resident of Ridgecrest, California. He was an employee
10 working in Defendant's Home Depot Home Improvement retail stores located in Ridgecrest,
11 California, in the County of Kern as an hourly compensated, nonexempt Freight Team from March
12 20, 2020 to August 9, 2021.

13 40. Plaintiff, DEVIN REYES was at all times relevant to this Complaint, an employee of
14 Defendant. He was at all relevant times a resident of Walnut, California. He was an employee working
15 in Defendant's Home Depot Home Improvement retail stores located in Covina, California, in the
16 County of Los Angeles as an hourly compensated, nonexempt Hardware Associate from October 15,
17 2019 to May 12, 2021.

18 41. Plaintiff, JOHN VAZQUEZ was at all times relevant to this Complaint, an employee
19 of Defendant. He was at all relevant times a resident of Hawthorne, California. He was an employee
20 working in Defendant's Home Depot Home Improvement retail stores located in Gardena, California,
21 in the County of Los Angeles as an hourly compensated, nonexempt Supervisor from April 27, 2015
22 to June 5, 2019.

23 42. Plaintiff, REINA PARTIDA was at all times relevant to this Complaint, an employee
24 of Defendant. She was at all relevant times a resident of Sun Valley, California. She was an employee
25 working in Defendant's Home Depot Home Improvement retail stores located in Van Nuys, North
26 Hollywood and San Fernando, California, in the County of Los Angeles as an hourly compensated,
27 nonexempt Millworks Specialist from July 9, 2012 to September 30, 2021.

1 43. Plaintiff, SEAN JOYNER was at all times relevant to this Complaint, an employee of
2 Defendant. He was at all relevant times a resident of San Diego, California. He was an employee
3 working in Defendant's Home Depot Home Improvement retail stores located in San Diego,
4 California, in the County of San Diego as an hourly compensated, nonexempt Flooring Specialist from
5 October 12, 2012 to November 21, 2021.

6 44. Plaintiff, JAMES GODOY was at all times relevant to this Complaint, an employee of
7 Defendant. He was at all relevant times a resident of West Hills, California. He was an employee
8 working in Defendant's Home Depot Home Improvement retail stores located in West Hills,
9 California, in the County of Los Angeles as an hourly compensated, nonexempt Hardware Associate
10 from March 15, 2021 to January 31, 2021.

11 45. Plaintiff, GABRIELA BANUELOS was at all times relevant to this Complaint, an
12 employee of Defendant. She was at all relevant times a resident of National City, California. She was
13 an employee working in Defendant's Home Depot Home Improvement retail stores located in
14 Cerritos, California, in the County of Los Angeles as an hourly compensated, nonexempt Service Desk
15 Associate from February 28, 2015 to May 24, 2019.

16 46. Plaintiff, MIKE MAGDALENO was at all times relevant to this Complaint, an
17 employee of Defendant. He was at all relevant times a resident of Winchester, California. He was an
18 employee working in Defendant's Home Depot Home Improvement retail stores located in Temecula,
19 California, in the County of Riverside as an hourly compensated, nonexempt Associate from March
20 7, 2018 to December 18, 2019.

21 47. Plaintiff, MARTIN HERNANDEZ was at all times relevant to this Complaint, an
22 employee of Defendant. He was at all relevant times a resident of Long Beach, California. He was an
23 employee working in Defendant's Home Depot Home Improvement retail stores located in Paramount,
24 California, in the County of Los Angeles as an hourly compensated, nonexempt Flooring Specialist
25 from December 17, 2019 to May 20, 2021.

26 48. Plaintiff, CLAUDIA ESQUIVEL was at all times relevant to this Complaint, an
27 employee of Defendant. She was at all relevant times a resident of Los Angeles, California. She was

1 an employee working in Defendant's Home Depot Home Improvement retail stores located in Marina
2 Del Rey, California, in the County of Los Angeles as an hourly compensated, nonexempt Head Cashier
3 from November 27, 2019 to October 13, 2021.

4 49. Plaintiff, NATHAN BALLENGER was at all times relevant to this Complaint, an
5 employee of Defendant. He was at all relevant times a resident of Murrieta, California. He was an
6 employee working in Defendant's Home Depot Home Improvement retail stores located in Perris,
7 California, in the County of Riverside as an hourly compensated, nonexempt DC Area Supervisor
8 from December 26, 2017 to June 14, 2021.

9 50. Plaintiff, DONTE ROBY was at all times relevant to this Complaint, an employee of
10 Defendant. He was at all relevant times a resident of Riverside, California. He was an employee
11 working in Defendant's Home Depot Home Improvement retail stores located in Riverside, Corona
12 and Anaheim, California, in the Counties of Riverside and Orange as an hourly compensated,
13 nonexempt Sales Associate from January 1, 2015 to June 1, 2019.

14 51. Plaintiff, JOHANNA APODACA was at all times relevant to this Complaint, an
15 employee of Defendant. She was at all relevant times a resident of Porterville, California. She was an
16 employee working in Defendant's Home Depot Home Improvement retail stores located in Porterville
17 and Ladera Heights, California, in the Counties of San Joaquin and Los Angeles as an hourly
18 compensated, nonexempt Cashier from February 7, 2020 to October 17, 2020.

19 52. Plaintiff, KATELYN USTACH was at all times relevant to this Complaint, an
20 employee of Defendant. She was at all relevant times a resident of Moorpark, California. She was an
21 employee working in Defendant's Home Depot Home Improvement retail stores located in Simi
22 Valley, California, in the County of Ventura as an hourly compensated, nonexempt Garden Sales
23 Associate from February 7, 2020 to October 17, 2020.

24 53. Plaintiff, SYMIRIA HARRIS was at all times relevant to this Complaint, an employee
25 of Defendant. She was at all relevant times a resident of Los Angeles, California. She was an employee
26 working in Defendant's Home Depot Home Improvement retail stores located in Inglewood,
27

1 California, in the County of Los Angeles as an hourly compensated, nonexempt Service Department
2 lead from March 17, 2020 to November 2, 2021.

3 54. Plaintiff, FERNANDO CALDERON was at all times relevant to this Complaint, an
4 employee of Defendant. He was at all relevant times a resident of Hesperia, California. He was an
5 employee working in Defendant's Home Depot Home Improvement retail stores located in Victorville,
6 California, in the County of San Bernardino as an hourly compensated, nonexempt Service
7 Department Supervisor from November 16, 2015 to February 13, 2021.

8 55. Plaintiff, BRANDON PARRA was at all times relevant to this Complaint, an employee
9 of Defendant. He was at all relevant times a resident of Encino, California. He was an employee
10 working in Defendant's Home Depot Home Improvement retail stores located in Woodland Hills,
11 California, in the County of Los Angeles as an hourly compensated, nonexempt Millworks Specialist
12 from June 17, 2016 to the present.

13 56. Plaintiff, CHRISTIAN MURPHY was at all times relevant to this Complaint, an
14 employee of Defendant. He was at all relevant times a resident of Eureka, California. He was an
15 employee working in Defendant's Home Depot Home Improvement retail stores located in Redding,
16 California, in the County of Shasta as an hourly compensated, nonexempt OFA from March 10, 2021
17 to June 21, 2021.

18 57. Plaintiff, JOSE CERVANTES was at all times relevant to this Complaint, an employee
19 of Defendant. He was at all relevant times a resident of San Ysidro, California. He was an employee
20 working in Defendant's Home Depot Home Improvement retail stores located in Otay Mesa,
21 California, in the County of San Diego as an hourly compensated, nonexempt Lumber Associate from
22 February 15, 2021 to June 25, 2021.

23 58. Plaintiff, BILL HAMMOND was at all times relevant to this Complaint, an employee
24 of Defendant. He was at all relevant times a resident of Chico, California. He was an employee
25 working in Defendant's Home Depot Home Improvement retail stores located in Chico, California, in
26 the County of Butte as an hourly compensated, nonexempt Sales Associate from April 16, 2020 to
27 February 15, 2021.

1 **Defendant HOME DEPOT**

2 59. At all times relevant to this Complaint, Defendant HOME DEPOT was a Delaware
3 corporation, duly registered and qualified to conduct business in the State of California via the
4 California Secretary of State, doing business and employing persons throughout the State of
5 California, where it employed Plaintiffs.

6 60. Defendant HOME DEPOT is the world's largest home improvement retailer, with over
7 232 stores in California alone and maintains its principal corporate headquarters offices in Georgia at
8 2455 Paces Ferry Road, Atlanta, Georgia, 30339.

9 61. At all times mentioned in this Complaint, HOME DEPOT was Plaintiffs' "employer,"
10 and Plaintiffs were its "employees" as defined by California law.

11 62. Plaintiffs are unaware of the true names or capacities of Defendants sued herein under
12 the fictitious names DOES 1–50, inclusive, but pray for leave to amend and serve such fictitiously-
13 named Defendants pursuant to California Code of Civil Procedure § 474 once their names and
14 capacities become known.

15 63. Plaintiffs are informed and believe, and thereon allege, that DOES 1–50, inclusive, are
16 the partners, agents, owners, shareholders, managers, principals or employees of Defendant and/or and
17 were acting on behalf of Defendant.

18 64. Plaintiffs are informed and believe, and thereon allege, that each and all of the acts and
19 omissions alleged herein was performed by or is attributable to Defendant, and that each such act or
20 omission by any individual was acting as the agent for Defendant and each of the other Doe Defendants
21 with legal authority to act on each of their behalf. The acts of any and all Doe Defendants was in
22 accordance with, and represent the policy of, Defendant.

23 65. At all times herein mentioned, Defendant, ratified each and every act or omission
24 complained of herein. At all times herein mentioned, Defendant, aided and abetted the acts and
25 omissions of each and all of the other fictitiously-named Doe Defendants in proximately causing the
26 damages herein alleged.
27

1 66. Plaintiffs are informed and believed, and thereon allege, that Defendant is in some
2 manner intentionally, negligently or otherwise responsible for the acts, omissions, occurrences and
3 transactions alleged herein.

4 **JURISDICTION AND VENUE**

5 67. The civil penalties sought by Plaintiffs exceed the minimum jurisdiction limits of the
6 Orange County Superior Court and will be established according to proof at trial.

7 68. This Court has jurisdiction of this action pursuant to the California Constitution, Article
8 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except those given
9 by statute to other courts. The statutes under which this action is brought do not specify any other basis
10 for jurisdiction.

11 69. This Court has jurisdiction over the violations alleged herein and over Defendant and
12 Does 1 – 50, inclusive, because upon information and belief, each party has sufficient minimum
13 contacts in California or otherwise intentionally avails itself of California law so as to render the
14 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play
15 and substantial justice. Defendant at all times relevant employed multiple Plaintiffs while such
16 Plaintiffs were domiciled in and performing their work duties in the State of California and within the
17 County of Orange.

18 70. Venue is proper in this Court because, upon information and belief, the named
19 Defendant transacts business and/or maintained an office in this county, and many of the acts and
20 omissions alleged herein took place in this county.

21 **GENERAL ALLEGATIONS AND SUMMARY OF CLAIMS**

22 71. Plaintiffs allege that they are individuals who currently work or formerly worked for
23 Defendant at various Home Depot retail locations in and throughout the State of California as regular,
24 hourly compensated, nonexempt employees. As nonexempt employees, Plaintiffs are/were entitled to
25 be paid wages for each and every hour of labor performed. In California, employers may not require
26 employees to work while off the clock and not be paid. Even a few minutes of time worked while off
27

1 the clock is compensable time for which Plaintiffs were entitled to be paid. As further alleged herein,
2 Plaintiffs frequently worked while off the clock and were not compensated for that time.

3 72. In addition, Plaintiffs allege that they worked, but were and/or are not paid overtime
4 wages for all hours worked in excess of eight (8) hours in a day and more than forty (40) hours in a
5 workweek.

6 73. Furthermore, Plaintiffs allege that as hourly compensated, nonexempt employees, they
7 were/are entitled to labor code compliant, timely, uninterrupted, non-abbreviated rest and meal break
8 periods, accurate wage statements, timely payment of wages when due, and were entitled to receive
9 reimbursement for work-related expenses incurred in the discharge of their job duties.

10 74. *Labor Code* § 512 provides in relevant part: “An employer shall not employ an
11 employee for a work period of more than five hours per day without providing the employee with a
12 meal period of not less than 30 minutes An employer shall not employ an employee for a work
13 period of more than 10 hours per day without providing the employee with a second meal period of
14 not less than 30 minutes”

15 75. IWC Order No. 4-2001, which applies to Defendant’s industry, likewise requires
16 employers to provide meal periods to employees. Section 11(C) of IWC Order No 4-2001 provides in
17 relevant part: “Unless the employee is relieved of all duty during a 30-minute meal period, the meal
18 period shall be considered an “on duty” meal period and counted as time worked.”

19 76. *Labor Code* § 510 states in pertinent part, “Any work in excess of eight hours in one
20 workday or in excess of 40 hours in any one workweek ... shall be compensated at the rate of no less
21 than one and one-half times the regular rate of pay for any employee.” In addition, “any work in excess
22 of 12 hours in one day shall be compensated at a rate of no less than twice the regular rate of pay for
23 an employee.” Plaintiffs allege that, in order to avoid paying overtime wages, Defendant required and
24 turned a blind eye to hours that are/were worked while off the clock during required rest and meal
25 breaks. As a result, Plaintiffs are/were regularly, working in excess of eight hours per day, and/or
26 required to work in excess of 40 hours per week without being paid the requisite overtime wages equal
27

1 to one and one-half times their regular rate of pay as legally mandated by *Labor Code* §§ 510, 1194
2 and Wage Order No. 4.

3 77. Defendant routinely failed to provide meal periods and rest periods to Plaintiffs. The
4 nature of Plaintiffs' work is/was rigorous and nonstop. Plaintiffs were frequently prevented from
5 timely taking meal breaks and rest breaks due to constant high-volume work demands and
6 corresponding staffing shortages. Consequently, often times there is and/or was no one available in
7 the stores to timely relieve Plaintiffs to allow them to be relieved of all duties to take such breaks.
8 Even when Plaintiffs are/were able to take a rest or meal period, Defendant's managers, supervisors,
9 and other employees would routinely interrupt Plaintiffs breaks in order to discuss and/or conduct
10 business matters. Thus, Plaintiffs are/were uniformly and systematically prohibited by Defendant from
11 taking timely, compliant, uninterrupted, unpaid 30-minute meal periods for every five hours worked
12 as required by *Labor Code* § 512 and Wage Order No. 4.

13 78. Moreover, Plaintiffs are/ were not paid a premium pay penalty equal to one hour of pay
14 at their regular rate of pay for each missed, short, late or interrupted meal period in violation of Labor
15 Code Section 226.7.

16 79. Due to Plaintiffs' working off the clock during lunch breaks because of interruptions
17 by other coworkers, supervisors, and/or managers, high-volume work, staffing shortages, and/or
18 continuing to work while off the clock for their breaks, their daily working shifts exceeded eight hours
19 a day and over 40 hours in a work-week. As a direct result of off the clock work, which was not
20 compensated by Defendant, Plaintiffs' timesheets did not reflect the off the clock work as hours
21 worked.

22 80. *Labor Code* § 1194 provides that employees must be separately paid an hourly wage
23 for each and every hour worked.

24 81. Plaintiffs were at all times subject to California's laws and regulations protecting the
25 employees' entitlement to be paid and presumption to be paid all wages earned for labor performed,
26 including an hourly wage for each and every hour worked.
27

1 82. *Labor Code* §§ 218, 1194(a) and 1194.2(a) provide that an employee who has not been
2 paid the legal wage may recover the unpaid balance and together with attorney’s fees and costs of suit,
3 as well as liquidated damages in an amount equal to the wages unpaid and interest thereon.

4 83. *Labor Code* § 1198 states: “The maximum hours of work and the standard conditions
5 of labor fixed by the commission shall be the maximum hours of work and the standard conditions of
6 labor for employees. The employment of any employee for longer hours than those fixed by the order
7 or under conditions of labor prohibited by the order is unlawful.”

8 84. Section 12(A) of IWC Order No. 4-2001 provides in relevant part: “Every employer
9 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in
10 the middle of each work period. The authorized rest period time shall be based on the total hours
11 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.
12 . . . Authorized rest period time shall be counted as hours worked for which there shall be no deduction
13 from wages.”

14 85. As prior stated, the nature of Plaintiffs’ work is and/or was rigorous and nonstop.
15 Plaintiffs are/were frequently prevented from timely taking rest breaks because of the constant work
16 demands and staffing shortages. Most days they are/were not relieved of all duties to take such breaks.
17 In addition, of times Defendant requires and/or required Plaintiffs to remain on duty and had to remain
18 on the job premises, allowing no time or opportunity for rest breaks. Thus, due to Defendant’s
19 operational policies, procedures and practices Plaintiffs are/were regularly, uniformly, and
20 systematically prohibited and impeded by Defendant from taking, timely, compliant, uninterrupted
21 paid 10-minute rest periods for every four hours worked (or major fraction thereof) as required by
22 Labor Code §§ 226.7, 512 and Wage Order 4.

23 80. Moreover, Defendant has failed to pay Plaintiffs premium pay penalties equal to one
24 hour’s wages at their regular rate of pay for each missed, short, late or interrupted rest period *in*
25 *violation of Labor Code* § 226.7(c) which provides in relevant part: “If an employer fails to provide
26 an employee a meal or rest or recovery period in accordance with a state law, including, but not limited
27 to, an applicable statute or applicable regulation, standard, or 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 workday that the meal or rest or recovery period is not provided."

81. Because it was due to Defendant's own business policies, procedures and practices, Defendant knew or reasonably should have known that Plaintiffs were not timely relieved of all duties because it was requiring Plaintiffs to perform more tasks and duties than were capable of being performed in a single day or a single shift, without hiring adequate staff to perform all the work or to provide relief to allow Plaintiffs the ability to take rest and meal breaks. Thus, Plaintiffs are and/or were impeded or prevented from taking timely all meal periods and rest breaks.

82. *Labor Code* § 226(a) requires employers to provide employees with itemized wage statements that accurately report, among other things, the total hours worked and total wages earned in each pay period.

86. Pursuant to Section 11(C) of IWC Order No. 4-2001, Defendant was required to accurately record purported "meal periods" during which Defendant failed to relieve Plaintiffs of all duty as "on duty" meal periods and should have compensated them for such time worked through or during their meal breaks. Those additional hours worked should have been recorded by Defendant and reflected on the wage statements that Defendant provided to Plaintiffs, but Defendant failed to do so, in violation of *Labor Code* § 226(a).

87. From the outset, Defendant has failed to comply with *Labor Code* § 226(a). As a matter of common policy and practice, Defendant does/ and did not include Plaintiffs' proper and correct number of hours worked at each correct hourly rate of pay. The wage statements that were distributed by Defendant to Plaintiffs did not contain all wages earned. Defendant's policies and practices and the omissions on the wage statements were systemic and consistent and therefore, intentional and knowing, causing Plaintiffs to suffer "injury" by, among other things, impeding them from knowing the amount of wages to which they are and were entitled.

88. Defendant's failure to accurately record and maintain records of all hours worked and wages earned further constitutes a violation of *Labor Code* §1174(d), which requires employers to maintain accurate records of hours worked and wages earned for a period of three years.

1 89. Plaintiffs who have separated from their employment with Defendant, include but are
2 not limited to: TOPANGA JACKSON, CONNER WARD, MAUSA ZAMANI, DAVID STARK,
3 ARTURO CONCHAS, ETHAN SHIN, DAMIAM ARTEAGA, LARRY SNIDER, WILLIAM
4 MARKWOOD, CAMERON FORTUNE-MORTON, JOHN BAKER, CASEY HAROLD, HAYLEY
5 KINGABY, ALEXIS PRADO, ADONIS FELIX, STEVEN WILLIAMSON, DALLAS HOVDE,
6 CHANCE SMITH JR., LUPE RAMIREZ, JONATHAN MYERS, JOHN HOTTON, GILBERT
7 GOMEZ, ALISSA CARREIRO, STACEY ELIAS, SARA GAVES, TEMPLE HUNG, SAVANNAH
8 KOLB, STEVEN PEREZ, EVERETT SENA, IVY PETERSON, LUCY MUNTEANU, JASMINE
9 PULLMAN, FELIPE AMAYA, SABRINA GORDON, ANNETTE ROMO, BRANDALYN KEKIC,
10 RICHARD VASQUEZ, ENRIQUE DE LA RIVA, CODY HANSEN, DEVIN REYES, JOHN
11 VAZQUEZ, REINA PARTIDA, SEAN JOYNER, JAMES GODOY, GABRIELA BANUELOS,
12 MIKE MAGDALENO, MARTIN HERNANDEZ, CLAUDIA ESQUIVEL, NATHAN
13 BALLENGER, DONTE ROBY, JOHANNA APODACA, KATELYN USTACH, SYMIRIA
14 HARRIS, FERNANDO CALDERON, CHRISTIAN MURPHY, JOSE CERVANTES, and BILL
15 HAMMOND (hereinafter referred to as the “Former Employee Plaintiffs”).

16 90. *Labor Code* § 201(a) provides in relevant part: “If an employer discharges an
17 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

18 91. *Labor Code* § 202(a) provides in relevant part: “If an employee not having a written
19 contract for a definite period quits his or her employment, his or her wages shall become due and
20 payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of
21 his or her intention to quit, in which case the employee is entitled to his or her wages at the time of
22 quitting.”

23 92. As a further result of Defendant’s derelict timekeeping practices and failure to
24 compensate Plaintiffs for all hours worked, including those worked off the clock, Defendant violated
25 *Labor Code* §§ 201 and 202 by failing to timely pay all wages due to such Former Employee Plaintiffs
26 who have separated from Defendant’s employment at their time of discharge or quitting.
27

1 93. *Labor Code* § 203(a) provides in relevant part: “If an employer willfully fails to pay,
2 without abatement or reduction, in accordance with §§ 201 . . . 202 . . . any wages of an employee who
3 is discharged or who quits, the wages of the employee shall continue as a penalty from the due date
4 thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not
5 continue for more than 30 days.”

6 94. Despite Defendant’s violations of *Labor Code* §§ 201 and 202 by failing to timely pay
7 all wages due upon such Former EmployeePlaintiffs who separated from Defendant’s employment
8 during the statutory period, discharge or quitting, Defendant has failed to pay such individuals
9 “waiting time” penalties pursuant to *Labor Code* § 203(a).

10 95. *Labor Code* § 2802(a) requires employers to reimburse employees for all expenses they
11 incur in direct consequence of the discharge of their duties or obedience to their employers’
12 instructions.

13 96. Defendant required Plaintiffs to use their personal cell phones to perform their job
14 duties each workday throughout their employment. Defendant required them to utilize their personal
15 cell phones for work-related communications such as phone calls and text messages. Plaintiffs were
16 also required to downloaded applications, specifically the Home Depot Application, onto their
17 personal cell phones through they provided customer assistance by checking the store’s inventory.
18 Moreover, some Plaintiffs were required to utilize their own personal vehicles for work-related travel
19 to and from multiple other jobsite locations as directed by the Defendant.

20 97. Despite Defendant’s requirement that Plaintiffs use their personal cell phones and
21 vehicles to perform their job duties, Defendant never reimbursed them for the expenses they incurred
22 in doing so. Defendant’s failure to reimburse Plaintiffs for these work-related expenses they incurred
23 in the necessary discharge of the job duties, constitutes a violation of *Labor Code* §2802(a).

24 98. Defendant has willfully refused to pay Plaintiffs compensation for all hours worked
25 and has failed to maintain accurate employee records as required by law.

26 99. Defendant’s company-wide business and operational policies and practices violate
27 California law as pled herein. Plaintiffs seek declaratory relief, regular and overtime compensation,

premium pay penalties for rest and meal break violations, reimbursement of business expenses, liquidated damages and other damages and penalties as permitted by California Law, as well as interest thereon and their attorneys' fees and costs.

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

In Violation of Labor Code §§ 226.7(c), 512(a), 1198 and IWC Order No. 4-2001

(Brought by Plaintiffs Against Defendant and Does 1 – 50, inclusive)

100. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully set forth herein.

101. *Labor Code* § 512 provides in relevant part: “An employer shall 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 An employer shall 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”

102. IWC Order No. 4-2001, which applies to Defendant's industry, likewise requires employers to provide meal periods to employees. Section 11(A) of IWC Order No 4-2001 provides in relevant part: “Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked.” An ‘on duty’ meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties, an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may in writing, revoke the agreement at any time.”

103. *Labor Code* §1198 states: “The 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.”

1 104. *Labor Code* § 226.7(c) provides in relevant part: “If an employer fails to provide an
2 employee a meal or rest or recovery period in accordance with a state law, including, but not limited
3 to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare
4 Commission, . . . the employer shall pay the employee one additional hour of pay at the employee’s
5 regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

6 105. Throughout the statutory period, Plaintiffs were rarely provided an uninterrupted meal
7 break due to Defendant requiring them to interrupt or cut their rest or meal breaks shorts at any given
8 time. This made it impossible for Plaintiffs to have a duty-free uninterrupted meal break. Defendant
9 has never paid Plaintiffs for the time they worked during their breaks nor the premium pay to which
10 they are/were entitled for the missed and non-compliant rest and meal breaks.

11 106. The nature of Plaintiffs’ work is and or was rigorous and nonstop. Plaintiffs are and or
12 were frequently prevented from timely taking meal breaks, due to their constant work demands and
13 staffing shortages.

14 107. Plaintiffs did not consent to missing their meal and rest breaks, nor did they waive their
15 right to timely, uninterrupted meal and rest breaks by mutual consent with Defendant or otherwise.

16 108. Defendant discouraged, impeded and through threats and intimidation prevented and
17 dissuaded Plaintiffs from taking compliant 30-minute meal periods, nor did Defendant pay Plaintiffs
18 with an additional hour of pay for these meal period violations, nor did Defendant pay Plaintiffs a
19 premium pay penalty for missed, short, late or interrupted meal breaks pursuant to *Labor Code* §
20 226.7(c).

21 109. As a result of Defendant’s violations of *Labor Code* §§ 226.7(c), 512(a), 1198, and
22 IWC Order No. 4-2001, Plaintiffs seek recovery of “premium pay” pursuant to the DLSE’s Policy
23 Manual Guidelines and *Labor Code* § 226.7.

24 /

25 //

26 ///

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7

2

3

4

5
6

7
8
9
0
1
2

3
4
5
6

7
8
9
0
1

2
3
4

5
6
7

1 116. As a result of Defendant's violations of *Labor Code* §§ 226.7(c), 1198, and IWC Order
2 No. 4-2001, Plaintiffs seek "premium pay penalties" pursuant to *Labor Code* § 226.7.

3 **THIRD CAUSE OF ACTION**

4 **FAILURE TO PAY OVERTIME WAGES**

5 **In Violation of Labor Code §§ 510, 1194**

6 **(Brought by Plaintiffs Against Defendant and Does 1 – 50, inclusive)**

7 117. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully
8 set forth herein.

9 118. Plaintiffs are/were at all times subject to California's laws and regulations protecting
10 the employees' entitlement to be paid and presumption to be paid overtime wages for requisite hours
11 worked beyond a normal work day or a normal work week, as specified, without limitation, by *Labor*
12 *Code* §§ 510, 1194 and Wage Order No. 4.

13 119. California law requires employers, such as Defendant, to pay overtime compensation
14 to all nonexempt employees for all hours worked over 40 hours per week, or over 8 hours per day.
15 *Labor Code* § 204 establishes the fundamental right of all employees in the State of California to be
16 paid wages, including straight time and overtime, in a timely fashion for their work.

17 120. Labor Code § 510(a) states in pertinent part: "Any work in excess of eight hours in one
18 workday and any work in excess of 40 hours in any one workweek ... shall be compensated at the rate
19 of no less than one and one-half times the regular rate of pay for any employee." In addition, *Labor*
20 *Code* § 510(a) provides that "[a]ny work in excess of 12 hours in one day shall be compensated at the
21 rate of no less than twice the regular rate of pay for an employee."

22 121. Pursuant to *Labor Code* § 1198 it is unlawful to employ persons for longer than the
23 hours set by the IWC.

24 122. Pursuant to *Labor Code* § 1194, "...any employee receiving less than the legal
25 minimum wage or the legal overtime compensation applicable to the employee is entitled to recover
26 in a civil action the unpaid balance of the full amount of this minimum wage or overtime
27 compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

1 establishments. These records shall be kept in accordance with rules established for this purpose by
2 the commission, but in any case, shall be kept on file for not less than three years. An employer shall
3 not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-
4 rate basis, piece-rate units earned.”

5 130. Defendant has knowingly and intentionally failed to accurately record, track, maintain
6 and keep accurate records of each and every hour worked, and wages earned for Plaintiffs.

7 131. Upon information and belief and thereon, Plaintiffs have alleged herein that Defendant
8 routinely prohibited Plaintiffs from receiving proper, timely, and compliant meal and rest breaks,
9 which became hours worked off the clock and were not compensated correctly nor properly recorded
10 on Plaintiffs’ timesheets made and distributed by Defendant

11 132. Thus, at all times relevant, Defendant has failed to maintain accurate records of all
12 hours Plaintiffs work/worked, including hours they are and or were working during rest and meal
13 break period, and for the days they work(ed) in excess of eight hours, or workweeks in excess of forty
14 hours. As a result of Defendant’s failure to maintain proper accurate records, premium penalties to
15 which Plaintiffs are/were entitled for rest and meal break violations was and is not properly recorded
16 nor paid to Plaintiffs either.

17 133. Accordingly, as a direct and proximate result of Defendant’s unlawful conduct as set
18 forth herein, Plaintiffs have sustained damages, for Defendant’s violation of *Labor Code* § 1174(d),
19 including loss of earnings for all hours worked, and loss of receipt of premium pay penalties, in
20 amounts to be established at time.

21 134. Plaintiffs are therefore entitled to and do seek to recover penalties, pursuant to § 1174.5,
22 which provides that an employer who fails to properly maintain records pursuant to 1174(d) shall be
23 subject to a civil penalty of five hundred dollars (\$500).

24 /

25 //

26 ///

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PAY ALL WAGES EARNED WHEN DUE**

3 **In Violation of Labor Code § 204**

4 **(Brought by Plaintiffs Against Defendant and Does 1 – 50, inclusive)**

5 135. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully
6 set forth herein.

7 136. The California Labor Code requires employers to pay all wages due within the time
8 specified by law. *California Labor Code* § 204 was in full force and effect at all relevant times herein.

9 137. Section 204 of the Labor Code pertains to the timely payment of wages earned and
10 serves a very important public policy, such that failure to timely pay an employee's wages visits strong
11 penalties on employers who violate that right. Pursuant to § 204, for employees entitled to pay twice
12 per month, two periods of pay are required. Labor performed between the 1st and 15th of the month
13 must be paid between the 16th and 26th of the same month and labor performed on the 16th and the
14 end of the month must be paid on pay days between the 1st and 10th of the following month. *Labor*
15 *Code* § 210(a) provides that " ... (a) In addition to, and entirely independent and apart from, any other
16 penalty provided in this article, every person who fails to pay the wages of each employee as provided
17 in §§ 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as
18 follows:

19 (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each
20 employee.

21 (2) For each subsequent violation, or any willful or intentional violation, two hundred
22 dollars (\$200) for each failure to pay each employee, ***plus 25 percent of the amount***
23 ***unlawfully withheld.***

24 138. Plaintiffs are/were entitled to be paid twice monthly for labor performed. Although
25 Plaintiffs are and/or were paid twice monthly, Defendant failed and intentionally refused to pay
26 Plaintiffs all wages for each hour of labor performed, twice monthly, including pay for time worked
27

1 while off the clock, and overtime wages they were owed during each and every pay period of their
2 employment.

3 139. As alleged herein, Plaintiffs are/were not paid for all of their wages, for each and every
4 hour worked, including inter alia, time worked during rest and meal breaks, time worked off the clock
5 and overtime hours, as alleged herein, during every single pay period during their respective terms of
6 employment.

7 140. Accordingly, as a result of the unlawful acts of Defendant, Plaintiffs have been
8 deprived of wages in amounts to be determined according to proof at trial, and are entitled to recovery
9 of such amounts, plus interest and penalties thereon, attorneys' fees, and costs of suit, pursuant to
10 *Labor Code* §§ 210(a), 218 and 1194.

11 **SIXTH CAUSE OF ACTION**

12 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

13 **In Violation of Labor Code § 226(a)**

14 **(Brought by Plaintiffs Against Defendant and Does 1 – 50, inclusive)**

15 141. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully
16 set forth herein.

17 142. *Labor Code* § 226(a) requires employers to provide employees itemized wage
18 statements that accurately report, among other things, the total hours worked, and total wages earned
19 in each pay period. Section 226(a) states in pertinent part, that “[e]very employer shall, semimonthly
20 or at the time of each payment of wages, furnish each of his or her employees, either as a detachable
21 part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid
22 by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned,
23 (2) total hours worked by the employee ..., (5) net wages earned, (6) the inclusive dates of the period
24 for which the employee is paid ..., and (9) all applicable hourly rates in effect during the pay period
25 and the corresponding number of hours worked at each hourly rate by the employee ...”

26 143. *Labor Code* § 226 (e)(1) states that “[a]n employee suffering injury as a result of a
27 knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover

1 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
2 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
3 not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of
4 costs and reasonable attorney's fees."

5 144. *Labor Code* § 226(e)(2)(C) defines "promptly and easily determine" to mean "a
6 reasonable person would be able to readily ascertain the information without reference to other
7 documents or information."

8 145. *Labor Code* § 226(e)(3) states that the phrase "knowing and intentional failure" "does
9 not include an isolated and unintentional payroll error due to a clerical or inadvertent mistake."

10 146. *Labor Code* § 226(h) provides: "An employee may also bring an action for injunctive
11 relief to ensure compliance with this section and is entitled to an award of costs and reasonable
12 attorney's fees."

13 147. As alleged supra, Defendant has failed to maintain accurate records, including
14 maintenance of accurate records of time Plaintiffs work(ed) through rest and meal break periods,
15 resulting in failure pay them all wages they were owed, including overtime wages when they work(ed)
16 shifts in excess of eight hours or in excess of forty hours per week.

17 148. In addition, because of Defendant's intentional and knowing failure to maintain proper
18 and accurate records, overtime hours and wages earned are and/or were also never recorded, and never
19 appear(ed) on the Plaintiffs' wage statements.

20 149. Further, Defendant has knowingly and willingly failed to comply with *Labor Code* §
21 226. Defendant has not accurately and properly itemize all hours worked, including hours worked
22 during rest and meal breaks, overtime hours worked and wage statements failed to include premium
23 pay penalties for Plaintiffs' regularly missed or otherwise, non-compliant, rest and meal breaks. The
24 wage statements issued to the Plaintiffs are / were not accurate, did and or do not reflect or include all
25 the correct corresponding wages earned during each and every pay period worked. As alleged the
26 omissions and inaccuracies were knowing and intentional product of Defendant's attempt to avoid
27 having to pay premium pay penalties and overtime wages. Defendant's knowing, and intentional

omissions has caused the Plaintiffs to suffer “injury” by, among other things, impeding them from knowing the amount of wages to which they are/were lawfully entitled.

150. As a result of Defendant’s violations of *Labor Code* § 226(a), Plaintiffs seek an award of penalties pursuant to *Labor Code* § 226(e)(1), and injunctive relief, attorneys’ fees, and costs pursuant to *Labor Code* § 226(h).

SEVENTH CAUSE OF ACTION

FAILURE TO REIMBURSE WORK EXPENSES

In Violation of Labor Code § 2802

(Brought by Plaintiffs Against Defendant and Does 1 – 50, inclusive)

151. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully set forth herein.

152. *Labor Code* § 2802(a) requires employers to reimburse employees for all expenses they incur in direct consequence of the discharge of their duties or obedience to their employers’ instructions.

153. As alleged, Defendant requires or required Plaintiffs to use their personal cell phones to perform their job duties each workday throughout their employment. At all times during Plaintiffs’ employment, Plaintiffs are/were required to utilize their personal cell phones for daily work-related phone calls and text messages with other employees and supervisors. Plaintiffs also download(ed) applications onto their personal cell phones through which applications are/were used assist customers and check inventory. Moreover, some Plaintiffs are/were required to utilize their own personal vehicles for work-related travel to and from multiple jobsite locations as directed by the Defendant.

154. Despite Defendant’s requirement that Plaintiffs incur expenses using their personal cell phones and vehicles to perform their job duties, Defendant has never reimbursed them for doing so. Defendant’s failure to reimburse Plaintiffs violated *Labor Code* § 2802(a).

155. As a result of Defendant’s failure to indemnify and reimburse Plaintiffs for the expenses they necessarily incur(ed) in the performance and discharge of their work-related duties, Plaintiffs have sustained economic damages in amount to be proven at trial.

1 156. As a result of Defendant's violation of *Labor Code* § 2802, Plaintiffs seek
2 reimbursement for all business-related expenses they have incurred working for Defendant, in amounts
3 to be determined at trial, with interest thereon as well as their attorney's fees and costs of suit pursuant
4 to *Labor Code* § 2802(c).

5
6 **EIGHTH CAUSE OF ACTION**

7 **FAILURE TO TIMELY PAY WAGES UPON TERMINATION**

8 **In Violation of Labor Code §§ 201-203**

9 **(Brought by the Former Employee Plaintiffs Against Defendant and Does 1 – 50, inclusive)**

10 157. The Former Employee Plaintiffs reallege and incorporate by reference all preceding
11 paragraphs as though fully set forth herein.

12 158. An employee who is discharged must be paid all of his or her wages, including accrued
13 vacation, at the time of termination.

14 159. *Labor Code* § 201(a) provides in relevant part: "If an employer discharges an
15 employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

16 160. *Labor Code* § 202(a) provides in relevant part: "If an employee not having a written
17 contract for a definite period quits his or her employment, his or her wages shall become due and
18 payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of
19 his or her intention to quit, in which case the employee is entitled to his or her wages at the time of
20 quitting."

21 161. All outstanding and unpaid wages were due and owed to the Former Employee
22 Plaintiffs who separated from Defendant's employment at the time of their voluntary or involuntary
23 discharge or termination of employment.

24 162. As alleged, Defendant owed and did not pay the Former Employee Plaintiffs all wages
25 they were owed, including wages for time worked while off the clock and overtime wages for hours
26 that were worked in excess of eight hours in a day or more than forty hours in a work-week.
27

163. An employer who willfully fails to pay any wages due a terminated employee (discharge or quit) in the prescribed time frame may be assessed a waiting time penalty. The waiting time penalty is an amount equal to the employee's daily rate of pay for each day the wages remain unpaid, up to a maximum of thirty (30) calendar days. *Mamika v. Barca* (1998) 68 Cal.App4th 487 and pursuant to Labor Code § 203(a) which provides in pertinent part: "If an employer willfully fails to pay, without abatement or reduction, in accordance with § § 201 . . . 202 . . . 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."

164. Defendant failed to pay all wages due upon the Former Employee Plaintiffs' voluntary or involuntary termination of the employment relationship.

165. More than thirty days have passed since the Former Employee Plaintiffs ceased their employment with Defendant and they are thus entitled to receive “waiting time” penalties up to a maximum of thirty (30) calendar days of their per diem wages, pursuant to the provisions of Labor Code § 203(a).

166. Further, Labor Code § 218.5(a) states in relevant part: “In any action brought for the nonpayment of wages . . . the court shall award reasonable attorney’s fees and costs to the prevailing party if any party to the action requests attorney’s fees and costs upon the initiation of the action.”

167. As a result of Defendant’s violations of Labor Code §§ 201 and 202, the Former Employee Plaintiffs seek to recover not only their unpaid wages yet due, but also an award of “waiting time penalties” pursuant to Labor Code § 203, and attorney’s fees and costs pursuant to *Labor Code* § 218.5.

NINTH CAUSE OF ACTION

UNFAIR BUSINESS PRACTICES

In Violation of Bus. & Prof. Code § 17200 et seq.

(Brought by Plaintiffs Against Defendant and Does 1 – 50, inclusive)

1 168. Plaintiffs reallege and incorporate by reference all preceding paragraphs as though fully
2 set forth herein.

3 169. California Business and Professions Code § 17200, et seq. prohibits unfair competition
4 in the form of any unlawful, unfair or fraudulent business act or practice.

5 170. California Business and Professions Code § 17202 provides: “Notwithstanding § 3369
6 of the Civil Code, specific or preventative relief may be granted to enforce a penalty, forfeiture, or
7 penal law in case of unfair competition.”

8 171. California Business and Professions Code § 17203 provides in relevant part that the
9 court may “restore to any person in interest any money or property, real or person, which may have
10 been acquired by means of such unfair competition.”

11 172. California Business and Professions Code § 17204 allows any “person who has
12 suffered injury in fact and has lost money or property as a result of such unfair competition” to
13 prosecute a civil action for violation of the Unfair Business Practices Act.

14 173. Pursuant to § 17204, Plaintiffs are entitled to enforce all applicable provisions of the
15 Labor Code.

16 174. As alleged herein, Defendant has committed acts of unfair competition as defined by
17 the Unfair Business Practices Act, by engaging in the unlawful, unfair and fraudulent practices and
18 acts described in the Complaint, including, but not limited to violations of Labor Codes §§ 201-203,
19 204, 226 (a), 226.7, 510, 512, 1174, 1194, 1198, 2802 and the provisions of IWC No. 4-2001.

20 175. The violations of these laws and regulations, as well as of fundamental California
21 public policies protecting workers, serve as unlawful predicate acts and practices for purposes of
22 Business and Professions Code § 17200 et seq.

23 176. The acts and practices described above constitute unfair, unlawful and fraudulent
24 business practices, and unfair competition, within the meaning of Business and Professions Code §
25 17200, et seq. Among other things, Defendant’s acts and practices have forced Plaintiffs to labor
26 without receiving appropriate wages for each and every hour worked at the correct corresponding rates
27

1 of pay and/or to incur personal cell phone expenses and vehicle expenses in the discharge of their
2 duties.

3 177. The acts and practices described above have allowed Defendant to gain an unfair
4 competitive advantage over law-abiding employers and competitors.

5 178. As a result of the acts and practices described herein, Plaintiffs have been denied
6 compensation in an amount to be proven at trial.

7 179. Plaintiffs are therefore, entitled to restitution pursuant to Business and Professions
8 Code § 17203 and 17208 for all wages and other compensation unlawfully withheld from them.

9 180. As a result of the aforementioned acts and practices, Defendant has received and
10 continues to receive ill-gotten gains belonging to Plaintiffs.

11 181. Injunctive relief is necessary and appropriate to prevent Defendant from repeating and
12 continuing their unlawful, unfair and fraudulent business acts and practices described herein.

13 182. Pursuant to § 17203 and/or any other applicable law, Plaintiffs seek an order preventing
14 Defendant from engaging in unlawful, unfair and fraudulent conduct and preventing Defendant from
15 profiting and benefiting from their illegal and wrongful acts.

16 183. Plaintiffs' success in this action will enforce important rights affecting the public
17 interest.

18 184. An award of attorneys' fees is appropriate pursuant to California Civil Code § 1021.5
19 because 1) there is a financial burden involved in pursuing this action; and 2) it would be against the
20 interest of justice to force Plaintiffs to pay attorneys' fees from any amount recovered in this action.

21
22 **PRAYER FOR RELIEF**

23 **WHEREFORE, PLAINTIFFS PRAY FOR RELIEF AS FOLLOWS:**

24 **ON THE FIRST THROUGH NINTH CAUSES OF ACTION**

- 25 1. A declaratory judgment that the practices complained of herein are unlawful under
26 California law;
27

2. Appropriate equitable relief to remedy Defendant's violations of California law including, but not necessarily limited to, an order enjoining Defendant from continuing their unlawful practices;
3. For an award of unpaid wages for all labor performed and liquidated damages in an amount equal to the amount unlawfully unpaid pursuant to Labor Code §§ 200, 218, 1194 and 1194.2;
4. For an award of unpaid overtime wages pursuant to Labor Code §§ 510 and 1194;
5. All appropriate California statutory penalties, including but not limited to Labor Code §§ 210, 226, 226.7, 1174 and 2802;
6. Premium pay penalties at the rate of one hour of regular pay for each instance in which a Plaintiff was not provided a first or second meal break period;
7. Premium pay penalties at the rate of one hour of regular pay for each instance in which a Plaintiff worked through a rest break or was not provided a proper rest break for every four hours worked or major fraction thereof;
8. Labor Code § 203 waiting time penalties as applicable;
9. Damages and penalties pursuant to Labor Code §§ 226(a) and 226.3 and 210;
10. Reimbursement of the necessary expenses incurred by the Plaintiffs in the discharge of their duties;
11. For an order that Defendant make restitution to Plaintiffs due to its unlawful business practices, including restitution and payment of Plaintiffs' unlawfully withheld wages pursuant to Business and Professions Code §§ 17203 and 17204;
12. Pre-judgment and post-judgment interest, as provided by law;
13. Such other equitable relief as the Court may deem just and proper;
14. Attorneys' fees and costs of suit, including expert fees and fees pursuant to California Labor Code §§ 218.5, 226, 1194, Code of Civil Procedure § 1021.5, and other applicable California laws.

DEMAND FOR JURY TRIAL

PLAINTIFFS hereby demands trial of all issues by jury.

DATED January 19, 2022

SW EMPLOYMENT LAW GROUP

By: _____


Jacob N. Whitehead, Esq.
Meghan N. Higday, Esq.
Attorneys for Plaintiffs