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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF SANTA CLARA**

14 JARED MANIGLIA, on behalf of the
15 State of California, as a private attorney
16 general,

17 Plaintiff,

18 vs.

19 HOME DEPOT U.S.A., INC., a
20 Corporation; and Does 1 through 50,
21 Inclusive,

22 Defendants.

Case No. 20CV368063

REPRESENTATIVE ACTION COMPLAINT
FOR:

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
226(a), 226.7, 351, 510, 512, 558(a)(1)(2),
1194, 1197, 1197.1, 1198, 2802, California
Code of Regulations, Title 8, Section 11040,
Subdivision 5(A)-(B), California Code of
Regulations, Title 8, Section 11070(14)
(Failure to Provide Seating).

1 Plaintiff Jared Maniglia (“PLAINTIFF”), on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for his own acts and knowledge which are based on personal
5 knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Defendant Home Depot U.S.A., Inc.
8 (“DEFENDANT”) seeking only to recover PAGA civil penalties for himself, and on behalf of
9 all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF does
10 **not seek to recover anything other than penalties as permitted by California Labor Code**
11 **§ 2699**. To the extent that statutory violations are mentioned for wage violations, PLAINTIFF
12 does not seek underlying general and/or special damages for those violations, but simply the
13 civil penalties permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA to permit an individual to bring an action on
15 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
16 nature of this action.

17 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
18 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
20 complaint should be construed as attempting to obtain any relief that would not be available in
21 a PAGA-only action.

22 **THE PARTIES**

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24 4. Defendant Home Depot U.S.A., Inc. (“DEFENDANT”) is a Corporation and at
25 all relevant times mentioned herein conducted and continues to conduct substantial and regular
26 business throughout California.
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1 5. DEFENDANT is a home improvement retailer in the United States supplying
2 tools, construction products and services.

3 6. PLAINTIFF was employed by DEFENDANT in California from January of 2019
4 to October of 2019 and was at all times classified by DEFENDANT as a non-exempt employee,
5 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
6 of minimum and overtime wages due for all time worked.

7 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
8 the requirements and exhaust the administrative procedures under the Private Attorney General
9 Act, brings this Representative Action on behalf of the State of California with respect to
10 himself and all individuals who are or previously were employed by DEFENDANT in a
11 California Distribution Center and classified as non-exempt Warehouse Associate employees
12 (“AGGRIEVED EMPLOYEES”) during the time period of April 22, 2019 until a date as
13 determined by the Court (the "PAGA PERIOD").

14 8. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
15 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
16 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT’s
17 violation of California Labor Code §§201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510,
18 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
19 Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1
20 1070(14) (Failure to Provide Seating), and the applicable Wage Order(s). Based upon the
21 foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within
22 the meaning of Labor Code § 2699, *et seq.*

23 9. The true names and capacities, whether individual, corporate, subsidiary,
24 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
25 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
26 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
27 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.

1 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
2 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
3 responsible in some manner for one or more of the events and happenings that proximately
4 caused the injuries and damages hereinafter alleged.

5 10. The agents, servants and/or employees of the Defendants and each of them acting
6 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
7 agent, servant and/or employee of the Defendants, and personally participated in the conduct
8 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
9 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
10 all Defendants are jointly and severally liable to PLAINTIFF and the other AGGRIEVED
11 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
12 agents, servants and/or employees.

13 14 THE CONDUCT

15 11. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
16 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
17 employees' work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
18 is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked,
19 meaning the time during which an employee was subject to the control of an employer,
20 including all the time the employee was permitted or suffered to permit this work.
21 DEFENDANT required PLAINTIFF and AGGRIEVED EMPLOYEES to work off the clock
22 without paying them for all the time they were under DEFENDANT's control. As a result of
23 their rigorous work schedules, PLAINTIFF and other AGGRIEVED EMPLOYEES were from
24 time to time not fully relieved of duty by DEFENDANT for their meal periods and would clock
25 out of DEFENDANT's timekeeping system but continue to work at DEFENDANT's direction
26 during what should have been their off-duty meal period. As a result, PLAINTIFF and other
27 AGGRIEVED EMPLOYEES forfeited minimum wages and overtime wage compensation by
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1 working without their time being correctly recorded and without compensation at the applicable
2 rates. DEFENDANT's policy and practice not to pay PLAINTIFF and other AGGRIEVED
3 EMPLOYEES for all time worked, is evidenced by DEFENDANT's business records.

4 12. DEFENDANT also required PLAINTIFF and AGGRIEVED EMPLOYEES to
5 work off the clock without paying them for all the time they were under DEFENDANT's
6 control. PLAINTIFF and the AGGRIEVED EMPLOYEES would clock out of
7 DEFENDANT's timekeeping system, in order to perform additional work for DEFENDANT
8 as required to meet DEFENDANT's job requirements. Specifically, during the PAGA
9 PERIOD, DEFENDANT engaged in the practice of requiring PLAINTIFF and AGGRIEVED
10 EMPLOYEES to perform work off the clock after clocking out in that DEFENDANT, as a
11 condition of employment, required these employees to wait for and submit to loss prevention
12 inspections after clocking out for meal breaks and at the end of each scheduled shift for which
13 DEFENDANT did not provide compensation for time spent waiting for and submitting to
14 DEFENDANT's loss prevention inspections off the clock. As a result, PLAINTIFF and other
15 AGGRIEVED EMPLOYEES forfeited minimum wage, overtime wage compensation, and meal
16 break wages, by working without their time being correctly recorded and without compensation
17 at the applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFF and other
18 AGGRIEVED EMPLOYEES for all time worked, is evidenced by DEFENDANT's business
19 records.

20 13. State law provides that employees must be paid overtime at one-and-one-half
21 times their "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES were
22 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
23 employee's performance.

24 14. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
25 compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF
26 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
27 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
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1 hourly basis with incentive compensation when the employees met the various performance
2 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
3 overtime to PLAINTIFF and other AGGRIEVED EMPLOYEES, DEFENDANT failed to
4 include the incentive compensation as part of the employees' "regular rate of pay" for purposes
5 of calculating overtime pay. Management and supervisors described the incentive program to
6 potential and new employees as part of the compensation package. As a matter of law, the
7 incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must
8 be included in the "regular rate of pay." The failure to do so has resulted in an underpayment
9 of overtime compensation to PLAINTIFF and other AGGRIEVED EMPLOYEES by
10 DEFENDANT.

11 15. In violation of the applicable sections of the California Labor Code and the
12 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
13 intentionally and knowingly failed to compensate PLAINTIFF and the other AGGRIEVED
14 EMPLOYEES at the correct rate of pay for all overtime worked. This policy and practice of
15 DEFENDANT was intended to purposefully avoid the payment of the correct overtime
16 compensation as required by California law which allowed DEFENDANT to illegally profit and
17 gain an unfair advantage over competitors who complied with the law. To the extent equitable
18 tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the
19 PAGA PERIOD should be adjusted accordingly.

20 16. As a result of their rigorous work schedules, PLAINTIFF and other
21 AGGRIEVED EMPLOYEES were also from time to time unable to take off duty meal breaks
22 and were not fully relieved of duty for meal periods. PLAINTIFF and other AGGRIEVED
23 EMPLOYEES were from time to time required to perform work as ordered by DEFENDANT
24 for more than five (5) hours during a shift without receiving an off-duty meal break. Further,
25 DEFENDANT failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second
26 off-duty meal period from time to time in which these employees are required by DEFENDANT
27 to work ten (10) hours of work from time to time. PLAINTIFF and the other AGGRIEVED
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1 EMPLOYEES therefore forfeit meal breaks without additional compensation and in accordance
2 with DEFENDANT's corporate policy and practice.

3 17. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
4 were also from time to time required to work in excess of four (4) hours without being provided
5 ten (10) minute rest periods. Further, these employees are denied their first rest periods of at
6 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and
7 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and
8 eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some
9 shifts worked of ten (10) hours or more from time to time. PLAINTIFF and other
10 AGGRIEVED EMPLOYEES are also not provided with one hour wages in lieu thereof. As
11 a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED EMPLOYEES
12 are periodically denied their proper rest periods by DEFENDANT and DEFENDANT's
13 managers. Additionally, the applicable California Wage Order requires employers to provide
14 employees with off-duty rest periods, which the California Supreme Court defined as time
15 during which an employee is relieved from all work related duties and free from employer
16 control. In so doing, the Court held that the requirement under California law that employers
17 authorize and permit all employees to take rest period means that employers must relieve
18 employees of all duties and relinquish control over how employees spend their time which
19 includes control over the locations where employees may take their rest period. Employers
20 cannot impose controls that prohibit an employee from taking a brief walk - five minutes out,
21 five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and other
22 AGGRIEVED EMPLOYEES from unconstrained walks and required these employees to
23 remain on DEFENDANT's premises under DEFENDANT's control during what should have
24 been their paid, off duty rest periods.

25 18. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
26 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
27 incurred by PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
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1 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
2 2802, employers are required to indemnify employees for all expenses incurred in the course
3 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
4 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
5 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
6 directions of the employer, even though unlawful, unless the employee, at the time of obeying
7 the directions, believed them to be unlawful."

8 19. In the course of their employment PLAINTIFF and other AGGRIEVED
9 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
10 cellular phones as a result of and in furtherance of their job duties as employees for
11 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
12 associated with the use of their personal cellular phones for DEFENDANT's benefit.
13 Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES were required by
14 DEFENDANT to use their personal cellular phones to for work related issues. As a result, in
15 the course of their employment with DEFENDANT, PLAINTIFF and other AGGRIEVED
16 EMPLOYEES incurred unreimbursed business expenses which included, but were not limited
17 to, costs related to the use of their personal cellular phones all on behalf of and for the benefit
18 of DEFENDANT.

19 20. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
20 employees with an accurate itemized wage statement in writing showing, among other things,
21 gross wages earned and all applicable hourly rates in effect during the pay period and the
22 corresponding amount of time worked at each hourly rate. From time to time, DEFENDANT
23 violated Cal. Lab. Code § 226 by failing to provide wage statements that identified the correct
24 gross and net wages earned. Aside from the violations listed above, DEFENDANT failed to
25 issue to PLAINTIFF an itemized wage statement that lists all the requirements under California
26 Labor Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and
27 the other AGGRIEVED EMPLOYEES with wage statements which violated Cal. Lab. Code
28

1 § 226.

2 21. All of the conduct and violations alleged herein occurred during the PAGA
3 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
4 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
5 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
6 AJDAR 12157 (Certified for Publication 12/19/18).

7
8 **JURISDICTION AND VENUE**

9 22. This Court has jurisdiction over this Action pursuant to California Code of Civil
10 Procedure, Section 410.10.

11 23. Venue is proper in this Court pursuant to California Code of Civil Procedure,
12 Sections 395 and 395.5, because PLAINTIFF worked and resides in this County, and
13 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
14 in this County and/or conducts substantial business in this County, and (ii) committed the
15 wrongful conduct herein alleged in this County against PLAINTIFF and the AGGRIEVED
16 EMPLOYEES.

17
18 **FIRST CAUSE OF ACTION**

19 **For Violation of the Private Attorneys General Act**

20 **[Cal. Lab. Code §§ 2698, *et seq.*]**

21 **(By PLAINTIFF and Against All Defendants)**

22 24. PLAINTIFF incorporates by reference the allegations set forth in paragraphs 1-23,
23 supra, as though fully set forth at this point.

24 25. PAGA is a mechanism by which the State of California itself can enforce state
25 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
26 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
27 fundamentally a law enforcement action designed to protect the public and not to benefit private
28 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a

1 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
2 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
3 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
4 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be
5 subject to arbitration.

6 26. PLAINTIFF, and such persons that may be added from time to time who satisfy
7 the requirements and exhaust the administrative procedures under the Private Attorney General
8 Act, brings this Representative Action on behalf of the State of California with respect to
9 himself and all individuals who are or previously were employed by DEFENDANT in a
10 California Distribution Center and classified as non-exempt Warehouse Associate employees
11 ("AGGRIEVED EMPLOYEES") during the time period of April 22, 2019 until a date as
12 determined by the Court (the "PAGA PERIOD").

13 27. On April 22, 2020, PLAINTIFF gave written notice by electronic mail to the
14 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
15 employer of the specific provisions of this code alleged to have been violated as required by
16 Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this reference
17 herein. The statutory waiting period for PLAINTIFF to add these allegations to the Complaint
18 has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a
19 representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of
20 California with respect to all AGGRIEVED EMPLOYEES as herein defined.

21 28. The policies, acts and practices heretofore described were and are an unlawful
22 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
23 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
24 and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed
25 to pay overtime wages, (e) failed to reimburse for required business expenses, and (f) failed to
26 pay wages when due, all in violation of the applicable Labor Code sections listed in Labor Code
27 §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197,
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1 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-
2 (B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating),
3 and the applicable Industrial Wage Order(s), and thereby gives rise to civil penalties as a result
4 of such conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by
5 the Labor Code Private Attorney General Act of 2004 as the representative of the State of
6 California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
7 EMPLOYEES.

8
9 **PRAYER FOR RELIEF**

10 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
11 severally, as follows:

12 1. On behalf of the State of California and with respect to all AGGRIEVED
13 EMPLOYEES:

14 A) Recovery of civil penalties as prescribed by the Labor Code Private
15 Attorneys General Act of 2004; and,

16 B) An award of attorneys' fees and cost of suit, as allowable under the
17 law, including, but not limited to, pursuant to Labor Code §2699.

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19
20 Dated: July 8, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

21
22
23 By: /s/ Norman Blumenthal
24 Norman B. Blumenthal
25 Attorneys for Plaintiff

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27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).

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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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WRITERS EXT:

1004

April 22, 2020
CA2123

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Home Depot U.S.A., Inc.
Certified Mail #70192280000189179134
CSC - Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Defendant Home Depot U.S.A., Inc. in a California Distribution Center and classified as non-exempt Warehouse Associate employees during the time period of April 22, 2019 until a date as determined by the Court. Our offices represent Plaintiff Jared Maniglia (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendant Home Depot U.S.A., Inc. (“Defendant”). Plaintiff was employed by Defendant in California from January of 2019 to October of 2019 as a non-exempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code

Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to him, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant fails to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The filing fee of \$75 is being mailed to the Department of Industrial Relations Accounting unit with an identification of the Plaintiff, the Defendant and the notice. The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)

2 Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

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Website: www.bamlawca.com

6 Attorneys for Plaintiff

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **IN AND FOR THE COUNTY OF SACRAMENTO**

9 JARED MANIGLIA, an individual, on behalf of
10 himself and on behalf of all persons similarly
situated,

11 Plaintiff,

12 vs.

13 HOME DEPOT U.S.A., INC., a Corporation; and
14 Does 1 through 50, Inclusive,

15 Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION
OF CAL. BUS. & PROF. CODE §§ 17200, *et*
seq.;

2. FAILURE TO PAY OVERTIME WAGES IN
VIOLATION OF CAL. LAB. CODE §§ 510, *et*
seq.;

3. FAILURE TO PAY MINIMUM WAGES IN
VIOLATION OF CAL. LAB. CODE §§ 1194,
1197 & 1197.1;

4. FAILURE TO PROVIDE REQUIRED MEAL
PERIODS IN VIOLATION OF CAL. LAB.
CODE §§ 226.7 & 512 AND THE APPLICABLE
IWC WAGE ORDER;

5. FAILURE TO PROVIDE REQUIRED REST
PERIODS IN VIOLATION OF CAL. LAB.
CODE §§ 226.7 & 512 AND THE APPLICABLE
IWC WAGE ORDER;

6. FAILURE TO PROVIDE ACCURATE
ITEMIZED STATEMENTS IN VIOLATION OF
CAL. LAB. CODE § 226;

7. FAILURE TO REIMBURSE EMPLOYEES
FOR REQUIRED EXPENSES IN VIOLATION
OF CAL. LAB. CODE § 2802; and,

8. FAILURE TO PROVIDE WAGES WHEN
DUE IN VIOLATION OF CAL. LAB. CODE §§
201, 202 AND 203.

DEMAND FOR A JURY TRIAL

1 Plaintiff Jared Mangilia (“PLAINTIFF”), an individual, on behalf of himself and all
2 other similarly situated current and former employees, alleges on information and belief, except
3 for his own acts and knowledge which are based on personal knowledge, the following:

4
5 **THE PARTIES**

6 1. Defendant Home Depot U.S.A., Inc. (“DEFENDANT”) is a Corporation and at
7 all relevant times mentioned herein conducted and continues to conduct substantial and regular
8 business throughout California.

9 2. DEFENDANT is a home improvement retailer in the United States supplying
10 tools, construction products and services.

11 3. PLAINTIFF was employed by DEFENDANT in California from January of 2019
12 to October of 2019 and was at all times classified by DEFENDANT as a non-exempt employee,
13 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
14 of minimum and overtime wages due for all time worked.

15 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
16 defined as all individuals who are or previously were employed by DEFENDANT in a
17 California Distribution Center and classified as non-exempt Warehouse Associate employees
18 (the “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to
19 the filing of this Complaint and ending on the date as determined by the Court (the
20 “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim of
21 CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

22 5. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
23 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
24 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s policy and practice which
25 failed to lawfully compensate these employees for all their overtime worked. DEFENDANT’s
26 policy and practice alleged herein was an unlawful, unfair and deceptive business practice
27 whereby DEFENDANT retained and continues to retain wages due PLAINTIFF and the other
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1 members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the
2 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the
3 future, relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS
4 who have been economically injured by DEFENDANT's past and current unlawful conduct,
5 and all other appropriate legal and equitable relief.

6 6. The true names and capacities, whether individual, corporate, subsidiary,
7 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
8 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
9 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
10 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
11 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
12 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
13 responsible in some manner for one or more of the events and happenings that proximately
14 caused the injuries and damages hereinafter alleged.

15 7. The agents, servants and/or employees of the Defendants and each of them acting
16 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
17 agent, servant and/or employee of the Defendants, and personally participated in the conduct
18 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
19 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
20 all Defendants are jointly and severally liable to PLAINTIFF and the other members of the
21 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
22 Defendants' agents, servants and/or employees.

23 THE CONDUCT

24
25 8. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
26 record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the actual amount
27 of time these employees work. Pursuant to the Industrial Welfare Commission Wage Orders,
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1 DEFENDANT is required to pay PLAINTIFF and other CALIFORNIA CLASS Members for
2 all time worked, meaning the time during which an employee was subject to the control of an
3 employer, including all the time the employee was permitted or suffered to permit this work.
4 DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work off the
5 clock without paying them for all the time they were under DEFENDANT's control. As a result
6 of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were
7 from time to time not fully relieved of duty by DEFENDANT for their meal periods and would
8 clock out of DEFENDANT's timekeeping system but continue to work at DEFENDANT's
9 direction during what should have been their off-duty meal period. As a result, PLAINTIFF and
10 other CALIFORNIA CLASS Members forfeited minimum wages and overtime wage
11 compensation by working without their time being correctly recorded and without compensation
12 at the applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFF and other
13 CALIFORNIA CLASS Members for all time worked, is evidenced by DEFENDANT's
14 business records.

15 9. DEFENDANT also required PLAINTIFF and CALIFORNIA CLASS Members
16 to work off the clock without paying them for all the time they were under DEFENDANT's
17 control. PLAINTIFF and CALIFORNIA CLASS Members would clock out of
18 DEFENDANT's timekeeping system, in order to perform additional work for DEFENDANT
19 as required to meet DEFENDANT's job requirements. Specifically, during the CALIFORNIA
20 CLASS PERIOD, DEFENDANT engaged in the practice of requiring PLAINTIFF and
21 CALIFORNIA CLASS Members to perform work off the clock after clocking out in that
22 DEFENDANT, as a condition of employment, required these employees to wait for and submit
23 to loss prevention inspections after clocking out for meal breaks and at the end of each
24 scheduled shift for which DEFENDANT did not provide compensation for time spent waiting
25 for and submitting to DEFENDANT's loss prevention inspections off the clock. As a result,
26 PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage, overtime
27 wage compensation, and meal break wages, by working without their time being correctly
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1 recorded and without compensation at the applicable rates. DEFENDANT's policy and practice
2 not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, is
3 evidenced by DEFENDANT's business records.

4 10. State law provides that employees must be paid overtime at one-and-one-half
5 times their "regular rate of pay." PLAINTIFF and other CALIFORNIA CLASS Members were
6 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
7 employee's performance.

8 11. The second component of PLAINTIFF's and other CALIFORNIA CLASS
9 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
10 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their
11 performance for DEFENDANT. The non-discretionary incentive program provided all
12 employees paid on an hourly basis with incentive compensation when the employees met the
13 various performance goals set by DEFENDANT. However, when calculating the regular rate
14 of pay in order to pay overtime to PLAINTIFF and other CALIFORNIA CLASS Members,
15 DEFENDANT failed to include the incentive compensation as part of the employees' "regular
16 rate of pay" for purposes of calculating overtime pay. Management and supervisors described
17 the incentive program to potential and new employees as part of the compensation package. As
18 a matter of law, the incentive compensation received by PLAINTIFF and other CALIFORNIA
19 CLASS Members must be included in the "regular rate of pay." The failure to do so has
20 resulted in an underpayment of overtime compensation to PLAINTIFF and other CALIFORNIA
21 CLASS Members by DEFENDANT.

22 12. In violation of the applicable sections of the California Labor Code and the
23 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
24 intentionally and knowingly failed to compensate PLAINTIFF and the other members of the
25 CALIFORNIA CLASS at the correct rate of pay for all overtime worked. This policy and
26 practice of DEFENDANT was intended to purposefully avoid the payment of the correct
27 overtime compensation as required by California law which allowed DEFENDANT to illegally
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1 profit and gain an unfair advantage over competitors who complied with the law. To the extent
2 equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT,
3 the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

4 13. As a result of their rigorous work schedules, PLAINTIFF and other
5 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal
6 breaks and were not fully relieved of duty for meal periods. PLAINTIFF and other
7 CALIFORNIA CLASS Members were from time to time required to perform work as ordered
8 by DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal
9 break. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS
10 Members with a second off-duty meal period from time to time in which these employees are
11 required by DEFENDANT to work ten (10) hours of work from time to time. PLAINTIFF and
12 the other CALIFORNIA CLASS Members therefore forfeit meal breaks without additional
13 compensation and in accordance with DEFENDANT's corporate policy and practice.

14 14. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
15 CALIFORNIA CLASS Members were also from time to time required to work in excess of four
16 (4) hours without being provided ten (10) minute rest periods. Further, these employees are
17 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
18 (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts
19 worked of between six (6) and eight (8) hours, and a first, second and third rest period of at
20 least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
21 PLAINTIFF and other CALIFORNIA CLASS Members are also not provided with one hour
22 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
23 CALIFORNIA CLASS Members are periodically denied their proper rest periods by
24 DEFENDANT and DEFENDANT's managers. Additionally, the applicable California Wage
25 Order requires employers to provide employees with off-duty rest periods, which the California
26 Supreme Court defined as time during which an employee is relieved from all work related
27 duties and free from employer control. In so doing, the Court held that the requirement under
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1 California law that employers authorize and permit all employees to take rest period means that
2 employers must relieve employees of all duties and relinquish control over how employees
3 spend their time which includes control over the locations where employees may take their rest
4 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -
5 five minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and
6 other CALIFORNIA CLASS Members from unconstrained walks and required these employees
7 to remain on DEFENDANT's premises under DEFENDANT's control during what should have
8 been their paid, off duty rest periods.

9 15. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
10 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses
11 incurred by PLAINTIFF and other CALIFORNIA CLASS Members in direct consequence of
12 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
13 2802, employers are required to indemnify employees for all expenses incurred in the course
14 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
15 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
16 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
17 directions of the employer, even though unlawful, unless the employee, at the time of obeying
18 the directions, believed them to be unlawful."

19 16. In the course of their employment PLAINTIFF and other CALIFORNIA CLASS
20 Members as a business expense, were required by DEFENDANT to use their own personal
21 cellular phones as a result of and in furtherance of their job duties as employees for
22 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
23 associated with the use of their personal cellular phones for DEFENDANT's benefit.
24 Specifically, PLAINTIFF and other CALIFORNIA CLASS Members were required by
25 DEFENDANT to use their personal cellular phones to for work related issues. As a result, in
26 the course of their employment with DEFENDANT, PLAINTIFF and other members of the
27 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not
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1 limited to, costs related to the use of their personal cellular phones all on behalf of and for the
2 benefit of DEFENDANT.

3 17. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
4 employees with an accurate itemized wage statement in writing showing, among other things,
5 gross wages earned and all applicable hourly rates in effect during the pay period and the
6 corresponding amount of time worked at each hourly rate. From time to time, DEFENDANT
7 violated Cal. Lab. Code § 226 by failing to provide wage statements that identified the correct
8 gross and net wages earned. Aside from the violations listed above, DEFENDANT failed to
9 issue to PLAINTIFF an itemized wage statement that lists all the requirements under California
10 Labor Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and
11 the other members of the CALIFORNIA CLASS with wage statements which violated Cal.
12 Lab. Code § 226.

13 18. Specifically as to PLAINTIFF's pay, DEFENDANT provided compensation to
14 him in the form of two components. One component of PLAINTIFF's compensation was a
15 base hourly wage. The second component of PLAINTIFF's compensation was non-
16 discretionary incentive wages as described above. DEFENDANT paid the incentive wages, so
17 long as PLAINTIFF met certain predefined performance requirements. PLAINTIFF met
18 DEFENDANT's predefined eligibility performance requirements in various pay periods
19 throughout his employment with DEFENDANT and DEFENDANT paid PLAINTIFF the
20 incentive wages. During these pay periods in which PLAINTIFF was paid the non-
21 discretionary incentive wages by DEFENDANT, PLAINTIFF also worked overtime for
22 DEFENDANT, but DEFENDANT never included the incentive compensation in PLAINTIFF's
23 regular rate of pay for the purposes of calculating what should have been PLAINTIFF's
24 accurate overtime rate and thereby underpaid PLAINTIFF for overtime worked throughout his
25 employment with DEFENDANT. The incentive compensation paid by DEFENDANT
26 constituted wages within the meaning of the California Labor Code and thereby should have
27 been part of PLAINTIFF's "regular rate of pay." PLAINTIFF was also from time to time
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1 unable to take off duty meal and rest breaks and was not fully relieved of duty for his meal
2 periods. PLAINTIFF was required to perform work as ordered by DEFENDANT for more than
3 five (5) hours during a shift without receiving an off-duty meal break and/or PLAINTIFF was
4 also from time to time interrupted and performed work for DEFENDANT during what should
5 have been PLAINTIFF's off duty meal and rest periods. Further, DEFENDANT failed to
6 provide PLAINTIFF with a second off-duty meal period from time to time in which he was
7 required by DEFENDANT to work ten (10) hours of work. PLAINTIFF therefore forfeited
8 meal and rest breaks without additional compensation and in accordance with DEFENDANT's
9 strict corporate policy and practice. DEFENDANT also provided PLAINTIFF with a pay stub
10 that failed to comply with all the requirements set forth in Cal. Lab. Code § 226(a). To date,
11 DEFENDANT has not fully paid PLAINTIFF the wages still owed to him or any waiting time
12 penalties owed to him under Cal. Lab. Code § 203. The amount in controversy for PLAINTIFF
13 individually does not exceed the sum or value of \$75,000.

14 15 **JURISDICTION AND VENUE**

16 19. This Court has jurisdiction over this Action pursuant to California Code of Civil
17 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
18 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees
19 of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

20 20. Venue is proper in this Court pursuant to California Code of Civil Procedure,
21 Sections 395 and 395.5, because PLAINTIFF worked and resides in this County, and
22 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
23 in this County and/or conducts substantial business in this County, and (ii) committed the
24 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS
25 and CALIFORNIA LABOR SUB-CLASS.

26 27 **THE CALIFORNIA CLASS**

1 21. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and Deceptive
2 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
3 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as
4 all individuals who are or previously were employed by DEFENDANT in a California
5 Distribution Center and classified as non-exempt Warehouse Associate employees (the
6 "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the
7 filing of this Complaint and ending on the date as determined by the Court (the "CALIFORNIA
8 CLASS PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA
9 CLASS Members is under five million dollars (\$5,000,000.00).

10 22. To the extent equitable tolling operates to toll claims by the CALIFORNIA
11 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
12 accordingly.

13 23. The California Legislature has commanded that "all wages... ..earned by any
14 person in any employment are due and payable twice during each calendar month, on days
15 designated in advance by the employer as the regular paydays", and further that "[a]ny work
16 in excess of eight hours in one workday and any work in excess of 40 hours in any one
17 workweek . . . shall be compensated at the rate of no less than one and one-half times the
18 regular rate of pay for an employee." (Lab. Code § 204 and § 510(a).) The Industrial Welfare
19 Commission (IWC), however, is statutorily authorized to "establish exemptions from the
20 requirement that an overtime rate of compensation be paid... ..for executive, administrative, and
21 professional employees, provided [inter alia] that the employee is primarily engaged in duties
22 that meet the test of the exemption, [and] customarily and regularly exercises discretion and
23 independent judgment in performing those duties..." (Lab. Code § 510(a).) Neither the
24 PLAINTIFF nor the other members of the CALIFORNIA CLASS and/or the CALIFORNIA
25 LABOR SUB-CLASS qualify for exemption from the above requirements.

26 24. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
27 Commission ("IWC") Wage Order requirements, and the applicable provisions of California
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1 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed
2 to correctly calculate and record minimum wage, and overtime compensation for all time
3 worked by PLAINTIFF and the other members of the CALIFORNIA CLASS, even though
4 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
5 permitted or suffered to permit this work.

6 25. DEFENDANT has the legal burden to establish that each and every
7 CALIFORNIA CLASS Member is paid the applicable rate for all overtime worked and to
8 accurately calculate the compensation that PLAINTIFF and members of the CALIFORNIA
9 CLASS were awarded by DEFENDANT. DEFENDANT, however, failed to have in place
10 during the CALIFORNIA CLASS PERIOD and still failed to have in place a policy or practice
11 to ensure that each and every CALIFORNIA CLASS Member was paid the applicable overtime
12 rate for all overtime worked, so as to satisfy their burden. This common business practice
13 applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-
14 wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§
15 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this claim.

16 26. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
17 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
18 employee for all overtime worked at the applicable rate, as required by California Labor Code
19 §§ 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was the
20 overtime compensation for any member of the CALIFORNIA CLASS properly recalculated so
21 as to include all earnings in the overtime compensation calculation as required by California
22 Labor Code §§ 510, *et seq.*

23 27. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
24 CLASS Members is impracticable.

25 28. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
26 law by:

27 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code
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1 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in
2 place company policies, practices and procedures that failed to pay all
3 wages due the CALIFORNIA CLASS for all overtime worked, and failed
4 to accurately record the applicable rates of all overtime worked by the
5 CALIFORNIA CLASS;

6 (b) Committing an act of unfair competition in violation of the California
7 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
8 unlawfully, unfairly, and/or deceptively having in place a company policy,
9 practice and procedure that failed to correctly calculate overtime
10 compensation due to PLAINTIFF and the members of the CALIFORNIA
11 CLASS;

12 (c) Committing an act of unfair competition in violation of the California
13 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
14 failing to provide mandatory meal and/or rest breaks to PLAINTIFF and
15 the CALIFORNIA CLASS members;

16 (d) Committing an act of unfair competition in violation of the California
17 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
18 unlawfully, unfairly and deceptively having in place company policies,
19 practices and procedures that denied PLAINTIFF and the members of the
20 CALIFORNIA CLASS the correct minimum wages and otherwise
21 violated applicable law; and,

22 (e) Committing an act of unfair competition in violation of the California
23 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
24 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
25 the CALIFORNIA CLASS members with necessary expenses incurred in
26 the discharge of their job duties.

27 29. This Class Action meets the statutory prerequisites for the maintenance of a Class
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1 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 2 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
3 that the joinder of all such persons is impracticable and the disposition of
4 their claims as a class will benefit the parties and the Court;
- 5 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
6 that are raised in this Complaint are common to the CALIFORNIA
7 CLASS will apply to every member of the CALIFORNIA CLASS;
- 8 (c) The claims of the representative PLAINTIFF are typical of the claims of
9 each member of the CALIFORNIA CLASS. PLAINTIFF, like all the
10 other members of the CALIFORNIA CLASS, is subjected to the
11 employment practices of DEFENDANT and is a non-exempt employee
12 paid on an hourly basis who has been subjected to the DEFENDANT's
13 practice and policy described herein. PLAINTIFF sustained economic
14 injury as a result of DEFENDANT's employment practices. PLAINTIFF
15 and the members of the CALIFORNIA CLASS were and are similarly or
16 identically harmed by the same unlawful, deceptive, and unfair
17 misconduct engaged in by DEFENDANT; and,
- 18 (d) The representative PLAINTIFF will fairly and adequately represent and
19 protect the interest of the CALIFORNIA CLASS, and has retained
20 counsel who are competent and experienced in Class Action litigation.
21 There are no material conflicts between the claims of the representative
22 PLAINTIFF and the members of the CALIFORNIA CLASS that would
23 make class certification inappropriate. Counsel for the CALIFORNIA
24 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
25 Members.

26 30. In addition to meeting the statutory prerequisites to a Class Action, this action
27 is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:
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1 (a) Without class certification and determination of declaratory, injunctive,
2 statutory and other legal questions within the class format, prosecution of
3 separate actions by individual members of the CALIFORNIA CLASS will
4 create the risk of:

5 1) Inconsistent or varying adjudications with respect to individual
6 members of the CALIFORNIA CLASS which would establish
7 incompatible standards of conduct for the parties opposing the
8 CALIFORNIA CLASS; and/or,

9 2) Adjudication with respect to individual members of the
10 CALIFORNIA CLASS which would as a practical matter be
11 dispositive of interests of the other members not party to the
12 adjudication or substantially impair or impede their ability to
13 protect their interests.

14 (b) The parties opposing the CALIFORNIA CLASS have acted or refused to
15 act on grounds generally applicable to the CALIFORNIA CLASS, making
16 appropriate class-wide relief with respect to the CALIFORNIA CLASS
17 as a whole in that DEFENDANT failed to pay all wages due. Including
18 the correct overtime rate, for all worked by the members of the
19 CALIFORNIA CLASS as required by law;

20 1) With respect to the First Cause of Action, the final relief on behalf
21 of the CALIFORNIA CLASS sought does not relate exclusively to
22 restitution because through this claim PLAINTIFF seeks
23 declaratory relief holding that the DEFENDANT's policy and
24 practices constitute unfair competition, along with declaratory
25 relief, injunctive relief, and incidental equitable relief as may be
26 necessary to prevent and remedy the conduct declared to constitute
27 unfair competition;

1 (c) Common questions of law and fact exist as to the members of the
2 CALIFORNIA CLASS, with respect to the practices and violations of
3 California law as listed above, and predominate over any question
4 affecting only individual CALIFORNIA CLASS Members, and a Class
5 Action is superior to other available methods for the fair and efficient
6 adjudication of the controversy, including consideration of:

7 1) The interests of the members of the CALIFORNIA CLASS in
8 individually controlling the prosecution or defense of separate
9 actions in that the substantial expense of individual actions will be
10 avoided to recover the relatively small amount of economic losses
11 sustained by the individual CALIFORNIA CLASS Members when
12 compared to the substantial expense and burden of individual
13 prosecution of this litigation;

14 2) Class certification will obviate the need for unduly duplicative
15 litigation that would create the risk of:

16 A. Inconsistent or varying adjudications with respect to
17 individual members of the CALIFORNIA CLASS, which
18 would establish incompatible standards of conduct for the
19 DEFENDANT; and/or,

20 B. Adjudications with respect to individual members of the
21 CALIFORNIA CLASS would as a practical matter be
22 dispositive of the interests of the other members not parties
23 to the adjudication or substantially impair or impede their
24 ability to protect their interests;

25 3) In the context of wage litigation because a substantial number of
26 individual CALIFORNIA CLASS Members will avoid asserting
27 their legal rights out of fear of retaliation by DEFENDANT, which
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1 may adversely affect an individual's job with DEFENDANT or
2 with a subsequent employer, the Class Action is the only means to
3 assert their claims through a representative; and,

- 4 4) A class action is superior to other available methods for the fair
5 and efficient adjudication of this litigation because class treatment
6 will obviate the need for unduly and unnecessary duplicative
7 litigation that is likely to result in the absence of certification of
8 this action pursuant to Cal. Code of Civ. Proc. § 382.

9 31. This Court should permit this action to be maintained as a Class Action pursuant
10 to Cal. Code of Civ. Proc. § 382 because:

- 11 (a) The questions of law and fact common to the CALIFORNIA CLASS
12 predominate over any question affecting only individual CALIFORNIA
13 CLASS Members because the DEFENDANT's employment practices are
14 applied with respect to the CALIFORNIA CLASS;
- 15 (b) A Class Action is superior to any other available method for the fair and
16 efficient adjudication of the claims of the members of the CALIFORNIA
17 CLASS because in the context of employment litigation a substantial
18 number of individual CALIFORNIA CLASS Members will avoid
19 asserting their rights individually out of fear of retaliation or adverse
20 impact on their employment;
- 21 (c) The members of the CALIFORNIA CLASS are so numerous that it is
22 impractical to bring all members of the CALIFORNIA CLASS before the
23 Court;
- 24 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not be
25 able to obtain effective and economic legal redress unless the action is
26 maintained as a Class Action;
- 27 (e) There is a community of interest in obtaining appropriate legal and
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1 equitable relief for the acts of unfair competition, statutory violations and
2 other improprieties, and in obtaining adequate compensation for the
3 damages and injuries which DEFENDANT's actions have inflicted upon
4 the CALIFORNIA CLASS;

5 (f) There is a community of interest in ensuring that the combined assets of
6 DEFENDANT are sufficient to adequately compensate the members of
7 the CALIFORNIA CLASS for the injuries sustained;

8 (g) DEFENDANT has acted or refused to act on grounds generally applicable
9 to the CALIFORNIA CLASS, thereby making final class-wide relief
10 appropriate with respect to the CALIFORNIA CLASS as a whole;

11 (h) The members of the CALIFORNIA CLASS are readily ascertainable from
12 the business records of DEFENDANT; and,

13 (i) Class treatment provides manageable judicial treatment calculated to bring
14 a efficient and rapid conclusion to all litigation of all wage and hour
15 related claims arising out of the conduct of DEFENDANT as to the
16 members of the CALIFORNIA CLASS.

17 32. DEFENDANT maintains records from which the Court can ascertain and identify
18 by job title each of DEFENDANT's employees who as have been intentionally subjected to
19 DEFENDANT's conduct as herein alleged. PLAINTIFF will seek leave to amend the
20 Complaint to include any additional job titles of similarly situated employees when they have
21 been identified.

22 **THE CALIFORNIA LABOR SUB-CLASS**

23 33. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh and
24 Eighth causes of Action on behalf of a California sub-class, defined as all members of the
25 CALIFORNIA CLASS employed by DEFENDANT in a California Distribution Center and
26 classified as non-exempt Warehouse Associate employees (the "CALIFORNIA LABOR SUB-
27 CLASS") at any time during the period three (3) years prior to the filing of the complaint and
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1 ending on the date as determined by the Court (the “CALIFORNIA LABOR SUB-CLASS
2 PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the
3 aggregate claim of CALIFORNIA LABOR SUB- CLASS Members is under five million
4 dollars (\$5,000,000.00).

5 34. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
6 Commission (“IWC”) Wage Order requirements, and the applicable provisions of California
7 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed
8 to correctly calculate minimum wage and overtime compensation for the all time worked by
9 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS, even though
10 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
11 permitted or suffered to permit this work. DEFENDANT denied these CALIFORNIA LABOR
12 SUB-CLASS Members wages at the correct amount to which these employees are entitled in
13 order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling
14 operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the
15 CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

16 35. DEFENDANT maintains records from which the Court can ascertain and identify
17 by name and job title, each of DEFENDANT’s employees who have been intentionally
18 subjected to DEFENDANT’s conduct as herein alleged. PLAINTIFF will seek leave to amend
19 the complaint to include any additional job titles of similarly situated employees when they have
20 been identified.

21 36. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
22 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

23 37. Common questions of law and fact exist as to members of the CALIFORNIA
24 LABOR SUB-CLASS, including, but not limited, to the following:

- 25 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
26 overtime wages and minimum wages to members of the CALIFORNIA
27 LABOR SUB-CLASS in violation of the California Labor Code and
28

California regulations and the applicable California Wage Order;

- (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS were entitled to overtime compensation for overtime worked under the overtime pay requirements of California law;
- (c) Whether DEFENDANT failed to accurately record the applicable overtime rates for all overtime worked PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS;
- (d) Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with legally required uninterrupted thirty (30) minute meal breaks and rest periods;
- (e) Whether DEFENDANT failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with accurate itemized wage statements;
- (f) Whether DEFENDANT engaged in unfair competition by the above-listed conduct;
- (g) The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS; and,
- (h) Whether DEFENDANT's conduct was willful.

38. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS under California law by:

- (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct overtime pay for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194 & § 1198;
- (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to accurately pay the PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS the correct minimum wage for which

1 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197, and
2 1197.1;

3 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
4 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
5 CLASS all legally required off-duty, uninterrupted thirty (30) minute meal
6 breaks and the legally required rest breaks;

7 (d) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and the
8 members of the CALIFORNIA LABOR SUB-CLASS with an accurate
9 itemized statement in writing showing all accurate and applicable
10 overtime rates in effect during the pay period and the corresponding
11 amount of time worked at each overtime rate by the employee;

12 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
13 when an employee is discharged or quits from employment, the employer
14 must pay the employee all wages due without abatement, by failing to
15 tender full payment and/or restitution of wages owed or in the manner
16 required by California law to the members of the CALIFORNIA LABOR
17 SUB-CLASS who have terminated their employment; and,

18 (f) Committing an act of unfair competition in violation of the California
19 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
20 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF and
21 the CALIFORNIA CLASS members with necessary expenses incurred in
22 the discharge of their job duties.

23 39. This Class Action meets the statutory prerequisites for the maintenance of a Class
24 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

25 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
26 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
27 Members is impracticable and the disposition of their claims as a class
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1 will benefit the parties and the Court;

2 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
3 that are raised in this Complaint are common to the CALIFORNIA
4 LABOR SUB-CLASS and will apply to every member of the
5 CALIFORNIA LABOR SUB-CLASS;

6 (c) The claims of the representative PLAINTIFF are typical of the claims of
7 each member of the CALIFORNIA LABOR SUB-CLASS. PLAINTIFF,
8 like all the other members of the CALIFORNIA LABOR SUB-CLASS,
9 is a non-exempt employee who has been subjected to the DEFENDANT's
10 practice and policy described herein. PLAINTIFF sustained economic
11 injury as a result of DEFENDANT's employment practices. PLAINTIFF
12 and the members of the CALIFORNIA LABOR SUB-CLASS were and
13 are similarly or identically harmed by the same unlawful, deceptive, and
14 unfair misconduct engaged in by DEFENDANT; and,

15 (d) The representative PLAINTIFF will fairly and adequately represent and
16 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and has
17 retained counsel who are competent and experienced in Class Action
18 litigation. There are no material conflicts between the claims of the
19 representative PLAINTIFF and the members of the CALIFORNIA
20 LABOR SUB-CLASS that would make class certification inappropriate.
21 Counsel for the CALIFORNIA LABOR SUB-CLASS will vigorously
22 assert the claims of all CALIFORNIA LABOR SUB-CLASS Members.

23 40. In addition to meeting the statutory prerequisites to a Class Action, this action is
24 properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

25 (a) Without class certification and determination of declaratory, injunctive,
26 statutory and other legal questions within the class format, prosecution of
27 separate actions by individual members of the CALIFORNIA LABOR
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SUB-CLASS will create the risk of:

- 1) Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA LABOR SUB-CLASS; or,
- 2) Adjudication with respect to individual members of the CALIFORNIA LABOR SUB-CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

(b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide relief with respect to the CALIFORNIA LABOR SUB-CLASS as a whole in that DEFENDANT failed to pay all wages due. Including the correct overtime rate, for all overtime worked by the members of the CALIFORNIA LABOR SUB-CLASS as required by law;

(c) Common questions of law and fact predominate as to the members of the CALIFORNIA LABOR SUB-CLASS, with respect to the practices and violations of California Law as listed above, and predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- 1) The interests of the members of the CALIFORNIA LABOR SUB-CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual

actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA LABOR SUB-CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;

2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:

A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,

B. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

3) In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,

4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

1 41. This Court should permit this action to be maintained as a Class Action pursuant
2 to Cal. Code of Civ. Proc. § 382 because:

- 3 (a) The questions of law and fact common to the CALIFORNIA LABOR
4 SUB-CLASS predominate over any question affecting only individual
5 CALIFORNIA LABOR SUB-CLASS Members;
- 6 (b) A Class Action is superior to any other available method for the fair and
7 efficient adjudication of the claims of the members of the CALIFORNIA
8 LABOR SUB-CLASS because in the context of employment litigation a
9 substantial number of individual CALIFORNIA LABOR SUB-CLASS
10 Members will avoid asserting their rights individually out of fear of
11 retaliation or adverse impact on their employment;
- 12 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
13 numerous that it is impractical to bring all members of the CALIFORNIA
14 LABOR SUB-CLASS before the Court;
- 15 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
16 Members, will not be able to obtain effective and economic legal redress
17 unless the action is maintained as a Class Action;
- 18 (e) There is a community of interest in obtaining appropriate legal and
19 equitable relief for the acts of unfair competition, statutory violations and
20 other improprieties, and in obtaining adequate compensation for the
21 damages and injuries which DEFENDANT's actions have inflicted upon
22 the CALIFORNIA LABOR SUB-CLASS;
- 23 (f) There is a community of interest in ensuring that the combined assets of
24 DEFENDANT are sufficient to adequately compensate the members of
25 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 26 (g) DEFENDANT has acted or refused to act on grounds generally applicable
27 to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-
- 28

1 wide relief appropriate with respect to the CALIFORNIA LABOR SUB-
2 CLASS as a whole;

- 3 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
4 ascertainable from the business records of DEFENDANT. The
5 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
6 CLASS Members classified as non-exempt employees during the
7 CALIFORNIA LABOR SUB-CLASS PERIOD; and,
8 (i) Class treatment provides manageable judicial treatment calculated to bring
9 a efficient and rapid conclusion to all litigation of all wage and hour
10 related claims arising out of the conduct of DEFENDANT as to the
11 members of the CALIFORNIA LABOR SUB-CLASS.

12
13 **FIRST CAUSE OF ACTION**

14 **For Unlawful Business Practices**

15 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

16 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

17 42. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
18 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
19 Complaint.

20 43. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
21 Code § 17021.

22 44. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
23 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
24 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
25 competition as follows:

26 Any person who engages, has engaged, or proposes to engage in unfair
27 competition may be enjoined in any court of competent jurisdiction. The court
28 may make such orders or judgments, including the appointment of a receiver, as
may be necessary to prevent the use or employment by any person of any practice

1 which constitutes unfair competition, as defined in this chapter, or as may be
2 necessary to restore to any person in interest any money or property, real or
personal, which may have been acquired by means of such unfair competition.

3 Cal. Bus. & Prof. Code § 17203.

4 45. By the conduct alleged herein, DEFENDANT has engaged and continues to
5 engage in a business practice which violates California law, including but not limited to, the
6 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
7 including Sections 204, 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198, and 2802, for which
8 this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code
9 § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
10 competition, including restitution of wages wrongfully withheld.

11 46. By the conduct alleged herein, DEFENDANT's practices were unlawful and
12 unfair in that these practices violated public policy, are immoral, unethical, oppressive,
13 unscrupulous or substantially injurious to employees, and are without valid justification or
14 utility for which this Court should issue equitable and injunctive relief pursuant to Section
15 17203 of the California Business & Professions Code, including restitution of wages wrongfully
16 withheld.

17 47. By the conduct alleged herein, DEFENDANT's practices were deceptive and
18 fraudulent in that DEFENDANT's policy and practice failed to pay PLAINTIFF, and other
19 members of the CALIFORNIA CLASS, minimum wages and overtime wages due for all time
20 worked, due to business practices that cannot be justified, pursuant to the applicable Cal. Lab.
21 Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§
22 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant
23 to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

24 48. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
25 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
26 other members of the CALIFORNIA CLASS to be underpaid during their employment with
27 DEFENDANT.

1 49. By the conduct alleged herein, DEFENDANT's practices were also unfair and
2 deceptive in that DEFENDANT's policies, practices and procedures failed to provide
3 mandatory meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members.

4 50. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
5 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty
6 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
7 for each workday in which a second off-duty meal period was not timely provided for each ten
8 (10) hours of work.

9 51. PLAINTIFF further demands on behalf of himself and on behalf of each
10 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off duty
11 paid rest period was not timely provided as required by law.

12 52. By and through the unlawful and unfair business practices described herein,
13 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
14 other members of the CALIFORNIA CLASS and has deprived them of valuable rights and
15 benefits guaranteed by law and contract, all to the detriment of these employees and to the
16 benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete against competitors
17 who comply with the law.

18 53. All the acts described herein as violations of, among other things, the Industrial
19 Welfare Commission Wage Orders, the California Code of Regulations, and the California
20 Labor Code, are unlawful and in violation of public policy, are immoral, unethical, oppressive
21 and unscrupulous, are deceptive, and thereby constitute unlawful, unfair and deceptive business
22 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

23 54. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
24 and do, seek such relief as may be necessary to restore to them the money and property which
25 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
26 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
27 unfair business practices, including earned but unpaid wages for all overtime worked.

55. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to, and do, seek a declaration that the described business practices are unlawful, unfair and deceptive, and that injunctive relief should be issued restraining DEFENDANT from engaging in any unlawful and unfair business practices in the future.

56. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic harm unless DEFENDANT is restrained from continuing to engage in these unlawful and unfair business practices.

SECOND CAUSE OF ACTION

For Failure To Pay Overtime Compensation

[Cal. Lab. Code §§ 204, 510, 1194 and 1198]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

57. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

58. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate the applicable rates for all overtime worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS and DEFENDANT's failure to properly compensate the members of the CALIFORNIA LABOR SUB-CLASS for overtime worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any workweek.

1 59. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
2 public policy, an employer must timely pay its employees for all hours worked.

3 60. Cal. Lab. Code § 510 further provides that employees in California shall not be
4 employed more than eight (8) hours per workday and/or more than forty (40) hours per
5 workweek unless they receive additional compensation beyond their regular wages in amounts
6 specified by law.

7 61. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
8 including overtime compensation and interest thereon, together with the costs of suit. Cal. Lab.
9 Code § 1198 further states that the employment of an employee for longer hours than those
10 fixed by the Industrial Welfare Commission is unlawful.

11 62. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
12 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
13 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
14 including overtime work. DEFENDANT maintained a wage practice of paying PLAINTIFF and
15 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
16 amount of overtime worked and correct applicable overtime rate for the amount of overtime
17 they worked. As set forth herein, DEFENDANT's policy and practice was to unlawfully and
18 intentionally deny timely payment of wages due for the overtime worked by PLAINTIFF and
19 the other members of the CALIFORNIA LABOR SUB-CLASS, and DEFENDANT in fact
20 failed to pay these employees the correct applicable overtime wages for all overtime worked.

21 63. DEFENDANT's unlawful wage and hour practices manifested, without
22 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
23 implementing a policy and practice that denied accurate compensation to PLAINTIFF and the
24 other members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked, including,
25 the work performed in excess of eight (8) hours in a workday and/or forty (40) hours in any
26 workweek.

27 64. In committing these violations of the California Labor Code, DEFENDANT
28

1 inaccurately calculated the amount of overtime worked and the applicable overtime rates and
2 consequently underpaid the actual time worked by PLAINTIFF and other members of the
3 CALIFORNIA LABOR SUB-CLASS. DEFENDANT acts in an illegal attempt to avoid the
4 payment of all earned wages, and other benefits in violation of the California Labor Code, the
5 Industrial Welfare Commission requirements and other applicable laws and regulations.

6 65. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
7 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did not
8 receive full compensation for all overtime worked.

9 66. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
10 from the overtime requirements of the law. None of these exemptions are applicable to
11 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
12 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were not
13 subject to a valid collective bargaining agreement that would preclude the causes of action
14 contained herein this Complaint. Rather, the PLAINTIFF brings this Action on behalf of
15 himself and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations of
16 non-negotiable, non-waiveable rights provided by the State of California.

17 67. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
18 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked that
19 they are entitled to, constituting a failure to pay all earned wages.

20 68. DEFENDANT failed to accurately pay PLAINTIFF and the other members of the
21 CALIFORNIA LABOR SUB-CLASS overtime wages for the time they work which is in excess
22 of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198,
23 even though PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
24 are required to work, and do in fact work, overtime as to which DEFENDANT failed to
25 accurately record and pay using the applicable overtime rate as evidenced by DEFENDANT's
26 business records and witnessed by employees.

27 69. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
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1 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
2 CLASS for the true time they work, PLAINTIFF and the other members of the CALIFORNIA
3 LABOR SUB-CLASS have suffered and will continue to suffer an economic injury in amounts
4 which are presently unknown to them and which will be ascertained according to proof at trial.

5 70. DEFENDANT knew or should have known that PLAINTIFF and the other
6 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime
7 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,
8 to not pay employees for their labor as a matter of company policy, practice and procedure, and
9 DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF and the other members
10 of the CALIFORNIA LABOR SUB-CLASS the applicable overtime rate.

11 71. In performing the acts and practices herein alleged in violation of California labor
12 laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-CLASS for
13 all time worked and provide them with the requisite overtime compensation, DEFENDANT
14 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and
15 the other members of the CALIFORNIA LABOR SUB-CLASS with a conscious of and utter
16 disregard for their legal rights, or the consequences to them, and with the despicable intent of
17 depriving them of their property and legal rights, and otherwise causing them injury in order
18 to increase company profits at the expense of these employees.

19 72. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
20 therefore request recovery of all unpaid wages, including overtime wages, according to proof,
21 interest, statutory costs, as well as the assessment of any statutory penalties against
22 DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable
23 statutes. To the extent minimum and/or overtime compensation is determined to be owed to the
24 CALIFORNIA LABOR SUB-CLASS Members who have terminated their employment,
25 DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these
26 individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
27 penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members.

1 DEFENDANT's conduct as alleged herein was willful, intentional and not in good faith.
2 Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are entitled to
3 seek and recover statutory costs.

4
5 **THIRD CAUSE OF ACTION**

6 **For Failure To Pay Minimum Wages**

7 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

8 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**
9 **and Against All Defendants)**

10 73. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
11 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
12 paragraphs of this Complaint..

13 74. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
14 CLASS bring a claim for DEFENDANT's willful and intentional violations of the
15 California Labor Code and the Industrial Welfare Commission requirements for
16 DEFENDANT's failure to accurately calculate and pay minimum wages to PLAINTIFF and
17 CALIFORNIA CLASS Members.

18 75. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
19 public policy, an employer must timely pay its employees for all hours worked.

20 76. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by
21 the commission is the minimum wage to be paid to employees, and the payment of a less
22 wage than the minimum so fixed in unlawful.

23 77. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid
24 wages, including minimum wage compensation and interest thereon, together with the costs
25 of suit.

26 78. DEFENDANT maintained a wage practice of paying PLAINTIFF and the
27 other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
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1 amount of time they work, including time spent engaging in work tasks while off the clock.
2 To the extent that these off-the-clock job tasks do not qualify for overtime premium
3 payment, DEFENDANT failed to pay minimum wages for the time worked off-the-clock in
4 violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1. As set forth herein,
5 DEFENDANT's policy and practice was to unlawfully and intentionally deny timely
6 payment of wages due to PLAINTIFF and the other members of the CALIFORNIA LABOR
7 SUB-CLASS.

8 79. DEFENDANT's unlawful wage and hour practices manifested, without
9 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
10 implementing a policy and practice that denied accurate compensation to PLAINTIFF and
11 the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum
12 wage pay.

13 80. In committing these violations of the California Labor Code, DEFENDANT
14 inaccurately calculated the correct time worked and consequently underpaid the actual time
15 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
16 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and
17 other benefits in violation of the California Labor Code, the Industrial Welfare Commission
18 requirements and other applicable laws and regulations.

19 81. As a direct result of DEFENDANT's unlawful wage practices as alleged
20 herein, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did
21 not receive the correct minimum wage compensation for their time worked for
22 DEFENDANT.

23 82. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
24 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
25 Members to work without paying them for all the time they were under DEFENDANT's
26 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
27 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked
28

1 that they were entitled to, constituting a failure to pay all earned wages.

2 83. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
3 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
4 CLASS for the true time they work, PLAINTIFF and the other members of the
5 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an
6 economic injury in amounts which are presently unknown to them and which will be
7 ascertained according to proof at trial.

8 84. DEFENDANT knew or should have known that PLAINTIFF and the other
9 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their
10 time worked. DEFENDANT elected, either through intentional malfeasance or gross
11 nonfeasance, to not pay employees for their labor as a matter of company policy, practice
12 and procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF
13 and the other members of the CALIFORNIA LABOR SUB-CLASS the correct minimum
14 wages for their time worked.

15 85. In performing the acts and practices herein alleged in violation of California
16 labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-
17 CLASS for all time worked and provide them with the requisite compensation,
18 DEFENDANT acted and continues to act intentionally, oppressively, and maliciously
19 toward PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
20 with a conscious of and utter disregard for their legal rights, or the consequences to them,
21 and with the despicable intent of depriving them of their property and legal rights, and
22 otherwise causing them injury in order to increase company profits at the expense of these
23 employees.

24 86. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
25 CLASS therefore request recovery of all unpaid wages, according to proof, interest,
26 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT,
27 in a sum as provided by the California Labor Code and/or other applicable statutes. To the
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1 extent minimum wage compensation is determined to be owed to the CALIFORNIA
2 LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT's
3 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also
4 be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought
5 herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's
6 conduct as alleged herein was willful, intentional and not in good faith. Further,
7 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek
8 and recover statutory costs.

9
10 **FOURTH CAUSE OF ACTION**

11 **For Failure to Provide Required Meal Periods**

12 **[Cal. Lab. Code §§ 226.7 & 512]**

13 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
14 **Defendants)**

15 87. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
16 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
17 paragraphs of this Complaint.

18 88. During the CALIFORNIA CLASS PERIOD, from time to time,
19 DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFF
20 and the other CALIFORNIA LABOR SUB-CLASS Members as required by the applicable
21 Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and
22 CALIFORNIA LABOR SUB-CLASS MEMBERS did not prevent these employees from
23 being relieved of all of their duties for the legally required off-duty meal periods. As a
24 result of their rigorous work schedules and DEFENDANT's loss prevention inspection
25 policy, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were from
26 time to time not fully relieved of duty by DEFENDANT for their meal periods.
27 Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA
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1 LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th)
2 hour of work is evidenced by DEFENDANT's business records from time to time. As a
3 result, PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS
4 therefore forfeited meal breaks without additional compensation and in accordance with
5 DEFENDANT's corporate policy and practice.

6 89. DEFENDANT further violated California Labor Code §§ 226.7 and the
7 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA
8 LABOR SUB-CLASS Members who were not provided a meal period, in accordance with
9 the applicable Wage Order, one additional hour of compensation at each employee's regular
10 rate of pay for each workday that a meal period was not provided.

11 90. As a proximate result of the aforementioned violations, PLAINTIFF and
12 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
13 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
14 suit.

15 **FIFTH CAUSE OF ACTION**

16 **For Failure to Provide Required Rest Periods**

17 **[Cal. Lab. Code §§ 226.7 & 512]**

18 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
19 **Defendants)**

20 91. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
21 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
22 paragraphs of this Complaint.

23 92. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
24 from time to time required to work in excess of four (4) hours without being provided ten
25 (10) minute rest periods. Further, these employees were denied their first rest periods of at
26 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and
27 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and
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1 eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some
2 shifts worked of ten (10) hours or more. PLAINTIFF and other CALIFORNIA LABOR
3 SUB-CLASS Members were also not provided with one hour wages in lieu thereof. As a
4 result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA LABOR
5 SUB-CLASS Members were periodically denied their proper rest periods by DEFENDANT
6 and DEFENDANT's managers.

7 93. DEFENDANT further violated California Labor Code §§ 226.7 and the
8 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA
9 LABOR SUB-CLASS Members who were not provided a rest period, in accordance with
10 the applicable Wage Order, one additional hour of compensation at each employee's regular
11 rate of pay for each workday that rest period was not provided.

12 94. As a proximate result of the aforementioned violations, PLAINTIFF and
13 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
14 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
15 suit.

16 17 **SIXTH CAUSE OF ACTION**

18 **For Failure to Provide Accurate Itemized Statements**

19 **[Cal. Lab. Code § 226]**

20 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
21 **Defendants)**

22 95. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
23 reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs
24 of this Complaint.

25 96. Cal. Labor Code § 226 provides that an employer must furnish employees with
26 an "accurate itemized" statement in writing showing:

27 (1) gross wages earned,

- (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- (3) the number of piecerate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- (5) net wages earned,
- (6) the inclusive dates of the period for which the employee is paid,
- (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- (8) the name and address of the legal entity that is the employer, 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.

97. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. From time to time, DEFENDANT violated Cal. Lab. Code § 226 by failing to provide wage statements that identified the correct gross and net wages earned. Aside from the violations listed above, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result, from time to time DEFENDANT provided PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal. Lab. Code § 226.

1 98. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor
2 Code § 226, causing injury and damages to the PLAINTIFF and the other members of the
3 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
4 expended calculating the correct rates for the overtime worked and the amount of employment
5 taxes which were not properly paid to state and federal tax authorities. These damages are
6 difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA
7 LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the
8 initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each
9 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according
10 to proof at the time of trial (but in no event more than four thousand dollars (\$4,000.00) for
11 PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

12
13 **SEVENTH CAUSE OF ACTION**

14 **For Failure to Pay Wages When Due**

15 **[Cal. Lab. Code §§ 201, 202, 203]**

16 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
17 **Defendants)**

18 99. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS,
19 reallege and incorporate by reference, as though fully set forth herein, the prior paragraphs of
20 this Complaint.

21 100. Cal. Lab. Code § 200 provides that:

22 As used in this article:

23 (a) "Wages" includes all amounts for labor performed by employees of every
24 description, whether the amount is fixed or ascertained by the standard of time,
task, piece, Commission basis, or other method of calculation.

25 (b) "Labor" includes labor, work, or service whether rendered or performed under
26 contract, subcontract, partnership, station plan, or other agreement if the labor to
be paid for is performed personally by the person demanding payment.

27 101. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges
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1 an employee, the wages earned and unpaid at the time of discharge are due and payable
2 immediately.”

3 102. Cal. Lab. Code § 202 provides, in relevant part, that:

4 If an employee not having a written contract for a definite period quits his or her
5 employment, his or her wages shall become due and payable not later than 72
6 hours thereafter, unless the employee has given 72 hours previous notice of his
7 or her intention to quit, in which case the employee is entitled to his or her wages
8 at the time of quitting. Notwithstanding any other provision of law, an employee
9 who quits without providing a 72-hour notice shall be entitled to receive payment
10 by mail if he or she so requests and designates a mailing address. The date of the
11 mailing shall constitute the date of payment for purposes of the requirement to
12 provide payment within 72 hours of the notice of quitting.

13 103. There was no definite term in PLAINTIFF’s or any CALIFORNIA LABOR SUB-
14 CLASS Members’ employment contract.

15 104. Cal. Lab. Code § 203 provides:

16 If an employer willfully fails to pay, without abatement or reduction, in
17 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee
18 who is discharged or who quits, the wages of the employee shall continue as a
19 penalty from the due date thereof at the same rate until paid or until an action
20 therefor is commenced; but the wages shall not continue for more than 30 days.

21 105. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-CLASS
22 Members has terminated and DEFENDANT has not tendered payment of wages, to these
23 employees who missed meal and rest breaks, as required by law.

24 106. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
25 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated,
26 PLAINTIFF demands up to thirty days of pay as penalty for not paying all wages due at time
27 of termination for all employees who terminated employment during the CALIFORNIA
28 LABOR SUB-CLASS PERIOD, and demands an accounting and payment of all wages due,
plus interest and statutory costs as allowed by law.

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SEVENTH CAUSE OF ACTION

For Failure to Reimburse Employees for Required Expenses

[Cal. Lab. Code § 2802]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All

Defendants)

107. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

108. Cal. Lab. Code § 2802 provides, in relevant part, that:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

109. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for required expenses incurred in the discharge of their job duties for DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not limited to, costs related to using their personal cellular phones all on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to use their personal cell phones to respond to work related issues. DEFENDANT's policy, practice and procedure was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their personal cellular phones for DEFENDANT within the course and scope of their employment for DEFENDANT. These expenses were necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to do under the laws and regulations of California.

110. PLAINTIFF therefore demands reimbursement for expenditures or losses incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job

1 duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest
2 at the statutory rate and costs under Cal. Lab. Code § 2802.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
5 severally, as follows:

6 1. On behalf of the CALIFORNIA CLASS:

- 7 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
8 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
9 B) An order temporarily, preliminarily and permanently enjoining and restraining
10 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
11 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully
12 withheld from compensation due to PLAINTIFF and the other members of the
13 CALIFORNIA CLASS; and,
14 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
15 for restitution of the sums incidental to DEFENDANT's violations due to
16 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

17 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

- 18 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, and
19 Eighth Causes of Action asserted by the CALIFORNIA LABOR SUB-CLASS
20 as a class action pursuant to Cal. Code of Civ. Proc. § 382;
21 B) Compensatory damages, according to proof at trial, including compensatory
22 damages for minimum wages and overtime compensation due PLAINTIFF and
23 the other members of the CALIFORNIA LABOR SUB-CLASS, during the
24 applicable CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon
25 at the statutory rate;
26 C) Meal and rest period compensation pursuant to California Labor Code Section
27 226.7 and the applicable IWC Wage Order;

- 1 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
2 in which a violation occurs and one hundred dollars (\$100) per each member of
3 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
4 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
5 an award of costs for violation of Cal. Lab. Code § 226;
- 6 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
7 1197;
- 8 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
9 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
10 costs of suit; and,
- 11 G) The wages of all terminated employees from the CALIFORNIA LABOR
12 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
13 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

14 3. On all claims:

- 15 A) An award of interest, including prejudgment interest at the legal rate;
16 B) Such other and further relief as the Court deems just and equitable; and,
17 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the law,
18 including, but not limited to, pursuant to Labor Code §226, §1194, and/or §2802.
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20 Dated: April 22, 2020

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

21
22 By: _____

23 Norman B. Blumenthal
24 Attorneys for Plaintiff
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DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: April 22, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Norman B. Blumenthal
Attorneys for Plaintiff