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

LI FAN and KENNETH CHIARITO,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

HOME DEPOT U.S.A. INC., a Delaware
Corporation; and DOES 1-50, inclusive,

Defendants.

Case No. MCV084871
Assigned to The Honorable Brian W. Enos,
Dept. 45

**FIRST AMENDED CLASS ACTION
COMPLAINT PURSUANT TO
CALIFORNIA CODE OF CIVIL
PROCEDURE §382 FOR:**

1. Failure to Pay Wages Including Overtime as Required by Labor Code §§ 510 and 1194
2. Failure to Provide Meal Periods
3. Failure to Provide Rest Periods
4. Failure to Pay Timely Wages Required by Labor Code § 203
5. Failure to Timely Pay Wages During Employment § 204
6. Failure to Provide Accurate Itemized Wage Statements Required by Labor Code § 226, 1174, 1198
7. Failure to Reimburse Necessary Business Expenses
8. Violation of Business & Professions Code § 17200, et seq.
9. Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, et seq

DEMAND FOR JURY TRIAL

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1 Plaintiffs LI FAN and KENNETH CHIARITO (collectively “Plaintiffs”), individually and on
2 behalf of all others similarly situated (hereinafter collectively referred to as the “Class” or “Class
3 Member”), hereby files this Complaint against Defendants HOME DEPOT U.S.A. INC., and DOES
4 1-50, inclusive (collectively “Defendants”) and alleges on information and belief as follows:

5 **I. JURISDICTION AND VENUE**

6 1. This class action is brought pursuant to California Code of Civil Procedure §382.
7 The monetary damages and restitution sought by Plaintiffs exceed the minimum jurisdiction limits
8 of the California Superior Court and will be established according to proof at trial.

9 2. This Court has jurisdiction over this action pursuant to the California Constitution
10 Article VI §10, which grants the California Superior Court original jurisdiction in all causes except
11 those given by statute to other courts. The statutes under which this action is brought do not give
12 jurisdiction to any other court.

13 3. This Court has jurisdiction over Defendants because, upon information and belief,
14 each Defendant either has sufficient minimum contacts in California, or otherwise intentionally
15 avails itself of the California market so as to render the exercise of jurisdiction over it by the
16 California Courts consistent with traditional notions of fair play and substantial justice.

17 4. The California Superior Court also has jurisdiction in this matter because the individual
18 claims of the members of the Classes herein are under the seventy-five thousand dollar (\$75,000.00)
19 jurisdictional threshold for Federal Court and the aggregate claim, including attorneys’ fees, is under
20 the five million dollar (\$5,000,000.00) threshold of the Class Action Fairness Act of 2005. Further,
21 there is no federal question at issue, as the issues herein are based solely on California statutes and law,
22 including the Labor Code, IWC Wage Orders, CCP, California Civil Code (“CC”) and B&PC.

23 5. Venue is proper in this Court because upon information and belief, one or more of
24 the Defendants, reside, transact business, or have offices in this County and/or the acts or omissions
25 alleged herein took place in this County.

26 **II. PARTIES**

27 6. Plaintiff, LI FAN, was at all times relevant to this action, a resident of California.
28 Plaintiff was employed by Defendants in approximately July 2016 as a Non-Exempt Employee and

1 worked during the liability period for Defendants as a retail associate, until Plaintiff's separation
2 from Defendants' employ in approximately October 2020. Plaintiff was assigned to work at
3 Defendants' Madera, California facility performing duties as a cashier.

4 7. Plaintiff KENNETH CHIARITO has worked for Defendants as an hourly paid, non-
5 exempt Sales Associate since approximately April 2013. Plaintiff works for Defendants at a Home
6 Depot retail store in Canoga Park, California. Plaintiff typically works eight (8) hours or more per
7 day, five (5) days per week, and approximately 40 hours or more per week. Plaintiff's primary job
8 duties include, without limitation, opening and maintaining the electrical department, interacting
9 with customers, and providing customer service.

10 8. Defendants THE HOME DEPOT USA, INC., are engaged in the ownership and
11 operation of an American home improvement supplies retailing company that sells tools,
12 construction products, and services. Defendants operate various store locations across the United
13 States and California, including but not limited to Bakersfield, Los Angeles, Orange, Sacramento,
14 San Diego, and San Francisco. Plaintiffs estimate there are in excess of 100 Non-Exempt Employees
15 who work or have worked for Defendants over the last four years.

16 9. Other than identified herein, Plaintiffs are unaware of the true names, capacities,
17 relationships, and extent of participation in the conduct alleged herein, of the Defendants sued as
18 DOES 1 through 50, but is informed and believes and thereon alleges that said defendants are legally
19 responsible for the wrongful conduct alleged herein and therefore sues these defendants by such
20 fictitious names. Plaintiffs will amend this complaint when their true names and capabilities are
21 ascertained.

22 10. Plaintiffs are informed and believe and thereon allege that each defendant, directly
23 or indirectly, or through agents or other persons, employed Plaintiffs and other members of the
24 Class, and exercised control over their wages, hours, and working conditions. Plaintiffs are
25 informed and believe and thereon allege that each Defendant acted in all respects pertinent to this
26 action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all
27 respects pertinent hereto, and the acts of each Defendant are legally attributable to the other
28 defendants.

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11. Plaintiffs bring this action individually and on behalf of all others similarly

12. Plaintiffs also seeks to represent the subclass(es) composed of and defined as

Sub-Class 3: All Class Members who are or were employed by Defendants and subject to Defendant’s Unfair Business Practices (hereinafter collectively referred to as the “Unfair Business Practice Subclass”).

13. Plaintiffs reserve the right under California Rule of Court 3.765(b) and other

14. The term “Class” includes Plaintiffs and all members of the Class and each of the

15. There is a well-defined community of interest in the litigation and the proposed

16. **Numerosity.** The members of the Class are so numerous that individual joinder

17. Commonality. Common questions of law and fact exist as to all Class members

1 and predominate over any questions that affect only individual members of the Class. These
2 common questions include, but are not limited to:

3 i. Whether Defendants failed to pay minimum wage compensation to Plaintiffs
4 and Class Members for all hours worked;

5 ii. Whether Defendants failed to accurately pay overtime to Plaintiffs and Class
6 Members;

7 iii. Whether Defendants failed to provide Plaintiffs and class members with meal
8 periods;

9 iv. Whether Defendants failed to authorize and permit Plaintiffs and class
10 members to take rest periods;

11 v. Whether Defendants maintained accurate payroll records as required by
12 California Labor Code section 1174(d);

13 vi. Whether Defendants failed to reimburse Plaintiffs and class members for
14 necessary and required business-related expenditures and/or losses incurred by them in the scope of
15 their employment;

16 vii. Whether Defendants failed to maintain accurate time record including
17 pursuant to Labor Code sections 1174.5 and the applicable IWC Wage Orders;

18 viii. Whether Defendants failed provide accurate itemized wage statements
19 pursuant to Labor Code sections 226;

20 ix. Whether Defendants violated Business and Professions Code and Labor Code
21 sections 201-204, 226.7, 510, 512(a), 516, 558, 226, 226.3, 512, 1174, 1174.5, 1175, 1194, 1197,
22 1197.1, 1198, 2802, and applicable IWC Wage Orders which violation constitutes a violation of
23 fundamental public policy; and

24 x. Whether Plaintiffs and the Members of the Plaintiffs Class are entitled to
25 equitable relief pursuant to Business and Professions Code section 17200, *et. seq.*

26 xi. Whether Plaintiffs and the Members of the Plaintiffs Class are entitled to
27 relief in the form of back wages, penalties and interest for failure to pay minimum wages pursuant
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1 to Labor Code sections 558, 1194 and 1197.

2 18. Typicality. Plaintiffs' claims herein alleged are typical of those claims which
3 could be alleged by any member of the Class and/or Subclass, and the relief sought is typical of the
4 relief which would be sought by each member of the Class and/or Subclass in separate actions.
5 Plaintiffs and all members of the Class and or Subclass sustained injuries and damages arising out
6 of and caused by Defendants' common course of conduct in violation of California laws, regulations,
7 and statutes as alleged herein.

8 19. Adequacy. Plaintiffs are qualified to, and will fairly and adequately protect the
9 interests of each member of the Class and/or Subclass with whom Plaintiffs has a well defined
10 community of interest and typicality of claims, as demonstrated herein. Plaintiffs acknowledges an
11 obligation to make known to the Court any relationships, conflicts, or differences with any member
12 of the Class and/or Subclass. Plaintiffs' attorneys and the proposed Counsel for the Class and
13 Subclass are versed in the rules governing class action discovery, certification, litigation, and
14 settlement and experienced in handling such matters. Other former and current employees of
15 Defendants may also serve as representatives of the Class and Subclass if needed.

16 20. Superiority. A class action is superior to other available means for the fair and
17 efficient adjudication of the claims of the Class and would be beneficial for the parties and the court.
18 Class action treatment will allow a large number of similarly situated persons to prosecute their
19 common claims in a single forum, simultaneously, efficiently, and without the unnecessary
20 duplication of effort and expense that numerous individual actions would require. The damages
21 suffered by each Class member are relatively small in the sense pertinent to class action analysis,
22 and the expense and burden of individual litigation would make it extremely difficult or impossible
23 for the individual Class Members to seek and obtain individual relief. A class action will serve an
24 important public interest by permitting such individuals to effectively pursue recovery of the sums
25 owed to them. Further, class litigation prevents the potential for inconsistent or contradictory
26 judgments raised by individual litigation.

27 21. Public Policy Considerations: Employers in the state of California violate
28 employment and labor laws everyday. Current employees are often afraid to assert their rights out

1 of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because
2 they believe their former employers may damage their future endeavors through negative references
3 and/or other means. The nature of this action allows for the protection of current and former
4 employees' rights without fear or retaliation or damage.

5 **IV. FACTUAL ALLEGATIONS**

6 22. At all times set forth herein, Defendants employed Plaintiffs and other persons in the
7 capacity of non-exempt positions, however titled, throughout the state of California.

8 23. Plaintiffs are informed and believe Class Members have at all times pertinent hereto
9 been Non-Exempt within the meaning of the California Labor Code and the implementing rules and
10 regulations of the IWC California Wage Orders.

11 24. Defendants employed Plaintiffs and Class Members as a Non-Exempt hourly paid
12 employees during the liability period.

13 25. Defendants continue to employ Non-Exempt Employees, however titled, in
14 California and implement a uniform set of policies and practices to all non-exempt employees, as
15 they were all engaged in the generic job duties of producing, selling, and distributing hardware and
16 construction materials.

17 26. Plaintiffs are informed and believe, and thereon allege, that Defendants are and were
18 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the
19 requirements of California's wage and employment laws.

20 27. On information and belief, during the relevant time frame, Plaintiffs and Class
21 Members frequently worked well over eight (8) hours in a day and forty (40) hours in a work week
22 and worked approximately five (5)-day work weeks.

23 28. Plaintiffs are informed and believe that Plaintiffs and Class Members were not
24 compensated for all time worked as a result of off-the-clock work performed. For instance, Plaintiffs
25 and Class Members, prior to every shift, were required by Defendants' management to put on
26 various equipment including but not limited to: (1) gloves, (2) masks, (3) uniforms, (4) aprons, and
27 (5) accessories to carry in the apron. Plaintiffs and Class Members were also required to go through
28 mandatory temperature checks. These tasks and temperature checks had to be completed before

1 Plaintiffs and Class Members were permitted to clock in for their shifts. Further, Defendants'
2 management, at the end of the day, also required Plaintiffs and Class Members to clock out first
3 prior to them taking off their equipment. Plaintiffs and Class Members were not compensated for
4 these pre and post shift activities and resulted in a disproportionate underpayment of minimum and
5 overtime wages.

6 29. Defendants also failed to provide accurate, lawful itemized wage statements to
7 Plaintiffs and the Class Members in part because of the above specified violations. In addition, upon
8 information and belief, Defendants omitted an accurate accounting of all work time performed, and
9 failed to provide an accurate itemization of total hours worked, including gross pay and net pay
10 figures from Plaintiffs and the Class Members' wage statements.

11 30. Plaintiffs are informed and believe, and thereon alleges, that at all times herein
12 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
13 thereof for resignations without prior notice as the case may be) they had a duty to accurately
14 compensate Plaintiffs and Class Members for all wages owed including minimum wages and
15 overtime wages that Defendants had the financial ability to pay such compensation, but willfully,
16 knowingly, recklessly, and/or intentionally failed to do so in part because of the above-specified
17 violations.

18 31. Upon information and belief, Defendants knew and or should have known that it is
19 improper to implement policies and commit unlawful acts such as:

- 20 (a) failing to pay Plaintiffs and Class Members for all wages including overtime wages
21 owed;
22 (b) failing to timely pay Plaintiffs and Class Members;
23 (c) failing to provide accurate itemized wage statements; and
24 (d) conducting and engaging in unfair business practices.

25 32. In addition to the violations above, and on information and belief, Defendants knew
26 they had a duty to compensate Plaintiffs and Class Members for the allegations asserted herein and
27 that Defendants had the financial ability to pay such compensation, but willfully, knowingly,
28 recklessly, and/or intentionally failed to do so.

1 33. Plaintiffs and Class Members they seek to represent are covered by, and Defendants
2 are required to comply with, applicable California Labor Codes, Industrial Welfare Commission
3 Occupational Wage Orders (hereinafter “IWC Wage Orders”) and corresponding applicable
4 provisions of California Code of Regulations, Title 8, section 11000 *et seq.*

5 **FIRST CAUSE OF ACTION**

6 **FAILURE TO PAY WAGES INCLUDING OVERTIME**

7 **(Against All Defendants)**

8 34. Plaintiffs incorporate and re-allege each and every allegation contained above as
9 though fully set forth herein.

10 35. At all times relevant, the IWC wage orders applicable to Plaintiffs’ and the Class
11 require employers to pay its employees for each hour worked at least minimum wage. “Hours
12 worked” means the time during which an employee is subject to the control of an employer, and
13 includes all the time the employee is suffered or permitted to work, whether or not required to do
14 so, and in the case of an employee who is required to reside on the employment premises, that time
15 spent carrying out assigned duties shall be counted as hours worked.

16 36. At all relevant times, Labor Code §1197 provides that the minimum wage for
17 employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a
18 lesser wage than the established minimum is unlawful. Further, pursuant to the IWC Wage Order
19 and Labor Code, Plaintiffs and Class Members are to be paid minimum wage for each hour worked,
20 and cannot be averaged At all times relevant, the IWC wage orders applicable to Plaintiffs and Class
21 Members’ employment by Defendants provided that employees working for more than eight (8)
22 hours in a day or forty (40) hours in a work week are entitled to overtime compensation at the rate
23 of one and one-half times the regular rate of pay for all hours worked in excess of eight (8) hours in
24 a day or forty (40) hours in a work week. An employee who works more than twelve (12) hours in
25 a day is entitled to overtime compensation at a rate of twice the regular rate of pay.

26 37. At all relevant times, Labor Code §1197.1 states “[a]ny employer or other persons
27 acting individually as an officer, agent, or employee of another person, who pays or causes to be
28 paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by

1 an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated
2 damages payable to the employee, and any applicable penalties pursuant to Section 203.

3 38. Labor Code §510 codifies the right to overtime compensation at the rate of one and
4 one-half times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or
5 forty (40) hours in a work week and to overtime compensation at twice the regular rate of pay for
6 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
7 seventh day of work in a particular work week.

8 39. At all times relevant, Plaintiffs and Class Members regularly performed non-exempt
9 work and thus were subject to the overtime requirements of the IWC Wage Orders, CCR § 11000,
10 et. seq. and the Labor Code.

11 40. At all times relevant, Plaintiffs and Class Members consistently worked in excess of
12 eight (8) hours in a day and/or forty (40) hours in a week as a result of the off-the-clock work
13 performed as discussed above. Defendants did not compensate Plaintiffs and Class Members for
14 such time which results in a disproportionate underpayment of minimum and overtime wages.

15 41. Accordingly, Defendants owe Plaintiffs and Class Members overtime wages, and
16 have failed to pay Plaintiffs and Class Members the overtime wages owed.

17 42. Pursuant to Labor Code §§ 510, 558 and 1194, Plaintiffs and Class Members are
18 entitled to recover their unpaid wages and overtime compensation, as well as interest, costs, and
19 attorneys' fees.

20 **SECOND CAUSE OF ACTION**

21 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**

22 **(Against All Defendants)**

23 43. Plaintiffs incorporate and re-alleges each and every allegation contained above as
24 though fully set forth herein.

25 44. Pursuant to California Labor Code § 512, no employer shall employ an employee
26 for a work period of more than five (5) hours without providing a meal break of not less than thirty
27 (30) minutes in which the employee is relieved of all of his or her duties. An employer may not
28 employ an employee for a work period of more than ten (10) hours per day without providing the

1 employee with a second meal period of not less than thirty (30) minutes, except that if the total hours
2 worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent
3 of the employer and the employee only if the first meal period was not waived.

4 45. Pursuant to the IWC wage orders applicable to Plaintiffs and Class Members'
5 employment by Defendants, in order for an "on duty" meal period to be permissible, the nature of
6 the work of the employee must prevent an employee from being relieved of all duties relating to his
7 or her work for the employer and the employees must consent in writing to the "on duty" meal
8 period. On information and belief, Plaintiffs and Class Members did not consent in writing to an
9 "on duty" meal period. Further, the nature of the work of Plaintiffs and Class Members was not
10 such that they were prevented from being relieved of all duties. Despite the requirements of the
11 IWC wage orders applicable to Plaintiffs' and Class Members' employment by Defendant and
12 California Labor Code § 512 and § 226.7, Defendants did not provide Plaintiffs and Class Members
13 with all their statutorily authorized meal periods.

14 46. For the four (4) years preceding the filing of this lawsuit, Defendants failed to provide
15 Plaintiffs and Class Members, timely and uninterrupted meal periods of not less than thirty (30)
16 minutes pursuant to the IWC wage orders applicable to Plaintiffs and Class Members' employment
17 by Defendants. As a proximate result of the aforementioned violations, Plaintiffs and the other
18 Class Members have been damaged in an amount according to proof at time of trial.

19 47. By their failure to provide a compliant meal period for each shift worked over five
20 (5) hours and their failure to provide a compliant second meal period for any shift worked over ten
21 (10) hours per day by Plaintiffs and Class Members, and by failing to provide compensation in lieu
22 of such non-provided meal periods, as alleged above, Defendants violated the provisions of
23 California Labor Code §§ 226.7 and 512 and applicable IWC Wage Orders.

24 48. Plaintiffs and Class Members he seeks to represent did not voluntarily or willfully
25 waive meal periods and were regularly required to work shifts without being provided all of their
26 legally required meal periods. Defendants created a working environment in which Plaintiffs and
27 Class Members were not provided all of their meal periods due to shift scheduling and/or work
28 related demands placed upon them by Defendants as discussed above. On information and belief,

1 Defendants' implemented a policy and practice which resulted in systematic and class-wide
2 violations of the Labor Code. On information and belief, Defendants' violations have been
3 widespread throughout the liability period and will be evidenced by Defendants' time records for
4 the Class Members.

5 49. Defendants have implemented, on a company-wide basis, an employer-imposed
6 requirement that Plaintiffs and class members perform self-health screenings before entering
7 Defendants' stores and distribution centers to start their shifts. Defendants have issued disposable
8 plastic thermometers to Plaintiffs and class members and instructed them to perform self-
9 temperature checks before their scheduled shifts, as well as complete online health screening
10 questionnaires. Defendants also have required Plaintiffs and class members to wait in line and have
11 their temperatures taken upon arriving at work, prior to being permitted to clock-in.

12 50. This health screening time was not considered by Defendants when determining
13 whether to provide meal periods to Plaintiffs and class members or determining when to pay meal
14 period premiums. For instance, employees who worked a five-hour shift were entitled to meal
15 periods when the additional health screening time is considered; however, Defendants have failed
16 to provide Plaintiffs and class members meal periods in these circumstances or pay Plaintiffs and
17 class members meal period premiums owed when timely, compliant meal periods were not provided.

18 51. As a result of the unlawful acts of Defendants described herein, Plaintiffs and Class
19 Members they seek to represent have been deprived of premium wages in amounts to be determined
20 at trial. Pursuant to California Labor Code § 226.7, Plaintiffs and Class Members are entitled to
21 recover one (1) hour of premium pay for each day in which a meal period was not provided, along
22 with interest and penalties thereon, attorneys' fees, and costs.

23 **THIRD CAUSE OF ACTION**

24 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**

25 **(Against All Defendants)**

26 52. Plaintiffs incorporate and re-allege each and every allegation contained above as
27 though fully set forth herein.

28 53. Pursuant to the IWC wage orders applicable to Plaintiffs and Class Members'

1 employment by Defendants, “Every employer shall authorize and permit all employees to take rest
2 periods, which insofar as practicable shall be in the middle of each work period.... [The] authorized
3 rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest
4 time per four (4) hours worked or major fraction thereof... Authorized rest period time shall be
5 counted as hours worked, for which there shall be no deduction from wages.” California Labor
6 Code § 226.7(a) prohibits an employer from requiring any employee to work during any rest period
7 mandated by an applicable order of the IWC.

8 54. Defendants were required to authorize and permit employees such as Plaintiffs and
9 Class Members to take rest periods, based upon the total hours worked at a rate of ten (10) minutes
10 net rest per four (4) hours worked, or major fraction thereof, with no deduction from wages. Despite
11 said requirements of the IWC wage orders applicable to Plaintiffs’ and Class Members’ employment
12 by Defendants, Defendants failed and refused to authorize and permit Plaintiffs and Class Members,
13 to take ten (10) minute rest periods for every four (4) hours worked, or major fraction thereof.

14 55. On information and belief Defendants created a working environment in which
15 Plaintiffs and Class Members were not provided all of their rest periods due to shift scheduling
16 and/or work related demands placed upon them by Defendant to meet the needs of Defendants’
17 business as discussed above. On information and belief, Defendants implemented a policy and
18 practice which resulted in systematic and class-wide violations of the Labor Code. On information
19 and belief, Defendants’ violations have been widespread throughout the liability period.

20 56. Labor Code 226.7 provides: (a) No employer shall require any employee to work
21 during any meal or rest period mandated by an applicable order of the Industrial Welfare
22 Commission. (b) If an employer fails to provide an employee a meal period or rest period in
23 accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay
24 the employee one additional hour of pay at the employee s regular rate of compensation for each
25 work day that the meal or rest period is not provided.

26 57. As stated, Defendants have implemented, on a company-wide basis, an employer-
27 imposed requirement that Plaintiffs and class members perform self-health screenings before
28 entering Defendants’ stores and distribution centers to start their shifts. Defendants have issued

1 disposable plastic thermometers to Plaintiffs and class members and instructed them to perform self-
2 temperature checks before their scheduled shifts, as well as complete online health screening
3 questionnaires. Defendants also have required Plaintiffs and class members to wait in line and have
4 their temperatures taken upon arriving at work, prior to being permitted to clock-in.

5 58. This health screening time was not considered by Defendants when determining
6 when to authorize and permit Plaintiffs and class members to take rest periods or when determining
7 when to pay rest period premiums. For instance, employees who worked a 3.5-hour shift were
8 entitled to a rest period when the additional health screening time is considered; however,
9 Defendants have failed to authorize and permit Plaintiffs and class members to take rest periods in
10 these circumstances or pay Plaintiffs and class members rest period premiums owed when compliant
11 rest periods were not authorized or permitted.

12 59. As a proximate result of the aforementioned violations, Plaintiffs and Class Members
13 have been damaged in an amount according to proof at time of trial. Pursuant to California Labor
14 Code § 226.7, Plaintiffs and Class Members are entitled to recover one (1) hour of premium pay for
15 each day in which Defendant failed to provide a rest period to Plaintiffs and the Class, plus interest
16 and penalties thereon, attorneys' fees, and costs.

17
18 **FOURTH CAUSE OF ACTION**

19 **FAILURE TO PAY TIMELY PAY WAGES**

20 **(Against All Defendants)**

21 60. Plaintiffs incorporate and re-allege each and every allegation contained above as
22 though fully set forth herein.

23 61. Plaintiffs incorporate and re-allege each and every allegation contained above as
24 though fully set forth herein. Labor Code §§201-202 requires an employer who discharges an
25 employee to pay compensation due and owing to said employee immediately upon discharge and
26 that if an employee voluntarily leaves his or her employment, his or her wages shall become due
27 and payable not later than seventy-two (72) hours thereafter, unless the employee has given
28 seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee

1 is entitled to his or her wages on their last day of work.

2 62. Labor Code §203 provides that if an employer willfully fails to pay compensation
3 promptly upon discharge, as required by Labor Code §§201-202, the employer is liable for waiting
4 time penalties in the form of continued compensation for up to thirty (30) work days.

5 63. During the relevant time period, Defendants willfully failed and refused, and
6 continue to willfully fail and refuse, to pay Plaintiffs and Class Members their wages, earned and
7 unpaid, either at the time of discharge, or within seventy-two (72) hours of their voluntarily leaving
8 Defendants' employ. These wages include minimum and overtime wages.

9 64. As a result, Defendants are liable to Plaintiffs and members of the Non-Exempt
10 Production Employee class for waiting time penalties pursuant to Labor Code §203, in an amount
11 according to proof at the time of trial.

12 **FIFTH CAUSE OF ACTION**

13 **Failure to Timely Pay Wages During Employment**

14 **(Against all Defendants)**

15 65. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and
16 every allegation set forth above.

17 66. At all times relevant herein set forth, Labor Code section 204 provides that all
18 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
19 days, inclusive, of any calendar month, other than those wages due upon termination of an
20 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the
21 month during which the labor was performed.

22 67. At all times relevant herein, Labor Code section 204 provides that all wages earned
23 by any person in any employment between the sixteenth (16th) and the last day, inclusive, of any
24 calendar month, other than those wages due upon termination of an employee, are due and payable
25 between the first (1st) and the tenth (10th) day of the following month.

26 68. At all times relevant herein, Labor Code section 204 provides that all wages earned
27 for labor in excess of the normal work period shall be paid no later than the payday for the next
28 regular payroll period. Alternatively, at all times relevant herein, Labor Code section 204 provides

1 that the requirements of this section are deemed satisfied by the payment of wages for weekly,
2 biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days
3 following the close of the payroll period.

4 69. During the relevant time period, Defendants willfully failed to timely pay Plaintiff
5 and class members all wages due including, but not limited to, the overtime wages, minimum
6 wages, and/or meal and rest period premiums, within the time periods specified by California
7 Labor Code section 204. Defendants partially compensated Plaintiff and class members for
8 performing health screenings. However, some of this compensation was paid subsequent to the
9 deadlines mandated by Labor Code section 204 and thus was not timely. For example, Plaintiff is
10 informed and believes that Defendants made a series of back payments in August 2020 for health
11 screenings performed as far back as March 2020.

12 70. Accordingly, Defendants did not pay minimum wages for all hours worked by
13 Plaintiff and class members at the time it was due. To the extent that these off-the-clock hours did
14 not qualify for overtime premium payment, Defendants did not pay at least minimum wages for
15 those hours worked off-the clock in violation of California Labor Code sections 1182.12, 1194,
16 1197, 1197.1, and 1198.

17 71. To the extent the wages would have qualified as overtime wages, Defendants'
18 failure to pay Plaintiff and class members the balance of overtime compensation as required by
19 California law, violates the provisions of California Labor Code sections 510 and 1198.

20 72. The failure to pay Plaintiff and class members wages on the schedule mandated by
21 law also gives rise to a civil penalty under California Labor Code section 210, as well as penalties
22 under section 226 for the inaccurate wage statements resulting from Defendants' untimely wage
23 payments.

24 73. Lastly, Defendants failure to timely pay wages constitutes an illegal and unfair
25 practice under California Business & Professions Code section 17200, et seq., which Plaintiffs and
26 class members lack an adequate remedy at law for recompense.

SIXTH CAUSE OF ACTION
VIOLATION OF CALIFORNIA LABOR CODE §§ 226(A), 1174(D), AND 1198—NON-
COMPLIANT WAGE STATEMENTS AND FAILURE TO MAINTAIN ACCURATE
PAYROLL RECORDS
(Against All Defendants)

74. Plaintiffs incorporate and re-allege each and every allegation contained above as though fully set forth herein.

75. Section 226(a) of the California Labor Code requires Defendants to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by Plaintiffs and the Class including applicable hourly rates and reimbursement expenses among other things. Defendants have knowingly and intentionally failed to comply with Labor Code section 226 and 204 on wage statements that have been provided to Plaintiffs and the Class.

76. IWC Wage Orders require Defendants to maintain time records showing, among others, when the employee begins and ends each work period, meal periods, split shift intervals and total daily hours worked in an itemized wage statement, and must show all deductions and reimbursements from payment of wages, and accurately report total hours worked by Plaintiffs and the Class. On information and belief, Defendants have failed to record all or some of the items delineated in Industrial Wage Orders and Labor Code §226.

77. Defendants have failed to accurately record all time worked.

78. Plaintiffs and the Class have been injured as they were unable to determine whether they had been paid correctly for all hours worked per pay period among other things.

79. Pursuant to Labor Code section 226, Plaintiffs and the Class are entitled up to a maximum of \$4,000 each for record keeping violations.

80. Pursuant to Labor Code section 226.3, any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226

81. As a result of the unlawful acts of Defendants, Plaintiffs and the Class Members have been deprived of un-reimbursed expense amounts to be determined at trial, and are entitled to the recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant to Labor Code §§ 226.

82. California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall ... [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments” At all relevant times, and in violation of Labor Code section 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass members showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

83. California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, Defendants failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Plaintiff and Subclass members, in violation of section 1198.

84. Plaintiff and Subclass members are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

SEVENTH CAUSE OF ACTION

FAILURE TO INDEMNIFY NECESSARY BUSINESS EXPENSES

1 **(Against All Defendants)**

2 85. Plaintiffs incorporate and re-allege each and every allegation contained above as
3 though fully set forth herein.

4 86. Labor Code § 2802 requires Defendants to indemnify Plaintiffs and Class Members
5 for necessary expenditures incurred in direct consequences of the discharge of his or her duties.
6 Despite these realities of the job, Defendants failed to provide reimbursements.

7 87. Labor Code §2804 states in pertinent part: “Any contract or agreement, express or
8 implied, made by any employee to waive the benefits of this article or any part thereof is null and
9 void, and this article shall not deprive any employee or his or her personal representative of any
10 right or remedy to which he is entitled under the laws of this State.

11 88. During the relevant time period, Defendants, on a company-wide basis, required that
12 Plaintiffs and class members use their own personal cellular phones, mobile data, internet-accessing
13 devices, and/or internet service providers to carry out their job duties, but failed to reimburse them
14 for the costs of their work-related cellular phone or internet-accessing expenses. Plaintiffs and class
15 members were required to complete online health questionnaires prior to arriving at Defendants’
16 stores and distribution centers to start their shifts. Although Defendants required Plaintiffs and class
17 members to utilize their personal cellular phones, internet-accessing devices, and/or related service
18 plans to carry out their work-related responsibilities, Defendants failed to fully reimburse them for
19 this cost.

20 89. As a result of the unlawful acts of Defendants, Plaintiffs and the Class Members have
21 been deprived of un-reimbursed expense amounts to be determined at trial, and are entitled to the
22 recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and costs, pursuant to
23 Labor Code § 2802.

24 **EIGHTH CAUSE OF ACTION**

25 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200, et.seq.**

26 **(Against All Defendants)**

27 90. Plaintiffs incorporate and re-allege each and every allegation contained above as
28 though fully set forth herein.

91. Defendants' conduct, as alleged in this complaint, has been, and continues to be, unfair, unlawful, and harmful to Plaintiffs and Class Members, Defendants' competitors, and the general public. Plaintiffs seek to enforce important rights affecting the public interest within the meaning of the California Code of Civil Procedure §1021.5.

92. Defendants' policies, activities, and actions as alleged herein, are violations of California law and constitute unlawful business acts and practices in violation of California Business and Professions Code §§17200, et seq.

93. A violation of California Business and Professions Code §§17200, et seq., may be predicated on the violation of any state or federal law. Defendants' policy of failing to pay Plaintiffs and Class members all wages due and owing including overtime wages violates Labor Code § §1194, §510, and applicable IWC Wage Orders and California Code of Regulations.

94. Plaintiffs and Class Members have been personally aggrieved by Defendants' unlawful and unfair business acts and practices alleged herein by the loss of money and/or property.

95. Pursuant to California Business and Professions Code §§17200, et seq., Plaintiffs and Class Members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four (4) years prior to the filing of this complaint; an award of attorneys' fees, interest; and an award of costs.

NINTH CAUSE OF ACTION

**REPRESENTATIVE CLAIMS THE PRIVATE ATTORNEYS GENERAL ACT-
LABOR CODE §§ 2698 *et seq.***

96. Plaintiffs incorporate by reference and re-alleges each and every allegation contained above, as though fully set forth herein.

97. On March 29, 2021 Plaintiff Fan complied with notice requirements pursuant to Labor Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit A**, indicating that the LWDA and Defendants were put on notice of the claims alleged here and that the notice requirement has been satisfied. Sixty-five days have passed and the LWDA has not indicated intent to investigate the claims. Therefore, Plaintiff may proceed with this action in a representative capacity. The substance and violations set forth in this Complaint of which the LWDA was provided

1 timely notice, Plaintiff has also sent a copy of this PAGA Representative Action Complaint to the
2 LWDA.

3 98. On November 24, 2021, Plaintiff Chiarito provided written notice by online filing to
4 the LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
5 Code alleged to have been violated, including facts and theories to support the alleged violations, in
6 accordance with California Labor Code sections 2699.3. Plaintiff's written notice was accompanied
7 with the applicable filing fee of seventy-five (\$75). The LWDA PAGA Administrator confirmed
8 receipt of Plaintiff's written notice and assigned Plaintiff PAGA Case Number LWDA-CM-854460-
9 21. A true and correct copy of Plaintiff's written notice to the LWDA and Defendants is attached
10 hereto as "Exhibit B."

11 99. Plaintiffs are aggrieved employees as defined in Labor Code Section 2699(a).
12 Plaintiffs bring this cause of action on behalf of all current and former California Non-Exempt
13 Employees of Defendants.

14 100. Pursuant to Labor Code section 2699(a) Plaintiffs seek to recover civil penalties for
15 which Defendants are liable due to numerous Labor Code violations as set forth in this Complaint,
16 including without limitation Labor Code section 201-203, 222.5, 226, 226.3, 226.7, 510, 512(a),
17 516, 558, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2802 and, 2698 *et seq.*, applicable IWC
18 Wage Orders and California Code of Regulations, Title 8, section 11000 *et. seq.*

19 101. Defendants violated Labor Code section 510, and 1194 by failing to accurately pay
20 overtime wages owed as discussed above for Defendants' failure to account for the time it took
21 Plaintiffs and Aggrieved Employees put on their work equipment and go through mandatory
22 temperature checks while they are off-the-clock. Therefore, Defendants violated section 510, and
23 1194 by not compensating its Non-Exempt Employees for work performed in excess of eight hours
24 (8) in a day or forty hours in a work week (40). Section 510 of the Labor Code codifies the right to
25 overtime compensation at the rate of one and one-half times the regular rate of pay for all hours
26 worked in excess of eight (8) hours in a day or forty (40) hours in a work week and to overtime
27 compensation twice the regular rate of pay for hours worked in excess of twelve (12) hours in a day
28 or in excess of eight (8) hours in a day on the seventh day of work in a particular work week

1 102. Defendants violated Labor Code section 200, 558, 1194, 1197, by failing to
2 accurately pay at least minimum wages due as a result Defendants' failure to account for the time it
3 took Plaintiffs and Aggrieved Employees put on their work equipment and go through mandatory
4 temperature checks while they are off-the-clock.

5 103. Defendants also willfully violated Labor Code sections 201-203 by failing to provide
6 all owed wages at separation from employment. Labor Code sections 201 and 202 require
7 Defendants to pay their employees all wages due either at time of firing, or within seventy-two (72)
8 hours of voluntary separation, if not sooner. Section 203 of the Labor Code provides that if an
9 employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay
10 the subject employee's wages until the back wages are paid in full or an action is commenced. The
11 penalty cannot exceed 30 days of wages.

12 104. Defendants violated Labor Code sections 226.7, 512(a), 516, and 1198, and the
13 applicable IWC wage order by failing to provide Plaintiffs and other aggrieved employees with meal
14 periods, as alleged herein.

15 105. Defendants violated Labor Code sections 226.7, 512(a), 516, and 1198, and the
16 applicable IWC wage order by failing to authorize and permit Plaintiffs and other aggrieved
17 employees with rest periods, as alleged herein.

18 106. Defendants violated Labor Code sections 222.5 by failing to pay Plaintiffs and other
19 aggrieved employees for the costs of mandatory medical or physical examinations. During the
20 relevant time period, Defendants have implemented, on a company-wide basis, an employer-
21 imposed requirement that Plaintiffs and other aggrieved employees perform self-health screenings
22 before entering Defendants' stores and distributions centers to start their shifts. As stated,
23 Defendants issued disposable plastic thermometers to Plaintiffs and other aggrieved employees and
24 instructed them to perform self-temperature checks before their scheduled shifts as well as complete
25 online health screening questionnaires. Plaintiffs and other aggrieved employees have followed
26 Defendants' instructions and completed the required self-health screenings using their personal
27 cellular phones, internet-accessing devices, and/or related service plans before being permitted to
28 clock in for their shifts. Even though Defendants are requiring mandatory self-health screenings,

1 Defendants are not compensating Plaintiffs and other aggrieved employees for the time they spend
2 undergoing the mandatory self-health screenings or reimbursing Plaintiffs and other aggrieved
3 employees for all expenses incurred to complete online health screening questionnaires

4 107. Defendants violated Labor Code sections 2802 by failing to reimburse Plaintiffs and
5 other all business expenses incurred, as alleged herein.

6 108. Plaintiffs and all other aggrieved employees who were separated from employment
7 are entitled to compensation for all forms of wages earned, including but not limited to
8 compensation minimum and overtime wages, but to date have not received such compensation,
9 therefore entitling them to penalties under PAGA for violations of Labor Code sections 201-203.

10 109. On information and belief, Defendants willfully failed to pay all wages due and
11 owing upon separation from employment. These wages include minimum and overtime wages.

12 110. On information and belief, Defendants failed to provide accurate itemized wage
13 statements which failed to include all hours worked, including overtime, due and owing to Plaintiffs
14 and the aggrieved employees, and the address of the legal entity that is the employer pursuant to
15 Labor Code section 226(a).

16 111. Pursuant to Labor Code section 226.3, any employer who violates subdivision (a) of
17 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
18 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each
19 violation in a subsequent citation, for which the employer fails to provide the employee a wage
20 deduction statement or fails to keep the records required in subdivision (a) of Section 226.

21 112. Additionally, Defendants have no accurate records relating to aggrieved employees'
22 work periods, total daily hours worked, total hours worked per payroll period and applicable pay
23 rates, in violation of applicable Wage Orders. Similarly, Defendants failed to maintain accurate
24 records relating to hours worked daily in violation of Labor Code sections 1174(d), 1174.5.

25 113. Wage Order 7-2001 states "All working employees shall be provided with suitable
26 seats when the nature of the work reasonably permits the use of seats." Plaintiffs allege that
27 Defendants failed to provide employees suitable seats while working even though the nature of the
28 work reasonably permitted the use of such seats.

114. Defendants' failure to provide suitable seats constitutes a violation of applicable California laws and regulations, including Labor Code section 1198 and IWC Wage Order 7-2001.

115. Labor Code section 1198 makes it unlawful to employ an employee under conditions of labor that are prohibited by the applicable Wage Order. By failing to provide Plaintiffs and the other current and former aggrieved employees with suitable seats in violation of Wage Order 5-2001, Defendants also violated Labor Code section 1198.

116. As a result of Defendants' unlawful conduct, Plaintiffs and Aggrieved employees are entitled to penalties to the extent they were not paid at the prevailing wage rate for all hours worked.

117. Plaintiffs and the Representative Aggrieved Employees are entitled to recover Penalties and attorneys' fees and costs under Labor Code section 2698, et. seq.

///

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants, as follows:

Class Certification

1. That this action be certified as a class action;
2. That Plaintiffs be appointed as the representatives of the Class;
3. That Plaintiffs be appointed as the representatives of the Subclass; and
4. That counsel for Plaintiffs are appointed as counsel for the Class and Subclass.

On the First Cause of Action

1. For compensatory damages equal to the unpaid balance of minimum wage compensation and overtime owed to Plaintiffs and Class members as well as interest and costs;
2. For reasonable attorneys' fees and costs pursuant to Labor Code §§ 510, and 1194;
3. For liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon pursuant to Labor Code §§ 1194.2, 558;

1 4. For such other and further relief as the Court deems proper.

2 On the Second Cause of Action

3 1. For one (1) hour of premium pay for each day in which a required meal period was
4 not provided or not provided in a timely manner; and

5 2. For such other and further relief as the Court deems proper.

6 On the Third Cause of Action

7 1. For one (1) hour of premium pay for each day in which a required rest period was
8 not authorized or permitted; and

9 2. For such other and further relief as the Court deems proper.

10 On the Fourth Cause of Action

11 1. For statutory penalties pursuant to Labor Code §203;

12 2. For interest for wages untimely paid; and

13 3. For such other and further relief as the Court deems proper.

14 On the Fifth Cause of Action

15 1. For statutory penalties pursuant to Labor Code §204;

16 2. For interest for wages untimely paid; and

17 3. For such other and further relief as the Court deems proper.

18 On the Sixth Cause of Action

19 1. For statutory penalties pursuant to Labor Code §226, 1174, 1198;

20 2. For interest for wages untimely paid;

21 3. For penalties pursuant to Labor Code §226.3; and

22 4. For such other and further relief as the Court deems proper.

23 On the Seventh Cause of Action

24 1. For statutory penalties pursuant to Labor Code §2802;

25 2. For interest for wages untimely paid; and

26 3. For such other and further relief as the Court deems proper.

27 On the Eighth Cause of Action

1 1. That Defendants, jointly and/or severally, pay restitution of sums to Plaintiffs and
2 Class Members for their past failure to, pay wages, premium wages for meal and/or rest periods,
3 that were not provided as described herein to Plaintiffs and Class Members, and to reimburse
4 expenses, over the last four (4) years in an amount according to proof;

5 2. For pre-judgment interest on any unpaid wages due from the day that such amounts
6 were due;

7 3. For reasonable attorneys' fees that Plaintiffs and Class Members are entitled to
8 recover;

9 4. For costs of suit incurred herein; and

10 5. For such other and further relief as the Court deems proper.

11 On the Ninth Cause of Action

12 1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq.;

13 2. For reasonable attorneys' fees and costs; and

14 3. For such other and further relief as the Court deems proper.

15 **DEMAND FOR JURY TRIAL**

16 Plaintiffs and members of the Class and Subclass request a jury trial in this matter.

17
18
19 Dated: December 6, 2024

JAMES HAWKINS APLC

20 By: /s/ Gregory Mauro

21 JAMES R. HAWKINS
22 GREGORY MAURO
23 MICHAEL CALVO
24 LAUREN FALK
25 AVA ISSARY

26 Attorneys for Plaintiff LI FAN individually
27 and on behalf of all others similarly situated.
28

PROOF OF SERVICE, COUNTY OF ORANGE

I am a resident of the State of California, County of Orange. I am over the age of eighteen years and not a party to the within action. My business address is 9880 Research Drive., Suite 200, Irvine, California 92618.

On December 17, 2024, I served on the interested parties in this action the following document(s) entitled:

FIRST AMENDED COMPLAINT

[XX] BY ELECTRONIC SERVICE: Based on a court Order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from the email address Alma@jameshawkinsaplc.com to the persons at the e-mail addresses listed in the Service List below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

SERVICE LIST

(Service List Attached)

[X] STATE: I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct.

Executed on December 17, 2024, at Irvine, California

Alma Chavarin
Alma Chavarin

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23 **Via LWDA Website Only**

24 Labor and Workforce Development Agency
25 Attn: PAGA Administrator
26 1515 Clay Street, Ste 801
27 Oakland, CA 94612
28 <http://www.dir.ca.gov/Private-Attorneys-General-Act>