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12 Attorneys for Plaintiff LISA DAVEY,
13 individually and on behalf of all others similarly situated

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA**

LISA DAVEY, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

THE HOME DEPOT USA, INC., a Delaware
Corporation, and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.:

Assigned For All Purposes To:

Judge:

Dept.:

**FRIST AMENDED CLASS ACTION
COMPLAINT PURSUANT TO
CALIFORNIA CODE OF CIVIL
PROCEDURE §382**

COMPLAINT FOR:

1. Failure to Provide Meal Periods as Required by Labor Code §§ 226.7, 512 and IWC Wage Orders
2. Failure to Provide Rest Periods as Required by Labor Code §§ 226.7, 512
3. Failure to Pay Timely Wages Required by Labor Code § 203
4. Failure to Provide Accurate Itemized Wage Statements as Required by Labor Code § 226
5. Violation of Business & Professions Code § 17200, et seq.
6. Private Attorney General Act of 2004 ("PAGA")

DEMAND FOR JURY TRIAL

1 Plaintiff LISA DAVEY (“Plaintiff”), individually and on behalf of all others similarly situated
2 (hereinafter collectively referred to as the “Class” or “Class Member”), hereby files this Complaint
3 against Defendants THE HOME DEPOT USA, INC., a California Limited Liability Company; and
4 DOES 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 Plaintiff 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, was at all times relevant to this action, a resident of California. Plaintiff
28 was employed Defendants in approximately May 2016 through, until her separation from

1 Defendants' employ in approximately February 2020. Plaintiff worked at various locations in
2 California, including but not limited to Concord, San Ramon, Pittsburg, Brentwood, Hercules, and
3 Martinez.

4 7. Defendants THE HOME DEPOT USA, INC., are engaged in the ownership and
5 operation of an American home improvement supplies retailing company that sells tools,
6 construction products, and services. Defendants operate various store locations across the United
7 States and California, including but not limited to Bakersfield, Los Angeles, Orange, Sacramento,
8 San Diego, and San Francisco. Plaintiff estimates there are in excess of one hundred Non-Exempt
9 Employees who work or have worked for Defendants over the last four years.

10 8. Other than identified herein, Plaintiff is unaware of the true names, capacities,
11 relationships, and extent of participation in the conduct alleged herein, of the Defendants sued as
12 DOES 1 through 50, but are informed and believe and thereon alleges that said defendants are legally
13 responsible for the wrongful conduct alleged herein and therefore sues these defendants by such
14 fictitious names. Plaintiff will amend this complaint when their true names and capabilities are
15 ascertained.

16 9. Plaintiff are informed and believe and thereon allege that each defendant, directly
17 or indirectly, or through agents or other persons, employed Plaintiff and other members of the Class,
18 and exercised control over their wages, hours, and working conditions. Plaintiff are informed and
19 believe and thereon allege that each Defendant acted in all respects pertinent to this action as the
20 agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects
21 pertinent hereto, and the acts of each Defendant are legally attributable to the other defendants.

22 **III. CLASS ACTION ALLEGATION**

23 10. Plaintiff brings this action individually and on behalf of all others similarly
24 situated as a class action pursuant to Code of Civil Procedure § 382. The members of the Class are
25 defined as follows:

26 All current and former California non-exempt employees of Defendants who received non-
27 discretionary remuneration, including but not limited to "Success Sharing Bonus" and
28 "Homer Award(s)" and was paid any meal and rest period premium payments in the same
period that the non-discretionary remuneration was earned, at any time between May 26,

1 2016 through the present (collectively referred to as the “Class” or “Plaintiff Class” or
2 “Class Members”).

3 11. Plaintiff also seeks to represent the subclass(es) composed of and defined as follows:

4 **Sub-Class 1:** All Class Members who are or were employed by Defendants who worked in
5 excess of six or ten hours in a work day but were not provided with a timely, uninterrupted,
6 duty-free thirty-minute meal period (hereinafter collectively referred to as the “Meal Period
7 Subclass”).

8 **Sub-Class 2:** All Class Members who are or were employed by Defendants who worked in
9 excess of three and a half (3.5) or ten hours in a work day but were not authorized and
10 permitted a rest period (hereinafter collectively referred to as the “Rest Period Subclass”).

11 **Sub-Class 3:** All Class Members who are or were employed by Defendants who received
12 non-discretionary remuneration, including but not limited to “Success Sharing Bonus” and
13 “Homer Award(s)” and was paid any meal and rest period premium payments in the same
14 period that the non-discretionary remunerations was earned, at any time between May 2019
15 through the present (hereinafter collectively referred to as the “Wage Statement/Regular
16 Rate Subclass”).

17 **Sub-Class 4:** All Class Members who have been employed by Defendants at any time
18 between May 2017 and the present and have separated their employment (hereinafter
19 collectively referred to as the “Waiting Time Penalty Subclass”).

20 **Sub-Class 5:** All Class Members who are or were employed by Defendants and subject to
21 Defendant’s Unfair Business Practices (hereinafter collectively referred to as the “Unfair
22 Business Practice Subclass”).

23 12. Plaintiff reserves the right under California Rule of Court 3.765(b) and other
24 applicable laws to amend or modify the class definition with respect to issues or in any other ways.
25 Plaintiff is a member of the Class as well as each of the Sub-Classes.

26 13. The term “Class” includes Plaintiff and all members of the Class and each of the
27 Sub-Classes, if applicable. Plaintiff seeks class-wide recovery based on the allegations set forth in
28 this complaint.

14. There is a well-defined community of interest in the litigation and the proposed
Class is easily ascertainable through the records Defendants are required to keep.

15. Numerosity. The members of the Class are so numerous that individual joinder
of all of them as Plaintiff is impracticable. While the exact number of the Class members is

1 unknown to Plaintiff at this time, Plaintiff are informed and believe and thereon alleges that there
2 are at least 100 (one hundred) Class members. Plaintiff is informed and believes, and alleges that
3 Defendants: (a) failed to provide proper payroll records in violation of Labor Code § 226; (b) failed
4 to include all remuneration, including non-discretionary remuneration, in the regular rate of pay for
5 purposes of calculating meal and rest period premium pay; and (c) engaged in unfair business
6 practices in violation of the California Labor Code, the applicable IWC Wage Orders and the UCL.

7 16. Commonality. Common questions of law and fact exist as to all Class members
8 and predominate over any questions that affect only individual members of the Class. These
9 common questions include, but are not limited to:

10 i. Whether Defendants violated Labor Code sections 226.7, 512, and applicable
11 IWC Wage Orders, by failing to authorize and permit daily rest periods to Plaintiff and Class
12 Members for every four hours or major fraction thereof worked and failing to compensate said
13 employees one hours wages in lieu of rest periods;

14 ii. Whether Defendants violated Labor Code sections 226.7, 512 and applicable
15 IWC Wage Orders, by failing to provide a meal period to Plaintiff and Class Members on days they
16 worked work periods in excess of six and 10 hours and failing to compensate said employees one
17 hour wages in lieu of meal periods;

18 iii. Whether Defendants failed to accurately account for all remunerations into
19 the regular rates of pay for purposes of meal and rest period premiums pursuant to Labor Code
20 sections 226.7 and 512.

21 iv. Whether Defendants failed to maintain accurate time record including
22 recording Plaintiff and Class Members' meal periods pursuant to Labor Code sections 1174.5 and
23 the applicable IWC Wage Orders;

24 v. Whether Defendants provided accurate itemized wage statements pursuant to
25 Labor Code section 226.

26 vi. Whether Defendants failed to timely pay all wages due and owing pursuant
27 to Labor Code sections 201-203.

28 vii. Whether Defendants violated Business and Professions Code and Labor Code

1 sections 201-202, 226, 226.7, 266.3, 512, 1174, 1174.5, 1175, f1197, 1197.1, and applicable IWC
2 Wage Orders which violation constitutes a violation of fundamental public policy; and

3 viii. Whether Plaintiff and the Members of the Plaintiff Class are entitled to
4 equitable relief pursuant to Business and Professions Code section 17200, *et. seq.*

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

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

19 19. Defendants uniformly administered a corporate policy, practice of: (a) failing to pay
20 Plaintiff and the Class all meal and rest break premiums owed; (b) failing to provide accurate
21 itemized wage statements, and (c) engaging in Unfair Business Practices, all in violation of the
22 applicable Labor Codes and IWC Wage order.

23 20. Superiority. A class action is superior to other available means for the fair and
24 efficient adjudication of the claims of the Class and would be beneficial for the parties and the court.
25 Class action treatment will allow a large number of similarly situated persons to prosecute their
26 common claims in a single forum, simultaneously, efficiently, and without the unnecessary
27 duplication of effort and expense that numerous individual actions would require. The damages
28 suffered by each Class member are relatively small in the sense pertinent to class action analysis,

1 and the expense and burden of individual litigation would make it extremely difficult or impossible
2 for the individual Class Members to seek and obtain individual relief. A class action will serve an
3 important public interest by permitting such individuals to effectively pursue recovery of the sums
4 owed to them. Further, class litigation prevents the potential for inconsistent or contradictory
5 judgments raised by individual litigation.

6 21. Public Policy Considerations: Employers in the state of California violate
7 employment and labor laws everyday. Current employees are often afraid to assert their rights out
8 of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because
9 they believe their former employers may damage their future endeavors through negative references
10 and/or other means. The nature of this action allows for the protection of current and former
11 employees' rights without fear or retaliation or damage.

12 IV. FACTUAL ALLEGATIONS

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

15 23. Plaintiff are informed and believe Class Members have at all times pertinent hereto
16 been Non-Exempt within the meaning of the California Labor Code and the implementing rules and
17 regulations of the IWC California Wage Orders.

18 24. Plaintiff are informed and believe that all Class Members are citizens of the state of
19 California.

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

24 26. Plaintiff are informed and believe, and thereon alleges, that Defendants are and were
25 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the
26 requirements of California's wage and employment laws.

27 27. During the relevant time frame, Defendants compensated Plaintiff and Class
28 Members based upon an hourly rate.

1 28. On information and belief, during the relevant time frame, Plaintiff and Class
2 Members typically worked five days a week working at least eight hours or more a day. For instance,
3 Plaintiff's schedule work either Monday through Friday starting from 5:00 a.m. and conclude at
4 1:30 p.m.; or would work Monday through Thursday starting from 8:00 p.m. to 6:00 a.m. the
5 following work day. Plaintiff and Class Members would often work 10 or more hour a day.

6 29. Plaintiff are informed and believe that the Class Members were required to keep
7 similar schedules.

8 30. Plaintiff and the Class Members were regularly required to work shifts in excess of
9 five hours without being provided a lawful meal period and over ten hours in a day without being
10 provided a second lawful meal period as required by law.

11 31. Indeed, during the relevant time, as a consequence of Defendants' staffing and
12 scheduling practices, lack of coverage, work demands, and Defendants' policies and practices,
13 Defendants frequently failed to provide Plaintiff and the Class Members timely, legally complaint
14 uninterrupted 30-minute meal periods on shifts over five hours as required by law.

15 32. Similarly, as a consequence of Defendants' staffing and scheduling practices, lack
16 of coverage, work demands, and Defendants' policies and practices, Defendants frequently failed
17 to provide Plaintiff and the Class Members legally compliant second meal periods on shifts over
18 ten hours as required by law.

19 33. On information and belief, Plaintiff and Class Members did not waive their rights
20 to meal periods under the law.

21 34. Plaintiff and the Class Members were not provided with valid lawful on-duty meal
22 periods.

23 35. Despite the above-mentioned meal period violations, Defendants failed to
24 compensate Plaintiff, and on information and belief, failed to compensate Class Members, one
25 additional hour of pay at their the correctly calculated regular rate as required by California law
26 when meal periods were not timely or lawfully provided in a compliant manner.

27 36. Further Defendants as a matter of corporate policy and procedure regularly failed to
28 pay the meal period premium at the correct rate of pay. Plaintiff and Class Members earned non-
discretionary incentive pay including but not limited to "Success Sharing Bonuses" and "Homer

1 Award(s)” which were not factored into the regular rate of pay for purposes of paying meal period
2 premium pay. Instead during pay periods in which Plaintiff and Class Members earned non-
3 discretionary remuneration, Defendants improperly paid the meal premium pay at the base rate of
4 pay.

5 37. Plaintiff are informed and believe, and thereon alleges, that Defendants know, should
6 know, knew, and/or should have known that Plaintiff and the other Class Members were entitled to
7 receive premium wages under Labor Code §226.7 but were not receiving such compensation.

8 38. In addition, during the relevant time frame, Plaintiff and the Non-Exempt
9 Employees were systematically not authorized and permitted to take one net ten-minute paid, rest
10 period for every four hours worked or major fraction thereof, which is a violation of the Labor
11 Code and IWC wage order.

12 39. Defendants maintained and enforced scheduling practices, policies, and imposed
13 work demands that frequently required Plaintiff and Class Members to forego their lawful, paid
14 rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
15 requisite rest periods were not timely authorized and permitted.

16 40. Despite the above-mentioned rest period violations, Defendants did not compensate
17 Plaintiff, and on information and belief, did not pay Class Members one additional hour of pay at
18 the correctly calculated regular rate as required by California law, including Labor Code section
19 226.7 and the applicable IWC wage order, for each day on which lawful rest periods were not
20 authorized and permitted.

21 41. Defendants as a matter of corporate policy and procedure regularly failed to pay the
22 rest period premium at the correct rate of pay. Plaintiff and Class Members earned non-discretionary
23 incentive pay including but not limited to “Success Sharing Bonuses” and “Homer Award(s)” which
24 were not factored into the regular rate of pay for purposes of paying rest period premium pay. Instead
25 during pay periods in which Plaintiff and Class Members earned non-discretionary remuneration,
26 Defendants improperly paid the rest premium pay at the base rate of pay.

27 42. Defendants also failed to provide accurate, lawful itemized wage statements to
28 Plaintiff and the Class Members in part because of the above specified violations. In addition,
upon information and belief, Defendants omitted an accurate itemization of premiums due and

1 owing for meal and rest period violations, gross pay and net pay figures from Plaintiff and the
2 Class Members' wage statements.

3 43. Plaintiff are informed and believe, and thereon alleges, that at all times herein
4 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
5 thereof for resignations without prior notice as the case may be) they had a duty to accurately
6 compensate Plaintiff and Class Members for all wages owed including meal and rest period
7 premiums, and that Defendants had the financial ability to pay such compensation, but willfully,
8 knowingly, recklessly, and/or intentionally failed to do so in part because of the above-specified
9 violations.

10 44. Plaintiff and the Class Members are covered by applicable California IWC Wage
11 Orders and corresponding applicable provisions of the California Code of Regulations, Title 8,
12 section 11000 *et seq.*

13 **FIRST CAUSE OF ACTION**

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

15 **(Against All Defendants)**

16 45. Plaintiff incorporates and re-alleges each and every allegation contained above as
17 though fully set forth herein.

18 46. Pursuant to Labor Code §512, no employer shall employ an employee for a work
19 period of more than five (5) hours without providing a meal break of not less than thirty (30) minutes
20 in which the employee is relieved of all of his or her duties. An employer may not employ an
21 employee for a work period of more than ten (10) hours per day without providing the employee
22 with a second meal period of not less than thirty (30) minutes, except that if the total hours worked
23 is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the
24 employer and the employee only if the first meal period was not waived.

25 47. Pursuant to the IWC wage orders applicable to Plaintiff and Class Members'
26 employment by Defendants, in order for an "on duty" meal period to be permissible, the nature of
27 the work of the employee must prevent an employee from being relieved of all duties relating to his
28 or her work for the employer and the employees must consent in writing to the "on duty" meal

1 period. On information and belief, Plaintiff and Class Members did not consent in writing to an “on
2 duty” meal period. Further, the nature of the work of Plaintiff and Class Members was not such that
3 they were prevented from being relieved of all duties. Despite the requirements of the IWC wage
4 orders applicable to Plaintiff and Class Members’ employment by Defendants and Labor Code
5 §512 and §226.7, Defendants did not provide Plaintiff and Class Members with all their statutorily
6 authorized meal periods.

7 48. For the four (4) years preceding the filing of this lawsuit, Defendants failed to provide
8 Plaintiff and Class Members, timely and uninterrupted meal periods of not less than thirty (30)
9 minutes pursuant to the IWC wage orders applicable to Plaintiff and Class Members’ employment
10 by Defendants. As a proximate result of the aforementioned violations, Plaintiff and the other Class
11 Members have been damaged in an amount according to proof at time of trial.

12 49. By their failure to provide a compliant meal period for each shift worked over five
13 (5) hours and their failure to provide a compliant second meal period for any shift worked over ten
14 (10) hours per day by Plaintiff and the Class Members, and by failing to provide compensation in
15 lieu of such non-provided meal periods, as alleged above, Defendants violated the provisions of
16 Labor Code sections 226.7 and 512 and applicable IWC Wage Orders. Further Defendants as a
17 matter of corporate policy and procedure regularly failed to pay the meal period premium at the
18 correct rate of pay. Plaintiff and Class Members earned non-discretionary incentive pay incentive
19 pay including but not limited to “Success Sharing Bonuses” and “Homer Award(s)” which were not
20 factored into the regular rate of pay for purposes of paying meal period premium pay. Instead during
21 pay periods in which Plaintiff and Class Members earned non-discretionary remuneration,
22 Defendants improperly paid the meal premium pay at the base rate of pay.

23 50. Defendants willfully failed to include all remuneration, including non-discretionary
24 remuneration, in the regular rate of pay for purposes of calculating meal period premium pay as
25 required by Labor Code §226.7 and 512 and the applicable IWC Wage Order. Thus Plaintiff and
26 Class Members are owed wages for these meal period violation set forth herein.

27 51. Plaintiff and the Class Members did not voluntarily or willfully waive meal periods
28 and were regularly required to work shifts without being provided all of their legally required meal

1 periods. Defendants created a working environment in which Plaintiff and Class Members were not
2 provided all of their meal periods due to shift scheduling and/or work related demands placed upon
3 them by Defendants as well as a lack of sufficient staffing to meet the needs of Defendants' business
4 as discussed above. On information and belief, Defendants' implemented a policy and practice
5 which resulted in systematic and class-wide violations of the Labor Code. On information and
6 belief, Defendants' violations have been widespread throughout the liability period and will be
7 evidenced by Defendants' time records for the Class Members.

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

13 **SECOND CAUSE OF ACTION**

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

15 **(Against All Defendants)**

16 53. Plaintiff incorporates and re-alleges each and every allegation contained above as
17 though fully set forth herein.

18 54. Pursuant to the IWC wage orders applicable to Plaintiff and Class Members'
19 employment by Defendants, "Every employer shall authorize and permit all employees to take rest
20 periods, which insofar as practicable shall be in the middle of each work period.... [The] authorized
21 rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest
22 time per four (4) hours worked or major fraction thereof.... Authorized rest period time shall be
23 counted as hours worked, for which there shall be no deduction from wages." Labor Code §226.7(a)
24 prohibits an employer from requiring any employee to work during any rest period mandated by an
25 applicable order of the IWC.

26 55. Defendants were required to authorize and permit employees such as Plaintiff and
27 Class Members to take rest periods, based upon the total hours worked at a rate of ten (10) minutes
28 net rest per four (4) hours worked, or major fraction thereof, with no deduction from wages. Despite

1 said requirements of the IWC wage orders applicable to Plaintiff and Class Members' employment
2 by Defendants, Defendants failed and refused to authorize and permit Plaintiff and Class Members,
3 to take ten (10) minute rest periods for every four (4) hours worked, or major fraction thereof.

4 56. On information and belief Defendants created a working environment in which
5 Plaintiff and Class Members were not provided all of their rest periods due to shift scheduling and/or
6 work related demands placed upon them by Defendants as well as a lack of sufficient staffing to
7 meet the needs of Defendants' business as discussed above. On information and belief, Defendants
8 implemented a policy and practice which resulted in systematic and class-wide violations of the
9 Labor Code. Further Defendants as a matter of corporate policy and procedure regularly failed to
10 pay the rest period premium at the correct rate of pay. Plaintiff and Class Members earned non-
11 discretionary incentive pay incentive pay including but not limited to "Success Sharing Bonuses"
12 and "Homer Award(s)" which were not factored into the regular rate of pay for purposes of paying
13 rest period premium pay. Instead during pay periods in which Plaintiff and Class Members earned
14 non-discretionary remuneration, Defendants improperly paid the rest premium pay at the base rate
15 of pay. On information and belief, Defendants' violations have been widespread throughout the
16 liability period.

17 57. Defendants willfully failed to include all remuneration, including non-discretionary
18 remuneration, in the regular rate of pay for purposes of calculating rest period premium pay as
19 required by the Labor Code and the applicable IWC Wage Order. Thus Plaintiff and Class Members
20 are owed wages for these rest period violation set forth herein

21 58. As a proximate result of the aforementioned violations, Plaintiff and Class Members
22 have been damaged in an amount according to proof at time of trial. Pursuant to Labor Code §226.7,
23 Plaintiff and Class Members are entitled to recover one (1) hour of premium pay for each day in
24 which Defendants failed to provide a rest period to Plaintiff and the Class, plus interest and penalties
25 thereon, attorneys' fees, and costs.

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1 **FOURTH CAUSE OF ACTION**

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

3 **(Against All Defendants)**

4 64. Plaintiff incorporates and re-alleges each and every allegation contained above as
5 though fully set forth herein.

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

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

17 67. The wage statements provided to Plaintiff and Class Members failed to identify such
18 information including without limitation, the applicable number of hours worked and rates of pay
19 as well as all of the wages owed for unpaid missed meal and rest period premium pay. Specifically,
20 Defendants violated §226 by failing to, *inter alia*, identify the correct rates of pay and number of
21 hours worked. Defendants failed to include the correct rate of premium pay for meal and rest period
22 premiums paid on wage statements as Defendants failed to factor the non-discretionary incentive
23 pay including but not limited to “Success Sharing Bonuses” and “Homer Award(s)” for purposes of
24 paying meal and rest period premiums issued to Plaintiff and Class Members.

25 68. Further, when non-discretionary incentive pay was paid to Plaintiff and Class
26 Members, Defendants violated § 226(a) and more specifically § 226(a)(9) by failing to identify the
27 correct rates of pay, number of hours worked for regular and overtime hours, gross amounts earned
28 and the percentage used to calculate the non-discretionary pay, which include but is not limited to

1 “Success Sharing Bonuses” and “Homer Award(s)”.

2 69. As a result, Plaintiff and the Class have been injured as they were unable to determine
3 whether they had been paid correctly for per pay period among other things.

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

6 71. Pursuant to Labor Code section 266.3, any employer who violates subdivision (a) of
7 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
8 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each
9 violation in a subsequent citation, for which the employer fails to provide the employee a wage
10 deduction statement or fails to keep the records required in subdivision (a) of Section 226.

11 **FIFTH CAUSE OF ACTION**

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

13 **(Against All Defendants)**

14 72. Plaintiff incorporates and re-alleges each and every allegation contained above as
15 though fully set forth herein.

16 73. Defendants’ conduct, as alleged in this complaint, has been, and continues to be,
17 unfair, unlawful, and harmful to Plaintiff and Class Members, Defendants’ competitors, and the
18 general public. Plaintiff seeks to enforce important rights affecting the public interest within the
19 meaning of the California Code of Civil Procedure §1021.5.

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

23 75. A violation of California Business and Professions Code §§17200, et seq., may be
24 predicated on the violation of any state or federal law. Defendants’ policy of failing to provide
25 accurate itemized wage statements and failing to provide Plaintiff and the Class with meal periods
26 and rest breaks or the one (1) hour of premium pay when a meal or rest break period was not
27 provided or provided outside of the required time frames, violates Labor Code § 226, §512, and
28 §226.7 and applicable IWC Wage Orders and California Code of Regulations.

76. Defendants further engaged in unfair and unlawful business practices in California by practicing, employing and utilizing the employment practices outlined above, including, to wit, by failing to include all remuneration, including non-discretionary remuneration, in the regular rate of pay for purposes of calculating meal and rest period premium pay in violation of Labor Code sections 226.7 and 512.

77. Plaintiff 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.

78. Pursuant to California Business and Professions Code §§17200, et seq., Plaintiff 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.

SIXTH CAUSE OF ACTION

PURSUANT TO PRIVATE ATTORNEYS GENERAL ACT OF 2004

79. Plaintiff incorporates and re-alleges each and every allegation contained above as though fully set forth herein.

80. On May 26, 2020 Plaintiff 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 timely notice, Plaintiff has also sent a copy of this PAGA Representative Action Complaint to the LWDA.

81. Plaintiffs is an aggrieved employee as defined in Labor Code Section 2699(a). Plaintiffs brings this cause of action on behalf of all current and former California Non-Exempt Employees of Defendants.

82. Pursuant to Labor Code section 2699(a) Plaintiff seeks to recover civil penalties and unpaid wages for which Defendants are liable due to numerous Labor Code violations as set forth

1 in this Complaint, including without limitation Labor Code section 201-203, 226, 266.3, 226.7, 512,
2 1174, 1174.5, 1175, 1194, 1197, 1197.1, and 2698 *et seq.*, applicable IWC Wage Orders and
3 California Code of Regulations, Title 8, section 11000 *et. seq.*

4 83. As a result of their unlawful acts, Plaintiff and the proposed class are entitled to civil
5 penalties pursuant to Labor Code Private Attorney General Act of 2004, Labor Code §2698 *et. seq.*

6 84. WHEREFORE, Plaintiff and the aggrieved employees he seeks to represent requests
7 relief as described herein and below.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

10 **Class Certification**

- 11 1. That this action be certified as a class action;
12 2. That Plaintiff be appointed as the representative of the Class;
13 3. That Plaintiff be appointed as the representative of the Subclass; and
14 4. That counsel for Plaintiff is appointed as counsel for the Class and Subclass.

15 **On the First Cause of Action**

- 16 1. For one (1) hour of premium pay for each day in which a required meal period was
17 not provided or not provided in a timely manner; and
18 2. For such other and further relief as the Court deems proper.

19 **On the Second Cause of Action**

- 20 1. For one (1) hour of premium pay for each day in which a required rest period was
21 not authorized or permitted; and
22 2. For such other and further relief as the Court deems proper.

23 **On the Third Cause of Action**

- 24 1. For statutory penalties pursuant to Labor Code §203;
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 Fourth Cause of Action**

- 28 1. For statutory penalties pursuant to Labor Code §226;

2. For interest for wages untimely paid;
3. For penalties pursuant to Labor Code §266.3; and
4. For such other and further relief as the Court deems proper.

On the Fifth Cause of Action

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

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

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

4. For costs of suit incurred herein; and

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

On the Sixth Cause of Action

1. For statutory penalties pursuant to Labor Code §2698 et. seq.; and

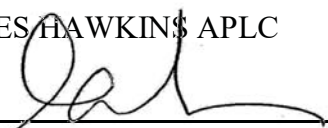
2. For such other and further relief as the Court deems proper;

DEMAND FOR JURY TRIAL

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

Dated: May 26, 2020

JAMES HAWKINS APLC

By: 

JAMES R. HAWKINS, ESQ.
GREGORY MAURO, ESQ.
MICHAEL CALVO, ESQ.
Attorneys for Plaintiff LISA DAVEY,
individually and on behalf of all others
similarly situated.