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individually and on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES COUNTY**

DANIEL G. LOZANO, 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.

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

APR 09 2020

Sherri K. Carter, Executive Officer/Clerk of Court
By Steven Drew, Deputy

CASE NO.: **20STCV13980**

Assigned For All Purposes To:

Judge:

Dept.:

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

COMPLAINT FOR:

1. Failure to Pay Wages Including Overtime as Required by Labor Code §§ 510 and 1194
2. Failure to Provide Meal Periods as Required by Labor Code §§ 226.7, 512 and IWC Wage Orders
3. Failure to Provide Rest Periods as Required by Labor Code §§ 226.7, 512
4. Failure to Pay Timely Wages Required by Labor Code § 203
5. Failure to Provide Accurate Itemized Wage Statements as Required by Labor Code § 226
6. Violation of Business & Professions Code § 17200, et seq.

DEMAND FOR JURY TRIAL

1 Plaintiff DANIEL G. LOZANO (“Plaintiff”), individually and on behalf of all others
2 similarly situated (hereinafter collectively referred to as the “Class” or “Class Member”), hereby
3 files this Complaint against Defendants THE HOME DEPOT USA, INC., a California Limited
4 Liability Company; and DOES 1-50, inclusive (collectively “Defendants”) and alleges on
5 information and belief as follows:

6 **I. JURISDICTION AND VENUE**

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

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

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

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

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

II. PARTIES

6. Plaintiff, was at all times relevant to this action, a resident of California. Plaintiff Lozano was employed by Defendants in approximately July 2013 as a non-exempt employee working as a driver, until his separation from Defendants' employ in approximately August 2019.

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

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

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

III. CLASS ACTION ALLEGATION

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

1 All persons who have been employed by Defendants as Non-Exempt Employees or
2 equivalent positions, however titled, in the state of California within four (4) years from
3 the filing of the Complaint in this action until its resolution. (collectively referred to as the
"Class" or "Plaintiff" Class" or "Class Members").

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

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

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

12 **Sub-Class 3:** All Class Members who are or were employed by Defendants at any time
13 between April 2019 and the present and who received wage statements from Defendant
(hereinafter collectively referred to as the "Wage Statement Subclass").

14 **Sub-Class 4:** All Class Members who have been employed by Defendants at any time
15 between April 2017 and the present and have separated their employment (hereinafter
16 collectively referred to as the "Waiting Time Penalty Subclass").

17 **Sub-Class 5:** All Class Members who are or were employed by Defendants and subject to
18 Defendant's Unfair Business Practices (hereinafter collectively referred to as the "Unfair
19 Business Practice Subclass").

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

23 13. The term "Class" includes Plaintiff and all members of the Class and each of the
24 Sub-Classes, if applicable. Plaintiff seeks class-wide recovery based on the allegations set forth in
25 this complaint.

26 14. There is a well-defined community of interest in the litigation and the proposed
27 Class is easily ascertainable through the records Defendants are required to keep.
28

1 15. Numerosity. The members of the Class are so numerous that individual joinder
2 of all of them as Plaintiff is impracticable. While the exact number of the Class members is
3 unknown to Plaintiff at this time, Plaintiff are informed and believe and thereon alleges that there
4 are at least 100 (one hundred) Class members.

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

8 i. Whether Defendants failed to pay minimum wage compensation to Plaintiff
9 and Class Members for all hours worked;

10 ii. Whether Defendants failed to accurately pay overtime to Plaintiff and Class
11 Members;

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

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

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

23 vi. Whether Defendants provided accurate itemized wage statements pursuant
24 to Labor Code section 226.

25 vii. Whether Defendants violated Business and Professions Code and Labor
26 Code sections 201-202, 510, 226, 226.7, 266.3, 512, 1174, 1174.5, 1175, 1194, 1197, 1197.1, and
27 applicable IWC Wage Orders which violation constitutes a violation of fundamental public policy;
28

1 and

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

4 ix. Whether Plaintiff and the Members of the Plaintiff Class are entitled to
5 relief in the form of back wages, penalties and interest for failure to pay minimum wages pursuant
6 to Labor Code sections 558, 1194 and 1197.

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

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

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

1 will serve an important public interest by permitting such individuals to effectively pursue
2 recovery of the sums owed to them. Further, class litigation prevents the potential for inconsistent
3 or contradictory judgments raised by individual litigation.

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

10 **IV. FACTUAL ALLEGATIONS**

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

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

16 23. Plaintiff are informed and believe that all Class Members are citizens of the state of
17 California.

18 24. Defendants employed Plaintiff as a Non-Exempt hourly paid employee during the
19 liability period.

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
23 and construction materials.

24 26. Plaintiff are informed and believe, and thereon alleges, that Defendants are and
25 were advised by skilled lawyers and other professionals, employees, and advisors with knowledge
26 of the 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. Plaintiff typical worked shifts of about 8 to 12 hours
3 or more a day staring as early as 3:30 a.m. and concluding as late as 7:00 p.m.

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

6 30. Plaintiff and the class members were not properly compensated for all hours
7 worked, in part due to Defendant's unlawful rounding policies For instance, Plaintiff and Class
8 Members were required to prepare their trucks and paper work for deliveries and thus would arrive
9 to work 15 to 20 minutes prior to their scheduled start times. Plaintiff and Class Members would
10 be permitted to clock in early, however Defendants would only pay Plaintiff and Class Members
11 starting on their scheduled start times. Defendants would also unlawfully round Plaintiff's and
12 Class Members' times at the end of the day. On a consistent and regular basis Plaintiff and Class
13 Members would return to their respective warehouses approximately 10 to fifteen minutes or more
14 after their scheduled end times. However, Defendants would automatically clock Plaintiff and
15 Class Members out at their scheduled end times and would not compensate Plaintiff and Class
16 Members for any additional time over their scheduled shift. Defendants' policies thus resulted in a
17 disproportionate underpayment of minimum and overtime wages.

18 31. Upon information and belief, Defendants failed to accurately calculate bonuses
19 earned by Plaintiff and Class Members into their regular rates of pay for overtime purposes.

20 32. Plaintiff and the Class Members were regularly required to work shifts in excess of
21 five hours without being provided a lawful meal period and over ten hours in a day without being
22 provided a second lawful meal period as required by law.

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

27 34. Similarly, as a consequence of Defendants' staffing and scheduling practices, lack
28 of coverage, work demands, and Defendants' policies and practices, Defendants frequently failed

1 to provide Plaintiff and the Class Members legally compliant second meal periods on shifts over
2 ten hours as required by law.

3 35. On information and belief, Plaintiff and Class Members did not waive their rights
4 to meal periods under the law.

5 36. Plaintiff and the Class Members were not provided with valid lawful on-duty meal
6 periods.

7 37. Despite the above-mentioned meal period violations, Defendants failed to
8 compensate Plaintiff, and on information and belief, failed to compensate Class Members, one
9 additional hour of pay at their regular rate as required by California law when meal periods were
10 not timely or lawfully provided in a compliant manner.

11 38. Plaintiff are informed and believe, and thereon alleges, that Defendants know,
12 should know, knew, and/or should have known that Plaintiff and the other Class Members were
13 entitled to receive premium wages based on their regular rate of pay under Labor Code §226.7 but
14 were not receiving such compensation.

15 39. On information and belief, Plaintiff and Class Members were deducted a full 30
16 minutes of time for meal periods that were not provided, late, or cut short, resulting in an
17 underpayment of minimum and overtime wages.

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

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

26 42. Despite the above-mentioned rest period violations, Defendants did not compensate
27 Plaintiff, and on information and belief, did not pay Class Members one additional hour of pay at
28 their regular rate as required by California law, including Labor Code section 226.7 and the
applicable IWC wage order, for each day on which lawful rest periods were not authorized and

1 permitted.

2 43. Defendants also failed to provide accurate, lawful itemized wage statements to
3 Plaintiff and the Class Members in part because of the above specified violations. In addition,
4 upon information and belief, Defendants omitted an accurate itemization of total hours worked,
5 including premiums due and owing for meal and rest period violations, gross pay and net pay
6 figures from Plaintiff and the Class Members' wage statements.

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

14 45. Plaintiff and the Class Members are covered by applicable California IWC Wage
15 Orders and corresponding applicable provisions of the California Code of Regulations, Title 8,
16 section 11000 *et seq.*

17 **FIRST CAUSE OF ACTION**

18 **FAILURE TO PAY WAGES INCLUDING OVERTIME**

19 **(Against All Defendants)**

20 46. Plaintiff incorporate and re-allege each and every allegation contained above as
21 though fully set forth herein.

22 47. At all times relevant, the IWC wage orders applicable to Plaintiff' and the Class
23 require employers to pay its employees for each hour worked at least minimum wage. "Hours
24 worked" means the time during which an employee is subject to the control of an employer, and
25 includes all the time the employee is suffered or permitted to work, whether or not required to do
26 so, and in the case of an employee who is required to reside on the employment premises, that
27 time spent carrying out assigned duties shall be counted as hours worked.

28 48. At all relevant times, Labor Code §1197 provides that the minimum wage for

1 employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a
2 lesser wage than the established minimum is unlawful. Further, pursuant to the IWC Wage Order
3 and Labor Code, Plaintiff and Class Members are to be paid minimum wage for each hour
4 worked, and cannot be averaged At all times relevant, the IWC wage orders applicable to Plaintiff
5 and Class Members' employment by Defendants provided that employees working for more than
6 eight (8) hours in a day or forty (40) hours in a work week are entitled to overtime compensation
7 at the rate of one and one-half times the regular rate of pay for all hours worked in excess of eight
8 (8) hours in a day or forty (40) hours in a work week. An employee who works more than twelve
9 (12) hours in a day is entitled to overtime compensation at a rate of twice the regular rate of pay.

10 49. At all relevant times, Labor Code §1197.1 states "[a]ny employer or other persons
11 acting individually as an officer, agent, or employee of another person, who pays or causes to be
12 paid to any employee a wage less than the minimum fixed by an applicable state or local law, or
13 by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated
14 damages payable to the employee, and any applicable penalties pursuant to Section 203.

15 50. Labor Code §510 codifies the right to overtime compensation at the rate of one and
16 one-half times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or
17 forty (40) hours in a work week and to overtime compensation at twice the regular rate of pay for
18 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the
19 seventh day of work in a particular work week.

20 51. At all times relevant, Plaintiff and Class Members regularly performed non-exempt
21 work and thus were subject to the overtime requirements of the IWC Wage Orders, CCR § 11000,
22 et. seq. and the Labor Code.

23 52. At all times relevant, Plaintiff and Class Members consistently worked in excess of
24 eight (8) hours in a day and/or forty (40) hours in a week as a result of unlawful rounding of work
25 time as discussed above. At all times relevant, Defendants also failed to pay all wages and
26 overtime owed to Plaintiff and Class Members for meal periods that were automatically deducted
27 when meal periods were not provided, cut short, or late.

28 53. At all relevant times, Defendants failed to accurately calculate bonuses earned by

1 Plaintiff and Class Members into their regular rates of pay for overtime purposes, resulting in an
2 inaccurate payment of overtime to Plaintiff and Class Members.

3 54. Accordingly, Defendants owe Plaintiff and Class Members overtime wages, and
4 have failed to pay Plaintiff and Class Members the overtime wages owed.

5 55. Pursuant to Labor Code §§ 510, 558 and 1194, Plaintiff and Class Members are
6 entitled to recover their unpaid wages and overtime compensation, as well as interest, costs, and
7 attorneys' fees.

8 **SECOND CAUSE OF ACTION**

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

10 **(Against All Defendants)**

11 56. Plaintiff incorporate and re-allege each and every allegation contained above as
12 though fully set forth herein.

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

20 58. Pursuant to the IWC wage orders applicable to Plaintiff and Class Members'
21 employment by Defendants, in order for an "on duty" meal period to be permissible, the nature of
22 the work of the employee must prevent an employee from being relieved of all duties relating to
23 his or her work for the employer and the employees must consent in writing to the "on duty" meal
24 period. On information and belief, Plaintiff and Class Members did not consent in writing to an
25 "on duty" meal period. Further, the nature of the work of Plaintiff and Class Members was not
26 such that they were prevented from being relieved of all duties. Despite the requirements of the
27 IWC wage orders applicable to Plaintiff' and Class Members' employment by Defendants and
28 Labor Code §512 and §226.7, Defendants did not provide Plaintiff and Class Members with all

1 their statutorily authorized meal periods.

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

7 60. By their failure to provide a compliant meal period for each shift worked over five
8 (5) hours and their failure to provide a compliant second meal period for any shift worked over ten
9 (10) hours per day by Plaintiff and the Class Members, and by failing to provide compensation in
10 lieu of such non-provided meal periods, as alleged above, Defendants violated the provisions of
11 Labor Code sections 226.7 and 512 and applicable IWC Wage Orders.

12 61. Plaintiff and the Class Members did not voluntarily or willfully waive meal periods
13 and were regularly required to work shifts without being provided all of their legally required meal
14 periods. Defendants created a working environment in which Plaintiff and Class Members were
15 not provided all of their meal periods due to shift scheduling and/or work related demands placed
16 upon them by Defendants as well as a lack of sufficient staffing 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
19 information and belief, Defendants' violations have been widespread throughout the liability
20 period and will be evidenced by Defendants' time records for the Class Members.

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

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28 ///

FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF
(Against All Defendants)

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

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

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

67. As a proximate result of the aforementioned violations, Plaintiff and Class

1 Members have been damaged in an amount according to proof at time of trial. Pursuant to Labor
2 Code §226.7, Plaintiff and Class Members are entitled to recover one (1) hour of premium pay for
3 each day in which Defendants failed to provide a rest period to Plaintiff and the Class, plus
4 interest and penalties thereon, attorneys' fees, and costs.

5 **FOURTH CAUSE OF ACTION**

6 **FAILURE TO PAY TIMELY PAY WAGES**

7 **(Against All Defendants)**

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

10 69. Plaintiff incorporate and re-allege each and every allegation contained above as
11 though fully set forth herein. Labor Code §§201-202 requires an employer who discharges an
12 employee to pay compensation due and owing to said employee immediately upon discharge and
13 that if an employee voluntarily leaves his or her employment, his or her wages shall become due
14 and payable not later than seventy-two (72) hours thereafter, unless the employee has given
15 seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee
16 is entitled to his or her wages on their last day of work.

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

20 71. During the relevant time period, Defendants willfully failed and refused, and
21 continue to willfully fail and refuse, to pay Plaintiff and Class Members their wages, earned and
22 unpaid, either at the time of discharge, or within seventy-two (72) hours of their voluntarily
23 leaving Defendants' employ. These wages include regular and overtime.

24 72. As a result, Defendants are liable to Plaintiff and members of the Non-Exempt
25 Production Employee class for waiting time penalties pursuant to Labor Code §203, in an amount
26 according to proof at the time of trial.

27 ///

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1 **FIFTH CAUSE OF ACTION**

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

3 **(Against All Defendants)**

4 73. Plaintiff incorporate and re-allege each and every allegation contained above as
5 though fully set forth herein.

6 74. 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
10 226 and 204 on wage statements that have been provided to Plaintiff and the Class.

11 75. 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
13 and 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 76. Defendants have failed to accurately record all time worked.

18 77. Defendants have also failed to accurately record the meal and rest period premiums
19 owed and all wages owed per pay period.

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

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

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

1 **SIXTH CAUSE OF ACTION**

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

3 **(Against All Defendants)**

4 81. Plaintiff incorporate and re-allege each and every allegation contained above as
5 though fully set forth herein.

6 82. Defendants' conduct, as alleged in this complaint, has been, and continues to be,
7 unfair, unlawful, and harmful to Plaintiff and Class Members, Defendants' competitors, and the
8 general public. Plaintiff seeks to enforce important rights affecting the public interest within the
9 meaning of the California Code of Civil Procedure §1021.5.

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

13 84. A violation of California Business and Professions Code §§17200, et seq., may be
14 predicated on the violation of any state or federal law. Defendants' policy of failing to provide
15 accurate itemized wage statements and failing to provide Plaintiff and the Class with meal periods
16 and rest breaks or the one (1) hour of premium pay when a meal or rest break period was not
17 provided or provided outside of the required time frames, violates Labor Code § 226, §512, and
18 §226.7 and applicable IWC Wage Orders and California Code of Regulations.

19 85. Plaintiff and Class Members have been personally aggrieved by Defendants'
20 unlawful and unfair business acts and practices alleged herein by the loss of money and/or
21 property.

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

1 **PRAYER FOR RELIEF**

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

3 **Class Certification**

- 4 1. That this action be certified as a class action;
- 5 2. That Plaintiff be appointed as the representative of the Class;
- 6 3. That Plaintiff be appointed as the representative of the Subclass; and
- 7 4. That counsel for Plaintiff is appointed as counsel for the Class and Subclass..

8 **On the First Cause of Action**

- 9 1. For compensatory damages equal to the unpaid balance of minimum wage
- 10 compensation and overtime owed to Plaintiff and Class members as well as interest and costs;
- 11 2. For reasonable attorneys' fees and costs pursuant to Labor Code §§ 510, and 1194;
- 12 3. For liquidated damages in an amount equal to the wages unlawfully unpaid and
- 13 interest thereon pursuant to Labor Code §§ 1194.2, 558;
- 14 4. For such other and further relief as the Court deems proper.

15 **On the Second 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 Third 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 Fourth 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 Fifth 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 Sixth 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, pay wages, 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.

DEMAND FOR JURY TRIAL

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

Dated: April 7, 2020

JAMES HAWKINS APLC

By: 

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