

Bevin Allen Pike (SBN 221936)
Bevin.Pike@capstonelawyers.com
Orlando Villalba (SBN 232165)
Orlando.Villalba@capstonelawyers.com
Joseph Hakakian (SBN 323011)
Joseph.Hakakian@capstonelawyers.com
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067
Telephone: (310) 556-4811
Facsimile: (310) 943-0396

Laura L. Ho (SBN 173179)
lho@gbdhlegal.com
Byron Goldstein (SBN 289306)
brgoldstein@gbdhlegal.com
GOLDSTEIN, BORGEN, DARDARIAN & HO
155 Grand Ave, Suite 900
Oakland, CA 94612
Tel: (510) 763-9800
Fax: (510) 835-1417

Attorneys for Plaintiffs Sergio Arellano
and Edgar Murillo

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

SERGIO ARELLANO, EDGAR
MURILLO, JOHN HENRY, and CURT
UYEMURA, individually, and on behalf of
other members of the general public
similarly situated,

Plaintiffs,

vs.

R&B SALES AND MARKETING, INC., a
Delaware corporation; TECHTRONIC
INDUSTRIES NORTH AMERICA, INC., a
Delaware corporation; and DOES 1 through
10, inclusive,

Defendants.

Case No.: 20STCV04112

**SECOND AMENDED CLASS AND
COLLECTIVE ACTION COMPLAINT &
ENFORCEMENT ACTION UNDER THE
PRIVATE ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, *ET
SEQ.***

- (1) Violation of California Labor Code §§ 204.3, 510, 513, and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);

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- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 5(A) (Failure to Provide Reporting Time Pay);
- (9) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (10) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (12) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)
- (13) Violation of Fair Labor Standards Act (Unpaid Overtime)

Jury Trial Demanded

1 Plaintiffs Sergio Arellano, Edgar Murillo, John Henry, and Curt Uyemura individually
2 and on behalf of all other members of the public similarly situated, and as aggrieved
3 employees and on behalf of all other aggrieved employees, allege as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiffs, the State of California, and
8 other current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint.

13 2. This is also a collective action brought pursuant to the Fair Labor Standards Act
14 (“FLSA”), 29 U.S.C. § 216(b) to recover unpaid wages, liquidated damages, and other
15 available relieve on behalf of Plaintiffs and all others employed by Defendants in the United
16 States as Field Representatives, Field Sales and Marketing Representatives, Single Store
17 Representative, or Multi Store Representatives and who covered one or more Home Depot
18 stores at any time from three years prior to the Preliminary Approval Order of this action
19 through March 21, 2021.

20 3. The monetary damages, penalties, and restitution sought by Plaintiffs exceed
21 the minimal jurisdiction limits of the Superior Court and will be established according to
22 proof at trial. This Court has jurisdiction over this action pursuant to the California
23 Constitution, Article VI, section 10. The statutes under which this action is brought do not
24 specify any other basis for jurisdiction. Plaintiffs’ share of damages, penalties, and other
25 relief sought in this action does not exceed \$75,000.

26 4. This Court has jurisdiction over Defendants because Defendants are either
27 citizens of California, have sufficient minimum contacts in California, or otherwise
28 intentionally avail themselves of the California market so as to render the exercise of

jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

5. Venue is proper in this Court because Defendants employ persons in this county, and employed Plaintiffs this county, and thus a substantial portion of the transactions and occurrences related to this action occurred in this county.

THE PARTIES

6. Plaintiff Sergio Arellano is a resident of Pico Rivera, in Los Angeles County, California. Defendants employed Plaintiff Arellano as an hourly paid, non-exempt Single Store Sales Representative from approximately October 2013 to September 2019. Plaintiff Arellano worked for Defendants out of a Home Depot store location in Whittier, California. During his employment, Plaintiff Arellano typically worked eight (8) hours or more per day, five (5) days per week, from 7:00 a.m. to 3:30 p.m. Plaintiff Arellano's primary job duties included, without limitation, selling Defendants' products to Home Depot customers by answering customer questions at a sales table and demonstrating products; training Home Depot associates about the products; communicating with Home Depot managers about the brand and how to sell product; installing, moving, and rearranging product displays; and picking up, analyzing, and transporting product shipments.

7. Plaintiff Edgar Murillo is a resident of Los Angeles, in Los Angeles County, California. Defendants employed Plaintiff Murillo as an hourly paid, non-exempt Single Store Representative from approximately August 2010 to June 2019. Plaintiff Murillo worked for Defendants out of a Home Depot store location in Marina del Rey, California. During his employment, Plaintiff Murillo typically worked eight (8) hours or more per day, five (5) days per week, from 6:00 a.m. to 2:30 p.m. Plaintiff Murillo's primary job duties included, without limitation, picking up product shipments (opening boxes, reviewing contents, loading them into his truck, and transporting product to the store), organizing inventory at the store in product displays, planning and holding sales events, manning the sales table, and providing customer service and outreach.

8. Plaintiff John Henry was employed as a Multi-Store Representative from

1 approximately July 2011 or July 2012 through February 2020. Mr. Henry is a resident of
2 Desert Hot Springs, California. He worked for Techtronic in Riverside County, San
3 Bernardino County, and Yuma County. Mr. Henry was assigned to a Home Depot store in
4 Arizona until about October 2019.

5 9. Plaintiff Curt Uyemura was employed as a Field Representative from
6 approximately January 2013 through September 1, 2020. Mr. Uyemura is a resident of
7 Orange County, California. He worked for Techtronic in Orange County.

8
9 10. R&B SALES AND MARKETING, INC. was and is, upon information and
10 belief, a Delaware corporation, and at all times hereinafter mentioned, an employer whose
11 employees are engaged throughout this county, the State of California, or the various states of
12 the United States of America.

13 11. TECHTRONIC INDUSTRIES NORTH AMERICA, INC. was and is, upon
14 information and belief, a Delaware corporation, and at all times hereinafter mentioned, an
15 employer whose employees are engaged throughout this county, the State of California, or the
16 various states of the United States of America.

17 12. Plaintiffs are unaware of the true names or capacities of the Defendants sued
18 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
19 amend the complaint and serve such fictitiously named Defendants once their names and
20 capacities become known.

21 13. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10
22 were the partners, agents, owners, or managers of R&B SALES AND MARKETING, INC.
23 and TECHTRONIC INDUSTRIES NORTH AMERICA, INC. at all relevant times.

24 14. Plaintiffs are informed and believe, and thereon allege, that each and all of the
25 acts and omissions alleged herein was performed by, or is attributable to, R&B SALES AND
26 MARKETING, INC.; TECHTRONIC INDUSTRIES NORTH AMERICA, INC. and/or DOES
27 1 through 10 (collectively, "Defendants" or "R&B"), each acting as the agent, employee, alter
28 ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and

1 was acting within the course and scope of such agency, employment, joint venture, or
2 concerted activity with legal authority to act on the others' behalf. The acts of any and all
3 Defendants were in accordance with, and represent, the official policy of Defendants.

4 15. At all relevant times, Defendants, and each of them, ratified each and every act
5 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
6 and abetted the acts and omissions of each and all the other Defendants in proximately causing
7 the damages herein alleged.

8 16. Plaintiffs are informed and believe, and thereon allege, that each of said
9 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
10 omissions, occurrences, and transactions alleged herein.

11 17. Under California law, Defendants are jointly and severally liable as employers
12 for the violations alleged herein because they have each exercised sufficient control over the
13 wages, hours, working conditions, and employment status of Plaintiffs and class members.
14 Each Defendant had the power to hire and fire Plaintiffs and class members, supervised and
15 controlled their work schedule and/or conditions of employment, determined their rate of pay,
16 and maintained their employment records. Defendants suffered or permitted Plaintiffs and
17 class members to work and/or "engaged" Plaintiffs and class members so as to create a
18 common law employment relationship. As joint employers of Plaintiffs and class members,
19 Defendants are jointly and severally liable for the civil penalties and all other relief available
20 to Plaintiffs and class members under the law.

21 18. Plaintiffs are informed and believe, and thereon allege, that at all relevant
22 times, Defendants, and each of them, have acted as joint employers with respect to Plaintiffs
23 and class members because Defendants have:

- 24 (a) jointly exercised meaningful control over the work performed by
25 Plaintiffs and class members;
- 26 (b) jointly exercised meaningful control over Plaintiffs' and class members'
27 wages, hours, and working conditions, including the quantity, quality
28 standards, speed, scheduling, and operative details of the tasks

performed by Plaintiffs and class members;

(c) jointly required that Plaintiffs and class members perform work which is an integral part of Defendants' businesses; and

(d) jointly exercised control over Plaintiffs and class members as a matter of economic reality in that Plaintiffs and class members were dependent on Defendants, who shared the power to set the wages of Plaintiffs and class members and determine their working conditions, and who jointly reaped the benefits from the underpayment of their wages and noncompliance with other statutory provisions governing their employment.

19. Plaintiffs are informed and believe, and thereon allege, that at all relevant times there has existed a unity of interest and ownership between Defendants such that any individuality and separateness between the entities has ceased.

20. R&B SALES AND MARKETING, INC.; TECHTRONIC INDUSTRIES NORTH AMERICA, INC.; and DOES 1-10 are therefore alter egos of each other.

21. Adherence to the fiction of the separate existence of Defendants would permit an abuse of the corporate privilege, and would promote injustice by protecting Defendants from liability for the wrongful acts committed by them under the name R&B.

22. Plaintiffs further allege, upon information and belief, that Defendants are alter egos of each other for the additional following reasons:

(a) On information and belief, R&B SALES AND MARKETING, INC. is a subsidiary of TECHTRONIC INDUSTRIES NORTH AMERICA, INC., which is a subsidiary of Techtronic Industries;

(b) On information and belief, Lee Sowell served as President of R&B SALES AND MARKETING, INC. and has served as President/Group President of the Outdoor Products Group of TECHTRONIC INDUSTRIES NORTH AMERICA, INC. since 2006;

(c) On the Delaware Division of Corporations website

(<https://corp.delaware.gov/>), R&B SALES AND MARKETING, INC. and TECHTRONIC INDUSTRIES NORTH AMERICA, INC. list their agent for service of process as “Corporation Service Company;” and

(d) On information and belief, R&B SALES AND MARKETING, INC. and TECHTRONIC INDUSTRIES NORTH AMERICA, INC. utilize the same standardized employment forms and issue the same employment policies.

GENERAL ALLEGATIONS

23. Defendants are a leader in quality consumer and professional products marketed to the home improvement and construction industries. Defendants’ brand portfolio includes Milwaukee, AEG, Ryobi, Homelite, Empire, Stiletto, Hoover US, Hart, Oreck, Vax, and Dirt Devil. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their company headquarters in Fort Lauderdale, Florida, which is responsible for recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

24. In particular, Plaintiffs and class members, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees’ assigned locations or positions. Upon information and belief, Defendants set forth uniform policies and procedures in several documents provided at an employee’s time of hire.

25. Upon information and belief, Defendants maintain a centralized Payroll department at their company headquarters in Fort Lauderdale, Florida, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations and jobsites in California, including Plaintiffs and class members. Based upon information and belief, Defendants issue the same formatted wage statements to all non-

1 exempt, hourly paid employees in California, irrespective of their work locations. Upon
2 information and belief, Defendants process payroll for departing employees in the same
3 manner throughout the State of California, regardless of the manner in which each employee's
4 employment ends.

5 26. Defendants continue to employ non-exempt or hourly paid employees in
6 California.

7 27. Plaintiffs are informed and believe, and thereon allege, that at all times herein
8 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
9 and advisors knowledgeable about California labor and wage law, employment and personnel
10 practices, and about the requirements of California law.

11 28. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and class
12 members were not paid for all hours worked because all hours worked were not recorded.

13 29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
14 should have known that Plaintiffs and class members were entitled to receive certain wages
15 for overtime compensation and that they were not receiving certain wages for overtime
16 compensation.

17 30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
18 should have known that Plaintiffs and class members were entitled to be paid at a regular rate
19 of pay, and corresponding overtime rate of pay, that included as eligible income all income
20 derived from incentive pay, nondiscretionary bonuses, and/or other forms of compensation.

21 31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
22 should have known that Plaintiffs and class members were entitled to receive at least
23 minimum wages for compensation and that they were not receiving at least minimum wages
24 for work that was required to be done off-the-clock. In violation of the California Labor
25 Code, Plaintiffs and class members were not paid at least minimum wages for work done off-
26 the-clock.

27 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew
28 or should have known that Plaintiffs and class members were entitled to meal periods in

1 accordance with the Labor Code or payment of one (1) additional hour of pay at their regular
2 rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal
3 periods and that Plaintiffs and class members were not provided with all meal periods or
4 payment of one (1) additional hour of pay at their regular rates of pay when they did not
5 receive a timely, uninterrupted, thirty (30) minute meal period.

6 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew
7 or should have known that Plaintiffs and class members were entitled to rest periods in
8 accordance with the Labor Code and applicable IWC Wage Order or payment of one (1)
9 additional hour of pay at their regular rates of pay when they were not authorized and
10 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiffs
11 and class members were not authorized and permitted to take compliant rest periods, nor did
12 Defendants provide Plaintiffs and class members with payment of one (1) additional hour of
13 pay at their regular rates of pay when they were not authorized and permitted to take a
14 compliant rest period.

15 34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
16 should have known that Plaintiffs and class members were entitled to receive complete and
17 accurate wage statements in accordance with California law. In violation of the California
18 Labor Code, Plaintiffs and class members were not provided complete and accurate wage
19 statements.

20 35. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
21 should have known that they had a duty to maintain accurate and complete payroll records in
22 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
23 and intentionally failed to do so.

24 36. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
25 should have known that Plaintiffs and class members were entitled to timely payment of all
26 wages earned upon termination of employment. In violation of the California Labor Code,
27 Plaintiffs and class members did not receive payment of all wages due, including, but not
28 limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting

1 time pay, within permissible time periods.

2 37. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
3 should have known that Plaintiffs and class members were entitled to timely payment of
4 wages during their employment. In violation of the California Labor Code, Plaintiffs and
5 class members did not receive payment of all wages, including, but not limited to, overtime
6 wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within
7 permissible time periods.

8 38. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
9 should have known that Plaintiff Arellano and class members were entitled to receive all
10 reporting time pay when Defendants required Plaintiff Arellano and class members were
11 required to report to work but were put to work for less than half of their regular scheduled
12 shift. In violation of the California Labor Code, Plaintiff Arellano and class members were
13 not paid all reporting time pay.

14 39. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
15 should have known that Plaintiffs and/or class members were entitled to suitable seating
16 and/or were entitled to sit when it did not interfere with the performance of their duties and
17 also have seats nearby to use during a lull in tasks that do require moving about or standing.

18 40. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
19 should have known that they had a duty to cover the costs and expenses other non-party
20 aggrieved employees incurred undergoing mandatory physical examinations and/or drug
21 testing, but willfully, knowingly, and intentionally failed to do so

22 41. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
23 should have known that Plaintiffs and class members were entitled to receive full
24 reimbursement for all business-related expenses and costs they incurred during the course and
25 scope of their employment and that they did not receive full reimbursement of applicable
26 business-related expenses and costs incurred.

27 42. Plaintiffs are informed and believe, and thereon allege, that at all times herein
28 mentioned, Defendants knew or should have known that they had a duty to compensate

1 Plaintiffs and class members for all hours worked, and that Defendants had the financial
2 ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so,
3 and falsely represented to Plaintiffs and class members that they were properly denied wages,
4 all in order to increase Defendants' profits.

5 **PAGA REPRESENTATIVE ALLEGATIONS**

6 43. At all times herein set forth, PAGA provides that any provision of law under
7 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
8 assessed and collected by the LWDA for violations of the California Labor Code and
9 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
10 civil action brought on behalf of themselves and other current or former employees pursuant
11 to procedures outlined in California Labor Code section 2699.3.

12 44. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
13 person who was employed by the alleged violator and against whom one or more of the
14 alleged violations was committed."

15 45. Plaintiffs and other current and former employees of Defendants are "aggrieved
16 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
17 or former employees and one or more of the alleged violations were committed against them.

18 46. Pursuant to California Labor Code sections 2699.3 and 2699.5, aggrieved
19 employees, including Plaintiffs, may pursue a civil action arising under PAGA after the
20 following requirements have been met:

21 (a) The aggrieved employee or representative shall give written notice by
22 online filing with the LWDA and by certified mail to the employer of
23 the specific provisions of the California Labor Code alleged to have
24 been violated, including the facts and theories to support the alleged
25 violation.

26 (b) An aggrieved employee's notice filed with the LWDA pursuant to
27 2699.3(a) and any employer response to that notice shall be
28 accompanied by a filing fee of seventy-five dollars (\$75).

1 (c) The LWDA shall notify the employer and the aggrieved employee or
2 representative by certified mail that it does not intend to investigate the
3 alleged violation (“LWDA’s Notice”) within sixty (60) calendar days of
4 the postmark date of the aggrieved employee’s notice. Upon receipt of
5 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
6 (65) calendar days of the postmark date of the aggrieved employee’s
7 notice, the aggrieved employee may commence a civil action pursuant
8 to California Labor Code section 2699 to recover civil penalties.

9 47. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
10 through Plaintiffs, may pursue a civil action arising under PAGA for violations of any
11 provision other than those listed in Section 2699.5 after the following requirements have been
12 met:

- 13 (a) The aggrieved employee or representative shall give written notice by
14 online filing with the LWDA and by certified mail to the employer of
15 the specific provisions of the California Labor Code alleged to have
16 been violated (other than those listed in Section 2699.5), including the
17 facts and theories to support the alleged violation.
- 18 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
19 2699.3(c) and any employer response to that notice shall be
20 accompanied by a filing fee of seventy-five dollars (\$75).
- 21 (c) The employer may cure the alleged violation within thirty-three (33)
22 calendar days of the postmark date of the notice sent by the aggrieved
23 employee or representative. The employer shall give written notice
24 within that period of time by certified mail to the aggrieved employee or
25 representative and by online filing with the LWDA if the alleged
26 violation is cured, including a description of actions taken, and no civil
27 action pursuant to Section 2699 may commence. If the alleged violation
28 is not cured within the 33-day period, the aggrieved employee may

1 commence a civil action pursuant to Section 2699.

2 48. On February 21, 2020, Plaintiff Arellano provided written notice by online
3 filing to the LWDA and by Certified Mail to Defendants of the specific provisions of the
4 California Labor Code alleged to have been violated, including facts and theories to support
5 the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff
6 Arellano's written notice was accompanied with the applicable filing fee of seventy-five
7 dollars (\$75). The LWDA PAGA Administrator confirmed receipt of Plaintiff Arellano's
8 written notice and assigned Plaintiff Arellano PAGA Case Number LWDA-CM-774058-20.
9 A true and correct copy of Plaintiff Arellano's written notice to the LWDA and Defendants is
10 attached hereto as "Exhibit 1."

11 49. On February 21, 2020, Plaintiff Murillo provided written notice by online filing
12 to the LWDA and by Certified Mail to Defendants of the specific provisions of the California
13 Labor Code alleged to have been violated, including facts and theories to support the alleged
14 violations, in accordance with California Labor Code section 2699.3. Plaintiff Murillo's
15 written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75).
16 The LWDA PAGA Administrator confirmed receipt of Plaintiff Murillo's written notice and
17 assigned Plaintiff Murillo PAGA Case Number LWDA-CM-774063-20. A true and correct
18 copy of Plaintiff Murillo's written notice to the LWDA and Defendants is attached hereto as
19 "Exhibit 2."

20 50. As of the filing date of this complaint, over 65 days have passed since Plaintiffs
21 sent the notices described above to the LWDA, and the LWDA has not responded that it
22 intends to investigate Plaintiffs' claims and Defendants have not cured the violations.

23 51. Thus, Plaintiffs have satisfied the administrative prerequisites under California
24 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
25 violations of California Labor Code sections 201, 202, 203, 204, 204.3, 222.5, 226(a), 226.7,
26 510, 512(a), 513, 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

27 52. Labor Code section 558(a) provides "[a]ny employer or other person acting on
28 behalf of an employer who violates, or causes to be violated, a section of this chapter or any

1 provision regulating hours and days of work in any order of the Industrial Welfare
2 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
3 dollars (\$50) for each underpaid employee for each pay period for which the employee was
4 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
5 underpaid employee for each pay period for which the employee was underpaid” Labor
6 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
7 to any other civil or criminal penalty provided by law.”

8 53. Defendants, at all times relevant to this complaint, were employers or persons
9 acting on behalf of an employer(s) who violated Plaintiffs’ and other aggrieved employees’
10 rights by violating various sections of the California Labor Code as set forth above.

11 54. As set forth below, Defendants have violated numerous provisions of both the
12 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
13 Order.

14 55. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
15 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiffs, acting in the public interest as
16 private attorneys general, seek assessment and collection of civil penalties for themselves, all
17 other aggrieved employees, and the State of California against Defendants for violations of
18 California Labor Code sections 201, 202, 203, 204, 204.3, 222.5, 226(a), 226.7, 510, 512(a),
19 513, 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

20 **CLASS ACTION ALLEGATIONS**

21 56. Plaintiffs bring this action on their own behalf, as well as on behalf of each and
22 all other persons similarly situated, and thus seek class certification under California Code of
23 Civil Procedure section 382.

24 57. All claims alleged herein arise under California law for which Plaintiffs seek
25 relief authorized by California law.

26 58. Plaintiffs’ proposed class consists of and is defined as follows:

27 All persons who worked for Defendants as non-exempt, hourly
28 paid employees in California, within four years prior to the filing
of the initial complaint until the date of trial (“Class”).

1 59. Plaintiffs’ proposed subclass consists of and is defined as follows:

2 All persons who worked for Defendants as non-exempt, hourly
3 paid employees in California and who received at least one wage
4 statement within one (1) year prior to the filing of the initial
 complaint until the date of trial (“Subclass”).

5 60. Members of the Class and Subclass are referred to herein as “class members.”

6 61. Plaintiffs reserve the right to redefine the Class and Subclass and to add
7 additional subclasses as appropriate based on further investigation, discovery, and specific
8 theories of liability.

9 62. There are common questions of law and fact as to class members that
10 predominate over questions affecting only individual members, including, but not limited to:

- 11 (a) Whether Defendants required Plaintiffs and class members to work over
12 eight (8) hours per day, over twelve (12) hours per day, or over forty
13 (40) hours per week and failed to pay all legally required overtime
14 compensation to Plaintiffs and class members;
- 15 (b) Whether Defendants failed to properly calculate the “regular rate” of
16 pay on which Plaintiffs’ and class members’ overtime rate of pay was
17 based;
- 18 (c) Whether Defendants failed to pay Plaintiffs and class members at least
19 minimum wages for all hours worked;
- 20 (d) Whether Defendants failed to provide Plaintiffs and class members with
21 meal periods;
- 22 (e) Whether Defendants failed to authorize and permit Plaintiffs and class
23 members to take rest periods;
- 24 (f) Whether Defendants provided Plaintiffs and class members with
25 complete and accurate wage statements as required by California Labor
26 Code section 226(a);
- 27 (g) Whether Defendants maintained accurate payroll records as required by
28 California Labor Code section 1174(d);

- 1 (h) Whether Defendants failed to pay earned overtime wages, minimum
2 wages, meal and rest period premiums, and/or reporting time pay due to
3 Plaintiffs and class members upon their discharge;
- 4 (i) Whether Defendants failed timely to pay overtime wages, minimum
5 wages, meal and rest period premiums, and/or reporting time pay to
6 Plaintiffs and class members during their employment;
- 7 (j) Whether Defendants required Plaintiff Arellano and class members to
8 report to work, but failed to provide them with work or provided them
9 with less than half their scheduled day's work, without properly
10 compensating them as required by California Code of Regulations, Title
11 8, section 11070, subsection 5;
- 12 (k) Whether Defendants failed to provide Plaintiffs and class members with
13 suitable seating;
- 14 (l) Whether Defendants failed to reimburse Plaintiffs and class members
15 for necessary and required business-related expenditures and/or losses
16 incurred by them in the scope of their employment;
- 17 (m) Whether Defendants engaged in unlawful and unfair business practices
18 in violation of California Business & Professions Code sections 17200,
19 *et seq.*; and
- 20 (n) The appropriate amount of damages, restitution, or monetary penalties
21 resulting from Defendants' violations of California law.

22 63. There is a well-defined community of interest in the litigation and the class
23 members are readily ascertainable:

- 24 (a) Numerosity: The class members are so numerous that joinder of all
25 members would be unfeasible and impractical. The membership of the
26 entire class is unknown to Plaintiffs at this time; however, the class is
27 estimated to be greater than one hundred (100) individuals and the
28 identity of such membership is readily ascertainable by inspection of

Defendants' employment records.

(b) Typicality: Plaintiffs are qualified to, and will, fairly and adequately protect the interests of each class member with whom they have a well-defined community of interest, and Plaintiffs' claims (or defenses, if any) are typical of all class members as demonstrated herein.

(c) Adequacy: Plaintiffs are qualified to, and will, fairly and adequately protect the interests of each class member with whom they have a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiffs acknowledge that they have an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiffs' attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiffs have incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(d) Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort, and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.

(e) Public Policy Considerations: Employers in the State of California violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class

actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights while simultaneously protecting their privacy.

64. **COLLECTIVE ACTION ALLEGATIONS** Plaintiffs also bring this action on behalf of themselves and other employees similarly situated as a collective action under the FLSA, 29 U.S.C. § 216(b). The employees similarly situated are:

All Field Representatives, Field Sales and Marketing Representatives, Single Store Representative, or Multi Store Representatives who covered one or more Home Depot stores and who were employed by Defendants in the United States at any time from three years prior to the Preliminary Approval Order in this action through March 21, 2021 (“Collective Class”).

65. Defendants suffered and permitted Reps to work more than forty hours per week without appropriate overtime compensation.

66. Defendants’ unlawful conduct has been widespread, repeated, and consistent.

67. Upon information and belief, Defendants knew that Plaintiffs and the Collective Class performed work that required overtime pay. Defendants have operated under a scheme to deprive these employees of appropriate overtime compensation owed.

68. Defendants’ conduct was willful and in bad faith, and has caused significant damages to Plaintiffs and the Collective Class.

69. Notice should be sent to the Collective Class informing them of this lawsuit and their opportunity to affirmatively join and stop the statute of limitations from running. There are numerous similarly situated current and former Reps who have been denied overtime pay in violation of the FLSA who would benefit from the issuance of such Notice. The names and addresses of the proposed collective class members are available from Defendants.

FIRST CAUSE OF ACTION

Violation of California Labor Code §§ 204.3, 510, 513 and 1198—Unpaid Overtime (Against all Defendants)

70. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

1 71. Labor Code section 1198 makes it illegal to employ an employee under
2 conditions of labor that are prohibited by the applicable wage order. California Labor Code
3 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
4 be the . . . standard conditions of labor for employees. The employment of any employee . . .
5 under conditions of labor prohibited by the order is unlawful.”

6 72. California Labor Code section 1198 and the applicable IWC Wage Order
7 provide that it is unlawful to employ persons without compensating them at a rate of pay
8 either time-and-one-half or two-times that person’s regular rate of pay, depending on the
9 number of hours worked by the person on a daily or weekly basis.

10 73. Specifically, the applicable IWC Wage Order provides that Defendants are and
11 were required to pay Plaintiffs and class members working more than eight (8) hours in a day
12 or more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all
13 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
14 workweek.

15 74. The applicable IWC Wage Order further provides that Defendants are and were
16 required to pay Plaintiffs and class members working more than twelve (12) hours in a day,
17 overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s
18 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
19 employee, including nondiscretionary bonuses and incentive pay.

20 75. California Labor Code section 510 codifies the right to overtime compensation
21 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
22 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
23 seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate
24 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
25 in a day on the seventh (7th) day of work.

26 76. During the relevant time period, Defendants willfully failed to pay all overtime
27 wages owed to Plaintiffs and class members. During the relevant time period, Plaintiffs and
28 class members were not paid overtime premiums for all of the hours they worked in excess of

1 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
2 hours in a week, because all hours worked were not recorded.

3 77. First, during the relevant time period, Defendants had a policy and/or practice
4 of discouraging and impeding Plaintiffs and class members from recording hours worked that
5 were outside of their scheduled shifts in order to limit the amount of overtime employees
6 could accrue. On information and belief, this limitation on overtime accrual was based on a
7 company-wide policy of staffing job sites or locations strictly based on the labor hours or
8 labor budget set by corporate. This policy of limiting overtime, coupled with Defendants'
9 single-staffing and/or understaffing policy (*see infra*) and assigning strict deadlines and heavy
10 workloads, led Plaintiffs and class members to work off-the-clock before and after their
11 scheduled shift times in order to complete their assigned tasks. Defendants discouraged
12 Plaintiffs and class members from earning overtime wages by requiring and then denying
13 approval of overtime hours, but made them to finish "re-sets" or other projects within a single
14 eight-hour shift. Thus, Plaintiffs would clock out at their designated shift end-time and would
15 continue working to finish their assignments, such as performing "re-sets" and preparing
16 product displays. As a result of this restriction on overtime accrual, Defendants also forced
17 Plaintiffs to perform work off-the-clock outside of their scheduled shifts, such as preparing
18 "re-sets" of store displays, including receiving packages at home, organizing product boxes,
19 and loading company vehicles with inventory; filling their company vehicles with gas, taking
20 them in for maintenance or service, and getting car washes; responding to phone calls and
21 texts on their company cellular phones; and traveling to and from Defendants' meetings or
22 other Home Depot store locations to assist other employees. Defendants failed to track this
23 time spent working before and after scheduled shifts, and Plaintiffs and class members
24 received no compensation for this time.

25 78. Second, during the relevant time period, on information and belief, Defendants
26 had a policy of improperly adjusting Plaintiffs' and class members' clock-in and clock-out
27 duration times in their Kronos timekeeping system. Defendants' time-shaving policy resulted
28 in the failure to compensate Plaintiffs and class members fully for all hours worked, causing

1 Plaintiffs and class members to not be paid overtime wages for all of the overtime hours they
2 actually worked. Upon information and belief, Defendants' time-shaving policy is, and
3 continues to be, unfair and has, over time, resulted in the underpayment of wages to Plaintiffs
4 and class members. To the extent Defendants' policy has taken away time worked that was
5 eligible for overtime, Plaintiffs and class members were denied overtime pay for all hours
6 worked.

7 79. Third, Defendants have systematically, and on a company-wide basis,
8 understaffed their posts by adopting a single-staffing model for their job sites, pursuant to
9 their labor budget practices, thereby failing to provide adequate meal period coverage to
10 permit employees to take compliant meal periods. Because Defendants understaff their job
11 sites, there is no one available to relieve Plaintiffs and class members needing meal period
12 coverage. For example, Plaintiffs' meal periods were missed or interrupted due to customer
13 demand, contractors asking questions, and calls from Defendants' management on company
14 cellular phones.

15 80. Fourth, during the relevant period, as stated above, Defendants had, and
16 continue to have, a company-wide policy and/or practice of understaffing their worksites
17 while assigning heavy workloads and/or strict deadlines for re-sets, resulting in a failure to
18 provide Plaintiffs and class members with adequate meal period coverage. As a result of this
19 lack of meal period coverage, Plaintiffs and class members were not always afforded
20 uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal
21 period. For example, Plaintiffs and class members were required to perform their duties, such
22 as working at promotional events, manning product displays, or responding to work-related
23 calls from Defendants' management during unpaid meal periods, or would have their meal
24 periods interrupted to complete such work-related tasks.

25 81. Additionally, Defendants, on a company-wide basis, had a practice of failing to
26 schedule (or adhere to a schedule of) meal periods, which further caused Plaintiffs and class
27 members to not be relieved of their duties for compliant meal periods. Thus, Plaintiffs and
28 class members missed or had meal periods interrupted in order to complete their assigned

workloads. Defendants did not pay Plaintiffs and class members for the time they continued to perform tasks during meal periods. Further, on information and belief, because Defendants frowned upon employees accruing meal period penalties, when Plaintiffs and class members failed to clock themselves out at designated meal period start times, they were subject to Defendants altering their time records and deducting time for meal periods that were not taken. Alternatively, Defendants' supervisors adjusted employee time records to show compliant meal periods, even if none were taken. Consequently, Plaintiffs and class members performed work during meal periods for which they were not paid.

82. Defendants knew or should have known that as a result of these company-wide practices and/or policies, Plaintiffs and class members were performing assigned duties during their meal periods and performing work off-the-clock before or after their shifts, and were suffered or permitted to perform work for which they were not paid. Because Plaintiffs and class members worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiffs and class members were not paid overtime wages for all of the overtime hours they actually worked.

83. Furthermore, on information and belief, Defendants did not pay Plaintiffs and class members the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, Defendants paid Plaintiffs and class members incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. For example, Defendants paid Plaintiffs and class members nondiscretionary bonuses and incentive pay, such as sales bonuses (based on a percentage of a store's total sales). However, in violation of the California Labor Code, Defendants failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Plaintiffs and class members worked overtime and received these other forms of pay, Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

84. Defendants' failure to pay Plaintiffs and class members the balance of overtime compensation as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiffs and class members are entitled to recover their unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

**Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid
Minimum Wages
(Against all Defendants)**

85. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

86. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 7 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11070(2)(G) (defining “Hours Worked”).

87. As stated, during the relevant time period, as a result of Defendants' policy of limiting the amount of overtime employees could accrue by discouraging and impeding Plaintiffs and class members from recording hours worked that were outside of their scheduled shifts, Plaintiffs and class members were required to work off-the-clock before and after their scheduled shift start and end times to complete their assigned job duties. Furthermore, as stated, Defendants had, and continue to have, a company-wide policy of adjusting or shaving down Plaintiffs' and class members' hourly clock-in and clock-out times in their Kronos timekeeping system, resulting in the failure to compensate Plaintiffs and class members fully for all hours worked and the failure to pay Plaintiffs and class members minimum wages for all hours actually worked.

88. As also stated above, due to Defendants' policy and/or practice of understaffing or single-staffing while assigning heavy workloads and strict deadlines, and failure to schedule (or adhere to a schedule of) meal periods, Plaintiffs and class members were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods.

89. Defendants did not pay minimum wages for off-the-clock hours that Plaintiffs and class members worked through that qualified for overtime premium payment. To the extent that these off-the-clock hours did not qualify for overtime premium payment, Defendants did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

90. Defendants' failure to pay Plaintiffs and class members minimum wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California Labor Code section 1194.2, Plaintiffs and class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

THIRD CAUSE OF ACTION

Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period

Violations

(Against all Defendants)

91. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

92. At all relevant times herein set forth, California Labor Code section 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012).

1 93. At all relevant times herein set forth, California Labor Code sections 226.7,
2 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
3 meal period mandated by an applicable order of the IWC.

4 94. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
5 the applicable IWC Wage Order also require employers to provide a second meal period of
6 not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
7 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
8 hours worked is no more than twelve (12) hours, the second meal period may be waived by
9 mutual consent of the employer and the employee only if the first meal period was not waived.

10 95. First, during the relevant time period, as stated, Defendants had, and continue
11 to have, a uniform policy and/or practice of single-staffing and understaffing pursuant to a
12 labor budget, which resulted in a lack of meal period coverage and prevented Plaintiffs and
13 class members from taking all timely, uninterrupted meal periods to which they were entitled.
14 Because Defendants understaff their job sites, there is no one available to relieve Plaintiffs
15 and class members needing meal period coverage.

16 96. Additionally, as stated, Defendants on a company-wide basis, have
17 systematically discouraged and impeded Plaintiffs and class members from taking meal
18 periods by failing to schedule (or failing to adhere to a schedule of) meal periods, while
19 assigning strict deadlines and heavy workloads, even though they are aware and know that
20 employees are entitled to such meal periods. As a result of this uniform failure to schedule (or
21 failure to adhere to a schedule of) meal periods, Plaintiffs and class members have not been
22 provided timely, uninterrupted 30-minute meal periods during their shifts in which they were
23 entitled to receive a meal period. Additionally, Defendants required Plaintiffs and class
24 members to respond to phone calls to their company cellular phones at all times, which further
25 caused Plaintiffs and class members to not be relieved of their duties for compliant meal
26 periods. As a result of Defendants' practices and/or policies, Plaintiffs and class members
27 had to work through part or all of their meal periods, have their meal periods interrupted,
28 and/or wait extended periods of time before taking meal periods.

1 97. Furthermore, because Defendants frowned upon employees accruing meal
2 period penalties, Defendants' management would adjust Plaintiffs' and class members' time
3 records to reflect compliant meal periods, regardless of whether they had received a compliant
4 meal period or not, in order to strictly limit meal penalties that would need to be paid by
5 Defendants. However, Plaintiffs and class members worked through meal periods or had their
6 meal periods interrupted, because there were not enough employees on duty to handle the
7 heavy workload and tend to customers.

8 98. As a result of Defendants' company-wide practices and/or policies, Plaintiffs
9 and class members would be forced to work in excess of five (5) hours before taking a meal
10 period and, at times, had their meal periods interrupted and/or had to forgo their meal periods
11 altogether. For example, during their employment, Plaintiffs would start their meal periods
12 late or would have their meal periods interrupted by Defendants' supervisors calling about
13 status updates on projects or to assist with customer inquiries. As a further example, Plaintiffs
14 would also miss their meal periods due to the heavy workload and deadlines for completing
15 re-sets and other projects in one eight-hour shift on their own. Plaintiffs and class members
16 did not sign valid meal period waivers on days that they were entitled to meal periods and
17 were not relieved of all duties.

18 99. At all times herein mentioned, Defendants knew or should have known that, as
19 a result of these policies, Plaintiffs and class members were prevented from being relieved of
20 all duties and required to perform some of their assigned duties during meal periods.
21 Defendants further knew or should have known that Defendants did not pay Plaintiffs and
22 class members meal period premium wages when meal periods were late, interrupted,
23 shortened, or missed because Defendants adjusted employee time records to reflect compliant
24 meal periods, even if none were taken.

25 100. Moreover, Defendants engaged in a company-wide practice and/or policy of
26 not paying all meal period premiums owed when compliant meal periods are not provided.
27 Because of Defendants' practices and/or policies, Plaintiffs and class members have not
28 received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the

1 extent that Defendants did pay Plaintiffs and class members premium pay for missed, late, and
2 interrupted meal periods, Defendants did not pay Plaintiffs and class members at the correct
3 rate of pay for premium wages because Defendants systematically failed to include all forms
4 of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of
5 remuneration, in the regular rate of pay. As a result, Defendants failed to provide Plaintiffs
6 and class members compliant meal periods in violation of California Labor Code sections
7 226.7, 512, and 516 and failed to pay the full meal period premiums due.

8 101. Defendants' conduct violates the applicable IWC Wage Order, and California
9 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiffs and class members are therefore
10 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
11 rate of compensation for each work day that the meal period was not provided.

12 //

13 //

14 **FOURTH CAUSE OF ACTION**

15 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 16 **(Against all Defendants)**

17 102. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
18 and every allegation set forth above.

19 103. At all relevant times herein set forth, the applicable IWC Wage Order and
20 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiffs and class
21 members' employment by Defendants.

22 104. At all relevant times, the applicable IWC Wage Order provides that "[e]very
23 employer shall authorize and permit all employees to take rest periods, which insofar as
24 practicable shall be in the middle of each work period" and that the "rest period time shall be
25 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
26 hours or major fraction thereof" unless the total daily work time is less than three and one-half
27 (3½) hours.

28 105. At all relevant times, California Labor Code section 226.7 provides that no

1 employer shall require an employee to work during any rest period mandated by an applicable
2 order of the California IWC. To comply with its obligation to authorize and permit rest
3 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
4 employer must “relinquish any control over how employees spend their break time, and
5 relieve their employees of all duties — including the obligation that an employee remain on
6 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
7 *Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and
8 California Labor Code section 226.7(b), Plaintiffs and class members are entitled to recover
9 from Defendants one (1) additional hour of pay at their regular rates of pay for each work day
10 that a required rest period was not authorized and permitted.

11 106. During the relevant time period, Defendants regularly failed to authorize and
12 permit Plaintiffs and class members to take a ten (10) minute rest period per each four (4)
13 hour period worked or major fraction thereof. As with meal periods, Defendants’ company-
14 wide practices, including assigning deadlines and heavy workloads, prevented Plaintiffs and
15 class members from being relieved of all duty to take their rest periods. For example,
16 Defendants actively discouraged Plaintiff Murillo from taking rest periods by threatening him
17 with discipline or write-ups. Additionally, Defendants failed schedule rest periods, which,
18 coupled with Defendants’ failure to provide adequate rest period coverage, further led to
19 Plaintiffs and class members not being authorized and permitted to take compliant rest
20 periods. Moreover, Plaintiffs and class members were assigned company-issued cellular
21 phones and were expected to carry and respond to them at all times, including during rest
22 periods. As a result of Defendants’ practices and policies, Plaintiffs and class members
23 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
24 receiving all uninterrupted 10-minute rest periods to which they were entitled.

25 107. Furthermore, upon information and belief, during the relevant time period,
26 Defendants maintained implemented a company-wide on-premises rest period policy, which
27 mandated that Plaintiffs and class members remain on the work premises during their rest
28 periods. Upon information and belief, Defendants’ company-wide on-premises rest period

1 policy prevented Plaintiffs and class members from being relieved of all duties for rest periods
2 and caused them to perform work during rest periods.

3 108. Defendants have also engaged in a systematic, company-wide practice and/or
4 policy of not paying rest period premiums owed when rest periods are not authorized and
5 permitted. As a result, Defendants denied Plaintiffs and class members rest periods and failed
6 to pay them rest period premium wages due, in violation of Labor Code section 226.7 and the
7 applicable IWC Wage Order.

8 109. Defendants have also engaged in a systematic, company-wide practice and/or
9 policy of not paying rest period premiums owed when rest periods are not authorized and
10 permitted. Alternatively, to the extent that Defendants did pay Plaintiffs and class members
11 one (1) additional hour of premium pay for missed rest periods, Defendants did not pay
12 Plaintiffs and class members at the correct rate of pay for premium wages because Defendants
13 failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses,
14 and/or other forms of remuneration, in the regular rate of pay. As a result, Defendants denied
15 Plaintiffs and class members rest periods and failed to pay them rest period premium wages
16 due, in violation of Labor Code section 226.7, 516, and the applicable IWC Wage Order.

17 110. Defendants' conduct violates the applicable IWC Wage Order and California
18 Labor Code sections 226.7, 516, and 1198. Plaintiffs and class members are therefore entitled
19 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
20 compensation for each work day that a compliant rest period was not authorized and
21 permitted.

22 **FIFTH CAUSE OF ACTION**

23 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 24 **Statements and Failure to Maintain Accurate Payroll Records** 25 **(Against all Defendants)**

26 111. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
27 and every allegation set forth above.

28 112. At all relevant times herein set forth, California Labor Code section 226(a)

1 provides that every employer shall furnish each of his or her employees an accurate and
2 complete itemized wage statement in writing, including, but not limited to, the name and
3 address of the legal entity that is the employer, the inclusive dates of the pay period, total
4 hours worked, and all applicable rates of pay.

5 113. At all relevant times, Defendants have knowingly and intentionally provided
6 Plaintiffs and Subclass members with uniform, incomplete, and inaccurate wage statements.
7 For example, Defendants issued uniform wage statements to Plaintiffs and Subclass members
8 that fail to correctly list: gross wages earned; total hours worked; net wages earned; the
9 correct name of the legal entity that is the employer; and all applicable hourly rates in effect
10 during the pay period, including overtime rates of pay, and the corresponding number of hours
11 worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2),
12 226(a)(5), 226(a)(8), and 226(a)(9).

13 114. First, because Defendants did not record the time Plaintiffs and Subclass
14 members spent working off the clock and underreported Plaintiffs' and Subclass members'
15 hourly clock-in and clock-out times in their timekeeping system, Defendants did not list the
16 correct amount of gross wages and net wages earned by Plaintiffs and Subclass members in
17 compliance with section 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to
18 accurately list the total number of hours worked by Plaintiffs and Subclass members in
19 violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect
20 during the pay period and corresponding accurate number of work hours worked at each
21 hourly rate in violation of section 226(a)(9).

22 115. Second, because Defendants did not calculate Plaintiffs' and Subclass
23 members' regular rate of pay correctly for purposes of paying overtime, Defendants did not
24 list the correct amount of gross wages earned by Plaintiffs and Subclass members in
25 compliance with section 226(a)(1). For the same reason, Defendants failed to list the correct
26 amount of net wages earned by Plaintiffs and Subclass members in violation of section
27 226(a)(5). Defendants also failed to correctly list all applicable hourly rates in effect during
28 the pay period, namely, correct overtime rates of pay and correct rates of pay for premium

1 wages, in violation of section 226(a)(9).

2 116. Third, and separate from these violations, Defendants issued uniform wage
3 statements to Plaintiffs and Subclass members that failed to correctly list the name of the legal
4 entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to
5 provide California employees with transparency as to the true identity of their employer, to
6 allow the employee to contact their employer during employment in the future for various
7 reasons, including, filing an administrative claim, judicial claim, or other action to seek relief
8 against their employer, to obtain unemployment benefits, etc.

9 117. Defendants systematically, and on a company-wide basis, issued wage
10 statements to Plaintiffs and Subclass members that incorrectly list the employing entity's
11 name. Plaintiffs' wage statements list the entity "R & B SALES AND MARKETING INC,"
12 but, according to the California Secretary of State's website, there is no such entity by that
13 name.

14 118. The wage statement deficiencies also include, without limitation, failing to list
15 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
16 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and
17 only the last four digits of his or her social security number or an employee identification
18 number other than a social security number; failing to list the address of the legal entity that is
19 the employer; failing to list the inclusive dates of the period for which class members were
20 paid; and/or failing to state all hours worked as a result of not recording or stating hours
21 worked off-the-clock.

22 119. California Labor Code section 1198 provides that the maximum hours of work
23 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
24 set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he
25 employment of any employees for longer hours than those fixed by the order or under
26 conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC
27 Wage Order, employers are required to keep accurate time records showing when the
28 employee begins and ends each work period and meal period. During the relevant time

1 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
2 and meal period start and stop times for Plaintiffs and Subclass members, in violation of
3 section 1198. Also, as stated, Defendants engaged in a company-wide practice and/or policy
4 of falsifying Plaintiffs' and Subclass members' time records by recording that compliant meal
5 periods were taken regardless of if or when meal periods were actually taken, and thereby
6 failed to keep accurate records of meal start and end times for Plaintiffs and Subclass
7 members.

8 120. California Labor Code section 1174(d) provides that "[e]very person employing
9 labor in this state shall ... [k]eep a record showing the names and addresses of all employees
10 employed and the ages of all minors" and "[k]eep, at a central location in the state or at the
11 plants or establishments at which employees are employed, payroll records showing the hours
12 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
13 applicable piece rate paid to, employees employed at the respective plants or establishments . .
14 . ." At all relevant times, and in violation of Labor Code section 1174(d), Defendants
15 willfully failed to maintain accurate payroll records for Plaintiffs and Subclass members
16 showing the daily hours they worked and the wages paid thereto as a result of failing to record
17 the off-the-clock hours that they worked and underreporting Plaintiffs' and Subclass
18 members' hourly clock-in and clock-out times in their timekeeping system.

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

23 **SIXTH CAUSE OF ACTION**

24 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid**

25 **Upon Termination**

26 **(Against all Defendants)**

27 122. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
28 and every allegation set forth above.

123. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, meal and rest period premium wages, and/or reporting time pay that were not timely paid to Plaintiffs and those class members no longer employed by Defendants upon their termination.

124. At all times relevant herein set forth, Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

125. Defendants willfully failed to pay Plaintiffs and class members who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, meal and rest period premium wages, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

126. Defendants' failure to pay Plaintiffs and class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiffs and class members are therefore entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

SEVENTH CAUSE OF ACTION

**Violation of California Labor Code § 204—Failure to Timely Pay Wages During
Employment
(Against all Defendants)**

127. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

1 128. This cause of action is dependent upon, and wholly derivative of, the overtime
2 wages, minimum wages, meal and rest period premium wages, and/or reporting time pay that
3 were not timely paid to Plaintiffs class members during their employment.

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

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

14 131. At all times relevant herein, Labor Code section 204 provides that all wages
15 earned for labor in excess of the normal work period shall be paid no later than the payday for
16 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
17 204 provides that the requirements of this section are deemed satisfied by the payment of
18 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
19 seven (7) calendar days following the close of the payroll period.

20 132. During the relevant time period, Defendants willfully failed to pay Plaintiffs
21 and class members all wages due including, but not limited to, overtime wages, minimum
22 wages, meal and rest period premium wages, and/or reporting time pay, within the time
23 periods specified by California Labor Code section 204.

24 133. Defendants' failure to pay Plaintiffs and class members all wages due violates
25 Labor Code section 204. Plaintiffs and class members are therefore entitled to recover from
26 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

27 **EIGHTH CAUSE OF ACTION**

28 **Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section**

11070 Subdivision 5(A)—Failure to Provide Reporting Time Pay
(By Plaintiff Arellano on behalf of all other persons similarly situated, against all
Defendants)

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

135. California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

136. The applicable IWC wage order, California Code of Regulations, Title 8, section 11070(5)(A), provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.”

137. During the relevant time period, Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(5)(A), because Defendants failed to pay Plaintiff Arellano and class members reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the regularly scheduled day’s work.

138. Defendants had a company-wide practice of sending Plaintiff Arellano and class members home early from their shifts, including before they had worked at least half of their regular shift, but would not pay Plaintiff Arellano and class members for half of their scheduled shift, due to Defendants’ labor budget. For example, Plaintiff Arellano would report to work the day after a quarterly meeting, but would be sent home early by Defendants’ management after being told he had accrued too much overtime. Although Plaintiff Arellano

1 and class members would report to work based on the schedule that Defendants provided to
2 them, Defendants would send them home before they had worked at least half of their
3 scheduled shifts without giving them reporting time pay.

4 139. Accordingly, Plaintiff Arellano and class members were not properly
5 compensated with reporting time pay in violation of California Labor Code section 1198.

6 **NINTH CAUSE OF ACTION**

7 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses**

8 **(Against all Defendants)**

9 140. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
10 and every allegation set forth above.

11 141. At all times herein set forth, California Labor Code section 2802 provides that
12 an employer must reimburse employees for all necessary expenditures and losses incurred by
13 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
14 to prevent employers from passing off their cost of doing business and operating expenses on
15 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
16 (2014). The applicable wage order, IWC Wage Order 7-2001, provides that: “[w]hen tools or
17 equipment are required by the employer or are necessary to the performance of a job, such
18 tools and equipment shall be provided and maintained by the employer, except that an
19 employee whose wages are at least two (2) times the minimum wage provided herein may be
20 required to provide and maintain hand tools and equipment customarily required by the trade
21 or craft.”

22 142. First, during the relevant time period, Defendants had a company-wide policy
23 of requiring Plaintiffs and class members to utilize their own personal vehicles for work
24 purposes, but failed to reimburse them for the costs of travel, including mileage. For example,
25 Plaintiff Arellano was required to take his company vehicle for maintenance at a service
26 station that was 30 miles from his home, and pick up the vehicle later using his wife’s vehicle,
27 but was not reimbursed for travel expenses or mileage from using his personal vehicle.
28 Additionally, while Plaintiff Murillo’s company vehicle was being serviced for a flat tire, he

1 was required to utilize his personal vehicle to drive to and from the job site, but was not
2 reimbursed for his travel or mileage. Although Defendants required Plaintiffs and class
3 members to use their own vehicles or obtain alternate transportation to carry out their work-
4 related responsibilities, Defendants never reimbursed them for all their travel expenses.

5 143. Second, Defendants, on a company-wide basis, expected Plaintiffs and class
6 members to maintain clean and presentable company vehicles. Plaintiffs and class members
7 were required to take their vehicles to car washes at least once a week and incur expenses in
8 doing so. Although Defendants required Plaintiffs and class members to maintain their
9 company vehicles as part of their work-related responsibilities, Defendants never reimbursed
10 them for all their expenses.

11 144. Third, Defendants, on a company-wide basis, expected Plaintiffs and class
12 members to report to work in clean and presentable uniforms, including a uniform polo shirt
13 emblazoned with one of Defendants' brand logos (e.g. Milwaukee, Ryobi, or Empire), which
14 forced Plaintiffs and class members to wash their uniforms more frequently than they would
15 otherwise do laundry, and incur expenses for doing so. For example, Plaintiffs were only
16 provided two (2) uniform shirts each, but were scheduled to work five (5) days in a week, and
17 thus incurred laundry expenses for the upkeep of their uniforms, as the nature of their work
18 resulted in their uniforms becoming sweaty and/or dirty. As a further example, Plaintiff
19 Arellano was required to dry-clean his uniform shirts in order to prevent wear and tear,
20 incurring a cost of approximately \$50.00 per month on dry-cleaning, and was also required to
21 purchase replacement uniforms at a cost of \$60.00 per shirt.

22 145. Defendants could have provided Plaintiffs and class members with the actual
23 tools for use on the job, such as company-provided transportation to get to and from vehicle
24 maintenance/service appointments, and with an adequate number of uniform shirts or access
25 to a cleaning service. Or, Defendants could have reimbursed employees for the costs of their
26 travel, mileage, maintenance of company vehicles, and laundry or dry-cleaning expenses.
27 Instead, Defendants passed these operating costs off onto Plaintiffs and class members.

28 146. Defendants' company-wide policy and/or practice of passing on their operating

costs to Plaintiffs and class members violates California Labor Code section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiffs and other class members for necessary business-related expenses and costs.

147. Plaintiffs and class members are entitled to recover from Defendants their business-related expenses incurred during the course and scope of their employment, plus interest.

TENTH CAUSE OF ACTION

For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.*

(Against all Defendants)

148. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

149. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiffs to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 204.3, 222.5, 226(a), 226.7, 510, 512(a), 513, 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiffs, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 516 and 1182.12.

150. Defendants’ conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

- (a) Violation of Labor Code sections 510, 1198, and the applicable IWC wage order for Defendants’ failure to compensate Plaintiffs and other aggrieved employees with all required overtime and failure to properly calculate the overtime rates paid to Plaintiffs and other aggrieved employees, as alleged herein;
- (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198, and the applicable IWC wage order for Defendants’ failure to compensate Plaintiffs and other aggrieved employees with at least

- 1 minimum wages for all hours worked, as alleged herein;
- 2 (c) Violation of Labor Code sections 226.7, 512, 516, 1198, and the
- 3 applicable IWC wage order for Defendants' failure to provide Plaintiffs
- 4 and other aggrieved employees with meal periods, as alleged herein;
- 5 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
- 6 IWC wage order for Defendants' failure to authorize and permit
- 7 Plaintiffs and other aggrieved employees to take rest periods, as alleged
- 8 herein;
- 9 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
- 10 wage order for failure to provide accurate and complete wage statements
- 11 to Plaintiffs and other aggrieved employees, as alleged herein;
- 12 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable
- 13 IWC wage order for failure to maintain payroll records as alleged
- 14 herein;
- 15 (g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
- 16 earned wages upon termination as alleged herein;
- 17 (h) Violation of Labor Code section 204 for failure to pay all earned wages
- 18 during employment, as alleged herein;
- 19 (i) Violation of Labor Code section 1198 and the applicable IWC wage
- 20 order for failure to pay reporting time pay when Plaintiffs and other
- 21 aggrieved employees were put to work for less than half of their regular
- 22 scheduled shifts, as alleged herein;
- 23 (j) Violation of Labor Code section 1198 for failing to provide suitable
- 24 seating to Plaintiffs and other aggrieved employees, as set forth below;
- 25 (k) Violation of Labor Code section 222.5 for failing to pay the costs of
- 26 mandatory drug tests and/or physical examinations as set forth below;
- 27 and
- 28 (l) Violation of Labor Code section 2802 for failure to reimburse Plaintiffs

1 and other aggrieved employees for all business expenses necessarily
2 incurred, as alleged herein.

3 151. At all relevant times herein, California Labor Code section 1198 makes it
4 illegal to employ an employee under conditions of labor that are prohibited by the applicable
5 wage order. California Labor Code section 1198 requires that “. . . the standard conditions of
6 labor fixed by the commission shall be the . . . standard conditions of labor for employees.
7 The employment of any employee . . . under conditions of labor prohibited by the order is
8 unlawful.”

9 152. California Code of Regulations, Title 8, section 11070(14)(A) provides that
10 “[a]ll working employees shall be provided with suitable seats when the nature of the work
11 reasonably permits the use of seats.”

12 153. Plaintiffs allege that Defendants’ California job sites are generally similar in
13 their layout and design and there is space behind sales/demonstration tables to allow for the
14 presence and use of a seat or stool by Plaintiffs and other aggrieved employees during the
15 performance of their work duties. Defendants could have provided Plaintiffs and other
16 aggrieved employees with a seat or stool at their sales/demonstration tables, with reasonable
17 or no modification to these work areas, but instead denies employees seating and forces
18 Plaintiffs and other aggrieved employees to stand throughout the day.

19 154. Plaintiffs and other aggrieved employees have spent a substantial portion of
20 their day at or behind these sales/demonstration tables. The nature of the work of an
21 employee performing sales representative duties at sales/demonstration tables can reasonably
22 be accomplished from a seated position. However, Defendants systematically, and on a
23 company-wide basis, did not provide seats or stools at or near the sales/demonstration tables,
24 forcing Plaintiffs and other aggrieved employees to stand throughout their work shifts.

25 155. During the relevant time period, Defendants violated California Labor Code
26 section 1198 and California Code of Regulations, Title 8, section 11070(14)(A), because
27 Plaintiffs and other aggrieved employees were not allowed to sit, even when the nature of
28 their work would reasonably permit the use of seats, nor were they provided with suitable

1 seats.

2 156. A substantial portion of Plaintiffs' and other aggrieved employees' duties were
3 performed from and connected to sales/demonstration tables and could have been performed
4 from a seated position. For example, Plaintiffs and other aggrieved employees could have
5 performed their sales representative duties, while seated without interference to their ability to
6 complete these duties.

7 157. Defendants could have placed seats or stools near each sales/demonstration
8 table for use by Plaintiffs and other aggrieved employees with reasonable or no modification
9 to these work areas. However, on a company-wide basis, Defendants did not provide seats or
10 stools at their sales/demonstration tables. Defendants' management did not inform Plaintiffs
11 and other aggrieved employees that they were allowed to sit down, provide any means for
12 them to sit down, or mention any policy regarding sitting.

13 158. As a result of Defendants' company-wide policy and/or practice prohibiting
14 employees from sitting during their shifts and failure to provide suitable seating to these
15 employees, Plaintiffs and other aggrieved employees were forced to stand during shifts and
16 denied seats. Defendants' failure to provide suitable seating to Plaintiffs and other aggrieved
17 employees violated and continues to violate California Labor Code section 1198 and IWC
18 Wage Order 7-2001, Section 14(A). Plaintiffs and other aggrieved employees are therefore
19 entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

20 159. At all relevant times herein, California Labor Code section 1198 makes it
21 illegal to employ an employee under conditions of labor that are prohibited by the applicable
22 wage order. California Labor Code section 1198 requires that "... the standard conditions of
23 labor fixed by the commission shall be the ... standard conditions of labor for employees.
24 The employment of any employee ... under conditions of labor prohibited by the order is
25 unlawful."

26 160. California Code of Regulations, Title 8, section 11070(14)(B) provides that
27 "[w]hen employees are not engaged in the active duties of their employment and the nature of
28 the work requires standing, an adequate number of suitable seats shall be placed in reasonable

1 proximity to the work area and employees shall be permitted to use such seats when it does
2 not interfere with the performance of their duties.”

3 161. During the relevant time period, Defendants violated California Labor Code
4 section 1198 and California Code of Regulations, Title 8, section 11070(14)(B), because
5 Plaintiffs and other aggrieved employees are not allowed to sit, even during lulls in their work
6 duties, nor are they provided with suitable seats in reasonable proximity to their work areas.

7 162. Defendants did not provide Plaintiffs and other aggrieved employees with seats
8 or stools in reasonable proximity to their work area to allow them to use seats when it would
9 not interfere with the performance of their duties for times when they were not engaged in
10 active duties that require standing. In other words, to the extent Plaintiffs and other aggrieved
11 employees have engaged in duties in which the nature of the work required standing,
12 Defendants denied them the use of seats nearby when they were not engaged in those duties.
13 Even though the layout of Defendants’ workplaces could accommodate seats or stools with
14 reasonable or no modification to these work areas, Defendants have, on a company-wide
15 basis, denied Plaintiffs and other aggrieved employees suitable seating altogether.

16 163. As a result of Defendants’ company-wide policy and/or practice prohibiting
17 employees from sitting at any time, even when they are not engaged in active duties requiring
18 standing, and company-wide failure to provide seats in reasonable proximity to their work
19 areas, Plaintiffs and other aggrieved employees were forced to stand during shifts and denied
20 seats. Defendants’ failure to provide suitable seating to Plaintiffs and other aggrieved
21 employees violated and continues to violate California Labor Code section 1198 and IWC
22 Wage Order 7-2001, Section 14(B). Plaintiffs and other aggrieved employees are therefore
23 entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

24 164. In addition, during the relevant time period, Defendants maintained and
25 implemented a company-wide policy of requiring newly-hired employees to undergo a
26 mandatory drug test. At all times, Defendants were in control of scheduling the date and time
27 for the exam, selecting the provider/facility where the exam was to take place, and
28 determining the scope of the exam. Defendants gave other non-party aggrieved employees

1 strict instructions to obtain a drug test and other non-party aggrieved employees underwent the
2 drug testing for the sole benefit of Defendants. However, Defendants did not compensate
3 other non-party aggrieved employees for the time they spent traveling to and from the drug
4 testing facility, for the time they spent undergoing drug testing, or for the travel expenses they
5 incurred getting to and from the medical and/or testing facility.

6 165. Defendants' company-wide policy and/or practice of not paying for all costs
7 other non-party aggrieved employees incurred obtaining mandatory drug tests and/or physical
8 examinations is in violation of California Labor Code section 222.5. In addition, Defendants'
9 company-wide policy and/or practice of passing its operating costs on to non-party aggrieved
10 employees is in violation of California Labor Code section 2802. Defendants have
11 intentionally and willfully failed to fully reimburse other non-party aggrieved employees for
12 necessary business-related expenses and costs.

13 166. Other non-party aggrieved employees are therefore entitled to recover
14 penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a),
15 (f)-(g).

16 **ELEVENTH CAUSE OF ACTION**

17 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

18 **Unlawful Business Practices**

19 **(Against all Defendants)**

20 167. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
21 and every allegation set forth above.

22 168. Defendants are "persons" as defined by California Business & Professions
23 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
24 and/or associations.

25 169. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
26 unlawful and harmful to Plaintiffs, class members, and to the general public. Plaintiffs have
27 suffered injury in fact and has lost money as a result of Defendants' unlawful business
28 practices. Plaintiffs seek to enforce important rights affecting the public interest within the

1 meaning of Code of Civil Procedure section 1021.5.

2 170. Defendants' activities, as alleged herein, are violations of California law, and
3 constitute unlawful business acts and practices in violation of California Business &
4 Professions Code sections 17200, *et seq.*

5 171. A violation of California Business & Professions Code sections 17200, *et seq.*
6 may be predicated on the violation of any state or federal law. In the instant case, Defendants'
7 policies and practices have violated state law in at least the following respects:

- 8 (a) Requiring non-exempt, hourly paid employees, including Plaintiffs and
9 class members, to work overtime without paying them proper
10 compensation in violation of California Labor Code sections 204.3, 510,
11 513 and 1198 and the applicable IWC Order, and paying Plaintiffs and
12 class members overtime at a lower rate than required by law by failing
13 to properly calculate the regular rate of pay for purposes of overtime, as
14 alleged herein;
- 15 (b) Failing to pay at least minimum wage to Plaintiffs and class members in
16 violation of California Labor Code sections 1182.12, 1194, 1197,
17 1197.1, and 1198 and the applicable IWC Order, as alleged herein;
- 18 (c) Failing to provide uninterrupted meal periods to Plaintiffs and class
19 members in violation of California Labor Code sections 226.7, 512(a),
20 516, 1198, and the applicable IWC Order, as alleged herein;
- 21 (d) Failing to authorize and permit Plaintiffs and class members to take
22 uninterrupted rest periods in violation of California Labor Code sections
23 226.7, 516, 1198, and the applicable IWC Order, as alleged herein;
- 24 (e) Failing to provide Plaintiffs and class members with accurate wage
25 statements and failing to maintain accurate payroll records in violation
26 of California Labor Code sections 226(a), 1174(d), 1198, and the
27 applicable IWC Order, as alleged herein;
- 28 (f) Failing timely to pay all earned wages to Plaintiffs and class members in

violation of California Labor Code section 204 and the applicable IWC Order, as alleged herein;

(g) Failing to pay reporting time pay in violation of California Labor Code section 1198 and the applicable Industrial Welfare Commission Order, as alleged herein; and

(h) Failing to reimburse Plaintiffs and class members for all business expenses necessarily incurred in violation of California Labor Code sections 2802, as alleged herein.

172. As a result of the violations of California law herein described, Defendants unlawfully gained an unfair advantage over other businesses. Plaintiffs and class members have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

173. Pursuant to California Business & Professions Code sections 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 years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiffs and class members; and an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

TWELFTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, et seq. –

Unfair Business Practices

(Against all Defendants)

174. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

175. Defendants are "persons" as defined by California Business & Professions Code sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

176. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,

1 and harmful to Plaintiffs, class members, and to the general public. Plaintiffs have suffered
2 injury in fact and has lost money as a result of Defendants' unfair business practices.
3 Plaintiffs seek to enforce important rights affecting the public interest within the meaning of
4 Code of Civil Procedure section 1021.5.

5 177. Defendants' activities, namely Defendants' company-wide practice and/or
6 policy of not paying Plaintiffs and class members all meal and rest period premium wages due
7 to them under Labor Code section 226.7, deprived Plaintiffs and class members of the
8 compensation guarantee and enhanced enforcement implemented by section 226.7. The
9 statutory remedy provided by section 226.7 is a "dual-purpose" remedy intended primarily to
10 compensate employees, and secondarily to shape employer conduct. *Safeway, Inc. v. Superior*
11 *Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were
12 guaranteed to Plaintiffs and class members as part of their employment with Defendants, and
13 thus Defendants' practice and/or policy of denying these statutory benefits constitutes an
14 unfair business practice in violation of California Business & Professions Code sections
15 17200, *et seq.* (Id.)

16 178. A violation of California Business & Professions Code sections 17200, *et seq.*
17 may be predicated on any unfair business practice. In the instant case, Defendants' policies
18 and practices have violated the spirit of California's meal and rest break laws and constitute
19 acts against the public policy behind these laws.

20 179. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
21 Plaintiffs and class members are entitled to restitution for the class-wide loss of the statutory
22 benefits implemented by section 226.7 withheld and retained by Defendants during a period
23 that commences four years prior to the filing of this complaint; a permanent injunction
24 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
25 Plaintiffs and class members; an award of attorneys' fees pursuant to California Code of Civil
26 Procedure section 1021.5 and other applicable laws; and an award of costs.

27 **THIRTEENTH CAUSE OF ACTION**

28 **Violation of Fair Labor Standards Act 29 U.S.C. § 207—Unpaid Overtime**

(Against all Defendants)

180. Plaintiffs, on behalf of themselves and others similarly situated, re-allege and incorporate by reference the allegations contained in the paragraphs above as if fully set forth herein.

181. Plaintiffs consent in writing to be a party to this action, pursuant to 29 U.S.C. § 216(b). Plaintiffs' written consent forms are attached hereto as Exhibit 3. Plaintiffs anticipate that other individuals will sign consent forms and join as plaintiffs.

182. At all relevant times, Techtronic has been, and continues to be, an "employer" engaged in interstate commerce, within the meaning of the FLSA, 29 U.S.C. § 203. Within the relevant time-period, Techtronic employed Plaintiffs, and employed and continues to employ members of the proposed collective class. At all relevant times, upon information and belief, Techtronic has had gross operating revenues in excess of \$500,000.

183. The FLSA requires that each covered employer, such as Techtronic, compensate all non-exempt employees at a rate of not less than one and one-half times the regular rate of pay for work performed in excess of forty hours per week.

184. By failing to accurately record, report, and/or preserve records of hours worked by Plaintiffs and the collective class, Techtronic has failed to make, keep, and preserve records with respect to each of its employees sufficient to determine their wages, hours, and other conditions and practice of employment, in violation of the FLSA, 29 U.S.C. § 201 et seq.

185. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA, within the meaning of 29 U.S.C. § 255(a).

186. Plaintiffs, on behalf of themselves and the collective class, seek damages in the amount of their and each class member's unpaid overtime compensation, liquidated damages from three years immediately preceding the filing of this action, plus interest and costs as allowed by law, pursuant to 29 U.S.C. §§ 216(b) and 255(a), and such other legal and equitable relief as the Court deems just and proper.

187. Plaintiffs, on behalf of themselves and the collective class, seek recovery of

1 their attorneys' fees and costs to be paid by Defendants, as provided by the FLSA, 29, U.S.C.
2 § 216(b).

3 **REQUEST FOR JURY TRIAL**

4 Plaintiffs request a trial by jury.

5 **PRAYER FOR RELIEF**

6 Plaintiffs, on behalf of all others similarly situated, pray for relief and judgment
7 against Defendants, jointly and severally, as follows:

8 1. For damages, unpaid wages, penalties, liquidated damages, injunctive relief,
9 and attorneys' fees in excess of twenty-five thousand dollars (\$25,000), exclusive of interest
10 and costs. Plaintiffs reserve the right to amend their prayer for relief to seek a different
11 amount.

12 //

13 **Class Certification**

14 2. That this case be certified as a class action;

15 3. That Plaintiffs be appointed as the representatives of the Class and Subclass;

16 4. That counsel for Plaintiffs be appointed as class counsel.

17 **As to the First Cause of Action**

18 5. That the Court declare, adjudge, and decree that Defendants violated California
19 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to
20 pay all overtime wages due to Plaintiffs and class members;

21 6. For general unpaid wages at overtime wage rates and such general and special
22 damages as may be appropriate;

23 7. For pre-judgment interest on any unpaid overtime compensation commencing
24 from the date such amounts were due, or as otherwise provided by law;

25 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
26 California Labor Code section 1194(a); and

27 9. For such other and further relief as the Court may deem equitable and
28 appropriate.

1 **As to the Second Cause of Action**

2 10. That the Court declare, adjudge and decree that Defendants violated California
3 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 by willfully failing to pay
4 minimum wages to Plaintiffs and class members;

5 11. For general unpaid wages and such general and special damages as may be
6 appropriate;

7 12. For pre-judgment interest on any unpaid compensation from the date such
8 amounts were due, or as otherwise provided by law;

9 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
10 California Labor Code section 1194(a);

11 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

12 15. For such other and further relief as the Court may deem equitable and
13 appropriate.

14 **As to the Third Cause of Action**

15 16. That the Court declare, adjudge, and decree that Defendants violated California
16 Labor Code sections 226.7, 512(a), 516, and 1198 and applicable IWC Wage Order(s) by
17 willfully failing to provide all meal periods to Plaintiffs and class members;

18 17. That the Court make an award to the Plaintiffs and class members of one (1)
19 hour of pay at each employee's regular rate of pay for each workday that a meal period was
20 not provided;

21 18. For all actual, consequential, and incidental losses and damages, according to
22 proof;

23 19. For premiums pursuant to California Labor Code section 226.7(b);

24 20. For pre-judgment interest on any unpaid meal period premiums from the date
25 such amounts were due, or as otherwise provided by law;

26 21. For attorneys' fees pursuant to California Code of Civil Procedure section
27 1021.5, or as otherwise provided by law; and

28 22. For such other and further relief as the Court may deem equitable and

1 appropriate.

2 **As to the Fourth Cause of Action**

3 23. That the Court declare, adjudge and decree that Defendants violated California
4 Labor Code sections 226.7, 516, and 1198 and applicable IWC Wage Orders by willfully
5 failing to authorize and permit Plaintiffs and class members to take all rest periods;

6 24. That the Court make an award to the Plaintiffs and class members of one (1)
7 hour of pay at each employee's regular rate of pay for each workday that a rest period was not
8 authorized and permitted;

9 25. For all actual, consequential, and incidental losses and damages, according to
10 proof;

11 26. For premiums pursuant to California Labor Code section 226.7(b);

12 27. For pre-judgment interest on any unpaid rest period premiums from the date
13 such amounts were due, or as otherwise provided by law;

14 28. For attorneys' fees pursuant to California Code of Civil Procedure section
15 1021.5, or as otherwise provided by law; and

16 29. For such other and further relief as the Court may deem equitable and
17 appropriate.

18 **As to the Fifth Cause of Action**

19 30. That the Court declare, adjudge and decree that Defendants violated the
20 recordkeeping provisions of California Labor Code section 226(a) and applicable IWC Wage
21 Orders as to Plaintiffs and Subclass members, and willfully failed to provide accurate itemized
22 wage statements thereto;

23 31. For all actual, consequential, and incidental losses and damages, according to
24 proof;

25 32. For injunctive relief pursuant to California Labor Code section 226(h);

26 33. For statutory penalties pursuant to California Labor Code section 226(e);

27 34. For attorneys' fees and costs pursuant to California Labor Code section
28 226(e)(1); and

1 35. For such other and further relief as the Court may deem equitable and
2 appropriate.

3 **As to the Sixth Cause of Action**

4 36. That the Court declare, adjudge and decree that Defendants violated California
5 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
6 meal and rest period premiums, and/or reporting time pay owed at the time of termination of
7 the employment of Plaintiffs and other terminated class members;

8 37. For all actual, consequential and incidental losses and damages, according to
9 proof;

10 38. For waiting time penalties according to proof pursuant to California Labor
11 Code section 203 for all employees who have left Defendants' employ;

12 39. For pre-judgment interest on any unpaid wages from the date such amounts
13 were due, or as otherwise provided by law;

14 40. For attorneys' fees pursuant to California Code of Civil Procedure section
15 1021.5, or as otherwise provided by law; and

16 41. For such other and further relief as the Court may deem equitable and
17 appropriate.

18 **As to the Seventh Cause of Action**

19 42. That the Court declare, adjudge and decree that Defendants violated California
20 Labor Code section 204 by willfully failing to timely pay Plaintiffs and class members
21 overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay
22 during their employment;

23 43. For all actual, consequential and incidental losses and damages, according to
24 proof;

25 44. For statutory penalties according to proof pursuant to California Labor Code
26 section 210;

27 45. For pre-judgment interest on any unpaid wages from the date such amounts
28 were due, or as otherwise provided by law;

1 46. For attorneys' fees pursuant to California Code of Civil Procedure section
2 1021.5, or as otherwise provided by law; and

3 47. For such other and further relief as the Court may deem equitable and
4 appropriate.

5 **As to the Eighth Cause of Action**

6 48. That the Court declare, adjudge and decree that Defendants violated California
7 Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(5)(A) by
8 failing to provide Plaintiff Arellano and class members with reporting time pay;

9 49. For all actual, consequential and incidental losses and damages, according to
10 proof;

11 50. For pre-judgment interest on any unpaid wages from the date such amounts
12 were due, or as otherwise provided by law; and

13 51. For such other and further relief as the Court may deem equitable and
14 appropriate.

15 **As to the Ninth Cause of Action**

16 52. That the Court declare, adjudge and decree that Defendants violated California
17 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-
18 related expenses and costs incurred by Plaintiffs and class members;

19 53. For unpaid business-related expenses and such general and special damages as
20 may be appropriate;

21 54. For pre-judgment interest on any unpaid business-related expenses from the
22 date such amounts were due, or as otherwise provided by law;

23 55. For all actual, consequential, and incidental losses and damages, according to
24 proof;

25 56. For attorneys' fees and costs pursuant to California Labor Code
26 section 2802(c), or as otherwise provided by law; and

27 57. For such other and further relief as the Court may deem equitable and
28 appropriate.

1 **As to the Tenth Cause of Action**

2 58. That the Court declare, adjudge and decree that Defendants violated the
3 following California Labor Code provisions as to Plaintiffs and/or other aggrieved employees:
4 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and
5 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516, and
6 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
7 permit all rest periods); 222.5 (by failing to pay for mandatory drug testing); 226(a), 1174(d)
8 and 1198 (by failing to provide accurate wage statements and maintain accurate payroll
9 records); 201, 202, 203 (by failing timely to pay all earned wages upon termination); 204 (by
10 failing timely to pay all earned wages during employment); 1198 (by failing to pay reporting
11 time pay); 1198 (by failing to provide suitable seating); and 2802 (by failing to reimburse
12 business expenses);

13 59. For civil penalties pursuant to California Labor Code sections 210, 226.3, 256,
14 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code
15 sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,
16 1197, 1197.1, 1198, and 2802;

17 60. For attorneys' fees and costs pursuant to California Labor Code section
18 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
19 Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d),
20 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

21 61. For pre-judgment and post-judgment interest as provided by law; and

22 62. For such other and further relief as the Court may deem equitable and
23 appropriate.

24 **As to the Eleventh Cause of Action**

25 63. That the Court declare, adjudge and decree that Defendants' conduct of failing
26 to provide Plaintiffs and class members all overtime wages due to them, failing to provide
27 Plaintiffs and class members all minimum wages due to them, failing to provide Plaintiffs and
28 class members all meal periods, failing to authorize and permit Plaintiffs and class members to

1 take all rest periods, failing to provide Plaintiffs and class members accurate and complete
2 wage statements, failing to maintain accurate payroll records for Plaintiffs and class members,
3 failing timely to pay Plaintiffs and class members all earned wages during employment,
4 failing to pay Plaintiffs and class members reporting time pay, and failing to reimburse
5 Plaintiffs and class members for business-related expenses, constitutes an unlawful business
6 practice in violation of California Business and Professions Code sections 17200, *et seq.*;

7 64. For restitution of unpaid wages to Plaintiffs and all class members and
8 prejudgment interest from the day such amounts were due and payable;

9 65. For the appointment of a receiver to receive, manage and distribute any and all
10 funds disgorged from Defendants and determined to have been wrongfully acquired by
11 Defendants as a result of violations of California Business & Professions Code sections 17200
12 *et seq.*;

13 66. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
14 California Code of Civil Procedure section 1021.5; and

15 67. For such other and further relief as the Court may deem equitable and
16 appropriate.

17 **As to the Twelfth Cause of Action**

18 68. That the Court declare, adjudge and decree that Defendants' conduct of denying
19 Plaintiffs and class members the statutory benefits guaranteed under section 226.7 constitutes
20 an unfair business practice in violation of California Business and Professions Code sections
21 17200, *et seq.*;

22 69. For restitution of the statutory benefits under section 226.7 unfairly withheld
23 from Plaintiffs and class members and prejudgment interest from the day such amounts were
24 due and payable;

25 70. For the appointment of a receiver to receive, manage and distribute any and all
26 funds disgorged from Defendants and determined to have been wrongfully acquired by
27 Defendants as a result of violations of California Business & Professions Code sections 17200
28 *et seq.*;

1 71. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
2 California Code of Civil Procedure section 1021.5;

3 72. For pre-judgment and post-judgment interest as provided by law; and

4 73. For such other and further relief as the Court may deem equitable and
5 appropriate.

6 **As to the Thirteenth Cause of Action**

7 74. Plaintiffs, on behalf of themselves and the collective class, seek damages in the
8 amount of their and each class member's unpaid overtime compensation, liquidated damages
9 from three years immediately preceding the filing of this action, plus interest and costs as
10 allowed by law, pursuant to 29 U.S.C. §§ 216(b) and 255(a), and such other legal and
11 equitable relief as the Court deems just and proper.

12 75. A determination that this action may be maintained as a collective action on
13 behalf of all similarly situated employees in the United States under the FLSA, 29 U.S.C. §
14 216(b), and issuance of notice to proposed collective class members under that section;

15 76. Plaintiffs, on behalf of themselves and the collective class, seek recovery of
16 their attorneys' fees and costs to be paid by Defendants, as provided by the FLSA, 29 U.S.C.
17 § 216(b).

18 Dated: February 28, 2022

Respectfully submitted,

20 By:



21 Bevin Allen Pike
22 Orlando Villalba
23 Joseph Hakakian
24 **CAPSTONE LAW APC**

25 Laura L. Ho
26 Byron Goldstein
27 **GOLDSTEIN, BORGEN, DARDARIAN & HO**

28 Attorneys for Plaintiffs Sergio Arellano
Edgar Murillo, John Henry, and Curt Uyemura

EXHIBIT “1”

MAO SHIOKURA
310.712.8030 Direct
Mao.Shiokura@capstonelawyers.com

February 21, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/260>)

Subject: *Sergio Arellano v. R&B Sales and Marketing, Inc., et al.*

Dear PAGA Administrator:

This office represents Sergio Arellano in connection with his claims under the California Labor Code. Mr. Arellano was an employee of R&B SALES AND MARKETING, INC. and/or TECHTRONIC INDUSTRIES NORTH AMERICA, INC. For the purpose of this letter, Mr. Arellano collectively refers to these entities as "R&B."

The employer may be contacted directly at the address below:

R&B SALES AND MARKETING, INC.
1428 PEARMAN DAIRY ROAD
ANDERSON, SC 29625

TECHTRONIC INDUSTRIES NORTH AMERICA, INC.
450 EAST LAS OLAS BOULEVARD, SUITE 1500
FORT LAUDERDALE, FL 33301

Mr. Arellano intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Arellano seeks relief on behalf of himself, the State of California, and other persons who are or were employed by R&B in California as a non-exempt, hourly paid employee and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

R&B employed Mr. Arellano as a non-exempt, hourly paid Single Store Sales Representative from approximately October 2013 to September 2019. Mr. Arellano worked for R&B out of a Home Depot store location in Whittier, California. During his employment, Mr. Arellano typically worked eight (8) hours or more per day, five (5) days per week, from 7:00 a.m. to 3:30 p.m. Mr. Arellano's primary job duties included, without limitation, selling R&B's products to Home Depot customers by

answering customer questions at a sales table and demonstrating products; training Home Depot associates about the products; communicating with Home Depot managers about the brand and how to sell product; installing, moving, and rearranging product displays; and picking up, analyzing, and transporting product shipments.

R&B has committed one or more of the following Labor Code violations against Mr. Arellano, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

R&B’s Company-Wide and Uniform Payroll and HR Practices

R&B SALES AND MARKETING, INC. and TECHTRONIC INDUSTRIES NORTH AMERICA, INC. are Delaware corporations, a leader in quality consumer and professional products marketed to the home improvement and construction industries. R&B’s brand portfolio includes Milwaukee, AEG, Ryobi, Homelite, Empire, Stiletto, Hoover US, Hart, Oreck, Vax, and Dirt Devil. Upon information and belief, R&B maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Fort Lauderdale, Florida, for all non-exempt, hourly paid employees working for R&B in California, including Mr. Arellano and other aggrieved employees. At all relevant times, R&B issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Arellano and other aggrieved employees, regardless of their location or position.

Upon information and belief, R&B maintains a centralized Payroll department at its corporate headquarters in Fort Lauderdale, Florida, which processes payroll for all non-exempt, hourly paid employees working for R&B in California, including Mr. Arellano and other aggrieved employees. Further, R&B issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Arellano and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, R&B utilized the same methods and formulas when calculating wages due to Mr. Arellano and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration

¹ These facts, theories, and claims are based on Mr. Arellano’s experience and counsel’s review of those records currently available relating to Mr. Arellano’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Arellano reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

R&B willfully failed to pay all overtime wages owed to Mr. Arellano and other aggrieved employees. During the relevant time period, Mr. Arellano and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, R&B had a policy and/or practice of discouraging and impeding Mr. Arellano and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. On information and belief, this limitation on overtime accrual was based on a company-wide policy of staffing job sites or locations strictly based on the labor hours or labor budget set by corporate. This policy of limiting overtime, coupled with R&B's single-staffing and/or understaffing policy (*see infra*) and assigning strict deadlines and heavy workloads, led Mr. Arellano and other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete their assigned tasks. R&B discouraged Mr. Arellano and other aggrieved employees from earning overtime wages by requiring and then denying approval of overtime hours, but made them to finish "re-sets" or other projects within a single eight-hour shift. Thus, Mr. Arellano and other aggrieved employees would clock out at their designated shift end-time and would continue working to finish their assignments, such as performing "re-sets" and preparing product displays.

As a result of this restriction on overtime accrual, R&B also forced Mr. Arellano and other aggrieved employees to perform work off-the-clock outside of their scheduled shifts, such as preparing "re-sets" of store displays, including receiving packages at home, organizing product boxes, and loading company vehicles with inventory; filling their company vehicles with gas, taking them in for maintenance or service, and getting car washes; responding to phone calls and texts on their company cellular phones; and traveling to and from R&B's meetings or other Home Depot store locations to assist other employees. R&B failed to track this time spent working before and after scheduled shifts, and Mr. Arellano and other aggrieved employees received no compensation for this time.

Second, during the relevant time period, on information and belief, R&B had a policy of improperly adjusting Mr. Arellano's and other aggrieved employees' clock-in and clock-out duration times in its Kronos timekeeping system. R&B's time-shaving policy resulted in the failure to compensate Mr. Arellano and other aggrieved employees fully for all hours worked, causing Mr. Arellano and other aggrieved employees to not be paid overtime wages for all of the overtime hours they actually worked. Upon information and belief, R&B's time-shaving policy is, and continues to be, unfair and has, over time, resulted in the underpayment of wages to Mr. Arellano and other aggrieved employees. To the extent R&B's policy has taken away time worked that was eligible for overtime, Mr. Arellano and other aggrieved employees were denied overtime pay for all hours worked.

Third, R&B has systematically, and on a company-wide basis, understaffed its posts by adopting a single-staffing model for job sites, pursuant to its labor budget practices, thereby failing to provide adequate meal period coverage to permit employees to take compliant meal periods. Because R&B understaffs its job sites, there is no one available to relieve Mr. Arellano and other aggrieved employees needing meal period coverage. For example, Mr. Arellano's meal periods were missed or interrupted due to customer demand, contractors asking questions, and calls from R&B's management on company cellular phones.

Fourth, during the relevant period, as stated above, R&B had, and continues to have, a company-wide policy and/or practice of understaffing its worksites while assigning heavy workloads and/or strict deadlines for re-sets, resulting in a failure to provide Mr. Arellano and other aggrieved employees with adequate meal period coverage. As a result of this lack of meal period coverage, Mr. Arellano and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Mr. Arellano and other aggrieved employees were required to perform their duties, such as working at promotional events, manning product displays, or responding to work-related calls from R&B's management during unpaid meal periods, or would have their meal periods interrupted to complete such work-related tasks.

Additionally, R&B, on a company-wide basis, had a practice of failing to schedule (or adhere to a schedule of) meal periods, which further caused Mr. Arellano and other aggrieved employees to not be relieved of their duties for compliant meal periods. Thus, Mr. Arellano and other aggrieved employees missed or had meal periods interrupted in order to complete their assigned workloads. R&B did not pay Mr. Arellano and other aggrieved employees for the time they continued to perform tasks during meal periods. Further, on information and belief, because R&B frowned upon employees accruing meal period penalties, when Mr. Arellano and other aggrieved employees failed to clock themselves out at designated meal period start times, they were subject to R&B altering their time records and deducting time for meal periods that were not taken. Alternatively, R&B's supervisors adjusted employee time records to show compliant meal periods, even if none were taken. Consequently, Mr. Arellano and other aggrieved employees performed work during meal periods for which they were not paid.

R&B knew or should have known that, as a result of these company-wide practices and/or policies, Mr. Arellano and other aggrieved employees were performing their assigned duties during their meal periods and performing work off-the-clock before or after their shifts, and were suffered or permitted to perform work for which they were not paid. R&B also knew, or should have known, that it did not compensate Mr. Arellano and other aggrieved employees applicable overtime rates of pay for overtime hours that they worked.

Because Mr. Arellano and other aggrieved employees regularly worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Arellano and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. R&B's failure to pay Mr. Arellano and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

Furthermore, R&B did not pay Mr. Arellano and other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, R&B paid Mr. Arellano and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. For example, R&B paid Mr. Arellano and other aggrieved employees nondiscretionary bonuses and incentive pay, such as sales bonuses (based on a percentage of a store's total sales). However, in violation of the California Labor Code, R&B failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Mr. Arellano and other aggrieved employees worked overtime and received these other forms of pay, R&B failed to pay all overtime wages by paying a lower overtime rate than required.

Mr. Arellano and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 7 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11070(2)(G) (defining "Hours Worked").

As set forth above, during the relevant time period, as a result of R&B's policy of limiting the amount of overtime employees could accrue by discouraging and impeding Mr. Arellano and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, Mr. Arellano and other aggrieved employees were required to work off-the-clock before and after their scheduled shift start and end times to complete their assigned job duties. Furthermore, as stated above, R&B had, and continues to have, a company-wide policy of adjusting or shaving down Mr. Arellano's and other aggrieved employees' hourly clock-in and clock-out times in its Kronos timekeeping system, resulting in the failure to compensate Mr. Arellano and other aggrieved employees fully for all hours worked and the failure to pay them minimum wages for all hours actually worked. As also stated, due to R&B's policy and/or practice of understaffing or single-staffing while assigning heavy workloads and strict deadlines, and failure to schedule (or adhere to a schedule of) meal periods, Mr. Arellano and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods.

Moreover, R&B maintained and implemented a company-wide policy of requiring employees to travel to a medical facility on their own time and using their own personal vehicles to undergo mandatory drug testing and/or physical examinations. At all times, R&B was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. However, R&B did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities and undergoing the mandatory drug testing and/or physical examinations.

Thus, R&B did not pay minimum wages for all hours worked by Mr. Arellano and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, R&B did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Accordingly, R&B regularly failed to pay at least minimum wages to Mr. Arellano and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Mr. Arellano and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal and rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal break of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, during the relevant time period, as stated, R&B had, and continues to have, a uniform policy and/or practice of single-staffing and understaffing pursuant to a labor budget, which resulted in a lack of meal period coverage and prevented Mr. Arellano and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Because R&B understaffs its job sites, there is no one available to relieve Mr. Arellano and other aggrieved employees needing meal period coverage.

Second, as stated, R&B has, on a company-wide basis, systematically discouraged and impeded Mr. Arellano and other aggrieved employees from taking meal periods by failing to schedule (or failing to adhere to a schedule of) meal periods, while assigning strict deadlines and heavy workloads, even though they are aware and know that employees are entitled to such meal periods. As a result of this uniform failure to schedule (or failure to adhere to a schedule of) meal periods, Mr. Arellano and other aggrieved employees have not been provided timely, uninterrupted 30-minute meal periods during their shifts in which they were entitled to receive a meal period. Additionally, R&B required Mr. Arellano and other aggrieved employees to respond to phone calls to their company cellular phones at all times, which further caused Mr. Arellano and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result of R&B's practices and/or policies, Mr. Arellano and other aggrieved employees had to work through part or all of their meal periods, have their meal periods interrupted, and/or wait extended periods of time before taking meal periods.

Third, because R&B frowned upon employees accruing meal period penalties, R&B's management would adjust Mr. Arellano's and other aggrieved employees' time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by R&B. However, Mr. Arellano and other aggrieved employees worked through meal periods or had their meal periods interrupted, because there were not enough employees on duty to handle the heavy workload and tend to customers.

R&B's practice of single-staffing and understaffing, coupled with R&B's failure to schedule (or failure to adhere to a schedule of) meal periods while assigning strict deadlines and heavy workloads, prevented Mr. Arellano and other aggrieved employees from taking all compliant meal

periods to which they were entitled. As a result, Mr. Arellano and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted and/or had to forgo their meal periods altogether. For example, during his employment, Mr. Arellano would start his meal periods late or would have his meal periods interrupted by his supervisors calling about status updates on projects or to assist with customer inquiries. As a further example, Mr. Arellano would also miss his meal periods due to the heavy workload and deadlines for completing re-sets and other projects in one eight-hour shift on his own.

Fourth, R&B did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. Arellano and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

As a result of R&B's practices and/or policies, Mr. Arellano and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted, and/or had to forgo their meal periods altogether. R&B knew or should have known that as a result of its policies, Mr. Arellano and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. R&B further knew or should have known that it did not pay Mr. Arellano and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted, because R&B adjusted employee time records to reflect compliant meal periods, even if none were taken.

R&B also has engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Arellano and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that R&B did pay meal period premium wages to Mr. Arellano and other aggrieved employees, it did so at the incorrect rates. Because R&B did not properly calculate Mr. Arellano's and other aggrieved employees' regular rates of pay by including all remunerations, such as incentive pay and/or nondiscretionary bonuses, any premiums paid for meal period violations were also paid at an incorrect rate and resulted in an underpayment of meal period premium wages.

Accordingly, R&B failed to provide all meal periods in violation of California Labor Code sections 226.7, 512, 516, and 1198. Mr. Arellano and other aggrieved employees are therefore entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "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 or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, R&B regularly failed to authorize and permit Mr. Arellano and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, R&B’s company-wide practices, including assigning deadlines and heavy workloads, prevented Mr. Arellano and other aggrieved employees from being relieved of all duty to take compliant rest periods. For example, R&B actively discouraged other aggrieved employees from taking rest periods by threatening them with discipline or write-ups. Additionally, R&B failed to schedule rest periods, which, coupled with R&B’s failure to provide adequate rest period coverage, further led to Mr. Arellano and other aggrieved employees not being authorized and permitted to take compliant rest periods. Moreover, Mr. Arellano and other aggrieved employees were assigned company-issued cellular phones and were expected to carry and respond to them at all times, including during rest periods.

Furthermore, R&B maintained and implemented a company-wide practice and/or policy requiring that Mr. Arellano and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Arellano and other aggrieved employees were restricted from leaving the work premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, R&B effectively maintained control over Mr. Arellano and other aggrieved employees during rest periods, and, as a result of this rest period policy, R&B did not relinquish control over Mr. Arellano and other aggrieved employees during rest periods.

As a result of R&B’s practices and policies, Mr. Arellano and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, throughout his employment, Mr. Arellano missed his rest periods, due to R&B’s policy of assigning heavy workloads and strict deadlines, failure to schedule rest periods, and requirement that he respond to his company-issued cellular phone at all times.

R&B also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Arellano and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that R&B did pay rest period premium wages to Mr. Arellano and other aggrieved employees, it did so at the incorrect rates. Because R&B did not properly calculate Mr. Arellano’s and other aggrieved employees’ regular rates of pay by including all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, any premiums paid for rest period violations were also paid at an incorrect rate and resulted in an underpayment of rest period premium wages.

Accordingly, R&B failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Arellano and other aggrieved employees are therefore entitled to civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. R&B has not provided Mr. Arellano and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, R&B has knowingly and intentionally provided Mr. Arellano and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, R&B issued uniform wage statements to Mr. Arellano and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the correct name of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, R&B violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because R&B did not record the time Mr. Arellano and other aggrieved employees spent working off-the-clock and underreported Mr. Arellano's and other aggrieved employees' hourly clock-in and clock-out times in their timekeeping system, R&B did not list the correct amount of gross wages and net wages earned by Mr. Arellano and other aggrieved employees, in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, R&B failed to accurately list the total number of the hours worked by Mr. Arellano and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Second, because R&B did not calculate Mr. Arellano's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, R&B did not list the correct amount of gross wages earned by Mr. Arellano and other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by Mr. Arellano and other aggrieved employees in violation of section 226(a)(5). R&B also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for premium wages, in violation of section 226(a)(9).

Third, and separate from these violations, R&B issued uniform wage statements to Mr. Arellano and other aggrieved employees that failed to correctly list the name and address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. Mr. Arellano's and other aggrieved employees' wage statements incorrectly list the employer as "R & B SALES AND MARKETING INC," but, according to the

California Secretary of State's website, there is no such entity by that name. *See example paystub below.*

CO. GFS	FILE	DEPT.	CLOCK	VCHR. NO.	1
					045-0001
R & B SALES AND MARKETING INC					
1428 PEARMAN DAIRY ROAD					
ANDERSON, SC 29625					

Earnings Statement



Period Beginning: 08/26/2019
Period Ending: 09/08/2019
Pay Date: 09/13/2019

Taxable Marital Status: ☐
Exemptions/Allowances:
Federal: ☐
CA: ☐

SERGIO ARELLANO

The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

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...” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), R&B willfully failed to maintain accurate payroll records for Mr. Arellano and other aggrieved employees 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 and underreporting Mr. Arellano's and other aggrieved employees' hourly clock-in and clock-out times in their timekeeping system.

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 Orders. 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. At all relevant times, as stated, R&B engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Arellano and other aggrieved employees. Also, as stated, R&B engaged in a company-wide practice and/or policy of falsifying Mr. Arellano's and other aggrieved employees' time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Mr. Arellano and other aggrieved employees.

Because R&B failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Arellano and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Arellano and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Arellano and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, R&B failed to pay Mr. Arellano and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, reporting time pay, and/or meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Mr. Arellano and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

R&B willfully failed to pay Mr. Arellano and other aggrieved employees who are no longer employed by R&B all their earned wages, including, but not limited to, overtime wages, minimum wages, reporting time pay, and/or meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving R&B's employ in violation of California Labor Code sections 201, 202, and 203.

Mr. Arellano and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, R&B implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo mandatory drug tests and/or physical examinations, but required them to do so at their own expense. As stated, R&B had a company-wide policy requiring that other aggrieved employees travel to a specified medical facility on their own time and use their own means of transportation to undergo drug testing and/or physical examinations. At all times, R&B was in control of scheduling the date and time for the drug testing and/or physical examinations, selecting the provider/facility where the drug testing and/or physical examinations were to take place, and determining the scope of the drug test and/or physical examinations.

However, R&B did not compensate other aggrieved employees for the time they spent traveling to and from their drug tests and/or physical examinations, or for the time they spent undergoing the testing and/or examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. R&B's policy and/or practice of not paying for all costs and other aggrieved employees incurred obtaining mandatory drug tests and/or physical examinations violates California Labor Code section 222.5.

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14(A) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11070(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

“The ‘nature of the work’ refers to an employee’s tasks performed at a given location for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the entire range of an employee’s duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for.” *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). “Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer’s business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee’s characteristics.” *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other

words, the employer must show that compliance is “infeasible because no suitable seating exists.”
See id.

R&B’s California job sites are generally similar in their layout and design and there was, and continues to be, space behind the sales/demonstration tables to allow for the presence and use of a seat or stool by Mr. Arellano and other aggrieved employees during the performance of their work duties. R&B could provide Mr. Arellano and other aggrieved employees with a seat or stool at its sales/demonstration tables, with reasonable or no modification to these work areas, but instead denies employees seating and forces Mr. Arellano and other aggrieved employees to stand throughout the day.

Mr. Arellano and other aggrieved employees spent a substantial portion of their day behind or at these sales/demonstration tables. The nature of the work of an employee performing sales representative duties at sales/demonstration tables can reasonably be accomplished from a seated position. However, as set forth herein, R&B systematically, and on a company-wide basis, does not provide seats or stools at or near the sales/demonstration tables, forcing Mr. Arellano and other aggrieved employees to stand throughout their work shifts.

R&B violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because Mr. Arellano and other aggrieved employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats. R&B’s management did not inform Mr. Arellano and other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of R&B’s company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, Mr. Arellano and other aggrieved employees were forced to stand during shifts and denied seats. R&B’s failure to provide suitable seating to Mr. Arellano and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 7-2001, Section 14(A).

Mr. Arellano and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring R&B into compliance with California’s seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11070(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

The IWC states that section 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under section 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under section 14(B) during “lulls in operation.” *Id.*

As stated, R&B’s California job sites are generally similar in their layout and design and there was, and continues to be, space near their work areas to allow for the presence and use of a seat or stool by Mr. Arellano and other aggrieved employees during lulls in operation. R&B could provide Mr. Arellano and other aggrieved employees with a seat or stool in its work areas, with reasonable or no modification to these work areas, but instead denies employees seating and forces Mr. Arellano and other aggrieved employees to stand throughout the day.

R&B did not provide Mr. Arellano and other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Mr. Arellano and other aggrieved employees engaged in duties in which the nature of the work required standing, R&B denied them the use of seats nearby during lulls in their work duties. Moreover, R&B did not inform Mr. Arellano and other aggrieved employees of their rights to a seat or stool under California law.

As a result of R&B’s company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Mr. Arellano and other aggrieved employees were forced to stand during shifts and denied seats. R&B’s failure to provide suitable seating to Mr. Arellano and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 7-2001, Section 14(B).

Mr. Arellano and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring R&B into compliance with California’s seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11070(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.” The

“primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

R&B violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(5), because R&B failed to pay Mr. Arellano and other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the regular schedule. R&B had a company-wide practice of sending Mr. Arellano and other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay Mr. Arellano and other aggrieved employees for half of their scheduled shift, due to R&B’s labor budget. For example, Mr. Arellano would report to work the day after a quarterly meeting, but would be sent home early by R&B’s management after being told he had accrued too much overtime. Although Mr. Arellano and other aggrieved employees would report to work based on the schedule that R&B provided to them, R&B would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. Accordingly, Mr. Arellano and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198.

Mr. Arellano and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

First, during the relevant time period, R&B had a company-wide policy of requiring Mr. Arellano and other aggrieved employees to utilize their own personal vehicles for work purposes, but failed to reimburse them for the costs of travel, including mileage. For example, Mr. Arellano was required to take his company vehicle for maintenance at a service station that was 30 miles from his home, and pick up the vehicle later using his wife’s vehicle, but was not reimbursed for travel expenses or mileage from using his personal vehicle. Additionally, other aggrieved employees had their company vehicles serviced for flat tires or other issues, but were required to utilize their personal vehicle to drive to and from job sites, and were not reimbursed for their travel or mileage. R&B also had a company-wide policy of requiring other aggrieved employees to travel in their own personal vehicles to medical facilities to obtain mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. Although R&B required Mr. Arellano and other aggrieved employees to use their own vehicles or obtain alternate transportation to carry out their work-related responsibilities, R&B never reimbursed them for all their travel expenses.

Second, R&B, on a company-wide basis, expected Mr. Arellano and other aggrieved employees to maintain clean and presentable company vehicles. Mr. Arellano and other aggrieved employees were required to take their vehicles to car washes at least once a week and incur expenses in doing so. Although R&B required Mr. Arellano and other aggrieved employees to maintain their company vehicles as part of their work-related responsibilities, R&B never reimbursed them for all their expenses.

Third, R&B, on a company-wide basis, expected Mr. Arellano and other aggrieved employees to report to work in clean and presentable uniforms, including a uniform polo shirt emblazoned with one of R&B's brand logos (e.g., Milwaukee, Ryobi, or Empire), which forced Mr. Arellano and other aggrieved employees to wash their uniforms more frequently than they would otherwise do laundry, and incur expenses for doing so. For example, Mr. Arellano and other aggrieved employees were only provided two (2) uniform shirts each, but were scheduled to work five (5) days in a week, and thus incurred laundry expenses for the upkeep of their uniforms, as the nature of their work resulted in their uniforms becoming sweaty and/or dirty. As a further example, Mr. Arellano was required to dry-clean his uniform shirts in order to prevent wear and tear, incurring a cost of approximately \$50.00 per month on dry-cleaning, and was also required to purchase replacement uniforms at a cost of \$60.00 per shirt.

R&B could have provided Mr. Arellano and other aggrieved employees with the actual tools for use on the job, such as company vehicles, to be used for fulfilling work-related tasks, or company-provided transportation to get to and from vehicle maintenance/service appointments, and with an adequate number of uniform shirts or access to a cleaning service. Or, R&B could have reimbursed employees for the costs of their travel, mileage, maintenance of company vehicles, and laundry or dry-cleaning expenses. Instead, R&B passed these operating costs off onto Mr. Arellano and other aggrieved employees. At all relevant times, Mr. Arellano did not earn at least two (2) times the minimum wage.

Thus, R&B had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Arellano and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

R&B failed to provide other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). R&B's failure to provide other aggrieved employees with written notice of basic information regarding their employment with R&B is in violation of Labor Code section 2810.5.

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." R&B, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Arellano's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Arellano seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Arellano, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against R&B for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512, 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Arellano seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

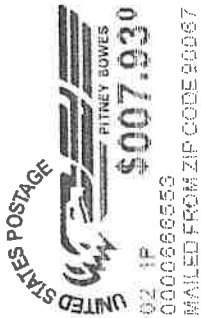
Mao Shiokura
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in black ink, appearing to read "Mao Shiokura", with a stylized flourish at the end.

Mao Shiokura

Copy: R&B SALES AND MARKETING, INC. (via U.S. Certified Mail); TECHTRONIC INDUSTRIES NORTH AMERICA, INC. (via U.S. Certified Mail)



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

R&B SALES AND MARKETING, INC.
1428 PEARMAN DAIRY ROAD
ANDERSON, SC 29625



9590 9403 0424 5163 3656 48

2. Article Number (Transfer from service label)

7019 0700 0001 7653 1025

PS Form 3811, April 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

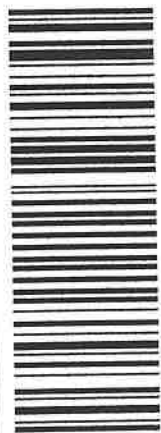
C. Date of Delivery

- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt



7019 0700 0001 7653 1025

R&B SALES AND MARKETING, INC.
1428 PEARMAN DAIRY ROAD
ANDERSON, SC 29625

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$ 3.50

Extra Services & Fees (check box, add fee as appropriate)

- ☒ Return Receipt (hardcopy) \$ 2.80
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

Sent To

R&B SALES AND MARKETING, INC.

Street and Apt. No. 1428 PEARMAN DAIRY ROAD

City, State, ZIP+4® ANDERSON, SC 29625

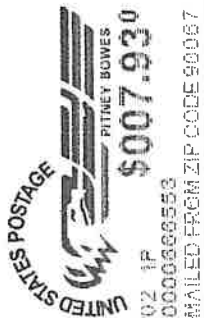
Postmark
Here

Arellano v. R&B
Sales and Marketing
Inc.

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

one
AW APC
Park East, Ste 1000
CA 90067



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

TECHTRONIC INDUSTRIES NORTH
AMERICA, INC.
450 EAST LAS OLAS BOULEVARD, SUITE
1500
FORT LAUDERDALE, FL 33301



9590 9403 0424 5163 3656 31

2. Article Number (Transfer from service label)

7019 0700 0001 7653 1292

PS Form 3811, April 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

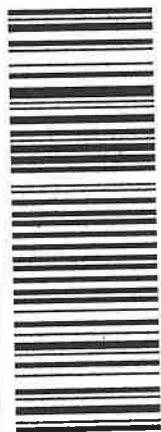
C. Date of Delivery

- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
☒ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail®
☐ Insured Mail Restricted Delivery (over \$500)
- ☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt



7019 0700 0001 7653 1292

TECHTRONIC INDUSTRIES NORTH AMERICA, INC.
450 EAST LAS OLAS BOULEVARD, SUITE 1500
FORT LAUDERDALE, FL 33301

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.**OFFICIAL USE**

Certified Mail Fee

\$ 3.50

Extra Services & Fees (check box, add fee as appropriate)

- ☒ Return Receipt (hardcopy) \$ 2.80
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

Sent To

AMERICA, INC.

Street and Apt. No., P.O. Box, or Street Name

450 EAST LAS OLAS BOULEVARD, SUITE

City, State, ZIP+4

1500
FORT LAUDERDALE, FL 33301

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

Postmark
HereArellano v. Techtronic
Industries North
America, Inc.

ine
W APC
Park East, Ste 1000
CA 90067

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

TECHTRONIC INDUSTRIES NORTH
AMERICA, INC.
450 EAST LAS OLAS BOULEVARD, SUITE
1500
PORT LAUDERDALE, FL 33301



9590 9403 0424 5163 3656 31

2. Article Number (Transfer from service label)

7019 0700 0001 7653 1292

PS Form 3811, April 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

7-25-00

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Insured Mail | |
| ☐ Insured Mail Restricted Delivery (over \$500) | |

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

R&B SALES AND MARKETING, INC.
1428 PEARMAN DAIRY ROAD
ANDERSON, SC 29625



9590 9403 0424 5163 3656 48

2. Article Number (Transfer from service label)

7019 0700 0001 7653 1025

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]*

☐ Agent

☐ Addressee

B. Received by (Printed Name)

[Signature]

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Registered Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, April 2015 PSN 7530-02-000-9053

Domestic Return Receipt

EXHIBIT “2”

Shareholders
Linda M. Dardarian
Laura L. Ho
James Kan
Andrew P. Lee



Of Counsel
Barry Goldstein
David Borgen
Morris J. Baller

September 21, 2020

Via Online Submission

California Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, CA 95814

Re: Labor Code Private Attorney General Act Notice

Dear LWDA:

This firm represents aggrieved former employees John Henry and Curt Uyemura, individually and on behalf of all others similarly situated, who work or worked for Techtronic Industries, Inc., TTI Group, R & B Sales and Marketing, Inc., Techtronic Industries North America, and/or its corporate affiliates (collectively, "Techtronic") as field representatives assigned to one or more The Home Depot Stores in California ("Reps").

Mr. Henry was employed by Techtronic from around July 2011 or July 2012 through February 2020. Mr. Uyemura was employed by Techtronic from around January 2013 through September 1, 2020. Reps are paid on an hourly basis. They primarily merchandise Techtronic products, which include an array of power tools and home and/or gardening appliances, at Home Depot stores ("in-store activities"). Reps also work outside of Home Depot stores, performing tasks that include entering data in Techtronic's computer system, preparing tools and other materials for in-store activities, among others.

Mr. Henry and Mr. Uyemura allege that Techtronic: (1) fails to compensate Reps for all hours worked, including overtime; (2) fails to provide meal and rest periods and to pay the entire amount of premium compensation due to employees for missed meal and rest periods; (3) fails to pay aggrieved employees all compensation due upon termination; (4) fails to pay all wages owed, including wages for all hours worked, overtime wages, and wages for missed meal and rest periods, twice each calendar month; (5) fails to keep payroll records showing total hours worked; and (6) unlawfully requires Reps to receive compensating time off in lieu of overtime. The factual basis for our clients' claims are detailed in the attached Complaint filed in Alameda County Superior Court on September 18, 2020.

These facts are the basis for our clients' claims that Techtronic violated the applicable California Wage Order 7 and California Labor Code Sections 201, 202, 203, 204, 204.3, 226, 226.3, 226.7, 256, 510, 512, 513, 558, 1182.12, 1174, 1174.5, 1194, 1194.2, 1197, and 1197.1.

The aggrieved employees hereby invite the Labor and Workforce Development Agency to take any action it deems appropriate.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Byron R. Goldstein', with a stylized, cursive script.

Byron R. Goldstein

BRG/kbm

cc: Techtronic Industries North America, Inc. (via Certified Mail, Return Receipt Requested)
450 East Las Olas Boulevard, Suite 1500
Fort Lauderdale, FL 33301

Corporation Service Company
Techtronic Industries North America, Inc. (via Certified Mail, Return Receipt Requested)
1201 Hays Street
Tallahassee, FL 32301-2525

R&B Sales and Marketing Inc. (via Certified Mail, Return Receipt Requested)
115 Innovation Way
Anderson, SC 29621

Techtronic Industries, Co. Ltd. (via Federal Express International Priority)
29/F, Tower 2
Kowloon Commerce Centre
51 Kwai Cheong Road
Kwai Chung
Hong Kong

EXHIBIT “3”

Laura L. Ho (SBN 173179)
lho@gbdhlegal.com
Byron R. Goldstein (SBN 289306)
brgoldstein@gbdhlegal.com
GOLDSTEIN, BORGES, DARDARIAN & HO
300 Lakeside Drive, Suite 1000
Oakland, CA 94612
Tel: (510) 763-9800
Fax: (510) 835-1417

Attorneys for Plaintiffs and the Proposed Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA**

JOHN HENRY and CURT UMEYURA,
individually, and on behalf of others similarly
situated,

Plaintiffs,

vs.

TECHTRONIC INDUSTRIES NORTH
AMERICA, INC., a corporation; R&B SALES &
MARKETING INC., a corporation; and DOES
ONE through TEN inclusive,

Defendants.

Case No.:

**CONSENT TO JOIN AS PARTY
PLAINTIFF**

CONSENT TO JOIN AS PARTY PLAINTIFF

1. I affirm that I was employed by Defendant, Techtronic Industries North America, Inc., as a Multi-Store Representative.

2. I worked for Techtronic in and around Riverside County, Yucca County and Yuma County, from July 2011 or July 2012 to February 2020.

3. Since April 5, 2017, there were weeks when I worked for Defendant for more than 40 hours without receiving overtime pay.

4. I understand this suit is brought under the federal Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* Pursuant to 29 U.S.C. § 216(b), I hereby give my consent to be a party plaintiff in the above-captioned action, and agree to be bound by any settlement or judgment of the Court in this

action.

5. I hereby authorize the above-named Plaintiffs' counsel of record to file this consent with the Clerk of the court.

Please type or print in ink the following:

Name: John Henry

Address: [REDACTED]

Desert Hot Springs

Ca

92240

(City)

(State)

(Zip Code)

Tel. No.: [REDACTED]

(Day)

(Evening)

Email address: [REDACTED]

Date: 9/19/2020

DocuSigned by:

[Signature]

20FDEE02AC57408

Signature

Laura L. Ho (SBN 173179)
lho@gbdhlegal.com
Byron R. Goldstein (SBN 289306)
brgoldstein@gbdhlegal.com
GOLDSTEIN, BORGEN, DARDARIAN & HO
300 Lakeside Drive, Suite 1000
Oakland, CA 94612
Tel: (510) 763-9800
Fax: (510) 835-1417

Attorneys for Plaintiffs and the Proposed Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA**

JOHN HENRY and CURT UMEYURA,
individually, and on behalf of others similarly
situated,

Plaintiffs,

vs.

TECHTRONIC INDUSTRIES NORTH
AMERICA, INC., a corporation; R&B SALES &
MARKETING INC., a corporation; and DOES
ONE through TEN inclusive,

Defendants.

Case No.:

**CONSENT TO JOIN AS PARTY
PLAINTIFF**

CONSENT TO JOIN AS PARTY PLAINTIFF

1. I affirm that I was employed by Defendant, Techtronic Industries North America, Inc.,
as a Field Representative.

2. I worked for Techtronic in and around Orange County, from January 2013 to September
2020.

3. Since April 5, 2017, there were weeks when I worked for Defendant for more than 40
hours without receiving overtime pay.

4. I understand this suit is brought under the federal Fair Labor Standards Act, 29 U.S.C.
§ 201, *et seq.* Pursuant to 29 U.S.C. § 216(b), I hereby give my consent to be a party plaintiff in the
above-captioned action, and agree to be bound by any settlement or judgment of the Court in this

1 action.

2 5. I hereby authorize the above-named Plaintiffs' counsel of record to file this consent
3 with the Clerk of the court.

4 Please type or print in ink the following:

5 Name: Curt Uyemura

6 Address: [REDACTED]

7 Fullerton

CA

92831

8 (City)

(State)

(Zip Code)

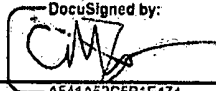
9 Tel. No.: [REDACTED]

(Day)

(Evening)

10 Email address: [REDACTED]

11
12 Date: 9/18/2020

DocuSigned by:

Signature
A541A52C5B1E474...

PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000, Los Angeles, California 90067.

On **February 28, 2022**, I served the document(s) described as: **SECOND AMENDED CLASS AND COLLECTIVE ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending [] the original [✓] a true copy thereof [✓] to interested parties as follows [or] [] as stated on the attached service list:

Kimberly Y. Higgin, (SBN: 245174)
kimberly.higgins@pillsburylaw.com
Paula M. Weber, (SBN: 121144)
paula.weber@pillsburylaw.com
PILLSBURY WINTHROP SHAW
PITTMAN, LLP
725 S. Figueroa Street, Suite 2800
Los Angeles, CA 90017-5406
Tel.: (213) 488-7327
Fax: (213) 629-1033

Attorneys for Defendants
R&B SALES AND MARKETING, INC.
and TECHTRONIC INDUSTRIES NORTH
AMERICA, INC.

() **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

() **BY FAX TRANSMISSION:** At or before 5:00 pm, I caused said document(s) to be transmitted by facsimile. The name(s) and facsimile machine telephone number(s) of the person(s) served are set forth in the service list. The document was transmitted by facsimile transmission, and the sending facsimile machine properly issued a transmission report confirming that the transmission was complete and without error.

() **BY PERSONAL SERVICE:** I caused delivery of the document(s), enclosed in a sealed envelope, by hand via ProLegal Network to the offices of the addressee(s) named herein.

(X) **BY ELECTRONIC SERVICE:** Pursuant to Court Order, I hereby certify that I caused a true and correct copy of the document(s) listed above to be served electronically on counsel of record via transmission to an electronic service provider.

() **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

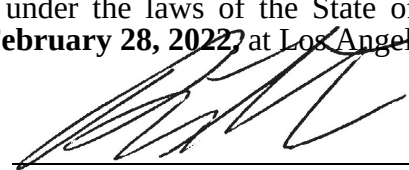
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(X) **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action: kimberly.higgins@pillsburylaw.com; paula.weber@pillsburylaw.com

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **February 28, 2022** at Los Angeles, California.

Riley McIntire
Type or Print Name



Signatur