

EXHIBIT 2

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES**
12

13 **SIMIN BORJKHANI and EVA LOPEZ**
14 **ACEVEDO**, individually and on behalf of all
other similarly situated individuals,

15 Plaintiffs,

16 v.

17 **PARLUX FRAGRANCES, INC.,**
18 **PARLUX FRAGRANCES, LLC, and**
19 **RANDSTAD HR SOLUTIONS OF**
DELAWARE, LLC d/b/a RANDSTAD
SOURCERIGHT, jointly and severally,

20 Defendants.
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Case No.: 19STCV07372

**AMENDED CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

1 Plaintiff, SIMIN BORJKHANI and EVA LOPEZ ACEVEDO (“Plaintiffs”), individually
2 and on behalf of all others similarly situated, by and through their attorneys, hereby brings this
3 Class Action Complaint against Defendant, PARLUX FRAGRANCES, INC., PARLUX
4 FRAGRANCES, LLC and RANDSTAD HR SOLUTIONS OF DELAWARE, LLC d/b/a
5 RANDSTAD SOURCERIGHT (hereinafter collectively referred to as “Defendants”), jointly and
6 severally, and states as follows:

7 **INTRODUCTION**

8 1. This is a class action brought by Plaintiffs, individually and on behalf of all
9 similarly situated persons employed by Defendants, arising, *inter alia*, from Defendants’ willful
10 violations of the California Labor Code (“Labor Code”), the California Industrial Welfare
11 Commission (“IWC”) Wage Order No. 4, and the California Business & Professions Code section
12 17200, *et seq.*

13 2. Defendants, PARLUX FRAGRANCES, INC. and PARLUX FRAGRANCES,
14 LLC (hereinafter collectively referred to as “Parlux”), engage in the creation, design, manufacture,
15 distribution and sale of fragrances and beauty related products.

16 3. DEFENDANT, RANDSTAD HR SOLUTIONS OF DELAWARE, LLC d/b/a
17 RANDSTAD SOURCERIGHT (“Randstad”), is a staffing company that provides temporary,
18 temporary-to-hire, and permanent placement services.

19 4. Randstad directly employed Plaintiffs and numerous similarly situated hourly
20 employees as RHR Sales Assistants (“Sales Assistants”) in California and assigned them to work
21 for Parlux, meaning that Randstad and Parlux jointly employed Plaintiffs and similarly situated
22 Sales Assistants.

23 5. In order to market and sell Parlux’s fragrances and beauty related products,
24 Defendants employed these Sales Assistants, including Plaintiffs, at specialty stores, national
25 department stores (including Macy’s, Niemen Marcus, Nordstrom, and Saks Fifth Avenue), and
26 perfumeries throughout the United States, including California.

27 6. Defendants typically schedule their Sales Assistants to work less than 40 hours per
28 week but pressure them to work beyond their scheduled work hours in order to achieve aggressive

1 weekly and monthly sales targets; however, Defendants do not accurately record their Sales
2 Assistants' compensable work time as required by law.

3 7. The hours reflected on the Sales Assistants' paystubs are not accurate, are contrived
4 by Defendants, and bear no relation to the hours that the Sales Assistants actually worked for
5 Defendants. Instead of paying Sales Assistants based on hours worked, Defendants pressure their
6 Sales Assistants not to submit all of their compensable work time, including overtime.

7 8. In addition, Defendants train and instruct their Sales Assistants to record 15-minute
8 rest breaks each and every shift, even though Sales Assistants rarely, if ever, take work-free, 15-
9 minute rest breaks. Moreover, these 15-minute "rest breaks" are *unpaid*, in violation of the Labor
10 Code, which requires employers to pay their employees for authorized rest breaks.

11 9. Defendants' compensation scheme results in Sales Assistants not being paid for all
12 time worked, including overtime.

13 10. Defendants' Sales Assistants perform the same basic job duties (i.e., marketing and
14 selling fragrances and beauty related products), work at the same or substantially similar retail
15 locations (i.e., specialty stores, national department stores, and perfumeries), are supervised by
16 Parlux's Account Executives, and are required to achieve the same or substantially similar sales
17 targets.

18 11. The individuals Plaintiffs seek to represent in this action are current and former
19 Sales Assistants who are similarly situated to each other in terms of their positions, job duties, pay
20 structure, and Defendants' violations of California state law.

21 12. Defendants knew or could have easily determined how long it takes for their Sales
22 Assistants to complete their work, and Defendants could have properly compensated Plaintiffs and
23 the putative Class for this work, but did not.

24 13. Plaintiffs seek a declaration that their rights, and the rights of the putative Class,
25 were violated, an award of unpaid wages, an award of liquidated damages, injunctive and
26 declaratory relief, attendant penalties, and an award of attorneys' fees and costs to make them
27 whole for damages they suffered, and to ensure that they and future workers will not be subjected
28 by Defendants to such illegal conduct in the future.

JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction over this class action. Plaintiffs are a California citizens and assert claims arising under California state law.

15. This Court has personal jurisdiction over Defendants because they conduct business in California, employ individuals in California, have caused injuries in California, and generally engage in substantial activities in California.

16. This Court is also a proper venue for this action because Defendants employed Sales Assistants in Los Angeles County, Plaintiffs reside in Los Angeles County, and a substantial portion of the events forming the basis of this suit (including implementation of the illegal pay practices alleged in this litigation) occurred in Los Angeles County.

PARTIES

17. Plaintiff SIMIN BORJKHANI is a resident of Los Angeles County, California, and was employed by Defendants as a Sales Assistant in Southern California within the last four years.

18. Plaintiff EVA LOPEZ ACEVEDO is a resident of Los Angeles County, California, and was employed by Defendants as a Sales Assistant in Southern California within the last four years.

19. Defendant PARLUX FRAGRANCES, INC. is a Delaware corporation (File Number: 2040418). Its registered agent for service in Delaware is Wilmington Trust SP Services, 1105 N. Market Street, Suite 1300, Wilmington, Delaware, 19801. According to business news website Bloomberg.com,

Parlux Fragrances, Inc. engages in the creation, design, manufacture, distribution, and sale of fragrances and beauty related products. The company offers body lotions, creams, shower gels, deodorants, soaps, and dusting powders. It also manufactures and distributes watches, handbags, purses, small leather goods, cosmetics, and sunglasses. It offers products under Paris Hilton, Jessica Simpson, Rihanna, Queen Latifah, Marc Ecko, Josie Natori, Nicole Miller, Kanye West, and Vince Camuto names on a licensee basis. The company markets its products primarily through specialty stores, national department stores, and perfumeries primarily in the United States, Canada, Europe, the Middle East, Asia, Australia, Latin America, the Caribbean, and Russia. Parlux Fragrances, Inc. was founded in 1984 and is headquartered in Ft. Lauderdale, Florida. As of April 18, 2012, Parlux Fragrances Inc. operates as a subsidiary of Perfumania Holdings, Inc.

<https://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=32726> (last visited on November 21, 2018).

20. Defendant PARLUX FRAGRANCES, LLC is a Delaware limited liability company (File Number: 5117735). Its registered agent for service in Delaware is Corporate Creations Network Inc., 3411 Silverside Road, Tatnall Building, Suite 104, Wilmington, Delaware 19810. According to business news website Bloomberg.com, “Parlux Fragrances, LLC is a manufacturer and international distributor of prestige fragrances. The Company holds licenses to manufacture and distribute designer fragrance brands. Parlux Fragrances serves customers worldwide.” <https://www.bloomberg.com/profiles/companies/PARL:US-parlux-fragrances-llc> (last visited November 23, 2018).

21. Defendant RANDSTAD HR SOLUTIONS OF DELAWARE, LLC d/b/a RANDSTAD SOURCERIGHT is a Delaware limited liability company (File Number: 2968663) licensed to do business in California (File Number: 201701010048). Its registered agent for service in Delaware is Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware 19808. According to its Facebook profile,

Randstad Sourceright is a global talent solutions leader, driving the talent acquisition and human capital management strategies for the world’s most successful employers. We empower these companies by leveraging a Human Forward strategy that balances the use of innovative technologies with expert insights, supporting both organizations and people in realizing their true potential.

https://www.facebook.com/pg/RandstadSourceright/about/?ref=page_internal (last visited on November 26, 2018).

22. Upon information and belief, Defendants employed hundreds of Sales Assistants—including Plaintiffs—in California during the last four years to perform services which include marketing and selling fragrances and beauty related products through specialty stores, national department stores, and perfumeries.

GENERAL ALLEGATIONS

23. Plaintiffs were employed by Defendants as a Sales Assistant in Southern California within the last four years.

24. Throughout their employment with Defendants, Plaintiffs was required to work a substantial amount of unpaid time, including overtime, as part of their job as a Sales Assistant.

25. Defendants’ Sales Assistants are responsible for, among other things: (a) selling

1 and marketing fragrances and beauty related products at specialty stores, national department
2 stores, and perfumeries; (b) working beyond their scheduled work hours in order to make more
3 sales; (c) issuing frequent and constant sales updates to Parlux's Account Executives; (d) entering
4 sales data into Defendants' computer system; and (e) tracking their work hours and submitting
5 their timesheets to Defendants at the end of each workweek.

6 26. Defendants schedule their Sales Assistants to work a part time schedule, typically
7 consisting of two to five shifts per week and four to eight hours per shift, depending upon the
8 season. In reality, however, Defendants pressure their Sales Assistants to work beyond their
9 scheduled work hours in order to achieve aggressive weekly and monthly sales targets.
10 Consequently, Defendants' Sales Assistants often work upwards of eight, ten or 12 hours in a
11 workday.

12 27. Defendants have strict expectations that their Sales Assistants will work beyond
13 their scheduled work hours in order to make more sales, every scheduled day, and Defendants
14 threaten discipline if a Sales Assistant fails to do so.

15 28. Defendants require their Sales Assistants to track and submit their hours worked at
16 the end of each workweek; however, Defendants do not accurately record their Sales Assistants'
17 compensable work time as required by law. Failing to accurately account and pay for all of the
18 time actually worked by employees is a clear violation of California's record keeping
19 requirements. *See* Labor Code §§ 226, 1174; IWC Wage Order No. 4, subd. 7(A).

20 **Defendants' Compensation System**

21 29. Defendants' Sales Assistants are paid on an hourly basis, with no sales
22 commissions.

23 30. However, because Defendants fail to accurately record their Sales Assistants' work
24 time, Defendants' compensation system fails to properly account for and compensate Sales
25 Assistants for all time worked, including their overtime hours, during each day and during each
26 workweek.

27 31. The hours reflected on the Sales Assistants' paystubs are not accurate, are contrived
28 by Defendants, and bear no relation to the hours the Sales Assistants actually worked for

1 Defendants. This is because Defendants pressure their Sales Assistants, including Plaintiff, to work
2 beyond their scheduled work hours in order to make more sales, while refraining from accurately
3 recording all of their hours worked.

4 32. For example, on May 27, 2016, Plaintiff BORJKHANI texted Parlux Account
5 Executive Tony Granata (“Account Executive Granata”), informing him that she worked beyond
6 her scheduled eight hour shift, but that she will only claim eight hours when she submits her
7 timesheet. **Exhibit 1**, May 27, 2016 Text Message Communication. Account Executive Granata
8 replied: “I appreciate that Simine [sic].” *Id.*

9 33. This unlawful policy results in Sales Assistants not being paid for all time worked,
10 including overtime.

11 34. Defendants’ unlawful compensation policy is not the result of one or two rogue
12 Account Executives, but instead stems from companywide practices designed to achieve
13 maximum sales results while reining in labor costs.

14 35. For example, on March 19, 2017, Plaintiff BORJKHANI texted Account Executive
15 Granata, informing him that she was scheduled to work six hours on Friday, that she stayed longer
16 and worked seven hours instead so that she could make more sales, and asked if she could claim
17 the extra hour worked on her timesheet. **Exhibit 2**, March 19, 2017 Text Message Communication.
18 Account Executive Granata denied Plaintiff’s request, explaining that he was “sorry” but that
19 “[Parlux Senior Vice President of Sales Dominic Pisani] will not allow us over Budget one single
20 dollar.” *Id.*

21 36. The evidence further shows that the pressure to achieve sales targets emanated from
22 Parlux’s corporate headquarters in New York.

23 37. For example, on May 4, 2016, Account Executive Granata texted Plaintiff
24 BORJKHANI, requesting a sales update for Westminster Mall in Westminster, California. **Exhibit**
25 **3**, May 4, 2016 Text Message Communication. Plaintiff responded: “It’s dead slow so far one set.”
26 *Id.* Account Executive Granata expressed disappointment: “Simine [sic] we need a huge night
27 tonight. One set so far is not good. We will have to make do. Let’s start selling” *Id.* Plaintiff replied
28 that she has been at Westminster Macy’s since 4:15 p.m. but will stay until closing and “will hustle

1 them.” *Id.* Account Executive Granata warned her that “Corporate in New York is watching
2 Westminster Sales every day now.” *Id.* Plaintiff responded that she was doing her best, to which
3 Account Executive Granata replied: “K thx. Sell.” *Id.*

4 38. On numerous occasions, Plaintiff BORJKHANI was expressly told by Parlux’s
5 managers—including Account Executive Granata and Account Executive, District Manager and
6 General Manager Norma Garcia—that Parlux has a corporate policy of not paying overtime to its
7 Sales Assistants, that overtime is not in Parlux’s budget, and that Parlux’s Account Executives will
8 face discipline if they pay overtime to the Sales Assistants or allow the Sales Assistants to submit
9 overtime.

10 39. Consequently, when Sales Assistants work in excess of eight hours in a workday,
11 they are required to fictitiously report that they did not work overtime by allocating their hours
12 across multiple workdays, so that their timesheets do not reflect more than eight hours worked in
13 any given workday. This common policy and practice was implemented by Parlux to avoid paying
14 daily overtime premiums to its Sales Assistants, as required under California law. *See* Labor Code
15 § 510(a) (“Any work in excess of eight hours in one workday ... shall be compensated at the rate
16 of no less than one and one-half times the regular rate of pay for an employee.”).

17 40. For example, on December 6, 2016, Plaintiff BORJKHANI texted Account
18 Executive Granata, informing him that she will work a ten hour shift on the upcoming Saturday,
19 just like she did the previous week, but will spread her hours over multiple days. **Exhibit 4**,
20 December 6, 2016 Text Message Communication. Having been told of Plaintiff’s plan to
21 misrepresent her overtime hours, Account Executive Granata expressed dismay that Plaintiff was
22 planning to work *only* ten hours and requested that she work 12 hours instead: “Only 10? Can you
23 do 12?” *Id.* Plaintiff BORJKHANI agreed that she could work a 12-hour shift as long as she does
24 not “collapse.” *Id.* To which Account Executive Granata responded, “Lol.” *Id.*

25 41. As a result of Defendants’ compensation policy, Plaintiffs and all other Sales
26 Assistants were deprived of pay for compensable time worked, including overtime.

27 **Meal Break Violations**

28 42. Sales Assistants, such as Plaintiffs, regularly work shifts in excess of five hours per

day, meaning that they are entitled to daily meal breaks under California law. *See* Labor Code §§ 226.7, 512; IWC Wage Order No. 4, subd. 11 (A-D).

43. IWC Wage Order No. 4, subd. 11 (A-D) establishes the following requirements for meal periods:

No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes.... An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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. ... If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

44. Nevertheless, Defendants do not provide their Sales Assistants with 30-minute work-free meal breaks, nor do they pay their Sales Assistants one hour's wages in lieu thereof. This is undisputed.

45. For example, Plaintiff's weekly timesheets reflect numerous separate workdays where she worked more than five hours without receiving a 30-minute meal break. *See, e.g., Exhibit 5*, Plaintiff's October 29, 2017 Weekly Timesheet, showing that Plaintiff BORJKHANI worked from 1:15 PM until 7:30 PM (six hours and 15 minutes) on Friday, October 27, 2017, but was not afforded a 30-minute meal break. Likewise, Plaintiff BORJKHANI worked from 11:15 AM until 5:30 PM (six hours and 15 minutes) on Saturday, October 28, 2017, but again was not afforded a 30-minute meal break. *Id.*

46. Any argument by Defendants that they provide Sales Assistants with Labor Code compliant meal periods is belied by Plaintiffs' weekly timesheets and ignores Defendants' record-keeping obligations under IWC Wage Order No. 4, subd. 7 (A), which provides:

Every employer shall keep accurate information with respect to each employee including the following: ... (3) Time records showing when the employee begins and ends each work period. **Meal periods**, split shift intervals and total daily hours worked **shall also be recorded**." (Emphasis added).

47. Because of Defendants' unlawful conduct in not providing their Sales Assistants with Labor Code compliant meal periods, as demonstrated above, Plaintiffs and all other Sales

1 Assistants are owed one hour's wages for each workday that the required meal period was not
2 provided.

3 **Rest Break Violations**

4 48. Defendants purport to provide their Sales Assistants with one 15-minute rest break
5 each shift, which is automatically deducted from Sales Assistants' wages. *See, e.g., Exhibit 5*,
6 Plaintiff BORJKHANI's October 29, 2017 Weekly Timesheet, showing that: (a) Plaintiff worked
7 from 1:15 PM until 7:30 PM (six hours and 15 minutes) on Friday, October 27, 2017; (b) Plaintiff
8 worked from 11:15 AM until 5:30 PM (six hours and 15 minutes) on Saturday, October 28, 2017;
9 (c) Plaintiff recorded a 15 minute rest break from 3:00 PM until 3:15 PM each day; and (d) Plaintiff
10 was credited with only six hours of work each day and 12 hours of work for the workweek,
11 meaning that the 15-minute rest breaks were deducted from her total hours worked. Plaintiff
12 BORJKHANI's corresponding pay stub, attached hereto as **Exhibit 6**, confirms that Plaintiff was
13 paid for only 12 hours of work for the workweek and thus was not paid for her purported 15-
14 minute rest breaks.

15 49. IWC Wage Order No. 4, subd. 12 (A-B) establishes the following requirements for
16 rest periods:

17 (A) Every employer shall authorize and permit all employees to take rest periods,
18 which insofar as practicable shall be in the middle of each work period. The
19 authorized rest period time shall be based on the total hours worked daily at the rate
20 of ten (10) minutes net rest time per four (4) hours or major fraction thereof.
21 However, a rest period need not be authorized for employees whose total daily work
22 time is less than three and one-half (3½) hours. Authorized rest period time shall
be counted as hours worked for which there shall be no deduction from wages. (B)
If an employer fails to provide an employee a rest period in accordance with the
applicable provisions of this order, the employer shall pay the employee one (1)
hour of pay at the employee's regular rate of compensation for each workday that
the rest period is not provided.

23 *See also* Labor Code § 226.7.

24 50. As a result, rest periods must be provided as follows: "Employees are entitled to 10
25 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more
26 than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so
27 on." *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1029, 273 P.3d 513, 529 (2012).

28 51. In reality, however, Defendants do not provide their Sales Assistants with Labor

Code compliant rest breaks because Defendants require their Sales Assistants to work through their rest breaks in order to achieve weekly and monthly sales targets.

52. Nevertheless, Defendants train and instruct their Sales Assistants to record 15-minute rest breaks each and every workday, which are automatically deducted from Sales Assistants' wages.

53. Because of Defendants' unlawful conduct in not providing their Sales Assistants with work-free ten-minute rest breaks for every four hours or major fraction thereof worked, Plaintiffs and all other Sales Assistants are owed one hour's wages for each workday that the required rest period was not provided.

Unlawful Deductions

54. Defendants also violated California law by not compensating Sales Assistants for their purported rest breaks, even though authorized rest breaks are compensable under California law. See IWC Wage Order No. 4, subd. 12 (A) ("Authorized rest period time **shall be counted as hours worked** for which there shall be **no deduction from wages.**") (emphasis added); Labor Code § 226.7(d) (same).

55. Likewise, the State of California Department of Industrial Relations website provides that: "Employers of California employees covered by the rest period provisions of the Industrial Welfare Commission Wage Orders must authorize and permit a net 10-minute **paid rest period** for every four hours worked or major fraction thereof." https://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm (last visited on November 23, 2018) (emphasis added).

56. Nevertheless, Defendants employ an unlawful policy wherein they deduct 15 minutes from Sales Assistants' wages each and every workday for purported rest breaks. The rest break time, whether taken or not, is compensable. Consequently, Plaintiffs and all other Sales Assistants are owed 15 minutes' wages for each workday that such unlawful deduction was made.

Joint Employer Allegations

57. IWC Wage Order No. 4, subd. 2(H) defines "employer" as "any person ... who directly or indirectly, or through an agent or any other person, employs or exercises control over

1 the wages, hours, or working conditions of any person.”

2 58. “[T]he language of the IWC’s ‘employer’ definition has the obvious utility of
3 reaching situations in which multiple entities control different aspects of the employment
4 relationship, as when one entity, which hires and pays workers, places them with other entities that
5 supervise the work. Consistently with this observation, the IWC has explained its decision to
6 include the language in one modern wage order as ‘specifically intended to include both temporary
7 employment agencies and employers who contract with such agencies to obtain employees within
8 the definition of ‘employer.’” *Martinez v. Combs*, 49 Cal. 4th 35, 59, 231 P.3d 259, 274 (2010)
9 (citation omitted).

10 59. Upon information and belief, Randstad directly employed hundreds of Sales
11 Assistants in California in the last four years, including Plaintiff, and assigned or placed them to
12 work for Parlux, who supervises the Sales Assistants’ work.

13 60. Randstad issued W2 Wage and Tax Statements to Plaintiffs for tax years 2010-
14 2017.

15 61. Sales Assistants are required to track their hours worked and submit their
16 timesheets to Defendants at the end of each workweek, and the time must be approved by a Parlux
17 Account Manager.

18 62. Plaintiffs’ paystubs show that they were paid by Randstad HR Solutions DE, LLC
19 and that the “customer” was Parlux Fragrances Inc. See **Exhibit 6**.

20 63. Defendants directly and/or jointly employed Plaintiffs and similarly situated Sales
21 Assistants.

22 64. Plaintiffs believe, and alleges thereon, that Defendants are directly responsible for
23 the circumstances alleged herein, and proximately caused the fraudulent, unlawful, unfair,
24 deceptive acts and wage violations complained of herein.

25 65. At all times herein mentioned, Defendants approved of, condoned, and/or otherwise
26 ratified each act or omission complained of herein.

27 66. Defendants acted willfully in violating the laws and regulations pleaded in this
28 Complaint.

67. At all times herein mentioned, Defendants' acts and omissions proximately caused the complaints, injuries and damages alleged herein.

68. The fact that each Defendant may not have exercised each aspect of the test for employer under applicable law, and may have delegated some of the responsibilities to others, does not alter their status as employers; it merely makes them joint employers.

69. Whether employers, or joint employers, each Defendant is nevertheless liable for the wage violations pleaded in this Complaint.

70. Defendants knew or should have known that Sales Assistants were not being appropriately paid for all compensable time and that they were not afforded Labor Code compliant meal/rest breaks.

71. The well-pleaded facts alleged in this Complaint support Plaintiffs' standing to sue the Defendants named herein as joint employers and seek damages for the alleged violations under a joint employment theory.

Defendants Unlawfully Benefitted From Their Sales Assistants' Uncompensated Work

72. At all relevant times, Defendants directed and directly benefitted from the work performed by their Sales Assistants in connection with the above-described unpaid work activities, including rest break time, performed by Plaintiffs and other Sales Assistants.

73. At all relevant times, Defendants controlled the work schedules, duties, protocols, applications, assignments and employment conditions of their Sales Assistants.

74. At all relevant times, Defendants were able to track the amount of time their Sales Assistants worked each day. However, Defendants failed to do so and/or failed to pay wages to their Sales Assistants for all the hours they worked, including overtime.

75. At all relevant times, Defendants' Sales Assistants were non-exempt employees, subject to the requirements of the Labor Code and other applicable state wage and hour laws.

76. At all relevant times, Defendants used their attendance and adherence policies against their Sales Assistants in order to pressure them to work in excess of their scheduled work hours, without paying the required minimum, regular and overtime wages to them.

77. Defendants expressly trained, instructed, and/or permitted their Sales Assistants to

perform the above-described off-the-clock work.

78. At all relevant times, Defendants' policies and practices deprived their Sales Assistants of wages owed for all of the work they performed, including overtime.

79. Defendants knew or should have known that the time spent by their Sales Assistants in connection with their overtime work is compensable under the law at a rate of one and one-half times their regular hourly rates. Indeed, in light of the explicit language contained in Labor Code § 510, as well as Defendants' express instructions to their Sales Agents to refrain from recording and submitting overtime, there is no conceivable way for Defendants to establish that they acted in good faith.

80. Despite knowing their Sales Assistants performed work beyond their scheduled work hours and beyond the hours reflected in their timesheets, including overtime, Defendants failed to make any effort to stop or disallow the excess work and instead suffered and permitted it to happen.

81. Unpaid wages—including minimum, regular and overtime wages—related to the excess work described herein are owed to the Sales Assistants at their regular hourly rates of pay for all such time that did not exceed eight hours in a workday or 40 hours in a workweek, and at one and one-half times their regular hourly rates of pay for all such time exceeding eight hours in a workday or 40 hours in a workweek.

FLSA COLLECTIVE ACTION ALLEGATIONS

82. Plaintiffs bring this action pursuant to 29 U.S.C. § 216(b) of the FLSA on their own behalf and on behalf of:

All similarly situated current and former hourly Sales Assistants who work or have worked for Defendant at any time from July 31, 2017 through judgment.

(hereinafter referred to as the "FLSA Collective"). Plaintiffs reserve the right to amend this definition if necessary.

83. Defendants are liable under the FLSA for, *inter alia*, failing to properly compensate Plaintiff and other similarly situated hourly Sales Assistants.

1 84. Excluded from the proposed FLSA Collective are Defendants’ executives,
2 administrative and professional employees, including computer professionals and outside sales
3 persons.

4 85. Consistent with Defendants’ policy and pattern or practice, Plaintiffs and the
5 members of the FLSA Collective were not paid premium overtime compensation when they
6 worked beyond 40 hours in a workweek.
7

8 86. All of the work that Plaintiffs and the members of the FLSA Collective have
9 performed has been assigned by Defendants, and/or Defendants have been aware of all of the work
10 that Plaintiffs and the FLSA Collective have performed.

11 87. As part of their regular business practices, Defendants have intentionally, willfully,
12 and repeatedly engaged in a pattern, practice, and/or policy of violating the FLSA with respect to
13 Plaintiffs and the members of the FLSA Collective. This policy and pattern or practice includes,
14 but is not limited to:
15

- 16 a. Willfully failing to pay their employees, including Plaintiffs and the
17 members of the FLSA Collective, premium overtime wages for hours
that they worked in excess of 40 hours per workweek;
- 18 b. Willfully failing to record all of the time that its employees, including
19 Plaintiffs and the members of the FLSA Collective, have worked for the
benefit of Defendants.
20

21 88. Defendants are aware or should have been aware that federal law required it to pay
22 Plaintiffs and the members of the FLSA Collective overtime premiums for hours worked in excess
23 of 40 per workweek.

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

25 90. A collective action under the FLSA is appropriate because the employees described
26 above are “similarly situated” to Plaintiffs under 29 U.S.C. § 216(b). The employees on behalf of
27 whom Plaintiffs bring this collective action are similarly situated because (a) they have been or
28

1 are employed in the same or similar positions; (b) they were or are performing the same or similar
2 job duties; (c) they were or are subject to the same or similar unlawful practices, policy, or plan;
3 and (d) their claims are based upon the same factual and legal theories.

4 91. The employment relationships between Defendants and every proposed FLSA
5 Collective member are the same and differ only by name, location, and rate of pay. The key issues
6 – unpaid wages and unpaid meal period time – do not vary substantially among the proposed FLSA
7 Collective members.
8

9 92. There are many similarly situated current and former hourly Sales Assistants who
10 have been underpaid in violation of the FLSA who would benefit from the issuance of a court-
11 supervised notice of this lawsuit and the opportunity to join it.
12

13 93. This notice should be sent to the FLSA Collective pursuant to 29 U.S.C. § 216(b).

14 94. Those similarly situated employees are known to Defendants, are readily
15 identifiable and can be located through Defendants' records.

16 95. Plaintiffs estimate the proposed FLSA Collective, including both current and
17 former employees over the relevant period will include several hundreds of workers. The precise
18 number of FLSA Collective members should be readily available from a review of Defendants'
19 personnel and payroll records.
20

21 **CLASS ACTION ALLEGATIONS**

22 96. Plaintiffs bring this action as a class action pursuant to Code of Civil Procedure
23 section 382 for the following Class of persons:

24 All current and former hourly Sales Assistants who worked for Defendants in
25 California at any time during the four years preceding the filing of this Complaint
up through and including the judgment.

26 Excluded from the Class are all legal entities, Defendants and any person, firm, trust, corporation,
27 or other entity related to or affiliated with Defendants, as well as any judge, justice or judicial
28 officer presiding over this matter and members of their immediate families and judicial staff.

1 Plaintiffs reserve the right to amend the foregoing Class definition.

2 97. While the exact number of Class members is unknown to Plaintiffs at this time, and
3 will be ascertained through appropriate discovery, Plaintiffs are informed and believes that there
4 are hundreds of similarly situated Class members in California. The number of individuals who
5 comprise the Class is so numerous that joinder of all such persons is impracticable and the
6 disposition of their claims in a class action, rather than in individual actions, will benefit both the
7 parties and the courts.

8 98. Plaintiffs' claims are typical of the claims of the other members of the Class. All
9 members of the Class have been and/or continue to be similarly affected by Defendants' wrongful
10 conduct as complained of herein, in violation of California law. Plaintiffs are unaware of any
11 interests that conflict with or are antagonistic to the interests of the Class.

12 99. Plaintiffs will fairly and adequately protect the Class members' interests and have
13 retained counsel competent and experienced in class action lawsuits and complex litigation.
14 Plaintiffs and their counsel have the necessary financial resources to adequately and vigorously
15 litigate this class action, and Plaintiffs are aware of their duties and responsibilities to the Class.

16 100. Plaintiffs share the same interests as the other Class members and will be entitled
17 under the Labor Code to unpaid overtime compensation, attorneys' fees, costs and lost interest
18 owed to their under nearly identical factual and legal standards as the remainder of the putative
19 class.

20 101. Defendants have acted with respect to the Class in a manner generally applicable
21 to each Class member. Common questions of law and fact exist as to all Class members and
22 predominate over any questions wholly affecting individual Class members. There is a well-
23 defined community of interest in the questions of law and fact involved in the action, which affect
24 all Class members. Among the questions of law and fact common to the Class are:

- 25 a. Whether Defendants engaged in a policy or practice of failing to pay each
26 Class member overtime compensation for all overtime hours worked;
- 27 b. Whether Defendants engaged in a policy or practice of failing to pay each
28 Class member minimum and regular wages for all compensable time;
- c. Whether Defendants violated Labor Code sections 201, 202, and 203 by

willfully failing to pay all wages and compensation due each Class member who resigned or who was discharged;

- d. Whether Defendants violated Labor Code section 226 by willfully failing to provide accurate itemized wage statements showing the number of hours worked by each Class member and the corresponding hourly rate;
- e. Whether Defendants violated Labor Code section 1174 by failing to maintain accurate records of hours worked and wages paid to Class members;
- f. Whether Defendants failed and/or refused to provide each Class member meal periods, or one hour's wages in lieu thereof, to which they were entitled pursuant to the Labor Code and IWC Wage Order No. 4;
- g. Whether Defendants failed and/or refused to provide each Class member rest periods, or one hour's wages in lieu thereof, to which they were entitled pursuant to the Labor Code and IWC Wage Order No. 4;
- h. Whether Defendants were unjustly enriched by the work and services performed by Class members without appropriate compensation;
- i. Whether Defendants engaged in unfair business practices in violation of Business and Professions Code section 17200 *et seq.*;
- j. Whether Defendants should be required to pay compensatory damages, attorneys' fees, penalties, costs, and interest for violating California state law; and
- k. Whether Defendants should be enjoined from continuing their wrongful conduct.

102. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all Class members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it virtually impossible for Class members to individually redress the wrongs done to them. There will be no difficulty in managing this action as a class action.

103. Defendants have acted on grounds generally applicable to the entire Class with respect to the matters complained of herein, thereby making appropriate the relief sought herein with respect to the Class as a whole.

COUNT I
VIOLATION OF CALIFORNIA LABOR CODE §§ 510, 1194, 1198 AND IWC WAGE
ORDER 4- FAILURE TO PAY OVERTIME

104. Plaintiffs re-allege and incorporate all previous paragraphs herein.

105. At all relevant times, Defendants regularly and consistently maintained corporate policies and procedures designed to reduce labor costs by reducing or minimizing the amount of compensation paid to their employees, including overtime compensation.

106. At all relevant times, Plaintiffs and the Class regularly performed non-exempt work and were thus subject to the overtime requirements of California law.

107. Labor Code §§ 510, 1198 and IWC Wage Order No. 4, subd. 3(A) provide that: (a) employees are entitled to compensation at the rate of one and one-half times their regular rate of pay for all hours worked in excess of eight hours in a workday up to 12 hours in a workday, in excess of 40 hours in a workweek, and for the first eight hours of work on the seventh consecutive day of a workweek; and (b) employees are entitled to compensation at the rate of twice their regular rate of pay for all hours worked in excess of 12 hours in a workday, and in excess of eight hours on the seventh consecutive day of work in a workweek.

108. At all relevant times, Plaintiffs and the Class regularly worked in excess of eight hours in a workday.

109. At all relevant times, Defendants failed and refused to pay overtime premiums to Plaintiffs and the Class members for their overtime hours worked. Instead, Defendants pressured Class members not to record all of their work hours and to fictitiously report that they did not work overtime by allocating their hours across multiple workdays, so as to give off the appearance that Class members did not work overtime.

110. Defendants intentionally, maliciously, fraudulently and with the intent to deprive Plaintiffs and the Class of their ability to earn a living so as to reduce their labor costs, knowingly and willfully implemented a scheme or artifice to avoid paying Plaintiffs and other Class members' overtime wages for all overtime hours worked.

111. Plaintiffs and the Class were entitled to receive overtime compensation at their lawful premium rates of pay for each overtime hour that they worked. Defendants' failure to pay

1 lawful premium overtime wages, as alleged above, was a willful violation of Labor Code §§ 510,
2 1198, and IWC Wage Order No. 4.

3 112. Wherefore, Plaintiffs demand payment of the unpaid balance of the full amount of
4 wages due for unpaid time worked, as well as overtime premiums owing, including interest
5 thereon, penalties, reasonable attorneys' fees, and costs of suit pursuant to Labor Code §§ 1194
6 and 1194.2 as a result of Defendants' failure to pay overtime premiums for all overtime hours
7 worked, as is required under California law.

8 **COUNT II**
9 **VIOLATION OF CALIFORNIA LABOR CODE §§ 1182.12, 1194, 1194.2, 1197, 1198**
10 **AND IWC WAGE ORDER 4 - FAILURE TO PAY MINIMUM WAGE**

11 113. Plaintiffs re-allege and incorporate all previous paragraphs herein.

12 114. At all relevant times, Plaintiffs and the Class earned "wages" for labor or services
13 rendered to Defendants within the meaning of Labor Code § 200(a) and/or for "hours worked"
14 within the meaning of the applicable IWC Wage Order.

15 115. Employers are required to pay their employees for all hours worked. During all
16 relevant times, Defendants failed to properly pay Plaintiffs and Class members for all the hours
17 they worked and/or were subject to Defendants' control, and failed to properly record all hours
18 worked by Class members. For example, Defendants allowed, encouraged, or required Plaintiffs
19 and Class members to work beyond their scheduled work hours while under the complete control
20 of Defendants and without recording the excess time, yet Defendants failed to compensate
21 Plaintiffs and the Class members for their excess work.

22 116. Defendants improperly withheld, deducted, and/or refused to pay wages for hours
23 that Plaintiffs and Class members worked.

24 117. Defendants' conduct deprived Plaintiffs and the Class members of full and timely
25 payment for all hours worked in violation of the Labor Code.

26 118. Defendants did not properly pay Plaintiffs and the Class members by, *inter alia*,
27 failing to pay them for all hours worked, in violation of Labor Code §§ 1182.12, 1194, 1197, and/or
28 1198.

119. Due to Defendants' willful and unlawful failure to pay Plaintiffs and the Class

1 members their earned wages, Plaintiffs and the Class members are entitled to recover their unpaid
2 wages, liquidated damages, costs and reasonable attorneys' fees, and the relief requested below in
3 the Prayer for Relief.

4 **COUNT III**
5 **VIOLATION OF CALIFORNIA LABOR CODE §§ 221 AND 223**
6 **UNLAWFUL DEDUCTIONS**

7 120. Plaintiffs re-allege and incorporate all previous paragraphs herein.

8 121. At all relevant times, Defendants regularly and consistently maintained corporate
9 policies and procedures designed to reduce labor costs by reducing or minimizing the amount of
10 compensation paid to their employees, including regular, minimum and overtime compensation.

11 122. Defendants made deductions from Plaintiffs' and the Class members' paychecks in
12 the amount of the unpaid regular, minimum and overtime compensation earned by the employees
13 during the pay period to avoid paying regular, minimum and overtime wages.

14 123. Labor Code § 221 provides it is unlawful for any employer to collect or receive
15 from an employee any part of wages theretofore paid by employer to employee.

16 124. Labor Code § 223 provides that where any statute or contract requires an employer
17 to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while
18 purporting to pay the wage designated by statute or by contract. Labor Code § 225 further provides
19 that the violation of any provision of Labor Code §§ 221 and 223 is a misdemeanor.

20 125. Due to their conduct alleged above, Defendants have unlawfully collected or
21 received from Plaintiffs and the Class part of the wages paid to their employees.

22 126. Wherefore, Plaintiffs demand, on behalf of themselves and the Class members, the
23 return of all wages unlawfully deducted from their paychecks, including interest thereon, penalties,
24 reasonable attorneys' fees, and costs of suit pursuant to Labor Code §§ 225.5 and 1194.

25 **COUNT IV**
26 **VIOLATION OF CALIFORNIA LABOR CODE §§ 226 AND 1174**
27 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

28 127. Plaintiffs re-allege and incorporate all previous paragraphs herein.

128. Labor Code §§ 226 and 1174 provide that every employer shall, semi-monthly or
at the time of payment of wages, furnish each employee, either as a detachable part of the check

1 or separately, an accurate, itemized statement in writing showing the total hours worked, and the
2 applicable hourly rates and corresponding total number of hours worked.

3 129. At all relevant times, Defendants failed to maintain proper records and furnish
4 Plaintiffs and the Class members, either semi-monthly or at the time of each payment of wages,
5 an accurate, itemized statement conforming to the requirements of Labor Code §§ 226 and 1174.

6 130. At all relevant times, Defendants failed to furnish Plaintiffs and Class members
7 with accurate wage statements in writing, showing: (1) gross wages earned; (2) total hours worked
8 by each respective employee; (3) all deductions; (4) net wages earned; (5) the inclusive dates of
9 the period for which the employee is paid; (6) the name of the employee and only the last four
10 digits of his or her social security number or an employee identification number; (7) the name and
11 address of the legal entity that is the employer; and (8) all applicable hourly rates in effect during
12 the pay period and the corresponding number of hours worked at each hourly rate.

13 131. Plaintiffs are informed and believes that Defendants knew or should have known
14 that Plaintiffs and the Class members were entitled to receive wage statements compliant with
15 Labor Code §§ 226 and 1174, and that Defendants willfully and intentionally failed to provide
16 Plaintiffs and the Class members with such accurate, itemized statements showing, for example,
17 accurate hours and overtime calculations.

18 132. Wherefore, Plaintiffs demand that Defendants pay each Class member \$50.00 for
19 the initial pay period in which the violation occurred and \$100 for each subsequent violation, up
20 to a maximum of \$4,000.00 pursuant to Labor Code § 226, as well as reasonable attorneys' fees
21 and costs.

22 **COUNT V**
23 **VIOLATION OF CALIFORNIA LABOR CODE §§ 201, 202, AND 203**
24 **FAILURE TO TIMELY PAY WAGES UPON DISCHARGE**

25 133. Plaintiffs re-allege and incorporate all previous paragraphs herein.

26 134. Labor Code §§ 201 and 202 require employers to pay their employees all wages
27 due within the time specified by law. Labor Code § 203 provides that if an employer willfully fails
28 to timely pay such wages, the employer must, as a penalty, continue to pay the subject employees'
wages until the back wages are paid in full or an action is commenced, up to a maximum of 30

1 days of wages.

2 135. The Class members who ceased employment with Defendants are entitled to unpaid
3 compensation, but to date have not received such compensation.

4 136. More than 30 days have passed since certain Class members left Defendants'
5 employ.

6 137. As a consequence of Defendants' willful conduct in not paying regular, minimum
7 and/or overtime compensation for all hours worked, the Class members whose employment ended
8 during the class period are entitled to 30 days' wages under Labor Code § 203, together with
9 interest thereon and attorneys' fees and costs.

10 **COUNT VI**
11 **VIOLATION OF CALIFORNIA LABOR CODE §§ 226.7, 512 AND IWC WAGE ORDER**
4 - FAILURE TO PROVIDE MEAL PERIODS

12 138. Plaintiffs re-allege and incorporate all previous paragraphs herein.

13 139. "No employer shall employ any person for a work period of more than five (5)
14 hours without a meal period of not less than 30 minutes, except that when a work period of not
15 more than six (6) hours will complete the day's work the meal period may be waived by mutual
16 consent of the employer and employee." Wage Order No. 4, subd. 11(A); *see also* Labor Code §
17 512(a). "An employer may not employ an employee for a work period of more than ten (10) hours
18 per day without providing the employee with a second meal period of not less than 30 minutes,
19 except that if the total hours worked is no more than 12 hours, the second meal period may be
20 waived by mutual consent of the employer and the employee only if the first meal period was not
21 waived." Wage Order No. 4, subd. 11(B); *see also* Labor Code § 512(a). "If an employer fails to
22 provide an employee a meal period in accordance with the applicable provisions of this order, the
23 employer shall pay the employee one (1) hour of pay at the employee's regular rate of
24 compensation for each workday that the meal period is not provided." Wage Order No. 4, subd.
25 11(D); *see also* Labor Code § 226.7(c).

26 140. During the relevant period, Plaintiffs and the Class members worked in excess of
27 five and ten hours during numerous separate workdays, yet Defendants failed and refused to
28 provide them with work-free 30-minute meal periods, or one hour's wages in lieu thereof, for shifts

1 in excess of five hours worked; nor did Defendants provide Class members with a second work-
2 free 30-minute meal period, or one hour's wages in lieu thereof, for shifts in excess of ten hours
3 worked.

4 141. Plaintiffs are informed, believe, and thereon alleges that Defendants' failure to
5 provide all required meal periods, or one hour's wages in lieu thereof, was willful, purposeful, and
6 unlawful and done in accordance with the policies and practices of Defendants' operations.
7 Because of Defendants' knowing and intentional policies and procedures, Plaintiffs and Class
8 members were not provided with all required meal periods, or one hour's wages in lieu thereof.

9 142. Plaintiffs are informed, believe, and thereon alleges that Defendants did not
10 properly maintain records pertaining to when Plaintiffs and Class members began and ended each
11 meal period, in violation of Labor Code § 1174 and Wage Order No. 4, subd. 7(A).

12 143. Due to Defendants' knowing, willful, and intentional failure to provide all required
13 meal periods, Plaintiffs and Class members are entitled to recover one additional hour of pay at
14 their regular rates of pay for each workday that a required meal period was not provided, pursuant
15 to Wage Order No. 4, subd. 11(D) and Labor Code § 226.7(c); and penalties, reasonable attorneys'
16 fees, and costs pursuant to Labor Code § 218.5.

17 144. Defendants' wrongful and illegal conduct in failing to provide Plaintiffs and the
18 Class members with meal breaks or to provide premium compensation, unless and until enjoined
19 by order of this Court, will continue to cause great and irreparable injury to Plaintiffs and the Class
20 members in that Defendants will continue to violate these laws unless specifically ordered to
21 comply with the same. The expectation of future violations will require current and future
22 employees to repeatedly and continuously seek legal redress in order to gain compensation to
23 which they are already entitled. Plaintiffs and the Class members have no other adequate remedy
24 at law to insure future compliance with the laws alleged herein to have been violated.

25 145. Wherefore, Plaintiffs demand pursuant to Labor Code §§ 226.7, 227.7 and 512, and
26 Wage Order No. 4, subd. 11(D), that Defendants pay each Class member one additional hour of
27 pay at the Class member's regular rate of compensation for each workday that a required meal
28 period was not provided, and the relief requested below in the Prayer for Relief.

COUNT VII
VIOLATION OF CALIFORNIA LABOR CODE § 226.7 AND IWC WAGE ORDER 4
FAILURE TO PROVIDE REST PERIODS

146. Plaintiffs re-allege and incorporate all previous paragraphs herein.

147. IWC Wage Order No. 4, subd. 12 (A-B) establishes the following requirements for rest periods: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. ... Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages. ... If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.”

148. Labor Code § 226.7(b-c) provides that: “An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission.... If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission ..., the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”

149. At all relevant times, Plaintiffs and the Class members consistently worked in excess of four hours in a day.

150. Plaintiffs and other Class members were regularly not allowed to take proper rest periods, nor were they properly compensated for the same.

151. Due to Defendants’ knowing, willful, and intentional failure to provide rest breaks, Plaintiffs and the Class members are entitled to recover one additional hour of pay at the employee’s regular rate of pay for each work day that a rest period was not provided, pursuant to Labor Code § 226.7 and IWC Wage Order No. 4, subd. 12(B), and penalties, reasonable attorneys’

1 fees, and costs pursuant to Labor Code § 218.5.

2 152. Defendants' wrongful and illegal conduct in failing to provide Plaintiffs and the
3 Class members with rest breaks or to provide premium compensation, unless and until enjoined
4 by order of this Court, will continue to cause great and irreparable injury to Plaintiffs and the Class
5 members in that Defendants will continue to violate these laws unless specifically ordered to
6 comply with the same. The expectation of future violations will require current and future
7 employees to repeatedly and continuously seek legal redress in order to gain compensation to
8 which they are already entitled. Plaintiffs and the Class members have no other adequate remedy
9 at law to insure future compliance with the laws alleged herein to have been violated.

10 153. Wherefore, Plaintiffs demand, pursuant to Labor Code Section 226.7(c), that
11 Defendants pay each Class member one additional hour of pay at the Class member's regular rate
12 of compensation for each workday that a rest period was not provided as required.

13 **COUNT VIII**
14 **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, et seq.**
15 **UNFAIR, UNLAWFUL AND/OR FRAUDULENT BUSINESS PRACTICES**

16 154. Plaintiffs re-allege and incorporate all previous paragraphs herein.

17 155. Defendants engaged and continue to engage in unfair business practices in
18 California by practicing, employing and utilizing the unlawful practices described above, including
19 but not limited to: (a) making deductions to employees' paychecks to recover overtime premiums
20 earned by the employees; (b) requiring employees to work overtime without lawful premium
21 compensation; and (c) failing to provide accurate, itemized wage statements.

22 156. In addition, the conduct alleged in each of the previously stated causes of action
23 constitutes an unlawful and unfair business practice within the meaning of Business & Professions
24 Code § 17200, et seq.

25 157. Because of Defendants' conduct, Plaintiffs and the Class have been harmed as
26 described in the allegations set forth above.

27 158. The actions described above constitute false, unfair, fraudulent, and deceptive
28 business practices within the meaning of California Business & Professions Code § 17200, et seq.
By and through such unfair, unlawful and/or fraudulent business practices, Defendants obtained

valuable property, money and services from Plaintiffs and the Class, and have deprived Plaintiffs and the Class of fundamental rights and privileges guaranteed to all employees under California law.

159. Defendants were unjustly enriched by the policies and practices described herein, and those policies and practices conferred an unfair business advantage on Defendants over other businesses providing similar services that routinely comply with the requirements of California law.

160. Plaintiffs seek, on their own behalf, and on behalf of the putative Class members, full restitution of all monies withheld, acquired and/or converted by Defendants by means of the unfair practices complained of herein, as necessary and according to proof, and/or disgorgement of all profits acquired by Defendants by means of the acts and practices described herein.

161. Plaintiffs seek, on their own behalf, and on behalf of the Class members, an injunction to prohibit Defendants from continuing to engage in the unfair business practices complained of herein. Defendants' unlawful conduct, as described above, unless and until enjoined and restrained by order of this Court, will cause great and irreparable injury to Plaintiffs and all Class members in that Defendants will continue to violate these California laws unless specifically ordered to comply with the same. This expectation of future violations will require current and future employees to repeatedly and continuously seek legal redress in order to gain compensation to which they are entitled under California law. Plaintiffs have no other adequate remedy at law to insure future compliance with the California labor laws and wage orders alleged to have been violated herein.

COUNT IX
VIOLATION OF CALIFORNIA LABOR CODE §§ 2698–2699.5
Representative Action for Civil Penalties

162. Plaintiffs re-allege and incorporate all previous paragraphs herein.

163. Plaintiffs are an “aggrieved employee” within the meaning of California Labor Code § 2699(c), and a proper representative to bring a civil action on behalf of their selves and other current and former employees of Defendants pursuant to the procedures specified in California Labor Code § 2699.3, because Plaintiffs and other aggrieved employee were employed by Defendants and the alleged violations of the California Labor Code were committed against Plaintiffs and other aggrieved employee.

164. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Labor

Code §§ 2698–2699.5, Plaintiffs and other aggrieved employee seeks to recover civil penalties, including but not limited to penalties under California Labor Code §§ 2699, 210, 226.3, 558, 1174.5, 1197.1, and IWC Wage Order No. 1-2001, § 20, from Defendant in a representative action for the violations set forth above, including but not limited to violations of California Labor Code §§ 201, 202, 203, 204, 221, 223, 226, 226.7, 510, 512, 1174, 1182.12, 1194, 1194.2, 1197, 1198, and 2802. Plaintiffs and other aggrieved employee are also entitled to an award of reasonable attorneys’ fees and costs pursuant to California Labor Code § 2699(g)(1).

COUNT X
VIOLATION OF FLSA, 29 U.S.C. § 201, et seq.
FAILURE TO PAY OVERTIME WAGES

165. Plaintiffs re-allege and incorporate all previous paragraphs herein.

166. At all times relevant to this action, Defendants were engaged in interstate commerce, or in the production of goods for commerce, as defined by the FLSA.

167. At all times relevant to this action, Plaintiffs and the FLSA Collective were “employees” of Defendants within the meaning of 29 U.S.C. § 203(e)(1) of the FLSA.

168. Plaintiffs and the FLSA Collective, by virtue of their job duties and activities actually performed, are all non-exempt employees.

169. Plaintiffs and the FLSA Collective either: (1) engaged in commerce; or (2) engaged in the production of goods for commerce; or (3) were employed in an enterprise engaged in commerce or in the production of goods for commerce.

170. At all times relevant to this action, Defendants “suffered or permitted” Plaintiffs and the FLSA Collective to work and thus “employed” them within the meaning of 29 U.S.C. § 203(g) of the FLSA.

171. At all times relevant to this action, Defendants required Plaintiffs and the FLSA Collective to perform off-the-clock work, but failed to pay these employees the federally mandated overtime compensation for the off-the-clock work.

172. The off-the-clock work performed every shift by Plaintiffs and the FLSA Collective is an essential part of their jobs and these activities and the time associated with these activities is not *de minimis*.

173. In workweeks where Plaintiffs and other FLSA Collective members worked 40 hours or more, the uncompensated off-the-clock work time, and all other overtime should have been paid at the federally mandated rate of 1.5 times each employee's regularly hourly wage, including the shift differential where applicable. 29 U.S.C. § 207.

174. Defendant's violations of the FLSA were knowing and willful. Defendant knew or could have determined how long it takes for their hourly Sales Associates to perform their off-the-clock work. Further, Defendants could have easily accounted for and properly compensated Plaintiffs and the FLSA Collective for these work activities, but did not.

175. The FLSA, 29 U.S.C. § 216(b), provides that as a remedy for a violation of the Act, an employee is entitled to his or her unpaid wages (including unpaid overtime), plus an additional equal amount in liquidated damages (double damages), plus costs and reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on their own behalf and on behalf of the putative Collective and Class members, requests judgment as follows:

- A. Certifying this case as a Collective in accordance with 29 U.S.C. § 216(b) with respect to the FLSA claims set forth above;
- B. Designating Plaintiffs as Class Representatives of the proposed FLSA Collective;
- C. Certifying the proposed California Class;
- D. Designating Plaintiffs as Class Representatives of the proposed California Class;
- E. Ordering service awards for the Class Representatives in recognition of the time, effort, and risk they incurred in bringing this action and as compensation for the value they have provided to the Class members;
- F. Appointing undersigned counsel as Class Counsel;

1 G. Issuing a declaratory judgment that the practices complained of herein are unlawful
2 under the FLSA, California Labor Code, and UCL;

3 H. Declaring that Defendant willfully violated the Fair Labor Standards Act and its
4 attendant regulations as set forth above;

5 I. Granting judgment in favor of Plaintiffs and against Defendants and awarding
6 unpaid regular and overtime wages calculated at Plaintiffs' regular or overtime premium rate of
7 pay;

8 J. For statutory and civil penalties pursuant to Labor Code §§ 201, 202, 203, 221, 223,
9 226, 226.7, 510, 512, 1174, 1182.12, 1194, 1194.2, 1197 and 1198.

10 K. For restitution to Plaintiffs and other similarly affected Class members of all funds
11 unlawfully acquired by Defendants by means of any acts or practices declared by this Court to
12 violate the mandate established by California Business and Professions Code § 17200 *et seq.*;

13 L. For the appointment of a receiver to receive, manage and distribute any and all funds
14 disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a
15 result of violations of California Business and Professions Code § 17200, *et seq.*;

16 M. For an injunction prohibiting Defendants from engaging in the unfair business
17 practices complained of herein;

18 N. For an injunction requiring Defendants to give notice to persons to whom restitution
19 is owing of the means by which to file for restitution;

20 O. For actual damages or statutory penalties according to proof as set forth in Labor
21 Code §§ 226, 1174, and IWC Wage Order No. 4, subd. 7(A) related to wage statements and record
22 keeping;

23 P. For an order requiring Defendants to show cause, if any there be, why they should
24 not be enjoined and ordered to comply with the applicable IWC wage orders related to record-
25 keeping for Defendants' employees related to the same; and for an order enjoining and restraining
26 Defendants and their agents, servants and employees related thereto;

27 Q. Awarding civil penalties pursuant to California Labor Code § 2698, *et seq.*;

28 R. For pre-judgment interest as allowed by Labor Code §§ 218.6 and 1194, California

1 Civil Code § 3287 and other statutes;

2 S. For reasonable attorneys' fees, expenses, and costs as provided by the FLSA, 29
3 U.S.C. 216(b); California Labor Code §§ 218.5, 226(e) and (h), 1194; and California Code of Civil
4 Procedure § 1021.5; and

5 T. For such other and further relief the Court may deem just and proper.

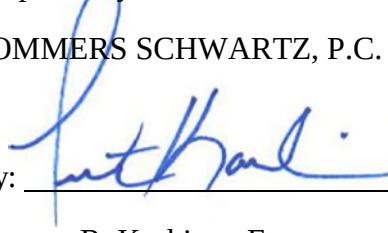
6 **JURY DEMAND**

7 Plaintiffs demand a trial by jury for all of the claims asserted in this Complaint so triable.

8 DATED: [INSERT]

9 Respectfully submitted,

10 SOMMERS SCHWARTZ, P.C.

11 By: 
12 _____

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