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

DAMONTAE LEVINGSTON, KEVIN
PEARSON, MARK GUTIERREZ, and
PAUL RODRIGUEZ, as individuals and
on behalf of all others similarly situated,

Plaintiffs,

v.

COMMERCE DISTRIBUTION
COMPANY LLC., a California Limited
Liability Company; SMART & FINAL
LOGISTICS LLC, a Delaware limited
liability company; SMART & FINAL
STORES, LLC, a California limited
liability company, and SMART & FINAL
LLC, a Delaware limited liability company
and DOES 1 through 50, inclusive,

Defendants.

CASE NO. 22STCV05730

*[Case assigned for all purposes to the Hon.
Randolph M. Hammock, Dept. 49]*

**DECLARATION OF MATTHEW K.
MOEN IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: April 5, 2023
Time: 8:30 a.m.
Dept.: 49

Action Filed: February 15, 2022
Trial Date: None Set

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I, MATTHEW K. MOEN, declare as follows:

1. I am a Senior Associate with Haines Law Group, APC, and counsel for named Plaintiffs Damontae Levingston, Kevin Pearson, Mark Gutierrez, and Paul Rodriguez (“Plaintiffs”) in the above-captioned matter. I am a member in good standing of the bar of the State of California and am admitted to practice in this Court. I have personal knowledge of the facts stated in this declaration and could testify competently to them if called upon to do so.

2. I received a Bachelor of Arts degree from UCLA in 2011, and a Juris Doctor from Loyola Law School, Los Angeles, in 2015. Both before and during law school, I worked for the law firm of Prindle, Amaro, Goetz, Hillyard, Barnes & Reinholtz LLP (now known as Prindle, Goetz, Barnes & Reinholtz LLP), located in Long Beach, California. Both before and during law school, I also worked for Jill McBride Baxter, Certified Sports Agent and Sports Law Attorney.

3. From January 2016 to December 2017, I worked as an associate at Baltodano & Baltodano LLP, a law firm dedicated exclusively to the practice of Plaintiff-side employment law located in San Luis Obispo, California. After the founding partner and senior litigation partner at Baltodano & Baltodano LLP, Justice Hernaldo J. Baltodano, was appointed to the California judiciary in December 2017, the firm dissolved on December 31, 2017. Since January 1, 2018, I have worked as an associate at my current firm, Haines Law Group, APC.

4. During my time with both Baltodano & Baltodano LLP and Haines Law Group, APC, my practice has been solely devoted to litigating plaintiff-side employment related cases in both state and federal court, including wage and hour class actions arising under the California Labor Code and the Fair Labor Standards Act. I am currently staffed on over fifty (50) active wage and hour class actions in which I am integrally involved in all aspects of the litigation. I have also supervised the work of several junior attorneys staffed on the same wage and hour class actions.

5. The following is a non-exhaustive list of the recent wage and hour class actions (that have been granted final approval) in which I have been named as Class Counsel: *Morales*

1 *v. Ball Horticultural Co.*, Case No. 16CV-0488, San Luis Obispo County Superior Court,
2 Honorable Linda D. Hurst, presiding (approving an hourly rate of \$375 for work performed in
3 2017 and 2018); *Ruvalcaba Quiroz v. Circle M Contractors, Inc.*, Case No. 30-2016-00885065-
4 CU-OE-CXC, Orange County Superior Court, Honorable William D. Claster, presiding;
5 *Armenta, et al., v. California Friends Homes d/b/a Quaker Gardens*, Case No. 30-2016-
6 00883282-CU-OE-CXC, Orange County Superior Court, Honorable Randall J. Sherman,
7 presiding; *Willie Daniel Myers, Jr. v. Jerome's Furniture Warehouse*, Case No. CIVDS
8 1715069, San Bernardino County Superior Court, Honorable Janet M. Frangie, presiding
9 (approving an hourly rate of \$375 for work performed in 2018 and 2019); *Tina Arellano v.*
10 *Williams Sonoma Stores, Inc.*, Case No. BC693760, Los Angeles County Superior Court,
11 Honorable Daniel J. Buckley, presiding (approving an hourly rate of \$375 for work performed
12 in 2018 and 2019); *William Cuellar v. UMA Enterprises, Inc.*, Case No. BC657146, Los
13 Angeles County Superior Court, Honorable Maren E. Nelson, presiding (approving an hourly
14 rate of \$375 for work performed in 2018 and 2019); *Arturo Delgado v. Spears Manufacturing*
15 *Co.*, Case No. BC709665, Los Angeles County Superior Court, Honorable Maren E. Nelson,
16 presiding (approving an hourly rate of \$400 for work performed in 2018, 2019, and 2020);
17 *Abbygail Hernandez v. WirelessPCS CA, LLC*, Case No. BC721326, Los Angeles County
18 Superior Court, Honorable Carolyn B. Kuhl, presiding; *Lucia Kang, et al., v. Extra Space*
19 *Management, Inc.*, Case No. 30-2018-00997364-CU-OE-CXC, Orange County Superior Court,
20 Honorable William Claster, presiding (approving an hourly rate of \$400 for work performed in
21 2018, 2019, and 2020); *Fishback v. Paragon Framing, Inc.*, Case No. CIVDS1906610, San
22 Bernardino County Superior Court, Honorable David Cohn, presiding (approving an hourly rate
23 of \$400 for work performed in 2019 and 2020); *Francisco Garcia v. Searing Industries, Inc.*,
24 Case No. CIVDS1932477, San Bernardino County Superior Court, Honorable David Cohn,
25 presiding (approving an hourly rate of \$400 for work performed in 2019 and 2020); *David*
26 *Hasler, et al. v. Anheuser-Busch, LLC*, Case No. 19STCV00802, Los Angeles County Superior
27 Court, Honorable Daniel J. Buckley, presiding; *Angel Ochoa v. Fonseca Construction, Inc.*,
28 Case No. CIVDS1928625, San Bernardino County Superior Court, Honorable David Cohn,

1 presiding (approving an hourly rate of \$400 for work performed in 2019 to 2021); *William*
2 *Chang v. Avcorp Composite Fabrication, Inc.*, Case No. BC715159, Los Angeles County
3 Superior Court, Honorable Amy D. Hogue, presiding (approving an hourly rate of \$400 for
4 work performed in 2018 to 2021); *David Alvarado, et al. v. J.G. Boswell Company*, Case No.
5 19STCV19033, Los Angeles County Superior Court, Honorable Daniel J. Buckley, presiding
6 (approving an hourly rate of \$400 for work performed in 2019 to 2021); *Gaudencio Arroyo*
7 *Reynoso, et al. v. Cream of the Crop Ag Service, Inc.*, Case No. VCU278847, Tulare County
8 Superior Court, Honorable Bret D. Hillman, presiding (approving an hourly rate of \$425 for
9 work performed in 2019 to 2022); and *Santos Orellana v. Smarte Carte, Inc.*, Case No.
10 20STCV08890, Los Angeles County Superior Court, Honorable Yvette M. Palazuelos,
11 presiding (approving an hourly rate of \$475 for work performed in 2020-2022).

12 6. I have also moved to certify, and have received an order certifying, a class action
13 as Class Counsel in the following case: *Staublein v. Wells Fargo Bank, National Association*,
14 Case No. CIVDS1712267, San Bernardino Superior Court, Honorable David Cohn, presiding
15 (certifying a wage statement class).

16 7. In every year from 2020 to 2022, Thomson Reuters and Los Angeles Magazine
17 recognized me as a Top Young Attorney in Southern California in the annual Rising Star
18 Edition of Super Lawyers. This is an honor awarded to no more than two-and-a-half percent
19 (2.5%) of attorneys under the age of forty in Southern California each year.

20 8. Paul K. Haines, who is also counsel of record for Plaintiffs in this matter, is a
21 2006 graduate of Pepperdine University School of Law, where he graduated *cum laude*. Mr.
22 Haines was admitted to the California State Bar in January 2007. Since that time, Mr. Haines
23 has practiced exclusively in the area of wage and hour class action litigation. Mr. Haines
24 transitioned into litigating wage and hour class actions from the Plaintiff's side in July 2012,
25 first as a Partner with the law firm of Boren, Osher & Luftman, LLP, and since February 2016,
26 as a Shareholder of Haines Law Group, APC. Mr. Haines was recognized by Thomson Reuters
27 as a Southern California "Rising Star" in 2015, 2016, and 2017, an honor awarded to no more
28 than 2.5% of attorneys under the age of forty in Southern California each year and has been

1 selected as a Southern California “Super Lawyer” each year from 2018-2022, an honor awarded
2 to no more than 5% of all attorneys in Southern California each year. Currently, over ninety
3 percent (90%) of his practice is dedicated exclusively to the prosecution of wage and hour class
4 actions, and he is currently responsible for prosecuting over thirty (30) wage and hour class
5 actions filed in both State and Federal courts throughout California. Mr. Haines has been
6 appointed as class counsel in over seventy-five (75) wage and hour class action settlements in
7 state and federal courts within California.

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9 9. Fletcher W. Schmidt, who is also counsel of record for Plaintiffs in this matter, is
10 a 2012 graduate of Loyola Law School, Los Angeles where he graduated *cum laude* and was
11 awarded membership in the Order of the Coif. From August 2013 to March 2016, Mr. Schmidt
12 worked as an associate attorney at Boren, Osher & Luftman LLP. Since March 2016, Mr.
13 Schmidt has practiced at Haines Law Group, APC, where, in 2018, he became a Partner. During
14 Mr. Schmidt’s time with Boren, Osher & Luftman LLP and Haines Law Group, APC, his
15 practice has been solely devoted to litigating plaintiff-side wage and hour class actions in
16 California state and federal court. Mr. Schmidt is currently responsible for managing a caseload
17 of over seventy-five (75) active wage and hour class actions. Each year from 2018 – 2022,
18 Thomson Reuters and Los Angeles Magazine recognized Mr. Schmidt as a Top Young Attorney
19 in Southern California in the annual Rising Star Edition of Super Lawyers, an honor awarded to
20 no more than two-and-a-half percent (2.5%) of attorneys under the age of forty in Southern
21 California each year.

22 10. Susan J. Perez, who is also counsel of record for Plaintiffs in this matter, is a
23 2019 graduate of Loyola Law School, Los Angeles. Since January 2022, Ms. Perez has worked
24 as an associate at Haines Law Group, APC litigating plaintiff-side wage and hour class actions
25 in California state and federal court. Ms. Perez has since drafted long-form settlement
26 agreements, drafted motions for preliminary and final settlement approval, and has been named
27 Class Counsel in class action settlements.
28

1 11. As counsel for Plaintiffs, I have been closely involved in all aspects of this
2 litigation since its inception and believe that the proposed Stipulation of Settlement (“Settlement
3 Agreement”) is a fair and reasonable result for the participating Settlement Class members.

4 12. Defendants Smart & Final Logistics, LLC, Commerce Distribution Company,
5 LLC, and Smart & Final Stores, LLC (collectively “Defendants”) are related entities comprised
6 of “Smart & Final” retail stores and warehouse facilities that provide inventory and shipments
7 to the retail stores. Defendants operate food supply warehouses in Riverside and Commerce,
8 California, as well as various retail store locations throughout California.

9 13. Plaintiff Levingston worked for Defendant Commerce Distribution Company,
10 LLC as a non-exempt warehouse employee from approximately January 31, 2022 to February 4,
11 2022. Plaintiff Pearson worked for Defendant Smart & Final Logistics, LLC as a non-exempt
12 warehouse employee from approximately August 2007 to August 2021. Plaintiff Pearson’s job
13 duties consisted primarily of filling pallets with inventory in Defendants’ cold storage
14 warehouse, which were then shipped to Defendants’ retail stores. Plaintiff Rodriguez has been
15 employed by Defendant Commerce Distribution Company, LLC as non-exempt warehouse
16 employee since 1996. Plaintiff Gutierrez was employed by Defendant Smart & Final Stores,
17 LLC as a non-exempt employee from approximately December 2019 to March 28, 2022.

18 14. Plaintiffs, like the Settlement Class members, were employed by Defendants as
19 non-exempt employees during the Class Period and were subject to Defendants’ allegedly
20 unlawful wage and hour policies and practices.

21 15. On February 15, 2022, Plaintiff Levingston initiated the instant action against
22 Defendant Commerce Distribution Company LLC, alleging a single class action cause of action
23 for wage statement violations under Labor Code § 226. On February 14, 2022, Plaintiff
24 Levingston sent written notice to Defendants and the Labor & Workforce Development Agency
25 (“LWDA”) of Defendant Commerce Distribution Company LLC’s violations of Labor Code §
26 226 and his intent to seek civil penalties under the Private Attorneys General Act, Labor Code §
27 2698 *et seq.* (“PAGA”). On May 5, 2022, Plaintiff Levingston filed his First Amended
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Complaint, dismissing his class action allegations and adding a cause of action for civil penalties under PAGA, premised on the same underlying Labor Code violation.

16. On February 2, 2022, Plaintiff Pearson initiated a class action complaint against Defendant Smart & Final Logistics LLC in Los Angeles County Superior Court, case number 22STCV04115, that was subsequently removed to the United States District Court, Central District of California, case number 2:22-cv-02513-FLA-E, alleging that Defendant Smart & Final Logistics LLC failed to: (i) pay all overtime wages owed; (ii) provide all lawful meal periods; (ii) authorize and permit all lawful rest periods; (iv) issue accurate and itemized wage statements; and (v) timely pay all final wages upon separation; and (vii) comply with California's Unfair Competition laws. On February 2, 2022, Plaintiff Pearson also provided notice to Defendant via certified mail and to the LWDA via its website of Defendant Smart & Final Logistics LLC's alleged violations and his intent to seek civil penalties under PAGA. On April 11, 2022, after exhausting his administrative remedies with the LWDA, Plaintiff Pearson filed his First Amended Complaint, adding a cause of action for civil penalties under PAGA, premised on the same underlying Labor Code violations. On May 20, 2022, Plaintiff Pearson filed his Second Amended Complaint, rectifying Defendants' perceived deficiencies with Plaintiff Pearson's First Amended Complaint.

17. On March 30, 2022, Plaintiff Rodriguez filed a class action complaint against Defendants Commerce Distribution Company, LLC, Smart & Final Stores LLC, and Smart & Final LLC in Los Angeles County Superior Court, case number 22STCV18277, which was subsequently removed to the United States District Court, Central District of California, Case No. 5:22-cv-00780, alleging that Defendants Commerce Distribution Company, LLC, Smart & Final Stores LLC, and Smart & Final LLC: (i) failed to comply with California's Unfair Competition laws; (ii) failed to pay all minimum wages; (iii) failed to pay all overtime wages owed; (iv) failed to provide all meal periods; (v) failed to authorize and permit all rest periods; (vi) failed to furnish accurate itemized wage statements; (vii) failed to pay all final wages upon separation of employment; (viii) failed to reimburse all necessary business expenses; and (ix) are liable for unlawful deductions. On March 30, 2022, Plaintiff Rodriguez also provided notice

1 to Defendants Commerce Distribution Company, LLC, Smart & Final Stores LLC, and Smart &
2 Final LLC and to the LWDA of the specific provisions of the Labor Code alleged to have been
3 violated and his intent to seek civil penalties under PAGA. On June 3, 2022, Plaintiff Rodriguez
4 filed a second, representative action lawsuit against Defendants Commerce Distribution
5 Company, LLC, Smart & Final Stores LLC, and Smart & Final LLC in Los Angeles County
6 Superior Court, case number 22STCV18277, alleging a single cause of action for civil penalties
7 under PAGA premised upon the same underlying Labor Code violations.

8 18. On July 20, 2022, Plaintiff Gutierrez provided notice to Defendant Smart & Final
9 Stores LLC and to the LWDA of Defendant Smart & Final Stores LLC's alleged Labor Code
10 violations and his intent to seek civil penalties under PAGA. On August 4, 2022, Plaintiff
11 Gutierrez filed a class action complaint in Los Angeles County Superior Court, case number
12 22STCV25180, alleging that Defendant Smart & Final Stores LLC failed to: (i) comply with
13 California's Unfair Competition laws; (ii) pay all minimum wages; (iii) pay all overtime wages
14 owed; (iv) provide all meal periods; (v) authorize and permit all rest periods; (vi) furnish
15 accurate itemized wage statements; (vii) reimburse necessary business expenses; (viii) pay all
16 final wages upon separation of employment; (ix) reimburse all necessary business expenses; and
17 (x) pay all sick pay wages. On October 12, 2022, Plaintiff Gutierrez filed a second,
18 representative action complaint against Defendant Smart & Final Stores LLC in Los Angeles
19 County Superior Court, case number 22STCV33312, alleging a single cause of action for civil
20 penalties under PAGA premised upon the same underlying Labor Code violations.

21 19. As a material term of the Settlement reached during the Parties' November 7,
22 2022 mediation, on January 31, 2023, Plaintiffs filed the operative Second Amended Complaint
23 in the instant action, consolidating all legal and factual allegations and causes of action alleged
24 in Plaintiffs' respective actions, naming Defendants Smart & Final Logistics, LLC and Smart &
25 Final Stores, LLC as additional named defendants in the instant action, and naming Plaintiff
26 Pearson, Plaintiff Rodriguez, and Plaintiff Gutierrez as additional named plaintiffs in the instant
27 action.

1 20. Plaintiffs assert that Defendants paid the Settlement Class members non-
2 discretionary incentive pay, but failed to correctly include the value of the incentive pay when
3 calculating the employees' respective regular rates of pay, which resulted in Defendants
4 underpaying Plaintiffs and the Settlement Class members for all overtime wages owed
5 throughout the Class Period.

6 21. In response, Defendants assert that they accurately compensated their employees
7 for all overtime wages owed through the use of overtime true-up payments. As such,
8 Defendants contend that Plaintiffs' claim would fail on the merits. Further, Defendants assert
9 that this claim is unmanageable, as it requires individualized inquiries into whether each
10 incentive payment made by Defendants was discretionary or non-discretionary, and whether
11 each employee who received an overtime true-up payment was accurately compensated for all
12 overtime wages owed, resulting in an unmanageable series of mini-trials.

13 22. Plaintiffs assert that Defendants maintained an unlawful rounding practice that
14 was not even handed over time, resulting in Defendants systematically underpaying Plaintiffs
15 and other non-exempt employees all wages earned. Further, Plaintiffs allege that Defendants
16 required employees to perform work duties while off-the-clock during their meal periods,
17 responding to work-related communications on their days off, and undergoing mandatory drug
18 testing and temperature checks/symptom questionnaires for COVID-19 screenings prior to
19 clocking in for the workday, resulting in additional unpaid minimum wages.

20 23. In response, Defendants maintain they accurately record all time worked by their
21 non-exempt employees and have properly paid all wages owed for all hours worked. Defendants
22 argue they do not permit Plaintiffs and other non-exempt employees to conduct off-the-clock
23 work and assert that Plaintiffs are unable to provide any class-wide evidence of such an off-the-
24 clock policy/practice. Defendants further dispute that they utilized a rounding policy or practice,
25 and provided substantial timekeeping data to support the position that employee timeclock
26 punches were not rounded. As a result, Defendants contend this claim is not amenable to class
27 certification as individualized inquiries would be required to determine whether each employee
28 performed off-the-clock work and when, whether Defendants were aware that such work was

1 being performed, and on a pay period by pay period basis whether any employee's timekeeping
2 and payroll records reflect an underpayment of wages, resulting in an unmanageable series of
3 mini-trials.

4 24. Plaintiffs assert that Defendants failed to provide the Settlement Class members
5 with all timely duty-free, uninterrupted 30-minute meal periods to which they were entitled.
6 Further, Plaintiffs assert that Defendants paid meal period premiums at the employees' base
7 rates of pay, rather than at their respective regular rates of pay in violation of Labor Code
8 section 226.7, due to Defendants failure to properly incorporate the value of Incentive Pay when
9 calculating the employees' respective regular rates of pay.

10 25. In response, Defendants contend they maintained lawful meal period
11 policies/practices throughout the Class Period. In support of this position, Defendants produced
12 facially compliant written policies prior to mediation that Defendants contend were applicable
13 to the Class Members throughout the Class Period, and argued during mediation that the
14 produced data reflected a 98% compliance rate for first meal periods and 96% compliance rate
15 for second meal periods. Additionally, Defendants argue that under Brinker, they are only
16 required to "provide" the opportunity to take meal periods, not "ensure" meal periods are timely
17 taken, which Defendants contend they have always done. Therefore, Defendants assert that if
18 employees did not take timely meal periods, this was solely the result of employee choice and
19 not reflective of Defendants' policies and practices. Defendants further contend that they
20 properly paid all meal period premiums at the correct regular rate of pay during the Class
21 Period. Finally, Defendants contend that Plaintiffs' meal period claim is not suited for class
22 certification as individual inquiries would be required to assess the reasons why an employee
23 recorded a non-compliant meal period on any given day and whether it was the result of
24 employee choice, resulting in an unmanageable series of mini-trials.

25 26. Plaintiffs further allege that Defendants failed to authorize and permit Settlement
26 Class members to take all lawful rest periods to which they were entitled. Additionally,
27 Plaintiffs assert that prior to September 2019, Defendants maintained a facially unlawful rest
28 period policy/practice that required Plaintiffs and other non-exempt employees to remain on

1 Defendants' premises during all rest periods, in violation of California law. Plaintiffs also allege
2 that Defendants failed to pay rest period premiums for each rest period violation at the
3 Settlement Class members' regular rate of pay.

4 27. Defendants maintain they authorize and permit their non-exempt employees to
5 take all lawful rest periods to which they are entitled. Defendants argue they maintained lawful
6 rest period policies throughout the Class Period, and that employees were at all times permitted
7 to leave the company premises during rest periods. Further, Defendants produced a facially
8 lawful rest period policy that Defendants contend was applicable to all Settlement Class
9 members throughout the Class Period. Therefore, Defendants assert that if employees did not
10 take all lawful rest periods, this was solely the result of employee choice and not reflective of
11 Defendants' policies and practices. Further, Defendants assert that this claim is unmanageable,
12 as it requires individualized inquiries into whether each employee was authorized and permitted
13 to take a lawful rest period and on which days, which Defendants argue Plaintiffs will be unable
14 to substantiate with any common, documentary evidence, as rest periods are not required to be
15 recorded.

16 28. Plaintiffs further allege that Defendants failed to reimburse the Settlement Class
17 members for all necessary business expenses incurred, in violation of Labor Code section 2802.
18 Specifically, Plaintiffs assert that Defendants required Plaintiffs and other non-exempt
19 employees to use their personal cell phones to communicate with supervisors for work-related
20 purposes, but did not reimburse Plaintiffs and other non-exempt employees for a reasonable
21 portion of their monthly cell phone bills.

22 29. In response, Defendants argue they maintain a policy to reimburse all reasonable
23 and necessary business expenditures and that, to the extent that any expenses were not
24 reimbursed, it was the result of Defendants' employees failing to submit expense reimbursement
25 requests. Further, Defendants emphasized that due to the nature of the Settlement Class
26 members' work duties, Settlement Class members do not need to communicate through their
27 cellular phones, as their supervisors, managers, and coworkers are onsite, and no further
28 communication with the employees is necessary once they clock out after their shifts.

1 Defendants also argue that any expenses incurred by the Settlement Class members were
2 minimal given the wide availability of low-cost cellular phone plans. Defendants also maintain
3 that this claim would require a series of mini-trials to determine which employees incurred
4 expenses, whether those expenses were reasonable and necessary, and why the employee had
5 not previously submitted an expense reimbursement request.

6 30. Plaintiffs further assert that Defendants failed to properly incorporate the value
7 of Incentive Pay when calculating the regular rate of pay for purposes of paying sick pay wages,
8 as mandated by Labor Code § 246(l)(1). Rather, Plaintiffs allege that Defendants paid all sick
9 pay wages at the employees' base rates of pay, even when the employee earned Incentive Pay in
10 the corresponding time period.

11 31. Defendants assert that they properly incorporated the value of all non-
12 discretionary Incentive Pay into the regular rate of pay calculations throughout the Class Period.
13 As such, Defendants contend that Plaintiffs' claims would fail on the merits. Further,
14 Defendants assert that this claim is unmanageable, as it requires individualized inquiries into
15 each employee's bonus receipt criteria, resulting in an unmanageable series of mini-trials.

16 32. As a result of Defendants' failure to pay all overtime wages, minimum wages,
17 meal and rest period premiums, and sick pay owed, Plaintiffs assert that Defendants also failed
18 to issue accurate itemized wage statements and failed to timely pay all final wages at the time of
19 separation. Further, Plaintiffs contend that Defendants issued facially non-compliant wage
20 statements in violation of Labor Code § 226(a), which failed to include all applicable hourly
21 rates in effect during the pay period, the corresponding number of hours worked at each hourly
22 rate, and the total hours worked during the pay period. As a result of these alleged Labor Code
23 violations, Plaintiffs also seek PAGA civil penalties on behalf of all aggrieved employees.

24 33. In response, Defendants argue that Plaintiffs' underlying claims will fail and, as
25 a result, the derivative wage statement, waiting time, and PAGA claims will also fail.
26 Defendants also maintain that Plaintiffs cannot show that the wage statement violations were
27 "knowing and intentional," or that the putative class members "suffer[ed] injury" as a result of
28 the alleged violations, as required by Labor Code § 226(e) for the imposition of wage statement

1 penalties. Moreover, Defendants maintain that their good faith defenses to Plaintiffs’ underlying
2 claims would preclude the recovery of waiting time penalties, which are only available for the
3 “willful” failure to pay wages, and that this Court would exercise its discretion to substantially
4 reduce any PAGA penalties awarded.

5 34. Finally, Defendants assert that all of Plaintiffs’ claims will fail prior to class
6 certification due to the existence of arbitration agreements potentially applicable to the vast
7 majority, if not all, of putative class members that includes a waiver of representative and/or
8 collective action litigation. Further, Defendants argue that Plaintiffs’ PAGA claims could be
9 compelled to individual arbitration as a result of the United States Supreme Court’s ruling in
10 *Viking River Cruises Inc. v. Moriana*, 142 S. Ct. 1906 (2022).

11 35. In connection with mediation, Defendants provided Plaintiffs with electronic
12 timekeeping and payroll records for approximately 10% of the Settlement Class members
13 (encompassing complete records for approximately 550 putative class members), key policy
14 documents, and workweek data spanning the entire Class Period. Plaintiffs then retained an
15 expert with a Ph.D. in economics to analyze the produced data and create a class-wide exposure
16 model for the claims at issue. On November 7, 2022, the Parties participated in a mediation
17 session with Jeffrey Ross, Esq., an experienced and well-respected wage and hour class action
18 mediator. During the mediation, the Parties exchanged divergent views on Defendants’ liability
19 and exposure valuations, their legal positions, and the likelihood of certification of Plaintiffs’
20 claims. At the conclusion of mediation, Mr. Ross made a mediator’s proposal that the Parties
21 ultimately accepted. Over the following months, the Parties finalized the terms of the proposed
22 Settlement now before the Court for preliminary approval.

23 36. Attached hereto as **Exhibit 1** is a true and correct copy of the Parties’
24 Settlement Agreement. Attached hereto as **Exhibit 2** are true and correct copies of the Notice
25 of Class Action Settlement (“Class Notice”) and Notice of Settlement Award (collectively,
26 “Notice Packet”).

27 37. If the Court preliminarily approves this settlement, Defendants will pay a Gross
28 Settlement Amount (“GSA”) of \$5,000,000.00. Settlement Class members can be easily

1 identified using Defendants' employment and payroll records. Defendants' records indicate that
2 there are approximately 32,423 Settlement Class members who worked approximately
3 2,750,000 workweeks.

4 38. At the time of seeking final settlement approval, Plaintiffs will apply for Class
5 Representative Service Awards in the amount of \$10,000 each for their service to the Settlement
6 Class and their respective general release of all claims. Plaintiffs' requests for their respective
7 service awards are intended to recognize the significant time and effort that they expended on
8 behalf of the Settlement Class. Plaintiffs' efforts include gathering relevant documents for use
9 in the lawsuit, reviewing important documents filed in the case, holding various phone calls
10 with their attorneys to discuss the claims in the lawsuit and Defendants' practices, assisting their
11 attorneys in preparing for mediation, and assisting their attorneys in moving the case towards
12 resolution. Further, the Plaintiffs have undertaken significant risks by serving as named
13 plaintiffs and are providing Defendants with a general release of all claims subject to a waiver
14 of Civil Code § 1542.

15 39. Plaintiffs' counsel will also apply for an attorneys' fee award of up to one third
16 of the GSA (currently estimated at \$1,666,666.67), and up to \$75,000 in reimbursement for
17 actual litigation costs. Plaintiffs submit that the requested fee is fair compensation for
18 undertaking complex, risky, expensive, and time-consuming litigation on a purely contingent
19 fee basis. Plaintiffs' counsel has incurred substantial attorneys' fees conducting pre-filing
20 investigation, analyzing Plaintiffs' claims, conducting legal research and analysis, reviewing
21 class documents and data produced by Defendants, extensively reviewing and evaluating the
22 produced timekeeping and payroll records with the assistance of a retained expert to build a
23 comprehensive damages model, preparing for and attending mediation, negotiating and drafting
24 the Settlement Agreement and Notice Packet documents, preparing this motion for preliminary
25 approval, and otherwise litigating the case. Plaintiffs' counsel will also expend future attorney
26 time attending the hearing on this Motion, overseeing the Notice process, drafting the Final
27 Approval Motion and supporting documents, attending the Final Approval hearing, and
28 completing other tasks, such as fielding questions from Settlement Class members.

1 40. Plaintiffs’ counsel carefully vetted the claims at issue, reviewed a representative
2 sampling of Settlement Class member data and all relevant policy documents, and created a
3 comprehensive damages model for Defendants’ liability. Although the Parties engaged in
4 substantial informal discovery and information exchange prior to mediation, the Parties had
5 agreed to refrain from engaging in formal written and deposition discovery until after
6 exhausting their settlement efforts at mediation. Absent settlement, the Parties will be required
7 to expend substantial time and resources conducting extensive formal written and deposition
8 discovery. Moreover, Plaintiffs had not yet filed for class certification, and thus, absent
9 settlement, the Parties would face the prospect of appeals in the wake of a disputed class
10 certification ruling and/or an adverse summary judgment ruling. Even if Plaintiffs succeeded in
11 certifying one or more classes, the Parties would incur considerably more attorneys’ fees and
12 costs through a possible decertification motion, trial, and possible appeal.

13 41. At the time of the proposed Settlement, Plaintiffs had not filed their motion for
14 class certification. Had the Court certified any claims, Plaintiffs anticipated that Defendants
15 would seek decertification. There was also a risk that Defendants would move to compel
16 arbitration for the non-exempt employees who signed arbitration agreements and/or engage in a
17 Pick-up-Stix campaign to significantly reduce the size of the putative class for a fraction of what
18 Settlement Class members are receiving through this Settlement. Therefore, absent the
19 Settlement, there was a serious risk that Plaintiffs would be unable to move forward on a class-
20 wide basis, or that a significantly smaller class would exist than that which is currently before
21 this Court for approval.

22 42. First, Plaintiffs data analysis determined that appropriately 40% of all pay
23 periods during the Class Period contained an underpayment of overtime wages as a result of
24 Defendants’ regular rate of pay miscalculation. Plaintiffs’ data analysis further determined that
25 the average underpayment was approximately \$2.50 per pay period. As noted above,
26 Defendants maintain that they accurately paid true-up payments to Plaintiffs and other non-
27 exempt employees at all times throughout the Class Period, and thus Plaintiffs’ damages
28 calculations were severely overstated as they failed to account for this offset. Plaintiffs therefore

discounted the potential maximum by 50% for risk of non-certification, and an additional 65% for risk of losing on merits.

43. Second, Plaintiffs' data analysis revealed approximately 1,117,545 workweeks in which Defendants required Plaintiffs and the Settlement Class members to submit to mandatory pre-shift COVID-19 temperature screenings, with an average of \$1.96 of minimum wages owed per workweek for this off-the-clock work. Defendants, however, maintain they have accurately recorded and compensated their employees for all their time worked, and argue that Plaintiffs' minimum wage claim cannot be certified given the lack of common evidence for this non-recorded time. Given these defenses, Plaintiffs discounted the maximum exposure by 65% for the risk of non-certification, and by an additional 35% for risk of losing on the merits.

44. Third, Plaintiffs' expert's data analysis revealed an approximately 98% first meal period compliance rate and a 96% second meal period compliance rate. Moreover, Plaintiffs' data analysis determined that Defendants began correctly calculating the regular rate of pay for purposes of meal period premiums by approximately the end of 2020. Plaintiffs' expert's data analysis further revealed that Defendants paid meal period premiums at the base rate of pay in approximately 25,947 pay periods during the Class Period, and when they did, the premiums were underpaid by an average of \$2.50 each. Defendants asserted, however, that they maintained a lawful meal period policy/practice at all times during the Class Period, as evidenced by the extremely high meal period compliance rates, and that any failure by an employee to take a lawful meal period was the result of employee choice rather than company policy, requiring individual inquiries into the reasons why each non-compliant meal period was missed on any given day. Given these defenses, Plaintiffs discounted the maximum exposure by 35% for the risk of non-certification, and by an additional 35% for risk of losing on the merits.

45. Fourth, Plaintiffs' expert's data analysis revealed that the Settlement Class members worked an aggregate of approximately 36,164 shifts in excess of 3.5 hours (i.e. a shifts for which at least one rest period must be authorized and permitted) prior to September 30, 2019 when Defendants discontinued their allegedly unlawful on-premises rest period policy. Notably,

1 Plaintiffs' expert's data analysis did not find any rest period premium payments made during
2 the Class Period.

3 46. Defendants contend they authorized and permitted employees to take all lawful
4 rest periods throughout the Class Period, and that if Settlement Class members stayed on the
5 premises during rest periods, it was purely their choice. Defendants further argue that Plaintiffs'
6 rest period claim is inherently unsuited for class treatment as it would require individualized
7 inquiries to determine whether a certain rest period was authorized and permitted on a given
8 shift, particularly since rest periods were not recorded and there was no other common evidence
9 of when rest periods were taken. Therefore, Plaintiffs discounted Defendants' maximum
10 exposure by 65% for risk of non-certification, and by an additional 35% for risk of being
11 unsuccessful on the merits.

12 47. Fifth, Plaintiffs allege that Defendants required Settlement Class members to use
13 their personal cellular phones for work purposes on certain occasions, including contacting
14 managers and/or supervisors. Plaintiffs extensively researched and analyzed the market rates for
15 cellular phones and cellular calling and data plans, including reviewing JD Power and
16 Consumer Reports analyses of cellular phone plan rates from all major service providers. As a
17 result, Plaintiffs determined that a reasonable monthly cell phone bill during the relevant time
18 period was approximately \$50-\$70. Plaintiffs further estimated that Defendants required the
19 Settlement Class members to use their personal cell phones for work purposes, on average,
20 approximately once per month during the 1,266,211 pay periods at issue during the Class
21 Period.

22 48. Defendants maintain Plaintiffs' reimbursement allegations fail on their merits, as
23 Defendants assert they never required their employees to use their personal cellular phones for
24 any work-related purposes, thus Plaintiffs' damages calculation for this claim is grossly
25 overstated. Further, Defendants contend this claim is not certifiable since it would require a
26 series of mini-trials to determine whether any of the Settlement Class members used their
27 personal cellular phones for work related purposes and the extent of that use. Therefore,
28

1 Plaintiffs discounted the maximum potential exposure by 65% for the risk of non-certification
2 and 75% for the risk of being unsuccessful on the merits.

3 49. Sixth, according to Plaintiffs' data analysis, approximately 457,691 wage
4 statements were issued during the relevant one-year statute of limitations period applicable to
5 this claim. Plaintiffs further found that only 36.7% of wage statements during the liability
6 period for this claim contained a potential wage statement violation, and approximately 7,219
7 Settlement Class members were potentially eligible for wage statement penalties. Defendants
8 raise numerous defenses to this claim, including that the alleged violations, if any, were not
9 "knowing and intentional," and that Plaintiffs could not show that the Settlement Class
10 members "suffer[ed] injury" as a result of any alleged violations. Therefore, Plaintiffs
11 discounted the maximum exposure by 70% for the risk of non-certification of the underlying
12 claims and 75% for a risk of being unsuccessful on the merits, including failing to prove the
13 violations were "knowing and intentional," that the Class Members "suffer[ed] injury," or that
14 any derivative wage statement penalties were recoverable at all in light of the holding in
15 *Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308.

16 50. Seventh, Plaintiffs' data analysis found that approximately 8,638 Settlement
17 Class members separated their employment during the relevant time period and were eligible for
18 waiting time penalties. Defendants maintain that waiting time penalties are not appropriate
19 because Plaintiffs' claims fail on the merits, and given their good-faith defenses, Plaintiffs
20 cannot show that any failure by Defendants to pay all final wages was willful under 8 Cal. Code
21 Regs. § 13520. Thus, Plaintiffs discounted this claim by 75% for the risk of non-certification
22 and by an additional 75% for risk of being unsuccessful on the merits or failing to establish
23 willfulness.

24 51. Eighth, Plaintiffs allege that PAGA civil penalties would be recoverable for each
25 pay period in which they could prove an underlying Labor Code violation. According to
26 Plaintiffs' data analysis, the Settlement Class members worked a combined total of 457,691 pay
27 periods during the PAGA liability period in which at least one of Plaintiffs' alleged Labor Code
28 violations occurred. However, these penalties are almost exclusively derivative of the

underlying violations that Defendants vigorously dispute, both as to certification and the merits. Plaintiffs also recognize that the Court has discretion to substantially reduce any award of PAGA penalties. Therefore, Plaintiffs discounted the maximum figure by 35% for the risk of losing on the merits of all underlying claims and by 90% for the likely possibility that this Court would reduce the PAGA penalties awarded.

52. Finally, Defendants assert that all of Plaintiffs' claims will fail prior to class certification due to the existence of arbitration agreements potentially applicable to the vast majority of, if not all, putative class members that include a waiver of representative and/or collective action litigation, and further argue that Plaintiffs' PAGA claims could be compelled to individual arbitration as a result of *Viking River Cruises Inc. v. Moriana*. In light of these serious challenges to class certification, Plaintiffs discounted the maximum potential exposure of all claims at issue by an additional 25%.

53. Using these estimated figures, Plaintiffs estimated that the potential reasonable recovery for the Settlement Class would be approximately \$6,427,218. Thus, the proposed recovery to the Settlement Class of \$5,000,000 represents approximately 77.79% of Plaintiffs' reasonably forecasted class-wide recovery, which is well within the range approved by courts as being fair, reasonable and adequate, while also avoiding further expense and risk of proceeding towards class certification and trial.

54. Attached hereto as **Exhibit 3** is a true and correct copy of Plaintiff Kevin Pearson's PAGA Notice Letter and LWDA Confirmation of Receipt. Attached hereto as **Exhibit 4** is a true and correct copy of Plaintiff Mark Gutierrez's PAGA Notice Letter. Attached hereto as **Exhibit 5** is a true and correct copy of Plaintiff Paul Rodriguez's PAGA Notice Letter and LWDA Confirmation of Receipt. Attached hereto as **Exhibit 6** is a true and correct copy of Plaintiff Damontae Levingston's PAGA Notice Letter.

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1 55. Concurrently with the filing of this motion, Plaintiffs provided notice of the
2 proposed Settlement, as well as copies of the Motion for Preliminary Approval and all papers
3 filed in support hereof, to the LWDA. Attached hereto as **Exhibit 7** are true and correct copies
4 of Plaintiffs' Settlement submission and the LWDA's confirmation of receipt.

5 I declare under penalty of perjury under the laws of the United States and the state of
6 California that the foregoing is true and correct. Executed on March 8, 2023, at El Segundo,
7 California.

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EXHIBIT 1

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement” or “Settlement”) is reached by and between Plaintiffs Kevin Pearson, Damontae Levingston, Paul Rodriguez, and Mark Gutierrez on the one hand (hereinafter, collectively, “Plaintiffs”), individually and on behalf of all members of the Settlement Class (defined below), on one hand, and Defendants Smart & Final Logistics, LLC, Smart & Final Stores, LLC, and Commerce Distribution Company, LLC (“Defendants”), on the other hand. Plaintiffs and Defendants are referred to herein collectively as the “Parties.” The Parties agree to the designation of Haines Law Group, APC, Diversity Law Group, P.C., Polaris Law Group, Law Offices of Choi & Associates, JCL Law Firm, Zakay Law Group, APLC, and Blumenthal Nordrehaug Bhowmik De Blouw LLP, as Class Counsel.

On February 2, 2022, Plaintiff Pearson filed a Class Action Complaint against Defendant Smart & Final Logistics, LLC alleging various wage and hour violations and on April 11, 2022, amended his complaint to add a claim for civil penalties for wage and hour violations under the Private Attorneys General Act (“PAGA”). On May 20, 2022, Plaintiff Pearson filed the operative Second Amended Complaint in the *Pearson* lawsuit, which rectified Defendant’s perceived deficiencies within Plaintiff Pearson’s First Amended Complaint. Defendant denied these allegations.

On February 15, 2022, Plaintiff Levingston filed a Class Action Complaint against Defendant Commerce Distribution Company, LLC alleging one Labor Code violation and on May 5, 2022, amended his complaint to dismiss his class claims and add a claim for civil penalties for one Labor Code violation under PAGA. Defendant denied these allegations.

On March 30, 2022, Plaintiff Rodriguez filed a Class Action Complaint against Defendant Commerce Distribution Company, LLC, Smart & Final Stores LLC and Smart & Final LLC (the “Rodriguez Lawsuit”) alleging various wage and hour violations and on June 3, 2022, filed a second lawsuit against these same defendants claiming civil penalties for wage and hour violations under PAGA. Defendants denied these allegations.

On August 4, 2022, Plaintiff Gutierrez filed a Class Action Complaint against Defendant Smart & Final Stores, LLC alleging various wage and hour violations and on October 12, 2022, filed a second lawsuit claiming civil penalties for wage and hour violations under PAGA. Defendants denied these allegations.

On or about January 31, 2023, the Plaintiffs filed a consolidated Second Amended Complaint (SAC) in the *Levingston* matter against Smart & Final Logistics, LLC, Commerce Distribution Company, LLC and Smart & Final Stores, LLC, naming all Plaintiffs as named parties in the action, consolidated all legal and factual allegations in the various actions, and alleging that Defendants: (i) failed to pay wages for all hours worked, including overtime; (ii) failed to provide meal periods, or premium pay for non-compliant meal periods; (iii) failed to authorize and permit all rest periods, or pay premium pay for non-complaint rest periods; (iv) failed to furnish accurate itemized wage statements; (v) failed to pay all wages owed upon termination; (vi) failed to reimburse reasonable and necessary business expenses; (vi) failed to provide accrued sick leave; and derivative claims for (vii) PAGA and (viii) violations of California Business and Professions Code §§ 17200 *et seq.* (the “Action”). Defendants deny Plaintiffs’ claims.

Plaintiffs and Defendants wish to settle both individually and on behalf of the Settlement Class. Accordingly, Plaintiffs and Defendants agree as follows:

1. **Settlement Class.** For the purposes of this Settlement Agreement only, Plaintiffs and Defendants stipulate to the certification of the following Settlement Class:

All current and former non-exempt employees of Defendants Smart & Final Logistics, LLC, Commerce Distribution Company, LLC, and Smart & Final Stores, LLC who worked for Defendants in California at any time from February 2, 2018, through February 7, 2023.

The time period of February 2, 2018 through February 7, 2023 shall be referred to herein as the “Class Period.”

Further, the Parties understand and agree that the workweeks to be included in this Settlement Class and the release below are for employees of Defendants in California during the Class Period and shall not include any other workweeks.

The Parties agree that certification for purposes of this Settlement Agreement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

2. **Release by Settlement Class Members and Plaintiffs.** Plaintiffs and every member of the Settlement Class (except those who opt out) will fully and forever completely and irrevocably release and discharge Defendants, and all of their past and present officers, directors, shareholders, unit holders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys, (collectively the “Released Parties”), as follows:

Upon entry of final judgment, Settlement Class members who do not timely request exclusion from the Settlement will release all claims, demands, rights, liabilities, and causes of action that were pled and/or alleged in the SAC filed in the Action, or which could have been pled in the SAC based on the factual allegations therein, that arose during the Class Period (“Released Claims”), including without limitation with respect to the following claims:

- A. (a) failure to pay all wages due for time worked, including overtime, in violation of Labor Code §§ 210, 221, 510, and 558; (b) failure provide meal periods, or premium pay for non-compliant meal periods in violation of Labor Code §§ 226.7, 512, 558, 1198 and the applicable IWC Wage Order; (c) failure to authorize and permit rest periods, or premium pay for non-compliant rest periods in violation of Labor Code §§ 226.7, 512, 558, 1198 and the applicable IWC Wage Order; (d) failure to furnish accurate itemized wage statements in violation of Labor Code §§ 226, 226.3, and 226.6; (e) failure to pay all wages owed upon termination in violation of Labor Code §§ 201-203 and 227.3; (f) failure to provide accrued sick

leave in violation of Labor Code § 246; (g) failure to reimburse expenses pursuant to Labor Code Section 2802; (h) penalties pursuant to Labor Code §§ 2698, *et seq.* relating to the violations of the above and including but not limited to alleged violations of Labor Code §§ 201-204, 210, 218, 221, 226(a), 226.3, 226.6, 226.7, 227.3, 246, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, and all applicable Wage Orders; along with claims for a failure to provide reimbursements under Labor Code § 2802; and (j) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above.

- B. It is understood and acknowledged that all persons who are employed or have been employed by Defendants in California as non-exempt employees at any time during the time period from February 2, 2021 through the close of the Class Period (the “PAGA Period”), will be issued a check for their share of the PAGA penalties payable to aggrieved employees, regardless of whether they submit a timely Request for Exclusion from the Settlement. All PAGA aggrieved employees shall be deemed to have released all claims for civil penalties under the PAGA against the Released Parties with respect to the underlying claims pled in the operative SAC in the Action or Plaintiffs’ letters to the California Labor and Workforce Development Agency dated February 2, 2022, February 14, 2022, and July 20, 2022, or which could have been pled in the operative SAC in the Action based on the factual allegations therein, that arose during the PAGA Period (the “PAGA Released Claims”).

3. **Release by Named Plaintiffs Only.** In light of their Class Representative Service Awards and other consideration given, Plaintiffs have agreed to a general release, in addition to the Released Claims described above, of all claims, demands, rights, liabilities, and causes of action, whether known or unknown, under federal, state or local law against the Released Parties (“General Release”). However, this General Release by Plaintiff Rodriguez only, who is still employed with Commerce Distribution Company, LLC, shall not extend to any non-Released Claims described above which accrue after the execution of this Agreement. Nothing herein shall be deemed to change the effective time period of the Released Claims for Plaintiff Rodriguez or any other Named Plaintiff (which shall remain the same for all class members). The Parties understand and agree that Plaintiffs are not, by way of this release, releasing any workers’ compensation claims nor any other claims which cannot be released as a matter of law. Notwithstanding the foregoing, Plaintiffs understand that this release includes unknown claims and that they are, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

4. **Gross Settlement Amount.** As consideration, Defendants agree to pay a “Gross Settlement Amount” of Five Million Dollars and Zero Cents (\$5,000,000.00) in full and complete settlement of the Action, as follows:
- A. The Parties have agreed to engage ILYM Group, Inc. as the “Claims Administrator” to administer this Settlement.
 - B. With the exception of the Claims Administrator’s fees, if otherwise required by the Claims Administrator, the Gross Settlement Amount shall be deposited with the Claims Administrator within fourteen (14) calendar days of the Effective Date (which, for this purpose, shall be defined as the date on which the Court enters an Order granting Final Approval of the Settlement Agreement) or, solely in the event that there are any objections to the Settlement Agreement (the filing of an objection being a prerequisite to the filing of an appeal), the later of: (i) the last date on which any appeal might be filed or (ii) the final resolution of any appeal(s) – including expiration of any time to seek reconsideration or further review.
 - C. This is a non-reversionary settlement. The Gross Settlement Amount includes:
 - (1) All payments (including interest) to the Settlement Class;
 - (2) All costs of the Claims Administrator and settlement administration, which are anticipated to be no greater than Ninety Thousand Dollars (\$90,000.00);
 - (3) Up to Ten Thousand Dollars and Zero Cents (\$10,000.00) each for Plaintiffs’ Class Representative Service Awards, in recognition of their contributions to the Action and their service to the Settlement Class. Even in the event that the Court reduces or does not approve the requested Class Representative Service Awards, Plaintiffs shall not have the right to revoke this Settlement Agreement, and it will remain binding;
 - (4) Up to one-third of the Gross Settlement Amount in Class Counsel’s attorneys’ fees (currently estimated to be no greater than One Million Six Hundred, Sixty-Six Thousand, Six Hundred and Sixty-Six Dollars and Sixty-Seven Cents (\$1,666,666.67)), plus actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than \$75,000.00. In the event that the Court reduces or does not approve the requested Class Counsel attorneys’ fees or costs, Class Counsel shall not have the right to revoke this Settlement Agreement, and it will remain binding; and
 - (5) One Hundred Thousand Dollars (\$100,000.00) will be attributed to Plaintiffs’ Private Attorneys General Act (“PAGA”) claim, 75% of which will be paid to the Labor Workforce Development Agency (“LWDA”) pursuant to PAGA, and the remaining 25% will be payable to the PAGA aggrieved employees as the “PAGA Amount.”

- (6) Defendants will separately pay their share of payroll taxes separately from the Gross Settlement Amount.
 - D. Defendants will not oppose the reasonableness of these requests. Any reduction by the Court of these requests will revert to the Net Settlement Amount for distribution to the Settlement Class members who do not opt-out.
 - E. **Material Representation as to Workweeks:** Defendants represent that there are approximately 2,750,000 aggregate workweeks worked by the Settlement Class members during the Class Period. The Parties expressly agree and acknowledge that the accuracy of this number is of the essence, that Plaintiffs have reasonably relied on this representation in reaching this settlement, and that this representation constitutes a material term of this Settlement Agreement.
5. **Payments to the Settlement Class.** Settlement Class members are not required to submit a claim form to receive a payment (“Individual Settlement Award”) from the Settlement. Individual Settlement Awards will be determined and paid as follows:
- A. The Settlement Administrator shall first deduct from the Gross Settlement Amount the amounts approved by the Court for Class Counsel’s attorneys’ fees, Class Counsel’s costs and expenses, Plaintiffs’ Class Representative Service Awards, the amount designated for PAGA civil penalties to the LWDA and aggrieved employees, and the Claims Administrator’s fees and expenses for administration. The remaining amount shall be known as the “Net Settlement Amount.”
 - (1) From the Net Settlement Amount, the Claims Administrator will calculate each Settlement Class member’s Individual Settlement Award based on the following formula: each participating Settlement Class member shall receive a proportionate settlement share based upon the number of workweeks worked during the Class Period by multiplying the Net Settlement Amount by a fraction, the numerator of which is the Settlement Class member’s total workweeks worked during the Class Period, and the denominator of which is the total workweeks worked by all participating Settlement Class members who worked during the Class Period.
 - (2) PAGA Amount: The \$25,000.00 payable to the PAGA aggrieved employees as their 25% portion of the PAGA civil penalties shall be designated as the “PAGA Amount.” All Class Members who were employed by Defendants in California at any time during the PAGA Period, regardless of whether they timely submit a Request for Exclusion, shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked during the PAGA Period compared to the aggregate number of workweeks worked by all aggrieved employees during the PAGA Period.
 - B. Within ten (10) business days following the deposit by Defendants of the Gross Settlement Amount with the Claims Administrator, the Claims Administrator will

calculate Individual Settlement Award amounts and provide the same to the Parties' counsel for review and approval. Within seven (7) calendar days of approval by the Parties' counsel, the Claims Administrator will prepare and mail Individual Settlement Awards, less applicable taxes and withholdings, to participating Settlement Class members. The Claims Administrator shall simultaneously pay the withholdings to the applicable authorities with the necessary reports, submitting copies to counsel for Defendants.

- C. For purposes of calculating applicable taxes and withholdings, each Settlement Award shall be allocated as follows: Eighty Percent (80%) as penalties and interest; and Twenty Percent (20%) as wages. The Claims Administrator will be responsible for issuing to participating Settlement Class members IRS Forms W-2 for amounts deemed "wages" and IRS Forms 1099 for the amounts allocated as penalties and interest. Each Settlement Class member who receives a Settlement Award will be responsible for correctly characterizing the payment for tax purposes and for payment of any taxes owing on said amount. Notwithstanding the treatment of the payments to each Settlement Class member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans.
- D. Defendants shall fully discharge its obligations to those Settlement Class members who get paid, through the Settlement Administrator, Individual Settlement Awards through the mailing of a Settlement check, regardless of whether such checks are actually received and/or negotiated by Settlement Class members. Each member of the Settlement Class who receives an Individual Settlement Award must cash the check(s) within 180 days from the date the Settlement Administrator mails it/them. Any funds payable to Settlement Class members whose checks were not cashed or otherwise negotiated within 180 days after mailing will be transferred to the State Controller's Office in the name of the Settlement Class member under the unclaimed Property Laws.
- E. Neither Plaintiffs nor Defendants shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Claims Administrator.

6. **Attorneys' Fees and Costs.** Defendants will not object to Class Counsel's request for a total award of attorneys' fees of one-third of the Gross Settlement Amount, which is currently estimated to be \$1,666,666.67. Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed Seventy-Five Thousand Dollars and Zero Cents (\$75,000.00) from the Gross Settlement Amount. The attorneys' fees awarded by the Court will be divided as follows: Haines Law Group, APC: 50%; Blumenthal Nordrehaug Bhowmik De Blouw LLP: 25%; Diversity Law Group, P.C.: 4.0625%; Polaris Law Group: 4.375%; Law Offices of Choi & Associates: 4.0625%; JCL Law Firm, APC: 6.25%; and, Zakay Law Group, APLC: 6.25%. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work

performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when the Settlement Administrator pays the fee award allowed by the Court.

7. **Class Representatives Service Award.** Defendants will not object to a request for a Class Representative Service Award of up to Ten Thousand Dollars and Zero Cents (\$10,000.00) to each of the Plaintiffs for their time and risk in prosecuting this case, and their service to the Settlement Class. This award will be in addition to Plaintiffs' Settlement Award as Settlement Class members and shall be reported on an IRS Form 1099 issued by the Settlement Administrator. Even in the event that the Court reduces or does not approve the requested Service Awards, Plaintiffs shall not have the right to revoke this Settlement, and it will remain binding.

8. **Claims Administrator.** Defendants will not object to the appointment of ILYM Group, Inc. as Claims Administrator. Defendants will not object to Plaintiffs' seeking permission to pay up to Ninety Thousand Dollars (\$90,000.00) for its services from the Gross Settlement Amount. The Claims Administrator shall be responsible for sending notices and for calculating Individual Settlement Awards and preparing all checks and mailings and other duties as described in this Settlement Agreement. The Claims Administrator shall be authorized to pay itself from the Gross Settlement Amount by Class Counsel only after Individual Settlement Awards have been mailed to all participating Settlement Class members.

9. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiffs shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement;
- B. Appointing Haines Law Group, APC, Diversity Law Group, P.C., Polaris Law Group, Law Offices of Choi & Associates, JCL Law Firm, Zakay Law Group, APLC, and Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel;
- C. Appointing Plaintiffs as Class Representatives for the Settlement Class;
- D. Approving ILYM Group, Inc., as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Notice Packet (which is comprised of the Class Notice and Notice of Settlement Award, drafts of which are attached hereto as Exhibits A and B, respectively), and directing the mailing of same; and
- G. Scheduling a Final Approval hearing.

10. **Notice to Settlement Class.** Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within thirty (30) days after entry of an order preliminarily approving this Settlement, Defendants will provide the Claims Administrator with the names, last known addresses, phone numbers, social security numbers, the dates of employment and the number of Workweeks worked by each Settlement Class member while employed during the Class Period (the "Class Data"). The Class Data shall be provided to the Claims Administrator in an electronic format satisfactory to the Claims Administrator.
- B. Within ten (10) business days from receipt of this information, the Claims Administrator shall (i) run the names of all Settlement Class members through the National Change of Address ("NCOA") database to determine any updated addresses for Settlement Class members; (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Individual Settlement Award for each Settlement Class member; and (iv) mail a Notice Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. Requests for Exclusion. Any Settlement Class member who wishes to opt-out of the Settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within forty five (45) calendar days of the date of the initial mailing of the Notice Packets (the "Response Deadline").
 - i. The Notice Packet shall state that Settlement Class members who wish to exclude themselves from the Settlement must submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the Settlement, except a Request for Exclusion not containing a Class Member's telephone number and/or last four digits of the Social Security number will be deemed valid. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon.
 - ii. Before the Court enters Final Approval of this Settlement, if five percent (5%) or more of the Settlement Class members timely and properly Request Exclusion from this Settlement, then Defendants has the sole and exclusive right to withdraw from and void this Settlement and the Parties' previously-executed memorandum of understanding, and the Parties will revert to their

positions prior to provisional class certification under the terms of this Settlement. If Defendants exercises this option, it must provide written notice to Class Counsel and the Settlement Administrator within thirty (30) days of learning that 5% or more of the Settlement Class members timely and properly requested exclusion from the Settlement. Furthermore, if Defendants exercises its option to withdraw from and void this Settlement pursuant to this paragraph, Defendants shall be solely responsible for the payment to the Settlement Administrator of all costs of the Settlement Administrator, including any re-notice to the Class Members as ordered by the Court.

- D. Objections. Members of the Settlement Class who do not request exclusion may object to this Settlement Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendants' counsel, as well as file all such objections with the Court). Defendants' counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval. To be valid, any written objection must: (1) contain the objecting Settlement Class member's full name and current address, as well as contact information for any attorney representing the objecting Settlement Class member for purposes of the objection; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (4) be postmarked no later than the Response Deadline. Members of the Settlement Class who do not request exclusion may also object to the Settlement by appearing at the Final Approval Hearing without first serving a written objection.
- E. Notice of Settlement Award / Disputes. Each Notice Packet mailed to a Settlement Class member shall disclose the amount of the Settlement Class member's estimated Individual Settlement Award as well as all of the information that was used from Defendants' records in order to calculate the Individual Settlement Award, including the Settlement Class member's number of Workweeks worked during the Class Period. Settlement Class members will have the opportunity, should they disagree with Defendants' records regarding the information stated in the Notice of Settlement Award, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Claims Administrator and postmarked by the Response Deadline. If there is a dispute, the Claims Administrator will consult with the Parties to determine whether an adjustment is warranted. The Claims Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Awards under the terms of this Settlement Agreement. The Claims Administrator's determination of the eligibility for and amount of any Individual Settlement Award shall be binding upon the Settlement Class member and the Parties.
- F. Any Notice Packets returned to the Claims Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Claims Administrator shall make

reasonable efforts, including utilizing a “skip trace,” to obtain an updated mailing address within five (5) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Claims Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within three (3) business days of obtaining the updated address. The address identified by the Claims Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. It will be conclusively presumed that, if an envelope so mailed has not been returned within thirty (30) days of the mailing, the Settlement Class member received the Notice Packet. Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Claims Administrator shall have fourteen (14) calendar days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to submit a Request for Exclusion, Objection, or dispute. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline. If a Settlement Class member’s Notice Packet is returned to the Claims Administrator more than once as non-deliverable, then an additional Notice Packet shall not be mailed. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Defendants’ Counsel to provide notice of the proposed settlement.

- G. At no time will the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class member to object to the Settlement or opt-out of the Settlement Class, or encourage any Settlement Class member to appeal from the final judgment.

11. **Final Approval.** Following preliminary approval and the close of the period for filing requests for exclusion, objections, or disputes under this Settlement Agreement, Plaintiffs shall apply to the Court for entry of an Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiffs’ and Class Counsel’s application for attorneys’ fees and costs, Class Representative Service Awards, and settlement administration costs; and
- C. Entering judgment pursuant to California Rule of Court 3.769.

12. **Circular 230 Disclaimer.** EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR

ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISOR'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT

13. **Non-Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this Settlement. In particular, but without limiting the generality of the foregoing, nothing about this Settlement Agreement shall be offered or construed as an admission of liability, wrongdoing, impropriety, responsibility, or fault whatsoever on the part of Defendants and/or the Released Parties, and it shall not be construed as or deemed to be evidence of, or an admission or concession that any Settling Class member has suffered any damage. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152.

14. **Non-disclosure and Non-publication.** Plaintiffs and Class Counsel agree not to disclose or publicize the Settlement Agreement contemplated herein, the fact of the Settlement Agreement, its terms or contents, or the negotiations underlying the Settlement Agreement, in any manner or form, directly or indirectly, to any person or entity, except to Settlement Class members and as shall be contractually required to effectuate the terms of the Settlement Agreement as set forth herein. However, for the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other lawsuits, Class Counsel may disclose the names of the Parties in this Action, the venue/case number of this Action, and a general description of the SAC, to a court in a declaration by Class Counsel. Class Counsel may also include a general description of the Settlement on their respective websites but may not include the name(s) of any of the Parties, or the case name or case number of the Action.

15. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

16. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Defendants: Laura Reathaford
Lathrop GPM LLP
2049 Century Park East, Suite 3500
Los Angeles, California 90067
Laura.reathaford@lathropgpm.com
(310) 789-4600

if to Plaintiffs: Paul Haines
Haines Law Group, APC
2155 Campus Drive, Suite 180
El Segundo, California 90245
phaines@haineslawgroup.com
(424) 292-2350

17. **Cooperation.** The Parties agree to work cooperatively, diligently and in good faith to ensure that all documents necessary to effectuate this Settlement are properly and timely filed.

18. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the Action contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof. Further, all terms of this Agreement and the exhibits hereto shall be governed by and interpreted according to the laws of the State of California.

19. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

DATED: January ³¹____, 2023

Damontae Levingston

DocuSigned by:

By: 9C853F01DC864CA...
Plaintiff and Settlement Class Representative

DATED: January ____, 2023

Kevin Pearson

By: _____
Plaintiff and Settlement Class
Representative

if to Defendants: Laura Reathafor
Lathrop GPM LLP
2049 Century Park East, Suite 3500
Los Angeles, California 90067
Laura.reathafor@lathropgpm.com
(310) 789-4600

if to Plaintiffs: Paul Haines
Haines Law Group, APC
2155 Campus Drive, Suite 180
El Segundo, California 90245
phaines@haineslawgroup.com
(424) 292-2350

17. **Cooperation.** The Parties agree to work cooperatively, diligently and in good faith to ensure that all documents necessary to effectuate this Settlement are properly and timely filed.

18. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the Action contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof. Further, all terms of this Agreement and the exhibits hereto shall be governed by and interpreted according to the laws of the State of California.

19. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

DATED: January ____, 2023

Damontae Levingston

By: _____
Plaintiff and Settlement Class Representative

DATED: February ⁰³ ____, 2023

Kevin Pearson

By:  _____
[Kevin Pearson \(Feb 3, 2023 23:42 PST\)](#)
Plaintiff and Settlement Class
Representative

Feb 6, 2023

DATED:

Paul Rodriguez

By: 
Paul Rodriguez (Feb 6, 2023 13:27 PST)

Plaintiff and Settlement Class
Representative

DATED: January ____, 2023

Mark Gutierrez

By: _____
Plaintiff and Settlement Class
Representative

DATED: January ____, 2023

Smart & Final Logistics, LLC

By: _____
Joe Angulo
Its: General Consul

DATED: January ____, 2023

Commerce Distribution Company, LLC

By: _____
Joe Angulo
Its: General Consul

DATED: January ____, 2023

Smart & Final Stores, LLC

By: _____
Joe Angulo
Its: General Consul

DATED: January ____, 2023

Paul Rodriguez

By: _____
Plaintiff and Settlement Class
Representative

DATED: February 10, 2023

Mark Gutierrez

mark Gutierrez
mark Gutierrez (Feb 10, 2023 20:26 PST)
By: _____
Plaintiff and Settlement Class
Representative

DATED: January ____, 2023

Smart & Final Logistics, LLC

By: Joe Angulo
Its: General Consul

DATED: January ____, 2023

Commerce Distribution Company, LLC

By: Joe Angulo
Its: General Consul

DATED: January ____, 2023

Smart & Final Stores, LLC

By: Joe Angulo
Its: General Consul

DATED: January ____, 2023

Paul Rodriguez

By: _____
Plaintiff and Settlement Class
Representative

DATED: February 10, 2023

Mark Gutierrez

mark Gutierrez
(mark Gutierrez (Feb 10, 2023 20:26 PST))
By: _____
Plaintiff and Settlement Class
Representative

DATED: ~~January~~ February 16, 2023

Smart & Final Logistics, LLC

Joe Angulo
By: Joe Angulo
Its: General Consul

DATED: ~~January~~ February 16, 2023

Commerce Distribution Company, LLC

Joe Angulo
By: Joe Angulo
Its: General Consul

DATED: ~~January~~ February 16, 2023

Smart & Final Stores, LLC

Joe Angulo
By: Joe Angulo
Its: General Consul

EXHIBIT 2

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

DAMONTAE LEVINGSTON, KEVIN PEARSON,
MARK GUTIERREZ, and PAUL RODRIGUEZ, as
individuals and on behalf of all others similarly
situated,

Plaintiffs,

vs.

COMMERCE DISTRIBUTION COMPANY LLC., a
California Limited Liability Company; SMART &
FINAL LOGISTICS LLC, a Delaware limited liability
company; SMART & FINAL STORES, LLC, a
California limited liability company, and SMART &
FINAL LLC, a Delaware limited liability company and
DOES 1 through 50, inclusive,

Defendants.

Case No. 22STCV05730

NOTICE OF CLASS ACTION SETTLEMENT

To: All current and former non-exempt employees of Defendants Smart & Final Logistics, LLC, Commerce Distribution Company, LLC, and Smart & Final Stores, LLC (collectively, “Defendants”) who worked for Defendants in California at any time from February 2, 2018 through February 7, 2023. Collectively, these employees will be referred to as “Settlement Class Members.”

**PLEASE READ THIS NOTICE CAREFULLY
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

Why should you read this notice?

The Court has granted preliminary approval of a proposed class action settlement (the “Settlement”) in *Damontae Levingston, et al. v. Commerce Distribution Company LLC, et al.*, Los Angeles County Superior Court, Case No. 22STCV05730 (the “Lawsuit”). Your rights may be affected by the Settlement, and it is important that you read this notice carefully.

You may be entitled to money from this Settlement. Defendants’ records show that you were employed by Defendants as a non-exempt employee in California between February 2, 2018 and February 7, 2023 (the “Settlement Class Period”). The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment.

What is this case about?

Plaintiffs Damontae Levingston, Kevin Pearson, Mark Gutierrez, and Paul Rodriguez (collectively, “Plaintiffs”) brought this lawsuit against Defendants Commerce Distribution Company LLC, Smart & Final Logistics LLC, Smart & Final Stores, LLC, and Smart & Final LLC (collectively, “Defendants”) asserting claims on behalf of all Settlement Class Members. Plaintiffs are known as the “Class Representatives,” and their attorneys, who also represent the interests of all Settlement Class Members, are known as “Class Counsel.”

In the Lawsuit, Plaintiffs allege that Defendants: (1) failed to pay all overtime wages; (2) failed to pay all minimum wages; (3) failed to provide all lawful meal periods; (4) failed to authorize and permit all lawful rest periods; (5) failed to reimburse for necessary business expenditures; (6) failed to issue accurate and itemized wage statements; (7) failed to timely pay all final wages; (8) engaged in unfair competition; (9) failed to pay all sick pay wages owed; and (10) is liable for civil penalties under the Private Attorneys General Act (“PAGA”).

Defendants deny that they have done anything wrong, and deny that they owe Settlement Class Members any wages, restitution, penalties, or other damages. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Defendants, which expressly deny all liability.

The Court has not ruled on the merits of Plaintiffs’ claims. However, to avoid additional expense, inconvenience, and interference with business operations, the parties concluded that it is in the interests of Settlement Class Members and in Defendants’ best interest to settle the Lawsuit on the terms summarized in this Notice. After Defendants provided substantial relevant information to Class Counsel, the Settlement was reached after mediation and arms’-length negotiations between the parties with the assistance of a neutral mediator.

The Class Representatives and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Defendants, the inherent risks of trial on the merits, and the delays and uncertainties associated with ongoing litigation.

If you are still employed by Defendants, your decision about whether to participate in the Settlement will not affect your employment. California law and Defendants’ policy strictly prohibit unlawful retaliation. Defendants will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Settlement Class Member because of his or her decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for Plaintiffs / Settlement Class Members:	Attorneys for Defendants:
HAINES LAW GROUP, APC Paul K. Haines (SBN 248226) phaines@haineslawgroup.com Fletcher W. Schmidt (SBN 286462) fschmidt@haineslawgroup.com Matthew K. Moen (SBN 305956) mmoen@haineslawgroup.com 2155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 haineslawgroup.com Larry W. Lee (State Bar No. 228175) lwlee@diversitylaw.com Shalom “Christine” Choo (State Bar No. 339947) christine@diversitylaw.com DIVERSITY LAW GROUP, P.C. 515 S. Figueroa St., Suite 1250 Los Angeles, California 90071 (213) 488-6555 (213) 488-6554 facsimile	Laura Reathafor (SBN 254751) LATHROP GPM LLP 2049 Century Park East, Suite 3500S Los Angeles, CA 90067 Tel: (310) 789-4600 Fax: (310) 789-4601 luara.reathafor@lathropgpm.com

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)
Kyle R. Nordrehaug (State Bar #205975)
Aparajit Bhowmik (State Bar #248066)
Nicholas J. De Blouw (State Bar #280922)
2255 Calle Clara
La Jolla, CA 92037
Telephone: (858)551-1223
Facsimile: (858) 551-1232
Website: www.bamlawca.com

ZAKAY LAW GROUP, APLC

Shani O. Zakay (State Bar #277924)
Jackland K. Hom (State Bar #327243)
Julieann Alvarado (State Bar #334727)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 255-9047
Facsimile: (858) 404-9203
shani@zakaylaw.com
jackland@zakaylaw.com
julieann@zakaylaw.com

JCL LAW FIRM, APC

Jean-Claude Lapuyade (State Bar #248676)
Eduardo Garcia (State Bar #290572)
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121
Telephone: (619) 599-8292
Facsimile: (619) 599-8291
jlapuyade@jcl-lawfirm.com
egarcia@jcl-lawfirm.com

William L. Marder (SBN 170131)
bill@polarislawgroup.com

POLARIS LAW GROUP

501 San Benito Street, Suite 200
Hollister, CA 95023
Telephone: (831) 531-4214
Facsimile: (831) 634-0333

Edward W. Choi, Esq. SBN 211334

LAW OFFICES OF CHOI & ASSOCIATES

515 S. Figueroa St., Suite 1250
Los Angeles, CA 90071
Telephone: (213) 381-1515
Facsimile: (213) 465-4885
Email: edward.choi@choiandassociates.com

What are the terms of the Settlement?

On <<PRELIM APPROVAL DATE>>, the Court preliminarily certified a settlement class – for settlement purposes only – of all current and former non-exempt employees of Defendants who worked for Defendants in California at any time during the Settlement Class Period. Settlement Class Members who do not submit a valid and timely Request for Exclusion from the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Defendants, as described below in the “Release” section.

Defendants agreed to pay \$5,000,000.00 (the “Gross Settlement Amount”) to fully resolve all claims in the Lawsuit, including payments to Settlement Class Members, attorneys’ fees and expenses, settlement administration costs, payment to the California Labor and Workforce Development Agency (“LWDA”) for its share of PAGA civil penalties, and the Class Representative Enhancement Payments. The following deductions from the Gross Settlement Amount will be requested by the parties:

Settlement Administration Costs. The Court has approved ILYM Group, Inc. to act as the “Claims Administrator,” who is sending this Notice to you and who will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$90,000.00 from the Gross Settlement Amount to pay the Settlement administration costs.

Attorneys’ Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of the Settlement Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Gross Settlement Amount. Settlement Class Members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will ask for fees of up to one-third of the Gross Settlement Amount (which is currently estimated to be \$1,666,666.67) as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$75,000.00 for verified costs which were incurred by Class Counsel in connection with the Lawsuit.

Class Representative Enhancement Payments. Class Counsel will ask the Court to award \$10,000.00 to each named Plaintiff (\$40,000.00 total) as a Class Representative Enhancement Payment. This is meant to compensate Plaintiffs for their service and extra work provided on behalf of the Settlement Class Members.

PAGA Payment to the State of California. The parties have agreed to allocate \$100,000.00 of the Gross Settlement Amount as PAGA civil penalties. Per Labor Code Section 2699(i), 75% of such penalties (\$75,000.00) will be payable to the LWDA for its share of PAGA penalties, and the remaining 25% (\$25,000.00) will be payable to the Settlement Class as part of the Net Settlement Amount.

Calculation of Settlement Class Members’ Individual Settlement Awards. After deducting the Court-approved amounts above, the balance of the Gross Settlement Amount will form the Net Settlement Amount, which will be distributed to all Settlement Class Members who do not submit a valid and timely Request for Exclusion (described below). The Net Settlement Amount will be divided based on the following formula:

- (i) Each participating Settlement Class Member shall receive a proportionate settlement share based upon the number of workweeks worked during the Class Period, by multiplying the Net Settlement Amount by a fraction, the numerator of which is the Settlement Class Member’s total workweeks worked during the Class Period, and the denominator of which is the total workweeks worked by all participating Settlement Class Members during the Class Period.
- (ii) PAGA Amount: The \$25,000.00 payable to the Settlement Class Members as PAGA civil penalties shall be designated as the “PAGA Amount.” Each Settlement Class Member who was employed by Defendants in California at any time between February 2, 2021 through February 7, 2023 (the “PAGA Period”), regardless of whether they timely submit a Request for Exclusion, shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked during the PAGA Period compared to the aggregate number of workweeks worked by all Settlement Class Members during the PAGA Period.

Individual Settlement Awards to Settlement Class Members. If the Court grants final approval of the Settlement, Individual Settlement Awards will be mailed to Settlement Class Members who did not submit a valid and timely Request for Exclusion. Each participating Settlement Class Member who receives an Individual Settlement Award must cash that check within 180 calendar days from the date the Claims Administrator mails it. Any funds payable to participating Settlement Class Members whose checks are not cashed within 180 calendar days after mailing will be transferred by the Claims Administrator to the State Controller’s Office in the name of the Settlement Class Member under the unclaimed Property Laws.

Allocation and Taxes. For tax purposes, each Individual Settlement Award will be allocated as 80% penalties and interest issued pursuant to an IRS Form 1099; and 20% as wages issued pursuant to an IRS Form W-2, with employee-side payroll withholding taxes withheld. Class Members are responsible for the proper income tax treatment of the Individual Settlement Awards. The Settlement Administrator, Defendants and their counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class Members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. If the Court approves the Settlement, each Settlement Class Member who has not submitted a timely and valid Request for Exclusion will fully and forever completely and irrevocably release and discharge Defendants, and all of their past and present officers, directors, shareholders, unit holders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys, (collectively the “Released Parties”), from all claims, demands, rights, liabilities, and causes of action that were pled and/or alleged in the Second Amended Complaint filed in the Lawsuit, or which could have been pled in the Second Amended Complaint based on the factual allegations therein, that arose during the Class Period (the “Released Claims”), including without limitation with respect to the following claims: (a) failure to pay all wages due for time worked, including overtime, in violation of Labor Code §§ 210, 221, 510, and 558; (b) failure to provide meal periods, or premium pay for non-compliant meal periods in violation of Labor Code §§ 226.7, 512, 558, 1198 and the applicable IWC Wage Order; (c) failure to authorize and permit rest periods, or premium pay for non-compliant rest periods in violation of Labor Code §§ 226.7, 512, 558, 1198 and the applicable IWC Wage Order; (d) failure to furnish accurate itemized wage statements in violation of Labor Code §§ 226, 226.3, and 226.6; (e) failure to pay all wages owed upon termination in violation of Labor Code §§ 201-203 and 227.3; (f) failure to provide accrued sick leave in violation of Labor Code § 246; (g) failure to reimburse expenses pursuant to Labor Code Section 2802; (h) penalties pursuant to Labor Code §§ 2698, *et seq.* relating to the violations of the above and including but not limited to alleged violations of Labor Code §§ 201-204, 210, 218, 221, 226(a), 226.3, 226.6, 226.7, 227.3, 246, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, and all applicable Wage Orders; along with claims for a failure to provide reimbursements under Labor Code § 2802; and (j) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above.

It is understood and acknowledged that all persons who are employed or have been employed by Defendants in California as non-exempt employees at any time during the PAGA Period will be issued a check for their share of the PAGA Amount, regardless of whether they submit a timely Request for Exclusion from the Settlement, and shall be deemed to have released all claims for civil penalties under the PAGA against the Released Parties with respect to the underlying claims pled in the operative Second Amended Complaint in the Lawsuit or Plaintiffs’ letters to the California Labor and Workforce Development Agency dated February 2, 2022, February 14, 2022, and July 20, 2022, or which could have been pled in the operative Second Amended Complaint in the Lawsuit based on the factual allegations therein, that arose during the PAGA Period (the “PAGA Released Claims”).

Conditions of Settlement. The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class Members, and the entry of Judgment.

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your Individual Settlement Award, which has been calculated for you based on the formula set forth above, and as stated in the accompanying Notice of Settlement Award. You also will be bound by the Settlement, including the release of claims stated above.

What other options do I have?

Dispute Information in Notice of Settlement Award. Your award is based on the proportionate number of workweeks that you worked during the relevant time periods. The information contained in Defendants’ records regarding this information, along with your estimated Individual Settlement Award, is listed on the accompanying Notice of Settlement Award. If you disagree with the information in your Notice of Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than

<<RESPONSE DEADLINE>>. DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE CLAIMS ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.

The Parties and the Claims Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class Members. Should a consensus not be reached, any outstanding disputes will be submitted to the Court for a final determination.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Claims Administrator a written “Request for Exclusion from the Class Action Settlement” letter or card postmarked no later than **<<RESPONSE DEADLINE>>**, with your name, address, telephone number, last four digits of your social security number, and your signature. The Request for Exclusion must state:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE *DAMONTAE LEVINGSTON, et al. v. COMMERCE DISTRIBUTION COMPANY LLC, et al.*, LAWSUIT FILED IN THE LOS ANGELES COUNTY SUPERIOR COURT, CASE NO. 22STCV05730. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT.”

Send the Request for Exclusion directly to the Claims Administrator at **<<ADMINISTRATOR CONTACT INFO>>**. Any person who submits a timely Request for Exclusion from the Settlement shall, upon receipt by the Claims Administrator, no longer be a Settlement Class Member, shall be barred from participating in any portion of the Settlement, and shall receive no benefits from the Settlement. However, all persons who are employed or have been employed by Defendants in California as non-exempt employees at any time during the PAGA Period will be issued a check for their share of the PAGA Amount, regardless of whether they submit a timely Request for Exclusion from the Settlement. **Do not submit both a Dispute and a Request for Exclusion.** If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement, or any portion of it, you may mail a written objection to the Claims Administrator. Your written objection should include your name, address, last four digits of your social security number, as well as contact information for any attorney representing you regarding your objection, the case name and number, each specific reason in support of your objection, and any legal or factual support for each objection together with any evidence in support of your objection. All objections or other correspondence must state the name and number of the case, which is *Damontae Levingston, et al. v. Commerce Distribution Company LLC, et al.*, Los Angeles County Superior Court, Case No. 22STCV05730. Objections in writing must be postmarked on or before **<<RESPONSE DEADLINE>>**.

You may also appear at the Final Approval Hearing scheduled for **<<FINAL APPROVAL HEARING DATE/TIME>>** in Department 49 of the Los Angeles County Superior Court, Stanley Mosk Courthouse, located at 111 North Hill Street, Los Angeles, CA 90012. The location, date, and time of the Final Approval Hearing may be moved without further notice to you. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing, if you wish to appear in person. You have the right to appear either in person or through your own attorney at this hearing, whether or not you submit a written objection. If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class Members who do not object. **PLEASE REVIEW THE INFORMATION BELOW REGARDING THE IMPACT OF COVID-19 ON YOUR ABILITY TO APPEAR IN PERSON AT THE FINAL APPROVAL HEARING.**

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on **<<FINAL APPROVAL HEARING DATE/TIME>>**, in Department 49 of the Los Angeles County Superior Court, Stanley Mosk Courthouse, located at 111 North Hill Street, Los Angeles, CA 90012. The location, date, and time of the Final Approval Hearing may be moved without further notice to you. You may contact Class Counsel using the contact information provided above to confirm the address and time of the hearing. The Court also will be asked to rule on Class Counsel’s request for attorneys’ fees and reimbursement of documented costs and expenses, the Enhancement Payments to the Class Representatives, the Claims Administrator’s costs, and the amount related to the

PAGA civil penalties. **You are not required to attend the Final Approval Hearing. PLEASE REVIEW THE INFORMATION BELOW REGARDING THE IMPACT OF COVID-19 ON YOUR ABILITY TO APPEAR IN PERSON AT THE FINAL APPROVAL HEARING.**

How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Clerk's Office at the Stanley Mosk Courthouse, located at 111 N. Hill Street, Los Angeles, California 90012, during regular business hours. You may also contact the Claims Administrator at <<ADMINISTRATOR CONTACT INFO>>, toll free, or Class Counsel using the contact information listed above for more information. In light of the COVID-19 pandemic, the Los Angeles County Superior Court has implemented certain protocols that may impact your ability to review the Court's files in person. As of the date of this mailing, you may be required to make an appointment with the Clerk's Office prior to accessing the Court's files. Current information regarding how to make an appointment, as well as additional rules, regulations, and safety protocols, can be viewed on the Court's website, at www.lacourt.org.

PLEASE DO NOT CALL OR WRITE THE CLERK OF THE COURT OR THE JUDGE FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS

Notice Regarding Impact of COVID-19.

In light of the COVID-19 pandemic, the Los Angeles County Superior Court has implemented certain protocols that may impact your ability to review the Court's files in person and/or appear at the Final Approval Hearing in person, should you choose to do so. Current information regarding the Court's COVID-19 rules, regulations, and safety protocols, can be viewed on the Court's website, at www.lacourt.org.

Additional information regarding making a Remote Appearance at the Final Approval Hearing can be found here: <http://www.lacourt.org/division/civil/CI0040.aspx>

REMINDER AS TO TIME LIMITS

The deadline for submitting any Disputes, Requests for Exclusion, or Objections is <<RESPONSE DEADLINE>>.

NOTICE OF SETTLEMENT AWARD

DAMONTAE LEVINGSTON, et al. v. COMMERCE DISTRIBUTION COMPANY LLC, et al.
LOS ANGELES COUNTY SUPERIOR COURT, CASE NO. 22STCV05730

Please complete, sign, date and return this Form to <<ADMINISTRATOR CONTACT INFO>> **ONLY IF** (1) your personal contact information has changed, and/or (2) you wish to dispute any of the information listed in Section (III), below. It is your responsibility to keep a current address on file with the Claims Administrator.

(I) Please type or print your name:

(First, Middle, Last)

(II) Please type or print the following identifying information if your contact information has changed:

Former Names (if any)

New Street Address

City

State

Zip Code

(III) Information Used to Calculate Your Individual Settlement Award:

According to Defendants' records:

- (a) You worked _____ workweeks between February 2, 2018 and February 7, 2023 (the "Class Period"); and
- (b) You worked _____ workweeks between February 2, 2021 and February 7, 2023 (the "PAGA Period").

Based on the above, your Individual Settlement Award is estimated to be \$ _____.

(IV) If you disagree with items (a) or (b) in Section (III) above, please explain why in the space provided below and include copies of any supporting evidence or documentation with this form:

If you dispute the above information from Defendants' records, those records will control unless you are able to provide documentation that establishes that Defendants' records are mistaken. If there is a dispute about whether Defendants' information or yours is accurate, and the dispute cannot be resolved informally, the dispute will be resolved by the Parties and the Claims Administrator as described in the Class Notice that accompanies this Form. Any unresolved disputes will be submitted to the Court for a final determination.

**ANY DISPUTES, ALONG WITH ANY SUPPORTING DOCUMENTATION, MUST BE POSTMARKED
NO LATER THAN <<RESPONSE DEADLINE>>.**

Signature: _____

Date: _____

EXHIBIT 3

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

February 2, 2022

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Kevin Pearson v. Smart and Final Logistics, LLC, et al.*

To Whom It May Concern:

Please be advised that this law firm represents Kevin Pearson in claims arising from his employment with Smart and Final Logistics, LLC and Does 1 through 100 (collectively, “Defendants”). Mr. Pearson is an “aggrieved employee” within the meaning of Labor Code section 2699.3 as to all of the violations alleged herein. The purpose of this letter is to comply with Labor Code § 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, “aggrieved employees” includes all of Defendants’ current and former non-exempt employees who worked for Defendants in California during the one year immediately preceding the date of this letter through the present.

Defendants operate a chain of food supply warehouses throughout California. Mr. Pearson was employed by Defendants as a non-exempt employee from approximately August 2007 to August 2021. Specifically, Mr. Pearson was an “Order Selector” in a cold storage facility warehouse owned by Defendant. Mr. Pearson’s job duties consisted primarily of building pallets with inventory from the warehouse that were then shipped to Defendant’s retail stores.

During Mr. Pearson’s employment with Defendants, Mr. Pearson routinely worked in excess of 8 hours per workday and/or more than 40 hours per workweek but did not receive overtime compensation equal to one and one-half times his regular rate of pay for working overtime hours. Specifically, Mr. Pearson and other aggrieved employees earned shift premiums (denoted on paystubs as “Shift Prem”), non-discretionary bonuses (denoted on paystubs as “Bonus”), and incentive pay (denoted on paystubs as “Incentive \$”), and other forms of pay that cannot be excluded from the regular rate of pay as a matter of law (hereinafter “Incentive Pay”). As a result of paying Mr. Pearson and other aggrieved employees Incentive Pay, Defendants failed to properly calculate the regular rate of pay, resulting in unpaid overtime wages.

For a portion of the statutory period, Defendants paid meal and rest period premium payments at Mr. Pearson's base hourly rate of pay, rather than at Mr. Pearson's regular rate of pay after factoring in Incentive Pay. As a result, Mr. Pearson and other aggrieved employees did not receive an additional hour of premium pay at their respective regular rates of pay for each workday in which a meal period and/or rest period violation occurred, as required by Labor Code § 226.7.

Further, Defendants failed to authorize and permit Mr. Pearson and other aggrieved employees to take all legally complaint rest periods to which they were entitled, due to Defendants' unlawful rest period policies/practices that were in effect up until approximately 2019. Specifically, until approximately 2019, Defendants required Mr. Pearson and other aggrieved employees to remain on Defendants' premises during rest periods and as a result failed to relinquish all control over how Mr. Pearson and other aggrieved employees spent their break time, in violation of *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260 ("[D]uring required rest periods, employers must relieve their employees of all duties and relinquish any control over how employees spend their break time."). On those occasions where Mr. Pearson and other aggrieved employees were not authorized to take all legally compliant rest periods to which they were entitled, Defendants failed to pay Mr. Pearson and other aggrieved employees an additional hour of rest period premium pay, as required by Labor Code § 226.7.

Defendants are governed by Labor Code § 226 (a), which requires, among other things, that Defendants' wage statements include all applicable hourly rates during the pay period and the corresponding number of hours worked at each hourly rate, and the total hours worked during the pay period. However, Defendants issued wage statements to Mr. Pearson and other aggrieved employees which listed multiple rates for "FLSA Prem \$" without indicating the number of hours worked at each hourly rate. Defendants' wage statements also list an inaccurate figure for the total hours worked in the pay period which double-counts certain hours, and includes certain hours that are not in fact "hours worked" such as hours associated with meal and rest period premiums. Additionally, Defendant issued wage statements that included negative deductions on various pay codes, such as "FLSA OT Prem" and "Break Premium." As a result, Defendants issued facially non-compliant wage statements to Mr. Pearson and other aggrieved employees, in violation of Labor Code § 226 (a).

As a result of Defendants' failure to pay all overtime wages, minimum wages, and meal and rest period premium wages owed, Defendants also maintained inaccurate payroll records, issued inaccurate wage statements to Mr. Pearson and other aggrieved employees, and failed to pay all final wages owed to Mr. Pearson and other aggrieved employees upon their respective separations from employment.

As described above, Defendants committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 7-2001 ("Wage Order 7"):

Overtime Violations

Defendants were required to properly pay Mr. Pearson and other aggrieved employees for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 7. Wage Order 7, § 3 requires an employer to pay an employee “one and one-half (1½) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours” per workday and/or in excess of 40 hours of work in the workweek. Wage Order 7, § 3 also requires an employer to pay an employee double the employee’s regular rate of pay for work in excess of twelve hours each work day and/or for work in excess of 8 hours on the seventh consecutive day of work in the workweek. Defendants caused Mr. Pearson and other aggrieved employees to work overtime hours but did not compensate Mr. Pearson and other aggrieved employees at one and one-half times their regular rate of pay for such hours. Defendants also caused Mr. Pearson and other aggrieved employees to work in excess of twelve hours in a workday but did not properly compensate Mr. Pearson and other aggrieved employees at double their regular rate of pay for all such hours.

Meal Period Violations

Defendants failed in their affirmative obligation to provide Mr. Pearson and other aggrieved employees with all legally-compliant meal periods. As a result of the meal period violations, Mr. Pearson and other aggrieved are owed an additional hour of wages for each meal period violation at the employee’s regular rate of compensation. *See* Labor Code section 226.7 (“If an employer fails to provide an employee a meal period or rest period in accordance with an applicable 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 period is not provided.”); *see also id.*, sections 204, 210, 512; Wage Order 7, § 11.

Rest Period Violations

Wage Order 7, § 12 and Labor Code §§ 226.7 and 516 establish the right of employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof.

Due to Defendants’ unlawful rest period policies and/or practices, Defendants failed to authorize and permit Mr. Pearson and other aggrieved employees to take all lawful rest periods to which they were legally entitled. Despite Defendants’ violations, Defendants failed to pay an additional hour of premium pay to Mr. Pearson and other aggrieved employees at their respective regular rates of pay for each violation, as required by California Labor Code § 226.7.

Wage Statement Violations

Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Mr. Pearson and other aggrieved employees with complete and

accurate itemized wage statements that included, among other requirements, all overtime and minimum wages earned, and all meal and rest period premium wages owed, in violation of Labor Code § 226 *et seq.* Defendants' failure to furnish Mr. Pearson and other aggrieved employees with complete and accurate, itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all overtime and minimum wages owed and all meal and rest period premium wages owed, and deprived them of the information necessary to identify the discrepancies in Defendants' reported data.

Waiting Time Penalties

Labor Code §§ 201-203 require an employer to pay all wages earned immediately at the time of separation of employment in the event the employer discharges the employee, or if the employee provides at least 72 hours of notice of his/her intent to quit. In the event the employee provides less than 72 hours of his/her intent to quit, said employee's wages become due and payable no later than 72 hours upon said employee's last date of employment. Defendants failed to timely pay Mr. Pearson and other aggrieved employees all final wages due to them at the time of their separation, which includes, among other things, underpaid owed overtime wages and minimum wages, and meal and rest period premium wages. Further, as a matter of uniform policy and practice, Defendants continue to fail to pay aggrieved employees all earned wages at the end of employment in a timely manner pursuant to Labor Code §§ 201-203. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203. Defendants' willful failure to timely pay Mr. Pearson and other aggrieved employees their earned wages upon separation from employment, results in a continued payment of wages up to thirty (30) days from the time the wages were due.

As an "aggrieved employee," Mr. Pearson will initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Pearson's own investigation, and on information and belief, Defendants committed and continue to commit the following Labor Code violations:

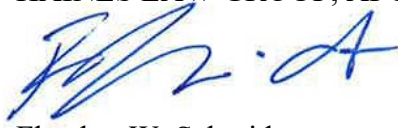
- a. Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Pearson and other aggrieved employees all overtime compensation earned;
- b. Defendants violated Labor Code §§ 226.7, 512, 558, and 1198 by failing to provide meal periods as required by law and failing to pay meal period premiums to Mr. Pearson and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;
- c. Defendants violated Labor Code §§ 226.7, 516, 558, and 1198 by failing to authorize and permit Mr. Pearson and other aggrieved employees to take all

lawful rest periods to which they are entitled, and failing to pay rest period premiums to Mr. Pearson and other aggrieved employees at these employees' respective regular rates of compensation for rest period violations;

- d. Defendants violated Labor Code § 226 by failing to furnish Mr. Pearson and other aggrieved employees with accurate and compliant itemized wage statements;
- e. Defendants violated Labor Code §§ 201-203 by failing to timely pay all final wages due to Mr. Pearson and other aggrieved employees;
- f. Defendants violated Labor Code § 204 by failing to pay Mr. Pearson and aggrieved employees all wages earned at least twice during each calendar month; and
- g. Defendants violated Labor Code §§ 558 and 1174 by failing to maintain accurate records on behalf of Mr. Pearson and aggrieved employees.

Pursuant to Labor Code § 2699.3, please notify us and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
HAINES LAW GROUP, APC



Fletcher W. Schmidt

cc: Smart and Final Logistics, LLC (via certified mail)

PROOF OF ACCEPTANCE (ELECTRONIC)

PRODUCED DATE: 02/03/2022

HAINES LAW GROUP:

The following is information for Certified Mail™/RRE item number:

9214 8901 9403 8365 3288 10

Our records indicate that this item was accepted by the USPS at:

SHIPMENT RECEIVED ACCEPTANCE PENDING EL SEGUNDO,CA 90245 02/02/2022

ORIGINAL INTENDED RECIPIENT:

SMART & FINAL LOGISTICS LLC
C/O: C T CORPORATION SYSTEM
STE 700
330 N BRAND BLVD
GLENDALE CA 91203-2336

JR

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: [Jonathan Ramirez](#)
Subject: Thank you for submission of your PAGA Case.
Date: Wednesday, February 02, 2022 12:17:36 PM

2/2/2022

LWDA Case No. LWDA-CM-866105-22
Law Firm : Haines Law Group, APC
Plaintiff Name : Kevin Pearson
Employer: Smart and Final Logistics, LLC
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT 4

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA

LA JOLLA, CALIFORNIA 92037

Web Site: www.bamlawca.com

San Diego | San Francisco | Sacramento | Los Angeles | Riverside | Santa Clara | Orange | Chicago

Phone: (858) 551-1223

Fax: (858) 551-1232

WRITERS E-MAIL:

Nick@bamlawca.com

WRITERS EXT:

1004

July 20, 2022

CA2665

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Smart & Final Stores, LLC
Certified Mail #70220410000153343294
C T Corporation System
330 N. Brand Blvd., Suite 700
Glendale, CA 91203

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Smart & Final Stores LLC in California, including any employees staffed with Smart & Final Stores LLC by a third party, and classified as non-exempt employees during the time period of July 20, 2021 until a date as determined by the Court. Our offices represent Plaintiff Mark Gutierrez (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Smart & Final Stores LLC (“Defendant”). Plaintiff was employed by Defendant in California as a non-exempt employee from December of 2019 to March 28, 2022 and entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal.

App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)

2 Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

3 Nicholas J. De Blouw (State Bar #280922)

2255 Calle Clara

4 La Jolla, CA 92037

Telephone: (858)551-1223

5 Facsimile: (858) 551-1232

Website: www.bamlawca.com

6 Attorneys for Plaintiff

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **IN AND FOR THE COUNTY OF LOS ANGELES**

10 MARK GUTIERREZ, an individual, on behalf
11 of himself and on behalf of all persons similarly
situated,

12
13 Plaintiff,

14 vs.

15 SMART & FINAL STORES LLC, a California
16 Limited Liability Company; and DOES 1
through 50, inclusive,

17
18 Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE § 510;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203; and,
9. FAILURE TO PAY SICK PAY WAGES IN VIOLATION OF CAL. LAB CODE §§201-204, 233, 246

DEMAND FOR A JURY TRIAL

1 Plaintiff Mark Gutierrez (“PLAINTIFF”), an individual, on behalf of himself and all
2 other similarly situated current and former employees alleges on information and belief, except
3 for his own acts and knowledge which are based on personal knowledge, the following:

4
5 **THE PARTIES**

6 1. Defendant Smart & Final Stores LLC (“DEFENDANT”) is a limited liability
7 company that at all relevant times mentioned herein conducted and continues to conduct
8 substantial business in the state of California.

9 2. DEFENDANT is a chain of warehouse-style food and supply stores based in
10 Commerce, California, which developed through a series of mergers and expansions. The oldest
11 of the combined companies, Hellman-Haas Grocery, was founded in 1871 in Los Angeles

12 3. PLAINTIFF was employed by DEFENDANT in California from December of
13 2019 to March 28, 2022 and was at all times classified by DEFENDANT as a non-exempt
14 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
15 payment of minimum and overtime wages due for all time worked.

16 4. PLAINTIFF brings this Class Action on behalf of himself and a California class,
17 defined as all individuals who are or previously were employed by DEFENDANT in California,
18 including any employees staffed with DEFENDANT by a third party, and classified as non-
19 exempt employees (the “CALIFORNIA CLASS”) at any time during the period beginning four
20 (4) years prior to the filing of this Complaint and ending on the date as determined by the Court
21 (the “CALIFORNIA CLASS PERIOD”). The amount in controversy for the aggregate claim
22 of CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

23 5. PLAINTIFF brings this Class Action on behalf of himself and a
24 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their
25 losses incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s
26 policy and practice which failed to lawfully compensate these employees. DEFENDANT’s
27 policy and practice alleged herein was an unlawful, unfair and deceptive business practice
28

1 whereby DEFENDANT retained and continues to retain wages due PLAINTIFF and the
2 other members of the CALIFORNIA CLASS. PLAINTIFF and the other members of the
3 CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANT in the
4 future, relief for the named PLAINTIFF and the other members of the CALIFORNIA
5 CLASS who have been economically injured by DEFENDANT's past and current unlawful
6 conduct, and all other appropriate legal and equitable relief.

7 6. The true names and capacities, whether individual, corporate, subsidiary,
8 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are
9 presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious
10 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this
11 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when
12 they are ascertained. PLAINTIFF is informed and believes, and based upon that information
13 and belief alleges, that the Defendants named in this Complaint, including DOES 1 through
14 50, inclusive, are responsible in some manner for one or more of the events and happenings
15 that proximately caused the injuries and damages hereinafter alleged.

16 7. The agents, servants and/or employees of the Defendants and each of them
17 acting on behalf of the Defendants acted within the course and scope of his, her or its
18 authority as the agent, servant and/or employee of the Defendants, and personally
19 participated in the conduct alleged herein on behalf of the Defendants with respect to the
20 conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to
21 the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and
22 the other members of the CALIFORNIA CLASS, for the loss sustained as a proximate result
23 of the conduct of the Defendants' agents, servants and/or employees.

24 **THE CONDUCT**

25
26 8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
27 was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time
28 worked, meaning the time during which an employee is subject to the control of an

1 employer, including all the time the employee is suffered or permitted to work.
2 DEFENDANT requires PLAINTIFF and CALIFORNIA CLASS Members to work without
3 paying them for all the time they are under DEFENDANT's control. Among other things,
4 DEFENDANT requires PLAINTIFF to work while clocked out during what is supposed to
5 be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by
6 work assignments while clocked out for what should have been PLAINTIFF's off-duty meal
7 break. DEFENDANT, as a matter of established company policy and procedure,
8 administers a uniform practice of rounding the actual time worked and recorded by
9 PLAINTIFF and CALIFORNIA CLASS Members, always to the benefit of DEFENDANT,
10 so that during the course of their employment, PLAINTIFF and CALIFORNIA CLASS
11 Members are paid less than they would have been paid had they been paid for actual
12 recorded time rather than "rounded" time. Additionally, DEFENDANT engages in the
13 practice of requiring PLAINTIFF and CALIFORNIA CLASS Members to perform work off
14 the clocking that DEFENDANT, as a condition of employment, required these employees to
15 submit to mandatory temperature checks and symptom questionnaires for COVID-19
16 screening prior to clocking into DEFENDANT's timekeeping system for the workday. As a
17 result, PLAINTIFF and other CALIFORNIA CLASS Members forfeit minimum wage,
18 overtime wage compensation, and off-duty meal breaks by working without their time being
19 correctly recorded and without compensation at the applicable rates. DEFENDANT's policy
20 and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time
21 worked, is evidenced by DEFENDANT's business records.

22 9. State and federal law provides that employees must be paid overtime and meal
23 and rest break premiums at one-and-one-half times their "regular rate of pay." PLAINTIFF
24 and other CALIFORNIA CLASS Members are compensated at an hourly rate plus incentive
25 pay that is tied to specific elements of an employee's performance.

26 10. The second component of PLAINTIFF's and other CALIFORNIA CLASS
27 Members' compensation is DEFENDANT's non-discretionary incentive program that paid
28 PLAINTIFF and other CALIFORNIA CLASS Members incentive wages based on their

1 performance for DEFENDANT. The non-discretionary incentive program provided all
2 employees paid on an hourly basis with incentive compensation when the employees met the
3 various performance goals set by DEFENDANT. However, when calculating the regular
4 rate of pay in order to pay overtime and meal and rest break premiums to PLAINTIFF and
5 other CALIFORNIA CLASS Members, DEFENDANT failed to include the incentive
6 compensation as part of the employees' "regular rate of pay" for purposes of calculating
7 overtime pay and meal and rest break premium pay. Management and supervisors described
8 the incentive program to potential and new employees as part of the compensation package.
9 As a matter of law, the incentive compensation received by PLAINTIFF and other
10 CALIFORNIA CLASS Members must be included in the "regular rate of pay." The failure
11 to do so has resulted in a underpayment of overtime compensation and meal and rest break
12 premiums to PLAINTIFF and other CALIFORNIA CLASS Members by DEFENDANT.

13 11. As a result of their rigorous work schedules, PLAINTIFF and other
14 CALIFORNIA CLASS Members were from time to time unable to take thirty (30) minute
15 off duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF
16 and other CALIFORNIA CLASS Members were required from time to time to perform
17 work as ordered by DEFENDANT for more than five (5) hours during some shifts without
18 receiving a meal break. Further, DEFENDANT from time to time failed to provide
19 PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty meal period for
20 some workdays in which these employees were required by DEFENDANT to work ten (10)
21 hours of work. DEFENDANT also engaged in the practice of rounding the meal period
22 times to avoid paying penalties to PLAINTIFF and other CALIFORNIA CLASS Members.
23 PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeit meal breaks
24 without additional compensation and in accordance with DEFENDANT's corporate policy
25 and practice.

26 12. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
27 CALIFORNIA CLASS Members were also required from time to time to work in excess of
28 four (4) hours without being provided ten (10) minute rest periods. Further, these employees

1 were denied their first rest periods of at least ten (10) minutes for some shifts worked of at
2 least two (2) to four (4) hours from time to time, a first and second rest period of at least ten
3 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to
4 time, and a first, second and third rest period of at least ten (10) minutes for some shifts
5 worked of ten (10) hours or more from time to time. PLAINTIFF and other CALIFORNIA
6 CLASS Members were also not provided with one hour wages in lieu thereof. Additionally,
7 the applicable California Wage Order requires employers to provide employees with off-
8 duty rest periods, which the California Supreme Court defined as time during which an
9 employee is relieved from all work related duties and free from employer control. In so
10 doing, the Court held that the requirement under California law that employers authorize and
11 permit all employees to take rest period means that employers must relieve employees of all
12 duties and relinquish control over how employees spend their time which includes control
13 over the locations where employees may take their rest period. Employers cannot impose
14 controls that prohibit an employee from taking a brief walk - five minutes out, five minutes
15 back. Here, DEFENDANT's policy restricted PLAINTIFF and other CALIFORNIA
16 CLASS Members from unconstrained walks and is unlawful based on DEFENDANT's rule
17 which states PLAINTIFF and other CALIFORNIA CLASS Members cannot leave the work
18 premises during their rest period.

19 13. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to
20 accurately record and pay PLAINTIFF and other CALIFORNIA CLASS Members for the
21 actual amount of time these employees worked. Pursuant to the Industrial Welfare
22 Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and other
23 CALIFORNIA CLASS Members for all time worked, meaning the time during which an
24 employee was subject to the control of an employer, including all the time the employee was
25 permitted or suffered to permit this work. DEFENDANT required these employees to work
26 off the clock without paying them for all the time they were under DEFENDANT's control.
27 As such, DEFENDANT knew or should have known that PLAINTIFF and the other
28 members of the CALIFORNIA CLASS were under compensated for all time worked. As a

1 result, PLAINTIFF and other CALIFORNIA CLASS Members forfeited time worked by
2 working without their time being accurately recorded and without compensation at the
3 applicable minimum wage and overtime wage rates. To the extent that the time worked off
4 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay
5 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
6 1197, and 1197.1.

7 14. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
8 other members of the CALIFORNIA CLASS with complete and accurate wage statements
9 which failed to show, among other things, the correct gross and net wages earned. Cal. Lab.
10 Code § 226 provides that every employer shall furnish each of his or her employees with an
11 accurate itemized wage statement in writing showing, among other things, gross wages
12 earned and all applicable hourly rates in effect during the pay period and the corresponding
13 amount of time worked at each hourly rate. PLAINTIFF and CALIFORNIA CLASS
14 Members were paid on an hourly basis. As such, the wage statements should reflect all
15 applicable hourly rates during the pay period and the total hours worked, and the applicable
16 pay period in which the wages were earned pursuant to California Labor Code Section
17 226(a). The wage statements DEFENDANT provided to PLAINTIFF and other
18 CALIFORNIA CLASS Members failed to identify such information. More specifically, the
19 wage statements failed to identify the accurate total hours worked each pay period. When
20 the hours shown on the wage statements were added up, they did not equal the actual total
21 hours worked during the pay period in violation of Cal. Lab. Code 226(a)(2). Aside, from
22 the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF
23 an itemized wage statement that lists all the requirements under California Labor Code 226
24 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the other
25 members of the CALIFORNIA CLASS with wage statements which violated Cal. Lab. Code
26 § 226.

27 15. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
28 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if

1 the wages are paid not more than seven (7) calendar days following the close of the payroll
2 period. Cal. Lab. Code § 210 provides:

3 in [I]n addition to, and entirely independent and apart from, any other penalty provided
4 this article, every person who fails to pay the wages of each employee as provided in
5 Sections. . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial
6 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
each subsequent violation, or any willful or intentional violation, two hundred dollars
(\$200) for each failure to pay each employee, plus 25 percent of the amount
unlawfully withheld.

7 16. DEFENDANT from time to time failed to pay PLAINTIFF and members of
8 the CALIFORNIA LABOR SUB-CLASS Members within seven (7) days of the close of the
9 payroll period in accordance with Cal. Lab. Code § 204(d), including but not limited to for
10 the “Hourly” regular wage payments.

11 17. DEFENDANT underpaid sick pay wages to PLAINTIFF and other
12 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of pay in
13 violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFF and other non-exempt
14 employees earn non-discretionary remuneration. Rather than pay sick pay at the regular rate
15 of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other CALIFORNIA CLASS
16 Members at their base rates of pay.

17 18. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
18 employees be calculated by dividing the employee’s total wages, not including overtime
19 premium pay, by the employee’s total hours worked in the full pay periods of the prior 90
20 days of employment.

21 19. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay
22 at the regular rate of pay. PLAINTIFF and CALIFORNIA CLASS Members routinely
23 earned non-discretionary incentive wages which increased their regular rate of pay.
24 However, when sick pay was paid, it was paid at the base rate of pay for PLAINTIFF and
25 members of the CALIFORNIA CLASS, as opposed to the correct, higher regular rate of pay,
26 as required under Cal. Lab. Code Section 246.

27 20. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF
28 and other members of the CALIFORNIA CLASS their correct wages and accordingly owe

1 waiting time penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is
2 informed and believes and based thereon alleges that such failure to pay sick pay at regular
3 rate was willful, such that PLAINTIFF and members of the CALIFORNIA CLASS whose
4 employment has separated are entitled to waiting time penalties pursuant to Cal. Lab. Code
5 Sections 201-203.

6 21. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
7 to collect or receive from an employee any part of wages theretofore paid by said employer
8 to said employee." DEFENDANT failed to pay all compensation due to PLAINTIFF and
9 other CALIFORNIA LABOR SUB-CLASS Members, made unlawful deductions from
10 compensation payable to PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members,
11 failed to disclose all aspects of the deductions from compensation payable to PLAINTIFF
12 and CALIFORNIA LABOR SUB-CLASS Members, and thereby failed to pay these
13 employees all wages due at each applicable pay period and upon termination. PLAINTIFF
14 and members of the CALIFORNIA LABOR SUB-CLASS seek recovery of all illegal
15 deductions from wages according to proof, related penalties, interest, attorney fees and costs.

16 22. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
17 PLAINTIFF and the other CALIFORNIA CLASS Members for required business expenses
18 incurred by the PLAINTIFF and other CALIFORNIA CLASS Members in direct
19 consequence of discharging their duties on behalf of DEFENDANT. Under California
20 Labor Code Section 2802, employers are required to indemnify employees for all expenses
21 incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly
22 states that "an employer shall indemnify his or her employee for all necessary expenditures
23 or losses incurred by the employee in direct consequence of the discharge of his or her
24 duties, or of his or her obedience to the directions of the employer, even though unlawful,
25 unless the employee, at the time of obeying the directions, believed them to be unlawful."

26 23. In the course of their employment PLAINTIFF and other CALIFORNIA
27 CLASS Members as a business expense, were required by DEFENDANT to use their own
28 personal cellular phones as a result of and in furtherance of their job duties as employees for

1 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost
2 associated with the use of their personal cellular phones and home offices for
3 DEFENDANT's benefit. Specifically, PLAINTIFF and other CALIFORNIA CLASS
4 Members were required by DEFENDANT to use their personal cellular phones and home
5 offices. As a result, in the course of their employment with DEFENDANT, PLAINTIFF
6 and other members of the CALIFORNIA CLASS incurred unreimbursed business expenses
7 which included, but were not limited to, costs related to the use of their personal cellular
8 phones and home offices all on behalf of and for the benefit of DEFENDANT.

9 24. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the legally
10 required off-duty meal and rest breaks to PLAINTIFF as required by the applicable Wage
11 Order and Labor Code and failed to pay PLAINTIFF all minimum and overtime wages due
12 to PLAINTIFF. DEFENDANT did not have a policy or practice which provided timely off-
13 duty meal and rest breaks to PLAINTIFF and also failed to compensate PLAINTIFF for
14 PLAINTIFF's missed meal and rest breaks. The nature of the work performed by the
15 PLAINTIFF did not prevent PLAINTIFF from being relieved of all of PLAINTIFF's duties
16 for the legally required off-duty meal periods. As a result, DEFENDANT's failure to
17 provide PLAINTIFF with the legally required meal periods is evidenced by DEFENDANT's
18 business records. The amount in controversy for PLAINTIFF individually does not exceed
19 the sum or value of \$75,000.

20 **JURISDICTION AND VENUE**

21 25. This Court has jurisdiction over this Action pursuant to California Code of
22 Civil Procedure, Section 410.10 and California Business & Professions Code, Section
23 17203. This action is brought as a Class Action on behalf of PLAINTIFF and similarly
24 situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

25 26. Venue is proper in this Court pursuant to California Code of Civil Procedure,
26 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
27 DEFENDANT (i) currently maintains and at all relevant times maintained offices and
28

1 facilities in this County and/or conducts substantial business in this County, and (ii)
2 committed the wrongful conduct herein alleged in this County against members of the
3 CALIFORNIA CLASS.

4
5 **THE CALIFORNIA CLASS**

6 27. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and
7 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
8 "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a
9 California class, defined as all individuals who are or previously were employed by
10 DEFENDANT in California, including any employees staffed with DEFENDANT by a third
11 party, and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time
12 during the period beginning four (4) years prior to the filing of this Complaint and ending on
13 the date as determined by the Court (the "CALIFORNIA CLASS PERIOD"). The amount
14 in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five
15 million dollars (\$5,000,000.00).

16 28. To the extent equitable tolling operates to toll claims by the CALIFORNIA
17 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
18 accordingly.

19 29. DEFENDANT, as a matter of company policy, practice and procedure, and in
20 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage
21 Order requirements, and the applicable provisions of California law, intentionally,
22 knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to record all
23 meal and rest breaks missed by PLAINTIFF and other CALIFORNIA CLASS Members,
24 even though DEFENDANT enjoyed the benefit of this work, required employees to perform
25 this work and permits or suffers to permit this work.

26 30. DEFENDANT has the legal burden to establish that each and every
27 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks missed as
28 required by California laws. The DEFENDANT, however, as a matter of policy and

1 procedure failed to have in place during the CALIFORNIA CLASS PERIOD and still fails
2 to have in place a policy or practice to ensure that each and every CALIFORNIA CLASS
3 Member is paid as required by law. This common business practice is applicable to each
4 and every CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as
5 unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.*
6 (the “UCL”) as causation, damages, and reliance are not elements of this claim.

7 31. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
8 CLASS Members is impracticable.

9 32. DEFENDANT violated the rights of the CALIFORNIA CLASS under
10 California law by:

- 11 (a) Committing an act of unfair competition in violation of , Cal. Bus. &
12 Prof. Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly
13 and/or deceptively having in place company policies, practices and
14 procedures that failed to record and pay PLAINTIFF and the other
15 members of the CALIFORNIA CLASS for all time worked, including
16 minimum wages owed and overtime wages owed for work performed
17 by these employees; and,
18 (b) Committing an act of unfair competition in violation of the UCL, by
19 failing to provide the PLAINTIFF and the other members of the
20 CALIFORNIA CLASS with the legally required meal and rest periods.

21 33. This Class Action meets the statutory prerequisites for the maintenance of a
22 Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 23 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
24 that the joinder of all such persons is impracticable and the disposition
25 of their claims as a class will benefit the parties and the Court;
26 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
27 issues that are raised in this Complaint are common to the
28

CALIFORNIA CLASS will apply to every member of the CALIFORNIA CLASS;

(c) The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFF, like all the other members of the CALIFORNIA CLASS, was classified as a non-exempt employee paid on an hourly basis who was subjected to the DEFENDANT's deceptive practice and policy which failed to provide the legally required meal and rest periods to the CALIFORNIA CLASS and thereby underpaid compensation to PLAINTIFF and CALIFORNIA CLASS. PLAINTIFF sustained economic injury as a result of DEFENDANT's employment practices. PLAINTIFF and the members of the CALIFORNIA CLASS were and are similarly or identically harmed by the same unlawful, deceptive and unfair misconduct engaged in by DEFENDANT; and,

(d) The representative PLAINTIFF will fairly and adequately represent and protect the interest of the CALIFORNIA CLASS, and has retained counsel who are competent and experienced in Class Action litigation. There are no material conflicts between the claims of the representative PLAINTIFF and the members of the CALIFORNIA CLASS that would make class certification inappropriate. Counsel for the CALIFORNIA CLASS will vigorously assert the claims of all CALIFORNIA CLASS Members.

34. In addition to meeting the statutory prerequisites to a Class Action, this action is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

(a) Without class certification and determination of declaratory, injunctive, statutory and other legal questions within the class format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will create the risk of:

- 1) Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,
 - 2) Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.
- (b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT failed to pay all wages due to members of the CALIFORNIA CLASS as required by law;
- 1) With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFF seeks declaratory relief holding that the DEFENDANT's policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;
- (c) Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class Action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

- 1) The interests of the members of the CALIFORNIA CLASS in individually controlling the prosecution or defense of separate actions in that the substantial expense of individual actions will be avoided to recover the relatively small amount of economic losses sustained by the individual CALIFORNIA CLASS Members when compared to the substantial expense and burden of individual prosecution of this litigation;
- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
 - A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,
 - B. Adjudications with respect to individual members of the CALIFORNIA CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- 3) In the context of wage litigation because a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- 4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary

1 duplicative litigation that is likely to result in the absence of
2 certification of this action pursuant to Cal. Code of Civ. Proc. §
3 382.

4 35. This Court should permit this action to be maintained as a Class Action
5 pursuant to Cal. Code of Civ. Proc. § 382 because:

- 6 (a) The questions of law and fact common to the CALIFORNIA CLASS
7 predominate over any question affecting only individual CALIFORNIA
8 CLASS Members because the DEFENDANT's employment practices
9 are applied with respect to the CALIFORNIA CLASS;
- 10 (b) A Class Action is superior to any other available method for the fair
11 and efficient adjudication of the claims of the members of the
12 CALIFORNIA CLASS because in the context of employment litigation
13 a substantial number of individual CALIFORNIA CLASS Members
14 will avoid asserting their rights individually out of fear of retaliation or
15 adverse impact on their employment;
- 16 (c) The members of the CALIFORNIA CLASS are so numerous that it is
17 impractical to bring all members of the CALIFORNIA CLASS before
18 the Court;
- 19 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not
20 be able to obtain effective and economic legal redress unless the action
21 is maintained as a Class Action;
- 22 (e) There is a community of interest in obtaining appropriate legal and
23 equitable relief for the acts of unfair competition, statutory violations
24 and other improprieties, and in obtaining adequate compensation for
25 the damages and injuries which DEFENDANT's actions have inflicted
26 upon the CALIFORNIA CLASS;
- 27
28

- 1 (f) There is a community of interest in ensuring that the combined assets of
2 DEFENDANT are sufficient to adequately compensate the members of
3 the CALIFORNIA CLASS for the injuries sustained;
- 4 (g) DEFENDANT has acted or refused to act on grounds generally
5 applicable to the CALIFORNIA CLASS, thereby making final class-
6 wide relief appropriate with respect to the CALIFORNIA CLASS as a
7 whole;
- 8 (h) The members of the CALIFORNIA CLASS are readily ascertainable
9 from the business records of DEFENDANT; and,
- 10 (i) Class treatment provides manageable judicial treatment calculated to
11 bring a efficient and rapid conclusion to all litigation of all wage and
12 hour related claims arising out of the conduct of DEFENDANT as to
13 the members of the CALIFORNIA CLASS.

14 36. DEFENDANT maintains records from which the Court can ascertain and
15 identify by job title each of DEFENDANT's employees who have been intentionally
16 subjected to DEFENDANT's company policy, practices and procedures as herein alleged.
17 PLAINTIFF will seek leave to amend the Complaint to include any additional job titles of
18 similarly situated employees when they have been identified.

19
20 **THE CALIFORNIA LABOR SUB-CLASS**

21 37. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth, Seventh,
22 Eighth and Ninth causes Action on behalf of a California sub-class, defined as all members
23 of the CALIFORNIA CLASS who are or previously were employed by DEFENDANT in
24 California, including any employees staffed with DEFENDANT by a third party, and
25 classified as non exempt employees (the "CALIFORNIA LABOR SUB-CLASS") at any
26 time during the period three (3) years prior to the filing of the complaint and ending on the
27 date as determined by the Court (the "CALIFORNIA LABOR SUB-CLASS PERIOD")
28 pursuant to Cal. Code of Civ. Proc. § 382. The amount in controversy for the aggregate

1 claim of CALIFORNIA LABOR SUB-CLASS Members is under five million dollars
2 (\$5,000,000.00).

3 38. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
4 Commission (“IWC”) Wage Order requirements, and the applicable provisions of California
5 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT
6 failed to correctly calculate compensation for the time worked by PLAINTIFF and the other
7 members of the CALIFORNIA LABOR SUB-CLASS and reporting time wages owed to
8 these employees, even though DEFENDANT enjoyed the benefit of this work, required
9 employees to perform this work and permitted or suffered to permit this work.
10 DEFENDANT has denied these CALIFORNIA LABOR SUB-CLASS Members wages to
11 which these employees are entitled in order to unfairly cheat the competition and unlawfully
12 profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR
13 SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD
14 should be adjusted accordingly.

15 39. DEFENDANT maintains records from which the Court can ascertain and
16 identify by name and job title, each of DEFENDANT’s employees who have been
17 intentionally subjected to DEFENDANT’s company policy, practices and procedures as
18 herein alleged. PLAINTIFF will seek leave to amend the complaint to include any
19 additional job titles of similarly situated employees when they have been identified.

20 40. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
21 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

22 41. Common questions of law and fact exist as to members of the CALIFORNIA
23 LABOR SUB-CLASS, including, but not limited, to the following:

- 24 (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay
25 compensation due to members of the CALIFORNIA LABOR SUB-
26 CLASS for missed meal and rest breaks in violation of the California
27 Labor Code and California regulations and the applicable California
28 Wage Order;

- 1 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the other
2 members of the CALIFORNIA LABOR SUB-CLASS with accurate
3 itemized wage statements;
- 4 (c) Whether DEFENDANT has engaged in unfair competition by the
5 above-listed conduct;
- 6 (d) The proper measure of damages and penalties owed to the members of
7 the CALIFORNIA LABOR SUB-CLASS; and,
- 8 (e) Whether DEFENDANT's conduct was willful.

9 42. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-
10 CLASS under California law by:

- 11 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the
12 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
13 CLASS all wages due for overtime worked, for which DEFENDANT is
14 liable pursuant to Cal. Lab. Code § 1194;
- 15 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
16 accurately pay PLAINTIFF and the members of the CALIFORNIA
17 LABOR SUB-CLASS the correct minimum wage pay for which
18 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and 1197;
- 19 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF and
20 the members of the CALIFORNIA LABOR SUB-CLASS with an
21 accurate itemized statement in writing showing the corresponding
22 correct amount of wages earned by the employee;
- 23 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
24 PLAINTIFF and the other members of the CALIFORNIA LABOR
25 SUB-CLASS with all legally required off-duty, uninterrupted thirty
26 (30) minute meal breaks and the legally required off-duty rest breaks;
- 27 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that
28 when an employee is discharged or quits from employment, the

1 employer must pay the employee all wages due without abatement, by
2 failing to tender full payment and/or restitution of wages owed or in the
3 manner required by California law to the members of the
4 CALIFORNIA LABOR SUB-CLASS who have terminated their
5 employment; and,

- 6 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFF
7 and the CALIFORNIA LABOR SUB-CLASS members with necessary
8 expenses incurred in the discharge of their job duties.

9 43. This Class Action meets the statutory prerequisites for the maintenance of a
10 Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 11 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS
12 are so numerous that the joinder of all CALIFORNIA LABOR SUB-
13 CLASS Members is impracticable and the disposition of their claims as
14 a class will benefit the parties and the Court;
- 15 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
16 issues that are raised in this Complaint are common to the
17 CALIFORNIA LABOR SUB-CLASS and will apply to every member
18 of the CALIFORNIA LABOR SUB-CLASS;
- 19 (c) The claims of the representative PLAINTIFF are typical of the claims
20 of each member of the CALIFORNIA LABOR SUB-CLASS.
21 PLAINTIFF, like all the other members of the CALIFORNIA LABOR
22 SUB-CLASS, was a non-exempt employee paid on an hourly basis who
23 was subjected to the DEFENDANT's practice and policy which failed
24 to pay the correct amount of wages due to the CALIFORNIA LABOR
25 SUB-CLASS. PLAINTIFF sustained economic injury as a result of
26 DEFENDANT's employment practices. PLAINTIFF and the members
27 of the CALIFORNIA LABOR SUB-CLASS were and are similarly or
28

1 identically harmed by the same unlawful, deceptive, and unfair
2 misconduct engaged in by DEFENDANT; and,

- 3 (d) The representative PLAINTIFF will fairly and adequately represent and
4 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and
5 has retained counsel who are competent and experienced in Class
6 Action litigation. There are no material conflicts between the claims of
7 the representative PLAINTIFF and the members of the CALIFORNIA
8 LABOR SUB-CLASS that would make class certification
9 inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS
10 will vigorously assert the claims of all CALIFORNIA LABOR SUB-
11 CLASS Members.

12 44. In addition to meeting the statutory prerequisites to a Class Action, this action
13 is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

- 14 (a) Without class certification and determination of declaratory, injunctive,
15 statutory and other legal questions within the class format, prosecution
16 of separate actions by individual members of the CALIFORNIA
17 LABOR SUB-CLASS will create the risk of:

- 18 1) Inconsistent or varying adjudications with respect to individual
19 members of the CALIFORNIA LABOR SUB-CLASS which
20 would establish incompatible standards of conduct for the
21 parties opposing the CALIFORNIA LABOR SUB-CLASS; or,
22 2) Adjudication with respect to individual members of the
23 CALIFORNIA LABOR SUB-CLASS which would as a
24 practical matter be dispositive of interests of the other members
25 not party to the adjudication or substantially impair or impede
26 their ability to protect their interests.

- 27 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have
28 acted or refused to act on grounds generally applicable to the

1 CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide
2 relief with respect to the CALIFORNIA LABOR SUB-CLASS as a
3 whole in that DEFENDANT fails to pay all wages due. Including the
4 correct wages for all time worked by the members of the
5 CALIFORNIA LABOR SUB-CLASS as required by law;

6 (c) Common questions of law and fact predominate as to the members of
7 the CALIFORNIA LABOR SUB-CLASS, with respect to the practices
8 and violations of California Law as listed above, and predominate over
9 any question affecting only individual CALIFORNIA LABOR SUB-
10 CLASS Members, and a Class Action is superior to other available
11 methods for the fair and efficient adjudication of the controversy,
12 including consideration of:

- 13 1) The interests of the members of the CALIFORNIA LABOR
14 SUB-CLASS in individually controlling the prosecution or
15 defense of separate actions in that the substantial expense of
16 individual actions will be avoided to recover the relatively small
17 amount of economic losses sustained by the individual
18 CALIFORNIA LABOR SUB-CLASS Members when compared
19 to the substantial expense and burden of individual prosecution
20 of this litigation;
- 21 2) Class certification will obviate the need for unduly duplicative
22 litigation that would create the risk of:
 - 23 A. Inconsistent or varying adjudications with respect to
24 individual members of the CALIFORNIA LABOR SUB-
25 CLASS, which would establish incompatible standards of
26 conduct for the DEFENDANT; and/or,
 - 27 B. Adjudications with respect to individual members of the
28 CALIFORNIA LABOR SUB-CLASS would as a

practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

3) In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,

4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Cal. Code of Civ. Proc. § 382.

45. This Court should permit this action to be maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382 because:

(a) The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;

(b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;

- 1 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
2 numerous that it is impractical to bring all members of the
3 CALIFORNIA LABOR SUB-CLASS before the Court;
- 4 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
5 Members, will not be able to obtain effective and economic legal
6 redress unless the action is maintained as a Class Action;
- 7 (e) There is a community of interest in obtaining appropriate legal and
8 equitable relief for the acts of unfair competition, statutory violations
9 and other improprieties, and in obtaining adequate compensation for
10 the damages and injuries which DEFENDANT's actions have inflicted
11 upon the CALIFORNIA LABOR SUB-CLASS;
- 12 (f) There is a community of interest in ensuring that the combined assets of
13 DEFENDANT are sufficient to adequately compensate the members of
14 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;
- 15 (g) DEFENDANT has acted or refused to act on grounds generally
16 applicable to the CALIFORNIA LABOR SUB-CLASS, thereby
17 making final class-wide relief appropriate with respect to the
18 CALIFORNIA LABOR SUB-CLASS as a whole;
- 19 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
20 ascertainable from the business records of DEFENDANT. The
21 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
22 CLASS Members who worked for DEFENDANT in California at any
23 time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- 24 (i) Class treatment provides manageable judicial treatment calculated to
25 bring a efficient and rapid conclusion to all litigation of all wage and
26 hour related claims arising out of the conduct of DEFENDANT as to
27 the members of the CALIFORNIA LABOR SUB-CLASS.
28

1 **FIRST CAUSE OF ACTION**

2 **For Unlawful Business Practices**

3 **[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]**

4 **(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)**

5 46. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege
6 and incorporate by this reference, as though fully set forth herein, the prior paragraphs of
7 this Complaint.

8 47. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
9 Code § 17021.

10 48. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”)
11 defines unfair competition as any unlawful, unfair, or fraudulent business act or practice.
12 Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to
13 unfair competition as follows:

14 Any person who engages, has engaged, or proposes to engage in unfair
15 competition may be enjoined in any court of competent jurisdiction. The court
16 may make such orders or judgments, including the appointment of a receiver,
17 as may be necessary to prevent the use or employment by any person of any
18 practice which constitutes unfair competition, as defined in this chapter, or as
19 may be necessary to restore to any person in interest any money or property,
20 real or personal, which may have been acquired by means of such unfair
21 competition.

18 Cal. Bus. & Prof. Code § 17203.

19 49. By the conduct alleged herein, DEFENDANT has engaged and continues to
20 engage in a business practice which violates California law, including but not limited to, the
21 applicable Industrial Wage Order(s), the California Code of Regulations and the California
22 Labor Code including Sections 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1,
23 1198, 2802 and the Fair Labor Standards Act and federal regulations promulgated
24 thereunder, for which this Court should issue declaratory and other equitable relief pursuant
25 to Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct
26 held to constitute unfair competition, including restitution of wages wrongfully withheld.
27
28

1 50. By the conduct alleged herein, DEFENDANT's practices were unlawful and
2 unfair in that these practices violate public policy, were immoral, unethical, oppressive,
3 unscrupulous or substantially injurious to employees, and were without valid justification or
4 utility for which this Court should issue equitable and injunctive relief pursuant to Section
5 17203 of the California Business & Professions Code, including restitution of wages
6 wrongfully withheld.

7 51. By the conduct alleged herein, DEFENDANT's practices were deceptive and
8 fraudulent in that DEFENDANT's policy and practice failed to provide the legally mandated
9 meal and rest periods, the required amount of compensation for missed meal and rest
10 periods and overtime and minimum wages owed, failed to timely pay wages, and failed to
11 reimburse all necessary business expenses incurred, and failed to provide Fair Labor
12 Standards Act overtime wages due for overtime worked as a result of failing to include non-
13 discretionary incentive compensation into their regular rates of pay for purposes of
14 computing the proper overtime pay due to a business practice that cannot be justified,
15 pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements
16 in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue
17 injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including
18 restitution of wages wrongfully withheld.

19 52. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
20 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and
21 the other members of the CALIFORNIA CLASS to be underpaid during their employment
22 with DEFENDANT.

23 53. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
24 unfair and deceptive in that DEFENDANT's policies, practices and procedures failed to
25 provide all legally required meal breaks to PLAINTIFF and the other members of the
26 CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7 and 512.

27 54. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
28 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty

1 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of
2 pay for each workday in which a second off-duty meal period was not timely provided for
3 each ten (10) hours of work.

4 55. PLAINTIFF further demands on behalf of himself and each member of the
5 CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in which an off
6 duty paid rest period was not timely provided as required by law.

7 56. By and through the unlawful and unfair business practices described herein,
8 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and
9 the other members of the CALIFORNIA CLASS, including earned wages for all time
10 worked, and has deprived them of valuable rights and benefits guaranteed by law and
11 contract, all to the detriment of these employees and to the benefit of DEFENDANT so as to
12 allow DEFENDANT to unfairly compete against competitors who comply with the law.

13 57. All the acts described herein as violations of, among other things, the
14 Industrial Welfare Commission Wage Orders, the California Code of Regulations, and the
15 California Labor Code, were unlawful and in violation of public policy, were immoral,
16 unethical, oppressive and unscrupulous, were deceptive, and thereby constitute unlawful,
17 unfair and deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et*
18 *seq.*

19 58. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled
20 to, and do, seek such relief as may be necessary to restore to them the money and property
21 which DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
22 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
23 unfair business practices, including earned but unpaid wages for all time worked.

24 59. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
25 entitled to, and do, seek a declaration that the described business practices are unlawful,
26 unfair and deceptive, and that injunctive relief should be issued restraining DEFENDANT
27 from engaging in any unlawful and unfair business practices in the future.

60. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic harm unless DEFENDANT is restrained from continuing to engage in these unlawful and unfair business practices.

SECOND CAUSE OF ACTION

For Failure To Pay Minimum Wages

[Cal. Lab. Code §§ 1194, 1197 and 1197.1]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS

and Against All Defendants)

61. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

62. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS bring a claim for DEFENDANT's willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure to accurately calculate and pay minimum wages to PLAINTIFF and CALIFORNIA CLASS Members.

63. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

64. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.

1 65. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid
2 wages, including minimum wage compensation and interest thereon, together with the costs
3 of suit.

4 66. DEFENDANT maintained a wage practice of paying PLAINTIFF and the
5 other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
6 amount of time they work. As set forth herein, DEFENDANT's policy and practice was to
7 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the
8 other members of the CALIFORNIA LABOR SUB-CLASS.

9 67. DEFENDANT's unlawful wage and hour practices manifested, without
10 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
11 implementing a policy and practice that denies accurate compensation to PLAINTIFF and
12 the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum
13 wage pay.

14 68. In committing these violations of the California Labor Code, DEFENDANT
15 inaccurately calculated the correct time worked and consequently underpaid the actual time
16 worked by PLAINTIFF and other members of the CALIFORNIA LABOR SUB-CLASS.
17 DEFENDANT acted in an illegal attempt to avoid the payment of all earned wages, and
18 other benefits in violation of the California Labor Code, the Industrial Welfare Commission
19 requirements and other applicable laws and regulations.

20 69. As a direct result of DEFENDANT's unlawful wage practices as alleged
21 herein, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS did
22 not receive the correct minimum wage compensation for their time worked for
23 DEFENDANT.

24 70. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
25 required, permitted or suffered PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
26 Members to work without paying them for all the time they were under DEFENDANT's
27 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and the
28

1 other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked
2 that they were entitled to, constituting a failure to pay all earned wages.

3 71. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
4 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
5 CLASS for the true time they worked, PLAINTIFF and the other members of the
6 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an
7 economic injury in amounts which are presently unknown to them and which will be
8 ascertained according to proof at trial.

9 72. DEFENDANT knew or should have known that PLAINTIFF and the other
10 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for their
11 time worked. DEFENDANT elected, either through intentional malfeasance or gross
12 nonfeasance, to not pay employees for their labor as a matter of company policy, practice
13 and procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF
14 and the other members of the CALIFORNIA LABOR SUB-CLASS the correct minimum
15 wages for their time worked.

16 73. In performing the acts and practices herein alleged in violation of California
17 labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-
18 CLASS for all time worked and provide them with the requisite compensation,
19 DEFENDANT acted and continues to act intentionally, oppressively, and maliciously
20 toward PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
21 with a conscious and utter disregard for their legal rights, or the consequences to them, and
22 with the despicable intent of depriving them of their property and legal rights, and otherwise
23 causing them injury in order to increase company profits at the expense of these employees.
24

25 74. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
26 CLASS therefore request recovery of all unpaid wages, according to proof, interest,
27 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT,
28 in a sum as provided by the California Labor Code and/or other applicable statutes. To the

1 extent minimum wage compensation is determined to be owed to the CALIFORNIA
2 LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT's
3 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also
4 be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought
5 herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's
6 conduct as alleged herein was willful, intentional and not in good faith. Further,
7 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek
8 and recover statutory costs.

9
10 **THIRD CAUSE OF ACTION**

11 **For Failure To Pay Overtime Compensation**

12 **[Cal. Lab. Code § 510]**

13 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
14 **Defendants)**

15 75. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
16 CLASS, reallege and incorporate by this reference, as though full set forth herein, the prior
17 paragraphs of this Complaint.

18 76. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
19 CLASS bring a claim for DEFENDANT's willful and intentional violations of the
20 California Labor Code and the Industrial Welfare Commission requirements for
21 DEFENDANT's failure to pay these employees for all overtime worked, including, work
22 performed in excess of eight (8) hours in a workday, and/or twelve (12) hours in a workday,
23 and/or forty (40) hours in any workweek.

24 77. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
25 public policy, an employer must timely pay its employees for all hours worked.

26 78. Cal. Lab. Code § 510 further provides that employees in California shall not
27 be employed more than eight (8) hours per workday and more than forty (40) hours per
28

1 workweek unless they receive additional compensation beyond their regular wages in
2 amounts specified by law.

3 79. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid
4 wages, including minimum wage and overtime compensation and interest thereon, together
5 with the costs of suit. Cal. Lab. Code § 1198 further states that the employment of an
6 employee for longer hours than those fixed by the Industrial Welfare Commission is
7 unlawful.

8 80. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
9 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
10 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
11 including overtime work.

12 81. DEFENDANT's unlawful wage and hour practices manifested, without
13 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
14 implementing a policy and practice that failed to accurately record overtime worked by
15 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members and denied accurate
16 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
17 CLASS for overtime worked, including, the overtime work performed in excess of eight (8)
18 hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any
19 workweek.

20 82. In committing these violations of the California Labor Code, DEFENDANT
21 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
22 PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS Members. DEFENDANT
23 acted in an illegal attempt to avoid the payment of all earned wages, and other benefits in
24 violation of the California Labor Code, the Industrial Welfare Commission requirements
25 and other applicable laws and regulations.

26 As a direct result of DEFENDANT's unlawful wage practices as alleged
27 herein, the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
28 did not receive full compensation for overtime worked.

1 83. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
2 from the overtime requirements of the law. None of these exemptions are applicable to the
3 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS. Further,
4 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS were not
5 subject to a valid collective bargaining agreement that would preclude the causes of action
6 contained herein this Complaint. Rather, PLAINTIFF brings this Action on behalf of
7 himself and the CALIFORNIA LABOR SUB-CLASS based on DEFENDANT's violations
8 of non-negotiable, non-waiveable rights provided by the State of California.

9 84. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF and
10 the other members of the CALIFORNIA LABOR SUB-CLASS have been paid less for
11 overtime worked that they are entitled to, constituting a failure to pay all earned wages..

12 85. DEFENDANT failed to accurately pay the PLAINTIFF and the other
13 members of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they
14 worked which was in excess of the maximum hours permissible by law as required by Cal.
15 Lab. Code §§ 510, 1194 & 1198, even though PLAINTIFF and the other members of the
16 CALIFORNIA LABOR SUB-CLASS were required to work, and did in fact work, overtime
17 as to which DEFENDANT failed to accurately record and pay as evidenced by
18 DEFENDANT's business records and witnessed by employees.

19 86. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
20 compensation to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
21 CLASS for the true amount of time they worked, PLAINTIFF and the other members of the
22 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an
23 economic injury in amounts which are presently unknown to them and which will be
24 ascertained according to proof at trial.

25 87. DEFENDANT knew or should have known that PLAINTIFF and the other
26 members of the CALIFORNIA LABOR SUB-CLASS were under compensated for all
27 overtime worked. DEFENDANT elected, either through intentional malfeasance or gross
28 nonfeasance, to not pay employees for their labor as a matter of company policy, practice

1 and procedure, and DEFENDANT perpetrated this scheme by refusing to pay PLAINTIFF
2 and the other members of the CALIFORNIA LABOR SUB-CLASS for overtime worked.

3 88. In performing the acts and practices herein alleged in violation of California
4 labor laws, and refusing to compensate the members of the CALIFORNIA LABOR SUB-
5 CLASS for all overtime worked and provide them with the requisite overtime compensation,
6 DEFENDANT acted and continues to act intentionally, oppressively, and maliciously
7 toward PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
8 with a conscious of and utter disregard for their legal rights, or the consequences to them,
9 and with the despicable intent of depriving them of their property and legal rights, and
10 otherwise causing them injury in order to increase company profits at the expense of these
11 employees.

12 89. PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
13 CLASS therefore request recovery of all overtime wages, according to proof, interest,
14 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT,
15 in a sum as provided by the California Labor Code and/or other applicable statutes. To the
16 extent minimum and/or overtime compensation is determined to be owed to the
17 CALIFORNIA LABOR SUB-CLASS Members who have terminated their employment,
18 DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these
19 individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
20 penalties are sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS
21 Members. DEFENDANT's conduct as alleged herein was willful, intentional and not in
22 good faith. Further, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
23 are entitled to seek and recover statutory costs.

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1 **FOURTH CAUSE OF ACTION**

2 **For Failure to Provide Required Meal Periods**

3 **[Cal. Lab. Code §§ 226.7 & 512]**

4 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
5 **Defendants)**

6 90. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
7 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
8 paragraphs of this Complaint.

9 91. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time to time
10 failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other
11 CALIFORNIA LABOR SUB-CLASS Members as required by the applicable Wage Order
12 and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA
13 LABOR SUB-CLASS MEMBERS did not prevent these employees from being relieved of
14 all of their duties for the legally required off-duty meal periods. As a result of their rigorous
15 work schedules, PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
16 were from time to time not fully relieved of duty by DEFENDANT for their meal periods.
17 Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA
18 LABOR SUB-CLASS Members with legally required meal breaks prior to their fifth (5th)
19 hour of work is evidenced by DEFENDANT's business records from time to time. Further,
20 DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a
21 second off-duty meal period in some workdays in which these employees were required by
22 DEFENDANT to work ten (10) hours of work from time to time. As a result, PLAINTIFF
23 and other members of the CALIFORNIA LABOR SUB-CLASS therefore forfeited meal
24 breaks without additional compensation and in accordance with DEFENDANT's strict
25 corporate policy and practice.

26 92. DEFENDANT further violates California Labor Code §§ 226.7 and the
27 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA
28 LABOR SUB-CLASS Members who were not provided a meal period, in accordance with

1 the applicable Wage Order, one additional hour of compensation at each employee's regular
2 rate of pay for each workday that a meal period was not provided.

3 93. As a proximate result of the aforementioned violations, PLAINTIFF and
4 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according
5 to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of
6 suit.

7
8 **FIFTH CAUSE OF ACTION**

9 **For Failure to Provide Required Rest Periods**

10 **[Cal. Lab. Code §§ 226.7 & 512]**

11 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
12 **Defendants)**

13 94. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
14 CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior
15 paragraphs of this Complaint.

16 95. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were
17 from time to time required to work in excess of four (4) hours without being provided ten
18 (10) minute rest periods. Further, these employees from time to time were denied their first
19 rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4)
20 hours, a first and second rest period of at least ten (10) minutes for some shifts worked of
21 between six (6) and eight (8) hours, and a first, second and third rest period of at least ten
22 (10) minutes for some shifts worked of ten (10) hours or more from time to time.

23 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were also not
24 provided with one hour wages in lieu thereof. As a result of their rigorous work schedules,
25 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members were periodically
26 denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

27 96. DEFENDANT further violated California Labor Code §§ 226.7 and the
28 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA

LABOR SUB-CLASS Members who were not provided a rest period, in accordance with the applicable Wage Order, one additional hour of compensation at each employee's regular rate of pay for each workday that rest period was not provided.

97. As a proximate result of the aforementioned violations, PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount according to proof at trial, and seek all wages earned and due, interest, penalties, expenses and costs of suit.

SIXTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All Defendants)

98. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

99. Cal. Labor Code § 226 provides that an employer must furnish employees with an "accurate itemized" statement in writing showing:

- (1) gross wages earned,
- (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- (3) the number of piecerate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- (5) net wages earned,
- (6) the inclusive dates of the period for which the employee is paid,
- (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- (8) the name and address of the legal entity that is the employer, and
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

1 100. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
2 other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate
3 wage statements which failed to show, among other things, the correct gross and net wages
4 earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
5 employees with an accurate itemized wage statement in writing showing, among other
6 things, gross wages earned and all applicable hourly rates in effect during the pay period and
7 the corresponding amount of time worked at each hourly rate. PLAINTIFF and
8 CALIFORNIA LABOR SUB-CLASS Members were paid on an hourly basis. As such, the
9 wage statements should reflect all applicable hourly rates during the pay period and the total
10 hours worked, and the applicable pay period in which the wages were earned pursuant to
11 California Labor Code Section 226(a). The wage statements DEFENDANT provided to
12 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members failed to identify
13 such information. More specifically, the wage statements failed to identify the accurate total
14 hours worked each pay period. When the hours shown on the wage statements were added
15 up, they did not equal the actual total hours worked during the pay period in violation of Cal.
16 Lab. Code 226(a)(2). Aside, from the violations listed above in this paragraph,
17 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
18 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time
19 to time provided PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
20 CLASS with wage statements which violated Cal. Lab. Code § 226.

21 101. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab.
22 Code § 226, causing injury and damages to PLAINTIFF and the other members of the
23 CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs
24 expended calculating the correct wages for all missed meal and rest breaks and the amount
25 of employment taxes which were not properly paid to state and federal tax authorities.
26 These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of
27 the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty
28 dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred

1 dollars (\$100.00) for each violation in a subsequent pay period pursuant to Cal. Lab. Code §
2 226, in an amount according to proof at the time of trial (but in no event more than four
3 thousand dollars (\$4,000.00) for PLAINTIFF and each respective member of the
4 CALIFORNIA LABOR SUB-CLASS herein).

5
6 **SEVENTH CAUSE OF ACTION**

7 **For Failure to Reimburse Employees for Required Expenses**

8 **[Cal. Lab. Code § 2802]**

9 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
10 **Defendants)**

11 102. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS members
12 reallege and incorporate by this reference, as though fully set forth herein, the prior
13 paragraphs of this Complaint.

14 103. Cal. Lab. Code § 2802 provides, in relevant part, that:

15 An employer shall indemnify his or her employee for all necessary
16 expenditures or losses incurred by the employee in direct consequence of the
17 discharge of his or her duties, or of his or her obedience to the directions of
the employer, even though unlawful, unless the employee, at the time of
obeying the directions, believed them to be unlawful.

18 104. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802,
19 by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
20 CLASS members for required expenses incurred in the discharge of their job duties for
21 DEFENDANT's benefit. DEFENDANT failed to reimburse PLAINTIFF and the
22 CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not
23 limited to, costs related to using their personal cellular phones on behalf of and for the
24 benefit of DEFENDANT. Specifically, PLAINTIFF and other CALIFORNIA LABOR
25 SUB-CLASS Members were required by DEFENDANT to use their personal cellular
26 phones and home offices in order to perform work related job tasks. DEFENDANT's policy
27 and practice was to not reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-
28

1 CLASS members for expenses resulting from using their personal cellular phones and home
2 offices for DEFENDANT within the course and scope of their employment for
3 DEFENDANT. These expenses were necessary to complete their principal job duties.
4 DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this
5 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF
6 and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify
7 and reimburse PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for
8 these expenses as an employer is required to do under the laws and regulations of California.

9 105. PLAINTIFF therefore demands reimbursement for expenditures or losses
10 incurred by himself and the CALIFORNIA LABOR SUB-CLASS members in the discharge
11 of their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT,
12 with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

13 **EIGHTH CAUSE OF ACTION**

14 **For Failure to Pay Wages When Due**

15 **[Cal. Lab. Code §§ 201, 202, 203]**

16 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**

17 **and Against All Defendants)**

18 106. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
19 CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior
20 paragraphs of this Complaint.

21 107. Cal. Lab. Code § 200 provides, in relevant part, that:

22 As used in this article:

23 (a) "Wages" includes all amounts for labor performed by employees of
every description, whether the amount is fixed or ascertained by the
24 standard of time, task, piece, Commission basis, or other method of calculation.

25 (b) "Labor" includes labor, work, or service whether rendered or
performed under contract, subcontract, partnership, station plan, or other
26 agreement if the labor to be paid for is performed personally by the person
demanding payment.

1 108. Cal. Lab. Code § 201 provides, in relevant part, “that If an employer
2 discharges an employee, the wages earned and unpaid at the time of discharge are due and
3 payable immediately.”

4 109. Cal. Lab. Code § 202 provides, in relevant part, that:

5 If an employee not having a written contract for a definite period quits his
6 or her employment, his or her wages shall become due and payable not
7 later than 72 hours thereafter, unless the employee has given 72 hours
8 previous notice of his or her intention to quit, in which case the employee
9 is entitled to his or her wages at the time of quitting. Notwithstanding any
10 other provision of law, an employee who quits without providing a 72-
11 hour notice shall be entitled to receive payment by mail if he or she so
12 requests and designates a mailing address. The date of the mailing shall
13 constitute the date of payment for purposes of the requirement to provide
14 payment within 72 hours of the notice of quitting.

15 110. There was no definite term in PLAINTIFF’s or any CALIFORNIA LABOR
16 SUB-CLASS Members’ employment contract.

17 111. Cal. Lab. Code § 203 provides, in relevant part, that:

18 If an employer willfully fails to pay, without abatement or reduction, in
19 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
20 employee who is discharged or who quits, the wages of the employee shall
21 continue as a penalty from the due date thereof at the same rate until paid
22 or until an action therefor is commenced; but the wages shall not continue
23 for more than 30 days.

24 112. The employment of PLAINTIFF and many CALIFORNIA LABOR SUB-
25 CLASS Members has terminated and DEFENDANT has not tendered payment of all wages
26 owed as required by law.

27 113. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
28 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated
and who have not been fully paid their wages due to them, PLAINTIFF demands thirty days
of pay as penalty for not paying all wages due at time of termination for all employees who
terminated employment during the CALIFORNIA LABOR SUB-CLASS PERIOD and
demands an accounting and payment of all wages due, plus interest and statutory costs as
allowed by law.

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1 **NINTH CAUSE OF ACTION**

2 **For Failure to Pay Sick Pay Wages**

3 **[Cal. Lab. Code §§ 201-204, 210, 233, 246]**

4 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**

5 **and Against All Defendants)**

6 114. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-
7 CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior
8 paragraphs of this Complaint.

9 115. Cal Lab. Code § 233 provides that an employer must permit an employee to
10 use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then
11 current rate of entitlement. Cal Lab. Code § 246 provides that an employee is entitled to
12 sick pay wages for use of accrued sick leave pursuant to Cal Lab. Code § 246.5.
13 Specifically, once accrued sick leave is used as paid sick time, an employee has a vested
14 right to sick pay wages, which an employer must calculate and compensate based on one of
15 two calculations: (i) "Paid sick time for nonexempt employees shall be calculated in the
16 same manner as the regular rate of pay for the workweek in which the employee uses paid
17 sick time, whether or not the employee actually works overtime in that workweek," or (ii)
18 "Paid sick time for nonexempt employees shall be calculated by dividing the employee's
19 total wages, not including overtime premium pay, by the employee's total hours worked in
20 the full pay periods of the prior 90 days of employment." Under Cal Lab. Code §§ 218 and
21 233, employees may sue to recover underpaid sick pay wages as damages.

22 116. As a matter of policy and practice, DEFENDANT pays sick pay wages to
23 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS at the
24 incorrect rate of pay. PLAINTIFF and the other members of the CALIFORNIA LABOR-
25 SUB-CLASS regularly use accrued sick leave in the workweeks in which they also earn
26 non-hourly remuneration. As a matter of policy and practice, DEFENDANT pays sick pay
27 wages to PLAINTIFF and the other members of the CALIFORNIA LABOR-SUB-CLASS
28 at the base hourly pay, as opposed to the regular rate of pay, which would consider all non-

1 hourly remuneration in addition to base hourly wages, or the rate resulting from dividing the
2 employee's total wages, not including overtime premium pay, by the employee's total hours
3 worked in the full pay periods of the prior 90 days of employment. As a result,
4 DEFENDANT underpaid sick pay wages to PLAINTIFF and the other members of the
5 CALIFORNIA LABOR-SUB-CLASS.

6 117. Cal. Lab. Code § 204 provides that wages generally are due and payable twice
7 during each calendar month and are to be paid no later than the payday for the next regular
8 payroll period. Consistent with Cal. Lab. Code § 204, Cal. Lab. Code § 246 specifically
9 requires that, upon use of accrued sick leave, vested sick pay wages are due and to be paid
10 no later than the payday for the next regular payroll period after accrued sick leave is used as
11 paid sick time. Similarly, Cal. Lab. Code § 201 provides that if an employer discharges an
12 employee, wages earned and unpaid at the time of discharge are due and payable
13 immediately. Cal. Lab. Code § 202 provides that an employee is entitled to receive all
14 unpaid wages no later than 72 hours after an employee quits his or her employment, unless
15 the employee has given 72-hour notice of his or her intention to quit, in which case the
16 employee is entitled to his or her wages at the time of quitting. The Labor Code penalizes
17 untimely payments. For example, Cal. Lab. Code § 203 provides that if an employer
18 willfully fails to pay wages owed in accordance with Cal. Lab. Code §§ 201-202, then the
19 wages of the employee shall continue as a penalty from the due date, and at the same rate
20 until paid, but the wages shall not continue for more than thirty (30) days. Likewise, Cal.
21 Lab. Code § 210 provides penalties for violations of Cal. Lab. Code § 204 and untimely
22 payments during employment. Under Cal. Lab. Code §§ 203, 210 and 218, employees may
23 sue to recover applicable penalties.

24 118. As alleged herein and as a matter of policy and practice, DEFENDANT
25 routinely underpays sick pay wages and thus did not timely pay PLAINTIFF and the other
26 members of the CALIFORNIA LABOR-SUB-CLASS all owing and underpaid sick pay
27 wages. As a result, DEFENDANT violates Cal. Lab. Code §§ 201-204, 210, 233, and 246,
28 among other Labor Code provisions. PLAINTIFF is informed and believes that

1 DEFENDANT was advised by skilled lawyers and knew, or should have known, of the
2 mandates of the Labor Code as it relates to PLAINTIFF's allegations, especially since the
3 California Supreme Court has explained that "[c]ourts have recognized that 'wages' also
4 include those benefits to which an employee is entitled as a part of his or her compensation,
5 including money, room, board, clothing, vacation pay, and sick pay." *Murphy v. Kenneth*
6 *Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007)(emphasis added). Because DEFENDANT
7 willfully fails to timely pay PLAINTIFF and the other members of the CALIFORNIA
8 LABOR-SUB-CLASS all sick pay wages due, DEFENDANT is subject to applicable
9 penalties.

10 119. Such a pattern, practice, and uniform administration of corporate policy is
11 unlawful and entitles PLAINTIFF and the other members of the CALIFORNIA LABOR-
12 SUB-CLASS to underpaid sick pay wages, including interest thereon, applicable penalties,
13 attorney's fees, and costs of suit.

14 15 **PRAYER FOR RELIEF**

16 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
17 severally, as follows:

18 1. On behalf of the CALIFORNIA CLASS:

- 19 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
20 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
21 B) An order temporarily, preliminarily and permanently enjoining and restraining
22 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
23 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully
24 withheld from compensation due to PLAINTIFF and the other members of the
25 CALIFORNIA CLASS; and,
26 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
27 for restitution of the sums incidental to DEFENDANT's violations due to
28 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

- 1 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:
- 2 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth
- 3 and Ninth Causes of Action asserted by the CALIFORNIA LABOR SUB-
- 4 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 5 B) Compensatory damages, according to proof at trial, including compensatory
- 6 damages for minimum and overtime compensation due PLAINTIFF and the other
- 7 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable
- 8 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the
- 9 statutory rate;
- 10 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay period
- 11 in which a violation occurs and one hundred dollars (\$100) per each member of
- 12 the CALIFORNIA LABOR SUB-CLASS for each violation in a subsequent pay
- 13 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and
- 14 an award of costs for violation of Cal. Lab. Code § 226;
- 15 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
- 16 the applicable IWC Wage Order;
- 17 E) For liquidated damages pursuant to California Labor Code Sections 1194.2 and
- 18 1197;
- 19 F) The amount of the expenses PLAINTIFF and each member of the CALIFORNIA
- 20 LABOR SUBCLASS incurred in the course of their job duties, plus interest, and
- 21 costs of suit.; and,
- 22 G) The wages of all terminated employees in the CALIFORNIA LABOR
- 23 SUB-CLASS as a penalty from the due date thereof at the same rate until paid or
- 24 until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.
- 25 3. On all claims:
- 26 A) An award of interest, including prejudgment interest at the legal rate;
- 27 B) Such other and further relief as the Court deems just and equitable; and,
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C) An award of penalties, attorneys’ fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §221, §226, §1194, and/or §2802.

Dated: July 13, 2022 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Nicholas J. De Blouw
Attorneys for Plaintiff

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DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: July 13, 2022

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: _____
Nicholas J. De Blouw
Attorneys for Plaintiff

EXHIBIT 5



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March 30, 2022

Via Online Filing to LWDA and Certified Mail to Defendants
Labor and Workforce Development Agency
Online Filing

COMMERCE DISTRIBUTION COMPANY LLC

c/o C T Corporation System
330 N Brand Blvd, Ste. 700
Glendale, CA 91203

Sent via Certified Mail and Return Receipt No. 7021 1970 0001 001 4068 3612

SMART & FINAL STORES LLC

c/o C T Corporation System
330 N Brand Blvd, Ste. 700
Glendale, CA 91203

Sent via Certified Mail and Return Receipt No. 7021 1970 0001 4068 3629

SMART & FINAL LLC

c/o C T Corporation System
330 N Brand Blvd, Ste. 700
Glendale, CA 91203

Sent via Certified Mail and Return Receipt No. 7021-1970 0001 4068 3636

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff PAUL RODRIGUEZ ("Plaintiff"), and other aggrieved employees in a proposed lawsuit against Defendants COMMERCE DISTRIBUTION COMPANY LLC ("Defendant Commerce Distribution Company"), SMART & FINAL STORES LLC ("Defendant Smart & Final Stores"), and SMART & FINAL LLC (Defendant Smart & Final") (collectively, "Defendants"). Plaintiff has been employed by Defendants in California since 1996 as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks and payment of minimum and overtime wages due for all time worked. Defendants, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Further, Defendants failed to timely pay Plaintiff and other aggrieved employees for earned wages.

As a consequence of the aforementioned violations, Plaintiff further contends that Defendants failed to provide accurate wage statements to him, and other aggrieved employees, in violation of California Labor Code section 226(a). Said conduct, in addition to the foregoing Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804, violates the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt and exempt employees who worked for Defendant Commerce Distribution Company and/or Defendant Smart & Final Stores and/or Defendant Smart & Final in California during the relevant claim period.

A true and correct copy of the proposed Complaint by Plaintiff against Defendants, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendants, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendants are on notice that Plaintiff continues his investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendants as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Very truly yours,
JCL LAW FIRM, APC

A handwritten signature in dark ink, appearing to read 'JC Lapuyade', with a stylized flourish extending to the right.

Jean-Claude Lapuyade, Esq.

Enclosure (1)

ZAKAY LAW GROUP, APLC

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Attorneys for Plaintiff PAUL RODRIGUEZ

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

PAUL RODRIGUEZ, an individual, on behalf
of himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

COMMERCE DISTRIBUTION COMPANY
LLC, a California limited liability company;
SMART & FINAL STORES LLC, a California
limited liability company; SMART & FINAL
LLC, a Delaware limited liability company; and
DOES 1-50, Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 2) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 3) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510 *et seq*;
- 4) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 5) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 6) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
- 7) FAILURE TO PROVIDE WAGES WHEN

DUE IN VIOLATION OF CAL. LAB.
CODE §§ 201, 202 AND 203;
8) FAILURE TO REIMBURSE
EMPLOYEES FOR REQUIRED
EXPENSES IN VIOLATION OF
CALIFORNIA LABOR CODE §2802; and,
9) UNLAWFUL DEDUCTIONS.

DEMAND FOR A JURY TRIAL

Plaintiff PAUL RODRIGUEZ (“PLAINTIFF”), an individual, on behalf of himself and all other similarly situated current and former employees, alleges on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

THE PARTIES

1. Defendant COMMERCE DISTRIBUTION COMPANY LLC (“Defendant Commerce Distribution Company”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, county of Los Angeles.

2. Defendant SMART & FINAL STORES LLC (“Defendant Smart & Final Stores”) is a California limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, county of Los Angeles

3. Defendant SMART & FINAL LLC (“Defendant Smart & Final”) is a Delaware limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California, county of Los Angeles.

4. Defendant Commerce Distribution, Defendant Smart & Final Stores, and Defendant Smart & Final were the joint employers of PLAINTIFF as evidenced by the contracts signed and by the company the PLAINTIFF performed work for respectively, and are therefore jointly responsible as employers for the conduct alleged herein and collectively referred to herein as “DEFENDANTS” and/or “DEFENDANT.”

5. DEFENDANTS operate food distribution centers and grocery in the State of California, including Los Angeles County, where PLAINTIFF worked.

6. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant

1 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the
2 true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
3 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
4 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, (hereinafter
5 collectively “DEFENDANTS” and/or “DEFENDANT”) are responsible in some manner for one
6 or more of the events and happenings that proximately caused the injuries and damages
7 hereinafter alleged.

8 7. The agents, servants, and/or employees of the Defendants and each of them acting
9 on behalf of the DEFENDANTS acted within the course and scope of his, her or its authority as
10 the agent, servant and/or employee of the Defendants, and personally participated in the conduct
11 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
12 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
13 Defendants are jointly and severally liable to PLAINTIFF and the other members of the
14 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
15 Defendants’ agents, servants and/or employees.

16 8. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of
17 PLAINTIFF’s employer, within the meaning of California Labor Code § 558, who violated or
18 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
19 regulating hours and days of work in any order of the Industrial Welfare Commission and, as
20 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558,
21 at all relevant times.

22 9. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of
23 PLAINTIFF’s employer either individually or as an officer, agent, or employee of another person,
24 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any
25 employee a wage less than the minimum fixed by California state law, and as such, are subject to
26 civil penalties for each underpaid employee.

27 10. PLAINTIFF has been employed by DEFENDANT in California from since 1996
28 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly
basis, and entitled to the legally required meal and rest periods and payment of minimum and
overtime wages due for all time worked.

11. PLAINTIFF brings this Class Action on behalf of himself and a California class, defined as all persons who are or previously were employed by Defendant Commerce Distribution Company and/or Defendant Smart & Final Stores and/or Defendant Smart & Final in California and classified as non-exempt employees (the “CALIFORNIA CLASS”) at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the “CLASS PERIOD”). The amount in controversy for the aggregate claim of the CALIFORNIA CLASS Members is under five million dollars (\$5,000,000.00).

12. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which failed to lawfully compensate these employees.

13. DEFENDANTS' uniform policies and practices alleged herein were unlawful, unfair and deceptive business practices whereby DEFENDANTS retained and continues to retain wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

14. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by DEFENDANTS in the future, relief for the named PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically injured by DEFENDANTS' past and current unlawful conduct, and all other appropriate legal and equitable relief.

JURISDICTION AND VENUE

15. This has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

16. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities in this County and/or conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

THE CONDUCT

17. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all time worked, failed compensate PLAINTIFF for off-the-clock work, failed to compensate PLAINTIFF and the other members of the CALIFORNIA CLASS overtime, double time, meal period premiums and sick pay at the correct regular rate of pay, and failed to issue to PLAINTIFF and the members of the CALIFORNIA CLASS with accurate itemized wage statements showing, among other things, the total hours worked and all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to purposefully avoid the accurate and full payment for all time worked as required by California law which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who comply with the law. To the extent equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted accordingly.

A. Meal Period Violations

18. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time-to-time during the CLASS PERIOD, DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they were under DEFENDANTS' control. Specifically, as a result of PLAINTIFF's demanding work requirements and DEFENDANT'S understaffing, DEFENDANTS required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work

1 assignments while clocked out for what should have been PLAINTIFF's off-duty meal break.
2 Indeed, there were many days where PLAINTIFF did not even receive a partial lunch. As a result,
3 the PLAINTIFF and other CALIFORNIA CLASS Members forfeited minimum wage and
4 overtime wages by regularly working without their time being accurately recorded and without
5 compensation at the applicable minimum wage and overtime rates. DEFENDANTS' uniform
6 policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all
7 time worked is evidenced by DEFENDANTS' business records.

8 19. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
9 requirements and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other
10 CALIFORNIA CLASS Members were from time-to-time unable to take thirty (30) minute off-
11 duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and
12 other CALIFORNIA CLASS Members were required from time-to-time to perform work as
13 ordered by DEFENDANTS for more than five (5) hours during some shifts without receiving a
14 meal break. Further, DEFENDANTS from time-to-time failed to provide PLAINTIFF and
15 CALIFORNIA CLASS Members with a second off-duty meal period for some workdays in which
16 these employees were required by DEFENDANTS to work ten (10) hours of work from time-to-
17 time. Additionally, DEFENDANTS from time-to-time failed to provide PLAINTIFF and
18 CALIFORNIA CLASS Members with a third off-duty meal period for some workdays in which
19 these employees were required by DEFENDANTS to work twelve (12) hours of work from time-
20 to-time. The nature of the work performed by PLAINTIFF and other CALIFORNIA CLASS
21 Members does not qualify for limited and narrowly construed "on-duty" meal period exception.
22 When they were provided with meal periods, PLAINTIFF and other CALIFORNIA CLASS
23 Members were, from time to time, required to remain on duty, and on call. Further, from time to
24 time, PLAINTIFF and other CALIFORNIA CLASS Members were required to remain on duty,
25 on call, and/or on the premises, and/or to carry cordless communication devices and respond to
26 communications received on said devices during what was supposed to be their off-duty meal
27 periods. PLAINTIFF and other CALIFORNIA CLASS Members therefore forfeited meal breaks
28

1 without additional compensation and in accordance with DEFENDANTS' strict corporate policy
2 and practice.

3 **B. Rest Period Violations**

4 20. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
5 CALIFORNIA CLASS members were also required from time to time to work in excess of four
6 (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work
7 requirements and DEFENDANTS' inadequate staffing. Further, for the same reasons these
8 employees were denied their first rest periods of at least ten (10) minutes for some shifts worked
9 of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten
10 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and
11 a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
12 hours or more from time to time. When they were provided with rest breaks, PLAINTIFF and
13 other CALIFORNIA CLASS Members were, from time to time, required to remain on duty and/or
14 on call. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-
15 hour wages *in lieu* thereof. Further, from time to time, PLAINTIFF and other CALIFORNIA
16 CLASS Members were required to remain on duty, on call, and/or on the premises, and/or to carry
17 cordless communication devices and respond to communications received on said devices during
18 what was supposed to be their off-duty rest periods. PLAINTIFF and other CALIFORNIA
19 CLASS Members therefore forfeited rest breaks without additional compensation in accordance
20 with DEFENDANTS' written corporate policy prohibiting PLAINTIFF and other CALIFORNIA
21 CLASS Members from leaving the premises during rest breaks. As a result of their rigorous work
22 schedules and DEFENDANTS' inadequate staffing, PLAINTIFF and other CALIFORNIA
23 CLASS Members were from time to time denied their proper rest periods by DEFENDANTS and
24 DEFENDANTS' managers.

25 **C. Unreimbursed Business Expenses**

26 21. DEFENDANTS as a matter of corporate policy, practice, and procedure,
27 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFF
28 and the CALIFORNIA CLASS for required business expenses incurred by the PLAINTIFF and

1 other CALIFORNIA CLASS Members in direct consequence of discharging their duties on behalf
2 of DEFENDANTS. Under California Labor Code Section 2802, employers are required to
3 indemnify employees for all expenses incurred in the course and scope of their employment. Cal.
4 Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee for all
5 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
6 of his or her duties, or of his or her obedience to the directions of the employer, even though
7 unlawful, unless the employee, at the time of obeying the directions, believed them to be
8 unlawful."

9 22. In the course of their employment, DEFENDANTS required PLAINTIFF and
10 other CALIFORNIA CLASS Members to use their personal cell phone to correspond and
11 coordinate tasks with their supervisor and/or other employees as a result of and in furtherance of
12 their job duties as employees for DEFENDANTS. But for the use of their own personal cell
13 phones, PLAINTIFF and the CALIFORNIA CLASS Members could not complete their essential
14 job duties, including but not limited to sending and receiving work-related communications from
15 DEFENDANTS. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFF and
16 other CALIFORNIA CLASS Members for their use of their personal cell phones. As a result, in
17 the course of their employment with DEFENDANTS, the PLAINTIFF and other CALIFORNIA
18 CLASS Members incurred unreimbursed business expenses, but were not limited to, costs related
19 to the use of their personal cellular phones, all on behalf of and for the benefit of DEFENDANT.

20 **D. Wage Statement Violations**

21 23. California Labor Code Section 226 requires an employer to furnish its employees
22 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked,
23 (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net
24 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name
25 of the employee and only the last four digits of the employee's social security number or an
26 employee identification number other than a social security number, (8) the name and address of
27 the legal entity that is the employer and, (9) all applicable hourly rates in effect during the pay
28 period and the corresponding number of hours worked at each hourly rate by the employee.

1 24. From time to time during the CLASS PERIOD, when PLAINTIFF and other
2 CALIFORNIA CLASS Members missed meal and rest breaks, or were not paid for all hours
3 worked, DEFENDANTS failed to provide PLAINTIFF and other CALIFORNIA CLASS
4 Members with complete and accurate wage statements that include, among other things, the total
5 hours worked, all applicable hourly rates in effect during the pay period, and the corresponding
6 amount of time worked at each hourly rate.

7 25. In addition to the violations described above, DEFENDANTS, from time to time,
8 failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements
9 that comply with Cal. Lab. Code § 226.

10 26. As a result, DEFENDANTS issued PLAINTIFF and the other members of the
11 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
12 DEFENDANTS' violations are knowing and intentional, were not isolated or due to an
13 unintentional payroll error due to clerical or inadvertent mistake.

14 **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

15 27. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
16 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA
17 CLASS for all hours worked.

18 28. During the CLASS PERIOD, from time-to-time DEFENDANTS required
19 PLAINTIFF and other members of the CALIFORNIA CLASS to perform work on days he was
20 not scheduled to work, including responding to work-related communications received on his
21 personal cell phone from DEFENDANTS' managers for work-related purposes. This resulted in
22 PLAINTIFF and other members of the CALIFORNIA CLASS having to work while off-the-
23 clock.

24 29. DEFENDANTS directed and directly benefited from the uncompensated off-the-
25 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.

26 30. DEFENDANTS controlled the work schedules, duties, protocols, applications,
27 assignments, and employment conditions of PLAINTIFF and the other members of the
28 CALIFORNIA CLASS.

1 31. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
2 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
3 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
4 wages earned and owed for all the work they performed, including but not limited to, the time
5 PLAINTIFF and members of the CALIFORNIA CLASS spent during non-production periods
6 and while waiting to load DEFENDANTS' trucks with goods.

7 32. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
8 exempt employees, subject to the requirements of the California Labor Code.

9 33. DEFENDANTS' policies and practices deprived PLAINTIFF and the other
10 members of the CALIFORNIA CLASS of all minimum, regular, overtime, and double time wages
11 owed for the off-the-clock work activities. Because PLAINTIFF and the other members of the
12 CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than eight (8)
13 hours per day, DEFENDANTS' policies and practices also deprived them of overtime pay.

14 34. DEFENDANTS knew or should have known that PLAINTIFF and the other
15 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

16 35. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
17 forfeited wages due them for all hours worked at DEFENDANTS' direction, control and benefit
18 for the time spent performing work, waiting to load DEFENDANTS' trucks with goods and
19 working while clocked out for meal periods. DEFENDANTS' uniform policy and practice to not
20 pay PLAINTIFF and the members of the CALIFORNIA CLASS wages for all hours worked in
21 accordance with applicable law is evidenced by DEFENDANTS' business records.

22 **F. Regular Rate Violation- Overtime, Double Time, Meal and Rest Period Premiums, and**
23 **Sick Pay**

24 36. From time-to-time during the CLASS PERIOD, DEFENDANTS failed and
25 continue to fail to accurately calculate and pay PLAINTIFF and the other CALIFORNIA CLASS
26 members for their overtime and double time hours worked, meal and rest period premiums, and
27 sick pay. As a result, PLAINTIFF and the other CALIFORNIA CLASS members forfeited wages
28 due them for working overtime without compensation at the correct overtime and double time

1 rates, meal and rest period premiums, and sick pay rates. DEFENDANTS’ uniform policy and
2 practice to not pay the CALIFORNIA CLASS members the correct rate for all overtime and
3 double time worked, meal and rest period premiums, and sick pay in accordance with applicable
4 law is evidenced by DEFENDANTS’ business records.

5 37. State law provides that employees must be paid overtime at one-and-one-half times
6 their “regular rate of pay.” PLAINTIFF and other CALIFORNIA CLASS members were
7 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
8 employee’s performance.

9 38. The second component of PLAINTIFF’S and other CALIFORNIA CLASS
10 members’ compensation was DEFENDANTS’ non-discretionary incentive program that paid
11 PLAINTIFF and other CLASS MEMBERS incentive wages based on their performance for
12 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
13 basis with bonus compensation when the employees met the various performance goals set by
14 DEFENDANTS.

15 39. However, from-time-to-time, when calculating the regular rate of pay, in those pay
16 periods where PLAINTIFF and other CALIFORNIA CLASS members worked overtime, double
17 time, paid meal and rest period premium payments, and/or paid sick pay, and earned non-
18 discretionary compensation, DEFENDANTS failed to accurately include the non-discretionary
19 compensation as part of the employees’ “regular rate of pay” and/or calculated all hours worked
20 rather than just all non-overtime hours worked. As a matter of law, the compensation received
21 by PLAINTIFF and other CALIFORNIA CLASS members must be included in the “regular rate
22 of pay.” The failure to do so has resulted in a systematic underpayment of overtime and double
23 time compensation, meal and rest period premiums, and sick pay to PLAINTIFF and other
24 CALIFORNIA CLASS members by DEFENDANTS. Specifically, California Labor Code
25 Section 246 mandates that paid sick time for non-employees shall be calculated in the same
26 manner as the regular rate of pay for the workweek in which the non-exempt employee uses paid
27 sick time, whether or not the employee actually works overtime in that workweek.
28 DEFENDANTS’ conduct, as articulated herein, by failing to include the incentive compensation

1 as part of the “regular rate of pay” for purposes of overtime, double time, paid meal and rest period
2 premium payments, and/or paid sick pay compensation was in violation of Cal. Lab. Code § 246
3 the underpayment of which is recoverable under Cal. Labor Code Sections 201, 202, 203 and/or
4 204.

5 40. In violation of the applicable sections of the California Labor Code and the
6 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
7 matter of company policy, practice and procedure, intentionally and knowingly failed to
8 compensate PLAINTIFF and the other members of the CALIFORNIA CLASS at the correct rate
9 of pay for all overtime and double time worked, meal and rest period premiums, and sick pay.
10 This uniform policy and practice of DEFENDANTS is intended to purposefully avoid the
11 payment of the correct overtime and double time compensation, meal and rest period premiums,
12 and sick pay as required by California law which allowed DEFENDANTS to illegally profit and
13 gain an unfair advantage over competitors who complied with the law. To the extent equitable
14 tolling operates to toll claims by the CALIFORNIA CLASS members against DEFENDANTS,
15 the CLASS PERIOD should be adjusted accordingly.

16 **G. Violation for Untimely Payment of Wages**

17 41. Pursuant to California Labor Code section 204, PLAINTIFF and the
18 CALIFORNIA CLASS members were entitled to timely payment of wages during their
19 employment. PLAINTIFF and the CALIFORNIA CLASS members, from time to time, did not
20 receive payment of all wages, including, but not limited to, overtime wages, minimum wages,
21 meal period premium wages, and rest period premium wages within permissible time period.

22 **H. Unlawful Deductions**

23 42. DEFENDANTS, from time-to-time unlawfully deducted wages from PLAINTIFF
24 and CALIFORNIA CLASS Members’ pay without explanations and without authorization to do
25 so or notice to PLAINTIFF and the CALIFORNIA CLASS Members. As a result,
26 DEFENDANTS violated Labor Code § 221.

27 43. Specifically, as to PLAINTIFF, PLAINTIFF was from time to time unable to take
28 off duty meal and rest breaks and was not fully relieved of duty for his rest and meal periods.

1 PLAINTIFF was required to perform work as ordered by DEFENDANTS for more than five (5)
2 hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS failed to
3 provide PLAINTIFF with a second off-duty meal period each workday in which he was required
4 by DEFENDANT to work ten (10) hours of work. When DEFENDANTS provided PLAINTIFF
5 with a rest break, they required PLAINTIFF to remain on the premises, on-duty and on-call, for
6 the rest break. DEFENDANTS' policy caused PLAINTIFF to remain on-call, on-duty and/or on-
7 premises during what was supposed to be his off-duty meal periods. PLAINTIFF therefore
8 forfeited meal and rest breaks without additional compensation and in accordance with
9 DEFENDANTS' strict corporate policy and practice. Moreover, DEFENDANTS also provided
10 PLAINTIFF with a paystub that failed to comply with Cal. Lab. Code § 226. To date,
11 DEFENDANTS have not fully paid PLAINTIFF the minimum, overtime and double time
12 compensation still owed to him or any penalty wages owed to him under Cal. Lab. Code § 203.
13 The amount in controversy for PLAINTIFF individually does not exceed the sum or value of
14 \$75,000.

15 **I. CLASS ACTION ALLEGATIONS**

16 44. PLAINTIFF brings the First through Ninth Causes of Action as a class action
17 pursuant to California Code of Civil Procedure § 382 on behalf of all persons who are or
18 previously were employed by Defendant Commerce Distribution Company and/or Defendant
19 Smart & Final Stores and/or Defendant Smart & Final in California and classified as non-exempt
20 employees ("CALIFORNIA CLASS") during the period beginning four years prior to the filing
21 of the Complaint and ending on a date determined by the Court ("CLASS PERIOD").

22 45. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
23 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
24 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
25 illegal meal and rest period policies, failure to reimburse for business expenses, failure to
26 compensate for off-the-clock work, failure to provide accurate itemized wage statements, failure
27 to maintain required records, and interest, statutory and civil penalties, attorney's fees, costs, and
28 expenses.

1 46. The members of the class are so numerous that joinder of all class members is
2 impractical.

3 47. Common questions of law and fact regarding DEFENDANTS' conduct, including
4 but not limited to, the off-the-clock work, unpaid meal and rest period premiums, failure to
5 provide legally compliant meal and rest periods, failure to reimburse for business expenses, failure
6 to provide accurate itemized wage statements, and failure to ensure they are paid at least minimum
7 wage and overtime, exist as to all members of the class and predominate over any questions
8 affecting solely any individual members of the class. Among the questions of law and fact
9 common to the class are:

- 10 a. Whether DEFENDANTS maintained legally compliant meal period policies and
11 practices;
- 12 b. Whether DEFENDANTS maintained legally compliant rest period policies and
13 practices;
- 14 c. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
15 CLASS Members accurate premium payments for missed meal and rest periods;
- 16 d. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
17 CLASS Members accurate overtime and double time wages;
- 18 e. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
19 CLASS Members at least minimum wage for all hours worked;
- 20 f. Whether DEFENDANTS failed to compensate PLAINTIFF and the
21 CALIFORNIA CLASS Members for required business expenses;
- 22 g. Whether DEFENDANTS unlawfully deducted earned wages from PLAINTIFF
23 and the CALIFORNIA CLASS Members' pay;
- 24 h. Whether DEFENDANTS issued legally compliant wage statements;
- 25 i. Whether DEFENDANTS committed an act of unfair competition by
26 systematically failing to record and pay PLAINTIFF and the other members of the
27 CALIFORNIA CLASS for all time worked;
- 28

1 j. Whether DEFENDANTS committed an act of unfair competition by
2 systematically failing to record all meal and rest breaks missed by PLAINTIFF
3 and other CALIFORNIA CLASS Members, even though DEFENDANTS enjoyed
4 the benefit of this work, required employees to perform this work and permits or
5 suffers to permit this work;

6 k. Whether DEFENDANTS committed an act of unfair competition in violation of
7 the UCL, by failing to provide the PLAINTIFF and the other members of the
8 CALIFORNIA CLASS with the legally required meal and rest periods.

9 48. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
10 a result of DEFENDANTS' conduct and actions alleged herein.

11 49. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has
12 the same interests as the other members of the class.

13 50. PLAINTIFF will fairly and adequately represent and protect the interests of the
14 CALIFORNIA CLASS Members.

15 51. PLAINTIFF retained able class counsel with extensive experience in class action
16 litigation.

17 52. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
18 interests of the other CALIFORNIA CLASS Members.

19 53. There is a strong community of interest among PLAINTIFF and the members of
20 the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of DEFENDANTS are
21 sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries
22 sustained.

23 54. The questions of law and fact common to the CALIFORNIA CLASS Members
24 predominate over any questions affecting only individual members, including legal and factual
25 issues relating to liability and damages.

26 55. A class action is superior to other available methods for the fair and efficient
27 adjudication of this controversy because joinder of all class members is impractical. Moreover,
28 since the damages suffered by individual members of the class may be relatively small, the

1 expense and burden of individual litigation makes it practically impossible for the members of the
2 class individually to redress the wrongs done to them. Without class certification and
3 determination of declaratory, injunctive, statutory and other legal questions within the class
4 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS will
5 create the risk of:

- 6 a. Inconsistent or varying adjudications with respect to individual members of the
7 CALIFORNIA CLASS which would establish incompatible standards of conduct
8 for the parties opposing the CALIFORNIA CLASS; and/or,
- 9 b. Adjudication with respect to individual members of the CALIFORNIA CLASS
10 which would as a practical matter be dispositive of the interests of the other
11 members not party to the adjudication or substantially impair or impeded their
12 ability to protect their interests.

13 56. Class treatment provides manageable judicial treatment calculated to bring an
14 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
15 the conduct of DEFENDANTS.

16 **FIRST CAUSE OF ACTION**

17 **Unlawful Business Practices**

18 **(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)**

19 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

20 57. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
21 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
22 Complaint.

23 58. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof.
24 Code § 17021.

25 59. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
26 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
27 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition
28 as follows:

1 Any person who engages, has engaged, or proposes to engage in unfair competition
2 may be enjoined in any court of competent jurisdiction. The court may make such
3 orders or judgments, including the appointment of a receiver, as may be necessary
4 to prevent the use or employment by any person of any practice which constitutes
5 unfair competition, as defined in this chapter, or as may be necessary to restore to
any person in interest any money or property, real or personal, which may have
been acquired by means of such unfair competition. (Cal. Bus. & Prof. Code §
17203).

6 60. By the conduct alleged herein, DEFENDANT has engaged and continues to
7 engage in a business practice which violates California law, including but not limited to, the
8 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
9 including Sections 201, 202, 203, 204, 221, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1,
10 1198, 2802, for which this Court should issue declaratory and other equitable relief pursuant to
11 Cal. Bus. & Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to
12 constitute unfair competition, including restitution of wages wrongfully withheld.

13 61. By the conduct alleged herein, DEFENDANT's practices were unlawful and unfair
14 in that these practices violated public policy, were immoral, unethical, oppressive unscrupulous
15 or substantially injurious to employees, and were without valid justification or utility for which
16 this Court should issue equitable and injunctive relief pursuant to Section 17203 of the California
17 Business & Professions Code, including restitution of wages wrongfully withheld.

18 62. By the conduct alleged herein, DEFENDANT's practices were deceptive and
19 fraudulent in that DEFENDANT's uniform policy and practice failed to provide the legally
20 mandated meal and rest periods and the required amount of compensation for missed meal and
21 rest periods and, due to a systematic business practice that cannot be justified, pursuant to the
22 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
23 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief,
24 pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

25 63. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
26 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
27 other members of the CALIFORNIA CLASS to be underpaid during their employment with
28 DEFENDANT.

1 64. By the conduct alleged herein, DEFENDANT's practices were also unfair and
2 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
3 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS members
4 as required by Cal. Lab. Code §§ 226.7 and 512.

5 65. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
6 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty meal
7 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for
8 each workday in which a second off-duty meal period was not timely provided for each ten (10)
9 hours of work.

10 66. PLAINTIFF further demands on behalf of himself and on behalf of each
11 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period was
12 not timely provided as required by law.

13 67. By and through the unlawful and unfair business practices described herein,
14 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
15 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
16 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
17 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
18 to unfairly compete against competitors who comply with the law.

19 68. All the acts described herein as violations of, among other things, the Industrial
20 Welfare Commission Wage Orders, the California Code of Regulations, and the California Labor
21 Code, were unlawful and in violation of public policy, were immoral, unethical, oppressive, and
22 unscrupulous, were deceptive, and thereby constitute unlawful, unfair and deceptive business
23 practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

24 69. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
25 and do, seek such relief as may be necessary to restore to them the money and property which
26 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
27 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and unfair
28 business practices, including earned but unpaid wages for all time worked.

70. PLAINTIFF and the other members of the CALIFORNIA CLASS are further entitled to, and do, seek a declaration that the described business practices are unlawful, unfair, and deceptive, and that injunctive relief should be issued restraining DEFENDANT from engaging in any unlawful and unfair business practices in the future.

71. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business practices of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As a result of the unlawful and unfair business practices described herein, PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will continue to suffer irreparable legal and economic harm unless DEFENDANT is restrained from continuing to engage in these unlawful and unfair business practices.

SECOND CAUSE OF ACTION

Failure To Pay Minimum Wages

(Cal. Lab. Code §§ 1194, 1197 and 1197.1.)

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

72. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

73. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim for DEFENDANT'S willful and intentional violations of the California Labor Code and the Industrial Welfare Commission requirements for DEFENDANT'S failure to accurately calculate and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS Members.

74. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

75. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful.

1 76. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
2 including minimum wage compensation and interest thereon, together with the costs of suit.

3 77. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and the
4 other members of the CALIFORNIA CLASS without regard to the correct amount of time they
5 worked. As set forth herein, DEFENDANT'S uniform policy and practice was to unlawfully and
6 intentionally deny timely payment of wages due to PLAINTIFF and the other members of the
7 CALIFORNIA CLASS.

8 78. DEFENDANT'S uniform pattern of unlawful wage and hour practices manifested,
9 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
10 implementing a uniform policy and practice that denied accurate compensation to PLAINTIFF
11 and the other members of the CALIFORNIA CLASS in regards to minimum wage pay.

12 79. In committing these violations of the California Labor Code, DEFENDANT
13 inaccurately calculated the amount of time worked and consequently underpaid the actual time
14 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANT acted
15 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
16 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
17 laws and regulations.

18 80. As a direct result of DEFENDANT'S unlawful wage practices as alleged herein,
19 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
20 minimum wage compensation for their time worked for DEFENDANT.

21 81. During the CLASS PERIOD, PLAINTIFF and the other members of the
22 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
23 failure to pay all earned wages.

24 82. By virtue of DEFENDANT'S unlawful failure to accurately pay all earned
25 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
26 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have
27 suffered and will continue to suffer an economic injury in amounts which are presently unknown
28 to them, and which will be ascertained according to proof at trial.

1 83. DEFENDANT knew or should have known that PLAINTIFF and the other
2 members of the CALIFORNIA CLASS are under-compensated for their time worked.
3 DEFENDANT systematically elected, either through intentional malfeasance or gross
4 nonfeasance, to not pay employees for their labor as a matter of uniform corporate policy, practice
5 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
6 PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum wages
7 for their time worked.

8 84. In performing the acts and practices herein alleged in violation of California labor
9 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time worked
10 and provide them with the requisite compensation, DEFENDANT acted and continues to act
11 intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of the
12 CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
13 consequences to them, and with the despicable intent of depriving them of their property and legal
14 rights, and otherwise causing them injury in order to increase company profits at the expense of
15 these employees.

16 85. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
17 request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
18 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
19 California Labor Code and/or other applicable statutes. To the extent minimum wage
20 compensation is determined to be owed to the CALIFORNIA CLASS Members who have
21 terminated their employment, DEFENDANT'S conduct also violates Labor Code §§ 201 and/or
22 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
23 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
24 Members. DEFENDANT'S conduct as alleged herein was willful, intentional and not in good
25 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
26 recover statutory costs.

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1 **THIRD CAUSE OF ACTION**

2 **Failure To Pay Overtime Compensation**

3 **(Cal. Lab. Code §§ 510, 1194 and 1198)**

4 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

5 86. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
6 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
7 Complaint.

8 87. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
9 for DEFENDANT's willful and intentional violations of the California Labor Code and the
10 Industrial Welfare Commission requirements for DEFENDANT's failure to pay these employees
11 for all overtime worked, including, work performed in excess of eight (8) hours in a workday,
12 and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

13 88. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
14 public policy, an employer must timely pay its employees for all hours worked.

15 89. Cal. Lab. Code § 510 further provides that employees in California shall not be
16 employed more than eight (8) hours per workday and more than forty (40) hours per workweek
17 unless they receive additional compensation beyond their regular wages in amounts specified by
18 law.

19 90. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages,
20 including minimum wage and overtime compensation and interest thereon, together with the costs
21 of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for longer hours
22 than those fixed by the Industrial Welfare Commission is unlawful.

23 91. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
24 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time
25 they worked, including overtime work.

26 92. DEFENDANT's uniform pattern of unlawful wage and hour practices manifested,
27 without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result of
28 implementing a uniform policy and practice that failed to accurately record overtime worked by

1 PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation to
2 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
3 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
4 (12) hours in a workday, and/or forty (40) hours in any workweek.

5 93. In committing these violations of the California Labor Code, DEFENDANT
6 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
7 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal
8 attempt to avoid the payment of all earned wages, and other benefits in violation of the California
9 Labor Code, the Industrial Welfare Commission requirements and other applicable laws and
10 regulations.

11 94. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
12 the PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full
13 compensation for overtime worked.

14 95. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
15 from the overtime requirements of the law. None of these exemptions are applicable to the
16 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and the
17 other members of the CALIFORNIA CLASS were not subject to a valid collective bargaining
18 agreement that would preclude the causes of action contained herein this Complaint. Rather,
19 PLAINTIFF brings this Action on behalf of himself and the CALIFORNIA CLASS based on
20 DEFENDANT's violations of non- negotiable, non-waivable rights provided by the State of
21 California.

22 96. During the CLASS PERIOD, PLAINTIFF and the other members of the
23 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
24 constituting a failure to pay all earned wages.

25 97. DEFENDANT failed to accurately pay the PLAINTIFF and the other members of
26 the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of the
27 maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198, even
28 though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to work,

1 and did in fact work, overtime as to which DEFENDANT failed to accurately record and pay as
2 evidenced by DEFENDANT's business records and witnessed by employees.

3 98. By virtue of DEFENDANT'S unlawful failure to accurately pay all earned
4 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for all
5 overtime worked by these employees, PLAINTIFF and the other members of the CALIFORNIA
6 CLASS have suffered and will continue to suffer an economic injury in amounts which are
7 presently unknown to them, and which will be ascertained according to proof at trial.

8 99. DEFENDANTS knew or should have known that PLAINTIFF and the other
9 members of the CALIFORNIA CLASS were under compensated for all overtime worked.
10 DEFENDANT systematically elected, either through intentional malfeasance or gross
11 nonfeasance, to not pay employees for their labor as a matter of uniform company policy, practice
12 and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay
13 PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

14 100. In performing the acts and practices herein alleged in violation of California labor
15 laws, and refusing to compensate the members of the CALIFORNIA CLASS for all overtime
16 worked and provide them with the requisite overtime compensation, DEFENDANT acted and
17 continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other
18 members of the CALIFORNIA CLASS with a conscious and utter disregard for their legal rights,
19 or the consequences to them, and with the despicable intent of depriving them of their property
20 and legal rights, and otherwise causing them injury in order to increase company profits at the
21 expense of these employees.

22 101. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
23 request recovery of all unpaid wages, including overtime wages, according to proof, interest,
24 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a
25 sum as provided by the California Labor Code and/or other applicable statutes. To the extent
26 minimum and/or overtime compensation is determined to be owed to the CALIFORNIA CLASS
27 Members who have terminated their employment, DEFENDANT's conduct also violates Labor
28 Code §§ 201 and/or 202, and therefore these employees would also be entitled to waiting time

1 penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
2 CALIFORNIA CLASS Members. DEFENDANT's conduct as alleged herein was willful,
3 intentional, and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS
4 Members are entitled to seek and recover statutory costs.

5 **FOURTH CAUSE OF ACTION**

6 **Failure To Provide Required Meal Periods**

7 **(Cal. Lab. Code §§ 226.7 & 512)**

8 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

9 102. PLAINTIFF and the other members of the CALIFORNIA CLASS, reallege and
10 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
11 Complaint.

12 103. During the CLASS PERIOD, DEFENDANT failed to provide all the legally
13 required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as
14 required by the applicable Wage Order and Labor Code. The nature of the work performed by
15 PLAINTIFF and CALIFORNIA CLASS MEMBERS did not prevent these employees from being
16 relieved of all of their duties for the legally required off-duty meal periods. As a result of their
17 rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not
18 fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's
19 failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required
20 meal breaks prior to their fifth (5th) hour of work is evidenced by DEFENDANT's business
21 records. Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS
22 Members with a second off-duty meal period in some workdays in which these employees were
23 required by DEFENDANT to work ten (10) hours of work. As a result, PLAINTIFF and other
24 members of the CALIFORNIA CLASS forfeited meal breaks without additional compensation
25 and in accordance with DEFENDANT's strict corporate policy and practice.

26 104. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
27 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members
28 who were not provided a meal period, in accordance with the applicable Wage Order, one

1 additional hour of compensation at each employee's regular rate of pay for each workday that a
2 meal period was not provided.

3 105. As a proximate result of the aforementioned violations, PLAINTIFF and
4 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
5 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

6 **FIFTH CAUSE OF ACTION**

7 **Failure To Provide Required Rest Periods**

8 **(Cal. Lab. Code §§ 226.7 & 512)**

9 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

10 106. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
11 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
12 Complaint.

13 107. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
14 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
15 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
16 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
17 minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and
18 third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more.
19 PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-hour
20 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
21 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
22 DEFENDANT and DEFENDANT's managers. As a result, DEFENDANT's failure to provide
23 PLAINTIFF and the CALIFORNIA CLASS Members with all the legally required paid rest
24 periods is evidenced by DEFENDANT's business records.

25 108. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable
26 IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS Members
27 who were not provided a rest period, in accordance with the applicable Wage Order, one
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1 additional hour of compensation at each employee's regular rate of pay for each workday that rest
2 period was not provided.

3 109. As a proximate result of the aforementioned violations, PLAINTIFF and
4 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
5 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

6 **SIXTH CAUSE OF ACTION**

7 **Failure To Provide Accurate Itemized Statements**

8 **(Cal. Lab. Code §§ 226)**

9 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

10 110. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
11 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
12 Complaint.

13 111. Cal. Labor Code § 226 provides that an employer must furnish employees with an
14 "accurate itemized" statement in writing showing:

- 15 a. Gross wages earned,
- 16 b. (2) total hours worked by the employee, except for any employee whose
17 compensation is solely based on a salary and who is exempt from payment
18 of overtime under subdivision (a) of Section 515 or any applicable order of
19 the Industrial Welfare Commission,
- 20 c. the number of piece-rate units earned and any applicable piece rate if the employee
21 is paid on a piece-rate basis,
- 22 d. all deductions, provided that all deductions made on written orders of the employee
23 may be aggregated and shown as one item,
- 24 e. net wages earned,
- 25 f. the inclusive dates of the period for which the employee is paid,
- 26 g. the name of the employee and his or her social security number, except that by
27 January 1, 2008, only the last four digits of his or her social security number of an
28

employee identification number other than social security number may be shown on the itemized statement,

h. the name and address of the legal entity that is the employer, and

i. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

112. During the CLASS PERIOD, when PLAINTIFF and other CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and accurate wage statements which failed to show, among other things, the total hours worked and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate, and correct rates of pay for penalty payments or missed meal and rest periods. Further, from time to time, DEFENDANTS failed to issue wage statements that provided the accurate name and address of the legal entity that is the employer of PLAINTIFF and other CALIFORNIA CLASS Members. Further, from time to time, DEFENDANT included hours for PTO and Holiday into the calculation for total hours worked, notwithstanding the fact that hours for PTO and Holiday are not considered hours worked for purposes of Cal. Lab. Code § 226(a)(2). Thus, DEFENDANT from time to time issued itemized wage statements that violated Cal. Lab. Code § 226(a)(2).

113. In addition to the foregoing, DEFENDANTS failed to provide itemized wage statements to PLAINTIFF and members of the CALIFORNIA CLASS that complied with the requirements of California Labor Code Section 226.

114. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA CLASS. These damages include, but are not limited to, costs expended calculating the correct wages for all missed meal and rest breaks and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to recover

1 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
2 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period
3 pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no
4 event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each respective member
5 of the CALIFORNIA CLASS herein).

6 **SEVENTH CAUSE OF ACTION**

7 **Failure To Pay Wages When Due**

8 **(Cal. Lab. Code §§ 203)**

9 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

10 115. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
11 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
12 Complaint.

13 116. Cal. Lab. Code § 200 provides that:

14 As used in this article:

- 15 (d) "Wages" includes all amounts for labor performed by employees of every
16 description, whether the amount is fixed or ascertained by the standard of time,
17 task, piece, Commission basis, or other method of calculation.
18 (e) "Labor" includes labor, work, or service whether rendered or performed under
19 contract, subcontract, partnership, station plan, or other agreement if the to be
20 paid for is performed personally by the person demanding payment.

21 117. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer discharges
22 an employee, the wages earned and unpaid at the time of discharge are due and payable
23 immediately."

24 118. Cal. Lab. Code § 202 provides, in relevant part, that:

25 If an employee not having a written contract for a definite period quits his or her
26 employment, his or her wages shall become due and payable not later than 72 hours
27 thereafter, unless the employee has given 72 hours previous notice of his or her intention
28 to quit, in which case the employee is entitled to his or her wages at the time of quitting.
Notwithstanding any other provision of law, an employee who quits without providing a
72-hour notice shall be entitled to receive payment by mail if he or she so requests and
designates a mailing address. The date of the mailing shall constitute the date of payment
for purposes of the requirement to provide payment within 72 hours of the notice of
quitting.

119. There was no definite term in PLAINTIFF's or any CALIFORNIA CLASS Members' employment contract.

120. Cal. Lab. Code § 203 provides:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

121. The employment of PLAINTIFF and many CALIFORNIA CLASS Members terminated, and DEFENDANT has not tendered payment of wages to these employees who were underpaid for minimum wage and/or overtime wage, and/or missed meal and rest breaks, as required by law.

122. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the members of the CALIFORNIA CLASS whose employment has terminated, PLAINTIFF demand up to thirty (30) days of pay as penalty for not paying all wages due at time of termination for all employees who terminated employment during the CLASS PERIOD and demand an accounting and payment of all wages due, plus interest and statutory costs as allowed by law.

EIGHTH CAUSE OF ACTION

Failure To Reimburse Employees For Required Expenses

(Cal. Lab. Code §§ 2802)

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

123. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

124. Cal. Lab. Code § 2802 provides, in relevant part, that:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful

125. From time-to-time during the CLASS PERIOD, DEFENDANTS violated Cal. Lab. Code § 2802, by failing to indemnify and reimburse PLAINTIFF and the members of the CALIFORNIA CLASS for required expenses incurred in the discharge of their job duties for

1 DEFENDANTS' benefit. DEFENDANTS failed to reimburse PLAINTIFF and the members of
2 the CALIFORNIA CLASS for expenses which included, but were not limited to, costs related to
3 using their personal cellular phone all on behalf of and for the benefit of DEFENDANTS.
4 Specifically, PLAINTIFF and the members of the CALIFORNIA CLASS were required by
5 DEFENDANTS to use their personal cell phones to execute their essential job duties on behalf of
6 DEFENDANTS. DEFENDANTS' uniform policy, practice and procedure was to not reimburse
7 PLAINTIFF and the members of the CALIFORNIA CLASS for expenses resulting from using
8 their personal cellular phones for DEFENDANTS within the course and scope of their
9 employment for DEFENDANTS. These expenses were necessary to complete their principal job
10 duties. DEFENDANTS are estopped by DEFENDANTS' conduct to assert any waiver of their
11 expectation. Although these expenses were necessary expenses incurred by PLAINTIFF and the
12 members of the CALIFORNIA CLASS, DEFENDANTS failed to indemnify and reimburse
13 PLAINTIFF and the members of the CALIFORNIA CLASS for these expenses as an employer
14 is required to do under the laws and regulations of California.

15 126. PLAINTIFF therefore demands reimbursement on behalf of the members of the
16 CALIFORNIA CLASS for expenditures or losses incurred in the discharge their job duties and
17 on behalf of DEFENDANTS, or his/her obedience to the directions of DEFENDANT, with
18 interest at the statutory rate and costs under Cal. Lab. Code § 2802.

19 **NINTH CAUSE OF ACTION**

20 **Unlawful Deductions from PLAINTIFF and CLASS MEMBERS Paychecks**

21 **[Cal. Labor Code §§ 221 and 223]**

22 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

23 127. PLAINTIFF incorporates herein by specific reference, as though fully set forth,
24 the allegations in the preceding paragraphs.

25 128. During the CLASS PERIOD, DEFENDANT regularly and consistently
26 maintained corporate policies and procedures designed to reduce labor costs by reducing or
27 minimizing the amount of compensation paid to its employees, including but not limited to,
28 overtime compensation.

129. DEFENDANT made deductions from PLAINTIFF and members of the CALIFORNIA CLASS' paychecks for unspecified reasons.

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

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

132. As a result of the conduct alleged above, DEFENDANTS unlawfully collected or received from PLAINTIFF and the members of the CALIFORNIA CLASS' part of the wages paid to their employees.

133. Wherefore, PLAINTIFF and the members of the CALIFORNIA CLASS demand the return of all wages unlawfully deducted from the paychecks, including interest thereon, penalties, reasonable attorneys' fees, and costs of suit pursuant to Labor Code §§ 225.5 and 1194.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for a judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

a. That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

b. An order temporarily, preliminarily and permanently enjoining and restraining
DEFENDANT from engaging in similar unlawful conduct as set forth herein;

c. An order requiring DEFENDANT to pay all overtime wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and

d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

1 2. On behalf of the CALIFORNIA CLASS:

- 2 a. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and
- 3 Ninth Causes of Action asserted by the CALIFORNIA CLASS as a class action
- 4 pursuant to Cal. Code of Civ. Proc. § 382;
- 5 b. Compensatory damages, according to proof at trial, including compensatory
- 6 damages for minimum and overtime compensation, due to PLAINTIFF and the
- 7 other members of the CALIFORNIA CLASS, during the applicable CLASS
- 8 PERIOD plus interest thereon at the statutory rate;
- 9 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
- 10 the applicable IWC Wage Order;
- 11 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
- 12 which a violation occurs and one hundred dollars (\$100) per each member of the
- 13 CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding
- 14 an aggregate penalty of four thousand dollars (\$4,000), and an award of costs for
- 15 violation of Cal. Lab. Code § 226
- 16 e. The wages of all terminated employees from the CALIFORNIA CLASS as a
- 17 penalty from the due date thereof at the same rate until paid or until an action
- 18 therefore is commenced, in accordance with Cal. Lab. Code § 203.

19 3. On all claims:

- 20 a. An award of interest, including prejudgment interest at the legal rate;
- 21 b. Such other and further relief as the Court deems just and equitable; and
- 22 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.
- 23

24 DATED: March 30, 2022

JCL LAW FIRM, APC

25 By: 
26 Jean-Claude Lapuyade, Esq.
27 Attorney for PLAINTIFF
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DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

DATED: March 30, 2022

JCL LAW FIRM, APC

By: 
Jean-Claude Lapuyade, Esq.
Attorney for PLAINTIFF

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

\$

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

☐ Return Receipt (hardcopy) \$

☐ Return Receipt (electronic) \$

☐ Certified Mail Restricted Delivery \$

☐ Adult Signature Required \$

☐ Adult Signature Restricted Delivery \$

Postage

\$

Total Postage and Fees

\$

Postmark
Here

Sent To Smart & Final, LLC
Street and Apt. No., or PO Box No.
City, State, ZIP+4®

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

See Reverse for Instructions

7021 1970 0001 4068 3636

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

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OFFICIAL USE

Certified Mail Fee

\$

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

☐ Return Receipt (hardcopy) \$

☐ Return Receipt (electronic) \$

☐ Certified Mail Restricted Delivery \$

☐ Adult Signature Required \$

☐ Adult Signature Restricted Delivery \$

Postage

\$

Total Postage and Fees

\$

Postmark
Here

Sent To Smart & Final Store
Street and Apt. No., or PO Box No.
City, State, ZIP+4®

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

See Reverse for Instructions

7021 1970 0001 4068 3629

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
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OFFICIAL USE

Certified Mail Fee

\$

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

☐ Return Receipt (hardcopy) \$

☐ Return Receipt (electronic) \$

☐ Certified Mail Restricted Delivery \$

☐ Adult Signature Required \$

☐ Adult Signature Restricted Delivery \$

Postage

\$

Total Postage and Fees

\$

Postmark
Here

Sent To Commerce
Street and Apt. No., or PO Box No.
City, State, ZIP+4®

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

See Reverse for Instructions

7021 1970 0001 4068 3612

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:

Commerce Distribution Co., LLC
c/o IT Corp. System
330 N. Brand Blvd, Ste 700
Glendale, CA 91203



9590 9402 6815 1074 9828 83

2. Article Number (Transfer from service label)

7021 1970 0001 4068 3612

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

NDS

C. Date of Delivery

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

APR 4 2022

00230198905230100

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Mail
Restricted Delivery

PS Form 3811, July 2020 PSN 7530-02-000-9053

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:

Smart Final stores, LLC
 C/O CT Corp. System
 330 N. Brand Blvd, Ste 700
 Glendale, CA 91203



9590 9402 6815 1074 9828 76

2. Article Number (Transfer from service label)

7021 1970 0001 4068 3629

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

APR 4 2022

Delivery Service

002-309 Paga 3.30.22

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restrict Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

☐ Restricted Delivery

Natalia Michele

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
Sent: Wednesday, March 30, 2022 1:37 PM
To: Tesla Stone
Subject: Thank you for submission of your PAGA Case.

3/30/2022

LWDA Case No. LWDA-CM-876222-22

Law Firm : JCL Law Firm, APC

Plaintiff Name : PAUL RODRIGUEZ

Employer: COMMERCE DISTRIBUTION COMPANY LLC Filing Fee : \$75.00 IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT 6

DAMONTAE LEVINGSTON

c/o DIVERSITY LAW GROUP, P.C.
515 S. FIGUEROA STREET, SUITE 1250
LOS ANGELES, CALIFORNIA 90071
TELEPHONE (213) 488-6555
FACSIMILE (213) 488-6554

February 11, 2022

VIA ONLINE FILING

California Labor & Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

Re: Levingston v. Commerce Distribution Company LLC

To Whom It May Concern:

This correspondence shall constitute as my written notice under Labor Code § 2699.3 of claims against my former employer Commerce Distribution Company LLC (“Defendant” or “the Company”). Specifically, I allege as follows:

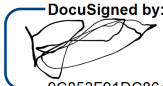
1. The Company violated Labor Code § 226 by failing to provide accurate and complete wage statements to myself and other similarly situated aggrieved employees. Specifically, the Company failed to list the accurate total hours worked for wage statements furnished to me and/or other similarly aggrieved non-exempt employees whenever shift differential wages were paid. In particular, whenever shift differential wages were paid, the wage statements issued by the Company did not identify the accurate total hours worked. Therefore, the Company violated Labor Code § 226 as to me and all other similarly aggrieved employees as it failed to identify the correct total hours worked.

The address for Defendant is as follows:

Commerce Distribution Company LLC
600 Citadel Drive
Commerce, CA 90040

Please contact my attorney Larry W. Lee at the above address/phone number if you have any questions regarding this matter.

Sincerely,

DocuSigned by:

9C853F91DC864CA...
Damontae Levingston

Cc: Commerce Distribution Company LLC (via certified mail)

EXHIBIT 7