

ORIGINAL

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUN 28 2024

BY Crystal K. D'Amico
CRYSTAL K. D'AMICO, DEPUTY

James R. Hawkins (SBN 192925)
Christina M. Lucio (SBN 253677)
Mitchell J. Murray (SBN 285691)
JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, California 92618
Telephone: (949) 387-7200
Facsimile: (949) 387-6676

Attorneys for Plaintiffs

[Additional Counsel on Following Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

Coordination Proceedings Special Title
(Rule 3.550)

TARGET WAGE AND HOUR CASES

Included Actions:

Medina et al. v. Target Corporation
San Bernardino Superior Court, Case No.
CIVSB2209126

Torres v. Target Corporation
Sacramento Superior Court, Case No. 34-
2022-00319715

Judicial Council Coordination Proceeding Case
No.: JCCP 5259

**SECOND AMENDED CONSOLIDATED
CLASS ACTION AND PAGA 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;
- 9) FAILURE TO PAY SICK PAY WAGES IN VIOLATION OF CAL. LAB. CODE §§ 201-204, 233, 246; AND
- 10) CIVIL PENALTIES UNDER PRIVATE

Additional Counsel:

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (SBN 068687)

Kyle R. Nordrehaug (SBN 205975)

Aparajit Bhowmik (SBN 248066)

Nicholas J. De Blouw (SBN 280922)

2255 Calle Clara

La Jolla, CA 92037

Tel: (858) 551-1223

Fax: (858) 551-1232

Attorneys for Plaintiffs

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

Susan J. Perez (SBN 329044)

sperez@haineslawgroup.com

2155 Campus Drive, Suite 180

El Segundo, California 90245

Tel: (424) 292-2350

Fax: (424) 292-2355

Attorneys for Plaintiffs

1 Plaintiffs GUSTAVO MEDINA, JANIRA PEREZ, SERGIO GARCIA, ALICIA TORRES,
2 ZACHARY LOMELY, ANGEL CARTER, DENISA CARDENAS, BRIAN MENA, JIMMY
3 PEREZ, EMILY PORCHO, SHEEMAL NARAYAN, JUAN MORALES, JOALDI GONZALEZ,
4 and MARTHA FRANCO (“PLAINTIFFS”), individuals, on behalf of themselves and all other
5 similarly situated current and former employees, allege on information and belief, except for their
6 own acts and knowledge, which are based on personal knowledge, the following:

7 **THE PARTIES**

8 1. Defendant Target Corporation (“DEFENDANT”) is Minnesota corporation that at
9 all relevant times mentioned herein conducted and continues to conduct substantial business in the
10 state of California. It is based at 1000 Nicollet Mall, Minneapolis, MN 55403.

11 2. DEFENDANT owns and operates big box retail stores in California.

12 3. Plaintiff Gustavo Medina was employed by DEFENDANT in California during the
13 relevant time and was at all times classified by DEFENDANT as a non-exempt employee, paid on
14 an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum
15 and overtime wages due for all time worked. Plaintiff Medina worked at Defendant’s distribution
16 center in Rialto, California.

17 4. Plaintiff Janira Perez was employed by DEFENDANT in California during the
18 relevant time period and was at all times classified by DEFENDANT as a non-exempt employee,
19 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of
20 minimum and overtime wages due for all time worked. Plaintiff Janira Perez worked at Defendant’s
21 distribution center in Rialto, California.

22 5. Plaintiff Sergio Garcia was employed by DEFENDANT in California during the
23 relevant time period and was at all times classified by DEFENDANT as a non-exempt employee,
24 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of
25 minimum and overtime wages due for all time worked. Plaintiff Sergio Garcia worked at
26 Defendant’s distribution center in Rialto, California.

27 6. Plaintiff Alicia Torres was employed by DEFENDANT in California from 2013 to
28

1 January of 2022 and was at all times classified by DEFENDANT as a non-exempt employee, paid
2 on an hourly basis, and entitled to the legally required meal and rest periods and payment of
3 minimum and overtime wages due for all time worked. Plaintiff Torres worked at DEFENDANT'S
4 distribution center located at 2050 E Beamer Street in Woodland, California.

5 7. Plaintiff Zachary Lomely was employed by DEFENDANT in California from
6 February of 2018 to July of 2022 and was at all times classified by DEFENDANT as a non-exempt
7 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
8 payment of minimum and overtime wages due for all time worked. Plaintiff Lomely worked at
9 DEFENDANT'S distribution center located at 3880 Zachary Avenue in Shafter, California.

10 8. Plaintiff Angel Carter was employed by DEFENDANT in California from June of
11 2021 to February of 2022 and was at all times classified by DEFENDANT as a non-exempt
12 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
13 payment of minimum and overtime wages due for all time worked. Plaintiff Carter worked at
14 DEFENDANT'S distribution center located at 3110 N. Alder Avenue in Rialto, California.

15 9. Plaintiff Denisa Cardenas was employed by DEFENDANT in California from July
16 of 2021 to July of 2022 and was at all times classified by DEFENDANT as a non-exempt employee,
17 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of
18 minimum and overtime wages due for all time worked. Plaintiff Cardenas worked at
19 DEFENDANT'S distribution center located at 14750 Miller Avenue in Fontana, California.

20 10. Plaintiff Brian Mena has been employed by DEFENDANT in California from
21 September of 2021 and has been at all times classified by DEFENDANT as a non-exempt
22 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
23 payment of minimum and overtime wages due for all time worked. Plaintiff Mena works at
24 DEFENDANT'S distribution center located at 14750 Miller Avenue in Fontana, California.

25 11. Plaintiff Jimmy Perez was employed by DEFENDANT in California from June of
26 2006 to October of 2022 and was at all times classified by DEFENDANT as a non-exempt
27 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
28 payment of minimum and overtime wages due for all time worked. Plaintiff Jimmy Perez worked

1 at DEFENDANT’S distribution center located at 3105 N. Mango Avenue in Rialto, California.

2 12. Plaintiff Emily Porcho was employed by DEFENDANT in California from April
3 2020 to September of 2022 and was at all times classified by DEFENDANT as a non-exempt
4 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
5 payment of minimum and overtime wages due for all time worked. Plaintiff Porcho worked at
6 DEFENDANT’S distribution center located at 2050 E Beamer Street in Woodland, California.

7 13. Plaintiff Sheemal Narayan was employed by DEFENDANT in California from June
8 2010 to May 2023 and was at all times classified by DEFENDANT as a non-exempt employee,
9 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of
10 minimum and overtime wages due for all time worked. Plaintiff Narayan worked at
11 DEFENDANT’S distribution center located at 2050 E Beamer Street in Woodland, California.

12 14. Plaintiff Juan Morales is employed by DEFENDANT in California since 2006 and
13 was at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis,
14 and entitled to the legally required meal and rest periods and payment of minimum and overtime
15 wages due for all time worked. Plaintiff Morales worked at DEFENDANT’S distribution center
16 located at 3110 N. Alder Avenue in Rialto, California.

17 15. Plaintiff Joaldi Gonzalez was employed by DEFENDANT in California from 2016
18 to June of 2022 and was at all times classified by DEFENDANT as a non-exempt employee, paid
19 on an hourly basis, and entitled to the legally required meal and rest periods and payment of
20 minimum and overtime wages due for all time worked. Plaintiff Joaldi Gonzalez worked at
21 Defendant’s distribution center located in Shafter, California.

22 16. Plaintiff Martha Franco was employed by DEFENDANT in California from 2003
23 to March 2020 before commencing a medical leave of absence, then performed work on February
24 17, 2023, before re-commencing her medical leave. Plaintiff Franco was at all times classified by
25 DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally
26 required meal and rest periods and payment of minimum and overtime wages due for all time
27 worked. Plaintiff Martha Franco worked at Defendant’s distribution center located in Shafter,
28 California.

1 17. PLAINTIFFS bring this Class Action on behalf of themselves and a California class,
2 defined as all individuals who are or previously were employed by DEFENDANT in a California
3 distribution center, including any employees staffed with DEFENDANT by a third party in a
4 California distribution center, and classified as non-exempt employees (the “CALIFORNIA
5 CLASS”) at any time during the relevant period (the “CALIFORNIA CLASS PERIOD”). The
6 amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five
7 million dollars (\$5,000,000.00)

8 18. The CALIFORNIA CLASS PERIOD is broken down into two separate subperiods:

9 a. BREAK CLASS PERIOD: As to Causes of Action Four and Five,
10 the Class Period is January 10, 2019 through the date of resolution
11 or trial.

12 b. WAGE AND HOUR CLASS PERIOD: As to Causes of Action One,
13 Two, Three, Six, Seven, Eight and Nine, the Class Period is April 2,
14 2021 through the date of resolution or trial.

15 19. PLAINTIFFS bring this Class Action on behalf of themselves and a CALIFORNIA
16 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred during
17 the CALIFORNIA CLASS PERIOD caused by DEFENDANT’s policy and practice which failed
18 to lawfully compensate these employees. DEFENDANT’s policy and practice alleged herein was
19 an unlawful, unfair and deceptive business practice whereby DEFENDANT retained and continues
20 to retain wages due PLAINTIFFS and the other members of the CALIFORNIA CLASS.
21 PLAINTIFFS and the other members of the CALIFORNIA CLASS seek an injunction enjoining
22 such conduct by DEFENDANT in the future, relief for the named PLAINTIFFS and the other
23 members of the CALIFORNIA CLASS who have been economically injured by DEFENDANT’s
24 past and current unlawful conduct, and all other appropriate legal and equitable relief.

25 20. PLAINTIFFS also bring this PAGA Action on behalf of themselves and all other
26 Aggrieved Employees, defined as all individuals who are or previously were employed by
27 DEFENDANT in a California distribution center, including any employees staffed with
28 DEFENDANT by a third party in a California distribution center, and classified as non-exempt

employees (the “AGGRIEVED EMPLOYEES”) at any time from February 22, 2021 through the date of resolution or trial (the “PAGA PERIOD”).

21. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFFS who therefore sue these Defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFFS are informed and believe, and based upon that information and belief allege, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

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

THE CONDUCT

23. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFFS 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. DEFENDANT requires PLAINTIFFS and CALIFORNIA CLASS Members to work without paying them for all the time they are under DEFENDANT’s control. Among other things, DEFENDANT requires PLAINTIFFS to work while clocked out during what is supposed to be PLAINTIFFS’ off-duty meal break. PLAINTIFFS were from time to time interrupted by work assignments while clocked out for what should have

1 been PLAINTIFFS' off-duty meal break, subjected to short meal breaks, and subjected to late meal
2 breaks. DEFENDANT, as a matter of established company policy and procedure, administers a
3 uniform practice of rounding the actual time worked and recorded by PLAINTIFFS and
4 CALIFORNIA CLASS Members, always to the benefit of DEFENDANT, so that during the course
5 of their employment, PLAINTIFFS and CALIFORNIA CLASS Members are paid less than they
6 would have been paid had they been paid for actual recorded time rather than "rounded" time.
7 Additionally, DEFENDANT engages in the practice of requiring PLAINTIFFS and CALIFORNIA
8 CLASS Members to perform work off the clock in that DEFENDANT, as a condition of
9 employment, required these employees to submit to mandatory temperature checks and symptom
10 questionnaires for COVID-19 screening prior to clocking into DEFENDANT's timekeeping
11 system for the workday. DEFENDANT also often performed bag or security checks while
12 PLAINTIFFS and the CALIFORNIA CLASS MEMBERS were off the clock, including during
13 purported meal periods. In addition, PLAINTIFFS and the CALIFORNIA CLASS MEMBERS
14 were subject to controlled walking time and controlled meal and rest periods. As a result,
15 PLAINTIFFS and other CALIFORNIA CLASS Members forfeit minimum wage, overtime wage
16 compensation, and off-duty meal breaks by working without their time being correctly recorded
17 and without compensation at the applicable rates. DEFENDANT's policy and practice not to pay
18 PLAINTIFFS and other CALIFORNIA CLASS Members for all time worked, is evidenced by
19 DEFENDANT's business records.

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

24 25. The second component of PLAINTIFFS' and other CALIFORNIA CLASS
25 Members' compensation is DEFENDANT's non-discretionary incentive program that paid
26 PLAINTIFFS and other CALIFORNIA CLASS Members incentive wages based on their
27 performance for DEFENDANT. The non-discretionary incentive program provided all employees
28 paid on an hourly basis with incentive compensation when the employees met the various

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

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

25 27. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and other
26 CALIFORNIA CLASS Members were also required from time to time to work in excess of four
27 (4) hours without being provided ten (10) minute rest periods. Further, these employees were
28 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2)

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

17 28. In addition, DEFENDANT failed to lawfully authorize and permit rest breaks for
18 CALIFORNIA CLASS Members, as rest breaks which were provided were frequently untimely or
19 less than net ten minutes because of the work requirements imposed by Defendants, and frequent
20 calls during rest periods.

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

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

7 30. DEFENDANT failed to provide accurate, lawful itemized wage statements to
8 PLAINTIFFS and the CALIFORNIA CLASS, as required by Labor Code section 226, in part
9 because of the above specified violations.

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

1 32. In addition, certain wage statements show deductions from CALIFORNIA CLASS
2 Members paychecks and show the reasoning as “VCH Pay” in violation of the IWC Wage Order
3 No. 4, section 8. At all times relevant hereto, IWC Wage Order No. 4, section 8, required that no
4 employer shall make any deduction from the wages of its employees or require any
5 reimbursement from an employee for any cash shortage, breakage, or loss of equipment, unless it
6 can be shown that the shortage, breakage, or loss is caused by a dishonest or willful act, or by the
7 gross negligence of the employee. To the extent this sum does not constitute an actual deduction
8 from wages, it is a violation of Labor Code section 226.

9
10 33. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be deemed
11 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are
12 paid not more than seven (7) calendar days following the close of the payroll period. Cal. Lab.
13 Code § 210 provides:

14 [I]n addition to, and entirely independent and apart from, any other penalty provided
15 in this article, every person who fails to pay the wages of each employee as provided
16 in Sections. . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial
17 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.

18 34. DEFENDANT from time to time failed to pay PLAINTIFFS and members of the
19 CALIFORNIA CLASS Members within seven (7) days of the close of the payroll period in
20 accordance with Cal. Lab. Code § 204(d), including but not limited to for the “Hourly” regular
21 wage payments.

22 35. DEFENDANT underpaid sick pay wages to PLAINTIFFS and other CALIFORNIA
23 CLASS Members by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
24 Code Section 246. Specifically, PLAINTIFFS and other non-exempt employees earn non-
25 discretionary remuneration. Rather than pay sick pay at the regular rate of pay, DEFENDANT
26 underpaid sick pay to PLAINTIFFS and other CALIFORNIA CLASS Members at their base rates
27 of pay.

28 36. Cal. Lab. Code Section 246(l)(2) requires that paid sick time for nonexempt

1 employees be calculated by dividing the employee's total wages, not including overtime premium
2 pay, by the employee's total hours worked in the full pay periods of the prior 90 days of
3 employment.

4 37. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at the
5 regular rate of pay. PLAINTIFFS and CALIFORNIA CLASS Members routinely earned non-
6 discretionary incentive wages which increased their regular rate of pay. However, when sick pay
7 was paid, it was paid at the base rate of pay for PLAINTIFFS and members of the CALIFORNIA
8 CLASS, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab. Code
9 Section 246.

10 38. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFFS and
11 other members of the CALIFORNIA CLASS their correct wages, including minimum wages,
12 overtime, and premium pay, and accordingly owe waiting time penalties pursuant to Cal. Lab. Code
13 Section 203. Further, PLAINTIFFS are informed and believe and based thereon allege that such
14 failure to pay sick pay at regular rate was willful, such that PLAINTIFFS and members of the
15 CALIFORNIA CLASS whose employment has separated are entitled to waiting time penalties
16 pursuant to Cal. Lab. Code Sections 201-203.

17 39. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer to
18 collect or receive from an employee any part of wages theretofore paid by said employer to said
19 employee." DEFENDANT failed to pay all compensation due to PLAINTIFFS and other
20 CALIFORNIA CLASS Members, made unlawful deductions from compensation payable to
21 PLAINTIFFS and CALIFORNIA CLASS Members, failed to disclose all aspects of the deductions
22 from compensation payable to PLAINTIFFS and CALIFORNIA CLASS Members, and thereby
23 failed to pay these employees all wages due at each applicable pay period and upon termination.
24 PLAINTIFFS and members of the CALIFORNIA CLASS seek recovery of all illegal deductions
25 from wages according to proof, related penalties, interest, attorney fees and costs.

26 40. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
27 PLAINTIFFS and the other CALIFORNIA CLASS Members for required business expenses
28 incurred by the PLAINTIFFS and other CALIFORNIA CLASS Members in direct consequence of

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

8 41. In the course of their employment PLAINTIFFS and other CALIFORNIA CLASS
9 Members as a business expense, were required by DEFENDANT to use their own personal cellular
10 phones as a result of and in furtherance of their job duties as employees for DEFENDANT but are
11 not reimbursed or indemnified by DEFENDANT for the cost associated with the use of their
12 personal cellular phones for DEFENDANT's benefit. Specifically, PLAINTIFFS and other
13 CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cellular
14 phones. As a result, in the course of their employment with DEFENDANT, PLAINTIFFS and
15 other members of the CALIFORNIA CLASS incurred unreimbursed business expenses which
16 included, but were not limited to, costs related to the use of their personal cellular phones all on
17 behalf of and for the benefit of DEFENDANT.

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

28 **JURISDICTION AND VENUE**

1 43. This Court has jurisdiction over this action pursuant to the California Constitution
2 Article VI §10, which grants the California Superior Court original jurisdiction in all causes except
3 those given by statute to other courts. The statutes under which this action is brought do not give
4 jurisdiction to any other court. This Court has jurisdiction over Defendants because, upon
5 information and belief, each Defendant is either a resident of California, has sufficient minimum
6 contacts in California, or otherwise intentionally avails itself of the California market so as to render
7 the exercise of jurisdiction over them by the California Courts consistent with traditional notions
8 of fair play and substantial justice. Defendants have done and are doing business throughout
9 California and San Bernardino County by maintaining and operating a number of Target's facilities
10 throughout California. The unlawful acts alleged herein have a direct effect on Plaintiffs and the
11 other similarly situated Non-Exempt Employees within San Bernardino County and throughout the
12 State of California and Defendants have employed hundreds of employees as Non-Exempt
13 Employees in San Bernardino County and throughout California.

14 44. Venue is proper in San Bernardino County pursuant to Code of Civil Procedure
15 section 395.5 because one or more of the violations alleged in this Complaint arise in that county.
16 Venue as to Defendant is also proper in this judicial district pursuant to Code of Civil Procedure
17 section 395.

18 45. Venue is proper in this Court because upon information and belief, one or more of
19 the Defendants transact business, or have offices in this County and the acts or omissions alleged
20 herein took place in this County.

21 **THE CALIFORNIA CLASS**

22 46. PLAINTIFFS bring the First through Ninth Causes of Action as a Class Action,
23 pursuant to Code of Civil Procedure section 382, on behalf of a California class, defined as all
24 individuals who are or previously were employed by DEFENDANT in a California distribution
25 center, including any employees staffed with DEFENDANT by a third party in a California
26 distribution center, and classified as non-exempt employees (the "CALIFORNIA CLASS") at any
27 time during the CALIFORNIA CLASS PERIOD.

28 47. DEFENDANT, as a matter of company policy, practice and procedure, and in

1 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage Order
2 requirements, and the applicable provisions of California law, intentionally, knowingly, and
3 willfully, engaged in a practice whereby DEFENDANT failed to record all meal and rest breaks
4 missed by PLAINTIFFS and other CALIFORNIA CLASS Members, even though DEFENDANT
5 enjoyed the benefit of this work, required employees to perform this work and permits or suffers to
6 permit this work.

7 48. DEFENDANT has the legal burden to establish that each and every CALIFORNIA
8 CLASS Member was paid accurately for all meal and rest breaks missed as required by California
9 laws. The DEFENDANT, however, as a matter of policy and procedure failed to have in place
10 during the CALIFORNIA CLASS PERIOD and still fails to have in place a policy or practice to
11 ensure that each and every CALIFORNIA CLASS Member is paid as required by law. This
12 common business practice is applicable to each and every CALIFORNIA CLASS Member and can
13 be adjudicated on a class-wide basis.

14 49. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
15 Commission (“IWC”) Wage Order requirements, and the applicable provisions of California law,
16 intentionally, knowingly, and willfully, engaged in a practice whereby DEFENDANT failed to
17 correctly calculate compensation for the time worked by PLAINTIFFS and the other members of
18 the CALIFORNIA CLASS and reporting time wages owed to these employees, even though
19 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
20 permitted or suffered to permit this work. DEFENDANT has denied these CALIFORNIA CLASS
21 Members wages to which these employees are entitled in order to unfairly cheat the competition
22 and unlawfully profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA
23 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted
24 accordingly.

25 50. DEFENDANT maintains records from which the Court can ascertain and identify
26 by name and job title, each of DEFENDANT’s employees who have been intentionally subjected
27 to DEFENDANT’s company policy, practices and procedures as herein alleged. PLAINTIFFS will
28 seek leave to amend the complaint to include any additional job titles of similarly situated

employees when they have been identified.

51. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA CLASS Members is impracticable.

52. Common questions of law and fact exist as to members of the CALIFORNIA CLASS, including, but not limited, to the following:

- a. Whether DEFENDANT unlawfully failed to correctly calculate and pay compensation due to members of the CALIFORNIA CLASS for missed meal and rest breaks in violation of the California Labor Code and California regulations and the applicable California Wage Order;
- b. Whether DEFENDANT failed to provide the PLAINTIFFS and the other members of the CALIFORNIA CLASS with accurate itemized wage statements;
- c. Whether Defendants knew or should have known that CALIFORNIA CLASS Members were required to perform work off the clock;
- d. Whether Defendants were required to compensate CALIFORNIA CLASS Members for bag checks and/or Covid-19 screenings;
- e. Whether Defendants had a policy and practice of providing lawful, timely meal periods in accordance with Labor Code § 512, as well as the applicable Industrial Welfare Commission ("IWC") wage order;
- f. Whether Defendants had a policy and practice of complying with Labor Code section 226.7 and IWC Wage Order on each instance that a lawful, timely 30-minute uninterrupted meal period was not provided;
- g. Whether Defendants failed to authorize and permit a lawful, net 10-minute rest period to the CALIFORNIA CLASS Members for every four (4) hours or major fraction thereof worked;
- h. Whether Defendants required CALIFORNIA CLASS Members to

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- remain on the premises during rest periods;
- i. Whether Defendants had a policy and practice of complying with Labor Code section 226.7 and the IWC Wage Order on each instance that a lawful rest period was not provided;
- j. Whether Defendants failed to timely pay all wages upon separation in accordance with Labor Code sections 201-202;
- k. Whether Defendants omitted required information from itemized wage statements;
- l. Whether Defendants failed to maintain accurate records of CALIFORNIA CLASS Members earned wages, work periods, meal periods and deductions;
- m. Whether DEFENDANT has engaged in unfair competition by the above-listed conduct;
- n. The proper measure of damages and penalties owed to the members of the CALIFORNIA CLASS; and,
- o. Whether DEFENDANT’s conduct was willful.

53. DEFENDANT violated the rights of the CALIFORNIA CLASS under California law by:

- a. Violating Cal. Lab. Code § 1194, 1197, and the IWC Wage Orders by failing to compensate PLAINTIFFS and the members of the CALIFORNIA CLASS for off the clock work, including Covid-19 screenings and security checks and controlled walking time and meal/rest periods;
- b. Violating Cal. Lab. Code § 510, by failing to correctly pay the PLAINTIFFS and the members of the CALIFORNIA CLASS all wages due for overtime worked, for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
- c. Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 et seq., by failing

1 to accurately pay PLAINTIFFS and the members of the
2 CALIFORNIA CLASS the correct minimum wage pay for which
3 DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and
4 1197;

5 d. Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFFS
6 and the members of the CALIFORNIA CLASS with an accurate
7 itemized statement in writing showing the corresponding correct
8 amount of wages earned by the employee;

9 e. Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
10 PLAINTIFFS and the other members of the CALIFORNIA CLASS
11 with all legally required off-duty, uninterrupted thirty (30) minute
12 meal breaks and the legally required off-duty rest breaks;

13 f. Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides
14 that when an employee is discharged or quits from employment, the
15 employer must pay the employee all wages due without abatement,
16 by failing to tender full payment and/or restitution of wages owed or
17 in the manner required by California law to the members of the
18 CALIFORNIA CLASS who have terminated their employment; and,

19 g. Violating Cal. Lab. Code § 2802 by failing to reimburse
20 PLAINTIFFS and the CALIFORNIA CLASS members with
21 necessary expenses incurred in the discharge of their job duties.

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

24 a. The persons who comprise the CALIFORNIA CLASS are so
25 numerous that the joinder of all CALIFORNIA CLASS Members is
26 impracticable and the disposition of their claims as a class will
27 benefit the parties and the Court;

28 b. Nearly all factual, legal, statutory, declaratory and injunctive relief

1 issues that are raised in this Complaint are common to the
2 CALIFORNIA CLASS and will apply to every member of the
3 CALIFORNIA CLASS;

4 c. The claims of the representative PLAINTIFFS are typical of the
5 claims of each member of the CALIFORNIA CLASS.
6 PLAINTIFFS, like all the other members of the CALIFORNIA
7 CLASS, were non-exempt employees paid on an hourly basis who
8 were subjected to the DEFENDANT's practice and policy which
9 failed to pay the correct amount of wages due to the CALIFORNIA
10 CLASS. PLAINTIFFS sustained economic injury as a result of
11 DEFENDANT's employment practices. PLAINTIFFS and the
12 members of the CALIFORNIA CLASS were and are similarly or
13 identically harmed by the same unlawful, deceptive, and unfair
14 misconduct engaged in by DEFENDANT; and,

15 d. The representative PLAINTIFFS will fairly and adequately represent
16 and protect the interest of the CALIFORNIA CLASS, and have
17 retained counsel who are competent and experienced in Class Action
18 litigation. There are no material conflicts between the claims of the
19 representative PLAINTIFFS and the members of the CALIFORNIA
20 CLASS that would make class certification inappropriate. Counsel
21 for the CALIFORNIA CLASS will vigorously assert the claims of
22 all CALIFORNIA CLASS Members.

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- i. 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; or,
 - ii. 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 fails to pay all wages due. Including the correct wages for all time worked by the members of the CALIFORNIA CLASS as required by law;
- c. Common questions of law and fact predominate 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:
- i. 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;

ii. Class certification will obviate the need for unduly duplicative litigation that would 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 DEFENDANT; and/or,

2. 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;

iii. 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,

iv. 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. Civ. Code § 382.

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

- a. The questions of law and fact common to the CALIFORNIA CLASS predominate over any question affecting only individual CALIFORNIA 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 CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- c. The members of the CALIFORNIA CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA CLASS before the Court;
- d. PLAINTIFFS, and the other CALIFORNIA CLASS Members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- e. There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA CLASS;
- f. There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;
- g. DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA CLASS as a whole;
- h. The members of the CALIFORNIA CLASS are readily ascertainable

1 from the business records of DEFENDANT. The CALIFORNIA
2 CLASS consists of all CALIFORNIA CLASS Members who worked
3 for DEFENDANT in California at any time during the
4 CALIFORNIA CLASS PERIOD; and,
5 i. Class treatment provides manageable judicial treatment calculated to
6 bring a efficient and rapid conclusion to all litigation of all wage and
7 hour related claims arising out of the conduct of DEFENDANT as to
8 the members of the CALIFORNIA CLASS.

9 **CLASS ACTION AND PAGA CLAIMS**

10 **FIRST CAUSE OF ACTION**

11 **For Unlawful Business Practices**

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

13 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**

14 57. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
15 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
16 Complaint.

17 58. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof. Code
18 § 17021. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines unfair
19 competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
20 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition
21 as follows:

22 Any person who engages, has engaged, or proposes to engage in unfair competition
23 may be enjoined in any court of competent jurisdiction. The court may make such
24 orders or judgments, including the appointment of a receiver, as may be necessary
25 to prevent the use or employment by any person of any practice which constitutes
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.

26 Cal. Bus. & Prof. Code § 17203.

27 59. By the conduct alleged herein, DEFENDANT has engaged and continues to engage
28 in a business practice which violates California law, including but not limited to, the applicable

1 Industrial Wage Order(s), the California Code of Regulations and the California Labor Code
2 including Sections 204, 210, 221, 226.7, 246, 510, 512, 1194, 1197, 1197.1, 1198, 2802 and the
3 Fair Labor Standards Act and federal regulations promulgated thereunder, for which this Court
4 should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as
5 may be necessary to prevent and remedy the conduct held to constitute unfair competition,
6 including restitution of wages wrongfully withheld.

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

12 61. By the conduct alleged herein, DEFENDANT's practices were deceptive and
13 fraudulent in that DEFENDANT's policy and practice failed to provide the legally mandated meal
14 and rest periods, the required amount of compensation for missed meal and rest periods and
15 overtime and minimum wages owed, failed to timely pay wages, and failed to reimburse all
16 necessary business expenses incurred, and failed to provide Fair Labor Standards Act overtime
17 wages due for overtime worked as a result of failing to include non-discretionary incentive
18 compensation into their regular rates of pay for purposes of computing the proper overtime pay due
19 to a business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code, and
20 Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, et seq., and
21 for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code
22 § 17203, including restitution of wages wrongfully withheld.

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

27 63. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair
28 and deceptive in that DEFENDANT's policies, practices and procedures failed to provide all legally

1 required meal breaks to PLAINTIFFS and the other members of the CALIFORNIA CLASS as
2 required by Cal. Lab. Code §§ 226.7 and 512.

3 64. Therefore, PLAINTIFFS demand on behalf of themselves and on behalf of each
4 CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which an off-duty meal
5 period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each
6 workday in which a second off-duty meal period was not timely provided for each ten (10) hours
7 of work.

8 65. PLAINTIFFS further demand on behalf of themselves and each member of the
9 CALIFORNIA CLASS, one (1) hour of pay for each workday in which an off duty paid rest period
10 was not timely provided as required by law.

11 66. PLAINTIFFS further demand on behalf of themselves and each member of the
12 CALIFORNIA CLASS, all wages earned but unpaid, including minimum wages and overtime.

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

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

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

12 **SECOND CAUSE OF ACTION**

13 **For Failure To Pay Minimum Wages**

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

15 **(By PLAINTIFFS and the CALIFORNIA CLASS**

16 **and Against All Defendants)**

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

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

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

26 75. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
27 commission is the minimum wage to be paid to employees, and the payment of a less wage than
28 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 wage practice of paying PLAINTIFFS and the other
4 members of the CALIFORNIA CLASS without regard to the correct amount of time they work.
5 As set forth herein, DEFENDANT's policy and practice was to unlawfully and intentionally deny
6 timely payment of wages due to PLAINTIFFS and the other members of the CALIFORNIA
7 CLASS.

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

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

18 80. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
19 PLAINTIFFS 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 CALIFORNIA CLASS PERIOD, DEFENDANT required, permitted or
22 suffered PLAINTIFFS and CALIFORNIA CLASS Members to work without paying them for all
23 the time they were under DEFENDANT's control. During the CALIFORNIA CLASS PERIOD,
24 PLAINTIFFS and the other members of the CALIFORNIA CLASS were paid less for time worked
25 that they were entitled to, constituting a failure to pay all earned wages.

26 82. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
27 compensation to PLAINTIFFS and the other members of the CALIFORNIA CLASS for the true
28 time they worked, PLAINTIFFS and the other members of the CALIFORNIA CLASS have

1 suffered and will continue to suffer an economic injury in amounts which are presently unknown
2 to them and which will be ascertained according to proof at trial.

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

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

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

1 **THIRD CAUSE OF ACTION**

2 **For Failure To Pay Overtime Compensation**

3 **[Cal. Lab. Code § 510]**

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

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

7
8 87. PLAINTIFFS 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 public
14 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 CALIFORNIA CLASS PERIOD, PLAINTIFFS and CALIFORNIA
24 CLASS Members were required, permitted or suffered by DEFENDANT to work for
25 DEFENDANT and were not paid for all the time they worked, including overtime work.

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

1 CLASS Members and denied accurate compensation to PLAINTIFFS and the other members of
2 the CALIFORNIA CLASS for overtime worked, including, the overtime work performed in excess
3 of eight (8) hours in a workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in
4 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 PLAINTIFFS 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. As a direct result of DEFENDANT's unlawful wage practices as alleged herein, the
11 PLAINTIFFS and the other members of the CALIFORNIA CLASS did not receive full
12 compensation for overtime worked.

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

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

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

1 evidenced by DEFENDANT's business records and witnessed by employees.

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

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

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

21 100. PLAINTIFFS and the other members of the CALIFORNIA CLASS therefore
22 request recovery of all overtime wages, according to proof, interest, statutory costs, as well as the
23 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California
24 Labor Code and/or other applicable statutes. To the extent minimum and/or overtime compensation
25 is determined to be owed to the CALIFORNIA CLASS Members who have terminated their
26 employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore
27 these individuals are also be entitled to waiting time penalties under Cal. Lab. Code § 203, which
28 penalties are sought herein on behalf of these CALIFORNIA CLASS Members. DEFENDANT's

1 conduct as alleged herein was willful, intentional and not in good faith. Further, PLAINTIFFS and
2 other CALIFORNIA CLASS Members are entitled to seek and recover statutory costs.

3 **FOURTH CAUSE OF ACTION**

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

5 **[Cal. Lab. Code §§ 226.7 & 512]**

6 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**

7 101. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
8 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
9 Complaint.

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

26 103. In addition, DEFENDANT often performed bag or security checks while
27 PLAINTIFFS and the CALIFORNIA CLASS MEMBERS were off the clock, including during
28 purported meal periods.

104. DEFENDANT further violates California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA CLASS Members who were not provided a meal 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 a meal period was not provided.

105. As a proximate result of the aforementioned violations, PLAINTIFFS and CALIFORNIA 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.

FIFTH CAUSE OF ACTION

For Failure to Provide Required Rest Periods

[Cal. Lab. Code §§ 226.7 & 512]

(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)

106. PLAINTIFFS, 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.

107. PLAINTIFFS and other CALIFORNIA CLASS Members were from time to time required to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees from time to time were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. PLAINTIFFS and other CALIFORNIA CLASS Members were also not provided with one hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFFS and other CALIFORNIA CLASS Members were periodically denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

108. DEFENDANT further violated California Labor Code §§ 226.7 and the applicable IWC Wage Order by failing to compensate PLAINTIFFS and CALIFORNIA CLASS Members

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

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

7 **SIXTH CAUSE OF ACTION**

8 **For Failure to Provide Accurate Itemized Statements**

9 **[Cal. Lab. Code § 226]**

10 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**

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

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

- 16 (1) gross wages earned,
- 17 (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
- 18 (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- 19 (3) the number of piece-rate units earned and any applicable piece rate if the employee is
paid on a piece-rate basis,
- 20 (4) all deductions, provided that all deductions made on written orders of the employee may
be aggregated and shown as one item,
- 21 (5) net wages earned,
- 22 (6) the inclusive dates of the period for which the employee is paid,
- 23 (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,
- 24 (8) the name and address of the legal entity that is the employer, and
- 25 (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.

26 112. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the other
27 members of the CALIFORNIA CLASS with complete and accurate wage statements which failed
28 to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides

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

16 113. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code §
17 226, causing injury and damages to PLAINTIFFS and the other members of the CALIFORNIA
18 CLASS. These damages include, but are not limited to, costs expended calculating the correct
19 wages for all missed meal and rest breaks and the amount of employment taxes which were not
20 properly paid to state and federal tax authorities. These damages are difficult to estimate.
21 Therefore, PLAINTIFFS and the other members of the CALIFORNIA CLASS may elect to recover
22 liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation
23 occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay period pursuant
24 to Cal. Lab. Code § 226, in an amount according to proof at the time of trial (but in no event more
25 than four thousand dollars (\$4,000.00) for PLAINTIFFS and each respective member of the
26 CALIFORNIA CLASS herein).

27 SEVENTH CAUSE OF ACTION

28 For Failure to Reimburse Employees for Required Expenses

1 [Cal. Lab. Code § 2802]

2 (By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)

3 114. PLAINTIFFS and the other CALIFORNIA CLASS members reallege and
4 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
5 Complaint.

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

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

12 116. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802, by
13 failing to indemnify and reimburse PLAINTIFFS and the CALIFORNIA CLASS members for
14 required expenses incurred in the discharge of their job duties for DEFENDANT's benefit.
15 DEFENDANT failed to reimburse PLAINTIFFS and the CALIFORNIA CLASS members for
16 expenses which included, but were not limited to, costs related to using their personal cellular
17 phones on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFFS and other
18 CALIFORNIA CLASS Members were required by DEFENDANT to use their personal cellular
19 phones and home offices in order to perform work related job tasks. DEFENDANT's policy and
20 practice was to not reimburse PLAINTIFFS and the CALIFORNIA CLASS members for expenses
21 resulting from using their personal cellular phones and home offices for DEFENDANT within the
22 course and scope of their employment for DEFENDANT. These expenses were necessary to
23 complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to
24 assert any waiver of this expectation. Although these expenses were necessary expenses incurred
25 by PLAINTIFFS and the CALIFORNIA CLASS members, DEFENDANT failed to indemnify and
26 reimburse PLAINTIFFS and the CALIFORNIA CLASS members for these expenses as an
27 employer is required to do under the laws and regulations of California.

28 117. PLAINTIFFS therefore demand reimbursement for expenditures or losses incurred
by themselves and the CALIFORNIA CLASS members in the discharge of their job duties for
DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the statutory

rate and costs under Cal. Lab. Code § 2802.

EIGHTH CAUSE OF ACTION

For Failure to Pay Wages When Due

[Cal. Lab. Code §§ 201, 202, 203]

(By Plaintiffs Medina, Janira Perez, Torres, Lomely, Carter, Cardenas, Jimmy Perez, and Joaldi Gonzalez and the CALIFORNIA CLASS and Against All Defendants)

118. Plaintiffs Medina, Janira Perez, Torres, Lomely, Carter, Cardenas, Jimmy Perez, and Joaldi Gonzalez and the other members of the CALIFORNIA CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior paragraphs of this Complaint.

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

As used in this article:

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

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

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

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

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. 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.

122. There was no definite term in Plaintiff Medina's, Plaintiff Janira Perez's, Plaintiff Torres's, Plaintiff Lomely's, Plaintiff Carter's, Plaintiff Cardenas's, Plaintiff Jimmy Perez's, Plaintiff Joaldi Gonzalez's or any CALIFORNIA CLASS Members' employment contract.

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

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

1 discharged or who quits, the wages of the employee shall continue as a penalty from
2 the due date thereof at the same rate until paid or until an action therefor is
3 commenced; but the wages shall not continue for more than 30 days.

4 124. The employment of Plaintiffs Medina, Janira Perez, Torres, Lomely, Carter,
5 Cardenas, Jimmy Perez, and Joaldi Gonzalez and many CALIFORNIA CLASS Members has
6 terminated and DEFENDANT has not tendered payment of all wages owed as required by law.

7 125. Therefore, as provided by Cal Lab. Code § 203, on behalf of themselves and the
8 members of the CALIFORNIA CLASS whose employment has terminated and who have not been
9 fully paid their wages due to them, Plaintiffs Medina, Janira Perez, Torres, Lomely, Carter,
10 Cardenas, Jimmy Perez, and Joaldi Gonzalez demand thirty days of pay as penalty for not paying
11 all wages due at time of termination for all employees who terminated employment during the
12 CALIFORNIA CLASS PERIOD and demands an accounting and payment of all wages due, plus
13 interest and statutory costs as allowed by law.

14 **NINTH CAUSE OF ACTION**

15 **For Failure to Pay Sick Pay Wages**

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

17 **(By PLAINTIFFS and the CALIFORNIA CLASS and Against All Defendants)**

18 126. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, reallege and
19 incorporate by reference, as though fully set forth herein, the prior paragraphs of this Complaint.

20 127. Cal Lab. Code § 233 provides that an employer must permit an employee to use
21 accrued sick leave in accordance with Cal Lab. Code § 246.5 at the employee's then current rate
22 of entitlement. Cal Lab. Code § 246 provides that an employee is entitled to sick pay wages for
23 use of accrued sick leave pursuant to Cal Lab. Code § 246.5. Specifically, once accrued sick
24 leave is used as paid sick time, an employee has a vested right to sick pay wages, which an
25 employer must calculate and compensate based on one of two calculations: (i) "Paid sick time for
26 nonexempt employees shall be calculated in the same manner as the regular rate of pay for the
27 workweek in which the employee uses paid sick time, whether or not the employee actually
28 works overtime in that workweek," or (ii) "Paid sick time for nonexempt employees shall be
calculated by dividing the employee's total wages, not including overtime premium pay, by the

1 employee's total hours worked in the full pay periods of the prior 90 days of employment." Under
2 Cal Lab. Code §§ 218 and 233, employees may sue to recover underpaid sick pay wages as
3 damages.

4 128. As a matter of policy and practice, DEFENDANT pays sick pay wages to
5 PLAINTIFFS and the other members of the CALIFORNIA CLASS at the incorrect rate of pay.
6 PLAINTIFFS and the other members of the CALIFORNIA CLASS regularly use accrued sick
7 leave in the workweeks in which they also earn non-hourly remuneration. As a matter of policy
8 and practice, DEFENDANT pays sick pay wages to PLAINTIFFS and the other members of the
9 CALIFORNIA CLASS at the base hourly pay, as opposed to the regular rate of pay, which would
10 consider all non-hourly remuneration in addition to base hourly wages, or the rate resulting from
11 dividing the employee's total wages, not including overtime premium pay, by the employee's
12 total hours worked in the full pay periods of the prior 90 days of employment. As a result,
13 DEFENDANT underpaid sick pay wages to PLAINTIFFS and the other members of the
14 CALIFORNIA CLASS.

15 129. Cal. Lab. Code § 204 provides that wages generally are due and payable twice
16 during each calendar month and are to be paid no later than the payday for the next regular
17 payroll period. Consistent with Cal. Lab. Code § 204, Cal. Lab. Code § 246 specifically requires
18 that, upon use of accrued sick leave, vested sick pay wages are due and to be paid no later than
19 the payday for the next regular payroll period after accrued sick leave is used as paid sick time.
20 Similarly, Cal. Lab. Code § 201 provides that if an employer discharges an employee, wages
21 earned and unpaid at the time of discharge are due and payable immediately. Cal. Lab. Code §
22 202 provides that an employee is entitled to receive all unpaid wages no later than 72 hours after
23 an employee quits his or her employment, unless the employee has given 72-hour notice of his or
24 her intention to quit, in which case the employee is entitled to his or her wages at the time of
25 quitting. The Labor Code penalizes untimely payments. For example, Cal. Lab. Code § 203
26 provides that if an employer willfully fails to pay wages owed in accordance with Cal. Lab. Code
27 §§ 201-202, then the wages of the employee shall continue as a penalty from the due date, and at
28 the same rate until paid, but the wages shall not continue for more than thirty (30) days. Likewise,

1 Cal. Lab. Code § 210 provides penalties for violations of Cal. Lab. Code § 204 and untimely
2 payments during employment. Under Cal. Lab. Code §§ 203, 210 and 218, employees may sue to
3 recover applicable penalties.

4 130. As alleged herein and as a matter of policy and practice, DEFENDANT routinely
5 underpays sick pay wages and thus did not timely pay PLAINTIFFS and the other members of
6 the CALIFORNIA CLASS all owing and underpaid sick pay wages. As a result, DEFENDANT
7 violates Cal. Lab. Code §§ 201-204, 210, 233, and 246, among other Labor Code provisions.

8 131. PLAINTIFFS are informed and believe that DEFENDANT was advised by skilled
9 lawyers and knew, or should have known, of the mandates of the Labor Code as it relates to
10 PLAINTIFFS' allegations, especially since the California Supreme Court has explained that
11 "[c]ourts have recognized that 'wages' also include those benefits to which an employee is
12 entitled as a part of his or her compensation, including money, room, board, clothing, vacation
13 pay, and sick pay." *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007)(emphasis
14 added).

15 132. Because DEFENDANT willfully fails to timely pay PLAINTIFFS and the other
16 members of the CALIFORNIA CLASS all sick pay wages due, DEFENDANT is subject to
17 applicable penalties.

18 133. Such a pattern, practice, and uniform administration of corporate policy is
19 unlawful and entitles PLAINTIFFS and the other members of the CALIFORNIA CLASS to
20 underpaid sick pay wages, including interest thereon, applicable penalties, attorney's fees, and
21 costs of suit.

22 **TENTH CAUSE OF ACTION**

23 **For Civil Penalties Under PAGA**

24 **[Cal. Lab. Code § 2698, *et seq.*]**

25 **(By PLAINTIFFS and the AGGRIEVED EMPLOYEES and Against All Defendants)**

26 134. PLAINTIFFS, and the other AGGRIEVED EMPLOYEES, reallege and
27 incorporate by reference, as though fully set forth herein, the prior paragraphs of this Complaint.

28

1 135. PLAINTIFFS provided timely written notice by certified mail to the Labor and
2 Workforce Development Agency (“LWDA”) and DEFENDANT of the specific violations of the
3 California Labor Code that DEFENDANT has violated and continues to violate, including the facts
4 and theories that supported each alleged violation. As set forth in the letters and herein,
5 PLAINTIFFS seek penalties for DEFENDANT’S violations of California Labor Code sections
6 201-204, 204b, 204.1, 204.2, 204.11, 205, 205.5, 210, 216, 218.5, 218.6, 221-224, 225.5, 226,
7 226.3, 226.7, 246, 510, 512, 516, 558, 1024.5, 1174, 1174.5, 1182.12, 1194, 1194.2, 1195, 1197,
8 1197.1, 1197.5, 1198, and 2802, violations of California Code of Regulations, Title 8, Section
9 11000, et seq., and violations of the applicable IWC Wage Order(s).

10 136. The LWDA did not provide notice of intention to investigate DEFENDANT’S
11 alleged violations within 65 calendar days of the notice. Labor Code section 2699.3(a)(2)A).
12 Thus, this action is timely.

13 137. Accordingly, PLAINTIFFS have exhausted all administrative procedures required
14 of them under Labor Code §§2698, 2699 and 2699.3, and as a result, are justified as a matter of
15 right in bringing forward this cause of action.

16 138. PLAINTIFFS are aggrieved employees as defined in Labor Code Section 2699(a).
17 They bring this cause of action on their own behalf and on behalf of all persons who are or were
18 employed as non-exempt employees, however titled, in Defendants’ distribution or warehouse
19 facilities during the liability period.

20 139. Pursuant to Labor Code section 2698 et seq and 2699(a) PLAINTIFFS seeks to
21 recover civil penalties for which DEFENDANT is liable due to numerous Labor Code and Wage
22 Order violations as set forth in this complaint.

23 140. Specifically, PLAINTIFFS seek penalties under Labor Code §2699, for, without
24 limitation, the following:

- 25 a. DEFENDANT’S failure to comply with the requirement of Labor
26 Code 1194, 1197, 1198, and Wage Order 7-2001 and 9-2001 to pay
27 at least minimum wage for each hour worked;
28

- 1 b. DEFENDANT's failure to comply with the requirement of Labor
2 Code § 510, 1194, 1197, 1198, and Wage Order 7-2001 and 9-2001
3 to pay all wages properly and accurately pay overtime wages;
- 4 c. DEFENDANT's failure to comply with the requirement of Labor
5 Code §216 to pay wages after demand was made by Plaintiffs;
- 6 d. DEFENDANT's failure to comply with the requirements of Labor
7 Code §§204, 204b, and 210 to pay, without condition and within the
8 time set by the applicable article, all wages, or parts thereof, which
9 DEFENDANT conceded to be due;
- 10 e. DEFENDANT's failure to comply with the requirement of Labor
11 Code §225.5 to pay wages due;
- 12 f. DEFENDANT's failure to comply with the requirement of Labor
13 Code §§201 and 202 to pay wages due to former employees;
- 14 g. DEFENDANT's failure to comply with the requirement of Labor
15 Code §203 to pay waiting time penalties to former employees;
- 16 h. DEFENDANT's failure to comply with the requirement of Labor
17 Code §512 and IWC Wage Order 7-2001 and 9-2001 to provide first
18 and second thirty (30) minute uninterrupted meal breaks as required
19 by law;
- 20 i. DEFENDANT's failure to comply with the requirement of Labor
21 Code §226.7, 1198, and IWC Wage Order 7-2001 and 9-2001 to
22 authorize and permit ten (10) minute rest breaks;
- 23 j. DEFENDANT's failure to comply with the requirement of Labor
24 Code §226.7, 1198, and IWC Wage Order 7-2001 and 9-2001 to pay
25 one hour of premium pay for each statutorily required rest break that
26 was not authorized and permitted;
- 27 k. DEFENDANT's failure to comply with the requirement of Labor
28 Code §226.7 and IWC Wage Order 7-2001 and 9-2001 to pay one

- 1 hour of premium pay for each statutorily required meal period that
2 was not timely and properly provided;
- 3 l. DEFENDANT's failure to maintain required records in violation of
4 Labor Code § 226, 1174, and Wage Order 7-2001 and 9-2001;
- 5 m. DEFENDANT's failure to provide accurate compliant wage
6 statements under Labor Code § 226;
- 7 n. DEFENDANT's failure to include sick leave pay on the itemized
8 wage statement in violation of Labor Code section 246.
- 9 o. DEFENDANT's failure to pay sick leave pay to PLAINTIFFS and
10 the AGGRIEVED EMPLOYEES at the regular rate in violation of
11 Labor Code section 246.
- 12 p. DEFENDANT's unlawful background/credit checks in violation of
13 Labor Code section 1024.5.
- 14 q. DEFENDANT's failure to pay all vested vacation wages upon
15 termination in violation of Labor Code section 227.3.
- 16 r. DEFENDANT's unlawful deductions from the wages of
17 AGGRIEVED EMPLOYEES in violation of Labor Code section
18 221-224.
- 19 s. DEFENDANT's failure to provide suitable seating to AGGRIEVED
20 EMPLOYEES in violation of Labor Code section 1198, the IWC
21 Wage Order, and California Code of Regulations, Title 8, Section 1
22 1070 (14).

23

24 141. As a result of the acts alleged above, PLAINTIFFS seek penalties under Labor Code
25 §§2698 and 2699 because of DEFENDANT'S violation of numerous provisions of the California
26 Labor Code and IWC Wage Orders.

27 142. As a result of the acts alleged above, PLAINTIFFS seeks penalties under Labor
28 Code §§2698 and 2699 because of DEFENDANT's violation of numerous provisions of the

1 California Labor Code and IWC Wage Orders. Plaintiffs seeks civil penalties for DEFENDANT's
2 violation of Labor Code provisions for which a civil penalty is specifically provided, including but
3 not limited to the following:

- 4 a. Pursuant to Labor Code § 210, for violations of Labor Code § 204,
5 DEFENDANT is subject to a civil penalty in the amount of one
6 hundred dollars (\$100) for the initial violation for each failure to pay
7 each employee and two hundred (\$200) per employee for violations
8 in subsequent pay periods.
- 9 b. Pursuant to Labor Code § 226.3, for violations of Labor Code §
10 226(a), DEFENDANT is subject to a civil penalty in the amount of
11 two hundred and fifty dollars (\$250) per aggrieved employee for the
12 initial pay period where a violation occurs and one thousand dollars
13 (\$1,000) per aggrieved employee for violations in subsequent pay
14 periods.
- 15 c. Pursuant to Labor Code § 558(a), "[a]ny employer or other person
16 acting on behalf of an employer who violates, or causes to be
17 violated, a section of this chapter or any provision regulating hours
18 and days of work in any order of the Industrial Welfare
19 Commission," including Labor Code §§ 510 and 512, shall be subject
20 to a civil penalty, in addition to any other penalty provided by law,
21 of fifty dollars (\$50) for initial violations for each underpaid
22 employee for each pay period for which the employee was underpaid
23 and one hundred dollars (\$100) for each subsequent violation for
24 each underpaid employee for each pay period for which the
25 employee was underpaid.
- 26 d. Pursuant to Labor Code § 1174.5, for violations of Labor Code §
27 1174(d), DEFENDANT is subject to a civil penalty of five hundred
28 dollars (\$500).

1 e. Pursuant to Labor Code § 1197.1, an employer who pays or causes
2 to be paid to any employee a wage less than the minimum fixed by
3 an order of the commission, shall be subject to a civil penalty as
4 follows: for any initial violation that is intentionally committed, one
5 hundred dollars (\$100) for each underpaid employee for each pay
6 period for which the employee is underpaid; and for each subsequent
7 violation of the same offense, two hundred fifty dollars (\$250) for
8 each underpaid employee for each pay period for which the
9 employee is underpaid regardless of whether the initial violation was
10 intentionally committed.

11 143. Under Labor Code §2699(f), PLAINTIFFS and the AGGRIEVED EMPLOYEES
12 are entitled to \$100 for any initial violation and \$200 for all subsequent violations of the above-
13 mentioned provisions of the California Labor Code for which no other civil penalty is specifically
14 provided.

15 144. Under Labor Code §2699, PLAINTIFFS and the AGGRIEVED EMPLOYEES
16 should be awarded twenty-five percent (25%) of all penalties due under California law, as well as
17 interest, attorneys' fees and costs.

18 145. Under Labor Code §2699, the State of California should be awarded seventy-five
19 percent (75%) of the penalties due under California law.

20
21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFFS pray judgment against Defendants, jointly and severally, as
3 follows:

4 1. On behalf of the CALIFORNIA CLASS:

- 5 A. That the Court certify the First Cause of Action asserted by the
6 CALIFORNIA CLASS as a class action pursuant to Cal. Civ. Code § 382;
7 B. An order temporarily, preliminarily and permanently enjoining and
8 restraining DEFENDANT from engaging in similar unlawful conduct as set
9 forth herein;
10 C. An order requiring DEFENDANT to pay all wages and all sums unlawfully
11 withheld from compensation due to PLAINTIFFS and the other members of
12 the CALIFORNIA CLASS; and,
13 D. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid
14 fund for restitution of the sums incidental to DEFENDANT's violations due
15 to PLAINTIFFS and to the other members of the CALIFORNIA CLASS.

16 2. On behalf of the CALIFORNIA CLASS:

- 17 A. That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh,
18 Eighth and Ninth Causes of Action asserted by the CALIFORNIA CLASS
19 as a class action pursuant to Cal. Civ. Code § 382;
20 B. Compensatory damages, according to proof at trial, including compensatory
21 damages for minimum and overtime compensation due PLAINTIFFS and
22 the other members of the CALIFORNIA CLASS, during the applicable
23 CALIFORNIA CLASS PERIOD plus interest thereon at the statutory rate;
24 C. The greater of all actual damages or fifty dollars (\$50) for the initial pay
25 period in which a violation occurs and one hundred dollars (\$100) per each
26 member of the CALIFORNIA CLASS for each violation in a subsequent
27 pay period, not exceeding an aggregate penalty of four thousand dollars
28 (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;

1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs, on behalf of the Classes, respectfully demand a jury trial in this matter to the
3 fullest extent available under the law.

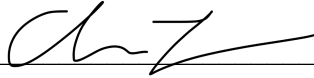
4 Respectfully submitted,

5
6
7 Dated: June 3, 2024



8 Kyle Nordrehaug
9 **BLUMENTHAL NORDREHAUG**
10 **BHOWMIK DE BLOUW LLP**
11 Attorneys for Plaintiffs

12
13 Dated: June 3, 2024



14 **JAMES HAWKINS, APLC**
15 James R. Hawkins, Esq.
16 Christina M. Lucio, Esq.
17 Mitchell J. Murray, Esq.

18 Attorneys for Plaintiffs

19 Dated: June 3, 2024

20 **HAINES LAW GROUP, APC**
21 Paul K. Haines
22 Fletcher W. Schmidt
23 Matthew K. Moen
24 Attorney for Plaintiffs

1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs, on behalf of the Classes, respectfully demand a jury trial in this matter to the
3 fullest extent available under the law.

4
5 Respectfully submitted,

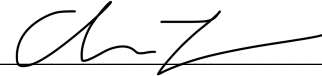
6
7 Dated: June 3, 2024

8 **BLUMENTHAL NORDREHAUG BHOWMIK**
9 **DE BLOUW LLP**

10 Norman Blumenthal, Esq.
11 Nicholas De Blouw, Esq.

12 Attorneys for Plaintiffs

13 Dated: June 3, 2024

14 

15 **JAMES HAWKINS, APLC**

16 James R. Hawkins, Esq.
17 Christina M. Lucio, Esq.
18 Mitchell J. Murray, Esq.

19 Attorneys for Plaintiffs

20 Dated: June 3, 2024

21 

22 **HAINES LAW GROUP, APC**

23 Paul K. Haines
24 Fletcher W. Schmidt
25 Matthew K. Moen
26 Attorney for Plaintiffs

PROOF OF SERVICE, COUNTY OF ORANGE

I am a resident of the State of California, County of Orange. I am over the age of eighteen years and not a party to the within action. My business address is 9880 Research Drive., Suite 200, Irvine, California 92618.

On July 9, 2024, I served on the interested parties in this action the following document(s) entitled:

SECOND AMENDED COMPLAINT

[XX] BY ELECTRONIC SERVICE: Based on a court Order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent from the email address irma@jameshawkinsaplc.com to the persons at the e-mail addresses listed in the Service List below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

SERVICE LIST

PLEASE SEE PAGE ATTACHED

[XX] STATE: I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct.

Executed on July 9, 2024, at Irvine, California.


IRMA CEJA

SERVICE LIST

Norman B. Blumenthal, Esq.
Kyle R. Nordrehaug, Esq.
Aparajit Bhowmik, Esq.
Nicholas J. De Blouw, Esq.
BLUMENTHAL NORDREHAUG
BHOWMIK DE BLOUW LLP
2255 Calle Clara
La Jolla, CA 92037
Tel: 858-551-1223
Fax: 858-551-1232
Norm@bamlawca.com
kyle@bamlawca.com
DeBlouw@bamlawca.com
Piya@bamlawca.com
Attorneys for Plaintiff

Paul K. Haines, Esq.
Fletcher W. Schmidt, Esq.
Matthew K. Moen, Esq.
Susan J. Perez, Esq.
HAINES LAW GROUP, APC
2155 Campus Dr., Suite 180
El Segundo, CA 90245
Tel: 4224-292-2350
Fax: 424-292-2355
phaines@haineslawgroup.com
fschmidt@haineslawgroup.com
mmoen@haineslawgroup.com
sperez@haineslawgroup.com
Attorneys for Plaintiff

Julie A. Dunne, Esq.
Matthew Riley, Esq.
Alberto Corona, Esq.
DLA PIPER LLP (US)
401 B Street, Suite 1700
San Diego, CA 92101
Tel: (619) 699-2700
Fax: (619) 699-2701
Julie.dunne@us.dlapiper.com
Matthew.riley@us.dlapiper.com
Alberto.corona@us.dlapiper.com