

22STCV34255

SUM-100**SUMMONS**
(CITACION JUDICIAL)**FOR COURT USE ONLY**
(SOLO PARA USO DE LA CORTE)**NOTICE TO DEFENDANT:**
(AVISO AL DEMANDADO):

U.S. FOODS, INC.,

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

RUBEN RODRIGUEZ, individually and on behalf of all others similarly situated,

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Stanley Mosk Courthouse

111 North Hill, Los Angeles, CA 90012

CASE NUMBER:
(Número del Caso):**22STCV34255**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Jean-Claude Lapuyade, Esq., JCL Law Firm, APC, 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121, T: (619) 599-8292

DATE: 10/25/2022

(Fecha)

Clerk, by Sherri R. Carter Executive Officer / Clerk of Court, Deputy
(Secretario) **G. Carini** (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

**NOTICE TO THE PERSON SERVED:** You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

Electronically FILED by Superior Court of California, County of Los Angeles on 10/25/2022 02:04 PM Sherri R. Carter, Executive Officer/Clerk of Court, by G. Carini, Deputy Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

RUBEN RODRIGUEZ, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

U.S. FOODS, INC.,

Defendant.

Case No.: **22STCV34255**

**CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE CALIFORNIA
LABOR CODE AND COMPLAINT FOR
VIOLATIONS OF PRIVATE
ATTORNEYS GENERAL ACT, CAL.
LAB. CODE §2698, et seq.**

JURY TRIAL DEMANDED

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Attorneys for Plaintiff and Proposed Class

1 Plaintiff, RUBEN RODRIGUEZ (“Plaintiff”), individually and on behalf of all others
2 similarly situated, by and through his attorneys, hereby brings this Class Action Complaint against
3 Defendant, U.S. FOODS, INC., (hereinafter referred to as “Defendant”), and states as follows:

4 **INTRODUCTION**

5 1. This is a class action brought by Plaintiff, individually and on behalf of all similarly
6 situated persons employed by Defendant, arising, *inter alia*, from Defendant’s willful violations
7 of the California Labor Code (“Labor Code”), the California Industrial Welfare Commission
8 (“IWC”) Wage Order No. 4, and the California Business & Professions Code §§ 17200, *et seq.*

9 2. Defendant engages in the sale and distribution of wholesale groceries and other
10 related products.

11 3. Defendant directly employed Plaintiff and similarly situated non-exempt, hourly
12 employees as Warehouse Selectors (“Selectors”) in California, who were in charge of picking the
13 food for shipment.

14 4. Plaintiff and similarly situated Selectors are and were employed by Defendant at
15 its warehouses throughout the United States, including in California.

16 5. Plaintiff and the Selectors all share similar job duties, training, compensation plans,
17 working hours, job descriptions, and job requirements, among other working conditions.

18 6. Plaintiff and the Selectors are all exposed to extreme and dangerous temperatures
19 while working for Defendant on each shift.

20 7. Defendant requires Plaintiff and the Selectors to wear company-issued uniforms
21 and safety equipment during their work shifts in order to maintain the quality and safety of its food
22 products, to ensure continuity of operations by minimizing onsite accidents and injuries, and to
23 comply with government food safety regulations and mandates.

24 8. The company-issued uniform includes zero-below suits and beanies.

25 9. The company-issued safety equipment includes facemasks, gloves, and radios.

26 10. Additionally, all employees are required to wear steel-toed safety shoes while
27 working in Defendant’s warehouses.

28 11. Defendant requires Plaintiff and the Selectors to change into (“don”) their steel-

1 toed safety shoes and company-issued zero-below suits and safety equipment before the start of
2 their scheduled shifts and to change out of (“doff”) their company-issued uniform and safety
3 equipment after the end of their shifts.

4 12. The process of donning and doffing company-issued uniforms and safety
5 equipment is compensable because Defendant requires Plaintiff and the Selectors to wear
6 company-issued uniform and safety equipment during their work shift and to don and doff the PPE
7 at Defendant’s worksite.

8 13. Additionally, the company-issued uniform and safety equipment are an integral and
9 indispensable part of Plaintiff’s and the Selectors principal work activities, as Plaintiff and the
10 Selectors cannot safely perform their assigned duties without wearing these items.

11 14. Defendant provides Plaintiff and the Selectors with assigned work lockers so they
12 can store their company-issued safety equipment in their work lockers and don and doff their
13 equipment at the worksite.

14 15. Plaintiff and the Selectors spent substantial amounts of time before each shift
15 donning the company-issued safety equipment and walking several hundred yards from the locker
16 room to the clock-in stations.

17 16. Plaintiff and the Selectors spend substantial amounts of time at the end of each shift
18 clocking-out and walking several hundred yards to the company-provided lockers where they doff
19 their company-provided uniforms and safety gear before leaving the premises.

20 17. Plaintiff and the Selectors repeat the same donning of the company-provided
21 uniform and safety gear when returning from all meal breaks.

22 18. Defendant pays Plaintiff and the Selectors based on their scheduled shift start and
23 end times (e.g., 5:00 a.m. to 5:00 p.m.), not the time that Plaintiff and the Selectors perform the
24 first and last principal activities of their workday.

25 19. Consequently, Defendant does not pay Plaintiff and the Selectors for their
26 mandatory and compensable pre-shift work activities, post-shift activities, including donning and
27 doffing the company-issued safety equipment, walking several hundred yards to and from the
28 locker room to the clock-in/out station. This policy and practice results in Defendant not paying

1 Plaintiff and the Selectors for all time worked, including overtime. It also results in missed or
2 shortened meal breaks.

3 20. The individuals Plaintiff seeks to represent in this action are current and former
4 Selectors who work(ed) for Defendant at its California warehouse facilities and who are/were
5 required to don and doff protective clothing and safety gear before the start of and after the end of
6 their work shifts.

7 21. Defendant knew or could have easily determined how long it takes Plaintiff and the
8 Selectors to complete the mandatory pre-shift process of donning their company-issued uniform
9 and safety equipment, walking several hundred yards from the locker room to the clock-in station,
10 and repeating this process after every meal break; and Defendant could have easily paid Plaintiff
11 and the Selectors for this pre-shift work, but deliberately chose not to.

12 22. Defendant knew or could have easily determined how long it takes Plaintiff and the
13 Selectors to complete the mandatory post-shift process of clocking out, walking several hundred
14 yards to the lockers, doffing the company issued uniforms and safety equipment, and finally
15 exiting the warehouse; and Defendant could have easily paid Plaintiff and the Selectors for this
16 post-shift work, but deliberately chose not to.

17 23. Plaintiff seeks a declaration that his rights, and the rights of the other Selectors were
18 violated, and an award of unpaid wages, an award of liquidated damages, injunctive relief and
19 declaratory relief, attendant penalties, and an award of attorneys' fees and costs to make them
20 whole for damages they suffered, and to ensure that they and future workers will not be subjected
21 by Defendant to such illegal conduct in the future.

22 **JURISDICTION AND VENUE**

23 24. This Court has subject matter jurisdiction over this class action. Plaintiff is a
24 California citizen and asserts claims arising under California state law.

25 25. This Court has personal jurisdiction over Defendant because it conducts business
26 in California, employs individuals in California, has caused injuries in California, and generally
27 engages in substantial activities in California.

28 26. This Court is also a proper venue for this action because Defendant employed

1 Selectors in Los Angeles County and a substantial portion of the events forming the basis of this
2 suit (including implementation of the illegal pay practices alleged herein) occurred in Los Angeles
3 County.

4 **PARTIES**

5 27. Plaintiff, Ruben Rodriguez, is a resident of San Bernardino County, California, and
6 was employed by Defendant as an Overnight Warehouse Selector in La Mirada, California within
7 the last four years. In that position, he regularly worked 40 hours per week and he was compensated
8 pursuant to an hourly wage, most recently at the rate of \$31.00 per hour.

9 28. Defendant, U.S. Foods, Inc., is a Delaware corporation organized and existing
10 under the laws of the State of Delaware, and transacting business throughout the State of
11 California, including in Los Angeles County. At all relevant times, Defendant was the “employer”
12 of Plaintiff within the meaning of all applicable state laws and statutes.

13 29. Defendant is registered with the California Secretary of State to do business in
14 California and can be served at its Agent for Service of Process, CSC – Lawyers Incorporating
15 Service (C2413079) at 2710 Gateway Oaks Drive, Suite 150N, Sacramento, California, 958333.

16 30. Defendant’s principal executive office is located at 9399 West Higgins Road, Suite
17 100, Rosemont, Illinois, 60018.

18 31. According to Defendant’s own website,

19 As a restaurant supplier for La Mirada and over 300,000 operations across the
20 country, US Foods® helps chefs and operators make it with innovative food,
21 Exclusive Brands and game-changing ideas. We proudly provide the business tools,
22 services and industry expertise that makes us one of the most trusted food
23 distributors in La Mirada, CA.

24 *<https://www.usfoods.com/locations/restaurant-supplier-in-los-angeles--ca.html>*. (last visited on
25 October 14, 2022).

26 32. Upon information and belief, Defendant employed hundreds of Warehouse
27 Selectors—including Plaintiff—in California during the last four years to perform services which
28 include: working in a multi-temperature environment ranging from -12 degrees to over 100
degrees, lifting, carrying, pushing, and pulling product weighing 20-100 lbs. repetitively, moving
1,500 plus cases of product during each shift, selecting customer orders, pre-shift equipment

1 checks, operating an electric pallet, moving products from racks to pallets, delivering product to
2 the docking area, shrink wrapping palletized orders, clearing aisles of debris, stacking empty
3 pallets, and returning pallet jacks to the charging area.

4 **GENERAL ALLEGATIONS**

5 **A. Defendant's Operations and Distribution Centers**

6 33. Defendant is an American foodservice distributor, partnering with approximately
7 300,000 restaurants and foodservice operators. Through distribution centers throughout the
8 country and some 78,000 employees, Defendant effectuates distribution of fresh meats, appetizers,
9 prepared meals, and frozen foods to educational institutions, restaurants, healthcare, hospitality,
10 government sectors, and more recently several large food retailers, such as The Kroger Co.
11 Defendant generates more than \$28 billion in annual revenue.

12 34. Defendant employs non-exempt, hourly Selectors who are responsible for the safe
13 operations and basic maintenance of Defendant's highly intricate distribution process directed by
14 order-selecting software and equipment.

15 35. Defendant has the authority to hire and terminate Plaintiff and the Selectors; to set
16 work rules and conditions governing Plaintiff and the Selectors; to supervise their daily
17 employment activities

18 36. Plaintiff and the Selectors are required to exercise considerable care in preparing
19 the orders that sustain Defendant's business, reviewing information, carefully moving products,
20 making independent and informed decisions and operating equipment safely and efficiently to
21 ensure the continuity of operations.

22 37. Plaintiff and the Selectors are and were employed by Defendant at its distribution
23 centers located in the state of California in the following cities: Corona; Fontana; La Mirada; Los
24 Angeles; San Francisco; McClellan; Tracy; and San Diego.

25 38. Defendant directly hired and paid wages and benefits to Plaintiff and the Selectors.

26 39. Plaintiff is informed and believes, and based thereon alleges that, at all relevant
27
28

1 times, Defendant was advised by skilled lawyers and other professionals, employees, advisors, and
2 consultants highly knowledgeable about California wage law, employment and personnel
3 practices.

4 40. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
5 or should have known that Plaintiff and the Selectors were entitled to receive certain wages for all
6 work performed.

7 41. Pursuant to state and federal regulations and Defendant's own internal policies and
8 procedures, Plaintiff and the Selectors are required to wear company-issued protective gear and
9 equipment to prevent injuries from occurring when selecting and packing Defendant's food items
10 for distribution.

11 **B. Defendant Requires Plaintiff and the Selectors to Wear Steel-Toed Safety Shoes and**
12 **Company-Issued Zero-Below Suits and Safety Equipment during their Work Shift**

13 42. Plaintiffs and the Selectors all share similar job duties, job titles, training,
14 compensation plans, working hours, job descriptions and job requirements, among other things.

15 43. Plaintiff and the Selectors are all exposed to dangerous working conditions on a
16 daily basis.

17 44. While performing their job duties, Plaintiff and the Selectors are frequently exposed
18 to the risk of heavy machinery, heavy boxes, and a multi-temperature environment ranging from
19 below freezing to over 100 degrees.

20 45. Due to the dangerous nature of their operations, Defendant requires Plaintiff and
21 the Selectors to utilize company-issued protective clothing and safety gear during their work shifts
22 in order to protect Plaintiff and the Selectors from suffering the consequences, which are
23 potentially permanent, of prolonged exposure to negative temperatures and other potential injuries
24 from falling boxes and heavy machinery.

25 46. Defendant requires Plaintiff and the Selectors to wear company-issued uniforms
26 and safety equipment during their work shifts in order to maintain the quality and accuracy of their
27 orders and to ensure the continuity of operations by minimizing onsite accidents and injuries.
28 Mandatory gear includes, but is not limited to, company-issued zero-below suits, beanies, gloves,

1 facemasks, steel-toed shoes, and RF scanners.

2 47. The company-issued zero-below suits and hi-viz beanies and bibs. These include a
3 pair of pants lined with a type of foil and weighing about 5-8 lbs. designed to keep the employee
4 warm.

5 48. Additionally, all employees are required to wear steel-toed safety shoes while
6 working in the distribution center.

7 49. Defendant requires Plaintiff and the Selectors to don and doff their steel-toed safety
8 shoes and the company-issued uniforms and safety equipment before and after of their scheduled
9 work shifts.

10 50. Defendant provides Plaintiff and the Selectors with two (2) assigned work lockers
11 so that they can store their company-issued uniforms and safety equipment in their work lockers
12 and don the equipment at the worksite.

13 51. Defendant prohibits Plaintiff and the Selectors from entering the work floor without
14 wearing their steel-toed safety shoes and the company-issued protective clothing and safety
15 equipment.

16 52. Defendant prohibits Plaintiff and the Selectors from leaving the locker room and
17 walking to the distribution area without wearing their company-issued protective clothing and
18 steel-toed safety shoes.

19 53. Defendant prohibits Plaintiff and the Selectors from entering certain areas of the
20 distribution center, including the zero-below freezer, without wearing the appropriate protective
21 gear.

22 54. Plaintiff and the production employees spend substantial amounts of time each day
23 donning and doffing their steel-toed safety shoes and the company-issued protective clothing and
24 safety equipment and walking to and from the locker room and the distribution area before and
25 after their work shifts, and after their meal breaks.

26 55. Defendant, however, does not pay Plaintiff and the Selectors for all of this time.
27
28

1 56. Instead, Defendant pays Plaintiff and the Selectors based on their actual clock-in
2 and clock-out times, not the time that Plaintiff and the Selectors perform their first and last
3 principal activities of the workday.

4 57. Consequently, Defendant does not pay Plaintiff and the Selectors for all
5 compensable time, including overtime.
6

7 **C. Pre-Shift Donning and Walking Activities**

8 58. At the beginning of each work day, prior to the start of paid time, Plaintiff and
9 Selectors spend substantial amounts of time, for which they are not compensated, waiting in line
10 for Covid-19 Screenings, donning their required gear, walking to the time clock station, and
11 performing other work activities. Because of the various work activities that must be performed
12 prior to the start of the continually paid time, employees are regularly forced to arrive at the plant
13 well before the start of their shifts and are not credited for all time-spent working on behalf of the
14 Defendant.

15 59. Before their scheduled shifts and before beginning their distribution activities,
16 Plaintiff and the Selectors are required to undertake the following essential tasks in chronological
17 order:

- 18 • Upon arriving at the facility, Plaintiff and the Selectors enter through a door that brings
19 them into the dry side of the warehouse;
- 20 • Plaintiff and Selectors walk through the entire dry warehouse, approximately fifteen (15)
21 aisles of product, to get to the next door.;
- 22 • At the next door Plaintiff and Selectors must quickly walk through the cooler section of
23 the warehouse, approximately six (6) aisles of product, to arrive at the middle are of the
24 warehouse where the office and breakroom are located;
- 25 • Plaintiff first retrieves from the office off the left side of the breakroom, batteries for his
26 RF scanner and takes them and his scanner to his pallet jack;
- 27 • Plaintiff then returns to the breakroom and enters the locker room off to the right side.
- 28 • After entering the locker room, Plaintiff and the Selectors unlock their lockers, remove
their personal clothing or items necessary and their shoes and stow the items in their locker,
and then put on their company-issued protective clothing which includes a zero-below suit
and bib, hi-viz beanie, and company-issued safety equipment which includes a facemask,

1 gloves, and steel-toed safety shoes;

- 2 • After readying and donning their protective clothing, Plaintiff and the Selectors must close
- 3 and lock their locker, and then walk to retrieve their pallet jack and RF scanner;
- 4 • After donning their company provided RF scanner and retrieving the pallet jack, the
- 5 Plaintiff and the Selectors then walk to the distribution area to clock-in;
- 6 • Upon arriving at the clock-in station, the Plaintiff and the Selectors must wait in line to
- 7 clock-in to begin their shift.

8 60. The mandatory pre-shift process of donning the company-issued safety equipment
9 and walking from the locker room to the clock-in station and distribution center takes substantial
10 time on a daily basis, in the range of 15-30 minutes per shift.

11 61. Consequently, Plaintiff and the Selectors must arrive to work approximately 30
12 minutes *before* their scheduled start times in order to don their company-issued safety equipment
13 and walk several hundred yards from the locker room to the time clock station and distribution
14 center in time for the start of their shift.

15 62. This policy results in Plaintiffs and the Selectors performing unpaid pre-shift work
16 in the range of 15-30 minutes per shift.

17 **D. Meal Period Off-the-Clock Work**

18 63. California Labor Code §512 and Industrial Welfare Commission (“IWC”) Wage
19 Order No. 4 § 11 (A) provide that an employer may not employ a person for a work period of more
20 than five (5) hours without providing the employee with a meal period of not less than thirty (30)
21 minutes, and may not employ an employee for a work period of more than ten (10) hours per day
22 without providing the employee with a second meal period of not less than (30) minutes. Unless
23 the employee is relieved of all duty during a 30-minute meal period, the meal period shall be
24 considered an “on duty” meal period and counted as time worked.
25

26 64. Upon returning to work from their scheduled meal period, Plaintiff and the
27 Selectors are required to undertake the following essential tasks in chronological order:
28

- Plaintiff and Selectors first return where they parked their pallet jack and left their RF scanners;
- Upon retrieving the pallet jack and RF scanner, Plaintiff and the Selectors don all their company-issued safety equipment;
- Plaintiff and the Selectors then drive their pallet jacks across the warehouse to the clock-in station and wait to clock back in from their meal period.

65. Defendant's policy and practice uniformly failed to afford Plaintiff and the Selectors the opportunity to take legally compliant meal breaks, as a result of requiring work duties to be performed during the 30-minute unpaid break. Similarly, all Selectors were required to leave dining areas several minutes prior to the conclusion of their 30-minute meal period in order to allow them sufficient time to don their company-issued safety equipment, walk back to the time-clock stations and wait to clock-in. Therefore, Plaintiff and the Selectors were not provided with the opportunity to take and enjoy legally compliant, duty free, 30-minute meal periods.

66. Defendant's practice of requiring employees to perform work during their legally mandated meal periods without premium compensation is a violation of Labor Code §§ 226.7 and 512, and IWC Wage Order No. 5 §§ 11(A) & 12(A).

67. Plaintiff is informed and believes Defendant did not properly maintain records pertaining to when Plaintiff and the Selectors began and ended each meal period, in violation of Labor Code § 1174 and IWC Wage Order No. 4 § 7(A)(3).

68. As a result of Defendant's knowing, willful, and intentional failure to provide legally mandated meal breaks, Plaintiff and the Selectors are entitled to recover civil penalties, reasonable attorneys' fees, and costs pursuant to Labor Code §§ 218.5 and 558.

E. Post-Shift Donning and Walking Activities

69. After completing their distribution activities, Plaintiff and the Selectors are required to undertake the following essential work tasks in chronological order:

- Leave the distribution area and walk to the time clock station and clock-out;

- 1 • Leave the time clock station and embark on a four to five minute walk to the locker room;
- 2 • After entering the locker room, Plaintiff and the Selectors must walk to their locker stall,
- 3 unlock their locker and doff their company-issued protective clothing and company-issued
- 4 safety equipment;
- 5 • After removing their protective clothing, Plaintiff and Selectors must remove and change
- 6 into any personal clothing or items and stow their company –issued protective gear in their
- 7 locker;
- 8 • After changing into their clothes, Plaintiff and Selectors must close their locker door, lock
- 9 their locker, and exit the locker room door;

10 70. The post-shift walking and doffing process takes substantial time on a daily basis,

11 ranging from 10-15 minutes per shift.

12 71. At the end of the day – and after the conclusion of paid time by Defendant – Plaintiff

13 and Selectors are required to doff and return their company-provided uniform and safety-gear to

14 their lockers without the overtime pay to which they are entitled under California Law.

15 72. Plaintiff and the Selectors are not properly paid for this time because Defendant

16 does not permit the Selectors to leave the distribution center area until 5 minutes before the their

17 scheduled work shifts end, meaning that Plaintiff and Selectors perform post-shift work in the

18 range of 5-10 minutes per shift.

19 **F. Inaccurate Wage Statements and Recordkeeping**

20 73. Pursuant to California law, Defendant is required to furnish to Plaintiff an accurate

21 wage statement showing “the total hours worked by the employee...” Cal. Labor Code § 226(a)(2).

22 Similarly, Defendant is also required to “keep, at a central location in the state or at the plants or

23 establishments at which employees are employed, payroll records showing the hours worked daily

24 by and the wages paid to, and the number of piece-rate units earned by and any applicable piece

25 rate paid to, employees employed at the respective plants or establishments.” Cal. Labor Code §

26 1174(d).

27 74. At all material times set forth herein, Defendant failed to maintain proper records

28 and furnish Plaintiff and the Selectors, either semi-monthly or at the time of each payment of

wages, an accurate, itemized statement conforming to the requirements of Cal. Labor Code §§ 226

1 and 1174.

2 75. Because Defendant requires Plaintiff, and all other current and/or former Selectors,
3 to work off-the-clock without being paid, the wage statements Defendant furnishes to Plaintiff and
4 the Selectors fail to list the total hours worked during the pay period in violation of §226(a). A
5 reasonable person cannot promptly nor easily determine from the wage statements alone the
6 missing and inaccurate information without reference to other documents or information.

7 **G. Defendant's Policies, Practices, and Timekeeping System Fails to Properly Account**
8 **for Plaintiff's and the Selectors' Donning, Doffing, and Walking Activities**

9 76. During their shifts, Plaintiff and the Selectors are required to enter their time into
10 Defendant's Kronos time-keeping system using a computer terminal in the distribution area, but
11 again, this time is based on their scheduled shift start times and end times (e.g. 5:00 p.m. to 1:30
12 a.m., with an unpaid 30-minute lunch period), not the time that Plaintiff and the Selectors perform
13 their first and last principal activities of the workday.

14 77. Defendant requires Plaintiff and the Selectors to report to their workstations and
15 begin their distribution activities no later than five (5) minutes after the start of their scheduled
16 work shifts; and Defendant does not permit Plaintiff and the Selectors to leave the distribution area
17 more than five (5) minutes before the end of their scheduled work shifts.

18 78. However, as described above, it takes Plaintiff and the Selectors significantly
19 longer, in the range of 5-30 minutes, to complete their donning, doffing, and walking activities.

20 79. Consequently, Defendant's timekeeping system fails to account for all of the time
21 Plaintiff and the Selectors spend donning and doffing company-issued protective clothing and
22 safety equipment, and walking to and from the locker room and distribution area.

23 **H. Defendant Unlawfully Benefitted From Its Employees' Uncompensated Work**

24 80. Plaintiff is informed and believes, and based thereon alleges, that Defendant
25 engaged in a uniform policy and systematic scheme of wage abuse against its hourly paid
26 employees.

27 81. Plaintiff is informed and believes, and based thereon alleges, that Defendant failed
28 to provide Plaintiff and the Selectors the required meal periods during the relevant time period as

required under the applicable Industrial Welfare Commission Wage Orders and/or Labor Code §§ 226.7 and 512, thus are entitled to any and all applicable penalties.

82. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew or should have known that Plaintiff and the Selectors were entitled to receive all meal periods or payment of one additional hour of pay at Plaintiff's and the other class member's regular rate of pay when a meal period was missed.

83. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew or should have known that Plaintiff and the Selectors were entitled to receive complete and accurate wage statements in accordance with California law.

84. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew or should have known that they had a duty to compensate Plaintiff and the Selectors pursuant to California law, and that Defendant had the financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so, all in order to benefit Defendant.

85. At all material times set forth herein, Defendant failed to fully comply with the relevant provision of the Labor Code and the IWC orders to pay wages to Plaintiff and the Selectors.

86. At all material times set forth herein, Defendant failed to fully comply with the relevant provision of the Labor Code and the IWC orders to provide uninterrupted meal and rest periods to Plaintiff and the Selectors.

87. At all material times set forth herein, Defendant regularly and consistently failed to provide complete and accurate wage statements to Plaintiff and the Selectors.

88. At all relevant times, Defendant directed and directly benefited from the work performed by its Selectors in connection with the above-described unpaid work activities.

89. Defendant expressly trained, instructed, and/or permitted its Selectors to perform the above-described off-the-clock work.

90. At all relevant times, Defendant's policies and practices deprived its Selectors of wages owed for all of the work they performed, including overtime.

91. Defendant knew or should have known that the time spent by its Selectors in

1 connection with their overtime work is compensable under the law at a rate of one and one-half
2 times their regular hourly rates. Indeed, in light of the explicit language contained in Labor Code
3 § 510.

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

9 93. Defendant was aware of the facts giving rise to the inaccurate wage statements and
10 payroll records. Defendant intentionally designed and implemented its systems, policies and
11 procedures, which required its employees to clock in after they had already begun their scheduled
12 shift and to clock out before their last principal activity of the day. Defendant easily could have
13 designed a system, or enacted policies and procedures, to correct this issue, but did not do so.
14 Similarly, Defendant could have compensated its employees for any off-the-clock work, but chose
15 not do so.

16 **CLASS ACTION ALLEGATIONS**

17 94. Plaintiff brings this action as a class action pursuant to Code of Civil Procedure
18 section 382 for the following putative Class of persons:

19 All current and former hourly Warehouse Selector employees who worked for
20 Defendant in California at any time during the four years preceding the filing of
this Complaint up through and including the judgment.

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

24 Plaintiff reserves the right to amend the foregoing Class definition.

25 95. While the exact number of Class members is unknown to Plaintiff at this time, and
26 will be ascertained through appropriate discovery, Plaintiff is informed and believes that there are
27 hundreds of similarly situated Class members in California. The number of individuals who
28

comprise the Class is so numerous that joinder of all such persons is impracticable and the disposition of their claims in a class action, rather than in individual actions, will benefit both the parties and the courts.

96. Plaintiff's claims are typical of the claims of the other members of the Class. All members of the Class have been and/or continue to be similarly affected by Defendant's wrongful conduct as complained of herein, in violation of California law. Plaintiff is unaware of any interests that conflict with or are antagonistic to the interests of the Class.

Plaintiff will fairly and adequately protect the Class members' interests and has retained counsel competent and experienced in class action lawsuits and complex litigation. Plaintiff and his counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiff is aware of his duties and responsibilities to the Class.

97. Plaintiff shares the same interests as the other Class members and will be entitled under the Labor Code to unpaid overtime compensation, attorneys' fees, costs, and lost interest owed to him under nearly identical factual and legal standards as the remainder of the Class.

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

- a. Whether Defendant engaged in a policy or practice of failing to pay each Class member overtime compensation for all overtime hours worked;
- b. Whether Defendant engaged in a policy or practice of failing to pay each Class member minimum and regular wages for all compensable time;
- c. Whether Defendant violated Labor Code section 226 by willfully failing to provide accurate itemized wage statements showing the number of hours worked by each Class member and the corresponding hourly rate;
- d. Whether Defendant violated Labor Code section 1174 by failing to maintain accurate records of hours worked and wages paid to Class members;
- e. Whether Defendant failed and/or refused to provide each Class member with proper meal periods, or one hour's wages in lieu thereof, to which they

1 were entitled pursuant to the Labor Code and IWC Wage Order No. 4;

- 2 f. Whether Defendant failed and/or refused to provide each Class member rest
3 periods, or one hour's wages in lieu thereof, to which they were entitled
4 pursuant to the Labor Code and IWC Wage Order No. 4;
- 5 g. Whether Defendant were unjustly enriched by the work and services
6 performed by Class members without appropriate compensation;
- 7 h. Whether Defendant engaged in unfair business practices in violation of
8 Business and Professions Code section 17200 *et seq.*;
- 9 i. Whether Defendant should be required to pay compensatory damages,
10 attorneys' fees, penalties, costs, and interest for violating California state
11 law; and
- 12 j. Whether Defendant should be enjoined from continuing its wrongful
13 conduct.

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

20 100. Defendant has acted on grounds generally applicable to the entire Class with respect
21 to the matters complained of herein, thereby making appropriate the relief sought herein with
22 respect to the Class as a whole.

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

26 101. Plaintiff re-alleges and incorporates all previous paragraphs herein.

27 102. At all relevant times, Defendant regularly and consistently maintained corporate
28 policies and procedures designed to reduce labor costs by reducing or minimizing the amount of
compensation paid to its employees, including overtime compensation.

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

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

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

106. At all relevant times, Defendant failed and refused to pay overtime premiums to Plaintiff and the Class members for their overtime hours worked.

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

108. Plaintiff and the Class were entitled to receive overtime compensation at their lawful premium rates of pay for each overtime hour that they worked. Defendant's failure to pay lawful premium overtime wages, as alleged above, was a willful violation of Labor Code §§ 510, 1198, and IWC Wage Order No. 4.

109. Wherefore, Plaintiff demands payment of the unpaid balance of the full amount of wages due for unpaid time worked, as well as overtime premiums owing, including interest thereon, penalties, reasonable attorneys' fees, and costs of suit pursuant to Labor Code §§ 1194 and 1194.2 as a result of Defendant's failure to pay overtime premiums for all overtime hours worked, as required under California law.

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

110. Plaintiff re-alleges and incorporates all previous paragraphs herein.

111. At all relevant times, Plaintiff and the Class earned “wages” for labor or services

1 rendered to Defendant within the meaning of Labor Code § 200(a) and/or for “hours worked”
2 within the meaning of the applicable IWC Wage Order.

3 112. Employers are required to pay their employees for all hours worked. During all
4 relevant times, Defendant failed to properly pay Plaintiff and Class members for all the hours they
5 worked and/or were subject to Defendant’s control, and failed to properly record all hours worked
6 by Class members. For example, Defendant allowed, encouraged, or required Plaintiff and Class
7 members to work beyond their scheduled work hours while under the complete control of
8 Defendant and without recording the excess time, yet Defendant failed to compensate Plaintiff and
9 the Class members for their excess work.

10 113. Defendant improperly withheld, deducted, and/or refused to pay wages for hours
11 that Plaintiff and Class members worked.

12 114. Defendant’s conduct deprived Plaintiff and the Class members of full and timely
13 payment for all hours worked in violation of the Labor Code.

14 115. Defendant did not properly pay Plaintiff and the Class members by, *inter alia*,
15 failing to pay them for all hours worked, in violation of Labor Code §§ 1182.12, 1194, 1197, and/or
16 1198.

17 116. Due to Defendant’s willful and unlawful failure to pay Plaintiff and the Class
18 members their earned wages, Plaintiff and the Class members are entitled to recover their unpaid
19 wages, liquidated damages, costs and reasonable attorneys’ fees, and the relief requested herein.

20 **COUNT III**
21 **VIOLATION OF CALIFORNIA LABOR CODE §§ 226 AND 1174**
22 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

23 117. Plaintiff re-alleges and incorporates all previous paragraphs herein.

24 118. Labor Code §§ 226 and 1174 provide that every employer shall, semi-monthly or
25 at the time of payment of wages, furnish each employee, either as a detachable part of the check
26 or separately, an accurate, itemized statement in writing showing the total hours worked, and the
applicable hourly rates and corresponding total number of hours worked.

27 119. At all relevant times, Defendant failed to maintain proper records and furnish
28 Plaintiff and the Class members, either semi-monthly or at the time of each payment of wages, an

accurate, itemized statement conforming to the requirements of Labor Code §§ 226 and 1174.

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

121. Plaintiff is informed and believes that Defendant knew or should have known that Plaintiff and the Class members were entitled to receive wage statements compliant with Labor Code §§ 226 and 1174, and that Defendant willfully and intentionally failed to provide Plaintiff and the Class members with such accurate, itemized statements showing, for example, accurate hours and overtime calculations.

122. Wherefore, Plaintiff demands that Defendant pay each Class member \$50.00 for the initial pay period in which the violation occurred and \$100 for each subsequent violation, up to a maximum of \$4,000.00 pursuant to Labor Code § 226, as well as reasonable attorneys' fees and costs.

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

123. Plaintiff re-alleges and incorporates all previous paragraphs herein.

124. "No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and employee." Wage Order No. 4, subd. 11(A); *see also* Labor Code § 512(a). "An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not

1 waived.” Wage Order No. 4, subd. 11(B); *see also* Labor Code § 512(a). “If an employer fails to
2 provide an employee a meal period in accordance with the applicable provisions of this order, the
3 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
4 compensation for each workday that the meal period is not provided.” Wage Order No. 4, subd.
5 11(D); *see also* Labor Code § 226.7(c).

6 125. During the relevant period, Plaintiff and the Class members worked in excess of
7 five and ten hours during numerous separate workdays, yet Defendant failed and refused to provide
8 them with work-free 30-minute meal periods, or one hour’s wages in lieu thereof, for shifts in
9 excess of five hours worked; nor did Defendant provide Class members with a second work-free
10 30-minute meal period, or one hour’s wages in lieu thereof, for shifts in excess of ten hours worked.

11 126. Plaintiff is informed, believes, and thereon alleges that Defendant’s failure to
12 provide all required meal periods, or one hour’s wages in lieu thereof, was willful, purposeful, and
13 unlawful, and done in accordance with the policies and practices of Defendant’s operations.
14 Because of Defendant’s knowing and intentional policies and procedures, Plaintiff and Class
15 members were not provided with all required meal periods, or one hour’s wages in lieu thereof.

16 127. Plaintiff is informed, believes, and thereon alleges that Defendant did not properly
17 maintain records pertaining to when Plaintiff and Class members began and ended each meal
18 period, in violation of Labor Code § 1174 and Wage Order No. 4, subd. 7(A).

19 128. Due to Defendant’s knowing, willful, and intentional failure to provide all required
20 meal periods, Plaintiff and Class members are entitled to recover one additional hour of pay at
21 their regular rates of pay for each workday that a required meal period was not provided, pursuant
22 to Wage Order No. 4, subd. 11(D) and Labor Code § 226.7(c); and penalties, reasonable attorneys’
23 fees, and costs pursuant to Labor Code § 218.5.

24 129. Defendant’s wrongful and illegal conduct in failing to provide Plaintiff and the
25 Class members with meal breaks or to provide premium compensation, unless and until enjoined
26 by order of this Court, will continue to cause great and irreparable injury to Plaintiff and the Class
27 members in that Defendant will continue to violate these laws unless specifically ordered to
28 comply with the same. The expectation of future violations will require current and future

employees to repeatedly and continuously seek legal redress in order to gain compensation to which they are already entitled. Plaintiff and the Class members have no other adequate remedy at law to insure future compliance with the laws alleged herein to have been violated.

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

COUNT VI
VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, et seq.
UNFAIR, UNLAWFUL AND/OR FRAUDULENT BUSINESS PRACTICES

131. Plaintiff re-alleges and incorporates all previous paragraphs herein.

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

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

134. Because of Defendant's conduct, Plaintiff and the Class were harmed as described in the allegations set forth above.

135. The actions described above constitute false, unfair, fraudulent, and deceptive business practices within the meaning of California Business & Professions Code § 17200, *et seq.* By and through such unfair, unlawful and/or fraudulent business practices, Defendant obtained valuable property, money, and services from Plaintiff and the Class, and have deprived Plaintiff and the Class of fundamental rights and privileges guaranteed to all employees under California law.

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

137. Plaintiff seeks, on his own behalf, and on behalf of the putative Class members, full restitution of all monies withheld, acquired and/or converted by Defendant by means of the unfair practices complained of herein, as necessary and according to proof, and/or disgorgement of all profits acquired by Defendant by means of the acts and practices described herein.

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

COUNT VII
VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT,
CAL. LAB. CODE, § 2698, et seq.
(On Behalf of the Aggrieved Employees)

139. Plaintiff re-alleges and incorporates all previous paragraphs herein.

140. At all relevant times, Plaintiff and all other current and former Selectors working for Defendant in the State of California are "Aggrieved Employees" under PAGA, as they were employed by Defendant during the applicable statutory period and suffered one or more of the Labor Code violations alleged herein. As such, Plaintiff seeks to recover, on behalf of himself and all other current and former Aggrieved Employees of Defendant, the civil penalties provided by PAGA, plus reasonable attorneys' fees and costs.

141. Plaintiff seeks to recover the PAGA civil penalties through a representative action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009).

142. Plaintiff seeks to pursue remedies pursuant to PAGA for the following violations:

- a. Defendant unlawfully failed to pay Plaintiff and other Aggrieved

1 Employees overtime compensation in violation of California Labor Code §§ 223, 510, 558,
2 1194, 1197.1, and 1198.

3 b. Defendant unlawfully failed to pay Plaintiff and other Aggrieved
4 Employees minimum wage and regular wage compensation in violation of California
5 Labor Code §§ 223, 1194, 1197, and 1197.1.

6 c. Defendant unlawfully paid Plaintiff and other Aggrieved Employees below
7 the designated rate in violation of California Wage Order No. 4-2001 and Cal. Labor Code
8 §§ 221 and 223.

9 d. During the applicable statutory period, Defendant failed to provide accurate
10 itemized wage statements, including the failure to provide employees with their total hours
11 worked and the failure to include all applicable hourly rates as required by California Labor
12 Code § 226.

13 e. During the applicable statutory period, Defendant failed to keep payroll
14 records showing total hours worked and wages paid to Plaintiff and other Aggrieved
15 Employees. Under California Labor Code § 1174(d), employers must keep “payroll records
16 showing the hours worked daily by and the wages paid to . . . employees” Because
17 Defendant did not keep accurate records reflecting hours worked for Defendant, it is liable
18 for civil penalties pursuant to California Labor Code § 2698, *et seq.* To the extent
19 Defendant’s failure to keep accurate payroll records was willful, it is liable to civil penalties
20 under California Labor Code §§ 1174 and 1174.5.

21 f. Defendant unlawfully failed to provide Plaintiff and other Aggrieved
22 Employees meal periods as required by California Labor Code §§ 226.2, 226.7, 512, and
23 California Wage Order No. 4-2001.

24 g. Under California Labor Code §§ 226.2, 226.7 and 512, and IWC Wage
25 Order 4, Defendant is liable for failing to pay Plaintiff and other Aggrieved Employees for
26 work performed during unpaid meal periods or paying Plaintiff and other Aggrieved
27 Employees one hour of pay for every such unpaid meal period.

28 143. In addition to the penalties provided above, California Labor Code §§ 2698, *et seq.*

1 imposes a civil penalty of one hundred dollars (\$100) per pay period, per Aggrieved Employee for
2 the initial violation of Labor Code §§ 221, 223, 226, 226.2, 226.7, 510, 512, 1174, 1194, 1197,
3 1197.1, 1198, and 2802, and two hundred dollars (\$200) for each Aggrieved Employee per pay
4 period for each subsequent violation.

5 144. Similarly, California Labor Code § 558 imposes a civil penalty of fifty dollars (\$50)
6 for the initial violation and one hundred dollars (\$100) for each subsequent violation of the
7 California Labor Code, for each underpaid employee for each period for which the employee was
8 underpaid.

9 145. Plaintiff has fully complied with the procedural requirements specified in
10 California Labor Code 2699.3 as to each of the alleged violations. On October 21, 2022, Plaintiff
11 provided notice to the LWDA of Plaintiff's claims based on the Labor Code violations alleged
12 herein, including the facts and theories supporting these claims. Plaintiff's PAGA claims will
13 become ripe and actionable under Labor Code § 2699 on or about December 26, 2022, after
14 conclusion of the 65-day waiting period, unless the LWDA provides notice of its intent to
15 investigate Plaintiff's claims prior to that date.

16 **REQUESTED RELIEF**

17 WHEREFORE, Plaintiff, on his own behalf and on behalf of the putative Class members,
18 requests judgment as follows:

- 19 A. Certifying the proposed California Class;
- 20 B. Designating Plaintiff as Class Representative of the proposed California Class;
- 21 C. Ordering a service award for the Class Representative in recognition of the time,
22 effort, and risk incurred in bringing this action and as compensation for the value provided to the
23 Class members;
- 24 D. Appointing undersigned counsel as Class Counsel;
- 25 E. Issuing a declaratory judgment that the practices complained of herein are unlawful
26 under the Labor Code and Unfair Competition Law;
- 27 F. Granting judgment in favor of Plaintiff and against Defendant and awarding unpaid
28 regular and overtime wages calculated at Plaintiff's and the Class members' regular or overtime

1 premium rate of pay;

2 G. For statutory and civil penalties pursuant to Labor Code §§ 201, 202, 203, 221, 223,
3 226, 226.7, 510, 512, 1174, 1182.12, 1194, 1194.2, 1197 and 1198.

4 H. For restitution to Plaintiff and other similarly affected Class members of all funds
5 unlawfully acquired by Defendant by means of any acts or practices declared by this Court to
6 violate the mandate established by California Business and Professions Code § 17200 *et seq.*;

7 I. For the appointment of a receiver to receive, manage and distribute any and all funds
8 disgorged from Defendant and determined to have been wrongfully acquired by Defendant as a result
9 of violations of California Business and Professions Code § 17200, *et seq.*;

10 J. For an injunction prohibiting Defendant from engaging in the unfair business
11 practices complained of herein;

12 K. For an injunction requiring Defendant to give notice to persons to whom restitution
13 is owing of the means by which to file for restitution;

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

17 M. For an order requiring Defendant to show cause, if any there be, why they should not
18 be enjoined and ordered to comply with the applicable IWC wage orders related to record-keeping
19 for Defendant's employees related to the same; and for an order enjoining and restraining
20 Defendant and their agents, servants and employees related thereto;

21 N. For pre-judgment interest as allowed by Labor Code §§ 218.6 and 1194, California
22 Civil Code § 3287 and other statutes;

23 O. For reasonable attorneys' fees, expenses, and costs as provided by Labor Code §§
24 218.5, 226(e) and (h) and 1194; and California Code of Civil Procedure § 1021.5; and

25 P. For such other and further relief the Court may deem just and proper.

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Dated: October 25, 2022

SOMMERS SCHWARTZ, P.C.

Counsel for Plaintiff and Proposed Class Members