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June 22, 2023

VIA ONLINE FILING

Labor & Workforce Development Agency

Website: <https://dir.tfaforms.net/116>

Email: PAGAfiling@dire.ca.gov

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Closet World, Inc

Attn: CEO and Chief Legal Officer

3860 Capitol Ave

Whittier, CA 90601

Re: Miguel Torres v. Closet World, Inc.

**NOTICE PURSUANT TO LABOR CODE SECTION 2699.3, *et seq.*; VIOLATIONS OF
LABOR CODE SECTIONS 201, 202 *et seq.*, 203, 226, 226.7, 512 BY CLOSET WORLD,
INC.**

To: California Labor and Workforce Development Agency; Closet World, Inc.

From: Miguel Torres, on behalf of himself and all aggrieved employees as defined below

This letter is intended to comply with the requirements of California Labor Code Private Attorneys General Act of 2004 (PAGA), California Labor Code section 2698, *et seq.*, including section 2699.3 with respect to notice of violations of the Labor Code by Closet World, Inc. (collectively hereinafter “Respondent”). Unless the Labor & Workforce Development Agency proceeds against Respondents, Miguel Torres (“Claimant”) intends to amend his operative complaint against Respondent to allege a PAGA cause of action on his behalf and on behalf of all other “aggrieved employees” that seeks civil penalties, costs, and attorney fees under PAGA.

Please note that this firm represents the interests of Claimant and all other current and former non-exempt hourly non-exempt employees of Respondent in the state of California who performed installation services for the period for the period of June 13, 2022 through the present (“Aggrieved Employees”).

Claimant is informed and believes and thereon alleges that Respondent failed to provide him and the Aggrieved Employees the requisite number of paid, duty-free, rest periods in shifts of four (4) hours or greater, such that Respondent did not provide him and other aggrieved employees a non-captive, duty-free, ten (10) minute paid rest period every four (4) hours of work, or major fraction thereof. Claimant is informed and believes and thereon alleges that Respondent failed to provide him and the Aggrieved Employees the requisite number of timely off-the-clock meal periods of not less than thirty (30) minutes for shifts lasting longer than five (5) and (10) hours without exemption. Claimant further contends that Respondent failed to provide him and other Aggrieved Employees accurate itemized wage statements reflecting the gross wages earned, net wages earned, total hours worked, the applicable hourly rates at the corresponding hours worked, and/or list the meal and rest period premium payment on the wage statement. Claimant also alleges that Respondent failed to pay all earned unpaid wages at termination to him and other Aggrieved Employees whose employment terminated with Respondent. Claimant is informed and believes and thereon alleges that Respondent failed to pay overtime and double wages based on the correct regular rate of pay.

Claimant alleges that Respondent violated Labor Code §§201, 202 *et seq.*, 203, 226, 226.7, 512, 510, 1194 in addition to claims under the Business and Professions Code §17200, *et seq.* Claimant further alleges that Respondents violated IWC Wage Order No. 4-2001 (“WO 4-01”).

Claimant and the Aggrieved Employees worked for Respondent as non-exempt hourly employees in the state of California who performed installation services.

Claimant further alleges that Respondent failed to provide the requisite number of timely duty-free meal periods for shifts lasting longer than five (5) and ten (10) hours, without exemption, in violation of Labor Code §§512 and 226.7 and WO 16-01. Claimant is informed and believes and thereon alleges that Respondent failed to provide him and the Aggrieved Employees the requisite number of timely off-the-clock meal periods of not less than thirty (30) minutes for shifts lasting longer than five (5) and (10) hours.

Claimant further alleges that Respondent failed to provide compliant paid, non-captive, duty-free, ten (10) minute rest periods to him and the Aggrieved Employees in violation of Labor Code §226.7 and WO 4-01. Claimant and the Aggrieved Employees were required to engage in Respondent’s business practice during meal and rest periods. Respondent failed to provide timely non-captive paid rest periods for every four (4) hours, or major fraction thereof, by not providing Claimant and the Aggrieved Employees uninterrupted rest periods. Claimant and the Aggrieved Employees were not provided captive-free paid ten (10) minute rest periods for every four (4) hours worked or major fraction thereof.

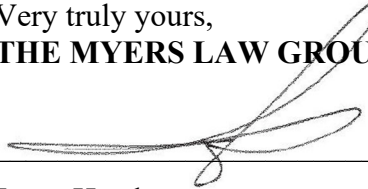
Claimant is informed and believes and thereon alleges that Respondent failed to pay him and the Aggrieved Employees all earned overtime and double time wages in violation of Labor Code §§510 and 1194. This includes but is not limited to the underpayment of overtime and double time wages due to the failure to include all required incentive pay in the calculation of the regular rate of pay for overtime and double time pay wages. This violates Labor Code §§510 and 1194 and the Wage Order.

Moreover, Claimant is informed, believes and alleges that Respondent violated Labor Code §§201, 202, *et seq.* by failing to pay him and other Aggrieved Employees meal and rest period premium payments for the failure to provide paid rest periods and off-the-clock meal periods and earned but unpaid overtime and double time wages timely in relation to termination. As a result, Respondent did not pay Claimant and other Aggrieved Employees all earned wages at the time of separation and the same are entitled to waiting time penalties pursuant to Labor Code §203.

The wage statements provided by Respondent to Claimant and other Aggrieved Employees failed to provide accurate information as to the gross wages earned, net wages earned, total hours worked, the applicable hourly rates at the corresponding hours worked, and/or list the meal and rest period premium payment on the wage statement. This violates Labor Code §226.

Please advise if the LWDA has any objection to our client filing a PAGA cause of action, by amending the attached Complaint (with all factual and legal allegations as well as statutory references incorporated by reference herein), to seek any and all appropriate civil penalties for these underlying factual allegations and Labor Code violations, pursuant to Labor Code §2699, *et seq.*

Very truly yours,
THE MYERS LAW GROUP, A.P.C.



Jason Hatcher
Attorneys for Miguel Torres and all others similarly situated

Enclosure

Enclosure

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Attorneys for Plaintiff Miguel Torres,
and all others similarly situated.

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County of Los Angeles
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

MIGUEL TORRES, on behalf of himself and
all others similarly situated

PLAINTIFFS,

v.

CLOSET WORLD, INC., a Delaware
Corporation; and DOES 1 through 100,
inclusive

DEFENDANTS.

Case No.: **23STCV13682**

CLASS ACTION

CLASS ACTION COMPLAINT

1. **Failure to Pay All Overtime and Double Time Wages;**
2. **Failure to Provide Meal Periods;**
3. **Failure to Provide Rest Periods;**
4. **Failure to Provide Accurate Wage Statements;**
5. **Failure to Pay All Wages Due at Separation;**
6. **Unfair Competition**

DEMAND FOR JURY

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I. INTRODUCTION

This is an action brought by Plaintiff MIGUEL TORRES (“Plaintiff”), on his behalf and all others similarly situated, against CLOSET WORLD, INC, a Delaware Corporation, and other as of yet unnamed DOE Defendants 1-100 (hereinafter collectively “Defendants”) alleging, among other things violations of the California Labor Code and Unfair Competition Law. Plaintiff demands a jury trial and seeks damages, attorneys’ fees and costs of suit. Plaintiff is informed and believes, and on that basis alleges, as follows:

II. GENERAL ALLEGATIONS

1. This class action arises from wage and hour violations for, among other things, Defendants failure to compensate hourly non-exempt employees in compliance with California law. As more fully described herein, Defendants failed and continue to fail to compensate Plaintiff and class members all earned overtime and double time wages at the correct regular rate of pay, failed to provide legally compliant meal and rest breaks, failed to provide accurate wage statements, failed to pay all earned wages timely upon termination and engaged in other Labor Code violations.

2. Plaintiff seeks among other things, all wages, restitutionary disgorgement, and statutory penalties. Plaintiff seeks to represent the following Class:

All current and former hourly non-exempt employees for Defendants in the state of California who performed installation services for the period of June 13, 2019 through the date of class certification (“the Class”).

3. This Court is the proper court and this action is properly filed in Los Angeles County and in this judicial district because Defendants do business in Los Angeles County and because Defendants’ obligations and liability arise therein.

4. Plaintiff is a former hourly, non-exempt, installers for Defendants in the state of California and a resident of the County of Los Angeles, State of California.

5. Plaintiff is informed and believes, and thereon alleges that Closet World, Inc., is a Delaware corporation, whose principal office of corporation is Whittier, California.

6. The true names and capacities, whether individual, corporate, associate, or otherwise, of DOES 1 through 100 are unknown to Plaintiff, who therefore sues the DOE

1 Defendants by fictitious names. Plaintiff will amend this Complaint to show their true names
2 and capacities when they have been ascertained.

3 7. Plaintiff is informed and believes, and thereon alleges, that each and all of the
4 acts and omissions alleged herein were performed by, and/or are attributable to, all Defendants,
5 each acting as agents and/or employees, and/or under the direction and control of each of the
6 other Defendants, and that said acts and failures to act were within the course and scope of said
7 agency, employment and/or direction and control. Plaintiff is informed and believes, and thereon
8 alleges, that at all times material hereto Defendants were and are the agents of each other.

9 8. Plaintiff is informed and believes, and thereon alleges, that Defendant DOES 1
10 through 100 are the partners, owners, shareholders, managers, joint employers, or alter egos of
11 Defendant Employers, and were acting on behalf of Defendant Employers in the payment of
12 wages to Plaintiff.

13 9. At all relevant times alleged herein Plaintiff was employed by Defendants, and
14 Plaintiff held a position with Defendants in Los Angeles County, State of California.

15 **III. FACTS COMMON TO MORE THAN ONE CAUSE OF ACTION**

16 10. Plaintiff and the Class worked as hourly, non-exempt, employees for Defendants
17 in the state of California performing installing home organizations.

18 11. Throughout the period of June 13, 2019 through the date of class certification
19 (“Class Period”), Plaintiff and all Class members were and are employees of Defendants in the
20 state of California, entitled to all of the protections afforded to employees under the Labor Code
21 and applicable IWC Wage Orders.

22 12. Defendants’ primary business is the operation of providing home organizing
23 services. This work is performed in part by Plaintiff and the Class members.

24 13. During the relevant time period, Plaintiff and the Class members worked in
25 excess of eight (8) hours in a workday and in excess of twelve (12) hours in a workday.

26 14. During the relevant time period, Defendants failed to pay Plaintiff and Class
27 members the full amount of overtime and/or double time wages based on their correct regular
28 rate of pay by excluding non-hourly compensation from the regular rate of pay calculation,

1 including but not limited to incentive pay.

2 15. Defendants failed to pay Plaintiff and the Class members the full amount of
3 overtime and/or double time pay without exemption.

4 16. Defendants conduct, as alleged herein, has caused Plaintiff and Class members
5 damages including, but not limited to, loss of wages and compensation.

6 17. Defendants are liable to Plaintiff and the Class for failing to pay overtime and/or
7 double time wages for all hours worked based on the regular rate of pay, failing to provide legally
8 compliant meal and rest periods, and failure to pay all wages owed upon termination, and unfair
9 competition.

10 18. Plaintiff is a member of and seeks to be the representative for the Class of
11 similarly situated employees who all have been exposed to, have suffered, and/or were permitted
12 to work under, Defendant's unlawful employment practices as alleged herein.

13 19. Plaintiff and the Class were suffered to work, and/or permitted to, and worked in
14 excess of eight (8) hours in a day without receiving all earned overtime and/or double time pay
15 for all overtime and/or double hours worked. Despite knowing that Plaintiff and the Class were
16 working overtime and/or double time hours, Defendants refused to pay the full amount of
17 overtime premiums and/or double time premiums at the regular rate of pay for all overtime and
18 double time hours worked.

19 20. Throughout the Class Period, Defendants failed to authorize and permit legally
20 compliant meal breaks. Plaintiff and Class members were assigned to and required to work shifts
21 lasting over six (6) hours and were not provided nor allowed to take a timely thirty (30) minute
22 uninterrupted off-duty meal break without exemption. Plaintiff and Class members were
23 assigned to and required to work shifts lasting over ten (10) hours without a second thirty (30)
24 minute uninterrupted off-duty meal break without exemption.

25 21. Throughout the Class Period, Defendants failed and continue to fail to pay for
26 meal period violations at the correct regular rate of pay.

27 22. Throughout the Class Period, Defendants failed to authorize and provide paid rest
28 periods compliant with the provisions of the California Labor Code and applicable Wage Order.

1 Plaintiff and Class members were assigned to and required to work shifts lasting over four (4)
2 hours and were not provided nor allowed to take a non-captive paid ten-minute uninterrupted
3 rest break during each four (4) hour work period, or major fraction thereof, at the direction of
4 Defendants and/or with Defendants knowledge and acquiescence.

5 23. Throughout the Class Period, Defendants failed and continue to fail to pay for
6 rest period violations at the correct regular rate of pay.

7 24. Defendants failed to pay Plaintiff and the Class all earned wages timely upon
8 termination. This includes, but is not limited to, unpaid overtime wages and/or double time
9 wages and/or meal period premiums at the regular rate of pay and/or rest period premiums at the
10 regular rate of pay.

11 25. The wage statements provided by Defendants failed to provide accurate
12 information as to the hourly rate for all hours worked, total hours worked, meal and rest period
13 premium payments, the net wages earned, and the gross wages earned per pay period.

14 26. The underpayment of wages, Labor Code violations, and Wage Order violations
15 upon Plaintiff and the Class are a consequence of Defendants' unlawful policies and practices
16 which were centrally devised, implemented, communicated, and applied to Plaintiff and the
17 Class.

18 27. Because of Defendants' unlawful conduct, Plaintiff and the Class have been and
19 continue to be systematically deprived of their earned wages to which they are entitled by law
20 and deprived of other benefits of the Labor Code and applicable IWC Wage Orders, to the
21 detriment of himself and the public at large.

22 **CLASS DEFINITION AND CLASS ALLEGATIONS**

23 28. Plaintiff brings this action on his own behalf and on behalf of all others similarly
24 situated, pursuant to California Code of Civil Procedure §382, and as a member of the Class
25 defined as follows:

26 All current and former hourly employees for Defendants in the state of
27 California who performed installation services for the period of June 13, 2019
28 through the date of class certification ("the Class").

1 **Sub-Class 1**

2 All current and former hourly employees for Defendants in the state of
3 California who performed installation services for the period of June 13, 2019
4 through the date of class certification and who earned incentive pay in the same
5 period as working in excess of eight (8) hours in a day or forty (40) hours in a
6 workweek for Defendants. (“Regular Rate” Sub-Class).

7 **Sub-Class 2**

8 All current and former hourly employees for Defendants in the state of
9 California who performed installation services for the period of June 13, 2019
10 through the date of class certification who worked at least one shift of more
11 than ten (10) hours. (“Second Meal Period” Sub-Class).

12 **Sub-Class 4**

13 All current and former hourly employees for Defendants in the state of
14 California who performed installation services for the period of June 13, 2019
15 through the date of class certification and who worked at lease one shift of 3.5
16 hours or more. (“Rest Period” Sub-Class).

17 **Sub-Class 5**

18 All current and former hourly employees for Defendants in the state of
19 California who performed installation services for the period of June 13, 2019
20 through the date of class certification and who are members of Sub-Class 1, 2,
21 3, or 4. (“Pay Stub” Sub-Class).

22 **Sub-Class 6**

23 All former hourly employees for Defendants in the state of California who
24 performed installation services for the period of June 13, 2020 through the date
25 of class certification. (“Waiting Time Penalties” Class).

26 29. Plaintiff reserves the right to amend or otherwise alter the class definition
27 presented to the Court at the appropriate time, or to alter, propose or eliminate sub-classes, in
28 response to facts learned through discovery, legal arguments advanced by Defendants or
29 otherwise.

30 30. Further, this action is brought for the benefit of the public, who are entitled to
31 restitution of those funds improperly withheld by Defendants.

32 31. This action has been brought and may be properly maintained as a class action
33 pursuant to the provisions of the Code of Civil Procedure §382 and other applicable law.

34 32. **Numerosity:** Members of the Class are so numerous that their individual joinder
35 is impracticable. It is possible to ascertain the number of former and current employees who are
36 members of the proposed class, but they are so numerous that joinder is impracticable. The

1 proposed Class includes future employees (persons who are hired by defendant within the class
2 period, but who are not now class members as current or former employees) whose joinder is
3 currently impossible. The precise number of Class members and their addresses can be
4 determined by Defendants' business records and will become known to Plaintiff through
5 discovery. Class members may be notified of the pendency of this action by mail, e-mail, the
6 internet, or published and posted notice.

7 **33. Typicality:** Plaintiff's claims are typical of the claims of members of the
8 proposed classes. Defendants employed Plaintiff during the statutory period, and Plaintiff has
9 been subjected to Defendants' unlawful employment practices, as alleged in this Complaint.

10 **34. Adequacy of Class Representative:** Plaintiff will fairly and adequately protect
11 the interests of the classes. Plaintiff's interests do not conflict with Class members' interests, and
12 Plaintiff has retained competent and experienced counsel. The interests of Class members will
13 be fairly and adequately protected by Plaintiff and his counsel.

14 **35. Common Questions of Law and Fact:** Common questions of law and fact exist
15 as to all Class members and predominate over any questions affecting solely individual members
16 of the proposed Class:

- 17 a. Whether Defendants engaged in a pattern or practice of failing to pay Plaintiff
18 and the members of the Class the full amount of overtime and/or double time
19 wages, based on the regular rate of pay, for all overtime and double time hours
20 worked in violation of the applicable Labor Code provisions including §§510
21 and 1194;
- 22 b. Whether Defendants failed to pay the appropriate premium overtime and/or
23 double time compensation to Plaintiff and the Class members based on the
24 correct regular rate of pay;
- 25 c. Whether Defendants improperly retained, appropriated or deprived Plaintiff and
26 the Class members of the use of monies or sums to which they were legally
27 entitled;
- 28 d. Whether Defendants engaged in unfair business practices;

- e. Whether Defendants were participants in the alleged unlawful conduct;
- f. Whether Defendants engaged in a pattern or practice of failing to provide Plaintiff and the members of the Class paid rest periods in violation of IWC Wage Order No. 4-2001 and Labor Code §226.7 by requiring Plaintiff and Class members to remain on-duty during paid rest breaks;
- g. Whether Defendants engaged in a pattern or practice of failing to provide Plaintiff and the members of the Class meal periods in violation of IWC Wage Order No. 4-2001 and Labor Code §§ 226.7, 512 by failing to timely provide the required number of 30-minute uninterrupted meal periods to Plaintiff and Class members;
- h. Whether Defendants engaged in unfair practice and violated California Business and Professions Code §17200 by failing to compensate Plaintiff and the members of the Class their full amount of overtime wages;
- i. Whether Defendants violated Labor Code §203 by failing to pay all wages due upon separation;
- j. Whether Defendants failed to provide accurate wage statements to Plaintiff and the members of the Class; and
- k. The nature and extent of class-wide injury and measure of damages for the injury.

36. **Superiority and Substantial Benefit:** A class action is the superior method for the fair and efficient adjudication of this controversy. Defendants implemented illegal schemes that are generally applicable to the members of the proposed plaintiff class and sub-classes. Damages suffered by each Class member may be relatively small given the burden and expense of individual prosecution of the complex and expensive litigation necessitated by Defendants' conduct. Further, it would be virtually impossible for the Class members to redress the wrongs done to them on an individual basis. Even if Class members could afford such individual litigation, the court system could not. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of a single adjudication, economies of scale,

1 and comprehensive supervision by a single court.

2 37. Plaintiff knows of no difficulty that will be encountered in the management of
3 this litigation that would preclude its maintenance as a class action. Plaintiff is informed and
4 believes, and on that basis alleges, that the amount of money due each Class member as economic
5 damages is ascertainable from Defendants' records or may readily be determined by other means.

6 38. The Classes should also be certified because:

- 7 a. The prosecution of separate actions by individual Class members would
8 create a risk of inconsistent or varying adjudications with respect to individual
9 Class members, which would establish incompatible standards of conduct for
10 Defendants;
11 b. The prosecution of separate actions by individual Class members creates the
12 risk of adjudication with respect to them, which would, as a practical matter,
13 be dispositive of the interests of the other Class members not parties to the
14 adjudications, or would substantially impair or impede their ability to protect
15 their interests; and
16 c. Defendants have acted or refused to act on grounds generally applicable to
17 the Class, and/or general public, thereby making appropriate final and
18 injunctive relief with respect to the Classes as a whole.

19 **FIRST CAUSE OF ACTION**

20 **Failure to Pay All Overtime and Double Time Wages**

21 **Violation of Labor Code §§510 and 1194; IWC Wage Order No. 4-2001**

22 (Against all Defendants)

23 39. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein,
24 paragraphs 1 through 38 of this Complaint.

25 40. Plaintiff and the Class members herein were and are employed and scheduled as
26 a matter of established company policy to work and in fact worked as non-exempt hourly
27 employees in excess of eight (8) hours per day and/or in excess of forty (40) hours per pay period.
28 Defendants employed and scheduled Plaintiff and the Class members without providing

1 overtime compensation for such excess hours worked in violation of Labor Code §§510 and
2 1194 and the relevant California Industrial Welfare Commission (IWC) orders. Plaintiff is
3 informed, believes, and thereon alleges that Defendants always had a written and verbal
4 agreement to pay overtime at time and one half for all hours worked in excess of eight (8) per
5 day and/or forty (40) hours per pay period.

6 41. Labor Code §510 mandates: “Eight hours of labor constitutes a day's work. Any
7 work in excess of eight hours in one workday and any work in excess of 40 hours in any one
8 workweek and the first eight hours worked on the seventh day of work in any one workweek
9 shall be compensated at the rate of no less than one and one-half times the regular rate of pay for
10 an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no
11 less than twice the regular rate of pay for an employee. In addition, any work in excess of eight
12 hours on any seventh day of a workweek shall be compensated at the rate of no less than twice
13 the regular rate of pay of an employee. Nothing in this section requires an employer to combine
14 more than one rate of overtime compensation in order to calculate the amount to be paid to an
15 employee for any hour of overtime work.” The California overtime requirement and wage
16 requirement are non-waivable rights pursuant to LC §219.

17 42. Section 3(a)(1) of Wage Order No. 4-2001 (“WO 4-01”) mandates that employers
18 pay one and one-half times the employees’ regular rate of pay for employees who work more
19 than eight hours in a day or forty hours in a week and two times their regular rate of pay for any
20 work in excess of twelve hours in one day.

21 43. Labor Code §1194(a) states: “Notwithstanding any agreement to work for a lesser
22 wage, any employee receiving less than the legal minimum wage or the legal overtime
23 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
24 of the full amount of this minimum wage or overtime compensation, including interest thereon,
25 reasonable attorney’s fees, and costs of suit.”

26 44. Pursuant to Labor Code §§218 and 1194(a), Plaintiff may bring a civil action for
27 overtime wages directly against the employer without first filing a claim with the Division of
28 Labor Standards Enforcement (“DLSE”) and may recover such wages, together with interest

1 thereon, penalties, attorneys' fees and costs. Further, pursuant to Labor Code §1198, it is
2 unlawful to employ person for longer than the hours set by the IWC or under conditions
3 prohibited by the applicable IWC Wage Orders. WO 4-01 applies to Plaintiff.

4 45. However, Defendants have failed and refused to pay Plaintiff and the class
5 members overtime compensation for all overtime hours worked in excess of eight (8) hours per
6 day as required by LC §§510, 1194 and the applicable Wage Orders. Plaintiff is informed and
7 believes and based thereon alleges that the obligations and responsibilities of the class employees
8 are irrelevant because Plaintiff and all other similarly situated employees were subjected to
9 Defendants' unlawful pay plans and its failure to pay daily overtime based on the regular rate of
10 pay for all overtime hours worked in excess of eight (8) in a workday by Plaintiff and the class
11 members.

12 46. Defendants, and each of them, consistently administered a corporate policy which
13 required Plaintiff and the Class members to work overtime without proper premium overtime
14 pay based on the regular rate of pay. Accordingly, Plaintiff and the Class members were and are
15 entitled to overtime compensation, under California law, based on the appropriate regular rate of
16 pay. Defendants have failed to properly include items of remuneration when determining
17 Plaintiff's and the Class Members' regular rate, this includes but is not limited to incentive pay.

18 47. Defendants, and each of them, consistently administered a corporate policy which
19 required Plaintiff and the Class members to work double time without proper premium double
20 time pay based on the regular rate of pay. Accordingly, Plaintiff and the Class members were
21 and are entitled to double time compensation, under California law, based on the appropriate
22 regular rate of pay. Defendants have failed to properly include items of remuneration when
23 determining Plaintiff's and the Class Members' regular rate, this includes but is not limited to
24 incentive pay.

25 48. Plaintiff and the class members have been deprived of rightfully earned overtime
26 and double time compensation as a direct and proximate result of Defendants' common policies,
27 practices, and refusal to pay the full amount of compensation earned for all overtime and double
28 time hours worked.

49. Plaintiff, and the class, are entitled to and seek the full amount of all earned unpaid overtime and double time pay, attorneys' fees and costs, and interest pursuant to LC §1194 in an amount to be determined at trial.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

Violation of Labor Code §§226.7, 512, & IWC Wage Order No. 4-2001

(Against all Defendants)

50. Plaintiff restates and incorporates by reference each and every allegation contained in paragraphs 1 through 38, inclusive, as though fully set forth herein.

51. Labor Code §226.7 requires an employer to pay one additional hour of compensation, at the regular rate of pay, per day for each meal period the employer fails to provide pursuant to the Labor Code and/or applicable Wage Order. Plaintiff alleges that Defendants failed to provide legally compliant meal periods to Plaintiff and the Class members; in addition to impeding, discouraging, and/or dissuading employees from taking legally compliant meal periods. Employees are entitled to a meal period of at least thirty (30) minutes per five (5) hours work period. Plaintiff and the Class members consistently worked over five (5) hours or ten (10) hours in a shift without the requisite, timely, number of meal periods due to Defendants' policy of discouraging, dissuading and/or impeding Plaintiff from taking meal periods. Defendants further failed to obtain legally compliant meal period waivers for shifts lasting longer than 10 hours. Pursuant to the Code, Plaintiff was entitled to a meal period of not less than thirty (30) minutes prior to exceeding five (5) hours of work and a second meal period for hours worked over ten (10) in a day.

52. Pursuant to Labor Code §512 and the applicable Wage Order, employees are entitled to a meal period of at least thirty (30) minutes per five (5) hour work period.

53. Section 11 of WO 4-01 applies to Plaintiff and the Class member, and provides, in pertinent part, that if an employer fails to provide an employee a legally compliant meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the meal

1 period was not provided.

2 54. During the relevant time period, Defendants failed to authorize and permit
3 uninterrupted meal breaks without exemption. Plaintiff and the Class were routinely required to
4 work shifts in excess of 10 hours and/or 12 hours without Defendants providing two (2) timely,
5 uninterrupted meal breaks at the direction of Defendants and/or with Defendants knowledge or
6 acquiescence.

7 55. Defendants failed to provide, impeded and/or discouraged Plaintiff and the Class
8 from taking timely meal breaks of not less than thirty (30) minutes as required by the Labor
9 Code, and WO 4-01 §11. This includes a first meal period prior to the fifth hour of work and a
10 second meal period prior to the tenth hour of work.

11 56. By its actions in requiring Plaintiff and the Class to work through meal periods
12 and/or its failure to relieve Plaintiff and the Class of their duties for off-duty meal periods,
13 Defendants violated California Labor Code §226.7 and §11 of IWC Wage Order No.4-2001 and
14 are liable to Plaintiff and the Class.

15 57. Pursuant to Labor Code §226.7, Plaintiff and the Class are entitled to damages in
16 an amount equal to one (1) hour of pay at no less than the regular rate of compensation per missed
17 meal break per day, in a sum to be proven at trial.

18 58. Pursuant to Labor Code §218.6 and Civil Code §3287, Plaintiff and the Class
19 Members seek recover of pre-judgment interest on all amounts recovered herein.

20 **THIRD CAUSE OF ACTION**

21 **FAILURE TO PROVIDE REST PERIODS**

22 **Violation of Labor Code §§226.7, 512, & IWC Wage Order No. 4-2001**

23 (Against all Defendants)

24 59. Plaintiff restates and incorporates by reference each and every allegation
25 contained in paragraphs 1 through 38, inclusive, as though fully set forth herein.

26 60. Labor Code §226.7(b) provides that “An employer shall not require an employee
27 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
28 applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational

1 Safety and Health Standards Board, or the Division of Occupational Safety and Health.”

2 61. Labor Code §516 provides that the Industrial Welfare Commission “may adopt
3 or amend working condition orders with respect to break periods, meal periods, and days of rest
4 for any workers in California consistent with the health and welfare of those workers.”

5 62. Section §11 of the IWC Wage Order No. 4-2001 states: “Every employer shall
6 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
7 the middle of each work period. The authorized rest period time shall be based on the total hours
8 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
9 thereof. However, a rest period need not be authorized for employees whose total daily work
10 time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as
11 hours worked for which there shall be no deduction from wages.”

12 63. Labor Code §226.7(b) and Section 12(D) of the Wage Order require an employer
13 to pay one additional hour of compensation, at the regular rate of pay, per day for each rest period
14 the employer failed to provide pursuant to the Labor Code and/or applicable Wage Order.

15 64. Plaintiff and the Class members worked over four (4) hours per shift and/or over
16 ten (10) hours per shift.

17 65. Plaintiff and the Class members were entitled to a non-captive, duty-free, paid
18 rest period of not less than ten (10) minutes for every four hours worked or major fraction thereof.

19 66. During the relevant time period, Defendants failed to provide legally compliant
20 non-captive and non-duty free ten (10) minute paid rest periods to Plaintiff and the Class member
21 by requiring the rest periods to be taken on Defendants’ property.

22 67. As such, Plaintiff and the Class members were not allowed to leave Defendants’
23 premises for their rest breaks in violation of *Augustus v. ABM Security Services, Inc.* (2016) 2
24 Cal.5th 257 as Defendants failed to relinquish control over how Plaintiff and the Class members
25 spent their rest breaks.

26 68. As such, as a matter of Defendants’ established company policy, Defendants
27 failed to authorize and permit all required paid rest periods established by Labor Code §§226.7
28 and 516 and Section 12 of the applicable Wage Order.

1 69. As a result of the unlawful acts of Defendants, Plaintiff and the Class members
2 have been deprived of legally compliant paid rest breaks and are entitled to recover damages
3 under Labor Code §226.7(b) and §12 of IWC Wage Order No. 4-2001 in the amount of one
4 additional hour of compensation at their regular rate of pay for each day a paid rest break was
5 not provided.

6 70. Pursuant to Labor Code §218.6 and Civil Code §3287, Plaintiff and the Class
7 Members seek recover of pre-judgment interest on all amounts recovered herein.

8 **FOURTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

10 **Violation of Labor Code §226**

11 (Against all Defendants)

12 71. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein,
13 paragraphs 1 through 38 of this Complaint.

14 72. California Labor Code §226 provides:

15 (a) Every employer shall, semimonthly or at the time of each payment of wages,
16 furnish each of his or her employees, either as a detachable part of the check, draft,
17 or voucher paying the employee's wages, or separately when wages are paid by
18 personal check or cash, an accurate itemized statement in writing showing (1) gross
19 wages earned, (2) total hours worked by the employee, except for any employee
20 whose compensation is solely based on a salary and who is exempt from payment
21 of overtime under subdivision (a) of Section 515 or any applicable order of the
22 Industrial Welfare Commission, (3) the number of piece-rate units earned and any
23 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
24 provided that all deductions made on written orders of the employee may be
25 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of
26 the period for which the employee is paid, (7) the name of the employee and only
27 the last four digits of his or her social security number or an employee identification
28 number other than a social security number, (8) the name and address of the legal
entity that is the employer..., and (9) all applicable hourly rates in effect during the
pay period and the corresponding number of hours worked at each hourly rate by
the employee...

73. Section 6(A) of the Wage Order requires accurate information pertaining to total
wages paid each payroll period, total hours worked in the payroll period and applicable rates of
pay, and incentive plan formula provided to the employees.

1 74. Labor Code §226(e) provides that an employee is entitled to recover the greater
2 of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation of §226
3 occurs and one hundred dollars (\$100) for each subsequent pay period not to exceed an aggregate
4 penalty of four thousand dollars (\$4,000), as well as an award of costs and reasonable attorneys'
5 fees, for all pay periods in which the employer knowingly and intentionally failed to provide
6 timely and accurate itemized statements to the employees.

7 75. At all material times, Defendants knowingly and intentionally failed to provide
8 Plaintiff and the Class members with wage statements reflecting the gross wages earned, net
9 wages earned, the applicable hourly rates at the corresponding hours worked, and/or list the meal
10 and rest period premium payment on the wage statement.

11 76. Plaintiff and the Class members suffered injury as a result of Defendants'
12 knowing and intentional failure to provide accurate itemized wage statements as Plaintiff and
13 the Class member were owed but not paid premium compensation for all premium hours worked
14 and premium payments for rest and meal period violations which were not reflected on the wage
15 statements. Plaintiff and the Class members suffered injury as a reasonable person could not
16 promptly and easily determine from the wage statements alone the accurate amount of gross
17 wages, applicable hourly rates at the corresponding hours worked, the net wages earned for the
18 pay period and/or the number of rest period premium payments on the wage statements.

19 77. Plaintiff and the Class members are entitled to damages of statutory penalties
20 pursuant to Labor Code §226(e) for these violations, in an amount to be determined at trial.

21 78. Plaintiff and the Class members are entitled to and seek costs and reasonable
22 attorneys' fees pursuant to Labor Code §226(e).

23 79. Plaintiff further seeks injunctive relief and reasonable attorneys' fees and costs
24 pursuant to Labor Code §226(h).

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1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PAY ALL WAGES DUE AT SEPARATION**

3 **Violation of Labor Code §§201, 203**

4 (Against all Defendants)

5 80. Plaintiff re-alleges and incorporates by reference, as though fully set forth herein,
6 paragraphs 1 through 38 of this Complaint.

7 81. Plaintiff and the Class members whose employment ended with Defendants
8 during the relevant time period were entitled to be promptly paid all earned and unpaid wages at
9 the time of termination, as required pursuant to Labor Code §§201 and 202, *et seq.* Defendants
10 refused and/or intentionally failed to promptly compensate Plaintiff and the other Class members
11 all earned overtime wages and/or rest period premium pay at the time of separation. Based on
12 this Plaintiff and the Class members seek and are entitled to damages in the form of statutory
13 waiting time penalties pursuant to LC §203.

14 82. Plaintiff and the Class members whose employment terminated during the
15 relevant time period were employees of Defendants covered by Labor Code §203 whose
16 employment ended with Defendants.

17 83. Accordingly, pursuant to Labor Code §203, Plaintiff and the Class members are
18 entitled to waiting time penalties at an amount to be proven at trial.

19 **SIXTH CAUSE OF ACTION**

20 **UNFAIR COMPETITION**

21 **Violation of Business and Professions Code §§17200, *et seq.***

22 (Against all Defendants)

23 84. Plaintiff re-alleges and incorporates by reference each and every one of the
24 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set
25 forth herein.

26 85. Beginning on an exact date unknown to Plaintiff but believed to have occurred at
27 least since four (4) years before the filing of this action, Defendants have engaged in a pattern
28 and practice of acts of unfair competition in violation of B&PC §17200, including the practices

1 alleged herein.

2 86. Defendants, and each of them, are “persons” as defined by Business and
3 Professions Code §17201.

4 87. Plaintiff seeks to enforce important rights affecting the public interest. Plaintiff
5 sues on his own behalf and on behalf of the current, former, and future employees of the
6 Defendants that were required to work overtime and double time hours without receiving the full
7 amount of overtime and double time compensation and required to work shifts without legally
8 compliant meal and rest periods and as parties harmed by Defendants unfair business practices.

9 88. Plaintiff and the Class members suffered injuries-in-fact and have lost money as
10 a result of the Defendants’ unfair competition alleged herein.

11 **UNLAWFUL BUSINESS PRACTICES**

12 89. Defendants previously or continue to engage in unlawful, unfair, and/or
13 fraudulent business practices, as alleged in this Complaint, in violation of California’s B&PC
14 §17200 *et seq.* by:

- 15 a. Failing and refusing to pay Plaintiff and the Class members the full amount of
16 overtime and double time compensation in violation of Labor Code §§510 and
17 1194 and IWC Wage Order No. 4-2001; and
- 18 b. Failing and refusing to provide Plaintiff and the Class members legally compliant
19 non-captive, duty-free, paid, ten-minute rest periods or premium payments, at the
20 regular rate of pay, in lieu thereof in violation of Labor Code §§226.7 and IWC
21 Wage Order No. 4-2001; and
- 22 c. Failing and refusing to provide Plaintiff and the Class members legally compliant,
23 uninterrupted, meal breaks or premium payments, at the regular rate of pay, in
24 lieu thereof in violation of Labor Code §§226.7, 512 and IWC Wage Order No.
25 4-2001

26 90. All of these allegations constitute unfair business practices and/or unlawful
27 business practices in violation of California B&PC §17200, *et seq.*

28 91. Defendants have avoided payment of wages, overtime and double time wages

1 and other benefits as required by the California Labor Code, the California Code of Regulations
2 and applicable IWC Wage Orders. As a result of Defendants' unfair business practices,
3 Defendants have reaped unfair benefits and illegal profits at the expense of Plaintiff, the Class
4 members, and others similarly situated, and the members of the public. Defendants should be
5 made to disgorge their ill-gotten gains and to restore them to the Class, including Plaintiff.

6 92. Plaintiff and the Class members seek full restitution of said monies, as necessary
7 and according to proof, to restore any and all monies withheld and/or acquired by Defendants by
8 means of the unfair, unlawful, and fraudulent business practices complained of herein. Plaintiff
9 seeks, on behalf of all current and former employees of Defendants, restitution of monies
10 retained by Defendants. Plaintiff further seeks, on behalf of himself and the Class members, the
11 appointment of a receiver, as necessary, to establish the total restitutionary relief from
12 Defendants. The restitution includes all wages withheld by Defendants as a result of the unfair,
13 unlawful, and/or fraudulent business practices; including interest thereon. Absent a statutory
14 provision specifically governing the type of claim at issue, the prejudgment interest rate is 10
15 percent. The acts complained of herein occurred, at least in part, within the last four (4) years
16 preceding the filing of the Complaint.

17 93. Plaintiffs is informed and believe and thereon allege that at all times herein
18 mentioned, Defendants have engaged in unlawful, deceptive, and unfair business practices
19 prohibited by California B&PC §17200, thereby depriving their employees and the Class
20 members, the minimum working condition, standards and conditions due to them under the
21 California labor laws and Industrial Welfare commission wage orders as specifically described
22 herein. Plaintiff further seeks an order requiring Defendants to identify by full name, telephone
23 number, email address and last known address employees who worked or still work for
24 Defendants for the Class members from four (4) years preceding the filing of the original
25 Complaint through the date of class certification. Plaintiff further seeks an order requiring
26 Defendants to timely pay restitution to all current and former employees, including back wages,
27 and interest.

28 94. By and through its unfair, unlawful, and/or fraudulent business practices and acts

1 described herein, Defendants have obtained valuable services from Plaintiff and all persons
2 similarly situated, and has deprived Plaintiff and all persons similarly situated of valuable rights
3 and benefits guaranteed by law, all to their detriment.

4 95. Plaintiff, and all persons similarly situated, and all persons in interest, are entitled
5 to and do seek such relief as may be necessary to restore to them the money and property which
6 Defendants have acquired, or of which Plaintiffs and class members have been deprived by mean
7 of the herein described unfair, unlawful, and/or fraudulent business practices.

8 96. Plaintiff, and all persons similarly situated, and all persons in interest, are further
9 entitled to and do seek a declaration that the above described business practices are unfair,
10 unlawful, and/or fraudulent, and declaratory relief of Defendants engaging in any of the herein
11 described unfair, unlawful, and/or fraudulent business practices.

12 97. Plaintiff and the Class members request attorney's fees and costs pursuant to
13 Code of Civil Procedure §1021.5 since this action is brought to vindicate important rights of a
14 large class and the public.

15 IV. PRAYER FOR RELIEF

16 WHEREFORE, Plaintiff prays judgment as follows:

- 17 1. An order that the action be certified as a class action;
- 18 2. An order that Plaintiff be appointed class representatives;
- 19 3. An order that counsel for Plaintiff be appointed class counsel;
- 20 4. An order requiring Defendants to identify, by name, email address, address and
21 telephone number all current and former hourly installers non-exempt employees of
22 Defendants for the period of June 12, 2019 through the date of class certification;
- 23 5. For all unpaid wages due to Plaintiff and each Class member in amounts to be proven
24 at trial;
- 25 6. For the full amount of unpaid overtime and/or double time wages due Plaintiff and
26 each Class member pursuant to Labor Code §1194;
- 27 7. For recovery as authorized by Labor Code §226(e);
- 28 8. For restitution of all unpaid wages due Plaintiff and each Class member;

9. For all applicable statutory penalties, in amounts to be proven at trial;
10. For an award of waiting time penalties pursuant to section 203 of the California Labor Code, in amounts to be proven at trial;
11. For general damages including compensatory damages according to proof;
12. For pre-judgment interest as allowed by Labor Code §§218.6 and 1194(a) as well as Cal. Civil Code §3287 and to the extent permitted by law, the California Constitution, and/or deemed equitable by the Court;
13. For all applicable interest on damages, wages, and penalties due;
14. For injunctive relief to prevent further violations of the California Labor Code;
15. For declaratory relief that Defendants engaged in unfair practices;
16. For declaratory relief that Defendants violated Labor Code §§201-203, 226, 226.7, 510, 512, 1194, and 1197;
17. For restitution of all moneys due to Plaintiff and Class members, and disgorged profits from the unlawful and/or unfair business practices of Defendants, pursuant to California Business & Professions Code §17200;
18. For one (1) hour of pay at each of the employees' regular rate of compensation for each workday that a legally compliant rest break was not provided;
19. For one (1) hour of pay at each of the employees' regular rate of compensation for each workday that a legally compliant meal break was not provided
20. For costs of suit, expenses and attorneys' fees pursuant to Labor Code §§226(e) and (h), 1194(a), 2269(g)(1), Code of Civil Procedure §1021.5, *et seq.*, and all other applicable law, and

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Dated: June 13, 2023

THE MYERS LAW GROUP, A.P.C.

THE MYERS LAW GROUP, A.P.C.

By:

David P. Myers

Jason Hatcher

Attorneys for Plaintiff MIGUEL TORRES and
all others similarly situated.