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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

DOUGLAS PATTON, on behalf of the State of California, as a private attorney general, and as an individual, on behalf of himself and on behalf of all persons similarly situated, and SALVADOR REYNOSA, JR., an individual, on behalf of himself and on behalf of all persons similarly situated,

Plaintiffs,

vs.

HOME DEPOT U.S.A., INC., a Corporation;
and Does 1 through 50, Inclusive,

Defendants.

Case No. 21CV387956

SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
3. FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
4. FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
6. FAILURE TO REIMBURSE EMPLOYEES FOR REQUIRED EXPENSES IN VIOLATION OF CAL. LAB. CODE § 2802;
7. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE §§ 201, 202 AND 203;
8. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226; and,
9. VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT [LABOR CODE §§ 2698, *et seq.*;

DEMAND FOR A JURY TRIAL

1 Plaintiffs Douglas Patton and Salvador Reynosa, Jr., (“PLAINTIFFS”), individuals, on
2 behalf of themselves and all other similarly situated current and former employees, allege on
3 information and belief, except for their own acts and knowledge which are based on personal
4 knowledge, the following:

5
6 **THE PARTIES**

7 1. Defendant Home Depot U.S.A., Inc. (“DEFENDANT”) is a Corporation and at
8 all relevant times mentioned herein conducted and continues to conduct substantial and regular
9 business throughout California.

10 2. DEFENDANT is a home improvement retailer in the United States supplying
11 tools, construction products and services.

12 3. Plaintiff Patton has been employed by DEFENDANT in California as a non-
13 exempt associate entitled to overtime pay and meal and rest periods since August of 2017.
14 Plaintiff Patton has been at all times relevant mentioned herein classified by DEFENDANT as
15 a non-exempt associate paid in whole or in part on an hourly basis and received additional
16 compensation from DEFENDANT in the form of non-discretionary incentive wages.

17 3. Plaintiff Reynosa was employed by DEFENDANT in California from January
18 of 2018 to October of 2018 and was at all times classified by DEFENDANT as a non-exempt
19 associate, paid on an hourly basis, and entitled to the legally required meal and rest periods and
20 payment of minimum and overtime wages due for all time worked.

21 4. PLAINTIFFS bring this Class Action on behalf of themselves and a California
22 class, defined as all non-exempt associates who worked at any California supply chain facility
23 of DEFENDANT (and its past and present parents, subsidiaries, affiliates and related entities)
24 (the “CALIFORNIA CLASS”) from January 26, 2017 through April 26, 2023 (the
25 “CALIFORNIA CLASS PERIOD”), except associates who worked at the Tracy RDC prior to
26 June 17, 2021. The amount in controversy for the aggregate claim of CALIFORNIA CLASS
27 Members is under five million dollars (\$5,000,000.00).

1 5. PLAINTIFFS bring this Class Action on behalf of themselves and a
2 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for their losses
3 incurred during the CALIFORNIA CLASS PERIOD caused by DEFENDANT's policy and
4 practice which failed to lawfully compensate these employees for all their overtime worked.
5 DEFENDANT's policy and practice alleged herein was an unlawful, unfair and deceptive
6 business practice whereby DEFENDANT retained and continues to retain wages due
7 PLAINTIFFS and the other members of the CALIFORNIA CLASS. PLAINTIFFS and the
8 other members of the CALIFORNIA CLASS seek an injunction enjoining such conduct by
9 DEFENDANT in the future, relief for the named PLAINTIFFS and the other members of the
10 CALIFORNIA CLASS who have been economically injured by DEFENDANT's past and
11 current unlawful conduct, and all other appropriate legal and equitable relief.

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

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

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3 **THE CONDUCT**

4 8. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to accurately
5 record and pay PLAINTIFFS and other CALIFORNIA CLASS Members for the actual amount
6 of time these employees work. Pursuant to the Industrial Welfare Commission Wage Orders,
7 DEFENDANT is required to pay PLAINTIFFS and other CALIFORNIA CLASS Members for
8 all time worked, meaning the time during which an employee was subject to the control of an
9 employer, including all the time the employee was permitted or suffered to permit this work.
10 DEFENDANT required PLAINTIFFS and CALIFORNIA CLASS Members to work off the
11 clock without paying them for all the time they were under DEFENDANT's control. As a result
12 of their rigorous work schedules, PLAINTIFFS and other CALIFORNIA CLASS Members
13 were from time to time not fully relieved of duty by DEFENDANT for their meal periods and
14 would clock out of DEFENDANT's timekeeping system but continue to work at
15 DEFENDANT's direction during what should have been their off-duty meal period. As a result,
16 PLAINTIFFS and other CALIFORNIA CLASS Members forfeited minimum wages and
17 overtime wage compensation by working without their time being correctly recorded and
18 without compensation at the applicable rates. Further, during the CALIFORNIA CLASS
19 PERIOD, PLAINTIFF and other CALIFORNIA CLASS Members from time to time were not
20 paid wages for all time worked, including overtime wages, such that in the aggregate employees
21 were underpaid wages as a result of DEFENDANT's pattern and practice of unevenly rounding
22 time worked by its employees. DEFENDANT's policy and practice not to pay PLAINTIFFS
23 and other CALIFORNIA CLASS Members for all time worked, is evidenced by
24 DEFENDANT's business records.

25 9. DEFENDANT also required PLAINTIFFS and CALIFORNIA CLASS Members
26 to work off the clock without paying them for all the time they were under DEFENDANT's
27 control. PLAINTIFFS and CALIFORNIA CLASS Members would clock out of
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1 DEFENDANT's timekeeping system, in order to perform additional work for DEFENDANT
2 as required to meet DEFENDANT's job requirements. For example, during the CALIFORNIA
3 CLASS PERIOD, DEFENDANT engaged in the practice of requiring PLAINTIFFS and
4 CALIFORNIA CLASS Members to perform work off the clock after clocking out in that
5 DEFENDANT, as a condition of employment, required these employees to wait for and submit
6 to loss prevention inspections off the clock. Additionally, DEFENDANT engaged in the
7 practice of requiring Plaintiff Patton and CALIFORNIA CLASS Members to perform work off
8 the clock in that DEFENDANT, as a condition of employment, required these employees to wait
9 in line and submit to mandatory temperature checks for COVID-19 screening prior to clocking
10 into DEFENDANT's timekeeping system for the workday. As a result of these and other
11 practices requiring CALIFORNIA CLASS Members to work off-the-clock, PLAINTIFFS and
12 other CALIFORNIA CLASS Members forfeited minimum wage, overtime wage compensation,
13 and meal break wages, by working without their time being correctly recorded and without
14 compensation at the applicable rates. Further, during the CALIFORNIA CLASS PERIOD,
15 PLAINTIFF and other CALIFORNIA CLASS Members from time to time were not paid wages
16 for all time worked, including overtime wages, such that in the aggregate employees were
17 underpaid wages as a result of DEFENDANT's pattern and practice of unevenly rounding time
18 worked by its employees. DEFENDANT's policy and practice not to pay PLAINTIFFS and
19 other CALIFORNIA CLASS Members for all time worked, is evidenced by DEFENDANT's
20 business records.

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

25 11. The second component of PLAINTIFFS' and other CALIFORNIA CLASS
26 Members' compensation was DEFENDANT's non-discretionary incentive program that paid
27 PLAINTIFFS and other CALIFORNIA CLASS Members incentive wages based on their
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1 performance for DEFENDANT. The non-discretionary incentive program provided all
2 employees paid on an hourly basis with incentive compensation when the employees met the
3 various performance goals set by DEFENDANT. However, when calculating the regular rate
4 of pay in order to pay overtime, meal and rest break premiums, sick pay and COVID-related
5 emergency sick leave to PLAINTIFFS and other CALIFORNIA CLASS Members,
6 DEFENDANT failed to include the incentive compensation as part of the employees' "regular
7 rate of pay" for purposes of calculating overtime pay, meal and rest break premium pay, sick
8 pay and COVID-related emergency sick leave. Management and supervisors described the
9 incentive program to potential and new employees as part of the compensation package. As a
10 matter of law, the incentive compensation received by PLAINTIFFS and other CALIFORNIA
11 CLASS Members must be included in the "regular rate of pay." The failure to do so has
12 resulted in an underpayment of overtime compensation and meal and rest break premiums to
13 PLAINTIFFS and other CALIFORNIA CLASS Members by DEFENDANT. Further,
14 DEFENDANT underpaid sick pay wages to PLAINTIFFS and other CALIFORNIA CLASS
15 Members by failing to pay such wages at the regular rate of pay. Specifically, PLAINTIFFS
16 and other non-exempt employees regularly earn non-discretionary remuneration, including but
17 not limited to, incentives, shift differential pay, and bonuses. Rather than pay sick pay at the
18 regular rate of pay, DEFENDANT underpaid sick pay to PLAINTIFFS and other
19 CALIFORNIA CLASS Members at their base rates of pay.

20 12. In violation of the applicable sections of the California Labor Code and the
21 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
22 intentionally and knowingly failed to compensate PLAINTIFFS and the other members of the
23 CALIFORNIA CLASS at the correct rate of pay for all overtime worked. This policy and
24 practice of DEFENDANT was intended to purposefully avoid the payment of the correct
25 overtime compensation as required by California law which allowed DEFENDANT to illegally
26 profit and gain an unfair advantage over competitors who complied with the law. To the extent
27 equitable tolling operates to toll claims by the CALIFORNIA CLASS against DEFENDANT,
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1 the CALIFORNIA CLASS PERIOD should be adjusted accordingly.

2 13. As a result of their rigorous work schedules, PLAINTIFFS and other
3 CALIFORNIA CLASS Members were also from time to time unable to take off duty meal
4 breaks and were not fully relieved of duty for meal periods. PLAINTIFFS and other
5 CALIFORNIA CLASS Members were from time to time required to perform work as ordered
6 by DEFENDANT for more than five (5) hours during a shift without receiving an off-duty meal
7 break. Further, DEFENDANT failed to provide PLAINTIFFS and CALIFORNIA CLASS
8 Members with a second off-duty meal period from time to time in which these employees are
9 required by DEFENDANT to work ten (10) hours of work from time to time. PLAINTIFFS and
10 the other CALIFORNIA CLASS Members therefore forfeit meal breaks without additional
11 compensation and in accordance with DEFENDANT's corporate policy and practice.

12 14. During the CALIFORNIA CLASS PERIOD, PLAINTIFFS and other
13 CALIFORNIA CLASS Members were also from time to time required to work in excess of four
14 (4) hours without being provided ten (10) minute rest periods. Further, these employees are
15 denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two
16 (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for some shifts
17 worked of between six (6) and eight (8) hours, and a first, second and third rest period of at
18 least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
19 PLAINTIFFS and other CALIFORNIA CLASS Members are also not provided with one hour
20 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFFS and other
21 CALIFORNIA CLASS Members are periodically denied their proper rest periods by
22 DEFENDANT and DEFENDANT's managers. Additionally, the applicable California Wage
23 Order requires employers to provide employees with off-duty rest periods, which the California
24 Supreme Court defined as time during which an employee is relieved from all work related
25 duties and free from employer control. In so doing, the Court held that the requirement under
26 California law that employers authorize and permit all employees to take rest period means that
27 employers must relieve employees of all duties and relinquish control over how employees
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1 spend their time which includes control over the locations where employees may take their rest
2 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -
3 five minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFFS and
4 other CALIFORNIA CLASS Members from unconstrained walks and required these employees
5 to remain on DEFENDANT's premises under DEFENDANT's control during what should have
6 been their paid, off duty rest periods.

7 15. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
8 PLAINTIFFS and the other CALIFORNIA CLASS Members for required business expenses
9 incurred by PLAINTIFFS and other CALIFORNIA CLASS Members in direct consequence
10 of discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
11 2802, employers are required to indemnify employees for all expenses incurred in the course
12 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
13 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
14 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
15 directions of the employer, even though unlawful, unless the employee, at the time of obeying
16 the directions, believed them to be unlawful."

17 16. In the course of their employment PLAINTIFFS and other CALIFORNIA CLASS
18 Members as a business expense, were required by DEFENDANT to use their own personal
19 cellular phones as a result of and in furtherance of their job duties as employees for
20 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
21 associated with the use of their personal cellular phones for DEFENDANT's benefit.
22 Specifically, PLAINTIFFS and other CALIFORNIA CLASS Members were required by
23 DEFENDANT to use their personal cellular phones for work related issues. As a result, in the
24 course of their employment with DEFENDANT, PLAINTIFFS and other members of the
25 CALIFORNIA CLASS incurred unreimbursed business expenses which included, but were not
26 limited to, costs related to the use of their personal cellular phones all on behalf of and for the
27 benefit of DEFENDANT.

1 17. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
2 employees with an accurate itemized wage statement in writing showing, among other things,
3 gross wages earned and all applicable hourly rates in effect during the pay period and the
4 corresponding amount of time worked at each hourly rate. From time to time, DEFENDANT
5 violated Cal. Lab. Code § 226 by failing to provide wage statements that identified the correct
6 gross and net wages earned. Aside, from the violations listed above in this paragraph,
7 DEFENDANT failed to issue to Plaintiff Patton an itemized wage statement that lists all the
8 requirements under California Labor Code 226 *et seq.* As a result, from time to time
9 DEFENDANT provided Plaintiff Patton and the other members of the CALIFORNIA
10 LABOR-SUB CLASS with wage statements which violated Cal. Lab. Code § 226.

11 18. Specifically as to PLAINTIFFS' pay, DEFENDANT provided compensation to
12 them in the form of two components. One component of PLAINTIFFS' compensation was a
13 base hourly wage. The second component of PLAINTIFFS' compensation was non-
14 discretionary incentive wages as described above. DEFENDANT paid the incentive wages, so
15 long as PLAINTIFFS met certain predefined performance requirements. PLAINTIFFS met
16 DEFENDANT's predefined eligibility performance requirements in various pay periods
17 throughout their employment with DEFENDANT and DEFENDANT paid PLAINTIFFS the
18 incentive wages. During these pay periods in which PLAINTIFFS were paid the non-
19 discretionary incentive wages by DEFENDANT, PLAINTIFFS also worked overtime and/or
20 were paid meal and/or rest period premium pay for DEFENDANT, but DEFENDANT never
21 included the incentive compensation in PLAINTIFFS' regular rate of pay for the purposes of
22 calculating what should have been PLAINTIFFS' accurate overtime rate and meal and rest
23 premium rate and thereby underpaid PLAINTIFFS for overtime worked and meal and rest
24 period premium pay throughout their employment with DEFENDANT. The incentive
25 compensation paid by DEFENDANT constituted wages within the meaning of the California
26 Labor Code and thereby should have been part of PLAINTIFFS' "regular rate of pay."
27 PLAINTIFFS were also from time to time unable to take off duty meal and rest breaks and were
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1 not fully relieved of duty for their meal periods. PLAINTIFFS were required to perform work
2 as ordered by DEFENDANT for more than five (5) hours during a shift without receiving an
3 off-duty meal break and/or PLAINTIFFS were also from time to time interrupted and performed
4 work for DEFENDANT during what should have been PLAINTIFFS' off duty meal and rest
5 periods. Further, DEFENDANT failed to provide PLAINTIFFS with a second off-duty meal
6 period from time to time in which they were required by DEFENDANT to work ten (10) hours
7 of work. PLAINTIFFS therefore forfeited meal and rest breaks without additional
8 compensation and in accordance with DEFENDANT's corporate policy and practice. In
9 addition, DEFENDANT failed to pay PLAINTIFFS vested vacation/PTO wages at the time of
10 termination. To date, DEFENDANT has not fully paid PLAINTIFFS the wages still owed to
11 them or any waiting time penalties owed to them under Cal. Lab. Code § 203. The amount in
12 controversy for PLAINTIFFS individually does not exceed the sum or value of \$75,000.

13 **JURISDICTION AND VENUE**

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

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

23 **THE CALIFORNIA CLASS**

24 21. PLAINTIFFS bring the First Cause of Action for Unfair, Unlawful and Deceptive
25 Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL") as a Class
26 Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a California class, defined as
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1 all non-exempt associates who worked at any California supply chain facility of DEFENDANT
2 (and its past and present parents, subsidiaries, affiliates and related entities)(the “CALIFORNIA
3 CLASS”) from January 26, 2017 through April 26, 2023 (the “CALIFORNIA CLASS
4 PERIOD”), except associates who worked at the Tracy RDC prior to June 17, 2021. The
5 amount in controversy for the aggregate claim of CALIFORNIA CLASS Members is under five
6 million dollars (\$5,000,000.00). To the extent equitable tolling operates to toll claims by the
7 CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should
8 be adjusted accordingly.

9 22. The California Legislature has commanded that “all wages... ..earned by any
10 person in any employment are due and payable twice during each calendar month, on days
11 designated in advance by the employer as the regular paydays”, and further that “[a]ny work
12 in excess of eight hours in one workday and any work in excess of 40 hours in any one
13 workweek . . . shall be compensated at the rate of no less than one and one-half times the
14 regular rate of pay for an employee.” (Lab. Code § 204 and § 510(a).) The Industrial Welfare
15 Commission (IWC), however, is statutorily authorized to “establish exemptions from the
16 requirement that an overtime rate of compensation be paid... ..for executive, administrative, and
17 professional employees, provided [inter alia] that the employee is primarily engaged in duties
18 that meet the test of the exemption, [and] customarily and regularly exercises discretion and
19 independent judgment in performing those duties...” (Lab. Code § 510(a).) Neither the
20 PLAINTIFFS nor the other members of the CALIFORNIA CLASS and/or the CALIFORNIA
21 LABOR SUB-CLASS qualify for exemption from the above requirements.

22 23. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
23 Commission (“IWC”) Wage Order requirements, and the applicable provisions of California
24 law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed
25 to correctly calculate and record minimum wage, and overtime compensation for all time
26 worked by PLAINTIFFS and the other members of the CALIFORNIA CLASS, even though
27 DEFENDANT enjoyed the benefit of this work, required employees to perform this work and
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1 permitted or suffered to permit this work.

2 24. DEFENDANT has the legal burden to establish that each and every
3 CALIFORNIA CLASS Member is paid the applicable rate for all overtime worked and to
4 accurately calculate the compensation that PLAINTIFFS and members of the CALIFORNIA
5 CLASS were awarded by DEFENDANT. DEFENDANT, however, failed to have in place
6 during the CALIFORNIA CLASS PERIOD and still failed to have in place a policy or practice
7 to ensure that each and every CALIFORNIA CLASS Member was paid the applicable overtime
8 rate for all overtime worked, so as to satisfy their burden. This common business practice
9 applicable to each and every CALIFORNIA CLASS Member can be adjudicated on a class-
10 wide basis as unlawful, unfair, and/or deceptive under Cal. Business & Professions Code §§
11 17200, *et seq.* (the “UCL”) as causation, damages, and reliance are not elements of this claim.

12 25. At no time during the CALIFORNIA CLASS PERIOD was the compensation for
13 any member of the CALIFORNIA CLASS properly recalculated so as to compensate the
14 employee for all overtime worked at the applicable rate, as required by California Labor Code
15 §§ 204 and 510, *et seq.* At no time during the CALIFORNIA CLASS PERIOD was the
16 overtime compensation for any member of the CALIFORNIA CLASS properly recalculated so
17 as to include all earnings in the overtime compensation calculation as required by California
18 Labor Code §§ 510, *et seq.*

19 26. The CALIFORNIA CLASS, is so numerous that joinder of all CALIFORNIA
20 CLASS Members is impracticable.

21 27. DEFENDANT violated the rights of the CALIFORNIA CLASS under California
22 law by:

- 23 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof. Code
24 §§ 17200, *et seq.*, by unlawfully, unfairly and/or deceptively having in
25 place company policies, practices and procedures that failed to pay all
26 wages due the CALIFORNIA CLASS for all overtime worked, and failed
27 to accurately record the applicable rates of all overtime worked by the
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1 CALIFORNIA CLASS;

2 (b) Committing an act of unfair competition in violation of the California
3 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
4 unlawfully, unfairly, and/or deceptively having in place a company policy,
5 practice and procedure that failed to correctly calculate overtime
6 compensation due to PLAINTIFFS and the members of the
7 CALIFORNIA CLASS;

8 (c) Committing an act of unfair competition in violation of the California
9 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
10 failing to provide mandatory meal and/or rest breaks to PLAINTIFFS and
11 the CALIFORNIA CLASS members;

12 (d) Committing an act of unfair competition in violation of the California
13 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by
14 unlawfully, unfairly and deceptively having in place company policies,
15 practices and procedures that denied PLAINTIFFS and the members of
16 the CALIFORNIA CLASS the correct minimum wages and otherwise
17 violated applicable law; and,

18 (e) Committing an act of unfair competition in violation of the California
19 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
20 violating Cal. Lab. Code § 2802 by failing to reimburse PLAINTIFFS and
21 the CALIFORNIA CLASS members with necessary expenses incurred in
22 the discharge of their job duties.

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

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

- 1 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
2 that are raised in this Complaint are common to the CALIFORNIA
3 CLASS will apply to every member of the CALIFORNIA CLASS;
- 4 (c) The claims of the representative PLAINTIFFS are typical of the claims of
5 each member of the CALIFORNIA CLASS. PLAINTIFFS, like all the
6 other members of the CALIFORNIA CLASS, are subjected to the
7 employment practices of DEFENDANT and are non-exempt employees
8 paid on an hourly basis who have been subjected to the DEFENDANT's
9 practice and policy described herein. PLAINTIFFS sustained economic
10 injury as a result of DEFENDANT's employment practices.
11 PLAINTIFFS and the members of the CALIFORNIA CLASS were and
12 are similarly or identically harmed by the same unlawful, deceptive, and
13 unfair misconduct engaged in by DEFENDANT; and,
- 14 (d) The representative PLAINTIFFS will fairly and adequately represent and
15 protect the interest of the CALIFORNIA CLASS, and have retained
16 counsel who are competent and experienced in Class Action litigation.
17 There are no material conflicts between the claims of the representative
18 PLAINTIFFS and the members of the CALIFORNIA CLASS that would
19 make class certification inappropriate. Counsel for the CALIFORNIA
20 CLASS will vigorously assert the claims of all CALIFORNIA CLASS
21 Members.

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

- 24 (a) Without class certification and determination of declaratory, injunctive,
25 statutory and other legal questions within the class format, prosecution of
26 separate actions by individual members of the CALIFORNIA CLASS will
27 create the risk of:
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1) Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,

2) Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

(b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT failed to pay all wages due. Including the correct overtime rate, for all worked by the members of the CALIFORNIA CLASS as required by law;

1) With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim PLAINTIFFS seek declaratory relief holding that the DEFENDANT's policy and practices constitute unfair competition, along with declaratory relief, injunctive relief, and incidental equitable relief as may be necessary to prevent and remedy the conduct declared to constitute unfair competition;

(c) Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question affecting only individual CALIFORNIA CLASS Members, and a Class

1 Action is superior to other available methods for the fair and efficient
2 adjudication of the controversy, including consideration of:

3 1) The interests of the members of the CALIFORNIA CLASS in
4 individually controlling the prosecution or defense of separate
5 actions in that the substantial expense of individual actions will be
6 avoided to recover the relatively small amount of economic losses
7 sustained by the individual CALIFORNIA CLASS Members when
8 compared to the substantial expense and burden of individual
9 prosecution of this litigation;

10 2) Class certification will obviate the need for unduly duplicative
11 litigation that would create the risk of:

12 A. Inconsistent or varying adjudications with respect to
13 individual members of the CALIFORNIA CLASS, which
14 would establish incompatible standards of conduct for the
15 DEFENDANT; and/or,

16 B. Adjudications with respect to individual members of the
17 CALIFORNIA CLASS would as a practical matter be
18 dispositive of the interests of the other members not parties
19 to the adjudication or substantially impair or impede their
20 ability to protect their interests;

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

27 4) A class action is superior to other available methods for the fair
28

1 and efficient adjudication of this litigation because class treatment
2 will obviate the need for unduly and unnecessary duplicative
3 litigation that is likely to result in the absence of certification of
4 this action pursuant to Cal. Code of Civ. Proc. § 382.

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

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

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

13 31. DEFENDANT maintains records from which the Court can ascertain and identify
14 by job title each of DEFENDANT's employees who as have been intentionally subjected to
15 DEFENDANT's conduct as herein alleged. PLAINTIFFS will seek leave to amend the
16 Complaint to include any additional job titles of similarly situated employees when they have
17 been identified.

18 **THE CALIFORNIA LABOR SUB-CLASS**

19 32. PLAINTIFFS further bring the Second, Third, Fourth, Fifth, Sixth, Seventh and
20 Eighth causes of Action on behalf of a California sub-class, defined as all non-exempt
21 associates who worked at any California supply chain facility of DEFENDANT (and its past
22 and present parents, subsidiaries, affiliates and related entities)(the "CALIFORNIA LABOR
23 SUB-CLASS") from January 26, 2017 through April 26, 2023 (the "CALIFORNIA LABOR
24 SUB-CLASS PERIOD"), except associates who worked at the Tracy RDC prior to June 17,
25 2021. The amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-
26 CLASS Members is under five million dollars (\$5,000,000.00).

27 33. DEFENDANT, in violation of the applicable Labor Code, Industrial Welfare
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Commission (“IWC”) Wage Order requirements, and the applicable provisions of California law, intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT failed to correctly calculate minimum wage and overtime compensation for the all time worked by Plaintiff Reynosa and the other members of the CALIFORNIA LABOR SUB-CLASS, even though DEFENDANT enjoyed the benefit of this work, required employees to perform this work and permitted or suffered to permit this work. DEFENDANT denied these CALIFORNIA LABOR SUB-CLASS Members wages at the correct amount to which these employees are entitled in order to unfairly cheat the competition and unlawfully profit. To the extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

34. DEFENDANT maintains records from which the Court can ascertain and identify by name and job title, each of DEFENDANT’s employees who have been intentionally subjected to DEFENDANT’s conduct as herein alleged. Plaintiff Reynosa will seek leave to amend the complaint to include any additional job titles of similarly situated employees when they have been identified.

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

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

- (a) Whether DEFENDANT unlawfully failed to correctly calculate and pay overtime wages and minimum wages to members of the CALIFORNIA LABOR SUB-CLASS in violation of the California Labor Code and California regulations and the applicable California Wage Order;
- (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS were entitled to overtime compensation for overtime worked under the overtime pay requirements of California law;

- 1 (c) Whether DEFENDANT failed to accurately record the applicable
2 overtime rates for all overtime worked Plaintiff Reynosa and the other
3 members of the CALIFORNIA LABOR SUB-CLASS;
- 4 (d) Whether DEFENDANT failed to provide Plaintiff Reynosa and the other
5 members of the CALIFORNIA LABOR SUB-CLASS with legally
6 required uninterrupted thirty (30) minute meal breaks and rest periods;
- 7 (e) Whether DEFENDANT failed to provide Plaintiff Reynosa and the other
8 members of the CALIFORNIA LABOR SUB-CLASS with accurate
9 itemized wage statements;
- 10 (f) Whether DEFENDANT engaged in unfair competition by the above-listed
11 conduct;
- 12 (g) The proper measure of damages and penalties owed to the members of the
13 CALIFORNIA LABOR SUB-CLASS; and,
- 14 (h) Whether DEFENDANT's conduct was willful.

15 37. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-CLASS
16 under California law by:

- 17 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by failing to accurately pay
18 Plaintiff Reynosa and the members of the CALIFORNIA LABOR SUB-
19 CLASS the correct overtime pay for which DEFENDANT is liable
20 pursuant to Cal. Lab. Code § 1194 & § 1198;
- 21 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by failing to
22 accurately pay the Plaintiff Reynosa and the members of the
23 CALIFORNIA LABOR SUB-CLASS the correct minimum wage for
24 which DEFENDANT is liable pursuant to Cal. Lab. Code §§ 1194 and
25 1197, and 1197.1;
- 26 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide Plaintiff
27 Reynosa and the other members of the CALIFORNIA LABOR SUB-
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1 CLASS all legally required off-duty, uninterrupted thirty (30) minute meal
2 breaks and the legally required rest breaks;

- 3 (d) Violating Cal. Lab. Code §§ 201, 202, 203 and/or 227.3, which provides
4 that when an employee is discharged or quits from employment, the
5 employer must pay the employee all wages due without abatement, by
6 failing to tender full payment and/or restitution of wages owed or in the
7 manner required by California law to the members of the CALIFORNIA
8 LABOR SUB-CLASS who have terminated their employment; and,
9 (e) Committing an act of unfair competition in violation of the California
10 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
11 violating Cal. Lab. Code § 2802 by failing to reimburse Plaintiff Reynosa
12 and the CALIFORNIA LABOR SUB-CLASS members with necessary
13 expenses incurred in the discharge of their job duties.

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

- 16 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS are
17 so numerous that the joinder of all CALIFORNIA LABOR SUB-CLASS
18 Members is impracticable and the disposition of their claims as a class
19 will benefit the parties and the Court;
20 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues
21 that are raised in this Complaint are common to the CALIFORNIA
22 LABOR SUB-CLASS and will apply to every member of the
23 CALIFORNIA LABOR SUB-CLASS;
24 (c) The claims of the representative Plaintiff Reynosa are typical of the claims
25 of each member of the CALIFORNIA LABOR SUB-CLASS. Plaintiff
26 Reynosa, like all the other members of the CALIFORNIA LABOR SUB-
27 CLASS, is a non-exempt employee who has been subjected to the

1 DEFENDANT's practice and policy described herein. Plaintiff Reynosa
2 sustained economic injury as a result of DEFENDANT's employment
3 practices. Plaintiff Reynosa and the members of the CALIFORNIA
4 LABOR SUB-CLASS were and are similarly or identically harmed by the
5 same unlawful, deceptive, and unfair misconduct engaged in by
6 DEFENDANT; and,

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

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

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

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

3 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have acted
4 or refused to act on grounds generally applicable to the CALIFORNIA
5 LABOR SUB-CLASS, making appropriate class-wide relief with respect
6 to the CALIFORNIA LABOR SUB-CLASS as a whole in that
7 DEFENDANT failed to pay all wages due. Including the correct overtime
8 rate, for all overtime worked by the members of the CALIFORNIA
9 LABOR SUB-CLASS as required by law;

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

17 1) The interests of the members of the CALIFORNIA LABOR SUB-
18 CLASS in individually controlling the prosecution or defense of
19 separate actions in that the substantial expense of individual
20 actions will be avoided to recover the relatively small amount of
21 economic losses sustained by the individual CALIFORNIA
22 LABOR SUB-CLASS Members when compared to the substantial
23 expense and burden of individual prosecution of this litigation;

24 2) Class certification will obviate the need for unduly duplicative
25 litigation that would create the risk of:

26 A. Inconsistent or varying adjudications with respect to
27 individual members of the CALIFORNIA LABOR SUB-
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CLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,

B. Adjudications with respect to individual members of the CALIFORNIA LABOR SUB-CLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;

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

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

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

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

(b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a

1 substantial number of individual CALIFORNIA LABOR SUB-CLASS
2 Members will avoid asserting their rights individually out of fear of
3 retaliation or adverse impact on their employment;

4 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
5 numerous that it is impractical to bring all members of the CALIFORNIA
6 LABOR SUB-CLASS before the Court;

7 (d) Plaintiff Reynosa, and the other CALIFORNIA LABOR SUB-CLASS
8 Members, will not be able to obtain effective and economic legal redress
9 unless the action is maintained as a Class Action;

10 (e) There is a community of interest in obtaining appropriate legal and
11 equitable relief for the acts of unfair competition, statutory violations and
12 other improprieties, and in obtaining adequate compensation for the
13 damages and injuries which DEFENDANT's actions have inflicted upon
14 the CALIFORNIA LABOR SUB-CLASS;

15 (f) There is a community of interest in ensuring that the combined assets of
16 DEFENDANT are sufficient to adequately compensate the members of
17 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

18 (g) DEFENDANT has acted or refused to act on grounds generally applicable
19 to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-
20 wide relief appropriate with respect to the CALIFORNIA LABOR SUB-
21 CLASS as a whole;

22 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily
23 ascertainable from the business records of DEFENDANT. The
24 CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA
25 CLASS Members classified as non-exempt employees during the
26 CALIFORNIA LABOR SUB-CLASS PERIOD; and,

27 (i) Class treatment provides manageable judicial treatment calculated to bring
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1 a efficient and rapid conclusion to all litigation of all wage and hour
2 related claims arising out of the conduct of DEFENDANT as to the
3 members of the CALIFORNIA LABOR SUB-CLASS.

4
5 **FIRST CAUSE OF ACTION**

6 **For Unlawful Business Practices**

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

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

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

12 42. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
13 Code § 17021.

14 43. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
15 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section
16 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
17 competition as follows:

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

22 Cal. Bus. & Prof. Code § 17203.

23 44. By the conduct alleged herein, DEFENDANT has engaged and continues to
24 engage in a business practice which violates California law, including but not limited to, the
25 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
26 including Sections 204, 210, 226.7, 510, 512, 1194, 1197, 1197.1, 1198, and 2802, for which
27 this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code

§ 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

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

46. By the conduct alleged herein, DEFENDANT's practices were deceptive and fraudulent in that DEFENDANT's policy and practice failed to pay PLAINTIFFS, and other members of the CALIFORNIA CLASS, minimum wages and overtime wages due for all time worked, due to business practices that cannot be justified, pursuant to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully withheld.

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

48. By the conduct alleged herein, DEFENDANT's practices were also unfair and deceptive in that DEFENDANT's policies, practices and procedures failed to provide mandatory meal and/or rest breaks to PLAINTIFFS and the CALIFORNIA CLASS members.

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

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

4 51. By and through the unlawful and unfair business practices described herein,
5 DEFENDANT has obtained valuable property, money and services from PLAINTIFFS and the
6 other members of the CALIFORNIA CLASS and has deprived them of valuable rights and
7 benefits guaranteed by law and contract, all to the detriment of these employees and to the
8 benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete against competitors
9 who comply with the law.

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

15 53. PLAINTIFFS and the other members of the CALIFORNIA CLASS are entitled
16 to, and do, seek such relief as may be necessary to restore to them the money and property
17 which DEFENDANT has acquired, or of which PLAINTIFFS and the other members of the
18 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
19 unfair business practices, including earned but unpaid wages for all overtime worked.

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

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

4
5 **SECOND CAUSE OF ACTION**

6 **For Failure To Pay Overtime Compensation**

7 **[Cal. Lab. Code §§ 204, 510, 1194 and 1198]**

8 **(By Plaintiff Reynosa and the CALIFORNIA LABOR SUB-CLASS and Against All**
9 **Defendants)**

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

13 57. Plaintiff Reynosa and the other members of the CALIFORNIA LABOR SUB-
14 CLASS bring a claim for DEFENDANT's willful and intentional violations of the California
15 Labor Code and the Industrial Welfare Commission requirements for DEFENDANT's failure
16 to accurately calculate the applicable rates for all overtime worked by Plaintiff Reynosa and
17 other members of the CALIFORNIA LABOR SUB-CLASS and DEFENDANT's failure to
18 properly compensate the members of the CALIFORNIA LABOR SUB-CLASS for overtime
19 worked, including, work performed in excess of eight (8) hours in a workday and/or forty (40)
20 hours in any workweek.

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

23 59. Cal. Lab. Code § 510 further provides that employees in California shall not be
24 employed more than eight (8) hours per workday and/or more than forty (40) hours per
25 workweek unless they receive additional compensation beyond their regular wages in amounts
26 specified by law.

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

4 61. During the CALIFORNIA LABOR SUB-CLASS PERIOD, Plaintiff Reynosa and
5 CALIFORNIA LABOR SUB-CLASS Members were required, permitted or suffered by
6 DEFENDANT to work for DEFENDANT and were not paid for all the time they worked,
7 including overtime work. DEFENDANT maintained a wage practice of paying Plaintiff
8 Reynosa and the other members of the CALIFORNIA LABOR SUB-CLASS without regard
9 to the correct amount of overtime worked and correct applicable overtime rate for the amount
10 of overtime they worked. As set forth herein, DEFENDANT's policy and practice was to
11 unlawfully and intentionally deny timely payment of wages due for the overtime worked by
12 Plaintiff Reynosa and the other members of the CALIFORNIA LABOR SUB-CLASS, and
13 DEFENDANT in fact failed to pay these employees the correct applicable overtime wages for
14 all overtime worked.

15 62. DEFENDANT's unlawful wage and hour practices manifested, without
16 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
17 implementing a policy and practice that denied accurate compensation to Plaintiff Reynosa and
18 the other members of the CALIFORNIA LABOR SUB-CLASS for all overtime worked,
19 including, the work performed in excess of eight (8) hours in a workday and/or forty (40) hours
20 in any workweek.

21 63. In committing these violations of the California Labor Code, DEFENDANT
22 inaccurately calculated the amount of overtime worked and the applicable overtime rates and
23 consequently underpaid the actual time worked by Plaintiff Reynosa and other members of the
24 CALIFORNIA LABOR SUB-CLASS. DEFENDANT acts in an illegal attempt to avoid the
25 payment of all earned wages, and other benefits in violation of the California Labor Code, the
26 Industrial Welfare Commission requirements and other applicable laws and regulations.

27 64. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
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1 Plaintiff Reynosa and the other members of the CALIFORNIA LABOR SUB-CLASS did not
2 receive full compensation for all overtime worked.

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

11 66. During the CALIFORNIA LABOR SUB-CLASS PERIOD, Plaintiff Reynosa and
12 the other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time worked
13 that they are entitled to, constituting a failure to pay all earned wages.

14 67. DEFENDANT failed to accurately pay Plaintiff Reynosa and the other members
15 of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time they work which is
16 in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194
17 & 1198, even though Plaintiff Reynosa and the other members of the CALIFORNIA LABOR
18 SUB-CLASS are required to work, and do in fact work, overtime as to which DEFENDANT
19 failed to accurately record and pay using the applicable overtime rate as evidenced by
20 DEFENDANT's business records and witnessed by employees.

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

27 69. DEFENDANT knew or should have known that Plaintiff Reynosa and the other
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1 members of the CALIFORNIA LABOR SUB-CLASS are under compensated for their overtime
2 worked. DEFENDANT elected, either through intentional malfeasance or gross nonfeasance,
3 to not pay employees for their labor as a matter of company policy, practice and procedure, and
4 DEFENDANT perpetrated this scheme by refusing to pay Plaintiff Reynosa and the other
5 members of the CALIFORNIA LABOR SUB-CLASS the applicable overtime rate.

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

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

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2 **THIRD CAUSE OF ACTION**

3 **For Failure To Pay Minimum Wages**

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

5 **(By Plaintiff Reynosa and the CALIFORNIA LABOR SUB-CLASS**
6 **and Against All Defendants)**

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

10 73. Plaintiff Reynosa and the other members of the CALIFORNIA LABOR SUB-
11 CLASS bring a claim for DEFENDANT's willful and intentional violations of the
12 California Labor Code and the Industrial Welfare Commission requirements for
13 DEFENDANT's failure to accurately calculate and pay minimum wages to Plaintiff
14 Reynosa and CALIFORNIA CLASS Members.

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

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

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

23 77. DEFENDANT maintained a wage practice of paying Plaintiff Reynosa and the
24 other members of the CALIFORNIA LABOR SUB-CLASS without regard to the correct
25 amount of time they work, including time spent engaging in work tasks while off the clock.
26 To the extent that these off-the-clock job tasks do not qualify for overtime premium
27 payment, DEFENDANT failed to pay minimum wages for the time worked off-the-clock in
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1 violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1. As set forth herein,
2 DEFENDANT's policy and practice was to unlawfully and intentionally deny timely
3 payment of wages due to Plaintiff Reynosa and the other members of the CALIFORNIA
4 LABOR SUB-CLASS.

5 78. DEFENDANT's unlawful wage and hour practices manifested, without
6 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a result of
7 implementing a policy and practice that denied accurate compensation to Plaintiff Reynosa
8 and the other members of the CALIFORNIA LABOR SUB-CLASS in regards to minimum
9 wage pay.

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

16 80. As a direct result of DEFENDANT's unlawful wage practices as alleged
17 herein, Plaintiff Reynosa and the other members of the CALIFORNIA LABOR SUB-
18 CLASS did not receive the correct minimum wage compensation for their time worked for
19 DEFENDANT.

20 81. During the CALIFORNIA LABOR SUB-CLASS PERIOD, DEFENDANT
21 required, permitted or suffered Plaintiff Reynosa and CALIFORNIA LABOR SUB-CLASS
22 Members to work without paying them for all the time they were under DEFENDANT's
23 control. During the CALIFORNIA LABOR SUB-CLASS PERIOD, Plaintiff Reynosa and
24 the other members of the CALIFORNIA LABOR SUB-CLASS were paid less for time
25 worked that they were entitled to, constituting a failure to pay all earned wages.

26 82. By virtue of DEFENDANT's unlawful failure to accurately pay all earned
27 compensation to Plaintiff Reynosa and the other members of the CALIFORNIA LABOR
28

1 SUB-CLASS for the true time they work, Plaintiff Reynosa and the other members of the
2 CALIFORNIA LABOR SUB-CLASS have suffered and will continue to suffer an
3 economic injury in amounts which are presently unknown to them and which will be
4 ascertained according to proof at trial.

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

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

21 85. Plaintiff Reynosa and the other members of the CALIFORNIA LABOR SUB-
22 CLASS therefore request recovery of all unpaid wages, according to proof, interest,
23 statutory costs, as well as the assessment of any statutory penalties against DEFENDANT,
24 in a sum as provided by the California Labor Code and/or other applicable statutes. To the
25 extent minimum wage compensation is determined to be owed to the CALIFORNIA
26 LABOR SUB-CLASS Members who have terminated their employment, DEFENDANT's
27 conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also

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

6
7 **FOURTH CAUSE OF ACTION**

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

9 **[Cal. Lab. Code §§ 226.7 & 512]**

10 **(By Plaintiff Reynosa and the CALIFORNIA LABOR SUB-CLASS and Against All**
11 **Defendants)**

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

15 87. During the CALIFORNIA CLASS PERIOD, from time to time,
16 DEFENDANT failed to provide all the legally required off-duty meal breaks to Plaintiff
17 Reynosa and the other CALIFORNIA LABOR SUB-CLASS Members as required by the
18 applicable Wage Order and Labor Code. The nature of the work performed by Plaintiff
19 Reynosa and CALIFORNIA LABOR SUB-CLASS MEMBERS did not prevent these
20 employees from being relieved of all of their duties for the legally required off-duty meal
21 periods. As a result of their rigorous work schedules and DEFENDANT's loss prevention
22 inspection policy, Plaintiff Reynosa and other CALIFORNIA LABOR SUB-CLASS
23 Members were from time to time not fully relieved of duty by DEFENDANT for their meal
24 periods. Additionally, DEFENDANT's failure to provide Plaintiff Reynosa and the
25 CALIFORNIA LABOR SUB-CLASS Members with legally required meal breaks prior to
26 their fifth (5th) hour of work is evidenced by DEFENDANT's business records from time to
27 time. As a result, Plaintiff Reynosa and other members of the CALIFORNIA LABOR

1 SUB-CLASS therefore forfeited meal breaks without additional compensation and in
2 accordance with DEFENDANT's corporate policy and practice.

3 88. DEFENDANT further violated California Labor Code §§ 226.7 and the
4 applicable IWC Wage Order by failing to compensate Plaintiff Reynosa and CALIFORNIA
5 LABOR SUB-CLASS Members who were not provided a meal period, in accordance with
6 the applicable Wage Order, one additional hour of compensation at each employee's regular
7 rate of pay for each workday that a meal period was not provided.

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

12
13 **FIFTH CAUSE OF ACTION**

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

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

16 **(By Plaintiff Reynosa and the CALIFORNIA LABOR SUB-CLASS and Against All**
17 **Defendants)**

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

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

5 92. DEFENDANT further violated California Labor Code §§ 226.7 and the
6 applicable IWC Wage Order by failing to compensate Plaintiff Reynosa and CALIFORNIA
7 LABOR SUB-CLASS Members who were not provided a rest period, in accordance with
8 the applicable Wage Order, one additional hour of compensation at each employee's regular
9 rate of pay for each workday that rest period was not provided.

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

14 **SIXTH CAUSE OF ACTION**

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

16 **[Cal. Lab. Code §§ 201, 202, 203, 227.3]**

17 **(By Plaintiff Reynosa and the CALIFORNIA LABOR SUB-CLASS and Against All**
18 **Defendants)**

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

22 95. Cal. Lab. Code § 200 provides that:

23 As used in this article:

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

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

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

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

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

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

17 99. Cal. Lab. Code § 227.3 provides:

18 Unless otherwise provided by a collective-bargaining agreement, whenever a
19 contract of employment or employer policy provides for paid vacations, and an
20 employee is terminated without having taken off his vested vacation time, all
21 vested vacation shall be paid to him as wages at his final rate in accordance
22 with such contract of employment or employer policy respecting eligibility or
23 time served; provided, however, that an employment contract or employer
24 policy shall not provide for forfeiture of vested vacation time upon
25 termination. The Labor Commissioner or a designated representative, in the
26 resolution of any dispute with regard to vested vacation time, shall apply the
27 principles of equity and fairness

28 100. Cal. Lab. Code § 203 provides:

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

 101. The employment of Plaintiff Reynosa and many CALIFORNIA LABOR
SUB-CLASS Members has terminated and DEFENDANT has not tendered payment of
wages, to these employees who missed meal and rest breaks, as required by law.

 102. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the

1 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated,
2 Plaintiff Reynosa demands up to thirty days of pay as penalty for not paying all wages due at
3 time of termination for all employees who terminated employment during the
4 CALIFORNIA LABOR SUB-CLASS PERIOD, and demands an accounting and payment
5 of all wages due, plus interest and statutory costs as allowed by law.

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10 **SEVENTH CAUSE OF ACTION**

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

12 **[Cal. Lab. Code § 2802]**

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

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

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

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

24 105. At all relevant times herein, DEFENDANT violated Cal. Lab. Code § 2802,
25 by failing to indemnify and reimburse Plaintiff Reynosa and the CALIFORNIA LABOR
26 SUB-CLASS members for required expenses incurred in the discharge of their job duties for
27 DEFENDANT's benefit. DEFENDANT failed to reimburse Plaintiff Reynosa and the
28 CALIFORNIA LABOR SUB-CLASS members for expenses which included, but were not
limited to, costs related to using their personal cellular phones all on behalf of and for the

benefit of DEFENDANT. Specifically, Plaintiff Reynosa and other CALIFORNIA LABOR SUB-CLASS Members were required by DEFENDANT to use their personal cell phones to respond to work related issues. DEFENDANT's policy, practice and procedure was to not reimburse Plaintiff Reynosa and the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using their personal cellular phones for DEFENDANT within the course and scope of their employment for DEFENDANT. These expenses were necessary to complete their principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert any waiver of this expectation. Although these expenses were necessary expenses incurred by Plaintiff Reynosa and the CALIFORNIA LABOR SUB-CLASS members, DEFENDANT failed to indemnify and reimburse Plaintiff Reynosa and the CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is required to do under the laws and regulations of California.

106. Plaintiff Reynosa therefore demands reimbursement for expenditures or losses incurred by them and the CALIFORNIA LABOR SUB-CLASS members in the discharge of their job duties for DEFENDANT, or their obedience to the directions of DEFENDANT, with interest at the statutory rate and costs under Cal. Lab. Code § 2802.

EIGHTH CAUSE OF ACTION

For Failure to Provide Accurate Itemized Statements

[Cal. Lab. Code § 226]

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

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

108. Cal. Labor Code § 226 provides that an employer must furnish employees with an "accurate itemized" statement in writing showing:
(1) gross wages earned,

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

109. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. From time to time, DEFENDANT violated Cal. Lab. Code § 226 by failing to provide wage statements that identified the correct gross and net wages earned. Aside from the violations listed above in this paragraph, DEFENDANT failed to issue to Plaintiff Patton an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a result, from time to time DEFENDANT provided Plaintiff Patton and the other members of the CALIFORNIA LABOR SUB-CLASS with wage statements which violated Cal. Lab. Code § 226.

110. DEFENDANT knowingly and intentionally failed to comply with Cal. Labor Code § 226, causing injury and damages to Plaintiff Patton and the other members of the CALIFORNIA LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating the correct rates for the overtime worked and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, Plaintiff Patton and the other members of the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the violation occurred, and one hundred dollars (\$100.00) for each

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

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10 **NINTH CAUSE OF ACTION**

11 **For Violation of the Private Attorneys General Act**

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

13 **(By Plaintiff Patton and Against All Defendants)**

14 110. PLAINTIFFS reallege and incorporate by this reference, as though fully set forth
15 herein, the prior paragraphs of this Complaint.

16 111. PAGA is a mechanism by which the State of California itself can enforce state
17 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
18 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
19 fundamentally a law enforcement action designed to protect the public and not to benefit private
20 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
21 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
22 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
23 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
24 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be
25 subject to arbitration.

26 112. California Labor Code § 1198 states that "the standard conditions of labor fixed
27 by the commission shall be . . . the standard conditions of labor for employees. The employment
28

1 of any employee . . . under conditions of labor prohibited by the order is unlawful." As required
2 by Industrial Welfare Commission Wage Order 7-2001 (hereafter "Wage Order") § 15, "[t]he
3 temperature maintained in each work area shall provide reasonable comfort consistent with
4 industry-wide standards for the nature of the process and the work performed" and "A
5 temperature of not less than 68° shall be maintained in the toilet rooms, resting rooms, and
6 change rooms during hours of use."

7 113. In the course of their employment PLAINTIFF and other AGGRIEVED
8 EMPLOYEES were scheduled to work areas and were subjected to unreasonably hot
9 temperatures during their shifts. PLAINTIFF and other AGGRIEVED EMPLOYEES
10 complained to DEFENDANT about the excessive heat, especially when the problem worsened
11 during the months of June through September where temperatures consistently rose above 80
12 -100 in areas where PLAINTIFF and other AGGRIEVED EMPLOYEES worked. Despite the
13 complaints from PLAINTIFF and other AGGRIEVED EMPLOYEES, DEFENDANT failed
14 to install a sufficient air conditioning system in the warehouses or provide any other form of
15 relief. Moreover, from October through May ("winter months"), PLAINTIFF and other
16 AGGRIEVED EMPLOYEES were scheduled to work in unreasonably frigid conditions where
17 the temperature would consistently fall below 60° and sometimes 40° making for extremely
18 uncomfortable working conditions. During the winter months, DEFENDANT did not maintain
19 a temperature of not less than 68° in the toilet rooms, resting rooms, and change rooms during
20 hours of use by PLAINTIFF and other AGGRIEVED EMPLOYEES. Thus, PLAINTIFF and
21 other AGGRIEVED EMPLOYEES were required by DEFENDANT to suffer under these
22 unreasonable and uncomfortable conditions.

23 114. DEFENDANT's thus failed to maintain a temperature in each work area that
24 provides reasonable comfort consistent with industry-wide standards for the nature of the
25 process and the work performed, in compliance with California Code of Regulations, Title 8,
26 Section 1 1070(15)(Temperature).

27 115. Plaintiff Patton, and such persons that may be added from time to time who satisfy
28

1 the requirements and exhaust the administrative procedures under the Private Attorney General
2 Act, brings this Representative Action on behalf of the State of California with respect to
3 himself and all hourly, non-exempt employees who were employed by DEFENDANT in
4 California ("AGGRIEVED EMPLOYEES") during the time period January 26, 2020 to April
5 16, 2023 (the "PAGA PERIOD").

6 116. On July 29, 2021, Plaintiff Patton gave written notice by electronic mail to the
7 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
8 employer of the specific provisions of this code alleged to have been violated as required by
9 Labor Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference herein
10 (*PAGA Notice only without draft complaint*). On May 10, 2022, Plaintiff Patton provided an
11 amended written notice by electronic mail to the Labor and Workforce Development Agency
12 (the "Agency") and by certified mail to the employer of the specific provisions of this code
13 alleged to have been violated as required by Labor Code § 2699.3. See **Exhibit #2**, attached
14 hereto and incorporated by this reference herein (*PAGA Notice only without draft complaint*).
15 The statutory waiting period for Plaintiff Patton to add these allegations to the Complaint has
16 expired. As a result, pursuant to Section 2699.3, Plaintiff Patton may now commence a
17 representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of
18 California with respect to all AGGRIEVED EMPLOYEES as herein defined.

19 117. The policies, acts and practices heretofore described were and are an unlawful
20 business act or practice because DEFENDANT (a) failed to provide Plaintiff Patton and the
21 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
22 record and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d)
23 failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees for required
24 expenses, (f) failed to provide a work environment maintained at a reasonable comfortable
25 temperature, (g) failed to provide wages when due and (h) failed to provide suitable seating, all
26 in violation of the applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204
27 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1,
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1 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B),
2 California Code of Regulations, Title 8, Section 1 1070(14)(Failure to Provide Seating), and
3 the applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such
4 conduct.¹ Plaintiff Patton hereby seeks recovery of civil penalties as prescribed by the Labor
5 Code Private Attorney General Act of 2004 as the representative of the State of California for
6 the illegal conduct perpetrated on Plaintiff Patton and the other AGGRIEVED EMPLOYEES.

7 118. All of the conduct and violations alleged herein occurred during the PAGA
8 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
9 Plaintiff Patton during the PAGA PERIOD, Plaintiff Patton seeks penalties for those violations
10 that affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
11 AJDAR 12157 (Certified for Publication 12/19/18).

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13
14 **PRAYER FOR RELIEF**

15 WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and
16 severally, as follows:

17 1. On behalf of the CALIFORNIA CLASS:

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

26
27 ¹Plaintiff Patton specifically excludes and/or does not allege any claims under California
28 Labor Code §558(a)(3).

1 for restitution of the sums incidental to DEFENDANT's violations due to
2 Plaintiff Reynosa and to the other members of the CALIFORNIA CLASS.

3 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

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

27 3. On behalf of the State of California and with respect to all AGGRIEVED
28

1 EMPLOYEES:

2 A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys
3 General Act of 2004.

4 4. On all claims:

- 5 A) An award of interest, including prejudgment interest at the legal rate;
6 B) Such other and further relief as the Court deems just and equitable; and,
7 C) An award of penalties, attorneys' fees and cost of suit, as allowable under the
8 law, including, but not limited to, pursuant to Labor Code §1194, and/or §2802.
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13 Dated: December 28, 2023

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
LLP

15 By: /s/ Norman B. Blumenthal
16 Norman B. Blumenthal
17 Attorneys for Plaintiffs
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DEMAND FOR A JURY TRIAL

PLAINTIFFS demand a jury trial on issues triable to a jury.

Dated: December 28, 2023 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Norman B. Blumenthal
Norman B. Blumenthal
Attorneys for Plaintiffs

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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA

LA JOLLA, CALIFORNIA 92037

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WRITERS EXT:

1004

July 29, 2021

CA2481

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Home Depot U.S.A., Inc.
Certified Mail #70203160000075433098
CSC Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Defendant Home Depot U.S.A., Inc. in a California Distribution Center and classified as non-exempt employees during the time period of July 29, 2020 until a date as determined by the Court. Our offices represent Plaintiff Douglas Patton (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Home Depot U.S.A., Inc. (“Defendant”). Plaintiff has been employed by Defendant in California as a non-exempt employee since August of 2017 and entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. However, when calculating the regular rate of pay in order to pay meal and rest break premium pay to Plaintiff and other Aggrieved Employees, Defendant fails to include the incentive compensation as part of the employees’ “regular rate of pay” for purposes of calculating meal and rest break premium pay and only pays these premiums at Plaintiff’s and Aggrieved Employees’ base rates of pay. As a matter of law, the incentive compensation received by Plaintiff and Aggrieved Employees must be included in the “regular rate of pay.” The failure to do so has resulted in an underpayment of meal and rest break premiums to Plaintiff and other Aggrieved Employees. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s

work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant requires Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant fails to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to Plaintiff, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, Plaintiff and Aggrieved Employees are paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the correct total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provides to Plaintiff and other Aggrieved Employees fail to identify such information. More specifically, the wage statements fail to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2) as when the hours are added up they do not equal the actual amount of hours worked each pay period. Additionally, Plaintiff contends that Defendant fails to comply with Industrial Wage Order 7(A)(3) in that Defendant fails to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant fails to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the

claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees.

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

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EXHIBIT 2

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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WRITERS PH:

858-888-3085

May 10, 2022

CA2481

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Home Depot U.S.A., Inc.
Certified Mail #70220410000153342556
CSC Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Amended Notice for LWDA Case No. LWDA-CM-839699-21

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

Our offices represent Plaintiff Douglas Patton (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Defendant Home Depot U.S.A., Inc. (“Defendant”).

Plaintiff originally sent a PAGA Notice on July 29, 2021 and gave notice to the LWDA and Defendant to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.*

This Amended Notice is intended to amend Plaintiff’s original PAGA Notice to provide an amended PAGA notice that will include additional allegations stemming from Defendant’s failure to maintain a temperature in each work area that provides reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed, in compliance with California Code of Regulations, Title 8, Section 1 1070(15)(Temperature).

“Aggrieved Employees” refers to all individuals who are or previously were employed by Defendant Home Depot U.S.A., Inc. in a California Distribution Center and classified as non-exempt employees during the time period of July 29, 2020 until a date as determined by the Court. Plaintiff has been employed by Defendant in California as a non-

exempt employee since August of 2017 and entitled to the legally required meal and rest breaks and payment for all time worked under Defendant's control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. However, when calculating the regular rate of pay in order to pay meal and rest break premium pay to Plaintiff and other Aggrieved Employees, Defendant fails to include the incentive compensation as part of the employees' "regular rate of pay" for purposes of calculating meal and rest break premium pay and only pays these premiums at Plaintiff's and Aggrieved Employees' base rates of pay. As a matter of law, the incentive compensation received by Plaintiff and Aggrieved Employees must be included in the "regular rate of pay." The failure to do so has resulted in an underpayment of meal and rest break premiums to Plaintiff and other Aggrieved Employees. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but "furnished less than half said employee's usual or scheduled day's work," Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours' worth of work at their regular rate of pay. In addition, when Defendant requires Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant fails to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to Plaintiff, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, Plaintiff and Aggrieved Employees are paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the correct total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provides to Plaintiff and other Aggrieved Employees fail to identify such information. More specifically, the wage statements fail to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2) as when the hours are added up they do not equal the actual amount of hours worked each pay period. Additionally, Plaintiff contends that Defendant fails to comply with Industrial Wage Order 7(A)(3) in that Defendant fails to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant fails to provide Plaintiff and other Aggrieved Employees with suitable seats. Defendant further fails to regulate the internal temperature of their warehouses, except for the offices of managers. Plaintiff and other Aggrieved Employees, therefore, are required to work in extreme temperatures, both too hot and too cold, depending on the season, without relief. Defendant fails to maintain temperatures within its warehouses that provide reasonable comfort for Plaintiff and Aggrieved Employees that is consistent with industry-wide standards for the nature of the process and the work performed. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations,

Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), California Code of Regulations, Title 8, Section 11070(15) (Temperature), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

This notice is provided to enable Plaintiff to proceed with an amended complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all Aggrieved Employees. If the agency needs any further information, please do not hesitate to ask.

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

Respectfully,

/s/ Victoria B. Rivapalacio

Victoria B. Rivapalacio, Esq.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I, Yesenia Silva, am a citizen of the United States and a resident of the State of California. I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 2255 Calle Clara, La Jolla, California 92037. On December 28, 2023, I served the document(s) described as:

1. SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

X (BY ELECTRONIC SERVICE): I provided the documents referenced above electronically via electronic mail (e-mail) to counsel for Defendant at the following e-mail address(es):

MORGAN, LEWIS & BOCKIUS LLP
Barbara J. Miller
barbara.miller@morganlewis.com
Alexander L. Grodan
alexander.grodan@morganlewis.com
Mayra Negrete
mayra.negrete@morganlewis.com
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600 Anton Blvd., Suite 1800
Costa Mesa, CA 92626
Telephone: +1.714.830.0600
Facsimile: +1.714.830.0700

X (State): I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 28, 2023 at San Diego, California.



Yesenia Silva