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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **IN AND FOR THE COUNTY OF SANTA CLARA**

10 DOUGLAS PATTON, on behalf of the
11 State of California, as a private attorney
general,

12 Plaintiff,

13 vs.

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

16 Defendants.

Case No. 21CV387956

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR:**

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210, 221,
226(a), 226.7, 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) and Subdivision 15(A)-
(D).

1 Plaintiff Douglas Patton (“PLAINTIFF”), on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for his own acts and knowledge which are based on personal
5 knowledge, the following:

6 7 INTRODUCTION

8 1. PLAINTIFF brings this action against Defendant Home Depot U.S.A., Inc.
9 (referred to as “DEFENDANT”) seeking only to recover PAGA civil penalties for himself, and
10 on behalf of all current and former aggrieved employees that worked for DEFENDANT.
11 PLAINTIFF does **not seek to recover anything other than penalties as permitted by**
12 **California Labor Code § 2699**. To the extent that statutory violations are mentioned for wage
13 violations, PLAINTIFF does not seek underlying general and/or special damages for those
14 violations, but simply the civil penalties permitted by California Labor Code § 2699.

15 2. California has enacted the PAGA to permit an individual to bring an action on
16 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
17 nature of this action.

18 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
19 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
20 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
21 complaint should be construed as attempting to obtain any relief that would not be available in
22 a PAGA-only action.

23 24 THE PARTIES

25 4. Defendant Home Depot U.S.A., Inc. is a Corporation that at all relevant times
26 mentioned herein conducted and continues to conduct substantial and regular business
27 throughout California. DEFENDANT is a home improvement retailer in the United States
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1 supplying tools, construction products and services.

2 5. PLAINTIFF has been employed by DEFENDANT in California as a non-exempt
3 employee entitled to overtime pay and meal and rest periods since August of 2017. PLAINTIFF
4 has been at all times relevant mentioned herein classified by DEFENDANT as a non-exempt
5 employee paid in whole or in part on an hourly basis and received additional compensation from
6 DEFENDANT in the form of non-discretionary incentive wages.

7 6. PLAINTIFF, and such persons that may be added from time to time who satisfy
8 the requirements and exhaust the administrative procedures under the Private Attorney General
9 Act, brings this Representative Action on behalf of the State of California with respect to
10 himself and all individuals who are or previously were employed by DEFENDANT in a
11 California Distribution Center and classified as non-exempt employees ("AGGRIEVED
12 EMPLOYEES") during the time period of July 29, 2020 until a date as determined by the Court
13 (the "PAGA PERIOD").

14 7. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
15 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
16 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
17 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 351,
18 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title
19 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s). Based upon the
20 foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within
21 the meaning of Labor Code § 2699, *et seq.*

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

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

12 13 THE CONDUCT

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

7 11. DEFENDANT also requires PLAINTIFF and other AGGRIEVED EMPLOYEES
8 to work off the clock without paying them for all the time they are under DEFENDANT's
9 control. PLAINTIFF and other AGGRIEVED EMPLOYEES clock out of DEFENDANT's
10 timekeeping system, in order to perform additional work for DEFENDANT as required to meet
11 DEFENDANT's job requirements. Specifically, during the PAGA PERIOD, DEFENDANT
12 engages in the practice of requiring PLAINTIFF and other AGGRIEVED EMPLOYEES to
13 perform work off the clock after clocking out in that DEFENDANT, as a condition of
14 employment, requires these employees to wait for and submit to loss prevention inspections
15 after clocking out for meal breaks and at the end of each scheduled shift for which
16 DEFENDANT does not provide compensation for time spent waiting for and submitting to
17 DEFENDANT's loss prevention inspections off the clock. Additionally, DEFENDANT
18 requires PLAINTIFF and other AGGRIEVED EMPLOYEES to wait in line and submit to
19 mandatory temperature checks for COVID-19 screening prior to passing through
20 DEFENDANT's security checkpoint and prior to clocking into DEFENDANT's timekeeping
21 system for the workday. PLAINTIFF and other AGGRIEVED EMPLOYEES also worked off
22 the clock with respect to time spent undergoing mandatory drug testing or any other testing
23 and/or examination required as a condition of employment. As a result, PLAINTIFF and other
24 AGGRIEVED EMPLOYEES forfeit minimum wage, overtime wage compensation, and meal
25 break wages, by working without their time being correctly recorded and without compensation
26 at the applicable rates.

27 12. State law provides that employees must be paid overtime and meal and rest break
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1 premiums at one-and-one-half times their “regular rate of pay.” PLAINTIFF and other
2 AGGRIEVED EMPLOYEES are compensated at an hourly rate plus incentive pay that was tied
3 to specific elements of an employee’s performance.

4 13. The second component of PLAINTIFF’s and other AGGRIEVED EMPLOYEES’
5 compensation was DEFENDANT’s non-discretionary incentive program that pays PLAINTIFF
6 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
7 DEFENDANT. The non-discretionary incentive program provides all employees paid on an
8 hourly basis with incentive compensation when the employees met the various performance
9 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
10 overtime and meal and rest break premium pay to PLAINTIFF and other AGGRIEVED
11 EMPLOYEES, DEFENDANT fails to include the incentive compensation as part of the
12 employees’ “regular rate of pay” for purposes of calculating overtime pay and meal and rest
13 break premium pay. Management and supervisors described the incentive program to potential
14 and new employees as part of the compensation package. As a matter of law, the incentive
15 compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must be
16 included in the “regular rate of pay.” The failure to do so has resulted in a underpayment of
17 overtime compensation and meal and rest break premiums to PLAINTIFF and other
18 AGGRIEVED EMPLOYEES by DEFENDANT.

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

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

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

6 17. DEFENDANT underpays sick pay wages to PLAINTIFF and other AGGRIEVED
7 EMPLOYEES by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
8 Code Section 246. Specifically, PLAINTIFF and other non-exempt employees earned non-
9 discretionary remuneration, including but not limited to, incentives, shift differential pay, and
10 bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpays sick pay
11 to PLAINTIFF and other AGGRIEVED EMPLOYEES their base rates of pay.

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

16 19. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at
17 the regular rate of pay. PLAINTIFF and the AGGRIEVED EMPLOYEES routinely earned non-
18 discretionary incentive wages, including but not limited to, incentives, shift differential pay, and
19 bonuses, which increased their regular rate of pay. However, when sick pay was paid, it was
20 paid at the base rate of pay for PLAINTIFF and the other AGGRIEVED EMPLOYEES, as
21 opposed to the correct, higher regular rate of pay, as required under Cal. Lab. Code Section 246.

22 20. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and
23 other AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time
24 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes
25 and based thereon alleges that such failure to pay sick pay at regular rate was willful, such that
26 PLAINTIFF and other AGGRIEVED EMPLOYEES whose employment has separated are
27 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

1 21. Cal. Lab. Code § 204 provides that “[a]ll wages. . . earned by any person in any
2 employment are due and payable twice during each calendar month, on days designated in
3 advance by the employer as the regular paydays.” Further, Cal. Lab. Code § 204(a) expressly
4 requires employers to pay employees all wages owed within eleven (11) days of the close of the
5 payroll period. DEFENDANT from time to time fails to pay PLAINTIFF and other
6 AGGRIEVED EMPLOYEES all wages owed to them within eleven (11) days of the close of
7 the payroll period.

8 22. Pursuant to Cal. Lab. Code Section 221, “It shall be unlawful for any employer
9 to collect or receive from an employee any part of wages theretofore paid by said employer to
10 said employee.” DEFENDANT fails to pay all compensation due to PLAINTIFF and other
11 AGGRIEVED EMPLOYEES, makes unlawful deductions from compensation payable to
12 PLAINTIFF and other AGGRIEVED EMPLOYEES, fails to disclose all aspects of the
13 deductions from compensation payable to PLAINTIFF and other AGGRIEVED EMPLOYEES,
14 and thereby fails to pay these employees all wages due at each applicable pay period and upon
15 termination.

16 23. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
17 employees with an accurate itemized wage statement in writing showing, among other things,
18 gross wages earned and all applicable hourly rates in effect during the pay period and the
19 corresponding amount of time worked at each hourly rate. DEFENDANT from time to time
20 fails to provide to PLAINTIFF and the AGGRIEVED EMPLOYEES wage statements that
21 identify the correct gross and net wages earned, the applicable number of hours worked and
22 rates of pay. PLAINTIFF and other AGGRIEVED EMPLOYEES are paid on an hourly basis.
23 As such, the wage statements should reflect all applicable hourly rates during the pay period and
24 the total hours worked, and the applicable pay period in which the wages are earned pursuant
25 to California Labor Code Section 226(a). The wage statements DEFENDANT provides to
26 PLAINTIFF and other AGGRIEVED EMPLOYEES fails to identify such information. More
27 specifically, the wage statements fail to identify the accurate total hours worked each pay
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1 period. When the hours shown on the wage statements are added up, they do not equal the
2 actual total hours worked during the pay period in violation of Cal. Lab. Code 226(a)(2). Aside,
3 from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF
4 and other AGGRIEVED EMPLOYEES an itemized wage statement that lists all the
5 requirements under California Labor Code 226 *et seq.*

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

16 25. In the course of their employment PLAINTIFF and other AGGRIEVED
17 EMPLOYEES as a business expense, are required by DEFENDANT to use their own personal
18 cellular phones as a result of and in furtherance of their job duties as employees for
19 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated
20 with the use of their personal cellular phones for DEFENDANT's benefit. As a result, in the
21 course of their employment with DEFENDANT, PLAINTIFF and other AGGRIEVED
22 EMPLOYEES incurred unreimbursed business expenses which include, but are not limited to,
23 costs related to the use of their personal cellular phones all on behalf of and for the benefit of
24 DEFENDANT. "

25 26. California Labor Code § 1198 states that "the standard conditions of labor fixed
26 by the commission shall be . . . the standard conditions of labor for employees. The employment
27 of any employee . . . under conditions of labor prohibited by the order is unlawful." As required
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1 by Industrial Welfare Commission Wage Order 7-2001 (hereafter "Wage Order") § 15, "[t]he
2 temperature maintained in each work area shall provide reasonable comfort consistent with
3 industry-wide standards for the nature of the process and the work performed" and "A
4 temperature of not less than 68° shall be maintained in the toilet rooms, resting rooms, and
5 change rooms during hours of use."

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

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

26 29. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
27 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which fails
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1 to accurately calculate and record the correct overtime rate for the overtime worked by
2 PLAINTIFF and other AGGRIEVED EMPLOYEES. The proper calculation of these
3 employees' overtime hour rates is the DEFENDANT's burden. As a result of DEFENDANT's
4 intentional disregard of the obligation to meet this burden, DEFENDANT fails to properly
5 calculate and/or pay all required overtime compensation for work performed by the
6 AGGRIEVED EMPLOYEES and violated the California Labor Code and regulations
7 promulgated thereunder as herein alleged.

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

13 **JURISDICTION AND VENUE**

14 31. This Court has jurisdiction over this Action pursuant to California Code of Civil
15 Procedure, Section 410.10.

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

21 **FIRST CAUSE OF ACTION**

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

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

24 **(By PLAINTIFF and Against All Defendants)**

25 33. PLAINTIFF realleges and incorporates by this reference, as though fully set
26 forth herein, the prior paragraphs of this Complaint.
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1 34. PAGA is a mechanism by which the State of California itself can enforce state
2 labor laws through the employee suing under the PAGA who do so as the proxy or agent of
3 the state's labor law enforcement agencies. An action to recover civil penalties under
4 PAGA is fundamentally a law enforcement action designed to protect the public and not to
5 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,
6 but to create a means of "deputizing" citizens as private attorneys general to enforce the
7 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the
8 public interest to allow aggrieved employees, acting as private attorneys general to recover
9 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
10 claims cannot be subject to arbitration.

11 35. PLAINTIFF, and such persons that may be added from time to time who
12 satisfy the requirements and exhaust the administrative procedures under the Private
13 Attorney General Act, brings this Representative Action on behalf of the State of California
14 with respect to himself and all individuals who are or previously were employed by
15 DEFENDANT in a California Distribution Center and classified as non-exempt employees
16 ("AGGRIEVED EMPLOYEES") during the time period of July 29, 2020 until a date as
17 determined by the Court (the "PAGA PERIOD").

18 36. On July 29, 2021, PLAINTIFF gave written notice by electronic mail to the
19 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
20 employer of the specific provisions of this code alleged to have been violated as required by
21 Labor Code § 2699.3.

22 37. On May 10, 2022, PLAINTIFF provided an amended written notice by
23 electronic mail to the Labor and Workforce Development Agency (the "Agency") and by
24 certified mail to the employer of the specific provisions of this code alleged to have been
25 violated as required by Labor Code § 2699.3. The statutory waiting period for PLAINTIFF
26 to add these additional allegations to the Complaint have expired. As a result, pursuant to
27 Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA
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1 pursuant to Section 2699 as the proxy of the State of California with respect to all
2 AGGRIEVED EMPLOYEES as herein defined.

3 38. The policies, acts and practices heretofore described were and are an unlawful
4 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
5 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
6 properly record and provide legally required meal and rest periods, (c) failed to pay
7 minimum wages, (d) failed to pay overtime wages and sick pay wages, (e) failed to
8 reimburse employees for required expenses, (f) failed to provide PLAINTIFF and the other
9 AGGRIEVED EMPLOYEES with a work environment maintained at a reasonable
10 comfortable temperature and (g) failed to provide wages when due, all in violation of the
11 applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221,
12 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code
13 of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage
14 Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF
15 hereby seeks recovery of only civil penalties as prescribed by the Labor Code Private
16 Attorney General Act of 2004 as the representative of the State of California for the illegal
17 conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

18 **PRAYER FOR RELIEF**

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

21 1. On behalf of the State of California and with respect to all AGGRIEVED
22 EMPLOYEES:

23 A) Recovery of civil penalties as prescribed by the Labor Code Private
24 Attorneys General Act of 2004; and,

25 B) An award of attorneys' fees and cost of suit, as allowable under the
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27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).

1 law, including, but not limited to, pursuant to Labor Code §2699.
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3
4 Dated: August 17, 2022

BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP

5 By: /s/ Norman Blumenthal
6 Norman B. Blumenthal
7 Attorneys for Plaintiff
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I, Christine T. LeVu, 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 August 17, 2022, I served the document(s) described as:

1. FIRST AMENDED COMPLAINT

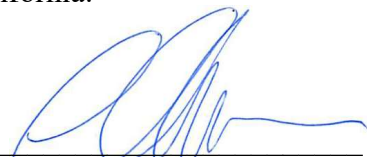
 (BY MAIL): I caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at San Diego, California. I am readily familiar with this firm's business practice for collection and processing of correspondence for mailing with the U.S. Postal Service pursuant to which practice the correspondence will be deposited with the U.S. Postal Service this same day in the ordinary course of business (C.C.P. Section 10139a); 2015.5):

 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):

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 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 August 17, 2022 at San Diego, California.



Christine T. LeVu