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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

DAMONTAE LEVINGSTON, KEVIN
PEARSON, MARK GUTIERREZ, and
PAUL RODRIGUEZ, as individuals and
on behalf of all others similarly situated,

Plaintiffs,

v.

COMMERCE DISTRIBUTION
COMPANY LLC., a California Limited
Liability Company; SMART & FINAL
LOGISTICS LLC, a Delaware limited
liability company; SMART & FINAL
STORES, LLC, a California limited
liability company, and SMART & FINAL
LLC, a Delaware limited liability company
and DOES 1 through 50, inclusive,

Defendants.

CASE NO. 22STCV05730

**SECOND AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

- (1) FAILURE TO PAY ALL OVERTIME
WAGES (LABOR CODE §§ 204, 510,
558, 1194, 1198);**
- (2) MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1194, 1197, 1197.1);**
- (3) MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (4) REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558);**
- (5) FAILURE TO REIMBURSE
NECESSARY BUSINESS EXPENSES
(LABOR CODE § 2802);**
- (6) WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226 *et seq.*);**
- (7) WAITING TIME PENALTIES (LABOR
CODE §§ 201-203);**
- (8) UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*);**
- (9) FAILURE TO PAY SICK PAY WAGES
(LABOR CODE §§ 233, 246); AND**

**(10) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 et seq.).**

**DEMAND FOR JURY TRIAL
DEMAND EXCEEDS \$25,000.00**

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1 Plaintiffs Damontae Levingston (“Plaintiff Levingston”), Kevin Pearson (“Plaintiff
2 Pearson”), Mark Gutierrez (“Plaintiff Gutierrez”), and Paul Rodriguez (“Plaintiff Rodriguez”)
3 (collectively, “Plaintiffs”) hereby submit this Second Amended Class and Representative Action
4 Complaint against Defendants Commerce Distribution Company LLC, a California Limited
5 Liability Company, Smart & Final Logistics, LLC, a Delaware limited liability company, Smart
6 & Final Stores, LLC, a California limited liability company, and Smart & Final LLC, a Delaware
7 limited liability company, and Does 1-50 (hereinafter collectively referred to as “Defendants”),
8 individually, and on behalf of themselves, all others similarly situated, and all aggrieved
9 employees of Defendants, for unpaid wages and penalties for violations of the California Labor
10 Code as follows:

11 **INTRODUCTION**

12 1. This class and representative action is within the Court’s jurisdiction under
13 California Labor Code §§ 201-204, 210, 218, 218.5, 218.6, 221, 223, 225.5, 226 *et seq.*, 226.2,
14 226.3, 226.7, 227.3, 246, 510, 512, 515, 516, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198,
15 1198.5, 1199, 2802, and 2698, *et seq.*, Business and Professions Code § 17200 *et. seq.*, and the
16 applicable Wage Orders of the Industrial and Welfare Commission (the “IWC”).

17 2. This Complaint challenges systemic illegal employment practices resulting in
18 violations of the California Labor Code against Defendants’ employees.

19 3. Plaintiffs are informed and believe and based thereon allege that Defendants
20 jointly and severally have acted intentionally and with deliberate indifference and conscious
21 disregard to the rights of all employees by failing to provide accurate and complete wage
22 statements to these employees.

23 **JURISDICTION AND VENUE**

24 4. The Court has jurisdiction over the violations of California Labor Code §§ 201-
25 204, 210, 218, 218.5, 218.6, 221, 223, 225.5, 226 *et seq.*, 226.2, 226.3, 226.7, 227.3, 246, 510,
26 512, 515, 516, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, and 2698, *et*
27 *seq.*, Business and Professions Code § 17200 *et. seq.*, and the applicable Wage Orders of the IWC.

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5. This class action is brought pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over Defendants' violations of the California Labor Code because the amount in controversy exceeds this Court's jurisdictional minimum.

6. Venue is proper in Los Angeles County pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, at least some of the acts and omissions complained of herein occurred in the County of Los Angeles, California. Defendants own, maintain offices, transact business, have an agent or agents within the County of Los Angeles, and/or otherwise are found within the County of Los Angeles, and Defendants are within the jurisdiction of this Court for purposes of service of process.

PARTIES

7. In or around January 31, 2022, Plaintiff Livingston was hired by Defendant Commerce Distribution Company, LLC as a Warehouse Associate. On or about February 4, 2022, Plaintiff's employment with Defendant Commerce Distribution Company, LLC ended. Throughout Plaintiff's employment, he has been an hourly, non-exempt employee.

8. Plaintiffs are informed and believe and based thereon allege that Defendant Commerce Distribution Company, LLC was and is a limited liability company which operates as a distribution center throughout the State of California, including in Los Angeles County, where Plaintiff Livingston worked.

9. Plaintiff Pearson was employed by Defendant Smart & Final Logistics, LLC as a non-exempt warehouse employee from approximately August 2007 to August 2021. Defendant Smart & Final Logistics, LLC operates a chain of food supply warehouses throughout California. Plaintiff Pearson was an “Order Selector” in a cold storage facility warehouse owned by Defendant Smart & Final Logistics, LLC. Plaintiff Pearson’s job duties consisted primarily of building pallets with inventory from the warehouse that were then shipped to Defendants’ retail stores.

10. Plaintiff Gutierrez was employed by Defendant Smart & Final Stores, LLC in California from December of 2019 to March 28, 2022 and was at all times classified as a non-

1 exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest
2 periods and payment of minimum and overtime wages due for all time worked.

3 11. Plaintiff Rodriguez has been employed by Defendants Commerce Distribution
4 Company, LLC, Smart & Final Stores LLC, and Smart and Final LLC since 1996. Defendants
5 were and are joint employers of Plaintiff Rodriguez, as evidenced by the contracts signed and by
6 the company Plaintiff Rodriguez performed work for respectively and are therefore jointly
7 responsible as employers for the conduct alleged herein.

8 12. Plaintiffs are informed and believe and based thereon allege that at all times herein
9 mentioned Defendants and DOES 1 through 50 are and were business entities, individuals, and
10 partnerships, licensed to do business and actually doing business in the State of California.

11 13. As such, and based upon all the facts and circumstances incident to Defendants'
12 business in California, Defendants are subject to Labor Code 201-204, 210, 218, 218.5, 218.6,
13 221, 223, 225.5, 226 *et seq.*, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 515, 516, 558, 1174,
14 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, and 2698, *et seq.*, Business and
15 Professions Code § 17200 *et. Seq.*, and the applicable Wage Orders of the IWC.

16 14. Plaintiffs do not know the true names or capacities, whether individual, partner or
17 corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason,
18 said Defendants are sued under such fictitious names, and Plaintiffs pray for leave to amend this
19 complaint when the true names and capacities are known. Plaintiffs are informed and believe and
20 based thereon allege that each of said fictitious Defendants was responsible in some way for the
21 matters alleged herein and proximately caused Plaintiffs, all others similarly situated, and
22 aggrieved employees to be subject to the illegal employment practices, wrongs and injuries
23 complained of herein.

24 15. At all times herein mentioned, each of said Defendants participated in the doing
25 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
26 Defendants, and each of them, were the agents, servants, and employees of each of the other
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1 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
2 within the course and scope of said agency and employment.

3 16. Plaintiffs are informed and believe and based thereon allege that at all times
4 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
5 joint venturer of, or working in concert with each of the other co-Defendants and was acting
6 within the course and scope of such agency, employment, joint venture, or concerted activity. To
7 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
8 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
9 Defendants.

10 17. At all times herein mentioned, Defendants, and each of them, were members of,
11 and engaged in, a joint venture, partnership, and common enterprise, and acting within the course
12 and scope of, and in pursuance of, said joint venture, partnership, and common enterprise.

13 18. At all times herein mentioned, the acts and omissions of various Defendants, and
14 each of them, concurred and contributed to the various acts and omissions of each and all of the
15 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
16 herein mentioned, Defendants, and each of them, ratified each and every act or omission
17 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided
18 and abetted the acts and omissions of each and all of the other Defendants in proximately causing
19 the damages as herein alleged.

20 **GENERAL FACTUAL ALLEGATIONS**

21 19. During Plaintiffs' respective employments with Defendants, Plaintiffs and other
22 non-exempt employees routinely worked in excess of 8 hours per workday and/or more than 40
23 hours per workweek but did not receive overtime compensation equal to one and one-half times
24 their respective regular rates of pay for working overtime hours. Specifically, Plaintiffs and other
25 non-exempt employees earned shift premiums (denoted on paystubs as "Shift Prem"), non-
26 discretionary bonuses (denoted on paystubs as "Bonus"), incentive pay (denoted on paystubs as
27 "Incentive \$"), and other forms of pay that cannot be excluded from the regular rate of pay as a
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1 matter of law (hereinafter “Incentive Pay”). As a result of paying Plaintiffs and other non-exempt
2 employees Incentive Pay, Defendants failed to properly calculate the regular rate of pay, resulting
3 in unpaid overtime wages.

4 20. During the statutory period, Defendants failed to accurately record and pay
5 Plaintiffs and other non-exempt employees for the actual amount of time these employees worked.
6 Pursuant to the IWC, Defendants were required to pay Plaintiffs and other non-exempt employees
7 for all time worked, meaning the time during which an employee was subject to the control of an
8 employer, including all the time the employee was permitted or suffered to permit this work.
9 Defendants required these employees to work off the clock without paying them for all the time
10 they were under Defendants’ control. Among other things, Defendants required Plaintiffs to work
11 while clocked out during what are supposed to be off-duty meal breaks, required Plaintiffs and
12 other non-exempt employees to perform work on days they were not scheduled to work, including
13 responding to work-related communications received on their personal cell phones from
14 Defendants’ managers for work-related purposes, resulting in Plaintiffs and other non-exempt
15 employees having to work while off-the-clock. Plaintiffs and other non-exempt employees also
16 worked off the clock with respect to time spent undergoing mandatory drug testing or any other
17 testing and/or examination required as a condition of employment. Defendants, as a matter of
18 established company policy and procedure, administers a uniform practice of rounding the actual
19 time worked and recorded by Plaintiffs and non-exempt employees, always to the benefit of
20 Defendants, so that during the course of their employment, Plaintiffs and other non-exempt
21 employees are paid less than they would have been paid had they been paid for actual recorded
22 time rather than “rounded” time. Additionally, Defendants engage in the practice of requiring
23 Plaintiffs and other non-exempt employees to submit to mandatory temperature checks and
24 symptom questionnaires for COVID-19 screenings prior to clocking into Defendants’
25 timekeeping system for the workday. Defendants were able to track the amount of time Plaintiffs
26 and other non-exempt employees spent working; however, Defendants failed to document, track
27 or pay Plaintiffs and other non-exempt employees all wages earned and owed for all the work
28 they performed, including but not limited to, the time spent during non-production periods and

1 while waiting to load Defendants' trucks with goods. As such, Defendants knew or should have
2 known that Plaintiffs and other non-exempt employees were under compensated for all time
3 worked. As a result, Plaintiffs and other non-exempt employees forfeited time worked by working
4 without their time being accurately recorded and without compensation at the applicable
5 minimum wage and overtime wage rates. To the extent that the time worked off the clock does
6 not qualify for overtime premium payment, Defendants failed to pay minimum wages for the time
7 worked off-the clock in violation of Labor Code §§ 1194, 1197, and 1197.1.

8 21. For a portion of the statutory period, Defendants paid meal period, rest period, and
9 sick pay premium payments at Plaintiffs' and other non-exempt employees' respective base
10 hourly rates of pay, rather than at the regular rate of pay after factoring in Incentive Pay. As a
11 result, Plaintiffs and other non-exempt employees did not receive an additional hour of premium
12 pay at their respective regular rates of pay for each workday in which a meal period and/or rest
13 period violation occurred, as required by Labor Code § 226.7. Further, Defendants failed to
14 compensate Plaintiffs and other non-exempt employees with sick pay at their respective regular
15 rates of pay, as mandated by Labor Code § 246.

16 22. As a result of their rigorous work schedules, Plaintiffs and other non-exempt
17 employees were from time to time unable to take thirty (30) minute off duty meal breaks and were
18 not fully relieved of duty for their meal periods. Plaintiffs and other non-exempt employees were
19 required from time to time to perform work as ordered by Defendants for more than five (5) hours
20 during some shifts without receiving a meal break. Further, Defendants from time to time failed
21 to provide Plaintiffs and other non-exempt employees with a second and third off-duty meal
22 period for some workdays in which these employees were required by Defendants to work for ten
23 (10) hours of work. Defendants also engaged in the practice of rounding the meal period times to
24 avoid paying penalties to Plaintiffs and other non-exempt employees. Plaintiffs and other non-
25 exempt employees therefore forfeited meal breaks without additional compensation and in
26 accordance with Defendants' corporate policy and practice. Further, from time to time, Plaintiffs
27 and other non-exempt employees were required to remain on duty, on call, and/or on the premises,
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1 and/or to carry cordless communication devices and respond to communications received on said
2 devices during what was supposed to be their off-duty meal periods.

3 23. Further, Defendants failed to authorize and permit Plaintiffs and other non-exempt
4 employees to take all legally complaint rest periods to which they were entitled, due to
5 Defendants' unlawful rest period policies/practices. Specifically, Plaintiffs and other non-exempt
6 employees were required to work in excess of four (4) hours without being provided ten (10)
7 minute rest periods. Further, these employees were denied their first rest periods of at least ten
8 (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first
9 and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and
10 eight (8) hours from time to time, and a first, second and third rest period of at least ten (10)
11 minutes for some shifts worked of ten (10) hours or more from time to time.

12 24. Further, until approximately 2019, Defendants required Plaintiffs and other non-
13 exempt employees to remain on Defendants' premises during rest periods and to carry cordless
14 communication devices and respond to communications received on said devices during what
15 was supposed to be their off-duty rest periods, and as a result, failed to relinquish all control over
16 how Plaintiffs and other non-exempt employees spent their break time, in violation of *Augustus*
17 *v. ABM Security Services, Inc.*, (2016) 2 Cal.5th 257, 260 (“[D]uring required rest periods,
18 employers must relieve their employees of all duties and relinquish any control over how
19 employees spend their break time.”). On those occasions where Plaintiffs and other non-exempt
20 employees were not authorized to take all legally compliant rest periods to which they were
21 entitled, Defendants failed to pay Plaintiffs and other non-exempt employees an additional hour
22 of rest period premium pay, as required by Labor Code § 226.7.

23 25. Defendants are governed by Labor Code § 226(a), which requires, among other
24 things, that Defendants' wage statements include all applicable hourly rates during the pay period
25 and the corresponding number of hours worked at each hourly rate, and the total hours worked
26 during the pay period. However, Defendants issued wage statements to Plaintiffs and other
27 employees which listed multiple rates for “FLSA Prem \$” without indicating the number of hours
28 worked at each hourly rate. Defendants' wage statements also list an inaccurate figure for the total

1 hours worked in the pay period which double-counts certain hours, and includes certain hours
2 that are not in fact “hours worked” such as hours associated with meal and rest period premiums.
3 Additionally, Defendants issued wage statements that included negative deductions on various
4 pay codes, such as “FLSA OT Prem” and “Break Premium.” As a result, Defendants issued
5 facially non-compliant wage statements to Plaintiffs and other non-exempt employees, in
6 violation of Labor Code § 226(a).

7 26. In the course of their employment, Defendants required Plaintiffs and other non-
8 exempt employees to use their personal cellular phones to correspond and coordinate tasks with
9 their supervisor and/or other employees as a result of and in furtherance of their job duties as
10 employees for Defendants. But for the use of their own personal cellular phones, Plaintiffs and
11 other non-exempt employees could not complete their essential job duties, including but not
12 limited to sending and receiving work-related communications from Defendants. However,
13 Defendants unlawfully failed to reimburse Plaintiffs and other non-exempt employees for their
14 use of their personal cellular phones. As a result, in the course of their respective employments
15 with Defendants, Plaintiffs and other non-exempt employees incurred unreimbursed business
16 expenses, but were not limited to, costs related to the use of their personal cellular phones, all on
17 behalf of and for the benefit of Defendants.

18 27. Pursuant to Labor Code § 221, “It shall be unlawful for any employer to collect or
19 receive from an employee any part of wages theretofore paid by said employer to said employee.”
20 Defendants failed to pay all compensation due to Plaintiffs and other non-exempt employees,
21 made unlawful deductions from compensation payable to Plaintiffs and other non-exempt
22 employees, and thereby failed to pay these employees all wages due at each applicable pay period
23 and upon termination.

24 28. As a result of Defendants’ failure to pay all overtime wages, minimum wages,
25 meal period and rest period premium wages, and sick pay owed, Defendants also maintained
26 inaccurate payroll records, issued inaccurate wage statements to Plaintiffs and other non-exempt
27 employees, and failed to pay all final wages owed to Plaintiffs and other non-exempt employees
28 upon their respective separations from employment. Plaintiffs further assert that Defendants

1 failed to pay Plaintiffs and other non-exempt employees within seven (7) days of the close of the
2 payroll period, as required by Labor Code § 204(d)

3 **CLASS ACTION ALLEGATIONS**

4 29. Class Definitions: Plaintiffs bring this action on behalf of themselves and the
5 following Classes pursuant to Section 382 of the Code of Civil Procedure:

- 6 a. The Overtime Class consists of all Defendants' current and former non-exempt
7 employees in California who: (1) worked more than 8.0 hours per day and/or
8 40.0 hours per workweek and were subject to Defendants' timekeeping
9 policies and/or practices; and/or (2) worked more than 8.0 hours per day and/or
10 40.0 hours per workweek and received Incentive Pay during a corresponding
11 time period, during the time period from February 2, 2018 through the present.
- 12 b. The Minimum Wage Class consists of all Defendants' current and former non-
13 exempt employees in California who were subject to Defendants' timekeeping
14 policies and/or practices, during the time period from February 2, 2018 through
15 the present.
- 16 c. The Meal Period Class consists of all Defendants' current and former non-
17 exempt employees in California who: (i) worked at least one shift in excess of
18 5.0 hours; and/or (ii) received a meal period premium that was paid at a rate
19 below the employee's regular rate of pay, during the time period from February
20 2, 2018 through the present.
- 21 d. The Rest Period Class consists of all Defendants' current and former non-
22 exempt employees in California who: (i) worked at least one shift in excess of
23 3.5 hours; and/or (ii) received a rest period premium that was paid at a rate
24 below the employee's regular rate of pay, during the time period from February
25 2, 2018 through the present.
- 26 e. The Reimbursement Class consists of all of Defendants' current and former
27 non-exempt employees in California who were not reimbursed for necessary
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business expenses incurred, during the time period from February 2, 2018 through the present.

f. The Wage Statement Class consists of all of Defendants' current and former non-exempt employees in California who received a wage statement from Defendants during the time period from February 2, 2021 through the present.

g. The Waiting Time Class consists of all members of the Overtime Class, Minimum Wage Class, Meal Period Class, and/or Rest Period Class who separated their employment with Defendants during the time period from February 2, 2019 through the present.

30. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiffs at this time; however, it is estimated that the Class members number greater than one hundred and seventy-five (175) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

31. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiffs and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation to:

- a. Whether Defendants lawfully paid premium wages for all overtime hours worked to members of the Overtime Class pursuant to Labor Code §§ 204, 510, 558, 1194 and 1198;
- b. Whether Defendants lawfully paid all minimum wages for all hours worked to members of the Minimum Wage Class pursuant to Labor Code §§ 1194, 1197, 1197.1;
- c. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;

- d. Whether Defendants authorized and permitted all lawful rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- e. Whether Defendants correctly paid meal and/or rest period premium payments for non-compliant meal and/or rest periods pursuant to Labor Code § 226.7;
- f. Whether Defendants failed to reimburse members of the Reimbursement Class for all necessary business expenses incurred pursuant to Labor Code § 2802;
- g. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226; and
- h. Whether Defendants paid all wages/compensation due upon separation to members of the Waiting Time Class pursuant to Labor Code §§ 201-203.

32. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform overtime and minimum wage policies/practices, meal and rest period policies/practices, and reimbursement policies/practices. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

33. **Typicality:** Plaintiffs' claims are typical of the claims of the Classes because Plaintiffs were employed by Defendants in California during the applicable statute of limitations period. As alleged herein, Plaintiffs, like the members of the Classes, were deprived of all overtime and minimum wages owed, were not provided all required meal periods, were not authorized and permitted to take all required rest periods, were not reimbursed for their necessary business expenses incurred, were not provided with accurate itemized wage statements, and did not receive all wages earned at the time of their respective separations from employment.

1 34. **Adequacy of Representation:** Plaintiffs are fully prepared to take all necessary
2 steps to represent fairly and adequately the interests of the members of the Classes. Moreover,
3 Plaintiffs’ attorneys are ready, willing, and able to fully and adequately represent the members of
4 the Class and Plaintiffs. Plaintiffs’ attorneys have prosecuted and defended numerous wage and
5 hour class actions in state and federal courts in the past, and are committed to vigorously
6 prosecuting this action on behalf of the members of the Classes.

7 35. **Superiority:** The California Labor Code is broadly remedial in nature and serves
8 an important public interest in establishing minimum working conditions and standards in
9 California. These laws and labor standards protect the average working employee from
10 exploitation by employers who have the responsibility to follow the laws, and who may seek to
11 take advantage of superior economic and bargaining power in setting onerous terms and
12 conditions of employment. The nature of this action and the format of laws available to Plaintiffs
13 and members of the Classes make the class action format a particularly efficient and appropriate
14 procedure to redress the violations alleged herein. If each employee was required to file an
15 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
16 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
17 their vastly superior financial and legal resources. Moreover, requiring each member of the
18 Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by
19 employees who would be disinclined to file an action against their former and/or current employer
20 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
21 employment. Further, the prosecution of separate actions by the individual class members, even
22 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
23 with respect to the individual class members against Defendants herein; and which would
24 establish potentially incompatible standards of conduct for Defendants; and/or legal
25 determinations with respect to individual class members which would, as a practical matter, be
26 dispositive of the interest of the other class members not parties to adjudications or which would
27 substantially impair or impede the ability of the class members to protect their interests. Further,
28 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous

individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes identified herein are maintainable under Section 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION
FAILURE TO PAY ALL OVERTIME WAGES
(AGAINST ALL DEFENDANTS)

36. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as though fully set forth herein.

37. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours worked and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

38. At all times relevant herein, Defendants were required to properly pay Plaintiffs and members of the Overtime Class for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 7. Wage Order 7, § 3 requires an employer to pay an employee “one and one-half (1½) times the employee’s regular rate of pay” for work in excess of 8 hours per work day and/or in excess of 40 hours of work in the workweek.

39. At all times relevant herein, Defendants caused Plaintiffs and other non-exempt employees to work overtime hours but did not compensate Plaintiffs or members of the Overtime Class at one and one-half times their regular rate of pay for such hours.

40. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiffs and the Overtime Class in a civil action for the unpaid amount of overtime premiums owing, including interest thereon, statutory and civil penalties, attorney’s fees, and costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order 7, and Code of Civil Procedure § 1021.5.

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SECOND CAUSE OF ACTION
MINIMUM WAGE VIOLATIONS
(AGAINST ALL DEFENDANTS)

41. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as though fully set forth herein.

42. Wage Order 7, § 4 and California Labor Code §§ 1197, 1197.1 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor Code § 1194(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit.

43. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes but is not limited to all hours they were subject to Defendants' control. Accordingly, Plaintiffs and members of the Minimum Wage Class were not compensated for all hours actually worked as required by the California Labor Code and Wage Order 7.

44. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiffs and the Minimum Wage Class have sustained economic damages, including, but not limited to unpaid wages and lost interest, in an amount to be established at trial, and they are entitled to recover economic and statutory damages and penalties and other appropriate relief as a result of Defendants' violations of the California Labor Code and Wage Order 7.

45. Defendants' timekeeping policies/practices are unlawful and create an entitlement to recovery by Plaintiffs and members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages, liquidated damages, including interest thereon, statutory penalties, civil penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 210, 216, 226.2, 558, 1194, and 1198, and Code of Civil Procedure § 1021.5.

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THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

46. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as though fully set forth herein.

47. Plaintiffs are informed and believe, and based thereon allege, that Defendants failed in their affirmative obligation to provide all of their non-exempt employees in California, including Plaintiffs and members of the Meal Period Class, with all legally compliant meal periods in accordance with the mandates of the California Labor Code and Wage Order 7, § 11, for the reasons set forth in the factual allegations and class definitions sections of this Complaint. Despite Defendants' violations, Defendants did not pay an additional hour of premium pay to Plaintiffs and members of the Meal Period Class at their respective regular rates of pay, in accordance with California Labor Code §§ 226.7 and 512.

48. As a result, Defendants are responsible for paying premium compensation for meal period violations, including interest thereon, statutory penalties, civil penalties, and costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 7, and Code of Civil Procedure § 1021.5.

FOURTH CAUSE OF ACTION
REST PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

49. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as though fully set forth herein.

50. Wage Order 7, § 12 and Labor Code §§ 226.7, 515, and 516 establish the right of employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof.

51. As alleged herein, and due to Defendants' unlawful rest period policies and/or practices, Defendants did not authorize and permit Plaintiffs and members of the Rest Period Class to take all lawful rest periods to which they were legally entitled. Despite Defendants'

1 violations, Defendants failed to pay an additional hour of premium pay to Plaintiffs and members
2 of the Rest Period Class at their respective regular rates of pay for each violation in accordance
3 with Labor Code § 226.7.

4 52. The foregoing policies and practices are unlawful and create an entitlement to
5 recovery by Plaintiffs and members of the Rest Period Class in a civil action for the unpaid amount
6 of rest period premiums owing, including interest thereon, statutory penalties, civil penalties, and
7 costs of suit according to Labor Code §§ 226.7, 515, 516, and 558, Wage Order 7, and Code of
8 Civil Procedure § 1021.5.

9 **FIFTH CAUSE OF ACTION**

10 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

11 **(AGAINST ALL DEFENDANTS)**

12 53. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as
13 though fully set forth herein.

14 54. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
15 states that “an employer shall indemnify his or her employees for all necessary expenditures or
16 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of
17 his or obedience to the directions of the employer.”

18 55. As alleged herein, due to Defendants’ unlawful reimbursement practices,
19 Defendants failed to indemnify Plaintiffs and the members of the Reimbursement Class for all
20 necessary business expenses incurred, including cell phone usage.

21 56. As a proximate result of Defendants’ policies and/or practices in violation of Labor
22 Code § 2802, Plaintiffs and members of the Reimbursement Class are entitled to damages,
23 attorneys’ fees and costs of suit, and interest thereon, in sums to be shown according to proof at
24 trial, pursuant to Labor Code § 2802.

25 **SIXTH CAUSE OF ACTION**

26 **WAGE STATEMENT PENALTIES**

27 **(AGAINST ALL DEFENDANTS)**

28 57. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as

1 though fully set forth herein.

2 58. Plaintiffs are informed and believe, and based thereon allege, that Defendants
3 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiffs
4 and the Wage Statement Class with wage statements that complied with the requirements of Labor
5 Code § 226(a) and/or 226.3.

6 59. Defendants' failure to furnish Plaintiffs and members of the Wage Statement Class
7 with compliant wage statements resulted in actual injury, as said failures rendered Plaintiffs
8 unable to unable to readily ascertain the information on their wage statements.

9 60. Defendants' failures create an entitlement to recovery by Plaintiffs and members
10 of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
11 Code § 226 *et seq.*, including statutory penalties, civil penalties, reasonable attorneys' fees, and
12 costs of suit according to California Labor Code § 226 *et seq.*

13 **SEVENTH CAUSE OF ACTION**

14 **WAITING TIME PENALTIES**

15 **(AGAINST ALL DEFENDANTS)**

16 61. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as though
17 fully set forth herein.

18 62. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
19 an employer to pay all wages earned immediately at the time of separation of employment in the
20 event the employer discharges the employee, or if the employee provides at least 72 hours of
21 notice of his/her intent to quit. In the event the employee provides less than 72 hours of his/her
22 intent to quit, said employee's wages become due and payable no later than 72 hours upon said
23 employee's last date of employment.

24 63. Plaintiffs are informed and believe, and based thereon allege, that Defendants
25 failed to timely pay Plaintiffs and members of the Waiting Time Class all final wages due to them
26 at the time of their separation, which includes, among other things, underpaid overtime and
27 minimum wages, and meal and rest period premium wages. Further, Plaintiffs are informed and
28 believe, and based thereon alleges, that as a matter of uniform policy and practice, Defendants

1 continue to fail to pay members of the Waiting Time Class all earned wages at the end of
2 employment in a timely manner pursuant to Labor Code §§ 201-203. Defendants' failure to pay
3 all final wages was willful within the meaning of Labor Code § 203.

4 64. Defendants' willful failure to timely pay Plaintiffs and members of the Waiting
5 Time Class their earned wages upon separation from employment, results in a continued payment
6 of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiffs and
7 members of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203.

8 **EIGHTH CAUSE OF ACTION**

9 **UNFAIR COMPETITION**

10 **(AGAINST ALL DEFENDANTS)**

11 65. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as
12 though fully set forth herein.

13 66. Defendants have engaged and continue to engage in unfair and/or unlawful
14 business practices in California in violation of California Business and Professions Code § 17200,
15 *et seq.*, by failing to pay Plaintiffs and the Classes all overtime wages owed; failing to pay all
16 minimum wages owed; failing to provide all required meal periods or pay premium payments in
17 lieu thereof; failing to authorize and permit all required rest periods or pay premium payments in
18 lieu thereof; failing to reimburse all necessary business expenses; failing to provide accurate
19 itemized wage statements; and failing to pay all final wages at the time of separation from
20 employment.

21 67. Defendants' utilization of these unfair and/or unlawful business practices deprived
22 Plaintiffs, and continues to deprive members of the Classes, of compensation to which they are
23 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
24 over Defendants' competitors who have been and/or are currently employing workers and
25 attempting to do so in honest compliance with applicable wage and hour laws.

26 68. Because Plaintiffs are victims of Defendants' unfair and/or unlawful conduct
27 alleged herein, Plaintiffs, for themselves and on behalf of the members of the Classes, seek full
28 restitution of monies as necessary and according to proof, to restore any and all monies withheld,

1 acquired, and/or converted by Defendants pursuant to Business and Professions Code §§ 17203
2 and 17208.

3 69. The acts complained of herein occurred within the four years immediately
4 preceding the filing of this action.

5 70. Plaintiffs are compelled to retain the services of counsel to file this court action to
6 protect their interests and those of the Classes, to obtain restitution on behalf of Defendants'
7 current non-exempt employees, and to enforce important rights affecting the public interest.
8 Plaintiffs have thereby incurred the financial burden of attorneys' fees and costs, which they are
9 entitled to recover under Code of Civil Procedure § 1021.5.

10 **NINTH CAUSE OF ACTION**

11 **SICK PAY WAGE VIOLATIONS**

12 **(AGAINST ALL DEFENDANTS)**

13 71. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as
14 though fully set forth herein.

15 72. Labor Code § 233 requires an employer to permit an employee to use accrued sick
16 leave in accordance with Labor Code § 246.5 at the employee's then current rate of entitlement.
17 Labor Code § 246 provides that an employee is entitled to sick pay wages for use of accrued sick
18 leave pursuant to Labor code § 246.5, which must be calculated and compensated based on one
19 of two calculations: (i) "Paid sick time for nonexempt employees shall be calculated in the same
20 manner as the regular rate of pay for the workweek in which the employee uses paid sick time,
21 whether or not the employee actually works overtime in that workweek," or (ii) "Paid sick time
22 for nonexempt employees shall be calculated by dividing the employee's total wages, not
23 including overtime premium pay, by the employee's total hours worked in the full pay periods of
24 the prior 90 days of employment." Under Labor code §§ 218 and 233, employees may sue to
25 recover underpaid sick pay wages as damages.

26 73. Plaintiffs are informed and believe, and based thereon allege, that Defendants, as
27 a matter of uniform policy and practice, failed to furnish Plaintiffs and similarly situated
28

1 nonexempt employees with all sick pay wages owed at the correct rate of pay, in violation of
2 Labor Code §§ 233 and 246.

3 74. Defendants' failures create an entitlement to recovery by Plaintiffs and similarly
4 situated nonexempt employees in a civil action for all damages and/or penalties pursuant to Labor
5 Code § 233, including statutory penalties, civil penalties, and reasonable attorneys' fees, and costs
6 of suit according to according to Labor Code §§ 218, 233, and 246, and Code of Civil Procedure
7 § 1021.5.

8 **TENTH CAUSE OF ACTION**

9 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

10 **(BY PLAINTIFFS AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

11 75. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as
12 though fully set forth herein.

13 76. Plaintiffs bring this cause of action as proxies for the State of California and in this
14 capacity, seek penalties on behalf of all Aggrieved Employees from February 2, 2021, through
15 the present, for Defendants' violations of the California Labor Code sections identified above.

16 77. Defendants have committed several Labor Code violations against Plaintiffs,
17 members of the Classes, and other aggrieved employees. Plaintiffs, as "aggrieved employees"
18 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of themselves and other
19 aggrieved employees, bring this representative action against Defendants to recover the civil
20 penalties due to Plaintiffs, the members of the Classes, other aggrieved employees, and the State
21 of California according to proof pursuant to Labor Code §§ 558 and 2699 (a) and (f) including,
22 but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and
23 \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code §
24 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2)
25 \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code
26 § 558 per employee per pay period; (3) \$250.00 for each initial violation and \$1,000.00 for each
27 subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (4)
28 \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay

1 period for those violations of the Labor Code for which no civil penalty is specifically provided,
2 based on the following Labor Code violations:

- 3 a. Failing to pay Plaintiffs and other aggrieved employees all overtime
4 compensation earned in violation of Labor Code §§ 204, 510, 558, 1194, and
5 1198;
- 6 b. Failing to pay Plaintiffs and other aggrieved employees the statutory minimum
7 wage for all hours worked in violation of Labor Code §§ 1194, 1194.2, 1197,
8 1197.1, 1198, and 1199;
- 9 c. Failing to provide meal periods as required by law and failing to pay meal
10 period premiums to Plaintiffs and other aggrieved employees at these
11 employees' respective regular rates of compensation for meal period violations
12 in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- 13 d. Failing to authorize and permit Plaintiffs and other aggrieved employees to
14 take all lawful rest periods to which they are entitled, and failing to pay rest
15 period premiums to Plaintiffs and other aggrieved employees at these
16 employees' respective regular rates of compensation for rest period violations
17 in violation of Labor Code §§ 226.7, 515, 516, 558, and 1198;
- 18 e. Failing to reimburse Plaintiffs and other aggrieved employees for all work-
19 related expenses they incurred in violation of Labor Code §§ 2802 and 2804;
- 20 f. Failing to furnish Plaintiffs and other aggrieved employees with accurate and
21 compliant itemized wage statements in violation of Labor Code §§ 226 *et seq.*;
- 22 g. Failing to timely pay all final wages due to Plaintiffs and other aggrieved
23 employees in violation of Labor Code §§ 201-203;
- 24 h. Failing to pay Plaintiffs and aggrieved employees all wages earned at least
25 twice during each calendar month in violation of Labor Code §§ 204 and 210;
- 26 i. Failing to maintain accurate records on behalf of Plaintiffs and aggrieved
27 employees in violation of Labor Code §§ 558 and 1174;
- 28 j. Failing to pay sick pay wages to Plaintiffs and other aggrieved employees at

1 their respective regular rates of pay in violation of Labor Code § 246; and
2 k. Additional violations of the following Labor Code sections: 218.5, 218.6, 221,
3 223, 225.5, 226.2, 246, 227.3, 510, 512, 1174(d), 1174.5, 1197, 1198.5.

4 78. On February 14, 2022, Plaintiff Levingston sent written notice to the California
5 Labor & Workforce Development Agency (“LWDA”) of Defendant Commerce Distribution
6 Company LLC’s violation of Labor Code § 226, pursuant to Labor Code § 2698, *et seq.*, the
7 Private Attorneys General Act (“PAGA”). Plaintiff Levingston also sent written notice of said
8 Labor Code violations to Defendant Commerce Distribution Company LLC via certified mail
9 pursuant to Labor Code § 2699.3. As of the date of the filing of this Complaint, the LWDA has
10 not provided written notice regarding whether it intends to investigate the Labor Code violations
11 set forth in Plaintiff Levingston’s written notice.

12 79. On February 2, 2022, Plaintiff Pearson notified Defendant Smart & Final Logistics
13 LLC via certified mail, and notified the LWDA via its website, of Defendants’ violations of the
14 California Labor Code and Plaintiff Pearson’s intent to bring a claim for civil penalties under
15 California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor Code
16 identified herein. Now that sixty-five days have passed from Plaintiff Pearson notifying
17 Defendant Smart & Final Logistics LLC and the LWDA of these violations, and the LWDA has
18 not provided notice that it intends to investigate the violations, Plaintiff Pearson has exhausted
19 his administrative requirements for bringing a claim under the PAGA with respect to these
20 violations.
21

22 80. On July 20, 2022, Plaintiff Gutierrez gave written notice by electronic mail to the
23 LWDA and by certified mail to Defendant Smart & Final Stores LLC of the specific provisions
24 of this code alleged to have been violated as required by Labor Code § 2699.3. The statutory
25 waiting period for Plaintiff Gutierrez to add these allegations to the Complaint has expired. As a
26 result, pursuant to Section 2699.3, Plaintiff Gutierrez may now commence a representative civil
27 action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect
28 to all aggrieved employees as herein defined.

81. By certified letter, return receipt requested, dated March 30, 2022, Plaintiff Rodriguez gave written notice to the LWDA and to Defendants Commerce Distribution Company LLC, Smart & Final Stores LLC, and Smart & Final LLC of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. As of the date of this complaint, more than sixty-five (65) days after serving the LWDA with written notice and amended notice of Defendants' violations, the LWDA has not provided any notice by certified mail of its intent to investigate the Defendants' alleged violations as mandated by Labor Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)(A), Plaintiff Rodriguez may commence and is authorized to pursue this cause of action.

82. Based on the foregoing, Plaintiffs seek to represent themselves and all aggrieved employees, as defined by Labor Code § 2699(c), which includes all current and former non-exempt employees who worked for Defendants in California between February 2, 2021 and the present.

83. Plaintiffs were compelled to retain the services of counsel to file this court action to protect their interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiffs have thereby incurred attorneys' fees and costs, which they are entitled to recover under California Labor Code § 2699.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as individuals and for all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiffs as representatives of the Classes;
3. For an order appointing Counsel for Plaintiffs as Counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;

1 5. Upon the Second Cause of Action, for payment of minimum wages, liquidated
2 damages, and penalties owed according to proof pursuant to Labor Code §§ 1194, 1197, and
3 1197.1;

4 6. Upon the Third Cause of Action, for compensatory, consequential, general and
5 special damages according to proof pursuant to Labor Code §§ 226.7, 512 and 558;

6 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
7 special damages according to proof pursuant to Labor Code §§ 226.7, 515, 516, and 558;

8 8. Upon the Fifth Cause of Action, for compensatory, consequential, general and
9 special damages according to proof pursuant to Labor Code § 2802;

10 9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code §
11 226 *et. seq.*;

12 10. Upon the Seventh Cause of Action, for statutory waiting time penalties pursuant
13 to Labor Code §§ 201-203;

14 11. Upon the Eighth Cause of Action, for restitution to Plaintiffs and members of the
15 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
16 practices declared by this Court to be in violation of California Business and Professions Code §
17 17200 *et seq.*;

18 12. Upon the Ninth Cause of Action, for compensatory, consequential, general and
19 special damages according to proof pursuant to Labor Code §§ 218, 233, and 246;

20 13. Upon the Tenth Cause of Action, for civil penalties due to Plaintiffs, other aggrieved
21 employees, and the State of California according to proof pursuant to Labor Code §§ 558 and
22 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure
23 to pay each employee and \$200 for each subsequent violation or willful or intentional violation
24 pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount
25 unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation
26 pursuant to Labor Code § 558 per employee per pay period; (3) \$250.00 for each initial violation
27 and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per
28 pay period; and/or (4) \$100.00 for each initial violation and \$200.00 for each subsequent violation

per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code violations identified in Paragraph 77 (a)-(k);

14. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code § 218.6 and Civil Code §§ 3287 and 3289;

15. On all causes of action for attorneys' fees and costs as provided by Labor Code §§ 218.5, 226, 233, 1194 *et seq.*, and 2698 *et seq.*, and California Code of Civil Procedure section 1021.5; and

16. For such other and further relief as the Court may deem just and proper.

DATED: January 27, 2023

DIVERSITY LAW GROUP, P.C.

By: 
Larry W. Lee
Shalom "Christine" Choo
Attorneys for Plaintiffs, the putative class
members, and the Aggrieved Employees

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial with respect to all issues triable by jury.

DATED: January 27, 2023

DIVERSITY LAW GROUP, P.C.

By: 
Larry W. Lee
Shalom "Christine" Choo
Attorneys for Plaintiffs, the putative class
members, and the Aggrieved Employees

1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3
4 STATE OF CALIFORNIA]
5]ss.
6 COUNTY OF LOS ANGELES]

7 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250, Los Angeles, California 90071.

8 On January 31, 2023, I served the following document(s) described as: **SECOND**
9 **AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this action as follows:

Laura Reathaford Laura.reathaford@lathropgpm.com Lathrop GPM, LLP 2049 Century Park East, Suite 3500S Los Angeles, California 90067 <i>Attorney for Defendant Commerce Distribution Center, LLC</i>	Paul K. Haines phaines@haineslawgroup.com Fletcher W. Schmidt fschmidt@haineslawgroup.com Matthew K. Moen mmoen@haineslawgroup.com Susan J. Perez sperez@haineslawgroup.com HAINES LAW GROUP, APC 2155 Campus Drive, Suite 180 El Segundo, California 90245 <i>Attorneys for Plaintiffs</i>
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1 5440 Morehouse Drive, Suite 3600
2 San Diego, CA 92121
3 *Attorneys for Plaintiffs*

4
5 X BY ELECTRONIC SERVICE: Based on a court order I caused the above-
6 entitled document(s) to be served through the ACE Attorney Service E-Filing System at the
7 website www.efile.acelegal.com, addressed to all parties appearing on this proof of service for
8 the above-entitled case. The service transmission was reported as complete and a copy of the
9 filing receipt/confirmation will be filed, deposited, or maintained with the original document(s)
10 in this office.

11 I declare under penalty of perjury under the laws of the State of California that the
12 above is true and correct. Executed on January 31, 2023, at Los Angeles, California.

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Erika Mejia