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HOME DEPOT U.S.A., INC.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION

VIRGIE FLORES, as individuals and
on behalf of others similarly situated

Plaintiff,

v.

HOME DEPOT U.S.A., INC., a
Delaware limited liability company,
and DOES 1-50, inclusive,

Defendant.

Case No. 5:20-CV-2215

CLASS ACTION

**DEFENDANT HOME DEPOT U.S.A.,
INC.’S NOTICE OF REMOVAL OF
ACTION PURSUANT TO 28 U.S.C.
§§ 1332(D)(2), 1441, 1446, AND 1453**

[Declarations of Alejandra Solis, Jonathan
Christie, G. Edward Anderson, Ph.D,
Certification of Interested Parties and
Corporate Disclosure Statement, Notice of
Related Cases, and Civil Cover Sheet filed
concurrently]

*(San Bernardino County Superior Court,
Case No. CIV DS 2013065)*

Date Action Filed: June 23, 2020
Amended Complaint Filed: July 23, 2020

1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
2 CENTRAL DISTRICT OF CALIFORNIA:

3 PLEASE TAKE NOTICE that defendant Home Depot U.S.A., Inc. (“Home
4 Depot”) hereby removes to this Court the state court action described below, pursuant to
5 28 U.S.C. §§ 1332(d)(2), 1441, 1446, and 1453. In support, Home Depot states as
6 follows:

7 1. On June 23, 2020, a putative class action was filed and is currently pending
8 against Home Depot in the Superior Court of California, County of San Bernardino,
9 Case No. CIV DS 2013065, entitled *Virgie Flores, Plaintiff v. Home Depot U.S.A., Inc.,*
10 *Defendant.* See Declaration of Jonathan S. Christie (“Christie Decl.”) ¶ 2 & Ex. A. On
11 July 20, 2020, the court issued an Order setting Initial Complex Case Management
12 Conference. Christie Decl. ¶ 3 & Ex. B.

13 2. On July 23, 2020, plaintiff filed his First Amended Complaint (“Am.
14 Compl.”). Christie Decl. ¶ 4 & Ex C. On September 21, 2020, CSC Corporation was
15 personally served with the First Amended Class Action Complaint, the original Class
16 Action Complaint, Summons, Civil Case Cover Sheet, Certificate of Assignment, Initial
17 Complex Order and Guidelines, Initial Case Management Conference Order, Guidelines
18 for the Complex Litigation Program. Christie Decl. ¶¶2-5 & Exs. A-D. On September
19 29, 2020, Plaintiff filed a Request to Continue Initial Status Conference. Christie Decl.
20 ¶ 6 & Ex. F. On October 2, 2020, the court vacated the Initial Status Conference, and
21 rescheduled it for November 4, 2020. Christie Decl. ¶ 7 & Ex. G.

22 3. On October 20, 2020, Defendant fax-filed its Answer to Plaintiff’s First
23 Amended Complaint. Christie Decl. ¶ 8 & Ex. H. On October 21, 2020, Defendant was
24 made aware of an error with the fee processing regarding its Answer and resubmitted its
25 fax-filing the same day. *Id.* ¶ 8 & Exs. H, I.

26 4. No other process, pleadings, or orders have been filed by or served upon
27 defendant as part of Case No. CIV DS 2013065. Christie Decl. ¶ 9. As required by 28
28 U.S.C. § 1446(a), a true and correct copy of all process, pleadings, and orders served

1 upon defendant or entered by the court as part of the above action are attached to the
2 Christie Declaration, filed concurrently in support of this Notice of Removal.

3 5. Plaintiff Virgie Flores (“plaintiff”) was formerly employed by Home Depot
4 as a nonexempt employee. Am. Compl. ¶ 13. She alleges that Home Depot failed to
5 pay minimum and overtime wages, failed to provide required meal and rest periods,
6 failed to provide accurate itemized wage statements, engaged in unlawful discount and
7 deductions of entitled wages, and failed to provide wages when due, and that Home
8 Depot violated California’s unfair competition law. *Id.* ¶¶ 55-117. She also seeks
9 penalties for Labor Code violations under the Private Attorneys General Act. *Id.* ¶¶ 118-
10 128.

11 6. Plaintiff seeks to bring this action on behalf of a class consisting of “[a]ll
12 persons who were employed by [Home Depot] as nonexempt employees, in California
13 at any time from four years prior to the date of filing of this action through the date of
14 trial (the “putative class”). Am. Compl. ¶ 22. Plaintiff also seeks to represent twenty-
15 seven subclasses of the putative class, including subclasses relating to her paycard, meal
16 period, rest period, unpaid wages, wage statement penalty, and waiting time penalty
17 claims. *Id.* ¶¶ 23-49. Members of the subclasses are subsumed within the putative
18 class. *Id.* ¶ 22.¹

19 7. Timeliness. Plaintiff filed his Amended Complaint in San Bernardino
20 County Superior Court on July 23, 2020. *See* Christie Decl. ¶ 4 & Ex. C. A proof of
21 service has not yet been filed with the court, however, according to the Proof of Service
22 on Defendant’s agent, CSC Corporation, the First Amended Class Action Complaint
23

24
25 ¹ Home Depot denies plaintiff’s allegations and disputes that this action is appropriate
26 for class treatment. However, for purposes of estimating the amount in controversy, the
27 allegations of plaintiff’s complaint are assumed to be true. *See Korn v. Polo Ralph*
28 *Lauren Corp.*, 536 F. Supp. 2d 1199, 1205 (E.D. Cal. 2008) (“In measuring the amount
in controversy, a court must assume that the allegations of the complaint are true and
that a jury will return a verdict for the plaintiff on all claims made in the complaint. The
ultimate inquiry is what amount is put ‘in controversy’ by the plaintiff’s complaint, not
what a defendant will *actually* owe.”) (citations omitted (emphasis in original)).

1 was served on Home Depot on September 21, 2020. *See id.* ¶ 5. Home Depot’s Notice
2 of Removal is therefore timely because it is being filed within 30 days of service of the
3 complaint. *See* 28 U.S.C. § 1446(b).

4 8. Jurisdiction. This is a civil action over which this Court has original
5 jurisdiction and thus may be removed pursuant to 28 U.S.C. § 1441. Under 28 U.S.C.
6 § 1441(a), a defendant may remove to federal district court “any civil action brought in
7 a State court of which the district courts of the United States have original
8 jurisdiction[.]” Pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C.
9 § 1332(d)(2), federal district courts have original jurisdiction over a class action if (1) it
10 involves 100 or more putative class members, (2) any class member is a citizen of a
11 state different from any defendant, and (3) the aggregated controversy exceeds
12 \$5,000,000 (exclusive of costs and interest). *See* 28 U.S.C. § 1332(d)(2), (d)(6), and
13 (d)(11)(B)(i). These criteria are satisfied here.

14 9. Class Size. Since June 23, 2016, over 50,000 non-exempt employees were
15 employed by Home Depot in California. Declaration of G. Edward Anderson, Ph.D.
16 (“Anderson Decl.”), filed and served concurrently, ¶ 5.² Thus, the putative class
17 includes more than 100 individuals.

18 10. Diversity of Citizenship. At all relevant times, there has been diversity of
19 citizenship between the parties to the action. “[U]nder CAFA, complete diversity is not
20 required; ‘minimal diversity’ suffices.” *Serrano v. 180 Connect, Inc.*, 478 F.3d 1018,
21 1021 (9th Cir. 2007) (internal citations omitted). Minimal diversity exists if any class
22 member is a citizen of a state different from any defendant. *See* 28 U.S.C. § 1332(d)(2).

23 11. The putative class includes citizens of California, including plaintiff. *See*
24 Am. Compl. ¶¶ 6 (plaintiff resides in California). From April 2, 2001 through the end of
25 her employment with Home Depot, plaintiff maintained a California residential address
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27 ² A defendant may make the requisite showing by setting forth facts in the notice of
28 removal or by affidavit. *See Lamke v. Sunstate Equip. Co.*, 319 F. Supp. 2d 1029, 1032
(N.D. Cal. 2004).

1 on file with Home Depot and worked in San Bernardino, California. *See* Declaration of
2 Alejandra Solis (“Solis Decl.”), filed concurrently, ¶ 4; Am. Compl. ¶¶ 6, 9. Her
3 employment and residence in California conclusively establish California citizenship.
4 *See Bey v. SolarWorld Indus. Am., Inc.*, 904 F. Supp. 2d 1103, 1105 (D. Or. 2012)
5 (residential address provided by employee to employer is prima facie evidence of
6 citizenship); *Abbott v. United Venture Capital, Inc.*, 718 F. Supp. 823, 826-27 (D. Nev.
7 1988) (plaintiff was a California citizen primarily because of continuous California
8 residence over multiple years).

9 12. Further, plaintiff seeks to represent a class consisting of thousands of
10 current and former California employees. Am. Compl. ¶¶ 22; *see also* Anderson Decl.
11 ¶ 5. This putative class logically includes other California citizens as well.

12 13. Home Depot is not a citizen of California. “[A] corporation shall be
13 deemed to be a citizen of every State ... by which it has been incorporated and of the
14 State ... where it has its principal place of business....” 28 U.S.C. § 1332(c)(1). Home
15 Depot is not incorporated in California. *See* Solis Decl. ¶ 2. Home Depot is a Delaware
16 corporation and its headquarters is in Atlanta, Georgia. *See id.*; *Ottaviano v. Home*
17 *Depot [U.S.A.], Inc.[.]*, 701 F. Supp. 2d 1005, 1007 (N.D. Ill. 2010) (Home Depot “is a
18 Delaware corporation with its principal executive offices located in Atlanta, Georgia”);
19 *Novak v. Home Depot U.S.A., Inc.*, 259 F.R.D. 106, 108 (D.N.J. 2009) (Home Depot “is
20 a Delaware corporation with its principal offices located in Georgia”). Nor is California
21 the state in which Home Depot has its principal place of business, which is “the place
22 where a corporation’s officers direct, control, and coordinate the corporation’s
23 activities.” *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010). Rather, Home Depot’s
24 principal place of business is Atlanta, Georgia. *See* Solis Decl. ¶ 2; *Ottaviano*, 701 F.
25 Supp. 2d at 1007; *Novak*, 259 F.R.D. at 108.

26 14. Defendants DOES 1-50 are unidentified. Am. Compl. ¶ 10. Because there
27 is “no information as to who they are or where they live or their relationship to the
28

1 action[, it is] proper for the district court to disregard them” for the purposes of removal.
2 *McCabe v. Gen. Foods Corp.*, 811 F.2d 1336, 1339 (9th Cir. 1987) (citations omitted).

3 15. Accordingly, this action involves citizens of different states: plaintiff is a
4 citizen of California (and seeks to represent other California citizens) and Home Depot
5 is a citizen of Delaware and Georgia. The CAFA minimal diversity requirement is
6 therefore satisfied. *See* 28 U.S.C. § 1332(d)(2).

7 16. Amount in Controversy. Home Depot avers, for purposes of this Notice
8 only and without conceding liability for the claims alleged by plaintiff or that plaintiff
9 can properly represent the putative class, that plaintiff’s claims place more than \$5
10 million in controversy. “The amount in controversy is simply an estimate of the total
11 amount in dispute, not a prospective assessment of [the] defendant’s liability.” *Lewis v.*
12 *Verizon Commc’ns, Inc.*, 627 F.3d 395, 400 (9th Cir. 2010) (on removal, defendant does
13 not “concede liability for the entire amount” alleged in complaint); *Ibarra v. Manheim*
14 *Invs., Inc.*, 775 F.3d 1193, 1198 n.1 (9th Cir. 2015) (“Even when defendants have
15 persuaded a court upon a CAFA removal that the amount in controversy exceeds \$5
16 million, they are still free to challenge the actual amount of damages in subsequent
17 proceedings and at trial . . . because they are not stipulating to damages suffered”). As
18 the United States Supreme Court has held, a defendant’s notice of removal need only
19 include “a plausible allegation that the amount in controversy exceeds the jurisdictional
20 threshold.” *Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 89 (2014).

21 Moreover, the Ninth Circuit has instructed that removal is proper if, based on the
22 allegations of the complaint and the Notice of Removal, it is more likely than not that
23 the amount in controversy exceeds \$5 million. *See Rodriguez v. AT&T Mobility Servs.*
24 *LLC*, 728 F.3d 975, 981 (9th Cir. 2013) (overturning Ninth Circuit precedent requiring
25 proof of amount in controversy to a “legal certainty” in some circumstances). In
26 determining whether the amount in controversy is met, the Court considers all requested
27 relief, “including . . . punitive damages, statutory penalties, and attorneys’ fees.” *Lake v.*
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1 *Delta Air Lines, Inc.*, No. SACV 10-1775 DOC(Ex), 2011 WL 3102486, at *4 (C.D.
2 Cal. July 22, 2011). Under this standard, the amount in controversy is satisfied.

3 17. In her third Cause of Action, plaintiff seeks waiting time penalties pursuant
4 to California Labor Code section 203 for Home Depot's alleged failure to pay all wages
5 due to putative class members at the end of their employment. *See* Am. Compl. ¶¶ 19-
6 20, 66-71 & Prayer for Relief, Third Cause of Action, ¶¶ 7-9. For this claim, plaintiff
7 seeks to represent the putative class and subclass members. Am. Compl. ¶ 68. Under
8 section 203, former employees who are willfully denied wages due at termination may
9 recover penalties in the amount of their daily rate of pay for a period of up to thirty
10 days. *See* Cal. Lab. Code § 203; *see also* Am. Compl. ¶ 69. Plaintiff alleges that
11 "Defendants failed to pay Plaintiffs, Class Members and Subclass Members who are no
12 longer employed by Defendant[] compensation due upon termination as required by
13 California Labor Code section 201 and 202." Am. Compl. ¶ 69. Plaintiff claims that
14 Defendant "has a policy and/or practice that failed to pay" all wages owed at
15 termination. *Id.* ¶ 20. Plaintiff further alleges that, as a result, class members are
16 entitled to waiting time penalties pursuant to Labor Code section 203. *Id.*; *see also*
17 Prayer for Relief, Third Cause of Action, ¶¶ 7-9 (demanding statutory penalties pursuant
18 to Labor Code section 203).

19 18. Plaintiff claims putative class members were not properly compensated for
20 all hours worked, including because Home Depot allegedly "unlawfully deducted,
21 discounted and secretly paid lowe[r] wages than earned" as a result of its use of pay
22 cards. Am. Compl. ¶¶ 15-16, 62. Plaintiff also alleges that Defendant had a "policy,
23 pattern or practice of requiring, encouraging and/or pressuring its employees to take
24 late, short, interrupted," or otherwise non-compliant meal and rest breaks. *Id.* ¶ 11.
25 Plaintiff further alleges that putative class members were not compensated for their
26 "missed, short, late or interrupted" meal or rest periods, and were not paid premiums for
27 break violations. *Id.*

1 19. Under plaintiff's theories, all putative class members whose employment
2 has ended since June 23, 2017 are entitled to recover waiting time penalties equal to 30
3 days of wages.³ See, e.g., *Schuyler v. Morton's of Chi., Inc.*, No. CV 10-06762 ODW
4 (JCGx), 2011 WL 280993, at *5 (C.D. Cal. Jan. 25, 2011) (appropriate to assume 100
5 percent violation rate for full 30 days of waiting time penalties where complaint alleges
6 multiple wage violations that were never paid); *Oda v. Gucci Am., Inc.*, No. 2:14-cv-
7 7468-SVW (JPRx), 2015 WL 93335, at *5 (assumption of maximum penalties proper).

8 20. At least 7,000 putative class members terminated employment with Home
9 Depot since June 23, 2017 are potentially eligible to recover section 203 penalties.
10 Anderson Decl. ¶ 6. These individuals earned, on average, daily wages of
11 approximately \$86.51. *Id.* Assuming that only half of the Waiting Time Penalties
12 Subclass members are entitled to waiting time penalties, the amount of waiting time
13 penalties in controversy exceeds \$9 million ($\$86.51 \times 30 \times 3,500 = \$9,083,550$).

14 21. Thus, even by conservative estimates, calculating waiting time penalties
15 alone, the \$5,000,000 CAFA threshold is met. See, e.g., *Deehan v. Amerigas Partners,*
16 *L.P.*, No. 08cv1009 BTM(JMA), 2008 WL 4104475, at *1 (S.D. Cal., Sept. 2, 2008)
17 (amount in controversy satisfied where estimated class size multiplied by statutory
18 penalty for alleged violations exceeded \$5 million).

19 22. Plaintiff also alleges in her first, second, fifth, and sixth causes of action
20 that Home Depot failed to pay minimum and overtime wages and failed to provide meal
21 and rest breaks and pay corresponding premiums. Plaintiff also alleges in her fourth
22 cause of action that Home Depot failed to provide accurate itemized wage statements,
23 and claims in her seventh through ninth causes of action that Home Depot unlawfully
24 discounted and/or deducted wages from its employees. These causes of action place
25 additional amounts in controversy. Home Depot has not attempted in these removal
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28 ³ A three-year statute of limitations applies to claims for penalties under section 203.
See *Pineda v. Bank of America, N.A.*, 50 Cal. 4th 1389, 1395-96 (2010).

1 papers to quantify the additional amounts these claims place in controversy because the
2 CAFA threshold is met without considering these claims.

3 23. Plaintiff also seeks attorney’s fees (Am. Compl. ¶¶ 65, 76, 82, 88, 94, 100,
4 106, 117; Prayer for Relief), which are part of the amount in controversy as well. *See*
5 *Fritsch v. Swift Transp. Co. of Ariz., LLC*, 899 F.3d 785, 794 (9th Cir. 2018) (“[I]f the
6 law entitles the plaintiff to future attorneys’ fees if the action succeeds, ‘then there is no
7 question that future [attorneys’ fees] are ‘at stake’ in the litigation,’ and the defendant
8 may attempt to prove that future attorneys’ fees should be included in the amount in
9 controversy.” (citation omitted)); *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th
10 Cir. 1998). The Ninth Circuit has established 25 percent of total potential damages as a
11 benchmark award for attorney’s fees. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011,
12 1029 (9th Cir. 1998); *see also Deaver v. BBVA Compass Consulting & Benefits, Inc.*,
13 No. 13-cv-00222-JSC, 2014 WL 2199645, at *6, *8 (N.D. Cal. May 27, 2014)
14 (accounting for attorney’s fees by adding 25 percent of potential damages and penalties
15 to amount in controversy); *Ford v. CEC Entm’t, Inc.*, No. CV 14-01420 RS, 2014 WL
16 3377990, at *6 (N.D. Cal. July 10, 2014) (same); *Rodriguez v. Cleansource, Inc.*, No.
17 14-CV-0789-L(DHB), 2014 WL 3818304, at *4-5 (S.D. Cal. Aug. 4, 2014) (denying
18 motion to remand where defendant showed potential damages of \$4.2 million because
19 attorneys’ fees of 25 percent brought the total amount in controversy to \$5.3 million).
20 Potential attorneys’ fees of 25 percent place at least an additional \$2,270,887 in
21 controversy here.

22 24. In sum, the allegations in plaintiff’s complaint seek penalties and attorneys’
23 fees in excess of \$5 million, and the amount in controversy is satisfied.

24 25. Venue. The United States District Court for the Central District of
25 California is the judicial district “embracing the place” where this action was filed by
26 plaintiff and is the appropriate court for removal pursuant to 28 U.S.C. § 1441(a).
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1 26. There are no grounds that would justify this Court in declining to exercise
2 its jurisdiction pursuant to 28 U.S.C. § 1332(d)(3) or requiring it to decline to exercise
3 jurisdiction pursuant to 28 U.S.C. § 1332(d)(4).

4 WHEREFORE, Home Depot requests that the above action now pending in the
5 Superior Court of California, County of San Bernardino be removed to this Court. In
6 the event the Court has any reason to question whether removal is proper, Home Depot
7 requests the opportunity to provide briefing on the issue.

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9 Dated: October 21, 2020

AKIN GUMP STRAUSS HAUER & FELD LLP
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12 By /s/ Gregory W. Knopp
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13 Attorneys for Defendant,
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUN 23 2020

BY Andrea Garcia
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5 Attorney for Plaintiff Virgie Flores

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10 SUPERIOR COURT OF STATE OF CALIFORNIA
11 FOR THE COUNTY OF SAN BERNARDINO

12 VIRGIE FLORES, as individuals and on
13 behalf of others similarly situated,

14 Plaintiff,

15 vs.

16 HOME DEPOT U.S.A., INC., a Delaware
17 limited liability company, and DOES 1-50,
18 inclusive,

19 Defendant.

Case No. **CIV DS 2013065**

Assigned to Honorable

CLASS ACTION CLAIMS

COMPLAINT FOR:

- 1. CLAIM FOR FAILURE TO PAY OVERTIME (LAB. CODE §§ 1194, 510, 1198, IWC WAGE ORDERS 4, 7, 9 § 3)
- 2. CLAIM FOR FAILURE TO PAY MINIMUM WAGE (LAB. CODE § 1194)
- 3. CLAIM FOR FAILURE TO PAY TIMELY WAGES UPON TERMINATION (LAB. CODE § 203)
- 4. CLAIM FOR FAILURE TO PROVIDE AND MAINTAIN ACCURATE ITEMIZED WAGE STATEMENTS (LAB. CODE § 226(a))

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CLASS ACTION COMPLAINT—1

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- 5. CLAIM FOR FAILURE TO PROVIDE MEAL BREAKS (IWC WAGE ORDERS 4, 7, 9, SECTION 11)
- 6. CLAIM FOR FAILURE TO PROVIDE UNINTERRUPTED REST PERIODS (LAB. CODE § 226.7)
- 7. CLAIM FOR UNLAWFUL DISCOUNT AND DEDUCTIONS OF ENTITLED WAGES (CAL. LAB. CODE §§ 212 AND 213)
- 8. CLAIM FOR UNLAWFUL DISCOUNT AND DEDUCTIONS OF ENTITLED WAGES (CAL. LAB. CODE §§ 221 AND 224)
- 9. CLAIM FOR UNLAWFUL SECRET DISCOUNT OF ENTITLED WAGES (CAL. LAB. CODE § 223)
- 10. UNLAWFUL BUSINESS PRACTICES UNDER (BUS. AND PROF. CODE, § 17200, ET SEQ.)

[JURY DEMAND]

1 Plaintiff Virgie Flores (“Plaintiff” or “Ms. Flores”) make the following allegations
2 against Defendant Home Depot, U.S.A., Inc. (referred to herein as “Defendant”, “Defendants”
3 “HD”), and DOES 1-50 (collectively referred to throughout herein as “Defendants”):

4 **INTRODUCTION**

5 1. Plaintiff brings this class action on behalf of all non-exempt employees (collectively
6 referred to herein as “Class Members” or “Subclass Members”) employed by Defendant and,
7 DOES 1-50 in California from the date four years prior to the filing of this Complaint through
8 the date of trial in this action.

9 2. In this action, Plaintiff, on behalf of herself and all Class Members, Subclass Members
10 seek unpaid overtime wages, minimum wages, unlawful deductions, wage statement penalties,
11 for unreimbursed business expenses and wages upon termination. Statutory penalties,
12 restitution, declaratory and injunctive relief, attorneys’ fees and costs, prejudgment interest and
13 other relief under California Industrial Welfare Commission (I.W.C.) Wage Order 4-2001, 8
14 Cal. Code of Reg. section 11050 (“Wage Order 4-2001”), Wage Order 7-2001, 8 Cal. Code of
15 Reg. section 11050 (“Wage Order 7-2001”), Wage Order 9-2001, 8 Cal. Code of Reg. section
16 11050 (“Wage Order 9-2001”), California Labor Code (Labor Code”) sections 201, 202, 203,
17 204, 212, 213, 221, 223, 224, 226(a) 1-2, 4-5, 8, 9, 226(a), 226.3, and 226.7, 510, 512, 1174
18 1182.12, 1194, 1197, 1197.1, 1198, 2699.5, 2802, California Code of Civil Procedure section
19 1021.5, California Business and Professions Code sections 17200 et seq. (“UCL”), and
20 California common law.

21 3. The “Class Period” is designated as the time from four years prior to the filing of this
22 Complaint through the trial of this action based upon the allegation that the violations of the
23 Labor Code and UCL, as described more fully below, have been ongoing since at least four
24 years prior to the date of the instant Complaint in this action and are continuing.

25 4. During the Class Period, Defendant had a consistent policy and/or practice of (1) failing
26 to compensate such Class Members and Subclass Members with overtime hours at the
27 appropriate rates; (2) failing to compensate Class Members and Subclass Members with
28 minimum wages; (3) unlawfully deducting and discounting wages from Class Members and

1 Subclass Members; (4) failing to issue accurate itemized wage statements; (5) failing to pay all
2 wages timely upon termination, resignation or end of employment; (6) failure to reimburse for
3 all necessary business expenses.

4 5. Accordingly, Defendant violated UCL, with the violations of the California wage and
5 hour laws described above.

6 **GENERAL ALLEGATIONS**

7 **Parties and Venue.**

8 6. Plaintiff, is, and at all relevant times was, a citizen and resident in the County of San
9 Bernardino, in the State of California.

10 7. Plaintiff is informed and believes and on that basis alleges that at all relevant times
11 Defendant HD is a Delaware corporation doing business in the State of California with a
12 principal place of business located at 2455 Paces Ferry Road, Atlanta, Georgia, 30339.

13 9. In light of the facts that the wrongful acts of this defendant occurred and the causes
14 against them arose in San Bernardino County, State of California, jurisdiction and venue is
15 proper in San Bernardino County.

16 **Doe Allegations.**

17 10. Plaintiffs do not presently know the true names and capacities of defendant named as
18 Doe1 through Doe 50, inclusive. Plaintiffs will amend this complaint, setting forth the true
19 names and capacities of these fictitious defendants, when they are ascertained. Plaintiffs are
20 informed and believes and on that basis alleges that each of the fictitious defendants have
21 participated in the acts alleged in this complaint to have been done by the named defendants.

22 **Vicarious Liability.**

23 11. Unless otherwise indicated, each defendant herein sued is the agent, co-conspirator,
24 joint venturer, partner, and/or employee of every other defendant and, as alleged, has been acting
25 within the course and scope of said agency, conspiracy, joint venture, partnership, and/or
26 employment, with the knowledge and/or consent of co-defendants, and each of them. Plaintiff is
27 informed and believes and thereon alleges that each defendant has authorized and/or ratified the
28 wrongful activities of each of the remaining defendants.

1 **COMMON ALLEGATIONS TO ALL CAUSES OF ACTION**

2 12. Defendant is a retail business that sales home improvement products among other
3 products and services.

4 13. Plaintiff, Class Members and Subclass Members worked for Defendant as non-exempt
5 employees in California.

6 14. Plaintiff, Class Members and Subclass Members worked as a non-exempt employee
7 for Defendant. During this employment a majority of Plaintiff's, Class Members and Subclass
8 Members work involved customer service, stocking, training cashiers and cashiering. On March
9 5, 2020, Plaintiff's employment ended at Defendant and Defendant was not paid her final wages
10 including her vacation time wages at that time. Instead, Defendant paid Plaintiff in the form of a
11 payroll card that required the incurrence of charges and expenses that should not have been
12 incurred by Plaintiff as an employee reduced Plaintiff's wages that she was entitled to in which
13 she lawfully earned.

14 **Defendant Failed to Compensate Plaintiff, Class Members and Subclass Members for**
15 **Minimum Wages and Overtime Wages and Unlawfully Deducted, Discounted and Secretly**
16 **Lowd Entitled Overtime and Minimum Wages**

17 15. Defendant had an agreement with a payroll service provider for the issuance of payroll
18 cards to Plaintiff, Class Members, Subclass Members and similarly situated employees that
19 required Plaintiff and these employees to incur a fee in order to access their full wages.
20 Furthermore, Plaintiff and other similarly situated employees would not be able to withdraw their
21 entire wages in one transaction via an ATM because ATM's only disburse cash in limited
22 denominations and do not dispense exact change. Moreover, Plaintiff and other similarly situated
23 employees had to abide by business hours of a specific bank chain and had limited locations with
24 limited business hours that created additional obstacles and hurdles to access their entire wages
25 without discount and without delay. Finally, when Plaintiff and other similarly situated
26 employees used their paycard they would incur a fee for each transaction, including even to
27 withdrawal their wages at an ATM.

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1 16. Moreover, Defendant provided Plaintiff, Class Members, Subclass Members and
2 similarly situated employees with payroll debit cards as payment of their wages. Under this
3 payroll debit card program, other aggrieved employees were assessed various fees in connection
4 with their use of the payroll debit cards. Plaintiff, Class Members, Subclass Members and
5 similarly situated employees were required to pay per-transaction fees. ATM fees, in-person
6 teller fees, and/or other fees to obtain and/or spend their earned and due wages. The fees charged
7 to other aggrieved employees resulted in a discount of their wages. Defendant's payroll debit
8 card program, which resulted in a discount of wages to employees, is tantamount to taking
9 deductions from other aggrieved employees' paychecks without their written authorization and
10 therefore constitutes an unlawful deduction of wages.

11 17. Moreover, during the relevant time period, Defendant willfully and systemically issued
12 payroll debit cards to Plaintiff, Class Members, Subclass Members and similarly situated
13 employees that discounted their wages by charging various fees in connection with the use of the
14 payroll debit cards. Defendant payroll debit card program resulted in the payment of less than
15 statutorily-required wages to other aggrieved employees. In doing so, Defendant acted with the
16 intent to deprive Plaintiff, Class Members, Subclass Members and similarly situated employees
17 of statutory wages, including but not limited to, overtime wages and minimum wages to which
18 they were entitled to under California law. Thus, Defendant paid Plaintiff, Class Members,
19 Subclass Members and similarly situated employees lower wages than those they were entitled to
20 while purporting that Plaintiff, Class Members, Subclass Members and similarly situated
21 employees were properly paid.

22 **Defendant Failed to Provide Accurate Wage Statements to Plaintiffs, Class Members and**
23 **Subclass Members**

24 18. Defendant knowingly and intentionally provided Plaintiff, Class Members and Subclass
25 Members with uniform incomplete and inaccurate wage statements. Defendant failed to list gross
26 wages earned, total hours worked, net wages earned, and all applicable hourly rates in effect
27 during the pay period, including overtime rates of pay, and the corresponding number of hours
28 worked at each hourly rate. Defendant failed to record the time Plaintiff, Class Members and

1 Subclass Members for unlawful deduction, secret discounts and list the correct amount of gross
2 wages, net wages, total number of hours worked and the applicable hourly rates of pay in effect
3 during the pay period and corresponding number of hours worked as each hourly rate.
4 Defendants also failed to allow the Plaintiff, Class and Subclass to retain the right to elect to
5 receive a written paper stub or record or provide those whom are provided with electronic wage
6 statements the opportunity to easily access the information and convert the electronic statements
7 into hard copies at no-expenses to the Plaintiff, Class and Subclass.

8 **Defendant Did Not Provide Meal and Rest Breaks**

9 11. Typically, Plaintiff would work above 8 hour work shifts at Defendant. During these
10 work shifts, Plaintiff would be required to do many tasks such as servicing customers. During
11 these shifts it would be very busy where he would not be able or permitted to take his entitled
12 uninterrupted 10-minute rest breaks each four hours or a 30-minute uninterrupted meal break at a
13 reasonably practicable time during his shift when she worked more than a five, six, ten and
14 twelve hour shift. Defendants would not compensate Plaintiff for all of her missed meal breaks
15 or rest periods throughout his employment. The wages for the missed meal breaks and rest
16 periods that should have been paid his premium wages. Moreover, Defendants had a policy,
17 pattern or practice of requiring, encouraging and/or pressuring its employees to take late, short,
18 interrupted, on-premises, on-call or no 10-minute rest breaks and/or 30-minute meal breaks at a
19 reasonably practicable time. Defendants would not compensate Plaintiff for all of their missed,
20 short, late or interrupted, meal breaks or rest periods throughout their employment nor were they
21 paid all of premium wages for the missed, short, late or interrupted, meal breaks and rest periods
22 that should have been paid.

23 **Defendant Failed to Pay All Wages Upon Termination to Plaintiff, Class Members and**
24 **Subclass Members**

25 19. Defendant willfully failed to pay Plaintiff all of her wages upon resignation or within
26 72 hours of leaving Defendant's employ.

27 20. Furthermore, during the Plaintiff, the Class Members and Subclass Members
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1 employment with Defendant they were entitled to be paid the correct minimum wages and
2 overtime time hours upon termination or resignation. Defendant had a policy and/or practice that
3 failed to pay Plaintiff's, the Class Members and Subclass Members all of their wages owed upon
4 termination including minimum wages, overtime hours wages that were withheld by Defendant
5 through the Plaintiff, the Class Members and Subclass Members employment.

6 **CLASS ACTION ALLEGATIONS**

7 21. This action is maintainable as a representative action pursuant to California Code of
8 Civil Procedure section 382 as to violations of Wage Order 4-2001, Wage Order 7-2001, Wage
9 Order 9-2001, Labor Codes and UCL minimum wages, overtime and double time wages, failure
10 to pay upon termination, waiting time penalties, and attorneys' fees and costs. Plaintiff is a
11 representative of other Class Members and Subclass Members and is acting on behalf of their
12 interests. The similarly situated employees are known to Defendant and are readily identifiable
13 and locatable through Defendant's own employment records. The Class and Subclasses that
14 Plaintiff seeks to represent is defined as follows:

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16 22. The Class the Plaintiff seeks to represent is defined as follows:

17 All persons who were employed by HD as nonexempt employees, in California at
18 any time from four years prior to the date of filing of this action through the date
19 of trial (referred to herein as "Class Members").

20 23. The Subclass 1 the Plaintiff seeks to represent is defined as follows:

21 All persons who were employed by HD in California at any time from four years
22 prior to the date of filing of this action through the date of trial and subjected to
policies and procedures of using HD paycard or payroll debit card.

23 24. The Subclass 2 the Plaintiff seeks to represent is defined as follows:

24 All persons who were employed by HD in California at any time from three years
25 prior to the date of filing of this action through the date of trial and subjected to
26 policies and procedures of using HD paycard or payroll debit card.

27 25. The Subclass 3 the Plaintiff seeks to represent is defined as follows:
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All persons who were employed by HD in California at any time from one year prior to the date of filing of this action through the date of trial and subjected to policies and procedures of using HD paycard or payroll debit card.

26. The Subclass 4 the Plaintiff seeks to represent is defined as follows:

All persons who were employed by HD in California as nonexempt employees at any time from four years prior to the date of filing of this action through the date of trial and subjected to policies and procedures of using HD paycard or payroll debit card.

27. The Subclass 5 the Plaintiff seeks to represent is defined as follows:

All persons who were employed by HD in California as nonexempt employees at any time from three years prior to the date of filing of this action through the date of trial and subjected to policies and procedures of using HD paycard or payroll debit card.

28. The Subclass 6 the Plaintiff seeks to represent is defined as follows:

All persons who were employed by HD in California as nonexempt employees at any time from one year prior to the date of filing of this action through the date of trial and subjected to policies and procedures of using HD paycard or payroll debit card.

29. The Subclass 7 the Plaintiff seeks to represent is defined as follows:

All persons who were employed by HD in California as nonexempt employees at any time from four years prior to the date of filing of this action through the date of trial and subjected to short, on-premises, late, interrupted, or no 30-minute uninterrupted meal breaks when they worked for the first 5 hours each shift and not paid premium wages..

30. The Subclass 8 the Plaintiff seeks to represent is defined as follows:

All persons who were employed by HD in California as nonexempt employees at any time from three years prior to the date of filing of this action through the date of trial and subjected to short, on-premises, late, interrupted, or no 30-minute uninterrupted meal breaks when they worked for the first 5 hours each shift and not paid premium wages..

31. The Subclass 9 the Plaintiff seeks to represent is defined as follows:

All persons who were employed by HD in California as nonexempt employees at any time from one year prior to the date of filing of this action through the date of

1 trial and subjected to short, on-premises, late, interrupted, or no 30-minute
2 uninterrupted meal breaks when they worked for the first 5 hours each shift and
not paid premium wages..

3 32. The Subclass 10 the Plaintiff seeks to represent is defined as follows:

4 All persons who were employed by HD in California as nonexempt employees at
5 any time from four years prior to the date of filing of this action through the date
6 of trial and subjected to short, on-premises, late, interrupted, or no 30-minute
uninterrupted meal breaks when they worked more than 6 hours each shift and not
7 paid premium wages..

8 33. The Subclass 11 the Plaintiff seeks to represent is defined as follows:

9 All persons who were employed by HD in California as nonexempt employees at
10 any time from three years prior to the date of filing of this action through the date
11 of trial and subjected to short, on-premises, late, interrupted, or no 30-minute
uninterrupted meal breaks when they worked more than 6 hours each shift and not
12 paid premium wages..

13 34. The Subclass 12 the Plaintiff seeks to represent is defined as follows:

14 All persons who were employed by HD in California as nonexempt employees at
15 any time from one year prior to the date of filing of this action through the date of
16 trial and subjected to short, on-premises, late, interrupted, or no 30-minute
uninterrupted meal breaks when they worked more than 6 hours each shift and not
17 paid premium wages..

18 35. The Subclass 13 the Plaintiff seeks to represent is defined as follows:

19 All persons who were employed by HD in California as nonexempt employees at
20 any time from four years prior to the date of filing of this action through the date
21 of trial and subjected to short, on-premises, late, interrupted, or no 30-minute
uninterrupted meal breaks when they worked more than 10 hours each shift and
22 not paid premium wages..

23 36. The Subclass 14 the Plaintiff seeks to represent is defined as follows:

24 All persons who were employed by HD in California as nonexempt employees at
25 any time from three years prior to the date of filing of this action through the date
26 of trial and subjected to short, on-premises, late, interrupted, or no 30-minute
uninterrupted meal breaks when they worked more than 10 hours each shift and
27 not paid premium wages..

28 37. The Subclass 15 the Plaintiff seeks to represent is defined as follows:

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All persons who were employed by HD in California as nonexempt employees at any time from one year prior to the date of filing of this action through the date of trial and subjected to short, on-premises, late, interrupted, or no 30-minute uninterrupted meal breaks when they worked more than 10 hours each shift and not paid premium wages..

38. The Subclass 16 the Plaintiff seeks to represent is defined as follows:

All persons who were employed by HD in California as nonexempt employees at any time from four years prior to the date of filing of this action through the date of trial and subjected to short, on-premises, late, interrupted, or no 30-minute uninterrupted meal breaks when they worked more than 12 hours each shift and not paid premium wages..

39. The Subclass 17 the Plaintiff seeks to represent is defined as follows:

All persons who were employed by HD in California as nonexempt employees at any time from three years prior to the date of filing of this action through the date of trial and subjected to short, on-premises, late, interrupted, or no 30-minute uninterrupted meal breaks when they worked more than 12 hours each shift and not paid premium wages..

40. The Subclass 18 the Plaintiff seeks to represent is defined as follows:

All persons who were employed by HD in California as nonexempt employees at any time from one year prior to the date of filing of this action through the date of trial and subjected to short, on-premises, late, interrupted, or no 30-minute uninterrupted meal breaks when they worked more than 12 hours each shift and not paid premium wages..

41. The Subclass 19 the Plaintiff seeks to represent is defined as follows:

All persons who were employed by HD in California as nonexempt employees at any time from four years prior to the date of filing of this action through the date of trial and subjected to short, on-premises, late, interrupted, or no 10-minute uninterrupted rest breaks when they worked more than 4 hours or major fraction thereof for each shift and not paid premium wages..

42. The Subclass 20 the Plaintiff seeks to represent is defined as follows:

All persons who were employed by HD in California as nonexempt employees at any time from three years prior to the date of filing of this action through the date of trial and subjected to short, on-premises, late, interrupted, or no 10-minute uninterrupted rest breaks when they worked more than 4 hours or major fraction thereof for each shift and not paid premium wages..

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43. The Subclass 21 the Plaintiff seeks to represent is defined as follows:

All persons who were employed by HD in California as nonexempt employees at any time from one year prior to the date of filing of this action through the date of trial and subjected to short, on-premises, late, interrupted, or no 10-minute uninterrupted rest breaks when they worked more than 4 hours or major fraction thereof for each shift and not paid premium wages..

44. The Subclass 22 the Plaintiff seeks to represent is defined as follows:

All persons who were employed by HD in California as nonexempt employees at any time from four years prior to the date of filing of this action through the date of trial and subjected to short, on-premises, late, interrupted, or no 10-minute uninterrupted rest breaks when they worked more than 8 hours or major fraction thereof for each shift and not paid premium wages..

45. The Subclass 23 the Plaintiff seeks to represent is defined as follows:

All persons who were employed by HD in California as nonexempt employees at any time from three years prior to the date of filing of this action through the date of trial and subjected to short, on-premises, late, interrupted, or no 10-minute uninterrupted rest breaks when they worked more than 8 hours or major fraction thereof for each shift and not paid premium wages..

46. The Subclass 24 the Plaintiff seeks to represent is defined as follows:

All persons who were employed by HD in California as nonexempt employees at any time from one year prior to the date of filing of this action through the date of trial and subjected to short, on-premises, late, interrupted, or no 10-minute uninterrupted rest breaks when they worked more than 8 hours or major fraction thereof for each shift and not paid premium wages..

47. The Subclass 25 the Plaintiff seeks to represent is defined as follows:

All persons who were employed by HD in California as nonexempt employees at any time from four years prior to the date of filing of this action through the date of trial and subjected to short, on-premises, late, interrupted, or no 10-minute uninterrupted rest breaks when they worked more than 12 hours or major fraction thereof for each shift and not paid premium wages..

48. The Subclass 26 the Plaintiff seeks to represent is defined as follows:

All persons who were employed by HD in California as nonexempt employees at any time from three years prior to the date of filing of this action through the date of trial and subjected to short, on-premises, late, interrupted, or no 10-minute

uninterrupted rest breaks when they worked more than 12 hours or major fraction thereof for each shift and not paid premium wages..

49. The Subclass 27 the Plaintiff seeks to represent is defined as follows:

All persons who were employed by HD in California as nonexempt employees at any time from one year prior to the date of filing of this action through the date of trial and subjected to short, on-premises, late, interrupted, or no 10-minute uninterrupted rest breaks when they worked more than 12 hours or major fraction thereof for each shift and not paid premium wages..

50. Subclass Members 1 through 27 shall be collectively referred to herein as (“Subclass Members”)

51. The individuals included within the alleged Class Members and Subclass Members are over one hundred (100) and is so numerous that joinder of each of them would be impracticable, and the disposition of their claims in a class action, rather than in numerous individual actions, will benefits the parties, the Court, and the interests of justice.

52. Among the proposed Class Members and Subclass Members there are a well-defined community of interest in the questions of law and/or fact involved, affecting the Class Members and Subclass Members, these common questions include, but are not limited to:

- a. Whether Defendant’s failure to provide Class Members and Subclass Members with entitled correct overtime wages for all hours worked above 8 hours per day or forty hours per week violates Labor Code sections 512, 1194 and Wage Order 4-2001, Wage Order 7-2001, Wage Order 9-2001;
- b. Whether Defendant’s failure to provide formerly employed Class Members and Subclass Members with all wages due upon separation violates Labor Code sections 201-203;
- c. Whether Defendant’s failure to provide meal periods to Class Members violates Labor Code sections 512 and 226.7 and Wage Order 4-2001, Wage Order 7-2001, Wage Order 9-2001;

- 1 d. Whether Defendant's failure to provide rest periods to Class Members violates
- 2 Labor Code section 226.7 and Wage Order 4-2001, Wage Order 7-2001, Wage
- 3 Order 9-2001;
- 4 e. Whether Defendant's various violations of the Labor Code serve as predicate
- 5 violations of the UCL.
- 6 f. Whether Defendants' failure to provide Class Members and Subclass Members
- 7 with entitled minimum wages for all hours worked violates Labor Code sections
- 8 1194 and Wage Order 4-2001, Wage Order 7-2001, Wage Order 9-2001;
- 9 g. Whether Defendants' failure to provide Class Members and Subclass Members
- 10 with accurate itemized wage statements violates Labor Code section 226(a);
- 11 h. Whether Defendants' discount of wages to Class Members and Subclass Members
- 12 violates Labor Code sections 221 and/or 224;
- 13 i. Whether Defendants' secret discount of wages to Class Members and Subclass
- 14 Members violates Labor Code sections 223; and
- 15 j. Whether Defendants' deduction of wages to Class Members and Subclass
- 16 Members violates Labor Code sections 221 and/or 224.

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18 53. Common questions of law and/or fact predominate over questions that affect only
19 individual Class Members and Subclass Members.

20 54. Plaintiff's claims are typical of those belonging to the members of the Class and
21 Subclass they seek to represent, and Plaintiffs can adequately represent the Class and Subclass
22 they seek to represent.

23 **FIRST CAUSE OF ACTION**

24 **(Claim For Failure to Pay Overtime Wage in Violation of Labor Code §§ 510, 1194, 1198**
25 **and IWC Wage Order 4, § 3, IWC Wage Order 7, § 3, IWC Wage Order 9, § 3 by Plaintiff,**
26 **Class Members and Subclass Members Against All Defendants and DOES 1-50)**

27 55. Plaintiff incorporates all of the allegations set forth in each of the paragraphs above
28 and below by reference as though set forth in full in this cause of action.

56. Plaintiff brings this claim on behalf of the Class Members and Subclass

1 Members.

2 57. Throughout Plaintiffs, Class Members and Subclass Members employment, they
3 worked above 8 hour daily working shifts and 40 hours per week. Defendants did not
4 compensate Plaintiffs, Class Members and Subclass Members for all entitled overtime and
5 double-time hours worked above 8 hours in a day and 40 hours per week with the correct amount
6 as it unlawfully deducted, discounted and secretly paid lowed wages than earned or entitled to.

7 58. Plaintiffs, Class Members and Subclass Members are entitled to overtime and
8 double time compensation according to proof at the time of trial under Labor Code sections 510,
9 1194 subdivision (a), 1198 enforcing, Wage Order 4, Wage Order 7, Wage Order 9. Defendant's
10 failure to pay Plaintiffs, Class Members and Subclass Members as required by the applicable
11 wage order, violates the provision of Labor Code section 1194, subdivision (a) and is therefore
12 unlawful. Defendant also violated Labor Code section 510.

13 59. Plaintiff, Class Members and Subclass Members are entitled to earnings for all hours
14 worked, including overtime and double overtime. Plaintiff is also entitled to recover the
15 statutory civil fines pursuant to Labor Code section 1194, subdivision (a). The exact amount of
16 the applicable damages is an amount to be shown according to proof at trial and within the
17 jurisdictional limits of the Court.

18 **SECOND CAUSE OF ACTION**

19 **(Claim for Failure to Pay All Wages, Including All Minimum Wages, Cal. Lab. Code**
20 **sections 204, 510, 1194, 1194.2 and 1197 and Wage Order 4-2001, Wage Order 7-2001**
21 **Wage Order 9-2001, By Plaintiff, Class Members and Subclass Members Against All**
22 **Defendants and DOES 1-50)**

23 60.Plaintiffs hereby incorporate all of the allegations set forth in each of the paragraphs
24 above and below by reference as though set forth in full in this cause of action.

25 61.Plaintiffs bring this claim on behalf of themselves, the Class Members and Subclass
26 Members.

27 62.Defendants were required to compensate Plaintiffs, Class Members and Subclass
28 Members for all hours worked pursuant to California Labor Code sections 510 and 1194 and
Industrial Welfare Commission Wage Order 4-2001 Section 3, Wage Order 7-2001 Section 3,
Wage Order 9-2001 Section 3. Defendants failed to do so as it unlawfully deducted, discounted

1 and secretly paid lowed wages than earned or entitled to. Plaintiff, Class Members and Subclass
2 Members are entitled to minimum wages and civil penalties as a consequence of this failure.

3 63. Defendants were required to pay Plaintiffs, Class Members and Subclass Members for all
4 of the minimum wages they are entitled to pursuant to California Labor Code sections 510 and
5 1194 and Industrial Welfare Commission Wage Order 7-2001 Section 3. Defendants failed to do
6 so. Plaintiff, Class Members and Subclass Members are entitled to civil penalties and owed
7 wages as a consequence of this failure.

8 64. As a direct result of Defendants' violations alleged herein, Plaintiffs, Class Members and
9 Subclass Members have suffered and continues to suffer substantial losses related to the use and
10 enjoyment of such wages, including lost interest on such monies and expenses and attorney's fees
11 in seeking to compel Defendants to fully perform its obligation under state law, all to their
12 respective damage in amounts according to proof at trial and within the jurisdictional limitations
13 of this Court.

14 65. As a result of the violations alleged herein, Plaintiffs, Class Members and Subclass
15 Members seeks all civil penalties and unpaid wages available pursuant to the Labor Code and
16 Wage Order 4-2001, Wage Order 7-2001, Wage Order 9-2001 including an award of interest on
17 the unpaid wages plus reasonable attorney's fees and costs and civil penalties. The exact amount
18 of the applicable penalties is an amount to be shown according to proof at trial.

19 **THIRD CAUSE OF ACTION**

20 **(Claim For Failure to Pay Wages Upon Termination in Violation of Labor Code § 203 by
21 Plaintiff, Class Members and Subclass Members Against All Defendants and DOES 1-50)**

22 66. Plaintiff hereby incorporates all of the allegations set forth in each of the paragraphs
23 above and below by reference as though set forth in full in this cause of action.

24 67. Pursuant to Labor Code section 203, an employer may not willfully fail to pay any
25 wages owed to an employee who is either discharged or quits.

26 68. Plaintiff brings this claim on behalf of the Class Members and Subclass
27 Members.

28 69. Defendant failed to pay Plaintiffs, Class Members and Subclass Members who are no

1 longer employed by Defendant's compensation due upon termination as required by California
2 Labor Code section 201 and 202 as a result of failing to pay Plaintiffs, Class Members and
3 Subclass Members the correct amount as it failed to as it unlawfully deducted, discounted and
4 secretly paid lowed wages than earned or entitled to. Furthermore, Defendants failed to
5 compensate Plaintiffs, Class Members and Subclass Members with premium wages for rest
6 breaks and meal breaks. As a result, Defendant is liable to Plaintiff, former employee Class
7 Members and Subclass Members-waiting-time penalties provided under California Labor Code
8 section 203, plus reasonable attorney's fees and costs of suit. At the time of Plaintiff's
9 termination and former Class Members and Subclass Members, Plaintiffs, Class Members and
10 Subclass Members were owed wages for Defendant's failure to compensate them for overtime
11 and double time including, but not limited to their correct overtime and double times rates for all
12 overtime and double-time hours worked in violation of Labor Code section 203.

13 70. Plaintiff, on behalf of itself, Class Members and Subclass Members, also request relief
14 as described below.

15 71. The exact amount of the applicable damages is an amount to be shown according to
16 proof at trial and within the jurisdictional limits of the Court.

FOURTH CAUSE OF ACTION

17 **(For Failure to Furnish Accurate Itemized Wage Statements in Violation of Lab. Code §**
18 **226 By Plaintiff, Class Members and Subclass Members Against All Defendants and DOES**
1-50)

19 72. Plaintiffs, Class Members and Subclass Members hereby incorporates all of the
20 allegations set forth in each of the paragraphs above and below by reference as though set forth
21 in full in this cause of action.

22 73.Plaintiffs bring this claim on behalf of themselves, Class Members and Subclass
23 Members.

24 74.Throughout the Class Period, Defendant failed to comply with Labor Code 226(a) by
25 failing to provide wage statements and failing to provide the wage statements of Plaintiff, Class
26 Members and Subclass Members did not accurately reflect each employee's applicable total
27 hours worked, net wages earned, gross wages earned and actual applicable wage rate all in
28 violation of California Labor Code Section 226(a), specifically sections 1-9.

1 75. Due to the fact that Defendants excluded the hours' worth of work that should have been
2 reflected on their wage statements for due to unlawful deduction, secret payment of lower wages
3 and unlawful discount of wages. Defendants violated California Labor Code Section 226(a),
4 specifically sections 1-9 . Defendants also failed to allow the Plaintiff, Class and Subclass to
5 retain the right to elect to receive a written paper stub or record or provide those whom are
6 provided with electronic wage statements the opportunity to easily access the information and
7 convert the electronic-statements into hard-copies at no expenses to the Plaintiff, Class and
8 Subclass Therefore, Plaintiff's, Class Members' and Subclass Members' wage statements did
9 not accurately reflect the total hours worked, net wages earned, gross wages earned, accurately
10 depict deductions that should have been taken out and actual applicable wage rate corresponding
11 with the total hours worked as a result of the unlawful deduction of wages associated with the
12 expenses for payroll paycards and as well as failing to comply with Labor Code 226(a)

13 76. As a direct result of Defendants' intentional violations alleged herein, Plaintiffs, Class
14 Members and Subclass Members have suffered and continues to suffer substantial losses related
15 to the use and enjoyment of such wages, including lost interest on such monies and expenses and
16 attorney's fees in seeking to compel Defendants to fully perform their obligation under state law,
17 all to their respective damage in amounts according to proof at trial and within the jurisdictional
18 limitations of this Court. The exact amount of the applicable civil penalties is an amount to be
19 shown according to proof at trial and an award of reasonable attorney's fees and costs.

20 **FIFTH CAUSE OF ACTION**

21 **(Claim for Failure to Provide Meal Breaks – Lab. Code 226.7, 512 and Wage Order 4-2001,
22 Wage Order 7-2001 Wage Order 9-2001 by Plaintiff and Class and Subclass Against All
23 Defendants and DOES 1-50)**

24 12. Plaintiff hereby incorporates all of the allegations set forth in each of the paragraphs
25 above and below by reference as though set forth in full in this cause of action.

26 13. Plaintiff brings this claim on behalf of himself, and the Class Members and Subclass.

27 14. Defendants were required to authorize and permit Plaintiff and Class and Subclass
28 Members to take uninterrupted meal breaks pursuant to Industrial Welfare Commission Wage
Order 4-2001 Section 11(A), Industrial Welfare Commission Wage Order 7-2001 Section 11(A),

1 Industrial Welfare Commission Wage Order 9-2001 Section 11(A). Defendants failed to do so by
2 not allowing such uninterrupted meal breaks. Plaintiff and Class Members are entitled to
3 premium wages and civil penalties as a consequence of this failure.

4 15. Defendants were required to pay the Plaintiff and Class and Subclass Members
5 employees one (1) hour of pay at their regular rate of compensation for each workday that the
6 legally compliant meal breaks are not provided, pursuant to Industrial Welfare Commission
7 Wage Order 4-2001 Section 11(B), Industrial Welfare Commission Wage Order 7-2001 Section
8 11(B), Industrial Welfare Commission Wage Order 9-2001 Section 11(B). It failed to do so.
9 Plaintiff and Class and Subclass Members are entitled to civil penalties and owed wages as a
10 consequence of this failure.

11 16. As a direct result of Defendant violations alleged herein, Plaintiff and Class and Subclass
12 Members have suffered and continues to suffer substantial losses related to the use and
13 enjoyment of such wages, including lost interest on such monies and expenses and attorney's fees
14 in seeking to compel Defendant to fully perform its obligation under state law, all to their
15 respective damage in amounts according to proof at trial and within the jurisdictional limitations
16 of this Court.

17 17. As a result of the violations alleged herein, Plaintiff seeks all civil penalties and wages
18 available pursuant to the Labor Code and Wage Order 4, Wage Order 7, Wage Order 9, and an
19 award of reasonable attorney's fees and costs. The exact amount of the applicable penalties is an
20 amount to be shown according to proof at trial.

21 **SIXTH CAUSE OF ACTION**

22 **(Claim for Failure to Provide Rest Periods – Lab. Code 226.7 Wage Order 4-2001, Wage**
23 **Order 7-2001 Wage Order 9-2001 by Plaintiff and Class and Subclass Against All**
Defendants and DOES 1-50)

24 18. Plaintiff hereby incorporates all of the allegations set forth in each of the paragraphs
25 above and below by reference as though set forth in full in this cause of action.

26 19. Plaintiff brings this claim on behalf of himself and the Class and Subclass Members.

27 20. Defendants were required to authorize and permit employees to take uninterrupted rest
28 periods pursuant to Industrial Welfare Commission Wage Order 4-2001 Section 12(A), Wage

1 Order 7-2001 Section 12(A), Wage Order 9-2001 Section 12(A). It failed to do so by not
2 allowing such uninterrupted rest periods. Plaintiff and Class and Subclass Members are entitled
3 to owed wages and civil penalties as a consequence of this failure.

4 21. Defendant was required to pay the employees one (1) hour of pay at their regular rate of
5 compensation for each workday that the legally compliant rest period is not provided, pursuant to
6 Industrial Welfare Commission Wage Order 4-2001 Section 12(B), Wage Order 7-2001 Section
7 12(B), Wage Order 9-2001 Section 12(B). Defendant failed to do so by not allowing such
8 interrupted rest periods. Plaintiff is entitled to civil penalties as a consequence of this failure.

9 22. As a direct result of Defendant's violations alleged herein, Plaintiff and Class and
10 Subclass Members have suffered and continues to suffer substantial losses related to the use and
11 enjoyment of such wages, including lost interest on such monies and expenses and attorney's fees
12 in seeking to compel Defendant's to fully perform its obligation under state law, all to their
13 respective damage in amounts according to proof at trial and within the jurisdictional limitations
14 of this Court. The exact amount of the applicable penalties is an amount to be shown according
15 to proof at trial.

16 23. As a result of the violations alleged herein, Plaintiff and Class and Subclass Members
17 seek all civil penalties and owed wages available pursuant to the Labor Code and Wage Orders
18 5, and an award of reasonable attorney's fees and costs.

19 **SEVENTH CAUSE OF ACTION**

20 **(Claim For Failure to Unlawful Discount and Deduction of Entitled Wages In Violation of**
21 **Lab. Code §§ 212 and 213 By Plaintiff, Class Member and Subclass Members Against All**
22 **Defendants and DOES 1-50)**

23 77. Plaintiffs hereby incorporates all of the allegations set for in each of the paragraphs above
24 and below by reference as though set forth in full in this cause of action.

25 78. Plaintiffs bring this claim on behalf of themselves, the Class Members and Subclass
26 Members.

27 79. Plaintiff, Class Members and Subclass Members were non-exempt employees of
28 Defendant. In the course of their employment, Plaintiff, Class Members and Subclass Members
were subject to unlawful deductions of their entitled wages during the course of the class period

1 and employment with Defendant. Defendant maintained an agreement with a payroll service
 2 provider for the issuance of payroll cards to employees to Plaintiff, Class Members and Subclass
 3 Members to discharge its wage payment obligations to its employees. Under Defendant's payroll
 4 debit card program, employees could use their payroll cards to (1) make purchases using the
 5 card; (2) make ATM withdrawals; or (3) make teller-assisted withdrawals. Under Defendant's
 6 payroll debit program, employees did not have easy access to the entirety of their wages without
 7 incurring a fee. Plaintiff, Class Members and Subclass Members were not able to withdraw their
 8 entire wages in one transaction via an ATM because ATM's only disburse cash in limited
 9 denominations and do not dispense exact change. While obtaining a teller-assisted withdrawal
 10 may have been another option available to employees, other aggrieved employees had to abide
 11 by the business hours of a specific bank chain, which had limited locations. Defendant's payroll
 12 debit card program presented a number of obstacles and hurdles that combined, made it difficult
 13 for Plaintiff, Class Members and Subclass Members to access their entire wages without discount
 14 and without delay. Furthermore, Plaintiff, Class Members and Subclass Members were assessed
 15 various fees in connection with their use of the payroll debit cards including but not limited to
 16 per-transaction fees, ATM fees, in-person teller fees, and/or other fees to obtain and/or spend
 17 their earned and due wages. The fees charged resulted in a discount and deduction of wages.

18 80. At all times herein mentioned Defendant was subject to Labor Code §§ 212 and 213
 19 which makes deducting or discounting an employees' wages unlawful.

20 81. As a proximate result of Defendant's policies in violation of Labor Code §§ 212 and 213,
 21 Plaintiff, Class Members and Subclass Members suffered damages in sums, which will be shown
 22 according to proof at the time of trial.

23 82. Plaintiff is entitled to expenses, attorney's fees, interest, and costs of suit.

24 **EIGHTH CAUSE OF ACTION**

25 **(Claim For Failure to Unlawful Discount and Deduction of Entitled Wages In Violation of**
 26 **Lab. Code §§ 221 and 224 By Plaintiff, Class Member and Subclass Members Against All**
 27 **Defendants and DOES 1-50)**

28 83. Plaintiffs hereby incorporates all of the allegations set for in each of the paragraphs above
 and below by reference as though set forth in full in this cause of action.

1 84.Plaintiffs bring this claim on behalf of themselves, the Class Members and Subclass
2 Members.

3 85.Plaintiff, Class Members and Subclass Members were non-exempt employees of
4 Defendant. In the course of their employment, Plaintiff, Class Members and Subclass Members
5 were subject to unlawful deductions of their entitled wages during the course of the class period
6 and employment with Defendant. Defendant maintained an agreement with a payroll service
7 provider for the-issuance-of-payroll-cards to employees to Plaintiff, Class Members and Subclass
8 Members to discharge its wage payment obligations to its employees. Under Defendant's payroll
9 debit card program, employees could use their payroll cards to (1) make purchases using the
10 card; (2) make ATM withdrawals; or (3) make teller-assisted withdrawals. Under Defendant's
11 payroll debit program, employees did not have easy access to the entirety of their wages without
12 incurring a fee. Plaintiff, Class Members and Subclass Members were not able to withdraw their
13 entire wages in one transaction via an ATM because ATM's only disburse cash in limited
14 denominations and do not dispense exact change. While obtaining a teller-assisted withdrawal
15 may have been another option available to employees, other aggrieved employees had to abide
16 by the business hours of a specific bank chain, which had limited locations. Defendant's payroll
17 debit card program presented a number of obstacles and hurdles that combined, made it difficult
18 for Plaintiff, Class Members and Subclass Members to access their entire wages without discount
19 and without delay. Furthermore, Plaintiff, Class Members and Subclass Members were assessed
20 various fees in connection with their use of the payroll debit cards including but not limited to
21 per-transaction fees, ATM fees, in-person teller fees, and/or other fees to obtain and/or spend
22 their earned and due wages. The fees charged resulted in a discount and deduction of wages.

23 86.At all times herein mentioned Defendant was subject to Labor Code §§ 221 and 224
24 which makes deducting or discounting an employees' wages unlawful.

25 87.As a proximate result of Defendant's policies in violation of Labor Code §§ 221 and 224,
26 Plaintiff, Class Members and Subclass Members suffered damages in sums, which will be shown
27 according to proof at the time of trial.

28 88.Plaintiff is entitled to expenses, attorney's fees. interest, and costs of suit.

NINTH CAUSE OF ACTION

(Claim For Failure to Secretly Discount Entitled Wages In Violation of Lab. Code § 223 By Plaintiff, Class Member and Subclass Members Against All Defendants and DOES 1-50)

89.Plaintiffs hereby incorporates all of the allegations set for in each of the paragraphs above and below by reference as though set forth in full in this cause of action.

90.Plaintiffs bring this claim on behalf of themselves, the Class Members and Subclass Members.

~~91.Plaintiff, Class Members and Subclass Members were non-exempt employees of Express.~~

In the course of their employment, Plaintiff, Class Members and Subclass Members were subject to unlawful deductions of their entitled wages during the course of the class period and employment with Express. Express maintained an agreement with a payroll service provider for the issuance of payroll cards to employees to Plaintiffs, Class Members and Subclass Members to discharge its wage payment obligations to its employees. Under Express' payroll debit card program, employees could use their payroll cards to (1) make purchases using the card; (2) make ATM withdrawals; or (3) make teller-assisted withdrawals. Under this Express payroll debit program, employees did not have easy access to the entirety of their wages without incurring a fee. Plaintiffs, Class Members and Subclass Members were not able to withdraw their entire wages in one transaction via an ATM because ATM's only disburse cash in limited denominations and do not dispense exact change. While obtaining a teller-assisted withdrawal may have been another option available to employees under Express' payroll card program, other aggrieved employees had to abide by the business hours of a specific bank chain, which had limited locations. Express' payroll debit card program presented a number of obstacles and hurdles that combined, made it difficult for Plaintiffs, Class Members and Subclass Members to access their entire wages without discount and without delay. Furthermore, Plaintiffs, Class Members and Subclass Members were assessed various fees in connection with their use of the payroll debit cards including but not limited to per-transaction fees, ATM fees, in-person teller fees, and/or other fees to obtain and/or spend their earned and due wages. The fees charged resulted in a discount and deduction of wages.

1 92. At all times herein mentioned Express was subject to Labor Code § 223 which makes
2 secretly discounting an employees' wages unlawful.

3 93. As a proximate result of Express' policies in violation of Labor Code § 223, Plaintiff,
4 Class Members and Subclass Members suffered damages in sums, which will be shown
5 according to proof at the time of trial.

6 94. Plaintiff is entitled to expenses, attorney's fees, interest, and costs of suit.

7 **TENTH CAUSE OF ACTION**

8 **(For Unlawful Business Practices-Bus. & Prof. Code § 17200 et seq.)**
9 **By Plaintiff, Class Members and Subclass Members Against All Defendants and DOES 1-**
10 **50)**

11 95. Plaintiff hereby incorporate all of the allegations set forth in each of the paragraphs
12 above and below by reference as though set forth in full in this cause of action.

13 96. Plaintiff brings this claim on behalf of herself and the Class Members and Subclass
14 Members.

15 97. Business & Professions Code section 17200 states "As used in this chapter, unfair
16 competition shall mean and include any unlawful, unfair or fraudulent business act or practice
17 and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1
18 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions
19 Code."

20 98. Through Defendant's conduct during the applicable statutory period including, but not
21 limited to, the conduct alleged herein, including that alleged on information and belief, the
22 Defendant has engaged in business practices in California by practicing, employing, and
23 utilizing, the employment practices outlined in the preceding paragraphs all in violation of
24 California law and the applicable Industrial Welfare Commission Wage Order. Defendant's use
25 of such practices constitutes an unfair business practice, unfair competition, and provides as
26 unfair advantage over Defendant's competitors doing business in the State of California that
27 comply with their obligations to properly provide employment conditions in compliance with the
28 law and pay employees for all earned wages and compensation as required by law.

99. Defendant's violations of the California Civil Code, Labor Code and the applicable

1 Wage Order and their scheme to lower payroll costs as alleged herein constitute unlawful
2 business practices because these actions were done in a systematic manner over a period of time
3 to the detriment of Plaintiffs, Class Members and Subclass Members. The acts complained of
4 herein occurred within the last four (4) years preceding the filing of this complaint and include,
5 but are not limited to, failure to (i) failure to pay California employees at the proper overtime
6 wages and minimum wages; (ii) failed to pay wages upon termination as a result of failing to pay
7 California employees at the proper overtime wages and minimum wages; (iii) failing to
8 compensate Class Members and Subclass Members with minimum wages; (iv) unlawfully
9 deducting and discounting wages from Class Members and Subclass Members; (v) failing to
10 issue accurate itemized wage statements; (vi) failing to pay all wages timely upon termination,
11 resignation or end of employment.. Plaintiff is informed and believes and on that basis alleges
12 that, at all times herein mentioned, Defendant engaged in the above-mentioned acts of unlawful,
13 deceptive, and unfair business practices prohibited by California Business and Professions Code
14 sections 17200 et seq., including those set forth in the preceding paragraph, thereby depriving
15 Plaintiff of the minimum working condition standards and conditions due, including those under
16 Labor Code and Wage Order.

17 100. As a result of Defendant's unfair competition as alleged herein, Plaintiff, Class
18 Members and Subclass Members have suffered injury in fact and lost money or property.
19 Plaintiffs, Class Members and Subclass Members have been deprived of the rights to accurate
20 and itemized wage statements, wages and benefits due including those as alleged herein.

21 101. Pursuant to California Business & Professions Code section 17203, Plaintiff is
22 entitled to
23 seek restitution of all wages and other monies owed on behalf of themselves and Class members
24 and Subclass members belonging to them, including interest thereon, which Defendant's
25 wrongfully withheld from them and retained for itself by means of its unlawful and unfair
26 business practices.

27 102. Plaintiff is entitled to an injunction and other declaratory and equitable relief against
28

1 such practices to prevent future damage for which there is no adequate remedy at law, and to
2 avoid a multiplicity of lawsuits.

3 103. Plaintiff is informed and believes, and on that basis alleges, that the illegal conduct
4 alleged herein is continuing and there is no indication that Defendant's will not continue such
5 activity into the future. Plaintiff alleges that if Defendant's are not enjoined from the conduct set
6 forth in this Complaint, they will continue to fail to pay the wage and compensation required to
7 be paid and will fail to comply with other requirements of the Labor Code and Wage Order.

8 104. As a direct and proximate result of Defendant's conduct, Defendants have received
9 and will continue to receive monies that rightfully belong to members of the general public who
10 have been adversely affected by Defendant's conduct, as well as to Plaintiff by virtue of any
11 unpaid wages and other monies or penalties associated therewith.

12 105. Plaintiffs, Class Members and Subclass Members are entitled and seeks any and all
13 available remedies including but not limited to restitution and recovery of reasonable attorney's
14 fees and costs pursuant to California Code of Civil Procedure section 1021.5, Business and
15 Professions Code section 17200 et seq., the substantial benefit doctrine, and/or the common fund
16 doctrine.

17
18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff prays individually and on behalf of the proposed Class and
20 Subclass Members, prays for judgment against Defendant as follows:

- 21 A. Certification of Plaintiff's claims as a class action pursuant to Cal. Code of Civ. Pro.
22 Section 382, on behalf of the proposed class;
- 23 B. Class notice to all Class Members and Subclass Members who worked for Defendant
24 from four years prior to the filing of the original Complaint through the trial of this
25 action;
- 26 C. Plaintiff be appointed as the representative of the Class;
- 27 D. Plaintiff be appointed as the representative of Subclass Members;
- 28 E. Counsel for Plaintiff be appointed as counsel for the Class and Subclass Members;

1 F. The Court declare that, as to former employee Class Members and Subclass
2 Members, Defendant have violated California Labor Code section 201-203 for willful
3 failure to pay compensation at the time of termination of employment, resulting in
4 unpaid waiting time penalties;

5 G. The Court declare that, as to former employee Class Members and Subclass
6 Members, Defendant have violated California Labor Code sections 510, 1194, Wage
7 Order 4-2001, Wage Order 7-2001 and Wage Order 9-2001 by failing to compensate
8 the Class Members and Subclass Members their proper overtime rates;

9 H. The Court declare that, as to former employee Class Members and Subclass
10 Members, Defendant have violated California Labor Code sections 1194 and Wage
11 Order 4-2001, Wage Order 7-2001 and Wage Order 9-2001 by failing to compensate
12 the Class Members and Subclass Members their proper minimum wage rates;

13 I. The Court declare that, as to former employee Class Members and Subclass
14 Members, Defendant have violated California Labor Code sections 226(a) by failing
15 to issue accurate itemized wage statements;

16 J. The Court declare that, as to former employee Class Members and Subclass
17 Members, Defendant have violated California Labor Code sections 212, 213, 221,
18 223 and/or 224 by requiring Class Members and Subclass Members to use a payroll
19 debit card and incur fees to use their wage earnings; and
20

21 **First Cause of Action:**

- 22 1. For an award of damages to Class Members and Subclass Members pursuant to
23 Labor Code sections 510 and 1194.
- 24 2. The exact amount of the applicable damages is an amount to be shown according to proof at
25 trial and within the jurisdictional limits of the Court.
- 26 3. An award to Class Representative Plaintiff Class Members and Subclass Members of
27 reasonable attorneys' fees and costs, pursuant to California Civil Procedure Code section 1021.5,
28 California Labor Code section 218.5, 1194, 510 and/or other applicable law.

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Second Cause of Action:

- 4. For an award for the Class Members and Subclass Members for owed wages and penalties, plus interest pursuant to Labor Code section 1194.
- 5. The exact amount of the applicable damages is an amount to be shown according to proof at trial and within the jurisdictional limits of the Court.
- 6. An award to Class Representative Plaintiff, the Class Members and Subclass Members of reasonable attorneys' fees and costs, pursuant to California Civil Procedure Code sections 1021.5 and California Labor Code sections 203, 218.5, 226, 226.7 and/or other applicable law.

Third Cause of Action:

- 7. For an award for the Class Members and Subclass Members for owed wages and penalties, plus, interest pursuant to Labor Code section 203.
- 8. The exact amount of the applicable damages is an amount to be shown according to proof at trial and within the jurisdictional limits of the Court.
- 9. An award to Class Representative Plaintiff, the Class Members and Subclass Members of reasonable attorneys' fees and costs, pursuant to California Civil Procedure Code sections 1021.5 and California Labor Code sections 203, 218.5, 226, 226.7 and/or other applicable law.

Fourth Cause of Action:

- 10. For an award for the Class Members and Subclass Members for owed wages and penalties, plus interest pursuant to Labor Code section 226(a).
- 11. The exact amount of the applicable damages is an amount to be shown according to proof at trial and within the jurisdictional limits of the Court.
- 12. An award to Class Representative Plaintiff, the Class Members and Subclass Members of reasonable attorneys' fees and costs, pursuant to California Civil Procedure Code sections 1021.5 and California Labor Code sections 203, 218.5, 226, 226.7 and/or other applicable law.

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Fifth Cause of Action:

13. For an award of damages to Plaintiff and the Class Members pursuant to Labor Code section 226.7 (c).

14. The exact amount of the applicable damages is an amount to be shown according to proof at trial and within the jurisdictional limits of the Court.

15. An award to Class Representative Plaintiff, and the Class Members of reasonable attorneys' fees and costs, pursuant to California Civil Procedure Code section 1021.5, California 226, 226.7 and/or other applicable law.

Sixth Cause of Action:

16. For an award for the Plaintiff and Class Members for owed wages and penalties, plus interest pursuant to Labor Code section 203.

17. The exact amount of the applicable damages is an amount to be shown according to proof at trial and within the jurisdictional limits of the Court.

18. For attorney's fees and costs to the extent permitted by Labor Code section 218.5 and 19. California Code of Civil Procedure 1021.5.

Seventh Cause of Action:

20. For an award for the Class Members and Subclass Members for owed wages, reimbursements of expenses and penalties, plus interest pursuant to Labor Code sections 212, and 213;

21. The exact amount of the applicable damages is an amount to be shown according to proof at trial and within the jurisdictional limits of the Court.

22. An award to Class Representative Plaintiff, the Class Members and Subclass Members of reasonable attorneys' fees and costs, pursuant to California Civil Procedure Code sections 1021.5 and California Labor Code sections 203, 212, 213, 218.5, 226, 226.7 and/or other applicable law

1 **Eighth Cause of Action:**

2 23. For an award for the Class Members and Subclass Members for owed wages,
3 reimbursements of expenses and penalties, plus interest pursuant to Labor Code sections 221 and
4 224;

5 24. The exact amount of the applicable damages is an amount to be shown according to proof at
6 trial and within the jurisdictional limits of the Court.

7 ~~25. An award to Class Representative Plaintiff, the Class Members and Subclass Members of~~
8 reasonable attorneys' fees and costs, pursuant to California Civil Procedure Code sections 1021.5
9 and California Labor Code sections 203, 218.5, 221, 224, 226, 226.7 and/or other applicable law
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11 **Ninth Cause of Action:**

12 26. For an award for the Class Members and Subclass Members for owed wages,
13 reimbursements of expenses and penalties, plus interest pursuant to Labor Code sections 223;

14 27. The exact amount of the applicable damages is an amount to be shown according to proof at
15 trial and within the jurisdictional limits of the Court.

16 28. An award to Class Representative Plaintiff, the Class Members and Subclass Members of
17 reasonable attorneys' fees and costs, pursuant to California Civil Procedure Code sections 1021.5
18 and California Labor Code sections 203, 212, 213, 218.5, 223, 226, 226.7 and/or other applicable
19 law
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21 **Tenth Cause of Action:**

22 29. For a temporary restraining order, a preliminary injunction, and a permanent injunction
23 enjoining Defendant and its agents, servants and employees, and all persons acting under, in
24 concert with, or for Defendant from engaging in the unlawful, unfair, and fraudulent acts and
25 business practices described in Paragraphs 75 through 85 above;

26 30. For restitution, lost wages and penalties therewith;

27 31. For pre-judgment and post-judgment interest to the extent permitted by law;

28 32. For an award of attorneys' fees and costs incurred in the investigation, filing and prosecution

1 of this action pursuant to Code of Civil Procedure section 1021.5, Business and Professions Code
2 sections 17200, et seq., Labor Code section 1194 and any other applicable provision of law; and
3 33. For such other relief as the Court deems just and proper.

4
5 **As to All Causes of Action:**

6 34. For reasonable attorneys' fees and costs incurred
7 ~~35. Interest accrued to date under the California Labor Code, including under Sections 226.7;~~
8 36. For such other and further relief as this Court may deem just and proper.

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13 Dated: June 19, 2020

Jackson Law, APC

14 By: /s/ Armond M. Jackson
15 Armond M. Jackson
16 Attorneys for Plaintiff Virgie Flores

17
18 **DEMAND FOR JURY TRIAL**

19 Plaintiff Virgie Flores demands a jury trial in the above captioned matter.

20 Dated: June 19, 2020

Jackson Law, APC

21 By: /s/ Armond M. Jackson
22 Armond M. Jackson
23 Attorneys for Plaintiff Virgie Flores
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25
26
27
28

AKIN GUMP STRAUSS HAUER & FELD LLP

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Attorneys for Defendant
HOME DEPOT U.S.A., INC.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION

VIRGIE FLORES, as individuals and
on behalf of others similarly situated

Plaintiff,

v.

HOME DEPOT U.S.A., INC., a
Delaware limited liability company,
and DOES 1-50, inclusive,

Defendant.

Case No. 5:20-CV-2215

CLASS ACTION

**DEFENDANT’S CERTIFICATE OF
SERVICE OF ITS NOTICE OF
REMOVAL AND SUPPORTING
DOCUMENTS**

[Declarations of Alejandra Solis, Jonathan
S. Christie, G. Edward Anderson, Ph.D,
Certification of Interested Parties and
Corporate Disclosure Statement, Notice of
Related Cases and Civil Cover Sheet filed
concurrently]

*(San Bernardino County Superior Court,
Case No. CIV DS 2013065)*

Date Action Filed: June 23, 2020
Amended Complaint Filed: July 23, 2020

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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: 1999 Avenue of the Stars, Suite 600, Los Angeles, California 90067. On October 21, 2020, I served the foregoing documents described as follows:

- 1. **DEFENDANT’S NOTICE OF REMOVAL OF ACTION PURSUANT TO 28 U.S.C. §§ 1332(D)(2), 1441, 1446, AND 1453;**
- 2. **DECLARATION OF JONATHAN CHRISTIE IN SUPPORT OF HOME DEPOT U.S.A., INC.’S NOTICE OF REMOVAL;**
- 3. **DECLARATION OF ALEJANDRA SOLIS IN SUPPORT OF HOME DEPOT U.S.A., INC.’S NOTICE OF REMOVAL;**
- 4. **DECLARATION OF G. EDWARD ANDERSON, PH.D. IN SUPPORT OF HOME DEPOT U.S.A., INC.’S NOTICE OF REMOVAL;**
- 5. **CIVIL COVER SHEET;**
- 6. **HOME DEPOT U.S.A., INC.’S NOTICE OF INTERESTED PARTIES AND CORPORATE DISCLOSURE STATEMENT [L.R. 7.1-1, F.R.C.P. 7.1]; AND**
- 7. **HOME DEPOT U.S.A., INC.’S NOTICE OF RELATED CASES.**

on the interested parties below, using the following means:

Armand M. Jackson
 JACKSON LAW, APC
 2 Venture Plaza, Suite 240
 Irvine, California 92618
 Tele: 949.281.6857
 Fax: 949.777.6218
 ajackson@jlaw-pc.com
 Attorney for Plaintiff

BY OVERNIGHT DELIVERY. I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the respective address of the parties stated above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

(FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on October 21, 2020, at Los Angeles, California.

Elena Swatek

 [Print Name of Person Executing Proof]

 [Signature]

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Former Home Depot Employee Alleges Retailer Paid Wages Via Payroll Card Subject to Fees](#)
