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10 Attorneys for Defendant
SCHENKER, INC.

11
12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14
15 EASTERN DIVISION

16 CHRISTIAN HERNANDEZ, on behalf
17 of himself and others similarly situated,

18 Plaintiff,

19 v.

20 PROCTOR & GAMBLE
21 DISTRIBUTING, LLC; SCHENKER,
22 INC.; and DOES 1 to 100, inclusive,

23 Defendants.

Case No. **21-cv-00921**

**DEFENDANT SCHENKER, INC.'S
NOTICE OF REMOVAL OF
CIVIL ACTION TO FEDERAL
COURT**

[28 U.S.C. §§ 1332, 1446]

Complaint Filed (State): April 2, 2021

Trial Date: None Set

1 **TO THE CLERK OF THE ABOVE-ENTITLED COURT, AND TO PLAINTIFF**
2 **CHRISTIAN HERNANDEZ AND HIS ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE THAT** Defendant Schenker, Inc. (“Defendant”)
4 hereby removes the above-entitled action from the Superior Court of the State of
5 California, County of Riverside, to the United States District Court for the Central
6 District of California, pursuant to 28 U.S.C. §§ 1332(d) and 1446.

7 **I. STATEMENT OF JURISDICTION**

8 1. This Court has original jurisdiction over this action based on the Class
9 Action Fairness Act of 2005 (“CAFA”), which vests the United States district courts
10 with original jurisdiction of any civil action: (a) that is a class action with a putative
11 class¹ of more than a hundred members; (b) in which any member of a class of plaintiffs
12 is a citizen of a State different from any defendant; and (c) in which the matter in
13 controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs. See
14 28 U.S.C. §1332(d).

15 **II. NOTICE OF REMOVAL TO STATE COURT AND PLAINTIFF**

16 2. Contemporaneously with the filing of this Notice of Removal Of Civil
17 Action to Federal Court (“Notice”) in this Court, a true and correct copy of this Notice
18 will be provided to Plaintiff CHRISTIAN HERNANDEZ’s (“Plaintiff”) counsel of
19 record, Joseph Lavi, LAVI & EBRAHIMIAN, LLP, 8889 W. Olympic Blvd., Suite 200,
20 Beverly Hills, CA 90211, in accordance with 28 U.S.C. section 1446(d).

21 3. Additionally, contemporaneously with the filing of Defendant’s Notice of
22 Removal in the United States District Court for the Central District of California, or
23 shortly thereafter, Defendant will file with the Clerk for the Superior Court of California
24 for the County of Riverside a “Notice to State Court and Adverse Parties of Removal
25 to Federal Court.” (Declaration of Jamie Y. Lee (“Lee Decl.”), ¶ 7.)

26 _____
27 ¹ Although Defendant contends Plaintiff cannot represent all non-exempt employees employed by
28 Defendant, Defendant uses the term “putative class members” to refer to non-exempt employees based
solely on the allegations in the complaint.

1 Act (“CAFA”), 28 U.S.C. § 1332(d), and this case may be removed pursuant to the
2 provisions of 28 U.S.C. § 1441(a), in that it is a civil class action wherein: (1) the
3 proposed class contains at least 100 members; (2) Defendant is not a state, state official,
4 or other governmental entity; (3) there is diversity between at least one class member
5 and at least one named and served Defendant; and (4) the total amount in controversy
6 for all class members exceeds \$5,000,000.

7 **A. The Proposed Class Contains At Least 100 Members**

8 9. 28 U.S.C. § 1332(d)(5)(B) sets forth that the provisions of CAFA do not
9 apply to any class action where “the number of members of all proposed plaintiff classes
10 in the aggregate is less than 100.” This requirement is easily met in this case.

11 10. Plaintiff seeks to represent seven classes, consisting of “[a]ll current and
12 former hourly non-exempt employees employed by Defendants in California at any
13 time from four (4) years prior to the filing of the initial Complaint in this matter through
14 the date notice is mailed to a certified class who were not paid at least minimum wage
15 for all time they were subject to Defendants’ control” (“Minimum Wage Class”), the
16 second consisting of “[a]ll current and former hourly non-exempt employees employed
17 by Defendants in California at any time from four (4) years prior to the filing of the
18 initial Complaint in this matter through the date notice is mailed to a certified class who
19 worked more than eight (8) hours in a workday, forth (40) hours in a workweek, and/or
20 seven (7) days in a workweek, to whom Defendants did not pay overtime wages”
21 (“Overtime Class”), the third consisting of “[a]ll current and former hourly non-exempt
22 employees employed by Defendants in California at any time from four (4) years prior
23 to the filing of the initial Complaint in this matter through the date notice is mailed to a
24 certified class who worked more than five (5) hours yet Defendants failed to authorize
25 or permit all required duty-free meal periods of not less than thirty (30) minutes” (“Meal
26 Period Class”), and the fourth, “[a]ll current and former hourly non-exempt employees
27 employed by Defendants in California at any time from four (4) years prior to the filing
28 of the initial Complaint in this matter through the date notice is mailed to a certified

1 class who worked shifts of at least three-and-a-half (3.5) hours who did not receive all
 2 required duty-free rest periods of a net ten (10) minutes for every four (4) hours worked
 3 or a major fraction thereof” (“Rest Period Class”), and the fifth, “[a]ll current and
 4 former hourly non-exempt employees employed by Defendants in California at any
 5 time from four (4) years prior to the filing of the initial Complaint in this matter through
 6 the date notice is mailed to a certified class who were not timely paid earned wages
 7 during employment” (“Pay Day Class”), and the sixth, “[a]ll current and former hourly
 8 non-exempt employees employed by Defendants in California from one (1) year prior
 9 to the filing of the initial Complaint in this matter through the date notice is mailed to a
 10 certified class who received inaccurate or incomplete wage and hour statements” (Wage
 11 Statement Class”) and the seventh, “[a]ll current and former hourly non-exempt
 12 employees employed by Defendants in California at any time from three (3) years prior
 13 to the filing of the initial Complaint in this matter through the date notice is mailed to a
 14 certified class who did not receive payment of all unpaid wages upon separation of
 15 employment within the statutory time period” (“Waiting Time Class”)(collectively
 16 referred to as the “California Class”) (Complaint at ¶ 43.) A review of Defendant’s
 17 records by a human resources employee with personal knowledge of Defendant’s record
 18 keeping practices establishes there were approximately 1,655 non-exempt employees
 19 (“putative class members”) employed between April 2, 2017 (four years before the
 20 filing of the Complaint) and the date of filing of the Complaint². (Declaration of Stacey
 21 Brown (“Brown Decl.”), ¶ 6.)

22 **B. Defendant Is Not A Governmental Entity**

23 11. Under 28 U.S.C. § 1332(d)(5)(B), the CAFA does not apply to class
 24 actions where “primary defendants are States, State officials, or other governmental
 25 entities against whom the district court may be foreclosed from ordering relief.”

26
 27 ² Defendant disputes that Plaintiff is able to represent these employees on a class basis, particularly
 28 those who worked in different job classifications and facilities than Plaintiff. This Notice of Removal
 assumes Plaintiff’s class definition as set forth in the Complaint for purposes of removal, but
 Defendant does not concede that such a class definition is appropriate in this case.

1 12. Defendant is a private business entity, not state, state official, or other
2 government entity exempt from the CAFA.

3 **C. There Is Diversity Between At Least One Class Member And One**
4 **Defendant**

5 13. CAFA’s minimal diversity requirement is satisfied when “any member of
6 a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C.
7 §§ 1332(d)(2)(A); 1453(b). Minimal diversity of citizenship exists here because
8 Plaintiff and Defendant are citizens of different states.

9 **1. Plaintiff is a citizen of California.**

10 14. Allegations of residency in a state court complaint can create a rebuttable
11 presumption of domicile supporting diversity of citizenship. *Lew v. Moss*, 797 F.2d 747,
12 751 (9th Cir. 1986); *see also State Farm Mut. Auto. v. Dyer*, 19 F.3d 514, 519-20 (10th
13 Cir. 1994) (allegation by party in state court complaint of residency “created a
14 presumption of continuing residence in [state] and put the burden of coming forward
15 with contrary evidence on the party seeking to prove otherwise”); *Smith v. Simmons*,
16 2008 U.S. Dist. LEXIS 21162, *22 (E.D. Cal. 2008) (place of residence provides “prima
17 facie” case of domicile). At the time Plaintiff commenced this action and, upon
18 information and belief, at the time of removal, Plaintiff resided in the State of California.
19 (Complaint at ¶ 3.) Therefore, Plaintiff is a citizen of California.

20 **2. Defendant is not a citizen of California.**

21 15. Defendant is not a citizen of the State of California. Defendant Schenker,
22 Inc. is and was, when this action was filed and at the time of its removal, a corporation
23 incorporated under the laws of the State of New York and having its principal place of
24 business in Virginia. (Brown Decl. ¶ 3.) 28 U.S.C. § 1332(c)(1) (“a corporation shall
25 be deemed to be a citizen of every State and foreign state by which it has been
26 incorporated and of the State or foreign state where it has its principal place of
27 business”). Thus, Defendant is not a citizen of the State of California.

28 16. Accordingly, the named Plaintiff is a citizen of a State different from

1 Defendant, and diversity exists for purposes of CAFA jurisdiction. See 28 U.S.C.
2 §§ 1332(d)(2)(A).

3 **D. The Amount In Controversy Exceeds \$5,000,000**

4 17. This Court has jurisdiction under CAFA, which authorizes the removal of
5 class actions in which, among the other factors mentioned above, the amount in
6 controversy for all class members exceeds \$5,000,000. 28 U.S.C. § 1332(d).

7 18. The removal statute requires that a defendant seeking to remove a case to
8 federal court must file a notice “containing a short and plain statement of the grounds
9 for removal.” 28 U.S.C. § 1446(a). The Supreme Court, in *Dart Cherokee Basin*
10 *Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014), recently recognized that “as
11 specified in §1446(a), a defendant’s notice of removal need include only a plausible
12 allegation that the amount in controversy exceeds the jurisdictional threshold.” Only if
13 the plaintiff contests or the court questions the allegations of the notice of removal is
14 supporting evidence required. *Id.* Otherwise “the defendant’s amount-in-controversy
15 allegation should be accepted” just as a plaintiff’s amount-in-controversy allegation is
16 accepted when a plaintiff invokes federal court jurisdiction. *Id.* at 553.

17 19. Here, Plaintiff does not allege the amount in controversy in the Complaint,
18 but the face of the Complaint clearly demonstrates that the amount in controversy in
19 this case exceeds \$5,000,000.

20 20. Plaintiff alleges a cause of action for a violation of the Unfair Competition
21 Law (“UCL”), Business and Professions Code §§ 17200, et seq. (Complaint ¶¶ 111-
22 114.) Alleging a UCL violation extends the statute of limitations on Plaintiff’s wage
23 and hour claims from three to four years from the filing of the Complaint, or going back
24 to April 2, 2017. See Cal. Bus. & Prof. Code § 17208; *Cortez v. Purolater Air Filtration*
25 *Products Co.*, 23 Cal. 4th 163, 178-79 (2000) (four-year statute of limitations for
26 restitution of wages under the UCL).

1 **1. Unpaid Wages for All Hours Worked at Minimum Wage**
2 **Claim**

3 21. By way of his first cause of action, Plaintiff and the putative class seek
4 allegedly unpaid wages for all hours worked at the legal minimum wage pursuant to
5 California Labor Code §§ 1194 and 1197. (Complaint ¶¶ 14-18.) Plaintiff alleges that
6 he and the putative class members incurred unpaid wages due to Defendants’ policies,
7 practices, and/or procedures that “round” down or “shave” time punches to the nearest
8 quarter hour, to the benefit of Defendants, each workday at the time of clock in for the
9 start of their shift and at the time they clock out for the end of their shift, as well as the
10 start and end of the meal periods. Additionally, Plaintiff alleges that he and the putative
11 class members incurred unpaid wages since on or around February 1, 2020 due to
12 Defendants’ requirement to line-up to wait to undergo COVID-19 temperature scans
13 and medical screening questionnaires without paying them for that time. (Complaint ¶
14 16 a-c.) However, Plaintiff does not state the amount of unpaid wages he and the
15 putative class incurred. Plaintiff asserts that he and other putative class members were
16 not paid minimum wage for all the hours worked. (Complaint ¶ 17.)

17 22. The weighted average hourly rate for non-exempt employees between
18 2017 and 2021 was over \$18.91 per hour, determined by each putative class member’s
19 hourly wage rate and days worked. (Brown Decl., ¶ 7.)

20 23. As stated above, in the years between April 2017 and April 2021,
21 approximately 1,655 hourly-paid putative class members worked for Defendant in
22 California. According to Defendant’s records, those putative class members were
23 employed for over 112,000 workweeks during the class period. (Brown Decl., ¶ 8.)

24 24. Assuming Plaintiff alleges each class member worked one uncompensated
25 hour per week, the total Plaintiff seeks for uncompensated overtime is \$2,117,920
26 (112,000 workweeks x \$18.91 per hour x 1 hour per week).

27 25. In sum, although Defendant vigorously denies Plaintiff’s allegations,
28 including the alleged damages, if Plaintiff were to prevail on his unpaid wages/failure

1 to pay minimum wage claim with respect to himself and the putative class for
2 uncompensated overtime work, the amount in controversy with respect to that claim
3 alone could be \$2,117,920.

4 2. Unpaid Overtime Claim

5 26. By way of his second cause of action, Plaintiff and the putative class seek
6 allegedly unpaid wages for all overtime hours worked pursuant to California Labor
7 Code §§ 510 and 1194. (Complaint ¶¶ 19-24.) Plaintiff alleges that he and the putative
8 class members were not paid for all hours worked in excess of eight (8) hours in a
9 workday, more than forty (40) hours in a workweek, and on any seventh consecutive
10 day of work in a workweek due to Defendants' policies, practices, and/or procedures
11 that "round" down or "shave" time punches to the nearest quarter hour, to the benefit
12 of Defendants, each workday at the time of clock in for the start of their shift and at the
13 time they clock out for the end of their shift, as well as the start and end of the meal
14 periods. Additionally, Plaintiff alleges that he and the putative class members incurred
15 unpaid wages since on or around February 1, 2020 due to Defendants' requirement to
16 line-up to wait to undergo COVID-19 temperature scans and medical screening
17 questionnaires without paying them for that time. (Complaint ¶ 16a-c.) However,
18 Plaintiff does not state the amount of unpaid overtime wages he and the putative class
19 incurred. Plaintiff asserts that to the extent employees already worked 8 hours in the
20 day or 40 hours in a workweek, they should be paid overtime for unpaid overtime
21 wages. (Complaint ¶ 23.) To determine the monetary amount in controversy for
22 Plaintiff's unpaid overtime wages claim, the total number of hours worked unpaid by
23 Plaintiff and the putative class that would have been considered overtime hours is
24 multiplied by one and one-half times their respective regular rates of pay rate in effect
25 during the time the overtime was allegedly worked.

26 27. The weighted average hourly rate for non-exempt employees between
27 2017 and 2021 was over \$18.91 per hour, determined by each putative class member's
28 hourly wage rate and days worked, and therefore an overtime rate of more than \$28.36

1 per hour applied. (Brown Decl., ¶ 7.)

2 28. As stated above, in the years between April 2017 and April 2021,
3 approximately 1,655 hourly-paid putative class members worked for Defendant in
4 California. According to Defendant's records, those putative class members were
5 employed for over 112,000 workweeks during the class period. (Brown Decl., ¶ 8.)

6 29. Assuming Plaintiff alleges each class member worked one uncompensated
7 overtime hour per week, the total Plaintiff seeks for uncompensated overtime is
8 \$3,176,320 (112,000 x \$28.36 per hour [1.5 x \$18.91 per hour overtime premium] x 1
9 overtime hour per week).

10 30. In sum, although Defendant vigorously denies Plaintiff's allegations,
11 including the alleged damages, if Plaintiff were to prevail on his overtime claim with
12 respect to himself and the putative class for uncompensated overtime work, the amount
13 in controversy with respect to that claim alone could be **\$3,176,320**.

14 3. Unpaid Meal Period Premiums Claim

15 31. Plaintiff's third cause of action alleges that Defendant failed to provide
16 Plaintiff and putative class members all compliant meal periods and failed to pay the
17 full meal period premiums due in violation of California Labor Code §§ 226.7 and 512.
18 (Complaint ¶¶ 25-29, 66-71.)

19 32. Assuming Plaintiff and the putative class allege they were not provided
20 compliant, uninterrupted meal periods once a week, the amount in controversy is
21 **\$2,117,920** (112,000 workweeks x \$18.91 per hour x 1 hour per week).

22 4. Unpaid Rest Period Premiums Claim

23 33. Plaintiff's fourth cause of action alleges that Defendant failed to provide
24 Plaintiff and putative class members all compliant rest periods and failed to pay the full
25 rest period premiums due in violation of California Labor Code §§ 226.7 and 512.
26 (Complaint ¶¶ 30-34, 74-79.)

27 34. Assuming Plaintiff and the putative class allege they were not provided
28 compliant, uninterrupted rest periods two times per week, the amount in controversy is

1 **\$2,117,920** (112,000 workweeks x \$18.91 per hour x 1 hour per week).

2 **5. Failure to Provide Accurate Wage Statements**

3 35. By way of the sixth cause of action, Plaintiff and the putative class
4 members allege that Defendant knowingly and intentionally failed to comply with
5 itemized employee wage statement requirements. (Complaint ¶¶ 38-40, 91-100.) Labor
6 Code Section 226(e) provides for a statutory penalty for violations of Labor Code §
7 226(a)'s wage statement requirements of \$50 per employee for the initial pay period in
8 which a violation occurs and \$100 per employee for each violation in a subsequent pay
9 period, not exceeding an aggregate amount of \$4,000 per employee. Cal. Lab. Code §
10 226(a). The statutory period for Labor Code § 226(e) penalties is one year. Cal. Code
11 Civ. Proc. § 340. At least 128 employees were employed by Defendant during the one
12 year prior to the filing of the Complaint in this action. (Brown Decl., ¶ 9.) Assuming
13 a maximum penalty of \$4,000 per employee for a class of approximately 128, the
14 amount in controversy for this claim could exceed **\$512,000** (\$4,000 potential penalty
15 x 128 employees).

16 **6. Claim for Final Wages Not Timely Paid**

17 36. Through his seventh cause of action, Plaintiff alleges a claim for unpaid
18 final wages pursuant to California Labor Code §§ 201 and 202, which provide that if an
19 employer willfully fails to pay wages owed, then the wages of the employee shall
20 continue as a penalty from the due date thereof at the same rate until paid for a maximum
21 of thirty (30) days. Plaintiff claims that Defendant intentionally and willfully failed to
22 pay Plaintiff and the other putative class members their wages, earned and unpaid,
23 within seventy-two (72) hours of their leaving Defendant's employ. (Complaint ¶¶ 41-
24 42, 104-110.) The statute of limitations for a wage action is three years. See Cal. Code
25 Civ. Proc. § 338. Here, more than 1,261 putative class members ceased employment
26 with Defendant within the three-year statute of limitation. (Brown Decl., ¶ 10.)
27 Penalties of continued wages for the maximum of thirty (30) days could exceed
28 \$5,722,922 (1,261 employees x \$18.91 per hour x 8 hours per day x 30 days). As such,

1 the amount in controversy for the failure to pay final wages in accordance with
2 California Labor Code §§ 201 and 202, would be **\$5,722,922**.

3 7. Attorneys' Fees

4 37. Finally, Plaintiff seeks reasonable attorneys' fees for his claims
5 (Complaint at ¶¶ 52, 63, 100, and Prayer for Relief ¶ 6), which must also be considered
6 in determining whether the jurisdictional limit is met. "Where an underlying statute
7 authorizes an award of attorneys' fees, either with mandatory or discretionary language,
8 such fees may be included in the amount in controversy." *Lowdermilk v. U.S. Bank*
9 *National Ass'n*, 479 F.3d 994, 1000 (9th Cir. 2007) (citing *Galt G/S v. JSS Scandinavia*,
10 142 F.3d 1150, 1155-56 (9th Cir. 1998)).

11 8. Summary of Amount in Controversy

12 Plaintiff's Claim	Amount in Controversy
13 Unpaid Wages/Failure to Pay Minimum 14 Wage	\$2,117,920
15 Unpaid Overtime	\$3,176,320
16 Unpaid Meal Period Premiums	\$2,117,920
17 Unpaid Rest Period Premiums	\$2,117,920
18 Final Wages Not Timely Paid	\$5,722,922
19 Non-Complaint Wage Statements	\$512,000
20 TOTAL	\$15,765,002 + attorneys' fees

21 38. Defendant provides the foregoing calculations only to demonstrate that the
22 amount in controversy in this case easily exceeds the amount in controversy
23 requirement of the CAFA. Defendant makes no admission of any liability or damages
24 with respect to any aspect of this case, nor do they endorse or concede that the proffered
25 methodology for such calculations passes muster.

26 39. In sum, when viewed in combination, the amount in controversy on
27 Plaintiff's claims for economic damages exceeds \$5,000,000.

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VI. VENUE

40. Venue lies in the Central District of California pursuant to 28 U.S.C. §§ 84(c), 1441(a), and 1446(a). Plaintiff originally brought this action in the Superior Court of the State of California, County of Riverside.

VII. CONCLUSION

41. For the reasons set forth above, the Complaint is removable to this Court pursuant to 28 U.S.C. § 1332(d). Pursuant to 28 U.S.C. § 1446(b), the Notice of Removal was filed within thirty (30) days of service on any defendant of a paper providing notice that a basis for removal of this action exists.

42. **WHEREFORE**, Defendant prays that this civil action be removed from the Superior Court of the State of California, County of Riverside, to the United States District Court for the Central District of California.

Dated: May 28, 2021

LITTLER MENDELSON P.C.

/s/ Jamie Y. Lee
Curtis A. Graham
Jamie Y. Lee

Attorneys for Defendant
SCHENKER, INC.

4827-8870-9355.1 / 099036-1000

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17 Attorneys for Defendant
18 SCHENKER, INC.

19 UNITED STATES DISTRICT COURT
20 CENTRAL DISTRICT OF CALIFORNIA
21 EASTERN DIVISION

22 CHRISTIAN HERNANDEZ, on behalf
23 of himself and others similarly situated,

24 Plaintiff,

25 v.

26 PROCTOR & GAMBLE
27 DISTRIBUTING, LLC; SCHENKER,
28 INC.; and DOES 1 to 100, inclusive,

Defendants.

Case No. **21-cv-00921**

**DECLARATION OF JAMIE Y.
LEE IN SUPPORT OF
DEFENDANT SCHENKER, INC.'S
REMOVAL OF CIVIL ACTION
TO FEDERAL COURT**

[28 U.S.C. §§ 1332, 1446]

Complaint Filed (State): April 2, 2021

Trial Date: None Set

DECLARATION OF JAMIE Y. LEE

I, Jamie Y. Lee, declare as follows:

1. I am an attorney with the law firm of Littler Mendelson, a Professional Corporation, counsel for Defendant Schenker, Inc. (“Defendant”) in the above-entitled matter. I am duly licensed to practice law in the State of California and before the United States District Court for the Central District and am responsible for representing said Defendant in this action. Except where otherwise indicated, all of the information contained herein is based upon my personal knowledge and if called and sworn as a witness, I could and would competently testify thereto.

2. On April 2, 2021, Plaintiffs filed a Complaint in the Superior Court of the State of California in and for the County of Riverside entitled *Christian Hernandez, on behalf of himself and others similarly situated v. Procter & Gamble Distributing, LLC; Schenker, Inc., and DOES 1 to 100, inclusive*; Case No. CVRI2101822 (“State Court Action”). Attached hereto as **Exhibit A** is a true and correct copy of the Summons, Complaint, Civil Case Cover Sheet, Certificate of Counsel, Notice of Case Management Statement and Notice of Department Assignment served on Defendant, Schenker, Inc. on April 28, 2021.

3. Defendant Schenker, Inc. filed an answer to the Complaint on May 27, 2021. A true and correct copy of the Answer filed by Defendant in the State Court Action is attached hereto as **Exhibit B**.

4. Pursuant to 28 U.S.C. § 1446(d), Exhibits A & B constitute all process, pleadings, and orders filed in the State Court Action.

5. Other than the court proceedings and documents discussed above and attached as Exhibits A and B hereto, I am not aware of any further proceedings or filings regarding this case in Riverside County Superior Court.

6. Based on review of the Court’s docket, Defendant Proctor & Gamble Distributing, LLC was served on April 30, 2021, but has not appeared in the action. As of the date of this Notice of Removal, no other parties have been named or served with

1 the Summons and Complaint in this action. A copy of the Court's Docket is attached
2 hereto as **Exhibit C**.

3 7. Contemporaneously with the filing of Defendant's Notice of Removal in
4 the United States District Court for the Central District of California, our office is
5 providing written notice of the removal to Plaintiff's counsel of record: Joseph Lavi,
6 LAVI & EBRAHIMIAN, LLP, 8889 W. Olympic Blvd., Suite 200, Beverly Hills, CA
7 90211. In addition, a copy of Defendant's Notice of Removal will be filed with the
8 Clerk of the Court for the Riverside County Superior Court.

9 I declare under penalty of perjury under the laws of the United States and the
10 State of California that the foregoing is true and correct.

11 Executed on May 28, 2021 at Los Angeles, California.

12
13 /s/ Jamie Y. Lee
14 Jamie Y. Lee

15 4814-7412-3243.1 / 099036-1000
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Exhibit A



**Service of Process
Transmittal**

04/28/2021

CT Log Number 539464560

TO: Richard Kaluzinski
Db US Holding Corporation
120 WHITE PLAINS ROAD
TARRYTOWN, NY 10591-

RE: Process Served in California

FOR: Schenker, Inc. (Domestic State: NY)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: CHRISTIAN HERNANDEZ, on behalf of himself and others similarly situated,
PLTF. vs. PROCTER & GAMBLE DISTRIBUTING, LLC., ET AL., DFTS. // TO: Schenker,
Inc.

DOCUMENT(S) SERVED: -

COURT/AGENCY: None Specified
Case # CVRI2101822

NATURE OF ACTION: Employee Litigation

ON WHOM PROCESS WAS SERVED: C T Corporation System, Los Angeles, CA

DATE AND HOUR OF SERVICE: By Process Server on 04/28/2021 at 13:01

JURISDICTION SERVED : California

APPEARANCE OR ANSWER DUE: None Specified

ATTORNEY(S) / SENDER(S): None Specified

ACTION ITEMS: CT has retained the current log, Retain Date: 04/28/2021, Expected Purge Date:
05/03/2021

Image SOP

Email Notification, Dennis St George dstgeorge@dbusholding.com

Email Notification, Richard Kaluzinski rkaluzinski@dbusholding.com

Email Notification, Andrea Hollandt ahollandt@dbusholding.com

REGISTERED AGENT ADDRESS: C T Corporation System
818 West 7th Street
Los Angeles, CA 90017
800-448-5350
MajorAccountTeam1@wolterskluwer.com

The information contained in this Transmittal is provided by CT for quick reference only. It does not constitute a legal opinion, and should not otherwise be relied on, as to the nature of action, the amount of damages, the answer date, or any other information contained in the included documents. The recipient(s) of this form is responsible for reviewing and interpreting the included documents and taking appropriate action, including consulting with its legal and other advisors as necessary. CT disclaims all liability for the information contained in this form, including for any omissions or inaccuracies that may be contained therein.



PROCESS SERVER DELIVERY DETAILS

Date: Wed, Apr 28, 2021

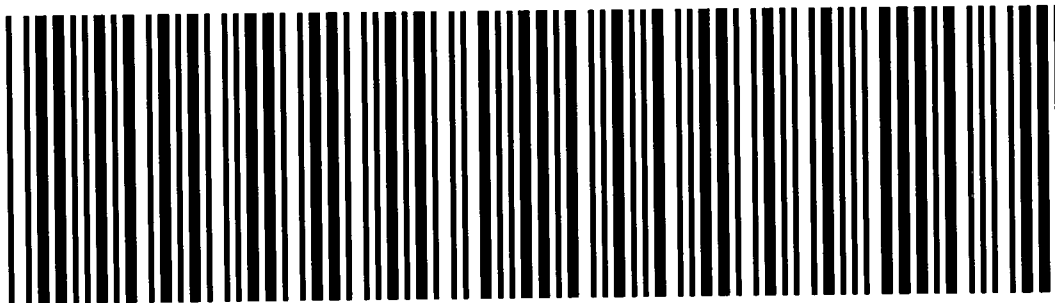
Server Name: Victor Mendez

Entity Served SCHENKER, INC.

Agent Name C T CORPORATION SYSTEM

Case Number CVRI2101822

Jurisdiction CA



SUM-100

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED

Superior Court of California
County of Riverside

4/2/2021

J. Hendrickson

Electronically Filed

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

PROCTER & GAMBLE DISTRIBUTING, LLC; SCHENKER, INC.; and DOES 1 to 100, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

CHRISTIAN HERNANDEZ, on behalf of himself and others similarly situated

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

RIVERSIDE SUPERIOR COURT; RIVERSIDE HISTORIC COURTHOUSE
4050 MAIN STREET ; RIVERSIDE, CA 92501

CASE NUMBER: (Número del Caso):

CVRI2101822

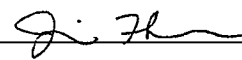
The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Joseph Lavi, Esq. (SBN 209776); Vincent C. Granberry, Esq. (SBN 276483); Pooja Patel, Esq. (SBN 317891); T: 310-432-0000; F: 310-432-0001
Lavi & Ebrahimian, LLP; 8889 W. Olympic Blvd., Suite 200; Beverly Hills, CA 90211

DATE:

4/2/2021

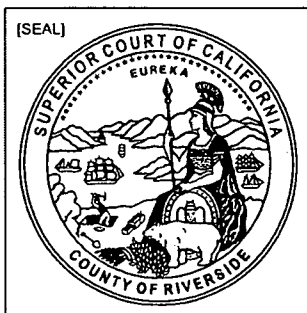
Clerk, by
(Secretario)



, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify): **Schenker, Inc.**
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
4. by personal delivery on (date)

For your protection and privacy, please press the Clear This Form button after you have printed the form.

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FILED
Superior Court of California
County of Riverside
4/2/2021
J. Hendrickson
Electronically Filed

7 Attorneys for Plaintiff CHRISTIAN HERNANDEZ
on behalf of himself and others similarly situated

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF RIVERSIDE**
11

12 CHRISTIAN HERNANDEZ, on behalf of
himself and others similarly situated,

13 Plaintiff,

14 vs.

15 PROCTER & GAMBLE DISTRIBUTING,
16 LLC; SCHENKER, INC.; and DOES 1 to 100,
inclusive,

17 Defendants.
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Case No.: **CVRI2101822**

CLASS ACTION

**PLAINTIFF CHRISTIAN
HERNANDEZ'S COMPLAINT FOR
DAMAGES AND RESTITUTION FOR:**

1. **FAILURE TO PAY WAGES FOR ALL HOURS WORKED AT MINIMUM WAGE IN VIOLATION OF LABOR CODE SECTIONS 1194 AND 1197**
2. **FAILURE TO PAY OVERTIME WAGES FOR DAILY OVERTIME WORKED IN VIOLATION OF LABOR CODE SECTIONS 510 AND 1194**
3. **FAILURE TO AUTHORIZE OR PERMIT MEAL PERIODS IN VIOLATION OF LABOR CODE SECTIONS 512 AND 226.7**
4. **FAILURE TO AUTHORIZE OR PERMIT REST PERIODS IN VIOLATION OF LABOR CODE SECTION 226.7**
5. **FAILURE TO TIMELY PAY EARNED WAGES DURING EMPLOYMENT IN VIOLATION OF LABOR CODE SECTION 204**

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- 6. **FAILURE TO PROVIDE COMPLETE AND ACCURATE WAGE STATEMENTS IN VIOLATION OF LABOR CODE SECTION 226**
- 7. **FAILURE TO TIMELY PAY ALL EARNED WAGES AND FINAL PAYCHECKS DUE AT TIME OF SEPARATION OF EMPLOYMENT IN VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**
- 8. **UNFAIR BUSINESS PRACTICES, IN VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTIONS 17200, ET SEQ.**

DEMAND FOR JURY TRIAL

COME NOW Plaintiff Christian Hernandez (“Plaintiff”), who alleges and complains against Defendants Procter & Gamble Distributing, LLC, Schenker, Inc., and DOES 1 to 100, inclusive (collectively “Defendants”) as follows:

I. INTRODUCTION

1. This is a class action lawsuit seeking unpaid wages and interest thereon for failure to pay wages for all hours worked at minimum wage and all overtime hours worked at the overtime rate of pay; failure to authorize or permit all legally required and compliant meal periods or pay meal period premium wages; failure to authorize or permit all legally required and compliant rest periods or pay rest period premium wages; statutory penalties for failure to timely pay earned wages during employment; statutory penalties for failure to provide accurate wage statements; statutory waiting time penalties in the form of continuation wages for failure to timely pay employees all wages due upon separation of employment; injunctive relief and other equitable relief; reasonable attorneys’ fees pursuant to Labor Code sections 218.5, 226(e) and 1194; costs; and interest brought on behalf of Plaintiff and others similarly situated.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over Plaintiff’s and putative class members’ claims for failure to pay wages for all hours worked at minimum wage and overtime hours worked at the

1 overtime rate of pay due; failure to authorize or permit all legally required and compliant meal
2 periods or pay meal period premium wages; failure to authorize or permit all legally required and
3 compliant rest periods or pay rest period premium wages; statutory penalties for failure to timely
4 pay earned wages during employment; statutory penalties for failure to provide accurate wage
5 statements; statutory waiting time penalties in the form of continuation wages for failure to timely
6 pay employees all wages due upon separation of employment; and claims for injunctive relief and
7 restitution under California Business and Professions Code sections 17200, *et seq.*, for the
8 following reasons: Defendants operate throughout California; Defendants employed Plaintiff and
9 putative class members in locations throughout California, including but not limited to Riverside
10 County, at 24015 Iris Ave., Moreno Valley, California 92551; more than two-thirds of putative
11 class members are California citizens; the principal violations of California law occurred in
12 California; no other class actions have been filed against Defendants in the last four (4) years
13 alleging wage and hour violations; the conduct of Defendants forms a significant basis for
14 Plaintiff's and putative class members' claims; and Plaintiff and putative class members seek
15 significant relief from Defendants.

16 **III. PARTIES**

17 3. Plaintiff brings this action on behalf of himself and other members of the general
18 public similarly situated. The named Plaintiff and the class of persons on whose behalf this action
19 is filed are current, former, and/or future employees of Defendants who work as hourly non-
20 exempt employees. At all times mentioned herein, the currently named Plaintiff is and was a
21 resident of California and was employed by Defendants in the State of California within the four
22 (4) years prior to the filing of this Complaint.

23 4. Defendants has employed Plaintiff as an hourly non-exempt employee since in or
24 around August 15, 2015, through the present.

25 5. Plaintiff is informed and believes and thereon alleges that Defendant employs him
26 and other hourly non-exempt employees throughout the State of California and therefore their
27 conduct forms a significant basis of the claims asserted in this matter.

28 ///

1 6. Plaintiff is informed and believes and thereon alleges that Defendant Procter &
2 Gamble Distributing, LLC is authorized to do business within the State of California and is doing
3 business in the State of California and/or that Defendants DOES 1-25 are, and at all times relevant
4 hereto were persons acting on behalf of Defendant Procter & Gamble Distributing, LLC in the
5 establishment of, or ratification of, the aforementioned illegal wage and hour practices or policies.
6 Defendant Procter & Gamble Distributing, LLC operates in Riverside County and employed
7 Plaintiff and putative class members in Riverside County, including but not limited to, at 24015
8 Iris Ave, Moreno Valley, California 92551.

9 7. Plaintiff is informed and believes and thereon alleges that Defendant Schenker, Inc.
10 is authorized to do business within the State of California and is doing business in the State of
11 California and/or that Defendants DOES 26-50 are, and at all times relevant hereto were persons
12 acting on behalf of Defendant Schenker, Inc. in the establishment of, or ratification of, the
13 aforementioned illegal wage and hour practices or policies. Defendant Schenker, Inc. operates in
14 Riverside County and employed Plaintiff and putative class members in Riverside County,
15 including but not limited to, at 24015 Iris Ave, Moreno Valley, California 92551.

16 8. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51-
17 100 are individuals unknown to Plaintiff. Each of the individual Defendants is sued individually in
18 his or her capacity as an agent, shareholder, owner, representative, s, supervisor, independent
19 contractor and/or employee of each Defendant and participated in the establishment of, or
20 ratification of, the aforementioned illegal wage and hour practices or policies.

21 9. Plaintiff is unaware of the true names of Defendants DOES 1-100. Plaintiff sues
22 said defendants by said fictitious names and will amend this Complaint when the true names and
23 capacities are ascertained or when such facts pertaining to liability are ascertained, or as permitted
24 by law or by the Court. Plaintiff is informed and believes that each of the fictitiously named
25 Defendants is in some manner responsible for the events and allegations set forth in this
26 Complaint.

27 10. Plaintiff is informed and believes and thereon alleges that at all relevant times, each
28 Defendant was an employer, was the principal, agent, partner, joint venturer, officer, director,

1 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
2 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
3 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
4 of the other defendants so as to be liable for their conduct with respect to the matters alleged in
5 this Complaint. Plaintiff is further informed and believe and thereon allege that each Defendant
6 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
7 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
8 controlled, aided and abetted the conduct of all other defendants. As used in this Complaint,
9 "Defendant" means "Defendants and each of them," and refers to the Defendants named in the
10 particular cause of action in which the word appears and includes Defendants Procter & Gamble
11 Distributing, LLC, Schenker, Inc., and DOES 1 to 100, inclusive.

12 11. At all times mentioned herein, each Defendant was the co-conspirator, agent,
13 servant, employee, and/or joint venturer of each of the other defendants and was acting within the
14 course and scope of said conspiracy, agency, employment, and/or joint venture and with the
15 permission and consent of each of the other Defendants.

16 12. Plaintiff makes the allegations in this Complaint without any admission that, as to
17 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and
18 Plaintiff reserves all of Plaintiff's rights to plead in the alternative.

19 **IV. DESCRIPTION OF ILLEGAL PAY PRACTICES**

20 13. Pursuant to the applicable Industrial Welfare Commission ("IWC") Wage Order
21 ("Wage Order"), codified at California Code of Regulations, title 8, section 11090, Defendants are
22 employers of Plaintiff within the meaning of Wage Order 9 and applicable Labor Code sections.
23 Therefore, each of these Defendants is jointly and severally liable for the wrongs complained of
24 herein in violation of the Wage Order and the Labor Code.

25 14. **Failure to pay wages for all hours worked at the legal minimum wage:**
26 Defendants employs many of their employees, including Plaintiff, as hourly non-exempt
27 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
28 which includes all time that an employee is under the control of the employer and all time the

1 employee is suffered and permitted to work. This includes the time an employee spends, either
2 directly or indirectly, performing services which inure to the benefit of the employer.

3 15. Labor Code sections 1194 and 1197 require an employer to compensate employees
4 for all “hours worked” at least at the minimum wage rate of pay as established by the IWC and the
5 Wage Orders.

6 16. Plaintiff and similarly situated hourly non-exempt employees work more minutes
7 per shift than Defendants credit them with having worked. Defendants fail to pay Plaintiff and
8 similarly situated employees all wages at the applicable minimum wage for all hours worked due
9 to Defendants’ policies, practices, and/or procedures including, but not limited to the following:

10 (a) From the four years prior to the filing of this Complaint through the present,
11 Defendants “round” down or “shave” Plaintiff’s and similarly situated employees’ time punches to
12 the nearest quarter hour, to the benefit of Defendants and to the detriment of Plaintiff and similarly
13 situated employees, each workday at the time they clock in for the start of their shift and at the
14 time they clock out for the end of their shift;

15 (b) From the four years prior to the filing of this Complaint through the present,
16 Defendants “round” down or “shave” Plaintiff’s and similarly situated employees’ time punches to
17 the nearest quarter hour, to the benefit of Defendants and to the detriment of Plaintiff and similarly
18 situated employees, each workday at the time they clock out for meal periods and at the time they
19 clock back in from meal periods;

20 (c) Since on or around February 1, 2020, Defendants, each workday, prior to
21 permitting Plaintiff and similarly situated employees to clock in for the start of their shifts, require
22 Plaintiff and similarly situated employees to line-up to wait to undergo and undergo COVID-19
23 temperature scans and medical screening questionnaires without paying them for that time. On
24 average, the time Plaintiff and similarly situated employees spend lining up, waiting to undergo,
25 and undergoing COVID-19 temperature scans and medical screening questionnaires prior to
26 clocking in is approximately three to six minutes, depending on the day and number of employees.
27 Plaintiff and similarly situated employees are subject to Defendants’ control while lining up,
28 waiting for, and undergoing the mandatory COVID-19 temperature scans and medical screening

1 questionnaires because they are required as a practical matter, occur at the workplace, involve a
2 significant degree of control, are imposed primarily for Defendant's benefit, and are enforced
3 through threat of discipline.

4 17. Plaintiff and similarly situated employees are not paid for this time resulting in
5 Defendants' failure to pay minimum wage for all the hours Plaintiff and similarly situated
6 employees worked.

7 18. Therefore, Defendants suffer, permit, and require their hourly non-exempt
8 employees to be subject to Defendants' control without paying wages for that time. This results in
9 Plaintiff and similarly situated employees working time for which they are not compensated any
10 wages, in violation of Labor Code sections 1194, 1197, and Wage Order 9.

11 19. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**
12 Defendants employ many of their employees, including Plaintiff, as hourly non-exempt
13 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
14 which includes all time that an employee is under the control of the employer and all time the
15 employee is suffered or permitted to work. This includes the time an employee spends, either
16 directly or indirectly, performing services which inure to the benefit of the employer.

17 20. Labor Code sections 510 and 1194 and Wage Order 9 require an employer to
18 compensate employees at a higher rate of pay for hours worked in excess of eight (8) hours in a
19 workday, more than forty (40) hours in a workweek, and on any seventh consecutive day of work
20 in a workweek:

21 Any work in excess of eight hours in one workday and any work in excess of 40
22 hours in any one workweek and the first eight hours worked on the seventh day of
23 work in any one workweek shall be compensated at the rate of no less than one and
24 one-half times the regular rate of pay for an employee. Any work in excess of 12
25 hours in one day shall be compensated at the rate of no less than twice the regular
rate of pay for an employee. In addition, any work in excess of eight hours on any
seventh day of a workweek shall be compensated at the rate of no less than twice
the regular rate of pay of an employee.

26 Labor Code section 510; Wage Order 9, §3.

27 21. Defendants fail to pay Plaintiff and similarly situated employees all wages at the
28 applicable minimum wage for all hours worked due to Defendants' policies, practices, and/or

1. procedures including, but not limited to, the following:

2 (a) From the four years prior to the filing of this Complaint through the present,
3 Defendants “round” down or “shave” Plaintiff’s and similarly situated employees’ time punches to
4 the nearest quarter hour, to the benefit of Defendants and to the detriment of Plaintiff and similarly
5 situated employees, each workday at the time they clock in for the start of their shift and at the
6 time they clock out for the end of their shift;

7 (b) From the four years prior to the filing of this Complaint through the present,
8 Defendants “round” down or “shave” Plaintiff’s and similarly situated employees’ time punches to
9 the nearest quarter hour, to the benefit of Defendants and to the detriment of Plaintiff and similarly
10 situated employees, each workday at the time they clock out for meal periods and at the time they
11 clock back in from meal periods;

12 (c) Since on or around February 1, 2020, Defendants, each workday, prior to
13 permitting Plaintiff and similarly situated employees to clock in for the start of their shifts, require
14 Plaintiff and similarly situated employees to line-up to wait to undergo and undergo COVID-19
15 temperature scans and medical screening questionnaires without paying them for that time. On
16 average, the time Plaintiff and similarly situated employees spend lining up, waiting to undergo,
17 and undergoing COVID-19 temperature scans and medical screening questionnaires prior to
18 clocking in is approximately three to six minutes, depending on the day and number of employees.
19 Plaintiff and similarly situated employees are subject to Defendants’ control while lining up,
20 waiting for, and undergoing the mandatory COVID-19 temperature scans and medical screening
21 questionnaires because they are required as a practical matter, occur at the workplace, involve a
22 significant degree of control, are imposed primarily for Defendant’s benefit, and are enforced
23 through threat of discipline.

24 22. Plaintiff and similarly situated employees are not paid for this time resulting in
25 Defendants’ failure to pay minimum wage for all the hours Plaintiff and similarly situated
26 employees worked.

27 23. To the extent the employees have already worked 8 hours in the day and on
28 workweeks they have already worked 40 hours in a workweek, the employees should be paid

1 overtime for this unpaid time. This results in hourly non-exempt employees working time which
2 should be paid at the legal overtime rate but is not paid any wages in violation of Labor Code
3 sections 510, 1194, and Wage Order 9.

4 24. Defendants' foregoing policy, practice, and/or procedure results in Defendants
5 failing to pay Plaintiffs and similarly situated employees at their overtime rate of pay for all
6 overtime hours worked, in violation of Labor Code sections 510, 1194, 1198, and the Wage Order.

7 25. **Failure to authorize or permit all legally required and compliant meal periods**
8 **and/or failure to pay meal period premium wages:** Defendants often employs hourly non-
9 exempt employees, including the named Plaintiff and similarly situated employees, for shifts
10 longer than five (5) hours in length and shifts longer than ten (10) hours in length.

11 26. California law requires an employer to authorize or permit an uninterrupted meal
12 period of no less than thirty (30) minutes no later than the end of the employee's fifth hour of
13 work and a second meal period no later than the employee's tenth hour of work. Labor Code §512;
14 Wage Order 9, §11. If the employee is not relieved of all duties during a meal period, the meal
15 period shall be considered an "on duty" meal period and counted as time worked. A paid "on
16 duty" meal period is only permitted when (1) the nature of the work prevents an employee from
17 being relieved of all duty and (2) the parties have a written agreement agreeing to on-duty meal
18 periods. If the employee is not free to leave the work premises or worksite during the meal period,
19 even if the employee is relieved of all other duty during the meal period, the employee is subject
20 to the employer's control and the meal period is counted as time worked. If an employer fails to
21 provide an employee a meal period in accordance with the law, the employer must pay the
22 employee one (1) hour of pay at the employee's regular rate of pay for each workday that a legally
23 required and compliant meal period was not provided. Labor Code §226.7; Wage Order 9, §11.

24 27. Here, Plaintiff and similarly situated employees work shifts long enough to entitle
25 them to meal periods under California law. Nevertheless, Defendants employ policies, practices,
26 and/or procedures that results in their failure to authorize or permit meal periods to Plaintiff and
27 similarly situated employees of no less than thirty (30) minutes for each five-hour period of work
28 as required by law. Such policies, practices, and/or procedures include, but are not limited to the

1 following:

2 (a) From the four years prior to the filing of this Complaint through the present,
3 Defendants “round” down or “shave” Plaintiffs and similarly situated employees’ time punches to
4 the nearest quarter hour, to the benefit of Defendants and to the detriment of Plaintiff and similarly
5 situated employees, each workday at the time they clock out for meal periods and at the time they
6 clock back in from meal periods; and/or

7 (b) From the four years prior to the filing of this Complaint through the present,
8 Defendants fail to authorize or permit Plaintiff and similarly situated employees a second
9 uninterrupted duty-free meal period of no less than thirty (30) minutes on each workday that
10 Plaintiff and similarly situated employees work shifts over ten (10) hours.

11 28. Additionally, Defendants fail to pay Plaintiff and similarly situated employees a
12 meal period premium wage of one (1) additional hour of pay at their regular rate of compensation
13 for each workday the employees do not receive all legally required and compliant meal periods.
14 Defendants employ policies and procedures which ensures that employees do not receive any meal
15 period premium wages to compensate them for workdays in which they do receive all legally
16 required and compliant meal periods.

17 29. The aforementioned policies, practices, and/or procedures of Defendants result in
18 Plaintiff and similarly situated employees not being provided with all legally required and
19 compliant meal periods and/or not receiving premium wages to compensate them for such
20 instances, all in violation of California law.

21 30. **Failure to authorize and permit all legally required and compliant rest periods**
22 **and/or failure to pay rest period premiums:** Defendants often employ non-exempt employees,
23 including the named Plaintiff and similarly situated employees, for shifts of least three-and-a-half
24 (3.5) hours.

25 31. California law requires every employer to authorize and permit an employee a rest
26 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
27 Code §226.7; Wage Order 9, §12. If the employer fails to authorize or permit a required rest
28 period, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of

1 compensation for each workday the employer did not authorize or permit a legally required rest
2 period. *Id.* Under California law, “[e]mployees are entitled to 10 minutes’ rest for shifts from three
3 and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30
4 minutes for shifts of more than 10 hours up to 14 hours, and so on.” *Brinker Restaurant Corp. v.*
5 *Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code §226.7; Wage Order 9, §12. Rest
6 periods, insofar as practicable, shall be in the middle of each work period. Wage Order 9, §12.
7 Additionally, the rest period requirement “obligates employers to permit – and authorizes
8 employees to take – off-duty rest periods.” *Augustus v. ABM Security Services, Inc.*, (2016) 5
9 Cal.5th 257, 269. That is, during rest periods employers must relieve employees of all duties and
10 relinquish control over how employees spend their time. *Id.*

11 32. In this case, Plaintiff and similarly situated employees regularly work shifts of
12 more than three-and-a-half (3.5) hours. Nevertheless, Defendants employ policies, practices,
13 and/or procedures that result in their failure to authorize or permit all legally required and
14 compliant rest periods to Plaintiff and similarly situated employees. Such policies, practices,
15 and/or procedures include, but are not limited to, from the four years prior to the filing of this
16 Complaint through the present, Defendants require Plaintiff and similarly situated employees to
17 remain on the premises during their rest periods. Because Defendants, through their policies,
18 effectively control “how” and “where” Plaintiff and similarly situated employees spend their rest
19 periods resulting in rest periods that are not duty-free.

20 33. Additionally, Defendants fail to pay Plaintiff and similarly situated employees a
21 rest period premium wage of one (1) additional hour of pay at their regular rate of compensation
22 for each workday the employees do not receive all legally required and compliant rest periods.
23 Defendants employ policies and procedures which ensure that employees do not receive any rest
24 period premium wages to compensate them for workdays in which they do not receive all legally
25 required and compliant rest periods.

26 34. The aforementioned policies, practices, and/or procedures of Defendants result in
27 Plaintiff and similarly situated employees not being provided with all legally required and
28 compliant rest periods and/or not receiving premium wages to compensate them for such

1 instances, all in violation of California law.

2 **35. Failure to timely pay earned wages during employment:** In California, wages
3 must be paid at least twice during each calendar month on days designated in advance by the
4 employer as regular paydays, subject to some exceptions. Labor Code §204(a). Wages earned
5 between the 1st and 15th days, inclusive, of any calendar month must be paid between the 16th
6 and the 26th day of that month and wages earned between the 16th and the last day, inclusive, of
7 any calendar month must be paid between the 1st and 10th day of the following month. *Id.* Other
8 payroll periods such as those that are weekly, biweekly, or semimonthly, must be paid within
9 seven (7) calendar days following the close of the payroll period in which wages were earned.
10 Labor Code §204(d).

11 **36.** As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants fails to
12 timely pay Plaintiff's and similarly situated employees' earned wages (including minimum wages,
13 overtime wages, meal period premium wages, and/or rest period premium wages), in violation of
14 Labor Code section 204.

15 **37.** Defendants' aforementioned policies, practices, and/or procedures result in their
16 failure to pay Plaintiff and similarly situated employees their earned wages within the applicable
17 time frames outlined in Labor Code section 204.

18 **38. Failure to provide accurate wage statements:** Labor Code section 226(a)
19 provides, *inter alia*, that, upon paying an employee his or her wages, the employer must "furnish
20 each of his or her employees ... an itemized statement in writing showing (1) gross wages earned,
21 (2) total hours worked by the employee, except for any employee whose compensation is solely
22 based on a salary and who is exempt from payment of overtime under subdivision (a) of Section
23 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate
24 units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
25 deductions, provided, that all deductions made on written orders of the employee may be
26 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the pay period
27 for which the employee is paid, (7) the name of the employee and his or her social security
28 number, (8) the name and address of the legal entity that is the employer, and (9) all applicable

1 hourly rates in effect during the pay period and the corresponding number of hours worked at each
2 hourly rate by the employee.”

3 39. Defendants commit direct violations of Labor Code section 226, through their
4 policies, practices, and/or procedures, including, but not limited to failing to provide Plaintiff and
5 other similarly situated employees accurate itemized wage statements, including but not limited to,
6 for example:

7 (a) On Plaintiff’s pay stub for the pay period January 4, 2021 through January
8 17, 2021, with a check date January 22, 2021, the paystub reflects that Plaintiff worked 12.5
9 overtime hours, but the paystub does not show the overtime rate of pay.

10 (b) On Plaintiff’s pay stub for the pay period January 18, 2021 through January
11 31, 2021, with a check date February 5, 2021, the paystub reflects that Plaintiff worked 7.75
12 overtime hours and 9.25 double time hours, but the paystub does not show the overtime rate of pay
13 or the double time rate of pay.

14 (c) On Plaintiff’s pay stub for the pay period February 1, 2021 through
15 February 14, 2021, with a check date February 19, 2021, the paystub reflects that Plaintiff worked
16 20.75 overtime hours, but the paystub does not show the overtime rate of pay.

17 40. Furthermore, as a derivative of Plaintiff’s claims above, Plaintiff alleges that
18 Defendants fail to provide accurate wage and hour statements to him and other similarly situated
19 employees who are subject to Defendants’ control for uncompensated time and who did not
20 receive all their earned wages (including minimum wages, overtime wages, meal period premium
21 wages, and/or rest period premium wages), in violation of Labor Code section 226.

22 41. **Failure to timely pay final wages:** An employer is required to pay all unpaid
23 wages timely after an employee’s employment ends. The wages are due immediately upon
24 termination or within seventy-two (72) hours of resignation. Labor Code §§201, 202.

25 42. As a result of the aforementioned violations of the Labor Code, Plaintiff alleges
26 that, on information and belief, other similarly situated employees, were not paid their final wages
27 in a timely manner as required by Labor Code section 203. Minimum wages for all hours worked,
28 overtime wages for overtime hours worked, meal period premium wages, and/or rest period

1 premium wages (all described above), were not paid at the time of similarly situated employees'
2 separation of employment, whether voluntarily or involuntarily, as required by Labor Code
3 sections 201, 202, and 203.

4 **V. CLASS DEFINITIONS AND CLASS ALLEGATIONS**

5 43. Plaintiff brings this action on behalf of himself, on behalf of others similarly
6 situated, and on behalf of the general public, and as members of a Class defined as follows:

7 A. **Minimum Wage Class:** All current and former hourly non-exempt
8 employees employed by Defendants in California at any time from four (4) years prior to the filing
9 of the initial Complaint in this matter through the date notice is mailed to a certified class who
10 were not paid at least minimum wage for all time they were subject to Defendants' control.

11 B. **Overtime Class:** All current and former hourly non-exempt employees
12 employed by Defendants in California at any time from four (4) years prior to the filing of the
13 initial Complaint in this matter through the date notice is mailed to a certified class who worked
14 more than eight (8) hours in a workday, forty (40) hours in a workweek, and/or seven (7) days in a
15 workweek, to whom Defendants did not pay overtime wages.

16 C. **Meal Period Class:** All current and former hourly non-exempt employees
17 employed by Defendants in California at any time from four (4) years prior to the filing of the
18 initial Complaint in this matter through the date notice is mailed to a certified class who worked
19 shifts more than five (5) hours yet Defendants failed to authorize or permit all required duty-free
20 meal periods of not less than thirty (30) minutes.

21 D. **Rest Period Class:** All current and former hourly non-exempt employees
22 employed by Defendants in California at any time from four (4) years prior to the filing of the
23 initial Complaint in this matter through the date notice is mailed to a certified class who worked
24 shifts of at least three-and-a-half (3.5) hours who did not receive all required duty-free rest periods
25 of a net ten (10) minutes for every four (4) hours worked or major fraction thereof.

26 E. **Pay Day Class:** All current and former hourly non-exempt employees
27 employed by Defendants in California at any time from four (4) years prior to the filing of the
28 initial Complaint in this action through the date notice is mailed to a certified class who were not

1 timely paid earned wages during their employment.

2 F. **Wage Statement Class:** All current and former hourly non-exempt
3 employees employed by Defendants in California at any time from one (1) year prior to the filing
4 of the initial Complaint in this action through the date notice is mailed to a certified class who
5 received inaccurate or incomplete wage and hour statements.

6 G. **Waiting Time Class:** All current and former hourly non-exempt employees
7 employed by Defendants in California at any time from three (3) years prior to the filing of the
8 initial Complaint in this action through the date notice is mailed to a certified class who did not
9 receive payment of all unpaid wages upon separation of employment within the statutory time
10 period.

11 H. **California Class:** All aforementioned classes are herein collectively
12 referred to as the "California Class."

13 44. There is a well-defined community of interest in the litigation and the classes are
14 ascertainable:

15 A. **Numerosity:** While the exact number of class members in each class is
16 unknown to Plaintiff at this time, the Plaintiff classes are so numerous that the individual joinder
17 of all members is impractical under the circumstances of this case.

18 B. **Common Questions Predominate:** Common questions of law and fact
19 exist as to all members of the Plaintiff classes and predominate over any questions that affect only
20 individual members of each class. The common questions of law and fact include, but are not
21 limited to:

22 i. Whether Defendants violated Labor Code sections 1194 and 1197
23 by not paying wages at the minimum wage rate for all time that the Minimum Wage Class
24 Members were subject to Defendants' control;

25 ii. Whether Defendants violated Labor Code sections 510 and 1194 by
26 not paying the Overtime Class Members at the applicable overtime rate for working in excess of
27 eight (8) hours in a workday, in excess of forty (40) hours in a workweek, and/or seven (7) days in
28 a workweek;

1 iii. Whether Defendants violated Labor Code sections 512 and 226.7, as
2 well as the applicable Wage Order, by employing the Meal Period Class Members without
3 providing all compliant and/or required meal periods and/or paying meal period premium wages;

4 iv. Whether Defendants violated Labor Code section 226.7 by
5 employing the Rest Period Class Members without providing all compliant and/or required rest
6 periods and/or paying rest period premium wages;

7 v. Whether Defendants violated Labor Code section 204 by employing
8 Pay Day Class Members without timely paying them all earned wages during their employment;

9 vi. Whether Defendants failed to provide the Wage Statement Class
10 Members with accurate itemized statements at the time they received their itemized statements;

11 vii. Whether Defendants failed to provide the Waiting Time Class
12 Members with all of their earned wages upon separation of employment within the statutory time
13 period;

14 viii. Whether Defendants committed unlawful business acts or practice
15 within the meaning of Business and Professions Code sections 17200, *et seq.*;

16 ix. Whether Class Members are entitled to unpaid wages, penalties, and
17 other relief pursuant to their claims;

18 x. Whether, as a consequence of Defendants' unlawful conduct, the
19 Class Members are entitled to restitution, and/or equitable relief; and

20 xi. Whether Defendants' affirmative defenses, if any, raise any common
21 issues of law or fact as to Plaintiff and as to Class Members as a whole.

22 C. **Typicality:** Plaintiff's claims are typical of the claims of the class members
23 in each of the classes. Plaintiff and members of the Minimum Wage Class sustained damages
24 arising out of Defendants' failure to pay wages at least at minimum wage for all time the
25 employees were subject to Defendants' control. Plaintiff and members of the Overtime Wage
26 Class sustained damages arising out of Defendants' failure to pay overtime wages for overtime
27 hours worked. Plaintiff and members of the Meal Period Class sustained damages arising out of
28 Defendants' failure to provide non-exempt employees with all required meal periods and/or meal

1 periods that were duty-free and not less than thirty (30) minutes and/or failure to pay meal period
2 premium wages as compensation. Plaintiff and members of the Rest Period Class sustained
3 damages arising out of Defendants' failure to provide non-exempt employees with all required rest
4 periods and/or rest periods that were duty-free and of a net ten (10) minutes and/or failure to pay
5 rest period premium wages as compensation. Plaintiff and members of the Pay Day Class
6 sustained damages arising out of Defendants' failure to timely pay them all wages earned during
7 their employment in compliance with Labor Code section 204. Plaintiff and members of the Wage
8 Statement Class sustained damages arising out of Defendants' failure to furnish them with
9 accurate itemized wage statements in compliance with Labor Code section 226. Plaintiff and
10 members of the Waiting Time Class sustained damages arising out of Defendants' failure to
11 provide all unpaid yet earned wages due upon separation of employment within the statutory time
12 limit.

13 **D. Adequacy of Representation:** Plaintiff will fairly and adequately protect
14 the interests of the members of each class. Plaintiff has no interest that is adverse to the interests of
15 the other class members.

16 **E. Superiority:** A class action is superior to other available means for the fair
17 and efficient adjudication of this controversy. Because individual joinder of all members of each
18 class is impractical, class action treatment will permit a large number of similarly situated persons
19 to prosecute their common claims in a single forum simultaneously, efficiently, and without the
20 unnecessary duplication of effort and expense that numerous individual actions would engender.
21 The expenses and burdens of individual litigation would make it difficult or impossible for
22 individual members of each class to redress the wrongs done to them, while important public
23 interests will be served by addressing the matter as a class action. The cost to and burden on the
24 court system of adjudication of individualized litigation would be substantial, and substantially
25 more than the costs and burdens of a class action. Individualized litigation would also present the
26 potential for inconsistent or contradictory judgments.

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1 (b) From the four years prior to the filing of this Complaint through the present,
2 Defendants “round” down or “shave” Plaintiff’s and the Minimum Wage Class’ time punches to
3 the nearest quarter hour, to the benefit of Defendants and to the detriment of Plaintiff and the
4 Minimum Wage Class s, each workday at the time they clock out for meal periods and at the time
5 they clock back in from meal periods;

6 (c) Since on or around February 1, 2020, Defendants, each workday, prior to
7 permitting Plaintiff and the Minimum Wage Class to clock in for the start of their shifts, require
8 Plaintiff and the Minimum Wage Class to line-up to wait to undergo and undergo COVID-19
9 temperature scans and medical screening questionnaires without paying them for that time. On
10 average, the time Plaintiff and the Minimum Wage Class spend lining up, waiting to undergo, and
11 undergoing COVID-19 temperature scans and medical screening questionnaires prior to clocking
12 in is approximately three to six minutes, depending on the day and number of employees. Plaintiff
13 and the Minimum Wage Class are subject to Defendants’ control while lining up, waiting for, and
14 undergoing the mandatory COVID-19 temperature scans and medical screening questionnaires
15 because they are required as a practical matter, occur at the workplace, involve a significant
16 degree of control, are imposed primarily for Defendant’s benefit, and are enforced through threat
17 of discipline.

18 50. Plaintiff and the Minimum Wage Class are not paid for this time resulting in
19 Defendants’ failure to pay minimum wage for all the hours Plaintiff and the Minimum Wage Class
20 worked.

21 51. As a result of Defendants’ unlawful conduct, Plaintiff and the Minimum Wage
22 Class have suffered damages in an amount subject to proof, to the extent that they were not paid
23 wages at a minimum wage rate for all hours worked.

24 52. Pursuant to Labor Code sections 1194 and 1194.2, Plaintiff and the Minimum
25 Wage Class are entitled to recover unpaid minimum wage, interest thereon, liquidated damages in
26 the amount of their unpaid minimum wage, and attorneys’ fees and costs.

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SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF LABOR CODE

SECTIONS 510 and 1194

(Against All Defendants by Plaintiff and the Overtime Class

53. Plaintiff incorporates all paragraphs above as though fully set forth herein.

54. At times relevant to this Complaint, Plaintiff and the Overtime Class were hourly non-exempt employees of Defendants, covered by Labor Code sections 510 and 1194 and the Wage Order 9.

55. Pursuant to Labor Code sections 510 and 1194 and the Wage Order 9, hourly non-exempt employees are entitled to receive a higher rate of pay for all hours worked in excess of eight (8) hours in a workday, forty (40) hours in a workweek, and on the seventh day of work in a workweek.

56. Labor Code section 510, subdivision (a), states in relevant part:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

57. Further, Labor Code section 1198 provides,

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

58. Despite California law requiring employers to pay employees a higher rate of pay for all hours worked more than eight (8) hours in a workday, more than forty (40) hours in a workweek, and on the seventh day of work in a workweek, Defendants failed to pay all overtime wages to Plaintiff and the Overtime Class for their daily overtime hours worked.

1 59. Specifically, Defendants’ employ policies, practices, and/or procedures including,
2 but not limited to, the following:

3 (a) From the four years prior to the filing of this Complaint through the present,
4 Defendants “round” down or “shave” Plaintiff’s and the Overtime Class’ time punches to the
5 nearest quarter hour, to the benefit of Defendants and to the detriment of Plaintiff and the
6 Overtime Class, each workday at the time they clock in for the start of their shift and at the time
7 they clock out for the end of their shift;

8 (b) From the four years prior to the filing of this Complaint through the present,
9 Defendants “round” down or “shave” Plaintiff’s and the Overtime Class’ time punches to the
10 nearest quarter hour, to the benefit of Defendants and to the detriment of Plaintiff and the
11 Overtime Class, each workday at the time they clock out for meal periods and at the time they
12 clock back in from meal periods;

13 (c) Since on or around February 1, 2020, Defendants, each workday, prior to
14 permitting Plaintiff and the Overtime Class to clock in for the start of their shifts, require Plaintiff
15 and the Overtime Class to line-up to wait to undergo and undergo COVID-19 temperature scans
16 and medical screening questionnaires without paying them for that time. On average, the time
17 Plaintiff and the Overtime Class spend lining up, waiting to undergo, and undergoing COVID-19
18 temperature scans and medical screening questionnaires prior to clocking in is approximately three
19 to six minutes, depending on the day and number of employees. Plaintiff and the Overtime Class
20 are subject to Defendants’ control while lining up, waiting for, and undergoing the mandatory
21 COVID-19 temperature scans and medical screening questionnaires because they are required as a
22 practical matter, occur at the workplace, involve a significant degree of control, are imposed
23 primarily for Defendant’s benefit, and are enforced through threat of discipline.

24 60. Plaintiff and the Overtime Class were not paid for this time.

25 61. To the extent that the foregoing unpaid time resulted from Plaintiff and the
26 Overtime Class being subject to the control of Defendants when they worked more than eight (8)
27 hours in a workday, more than forty (40) hours in a workweek, and/or seven days in a workweek,
28 Defendants failed to pay them at their overtime rate of pay for all the overtime hours they worked.

1 practices, and/or procedures that resulted in their failure to authorize or permit meal periods to
2 Plaintiff and the Meal Period Class of no less than thirty (30) minutes for each five-hour period of
3 work as required by law. Such policies, practices, and/or procedures included, but were not limited
4 to, the following:

5 (a) From the four years prior to the filing of this Complaint through the present,
6 Defendants “round” down or “shave” Plaintiffs and the Meal Period Class’ time punches to the
7 nearest quarter hour, to the benefit of Defendants and to the detriment of Plaintiff and the Meal
8 Period Class, each workday at the time they clock out for meal periods and at the time they clock
9 back in from meal periods; and/or

10 (b) From the four years prior to the filing of this Complaint through the present,
11 Defendants fail to authorize or permit Plaintiff and the Meal Period Class a second uninterrupted
12 duty-free meal period of no less than thirty (30) minutes on each workday that Plaintiff and the
13 Meal Period Class work shifts over ten (10) hours.

14 68. Additionally, Defendants failed to pay Plaintiff and the Meal Period Class one (1)
15 hour of pay at their regular rate of pay for each workday they did not receive all legally required
16 and legally compliant meal periods. Defendants lacked a policy and procedure for compensating
17 Plaintiff and the Meal Period Class with premium wages when they did not receive all legally
18 required and legally compliant meal periods.

19 69. Defendants’ unlawful conduct alleged herein occurred in the course of
20 employment of Plaintiff and the Meal Period Class and such conduct has continued through the
21 filing of this Complaint.

22 70. Because Defendants failed to provide employees with meal periods in compliance
23 with the law, Defendants are liable to Plaintiff and the Meal Period Clas for one (1) hour of
24 additional pay at the regular rate of compensation for each workday that Defendants did not
25 provide all legally required and legally compliant meal periods, pursuant to Labor Code section
26 226.7 and the Wage Order.

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1 71. Plaintiff, on behalf of himself and the Meal Period Class seeks damages and all
2 other relief allowable, including a meal period premium wage for each workday Defendants failed
3 to provide all legally required and legally compliant meal periods, plus pre-judgment interest.

4 **FOURTH CAUSE OF ACTION**

5 **FAILURE TO AUTHORIZE OR PERMIT REQUIRED REST PERIODS IN VIOLATION**
6 **OF LABOR CODE SECTION 226.7**

7 **(Against All Defendants by Plaintiff and the Rest Period Class)**

8 72. Plaintiff incorporates all paragraphs above as though fully set forth herein.

9 73. At all times relevant to this Complaint, Plaintiff and the Rest Period Class were
10 employees of Defendants, covered by Labor Code section 226.7 and Wage Order 9.

11 74. California law requires that “[e]very employer shall authorize and permit all
12 employees to take rest periods, which insofar as practicable shall be in the middle of each work
13 period. The authorized rest period time shall be based on the total hours worked daily at the rate of
14 ten (10) minutes net rest time per four (4) hours or major fraction thereof....” Wage Order 9, §12.
15 Employees are entitled to 10 minutes rest for shifts from three and one-half to six hours in length,
16 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10
17 hours up to 14 hours, and so on.” *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53
18 Cal.4th 1004, 1029; Labor Code §226.7. Additionally, the rest period requirement “obligates
19 employers to permit – and authorizes employees to take – off-duty rest periods.” *Augustus v. ABM*
20 *Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must
21 relieve employees of all duties and relinquish control over how employees spend their time. *Id.* If
22 an employer fails to provide an employee a rest period in accordance with the applicable
23 provisions of this Order, the employer shall pay the employee one (1) hour of pay at the
24 employee’s regular rate of compensation for each work day that the rest period is not provided.”
25 Wage Order 9, §12; Labor Code §226.7.

26 75. In this case, Plaintiff and the Rest Period Class regularly work shifts of more than
27 three-and-a-half (3.5) hours. Nevertheless, Defendants employ policies, practices, and/or
28 procedures that result in their failure to authorize or permit all legally required and compliant rest

1 periods to Plaintiff and the Rest Period Class. Such policies, practices, and/or procedures include,
2 but are not limited to, from the four years prior to the filing of this Complaint through the present,
3 Defendants require Plaintiff and the Rest Period Class to remain on the premises during their rest
4 periods. Because Defendants, through their policies, effectively control “how” and “where”
5 Plaintiff and the Rest Period Class spend their rest periods resulting in rest periods that are not
6 duty-free.

7 76. Additionally, Defendants failed to pay Plaintiff and the Rest Period Class one (1)
8 hour of pay at their regular rate of pay for each workday they did not receive all legally required
9 and legally compliant rest periods. Defendants lacked a policy and procedure for compensating
10 Plaintiff and the Rest Period Class with premium wages when they did not receive all legally
11 required and legally compliant rest periods.

12 77. Defendants’ unlawful conduct alleged herein occurred in the course of employment
13 of Plaintiff and the Rest Period Class and such conduct has continued through the filing of this
14 Complaint.

15 78. Because Defendants failed to provide employees with rest periods in compliance
16 with the law, Defendants are liable to Plaintiff and the Rest Period Class for one (1) hour of
17 additional pay at the regular rate of compensation for each workday that Defendants did not
18 provide all legally required and legally compliant rest periods, pursuant to Labor Code section
19 226.7 and the Wage Order.

20 79. Plaintiff, on behalf of himself and the Rest Period Class seeks damages and all
21 other relief allowable, including a rest period premium wage for each workday Defendants failed
22 to provide all legally required and legally compliant rest periods, plus pre-judgment interest.

23 **FIFTH CAUSE OF ACTION**

24 **FAILURE TO TIMELY PAY EARNED WAGES DURING EMPLOYMENT IN**

25 **VIOLATION OF LABOR CODE SECTION 204**

26 **(Against All Defendants by Plaintiff and the Pay Day Class)**

27 80. Plaintiff incorporates all paragraphs above as though fully set forth herein.

28 81. Plaintiff and the Pay Day Class have been employed by Defendants in the State of

1 California. In California, wages must be paid at least twice during each calendar month on days
2 designated in advance by the employer as regular paydays, subject to some exceptions. Labor
3 Code §204(a). Wages earned between the 1st and 15th days, inclusive, of any calendar month
4 must be paid between the 16th and the 26th day of that month and wages earned between the 16th
5 and the last day, inclusive, of any calendar month must be paid between the 1st and 10th day of
6 the following month. *Id.* Other payroll periods such as those that are weekly, biweekly, or
7 semimonthly, must be paid within seven (7) calendar days following the close of the payroll
8 period in which wages were earned. Labor Code §204(d).

9 82. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
10 to timely pay Plaintiff's and the Pay Day Class' earned wages (including minimum wages,
11 overtime wages, meal period premium wages, and/or rest period premium wages), in violation of
12 Labor Code section 204.

13 83. Defendants' aforementioned policies, practices, and/or procedures resulted in their
14 failure to pay Plaintiff and the Pay Day Class their earned wages within the applicable time frames
15 outlined in Labor Code section 204.

16 84. Defendants' failure to timely pay Plaintiff and the Pay Day Class their earned
17 wages in accordance with Labor Code section 204 was willful. Defendants had the ability to
18 timely pay all wages earned by hourly workers in accordance with Labor Code section 204, but
19 intentionally adopted policies or practices incompatible with the requirements of Labor Code
20 section 204. When Defendants failed to timely pay Plaintiff and the Pay Day Class all earned
21 wages, they knew what they were doing and intended to do what they did.

22 85. As a result of Defendants' unlawful conduct, Plaintiff and the Pay Day Class have
23 suffered damages in an amount subject to proof, to the extent that they were not timely paid their
24 earned wages pursuant to Labor Code section 204.

25 86. Pursuant to Labor Code section 210, Plaintiff and the Pay Day Class are entitled to
26 recover civil penalties as follows: (1) for any initial violation, one hundred dollars (\$100) for each
27 failure to pay each employee; and (2) for each subsequent violation, or any willful or intentional
28 violation, two hundred dollars (\$200) for each failure to pay each employee, plus twenty-five

1 (25%) percent of the amount unlawfully withheld.

2 **SIXTH CAUSE OF ACTION**

3 **FAILURE TO PROVIDE COMPLETE AND ACCURATE WAGE STATEMENTS IN**
4 **VIOLATION OF LABOR CODE SECTION 226**

5 **(Against All Defendants by Plaintiff and the Wage Statement Class)**

6 87. Plaintiff incorporates all paragraphs above as though fully set forth herein.

7 88. At all times relevant to this Complaint, Plaintiff and the Wage Statement Class
8 were hourly, non-exempt employees of Defendants, covered by Labor Code section 226.

9 89. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and the Wage
10 Statement Class were entitled to receive, semimonthly or at the time of each payment of wages, an
11 itemized wage statement accurately stating the following:

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

20 90. Defendants commit direct violations of Labor Code section 226, through their
21 policies, practices, and/or procedures, including, but not limited to failing to provide Plaintiff and
22 the Wage Statement Class accurate itemized wage statements, including but not limited to, for
23 example:

24 91. On Plaintiff's pay stub for the pay period January 4, 2021 through January 17,
25 2021, with a check date January 22, 2021, the paystub reflects that Plaintiff worked 12.5 overtime
26 hours, but the paystub does not show the overtime rate of pay.

27 92. On Plaintiff's pay stub for the pay period January 18, 2021 through January 31,
28 2021, with a check date February 5, 2021, the paystub reflects that Plaintiff worked 7.75 overtime

1 hours and 9.25 double time hours, but the paystub does not show the overtime rate of pay or the
2 double time rate of pay.

3 93. On Plaintiff's pay stub for the pay period February 1, 2021 through February 14,
4 2021, with a check date February 19, 2021, the paystub reflects that Plaintiff worked 20.75
5 overtime hours, but the paystub does not show the overtime rate of pay.

6 94. As a derivative of Defendants' claims above, Plaintiff alleges that Defendants
7 failed to provide accurate wage and hour statements to him and the Wage Statement Class who
8 were subject to Defendants' control for uncompensated time and who did not receive all their
9 earned wages (including minimum wages, overtime wages, meal period premium wages, and/or
10 rest period premium wages), in violation of Labor Code section 226.

11 95. Defendants provided Plaintiff and the Wage Statement Class with itemized
12 statements which stated inaccurate information including, but not limited to, the number of hours
13 worked, the gross wages earned, and the net wages earned.

14 96. Defendants' failure to provide Plaintiff and the Wage Statement Class with
15 accurate wage statements was knowing and intentional. Defendants had the ability to provide
16 Plaintiff and the Wage Statement Class with accurate wage statements but intentionally provided
17 wage statements they knew were not accurate. Defendants knowingly and intentionally put in
18 place practices which deprived employees of wages and resulted in Defendants knowingly and
19 intentionally providing inaccurate wage statements. These practices included Defendants' failure
20 to include all hours worked and all wages due.

21 97. As a result of Defendants' unlawful conduct, Plaintiff and the Wage Statement
22 Class have suffered injury. The absence of accurate information on their wage statements has
23 prevented earlier challenges to Defendants' unlawful pay practices, will require discovery and
24 mathematical computations to determine the amount of wages owed, and will cause difficulty and
25 expense in attempting to reconstruct time and pay records. Defendants' conduct led to the
26 submission of inaccurate information about wages and amounts deducted from wages to state and
27 federal government agencies. As a result, Plaintiff and the Wage Statement Class are required to
28 participate in this lawsuit and create more difficulty and expense for Plaintiff and the Wage

1 Statement Class from having to reconstruct time and pay records than if Defendants had complied
2 with their legal obligations.

3 98. Pursuant to Labor Code section 226(e), Plaintiff and the Wage Statement Class are
4 entitled to recover fifty (50) dollars per employee for the initial pay period in which a section 226
5 violation occurred and one hundred dollars per employee per violation for each subsequent pay
6 period, not to exceed an aggregate penalty of four thousand (4,000) dollars per employee.

7 99. Pursuant to Labor Code section 226(h), Plaintiff and the Wage Statement Class are
8 entitled to bring an action for injunctive relief to ensure Defendants' compliance with Labor Code
9 section 226(a). Injunctive relief is warranted because Defendants continue to provide currently
10 employed Wage Statement Class members with inaccurate wage statements in violation of Labor
11 Code section 226(a) and currently employed Wage Statement Class members have no adequate
12 legal remedy for the continuing injuries that will be suffered as a result of Defendants' ongoing
13 unlawful conduct. Injunctive relief is the only remedy available for ensuring Defendants'
14 compliance with Labor Code section 226(a).

15 100. Pursuant to Labor Code sections 226(e) and 226(h), Plaintiff and the Wage
16 Statement Class are entitled to recover the full amount of penalties due under Section 226(e),
17 reasonable attorneys' fees, and costs of suit.

18 **SEVENTH CAUSE OF ACTION**

19 **FAILURE TO PAY ALL WAGES TIMELY UPON SEPARATION OF EMPLOYMENT**

20 **IN VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

21 **(Against All Defendants by Plaintiff and the Waiting Time Class)**

22 101. Plaintiff incorporates all paragraphs above as though fully set forth herein.

23 102. At all times relevant to this Complaint, Plaintiff and the Waiting Time Class were
24 employees of Defendants, covered by Labor Code sections 201 and 202.

25 103. An employer is required to pay all unpaid wages timely after an employee's
26 employment ends. The wages are due immediately upon termination or within seventy-two (72)
27 hours of resignation. Labor Code §§201, 202. If an employee gave seventy-two (72) hours
28 previous notice, they were entitled to payment of all wages earned and unpaid at the time of

1 resignation. *Id.*

2 104. Defendants failed to pay Plaintiff and on information and belief, the Waiting Time
3 Class, with all wages earned and unpaid prior to separation of employment, in accordance with
4 either Labor Code section 201 or 202. Plaintiff is informed and believes and thereon alleges that at
5 all relevant times within the limitations period applicable to this cause of action, Defendants
6 maintained a policy or practice of not paying hourly employees all earned wages timely upon
7 separation of employment.

8 105. Defendants' failure to pay Plaintiff and the Waiting Time Class with all wages
9 earned prior to separation of employment timely in accordance with Labor Code sections 201 and
10 202 was willful. Defendants had the ability to pay all wages earned by hourly workers prior to
11 separation of employment in accordance with Labor Code sections 201 and 202, but intentionally
12 adopted policies or practices incompatible with the requirements of Labor Code sections 201 and
13 202. Defendants' practices include failing to pay at least minimum wage for all time worked,
14 overtime wages for all overtime hours worked, meal period premium wages, and/or rest period
15 premium wages. When Defendants failed to pay Plaintiff and the Waiting Time Class all earned
16 wages timely upon separation of employment, they knew what they were doing and intended to do
17 what they did.

18 106. Pursuant to either Labor Code section 201 or 202, Plaintiff and the Waiting Time
19 Class are entitled to all wages earned prior to separation of employment that Defendants have yet
20 to pay them.

21 107. Pursuant to Labor Code section 203, Plaintiff and the Waiting Time Class are
22 entitled to continuation of their wages, from the day their earned and unpaid wages were due until
23 paid, up to a maximum of thirty (30) days.

24 108. As a result of Defendants' conduct, Plaintiff and the Waiting Time Class have
25 suffered damages in an amount, subject to proof, to the extent they were not paid for all wages
26 earned prior to separation.

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1 109. As a result of Defendants' conduct, Plaintiff and the Waiting Time Class have
2 suffered damages in an amount, subject to proof, to the extent they were not paid all continuation
3 wages owed under Labor Code section 203.

4 110. Plaintiff and the Waiting Time Class are entitled to recover the full amount of their
5 unpaid wages, continuation wages under Labor Code section 203, and interest thereon.

6 **EIGHTH CAUSE OF ACTION**

7 **UNFAIR BUSINESS PRACTICES, IN VIOLATION OF BUSINESS AND PROFESSIONS**

8 **CODE SECTION 17200, et seq.**

9 **(Against All Defendants by Plaintiff and the California Class)**

10 111. Plaintiff incorporates all paragraphs above as though fully set forth herein.

11 112. The unlawful conduct of Defendants alleged herein constitutes unfair competition
12 within the meaning of Business and Professions Code section 17200. This unfair conduct includes
13 Defendants' use of policies, practices, and/or procedures which resulted in: failure to pay
14 employees at least at the minimum wage rate for all hours which they worked; failure to pay
15 overtime wages for all overtime hours worked; failure to authorize or permit all legally required
16 and compliant meal periods or pay meal period premium wages; failure to authorize or permit all
17 legally required and compliant rest periods or pay rest period premium wages; failure to timely
18 pay wages; failure to provide accurate wage and hour statements; and failure to timely pay all
19 wages due upon separation of employment. Due to their unfair and unlawful business practices in
20 violation of the Labor Code, Defendants have gained a competitive advantage over other
21 comparable companies doing business in the State of California that comply with their obligations
22 to pay minimum wages for all hours worked; pay overtime wages for all overtime hours worked;
23 authorize or permit all legally required and compliant meal periods or pay meal period premium
24 wages; authorize or permit all legally required and compliant rest periods or pay rest period
25 premium wages; timely pay wages; provide accurate wage and hour statements; and timely pay
26 all wages due upon separation of employment.

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1 113. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
2 California Class have suffered injury in fact and lost money or property, as described in more
3 detail above.

4 114. Pursuant to Business and Professions Code section 17203, Plaintiff and the
5 California Class are entitled to restitution of all wages and other monies rightfully belonging to
6 them that Defendants failed to pay and wrongfully retained by means of their unlawful and unfair
7 business practices. Plaintiff also seeks an injunction against Defendants on behalf of the California
8 Class enjoining Defendants, and any and all persons acting in concert with them, from engaging in
9 each of the unlawful policies, practices, and/or procedures set forth herein.

10 **PRAYER FOR RELIEF**

11 **WHEREFORE, PLAINTIFF ON HIS OWN BEHALF AND ON BEHALF OF**
12 **THOSE SIMILARLY SITUATED, PRAYS AS FOLLOWS:**

13 **ON THE FIRST, SECOND, THIRD, FOURTH, FIFTH, SIXTH, SEVENTH AND**
14 **EIGHTH CAUSES OF ACTION:**

15 1. That the Court determine that this action may be maintained as a class action (for
16 the entire California Class and/or any and all of the specified sub-classes) pursuant to Code of
17 Civil Procedure section 382 and any other applicable law;

18 2. That the named Plaintiff be designated as a class representative for the California
19 Class (and all sub-classes thereof);

20 3. For a declaratory judgment that the policies, practices, and/or procedures
21 complained herein are unlawful; and

22 4. For an injunction against Defendants enjoining them, and any and all persons
23 acting in concert with them, from engaging in each of the unlawful policies, practices, and/or
24 procedures set forth herein.

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ON THE FIRST CAUSE OF ACTION:

- 1
- 2 1. That Defendants be found to have violated the minimum wage provisions of the
- 3 Labor Code and the IWC Wage Order as to Plaintiff and the Minimum Wage Class;
- 4 2. For damages, according to proof, including but not limited to unpaid wages;
- 5 3. For any and all legally applicable penalties;
- 6 4. For liquidated damages pursuant to Labor Code section 1194.2;
- 7 5. For pre-judgment interest, including but not limited to that recoverable under Labor
- 8 Code section 1194, and post-judgment interest;
- 9 6. For attorneys' fees and costs of suit, including but not limited to that recoverable
- 10 under Labor Code section 1194;
- 11 7. For pre-judgment interest, including but not limited to that recoverable under Labor
- 12 Code section 218.6, and post-judgment interest; and,
- 13 8. For such other further relief, in law and/or equity, as the Court deems just or
- 14 appropriate.

ON THE SECOND CAUSE OF ACTION:

- 15
- 16 1. That Defendants be found to have violated the overtime provisions of the Labor
- 17 Code and the IWC Wage Order as to Plaintiff and the Overtime Class;
- 18 2. For damages, according to proof, including but not limited to unpaid wages;
- 19 3. For any and all legally applicable penalties;
- 20 4. For pre-judgment interest, including but not limited to that recoverable under Labor
- 21 Code section 1194, and post-judgment interest;
- 22 5. For attorneys' fees and costs of suit, including but not limited to that recoverable
- 23 under Labor Code section 1194; and
- 24 6. For such other further relief, in law and/or equity, as the Court deems just or
- 25 appropriate.

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ON THE THIRD CAUSE OF ACTION:

1. That Defendants be found to have violated the meal period provisions of the Labor Code and the IWC Wage Order as to Plaintiff and the Meal Period Class;
2. For damages, according to proof, including unpaid premium wages;
3. For any and all legally applicable penalties;
4. For pre-judgment interest, including but not limited to that recoverable under Labor Code section 218.6, and post-judgment interest; and
5. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE FOURTH CAUSE OF ACTION:

1. That Defendants be found to have violated the rest period provisions of the Labor Code and the IWC Wage Order as to Plaintiff and the Rest Period Class;
2. For damages, according to proof, including unpaid premium wages;
3. For any and all legally applicable penalties;
4. For pre-judgment interest, including but not limited to that recoverable under Labor Code section 218.6, and post-judgment interest; and
5. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE FIFTH CAUSE OF ACTION:

1. That Defendants be found to have violated Labor Code 204 as to Plaintiff and the Pay Day Class;
2. For damages, according to proof;
3. For any and all legally applicable penalties, including but not limited to those recoverable pursuant to Labor Code section 210(a);
4. For pre-judgment interest, including but not limited to that recoverable under Labor Code section 218.6, and post-judgment interest; and
5. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

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ON THE SIXTH CAUSE OF ACTION:

- 1. That Defendants be found to have violated the provisions of the Labor Code regarding accurate itemized paystubs as to Plaintiff and the Wage Statement Class;
- 2. For damages and/or penalties, according to proof, including damages and/or statutory penalties under Labor Code section 226, subdivision (e), and any other legally applicable damages or penalties;
- 3. For pre-judgment interest and post-judgment interest;
- 4. For an injunction against Defendants enjoining them, and any and all persons acting in concert with them, from engaging in violations of Labor Code section 226(a);
- 5. For attorneys' fees and costs of suit, including but not limited to that recoverable under Labor Code section 226, subdivision (e); and,
- 6. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE SEVENTH CAUSE OF ACTION:

- 1. That Defendants be found to have violated the provisions of the Labor Code regarding payment of all unpaid wages due upon resignation or termination as to Plaintiff and the Waiting Time Class;
- 2. For damages and/or penalties, according to proof, including damages and/or statutory penalties under Labor Code section 203 and any other legally applicable damages or penalties;
- 3. For pre-judgment interest, including under Labor Code section 218.6, and post-judgment interest; and,
- 4. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

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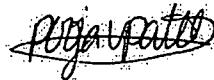
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ON THE EIGHTH CAUSE OF ACTION:

1. That Defendants be found to have violated Business and Professions Code sections 17200, *et seq.*, for the conduct alleged herein as to the California Class;
2. A declaratory judgment that the practices complained herein are unlawful;
3. An injunction against Defendants enjoining them, and any and all persons acting in concert with them, from engaging in each of the unlawful practices, policies and patterns set forth herein;
4. For restitution to the full extent permitted by law; and
5. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

Dated: April 2, 2021

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP



By: _____

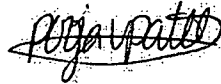
Joseph Lavi, Esq.
Vincent C. Granberry, Esq.
Pooja V. Patel, Esq.
Attorneys for Plaintiff
Christian Hernandez
on behalf of himself and others similarly situated

DEMAND FOR JURY TRIAL

1 Plaintiff Christian Hernandez demands a trial by jury for himself and the California Class
2 on all claims so triable.

3
4 Dated: April 2, 2021

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP



By: _____

Joseph Lavi, Esq.
Vincent C. Granberry, Esq.
Pooja V. Patel, Esq.
Attorneys for Plaintiff
Christian Hernandez
on behalf of himself and others similarly situated

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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
 JOSEPH LAVI (SBN 209776); VINCENT GRANBERRY (SBN 276483)
 POOJA PATEL (SBN 317891)
 LAVI & EBRAHIMIAN, 8889 W OLYMPIC BLVD, STE 200, BEVERLY HILLS CA 90211

TELEPHONE NO.: 310-432-0000 FAX NO. (Optional): 310-432-0001
 ATTORNEY FOR (Name): PLAINTIFF CHRISTIAN HERNANDEZ

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE
 STREET ADDRESS: 4050 MAIN STREET
 MAILING ADDRESS: SAME
 CITY AND ZIP CODE: RIVERSIDE, CALIFORNIA 92501
 BRANCH NAME: RIVERSIDE HISTORIC COURTHOUSE

CASE NAME:
 HERNANDEZ V. PROCTER & GAMBLE DISTRIBUTING, LLC, ET AL

FOR COURT USE ONLY

FILED
 Superior Court of California
 County of Riverside
 4/2/2021
 J. Hendrickson
 Electronically Filed

CASE NUMBER:
CVRI2101822

JUDGE:
 DEPT.:

CIVIL CASE COVER SHEET		Complex Case Designation	
<input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000)	<input type="checkbox"/> Counter	<input type="checkbox"/> Joinder
		Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<p>Auto Tort</p> <p><input type="checkbox"/> Auto (22)</p> <p><input type="checkbox"/> Uninsured motorist (46)</p> <p>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</p> <p><input type="checkbox"/> Asbestos (04)</p> <p><input type="checkbox"/> Product liability (24)</p> <p><input type="checkbox"/> Medical malpractice (45)</p> <p><input type="checkbox"/> Other PI/PD/WD (23)</p> <p>Non-PI/PD/WD (Other) Tort</p> <p><input type="checkbox"/> Business tort/unfair business practice (07)</p> <p><input type="checkbox"/> Civil rights (08)</p> <p><input type="checkbox"/> Defamation (13)</p> <p><input type="checkbox"/> Fraud (16)</p> <p><input type="checkbox"/> Intellectual property (19)</p> <p><input type="checkbox"/> Professional negligence (25)</p> <p><input type="checkbox"/> Other non-PI/PD/WD tort (35)</p> <p>Employment</p> <p><input type="checkbox"/> Wrongful termination (36)</p> <p><input checked="" type="checkbox"/> Other employment (15)</p>	<p>Contract</p> <p><input type="checkbox"/> Breach of contract/warranty (06)</p> <p><input type="checkbox"/> Rule 3.740 collections (09)</p> <p><input type="checkbox"/> Other collections (09)</p> <p><input type="checkbox"/> Insurance coverage (18)</p> <p><input type="checkbox"/> Other contract (37)</p> <p>Real Property</p> <p><input type="checkbox"/> Eminent domain/Inverse condemnation (14)</p> <p><input type="checkbox"/> Wrongful eviction (33)</p> <p><input type="checkbox"/> Other real property (26)</p> <p>Unlawful Detainer</p> <p><input type="checkbox"/> Commercial (31)</p> <p><input type="checkbox"/> Residential (32)</p> <p><input type="checkbox"/> Drugs (38)</p> <p>Judicial Review</p> <p><input type="checkbox"/> Asset forfeiture (05)</p> <p><input type="checkbox"/> Petition re: arbitration award (11)</p> <p><input type="checkbox"/> Writ of mandate (02)</p> <p><input type="checkbox"/> Other judicial review (39)</p>	<p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <p><input type="checkbox"/> Antitrust/Trade regulation (03)</p> <p><input type="checkbox"/> Construction defect (10)</p> <p><input type="checkbox"/> Mass tort (40)</p> <p><input type="checkbox"/> Securities litigation (28)</p> <p><input type="checkbox"/> Environmental/Toxic tort (30)</p> <p><input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)</p> <p>Enforcement of Judgment</p> <p><input type="checkbox"/> Enforcement of judgment (20)</p> <p>Miscellaneous Civil Complaint</p> <p><input type="checkbox"/> RICO (27)</p> <p><input type="checkbox"/> Other complaint (not specified above) (42)</p> <p>Miscellaneous Civil Petition</p> <p><input type="checkbox"/> Partnership and corporate governance (21)</p> <p><input type="checkbox"/> Other petition (not specified above) (43)</p>
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input checked="" type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence	f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): EIGHT (8)

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: APRIL 2, 2021
 POOJA V PATEL


 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

(TYPE OR PRINT NAME)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

- | | |
|--|---|
| <input type="checkbox"/> BANNING 311 E. Ramsey St., Banning, CA 92220 | <input type="checkbox"/> MURRIETA 30755-D Auld Rd., Suite 1226, Murrieta, CA 92563 |
| <input type="checkbox"/> BLYTHE 265 N. Broadway, Blythe, CA 92225 | <input type="checkbox"/> PALM SPRINGS 3255 E. Tahquitz Canyon Way, Palm Springs, CA 92262 |
| <input type="checkbox"/> CORONA 505 S. Buena Vista, Rm. 201, Corona, CA 92882 | <input checked="" type="checkbox"/> RIVERSIDE 4050 Main St., Riverside, CA 92501 |
| <input type="checkbox"/> HEMET 880 N. State St., Hemet, CA 92543 | <input type="checkbox"/> TEMECULA 41002 County Center Dr., #100, Temecula, CA 92591 |
| <input type="checkbox"/> MORENO VALLEY 13800 Heacock St., Ste. D201, Moreno Valley, CA 92553 | |

RI-CI032

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar Number and Address) Joseph Lavi, Esq. (SBN: 209776); Vincent C. Granberry, Esq. (SBN: 276483) Pooja V. Patel, Esq. (SBN: 317891) 8889 W. Olympic Blvd., Ste. 200 Beverly Hills, CA 90211 TELEPHONE NO: (310) 432-0000 FAX NO. (310) 432-0001 E-MAIL ADDRESS (Optional): ppatel@lelawfirm.com ATTORNEY FOR (Name): Christian Hernandez	FOR COURT USE ONLY FILED Superior Court of California County of Riverside 4/2/2021 J. Hendrickson Electronically Filed
PLAINTIFF/PETITIONER: Christian Hernandez DEFENDANT/RESPONDENT: Procter & Gamble Distributing, LLC, et al.	CASE NUMBER: CVRI2101822
CERTIFICATE OF COUNSEL	

The undersigned certifies that this matter should be tried or heard in the court identified above for the reasons specified below:

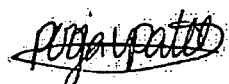
- The action arose in the zip code of: 92551
- The action concerns real property located in the zip code of: _____
- The Defendant resides in the zip code of: _____

For more information on where actions should be filed in the Riverside County Superior Courts, please refer to Local Rule 1.0015 at www.riverside.courts.ca.gov.

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date April 2, 2021

POOJA V. PATEL
 (TYPE OR PRINT NAME OF ATTORNEY PARTY MAKING DECLARATION)



(SIGNATURE)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

- Historic Court House
4050 Main Street, Riverside, CA 92501

Case Number: CVRI2101822

Case Name: HERNANDEZ vs PROCTER & GAMBLE DISTRIBUTING, LLC

Pooja V. Patel
8889 W. OLYMPIC BLVD., SUITE 200.
BEVERLY HILLS, CA 90211

NOTICE OF CASE MANAGEMENT CONFERENCE



The Case Management Conference is scheduled as follows:

Hearing Date	Hearing Time	Department
06/21/2021	8:30 AM	Department 6
Location of Hearing: 4050 Main Street, Riverside, CA 92501		

No later than 15 calendar days before the date set for the case management conference or review, each party must file a case management statement and serve it on all other parties in the case. CRC, Rule 3.725.

The plaintiff/cross-complainant shall serve a copy of this notice on all defendants/cross-defendants who are named or added to the complaint and file proof of service.

Any disqualification pursuant to CCP Section 170.6 shall be filed in accordance with that section.


	Interpreter services are available upon request. If you need an interpreter, please complete and submit the online Interpreter Request Form (https://riverside.courts.ca.gov/Divisions/InterpreterInfo/ri-in007.pdf) or contact the clerk's office and verbally request an interpreter. All requests must be made in advance with as much notice as possible, and prior to the hearing date in order to secure an interpreter.
	Assistive listening systems, computer-assisted real time captioning, or sign language interpreter services are available upon request if at least 5 days notice is provided. Contact the Office of the ADA Coordinator by calling (951) 777-3023 or TDD (951) 777-3769 between 8:00 am and 4:30 pm or by emailing ADA@riverside.courts.ca.gov to request an accommodation. A <i>Request for Accommodations by Persons With Disabilities and Order</i> (form MC-410) must be submitted when requesting an accommodation. (Civil Code section 54.8.)

CERTIFICATE OF MAILING

I certify that I am currently employed by the Superior Court of California, County of Riverside, and that I am not a party to this action or proceeding. In my capacity, I am familiar with the practices and procedures used in connection with the mailing of correspondence. Such correspondence is deposited in the outgoing mail of the Superior Court. Outgoing mail is delivered to and mailed by the United States Postal Service, postage prepaid, the same day in the ordinary course of business. I certify that I served a copy of the Notice of Case Management Conference on this date, by depositing said copy as stated above.

Dated: 04/22/2021

W. SAMUEL HAMRICK, JR.,
Court Executive Officer/Clerk of Court

by: 

J. Hendrickson, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

Historic Court House
4050 Main Street, Riverside, CA 92501

Case Number: CVRI2101822

Case Name: HERNANDEZ vs PROCTER & GAMBLE DISTRIBUTING, LLC

CHRISTIAN HERNANDEZ

NOTICE OF CASE MANAGEMENT CONFERENCE



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Dated: 04/22/2021

W. SAMUEL HAMRICK JR.,
Court Executive Officer/Clerk of Court

by: 

J. Hendrickson, Deputy Clerk

CI-NOCMC
(Rev. 03/06/20)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

Historic Court House
4050 Main Street, Riverside, CA 92501

Case Number: CVRI2101822

Case Name: HERNANDEZ vs PROCTER & GAMBLE DISTRIBUTING, LLC

PROCTER & GAMBLE DISTRIBUTING, LLC

NOTICE OF CASE MANAGEMENT CONFERENCE



The Case Management Conference is scheduled as follows:

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Location of Hearing: 4050 Main Street, Riverside, CA 92501		

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Dated: 04/22/2021

W. SAMUEL HAMRICK JR.,
Court Executive Officer/Clerk of Court

by: 

J. Hendrickson, Deputy Clerk

CI-NOCMG
(Rev. 05/06/20)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

Historic Court House
4050 Main Street, Riverside, CA 92501

Case Number: CVRI2101822

Case Name: HERNANDEZ vs PROCTER & GAMBLE DISTRIBUTING, LLC

SCHENKER, INC.

NOTICE OF CASE MANAGEMENT CONFERENCE



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06/21/2021	8:30 AM	Department 6
Location of Hearing: 4050 Main Street, Riverside, CA 92501		

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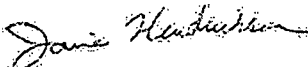
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Dated: 04/22/2021

W. SAMUEL HAMRICK, JR.,
Court Executive Officer/Clerk of Court

by: 

J. Hendrickson, Deputy Clerk

Notice has been printed for the following Firm/Attorneys or Parties: CVRI2101822

Patel, Pooja V.
8889 W. OLYMPIC BLVD., SUITE 200
BEVERLY HILLS, CA 90211

HERNANDEZ, CHRISTIAN

SCHENKER, INC.

PROCTER & GAMBLE DISTRIBUTING, LLC

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

Historic Court House
4050 Main Street, Riverside, CA 92501

Case Number: CVRI2101822

Case Name: HERNANDEZ vs: PROCTER & GAMBLE DISTRIBUTING, LLC

NOTICE OF DEPARTMENT ASSIGNMENT



The above entitled case is assigned to the Honorable Sunshine Sykes in Department 6 for All Purposes.

Any disqualification pursuant to CCP section 170.6 shall be filed in accordance with that section.

The court follows California Rules of Court, Rule 3.1308(a)(1) for tentative rulings (see Riverside Superior Court Local Rule 3316). Tentative Rulings for each law and motion matter are posted on the internet by 3:00 p.m. on the court day immediately before the hearing at <http://riverside.courts.ca.gov/tentativerulings.shtml>. If you do not have internet access, you may obtain the tentative ruling by telephone at (760) 904-5722.

To request oral argument, you must (1) notify the judicial secretary at (760) 904-5722 and (2) inform all other parties, no later than 4:30 p.m. the court day before the hearing. If no request for oral argument is made by 4:30 p.m., the tentative ruling will become the final ruling on the matter effective the date of the hearing.

The filing party shall serve a copy of this notice on all parties.

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Dated: 04/22/2021

W. SAMUEL HAMRICK JR.,
Court Executive Officer/Clerk of Court

by: *Jane Hendrickson*

J. Hendrickson, Deputy Clerk

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Accuses Procter & Gamble Distributing, Schenker of Calif. Labor Law Violations](#)
