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16 UNITED STATES DISTRICT COURT

17 EASTER DISTRICT OF CALIFORNIA

18 KURTIS MEEKS, individually, and on behalf
of other individuals similarly situated,

19 Plaintiff,

20 v.

21 LOWE'S HOME CENTERS, LLC, a North
22 Carolina, Limited Liability Company and
DOES 1-100, inclusive,

23 Defendants.
24

CASE NO. 2:20-at-00590

**DEFENDANT LOWE'S HOME CENTERS,
LLC'S NOTICE OF REMOVAL OF CLASS
ACTION**

(Removal from the Superior Court of California
for the County of Solano, Case No. FCS054750)

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1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT
2 OF CALIFORNIA, AND TO PLAINTIFF KURTIS MEEK AND HIS COUNSEL OF RECORD:

3 **PLEASE TAKE NOTICE THAT**, pursuant to the Class Action Fairness Act of 2005, 28
4 U.S.C. §§ 1332(d), 1453, and 1711, Defendant Lowe’s Home Centers, LLC hereby removes to the
5 United States District Court for the Eastern District of California the above-captioned state court action,
6 originally filed as Case No. FCS054750 in Solano County Superior Court, State of California. Removal
7 is proper on the following grounds:

8 **I. TIMELINESS OF REMOVAL**

9 1. Plaintiff Kurtis Meek¹ (“Plaintiff”) filed a putative Class Action Complaint against
10 Lowe’s Home Centers, LLC (“Lowe’s” or “Defendant”) in Solano County Superior Court, State of
11 California, Case No. FCS054750 on May 22, 2020. Pursuant to 28 U.S.C. § 1446(a), attached as
12 Exhibits A–F to the Declaration of Michele L. Maryott (“Maryott Decl.”) are true and correct copies
13 of all process, pleadings, and order served on Lowe’s in this matter: (A) Summons, (B) Class Action
14 Complaint, (C) Civil Case Cover Sheet, (D) Notice of Case Management Conference One and Notice
15 of Assignment of Judge for All Purposes, (E) Amended Standing Order for Electronic Service of
16 Documents in Complex Litigation, and (F) Notice of Service of Process.

17 2. Plaintiff served Lowe’s by Personal Service on May 28, 2020. *See* Maryott Decl., Ex.
18 F, Notice of Service of Process. Consequently, service was completed on May 28, 2020. This notice
19 of removal is timely because it is filed within 30 days after service was completed. 28 U.S.C.
20 § 1446(b).

21 **II. SUMMARY OF ALLEGATIONS AND GROUNDS FOR REMOVAL**

22 3. Removal is proper pursuant to 28 U.S.C. §§ 1441 and 1453 because this Court has
23 subject matter jurisdiction over this action and all claims asserted against Lowe’s pursuant to the Class
24 Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d).

25 4. CAFA applies “to any class action before or after the entry of a class certification order
26 by the court with respect to that action.” 28 U.S.C. § 1332(d)(8). This case is a putative “class action”
27

28 ¹ While Plaintiff’s Complaint is captioned as “Kurtis Meeks,” Lowe’s employment records reflect Plaintiff’s name as “Kurtis Meek.”

1 under CAFA because it was brought under a state statute or rule, namely California Code of Civil
2 Procedure § 382, authorizing an action to be brought by one or more representative persons as a class
3 action. *See* 28 U.S.C. § 1332(d)(1)(B); *see also* Maryott Decl., Ex. B, Compl. ¶¶ 14, 43.

4 5. Plaintiff seeks to bring a class action on behalf of “[a]ll individuals who were or are
5 employed by” Lowe’s “in California during the . . . four years prior to the filing of the complaint” as
6 “[n]on-exempt employees.” Maryott Decl., Ex. B, Compl. ¶¶ 43–44.

7 6. Plaintiff alleges eight causes of action against Lowe’s: (1) Failure to Pay Overtime
8 Compensation; (2) Failure to Pay All Wages and Overtime Compensation in Violation of the Fair Labor
9 Standards Act; (3) Failure to Pay for All Hours Worked in Violation of California Labor Code §§ 201,
10 202, 204, and 221–223; (4) Failure to Provide Meal Periods, or Compensation in Lieu Thereof; (5)
11 Failure to Provide Rest Periods, or Compensation in Lieu Thereof; (6) Failure to Furnish an Accurate
12 Itemized Wage Statement; (7) Unfair Competition and Unlawful Business Practices; and (8) Public
13 Nuisance.

14 7. Plaintiff asks the Court “[f]or an order certifying the proposed Class.” *See id.*, Compl.,
15 Prayer for Relief ¶ 1.

16 8. Among other things, Plaintiff alleges that putative class members are entitled to unpaid
17 wages, penalties for missed meal periods and rest breaks, penalties for failure to provide accurate wage
18 statements, waiting time penalties for failure to pay all wages due at termination, and attorneys’ fees
19 and costs. *See id.*, Compl., Prayer for Relief.

20 9. Removal of a class action is proper if: (1) there are at least 100 members in the putative
21 class; (2) there is minimal diversity between the parties, such that at least one class member is a citizen
22 of a state different from any defendant; and (3) the aggregate amount in controversy exceeds \$5 million,
23 exclusive of interest and costs. *See* 28 U.S.C. §§ 1332(d), 1441.

24 10. Lowe’s denies any liability in this case, both as to Plaintiff’s individual claims and as
25 to his putative class claims, and further maintains that this action was improperly filed in court because
26 Plaintiff agreed to binding individual arbitration of the claims he has asserted in this action. Lowe’s
27 also intends to oppose class certification on multiple grounds, including that (a) Plaintiff must arbitrate
28 his claims against Lowe’s individually pursuant to the binding and enforceable arbitration agreement

1 and class action waiver executed by Plaintiff, and (b) class treatment is inappropriate under these
2 circumstances in part because there are many material differences between the named Plaintiff and the
3 putative class members Plaintiff seeks to represent, as well as amongst the putative class members.
4 Lowe’s expressly reserves all rights to move to compel individual arbitration, oppose class
5 certification, and contest the merits of all claims asserted in the Complaint. However, for purposes of
6 the jurisdictional requirements *for removal only*, the allegations in Plaintiff’s Complaint identify a
7 putative class of more than 100 members and put in controversy, in the aggregate, an amount that
8 exceeds \$5 million. *See* 28 U.S.C. § 1332(d)(6).

9 **A. The Proposed Class Consists of More than 100 Members**

10 11. Based on Plaintiff’s allegations, this action satisfies CAFA’s requirement that the
11 putative class action contains at least 100 members. *See* 28 U.S.C. § 1332(d)(5)(B).

12 12. Plaintiff’s proposed class consists of “[a]ll individuals who were or are employed by”
13 Lowe’s “in California during the . . . four years prior to the filing of the complaint” as “Non-exempt
14 employees.” Maryott Decl., Ex. B, Compl. ¶¶ 43–44. According to Lowe’s data, there were
15 approximately 38,767 non-exempt individuals employed by Lowe’s in California during the period of
16 May 22, 2016 and May 22, 2020. Declaration of Casey Morales (“Morales Decl.”) ¶ 3(a).

17 13. Accordingly, while Lowe’s denies that class treatment is permissible or appropriate, the
18 proposed class consists of more than 100 members.

19 **B. Lowe’s and Plaintiff Are Not Citizens of the Same State**

20 14. Under CAFA’s minimum diversity of citizenship requirement, the plaintiff or any
21 member of the putative class must be a citizen of a different state from any defendant. *See* 28 U.S.C.
22 § 1332(d)(2)(A).

23 15. Plaintiff alleges that he “was and currently is, a California resident.” Maryott Decl., Ex.
24 B, Compl. ¶ 5. As such, Plaintiff is a citizen of California.

25 16. A corporation is a citizen of its state of incorporation and the state of its principal place
26 of business. 28 U.S.C. § 1332(c)(1). “[A]n LLC is a citizen of every state of which its owners/members
27 are citizens.” *Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006). Lowe’s
28 is a limited liability company organized under the laws of North Carolina and has its principal place of

1 business in North Carolina. Morales Decl. ¶ 2. Lowe’s Companies, Inc. is the sole member of Lowe’s
2 and Lowe’s is wholly owned by Lowe’s Companies, Inc., which is a North Carolina corporation with
3 its principal place of business in North Carolina. *Id.* As such, Lowe’s is a citizen of North Carolina.
4 *See* 28 U.S.C. § 1332(c)(1); *Johnson*, 437 F.3d at 899.

5 **C. The Amount in Controversy Exceeds \$5 Million**

6 17. CAFA requires that the amount in controversy in a class action exceed \$5 million,
7 exclusive of interests and costs. 28 U.S.C. § 1332(d)(2). In calculating the amount in controversy, a
8 court must aggregate the claims of all individual class members. 28 U.S.C. § 1332(d)(6).

9 18. The Ninth Circuit applies “a preponderance of the evidence” standard to determine
10 whether removal under CAFA is proper. *Rodriguez v. AT&T Mobility Servs. LLC*, 728 F.3d 975, 981
11 (9th Cir. 2013); *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 699 (9th Cir. 2007). A defendant
12 seeking to remove under CAFA need only “provide evidence establishing that it is ‘more likely than
13 not’ that the amount in controversy exceeds [the jurisdictional] amount” of \$5 million. *Guglielmino*,
14 506 F.3d at 699. To satisfy this burden, a defendant may rely on a “reasonable” “chain of reasoning”
15 that is based on “reasonable” “assumptions.” *LaCross v. Knight Transp. Inc.*, 775 F.3d 1200, 1201
16 (9th Cir. 2015). Plaintiffs seeking to represent a putative class cannot “bind the absent class” through
17 statements aimed to limit their recovery in an effort to “avoid removal to federal court.” *Std. Fire Ins.*
18 *Co. v. Knowles*, 568 U.S. 588, 595–96 (2013).

19 19. Moreover, in assessing whether the amount in controversy requirement has been
20 satisfied, “a court must ‘assume that the allegations of the complaint are true and that a jury will return
21 a verdict for the plaintiff on all claims made in the complaint.’” *Campbell v. Vitran Exp., Inc.*, 471 F.
22 App’x 646, 648 (9th Cir. 2012) (quoting *Kenneth Rothschild Tr. v. Morgan Stanley Dean Witter*, 199
23 F. Supp. 2d 993, 1001 (C.D. Cal. 2002)). In other words, the focus of the Court’s inquiry must be on
24 “what amount is put ‘in controversy’ by the plaintiff’s complaint, not what a defendant will actually
25 owe.” *Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1205 (E.D. Cal. 2008) (citing *Rippee*
26 *v. Boston Mkt. Corp.*, 408 F. Supp. 2d 982, 986 (S.D. Cal. 2005)).

27 20. Although Lowe’s denies that Plaintiff’s claims have any merit, Lowe’s avers, for the
28 purposes of meeting the jurisdictional requirements for removal *only*, that if Plaintiff were to prevail

1 on every claim and allegation in his Complaint on behalf of the putative class, the requested monetary
2 recovery would exceed \$5 million.

3 **1. Plaintiff's Allegations Regarding Waiting Time Penalties *Alone* Establish That**
4 **the Amount in Controversy Exceeds \$5 Million**

5 21. Lowe's reserves the right to present evidence establishing the amount placed in
6 controversy by each of Plaintiff's claims should Plaintiff challenge whether the jurisdictional amount-
7 in-controversy threshold is satisfied. *See Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S.
8 Ct. 547, 554 (2014) ("Evidence establishing the amount is required by § 1446(c)(2)(B) only when the
9 plaintiff contests, or the court questions, the defendant's allegation [that the amount in controversy
10 exceeds the jurisdictional threshold]."). But for present purposes, it is sufficient to note that Plaintiff's
11 claim for waiting time penalties pursuant to California Labor Code sections 201 and 202 *alone* puts
12 more than \$5 million in controversy.

13 22. Plaintiff alleges that he and other putative class members who ended their employment
14 with Lowe's during the three year period prior to filing this Complaint²—May 22, 2017 to May 22,
15 2020, *see* Maryott Decl., Ex. B, Compl. ¶¶ 74–82—are entitled to recovery of "penalties," *id.*, Compl.
16 ¶ 82.

17 23. If an employer fails to pay all wages due to an employee at the time of termination, as
18 required by Labor Code Section 201, or within 72 hours after resignation, as required by Labor Code
19 Section 202, then the wages "shall continue as a penalty from the due date thereof at the same rate until
20 paid or until an action therefor is commenced," for up to a maximum of 30 calendar days. Cal. Lab.
21 Code § 203. An employer may not be liable for these penalties if a good faith dispute exists as to
22 whether the wages are owed. Further, to be liable for waiting time penalties, an employer's failure to
23 pay wages within the statutory time frame must be *willful*. "A willful failure to pay wages within the
24 meaning of Labor Code Section 203 occurs when an employer *intentionally* fails to pay wages to an
25 employee when those wages are due." Cal. Code Regs., tit. 8, § 13520 (emphasis added).

26
27
28 ² The statute of limitations for an action for final wages not timely paid under Labor Code sections
201 and 202 is three years. Cal. Civ. Proc. Code § 338(a); *Pineda v. Bank of Am., N.A.*, 241 P.3d
870, 876 (2010).

24. Calculation of waiting time penalties for wages owed requires the calculation of an employee’s daily rate of pay, which is then multiplied by a maximum of 30 days, depending on the length of delay in receipt of wages, in order to determine the amount of penalty owed. *See Mamika v. Barca*, 68 Cal. App. 4th 487, 493 (1998) (holding that the waiting time penalty is “equivalent to the employee’s daily wages for each day he or she remained unpaid up to a total of 30 days” and noting that the “critical computation” is “the calculation of a daily wage rate, which can then be multiplied by the number of days of nonpayment, up to 30 days”); *Tajonar v. Echosphere, L.L.C.*, 2015 WL 4064642, at *4 (S.D. Cal. July 2, 2015). Where final “wages [due] are alleged to have not been paid, the full thirty-days may be used for each of the putative class members.” *Marentes v. Key Energy Servs. Cal., Inc.*, 2015 WL 756516, at *9 (E.D. Cal. Feb. 23, 2015).

25. Lowe’s denies that any such penalties are owed to Plaintiff or any putative class members. However, for purposes of this jurisdictional analysis only, Lowe’s relies on Plaintiff’s allegations that the penalties are owed.

26. Lowe’s employed approximately 19,781 full-time employees between May 22, 2017 to May 22, 2020. Morales Decl. ¶ 3(c). Of those individuals, 8,432 of them resigned or were terminated between May 22, 2017 to May 22, 2020. *Id.* ¶ 3(d). The average hourly pay rate for those 8,432 employees was, during the operative three-year period, \$16.30. *Id.* ¶ 3(e).

27. If, as Plaintiff alleges, individuals who left the employment of Lowe’s during the three years preceding the filing of the Complaint were owed wages and did not receive them, the amount in controversy with respect to the waiting time penalties for full-time employees alone would be approximately **\$24.5 million**, calculated as follows:

\$16.30 average hourly rate x 6 hours per day: ³	\$97.80 daily rate
\$97.80 x 30 days maximum penalty:	\$2,934 per employee
Amount in controversy for waiting time penalties, based on Plaintiff’s allegations (\$2,934 x 8,432 employees):	\$24,739,488

³ This is a conservative estimate based on the fact that full-time Lowe’s employees are expected to work a minimum of 30 hours per week. *See* Morales Decl. ¶ 3(c). This calculation does not include any waiting time penalties allegedly owed to part-time employees, which would further increase the amount in controversy.

1 **2. Plaintiff's Requests for Attorneys' Fees Alone Places More Than \$5 Million in**
 2 **Controversy**

3 28. The foregoing calculations do not take into account attorneys' fees in calculating the
 4 total amount in controversy, although attorneys' fees are properly included in the amount in
 5 controversy for purposes of evaluating diversity jurisdiction. *See Guglielmino*, 506 F.3d at 700. Under
 6 the Ninth Circuit's well-established precedent, 25% of the common fund is generally used as a
 7 benchmark for an award of attorney fees. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir.
 8 1998); *Barcia v. Contain-A-Way, Inc.*, 2009 WL 587844, at *5 (S.D. Cal., Mar. 6, 2009) ("In wage and
 9 hour cases, '[t]wenty-five percent is considered a benchmark for attorneys' fees in common fund
 10 cases.'"). Here, Lowe's has established that the total amount in controversy is at least \$73 million, and
 11 Plaintiff has not indicated that he will seek less than 25% of a common fund in attorneys' fees. *See*
 12 *Maryott Decl., Ex. B., Compl., Prayer For Relief* ¶ 11 (seeking attorneys' fees). Although Lowe's has
 13 shown that the amount in controversy absent attorneys' fees surpasses the jurisdictional threshold, this
 14 Court should nevertheless include the potential attorneys' fees in evaluating jurisdiction. *Guglielmino*,
 15 506 F.3d at 700. Lowe's denies that any such attorneys' fees are owed to Plaintiff or putative class
 16 members. However, for purposes of this jurisdictional analysis only, Lowe's relies on Plaintiff's
 17 allegations that the attorneys' fees are owed.

18 29. Using a twenty-five percent benchmark figure for attorneys' fees for Plaintiff's
 19 allegations regarding waiting time penalties, alleged Labor Code Section 226 violations, and meal and
 20 rest break claims results in estimated attorney's fees of approximately **\$6 million**, calculated as follows:

21 Conservative Estimate of Amount in Controversy from Waiting Time Claim:	\$24,739,488
22 Attorneys' Fees Benchmark:	25%
23 Attorneys' Fees:	\$6,184,872

24 **3. In Total, Just One of Plaintiff's Eight Causes of Action, Including Attorneys'**
 25 **Fees, Places More Than \$30 Million in Controversy**

26 30. Plaintiff's allegations regarding waiting time penalties place more than \$25.5 million in
 27 controversy. And Plaintiff's request for attorneys' fees places more than \$6 million in controversy. In
 28

1 total, just one of Plaintiff's eight causes of action, including attorneys' fees on those causes of action,
2 places more than \$30 million in controversy.

3 31. These figures are under-inclusive of the actual amount placed in controversy by
4 Plaintiff's claims because they are based on conservative assumptions about Plaintiff's putative class
5 allegations and do not account for, among other things, any recovery sought for failure to pay overtime
6 compensation (First Cause of Action), failure to pay all wages and overtime compensation under the
7 Fair Labor Standards Act (Second Cause of Action), failure to provide meal periods (Fourth Cause of
8 Action), failure to provide rest periods (Fifth Cause of Action), failure to furnish itemized wage
9 statements (Sixth Cause of Action), unfair and unlawful business practices (Seventh Cause of Action),
10 or public nuisance (Eighth Cause of Action). One or more of Plaintiff's remaining causes of action, as
11 pled in the Complaint, place more than \$5 million in controversy.

12 32. Plaintiff's allegations therefore place more than the requisite \$5 million in controversy.
13 Thus, the jurisdictional amount-in-controversy requirement is met, and removal to this Court is proper
14 under CAFA.

15 **III. THE COURT HAS JURISDICTION AND REMOVAL IS PROPER**

16 33. Based on the foregoing facts and allegations, this Court has original jurisdiction over
17 this action pursuant to 28 U.S.C. § 1332(d).

18 34. The United States District Court for the Eastern District of California is the federal
19 judicial district in which the Solano County Superior Court sits. This action was originally filed in the
20 Solano County Superior Court, rendering venue in this federal judicial district and division proper. 28
21 U.S.C. § 84(c); *see also* 28 U.S.C. § 1441(a).

22 35. True and correct copies of the A) Summons, (B) Class Action Complaint, (C) Civil Case
23 Cover Sheet, (D) Notice of Case Management Conference One and Notice of Assignment of Judge for
24 All Purposes, (E) Amended Standing Order for Electronic Service of Documents in Complex
25 Litigation, and (F) Notice of Service of Process, are attached as Exhibits A–F to the Declaration of
26 Michele L. Maryott filed concurrently herewith. These filings constitute the complete record of all
27 records and proceedings in the state court.

1 36. Upon filing the Notice of Removal, Lowe’s will furnish written notice to Plaintiff’s
2 counsel, and will file and serve a copy of this Notice with the Clerk of the Solano County Superior
3 Court, pursuant to 28 U.S.C. § 1446(d).

4 DATED: June 18, 2020

5 GIBSON, DUNN & CRUTCHER LLP
6 JASON C. SCHWARTZ*
7 MICHELE L. MARYOTT
8 KATHERINE V.A. SMITH
9 BRADLEY HAMBURGER
10 CHRIS WHITTAKER

11 By: /s/ Michele L. Maryott
12 Michele L. Maryott

13 Attorneys for LOWE’S HOME CENTERS, LLC

14 * *Pro Hac Vice* application forthcoming

15 103960288.7

EXHIBIT B

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12 Attorneys for Plaintiff, Kurtis Meeks, individually
13 and on behalf of other individuals similarly situated

ENDORSED FILED
Clerk of the Superior Court

MAY 22 2020

By J. Abueg
DEPUTY CLERK

**ASSIGNED TO
JUDGE CHRISTINE CARRINGER
FOR ALL PURPOSES**

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SOLANO

14 KURTIS MEEKS, individually, and on behalf of
15 other individuals similarly situated,

16 Plaintiff,

17 v.

18 LOWE'S HOME CENTERS, LLC, a North
19 Carolina, Limited Liability Company and DOES
20 1-100, inclusive

21 Defendants.

CASE NO. **FC8054750**

CLASS ACTION

1. Failure to Pay Overtime Time Wages (California Labor Code §§ 510, 515.5, 1194, and 1198);
2. Failure to Pay All Wages and Overtime Compensation in Violation of the Fair Labor Standards Act ("FLSA");
3. Failure to Provide Meal Periods, or Compensation in Lieu Thereof (California Labor Code §§ 226.7 and 512);
4. Failure to Provide Rest Periods, or Compensation in Lieu Thereof (California Labor Code §§ 226.7);
5. Failure to Furnish an Accurate Itemized Wage Statement upon Payment of Wages (Labor Code § 226);
6. Unfair Competition (Bus & Prof Code § 17200 et seq.)

FAXED

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7. Public Nuisance

DEMAND FOR A JURY TRIAL

Plaintiff Kurtis Meeks (“Plaintiff”) on behalf of himself and all others similarly situated, hereby brings this Class Action Complaint against Defendants Lowe’s Home Centers, LLC (“Lowe’s”); and DOES 1 to 100 (collectively “Defendants”), inclusive, and on information and belief alleges as follows:

INTRODUCTION

1. This is a class action and collective action brought by Plaintiff on behalf of retail store employees of defendant, Lowe’s Home Centers, LLC in the State of California.

2. Plaintiff seeks to recover for Defendants’ failure to pay their non-exempt employees all the wages they are owed, failure to properly compensate them for overtime, and failure to provide them with meal and rest periods in compliance with the applicable Wage Order.

3. Moreover, Defendants have maintained an unsafe work environment and have failed to comply with State, County, and municipal ordinances and statutes. The company has failed to establish and implement effective safety protocols to deal with COVID-19, failed to provide sterile protective equipment, and failed to creating and implementing a social distancing plan that will allow workers to remain six feet apart from customers – these failings constitute unfair business practices and create a public nuisance.

PARTIES

4. Lowe’s Home Centers, LLC is a retail company that specializes in home improvement. Defendant is a North Carolina limited liability company headquartered in Mooresville, North Carolina. Defendants employ hundreds of non-exempt employees in California and throughout the United States.

5. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein, Plaintiff was and currently is, a California resident. During the four years immediately preceding the

1 filing of the Complaint in this action and within the statute of limitations periods applicable to each
2 cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt employee.

3 6. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of
4 herein, lost money and/or property, and has been deprived of the rights guaranteed to his by California
5 Labor Code §§ 2802, 20, 204, 226, 226.7, 512, 515, 516, 226.8, 6311, 6400, 6401, 6401.7, 6402, and
6 6403, and California Business and Professions Code § 17200 et seq. (Unfair Competition).

7 7. Plaintiff is informed and believes, and based thereon alleges, that during the four years
8 preceding the filing of the Complaint and continuing to the present, Defendants did (and do) business
9 by a delivery service throughout Orange County and throughout California, and employed Plaintiff
10 and other similarly-situated non-exempt employees within Orange County and, therefore, were (and
11 are) doing business in Orange County and the State of California.

12 8. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
13 herein, Defendants were conducting business in California and Orange County, and were the
14 employers of Plaintiff and all members of the Class (as defined in Paragraph 46).

15 9. Plaintiff does not know the true names, capacities, relationships and/or the extent of
16 participation of Defendants DOES 1 through 100, inclusive, in the conduct alleged in this Complaint.
17 For that reason, Defendants DOES 1 through 100, inclusive, are sued under such fictitious names.
18 Plaintiff prays for leave to amend this Complaint when the true names and capacities are known.
19 Plaintiff is informed and believes, and based thereon alleges, that each fictitiously named defendant is
20 and was responsible in some way for the alleged wage and hour violations and other wrongful conduct
21 which subjected Plaintiff and the Class, as defined below, to the illegal employment practices, wrongs
22 and injuries complained of herein. All references in this Complaint to "Defendants" shall be deemed
23 to include all DOE Defendants.

24 10. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
25 herein, Defendants were and are the employers of Plaintiff and all members of the Class (as defined
26 in Paragraph 46).

27 11. At all times herein mentioned, each of said Defendants participated in the doing of the
28 acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants,

1 and each of them, were the agents, servants, and employees of each and every one of the other
2 Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting
3 within the course and scope of said agency and employment. Defendants, and each of them, approved
4 of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of
5 herein.

6 12. At all times mentioned herein, Defendants, and each of them, were members of and
7 engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope
8 of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges
9 that all Defendants were joint employers for all purposes of Plaintiff and all members of the Class (as
10 defined in Paragraph 46).

11 JURISDICTION

12 13. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this class
13 action under Labor Code §§ 2802, 20, 204, 226, 226.7, 512, 515, 516, 226.8, 6311, 6400, 6401,
14 6401.7, 6402, and 6403 *et seq.*, and California Business and Professions Code § 17200 *et. seq.*, in
15 addition to seeking declaratory relief, injunctive relief, and restitution.

16 14. This class action is brought pursuant to California Code of Civil Procedure 382.

17 15. This Court has jurisdiction over Defendants' violations of the California Labor Code
18 because the amount in controversy exceeds this Court's jurisdictional minimum.

19 VENUE

20 16. Venue as to each Defendant is proper in this judicial district pursuant to California
21 Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained
22 of hereon occurred in Solano County. Further, at all times relevant herein Plaintiff was employed by
23 Defendants within Solano County.

24 GENERAL FACTUAL ALLEGATIONS

25 COVID-19

26 17. Coronavirus disease 2019 (COVID-19) is a respiratory illness that spreads from person
27 to person. COVID-19 appeared in Wuhan, a city in China, in December 2019. Although health
28 officials are still tracing the exact source of this new coronavirus, early hypotheses thought it may be

1 linked to a seafood market in Wuhan, China. Some people who visited the market developed viral
2 pneumonia caused by the new coronavirus. A study that came out on Jan. 25, 2020, notes that the
3 individual with the first reported case became ill on Dec. 1, 2019, and had no link to the seafood
4 market. Investigations are ongoing as to how this virus originated and spread.

5 18. COVID-19 is now a pandemic affecting many countries globally, including the United
6 States.

7 19. The virus is thought to spread mainly between people who are in close contact with
8 one another (within about six feet) through respiratory droplets produced when the infected person
9 coughs or sneezes. It also may be possible that persons can get COVID-19 by touching surfaces or
10 object that has the virus on it and then touching their own mouth, nose or possibly their eyes.

11 20. Infection with SARS-CoV-2, the virus that causes COVID-19, can cause illness
12 ranging from mild to severe and, in some cases, can be fatal¹.

13 21. The Center for Disease Control has identified the following symptoms associated with
14 COVID-19 after two-fourteen days of exposure²:

- 15
- 16 • Fever
 - 17 • Chills
 - 18 • Repeated shaking with chills
 - 19 • Headache
 - New loss of taste or smell
 - Cough
 - Shortness of breath or difficulty breathing
 - Muscle pain
 - Sore throat

20 22. As of Apr. 23, 2020, 184,268 deaths have been attributed to COVID-19³.

21 23. Recent studies have suggested that COVID-19 may be spread by people who are not
22 manifesting symptoms⁴.

23 24. Some populations are especially vulnerable to the consequences of COVID-19,
24 including individuals 65 years and older, people living in a nursing home or long-term care facility,

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26 ¹ <https://www.osha.gov/Publications/OSHA3990.pdf>

27 ² <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>

28 ³ <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus>

⁴ <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>

1 and others of all ages with underlying medical conditions, such as people with lung disease, asthma,
2 heart conditions, severe obesity, diabetes, kidney disease, or liver disease and people who are
3 immunocompromised.

4 **California's Response to COVID-19**

5 25. On March 4, 2020, California Governor Gavin Newsom proclaimed a "state of
6 emergency" as a result of the threat of COVID-19.

7 26. Thereafter, on March 11, 2020, the World Health Organization declared the
8 Coronavirus a pandemic.

9 27. On March 19, 2020, California Executive Order N-33-20 established stay-at-home
10 requirements for individuals living in the State of California, subject to essential worker exemptions.
11 The executive order did not set a date for the lifting of the "stay-at-home" requirement.

12 28. Additionally, numerous cities, counties and municipalities throughout California have
13 issued orders related to COVID-19 including the City of Los Angeles, County of Los Angeles, the
14 City and County of San Francisco, and the City of San Jose.

15 **Defendants' Failure to Provide Required Safety Gear & Institute Effective Safety Protocols**

16 29. Throughout this pandemic Employer has failed to implement and maintain an effective illness
17 prevention program, provide proper and sterile protective equipment and materials, policies, trainings
18 and communications to Employee and the members of the Class. Such failing included, but are not
19 limited to, the failure to provide face coverings and gloves (or to provide face coverings which are
20 unsealed and placed in public areas where they are subject to contamination), failure to update any
21 injury and illness prevention program to account for COVID-19 and to properly train employees on
22 such program; failure to enforce social distancing requirements; requiring employees to share
23 employment spaces, computers, handsets, and other equipment and the subsequent failure to properly
24 sanitize shared employment spaces/equipment; failure to provide sufficient breaks so that employees
25 can wash their hands; and failing to install sufficient barriers/shields.

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1 **General Facts Regarding Defendant's Operation**

2 30. According to its 2019 10K filing, is a Fortune® 50 company and the world's second largest
3 home improvement retailer⁵.

4 31. During the relevant time period of this action, Defendants have employed Plaintiff and other
5 similarly situated individuals to provide assistance to customers in their retail stores. As of February
6 1, 2019, Lowe's employed approximately 190,000 full-time and 110,000 part-time employees⁶.

7 32. Lowe's recognized in its 10k filings that "the outbreak of pandemic" could "adversely affect"
8 its operations, however, Lowe's failed to properly prepare for such scenario⁷.

9 **Defendant Failed to Compensate Non-exempt employees for All Time Worked**

10 33. Defendants have engaged in a common scheme of routinely requiring and/or suffering and
11 permitting the non-exempt employees to work in excess of 8 hours per day without compensating
12 them at the statutorily-mandated overtime-time rate and have failed to compensate the non-exempt
13 employees at all for discrete periods of work.

14 34. Defendant requires employees to remain in its stores after their closing shifts, after clocking
15 out for the day, pending the completion of certain closing duties. Employees are not compensated for
16 such time.

17 35. Additionally, Defendant offers non-discretionary bonuses to its employees including the
18 Emergency Assistance pay, but does not include such compensation in the employees' regular rate for
19 the purposes of calculating overtime. As such, Defendants failed to properly calculate the overtime
20 rate of pay for Plaintiff and the members of the Plaintiff Class.

21 **Facts Regarding Meal and Rest Periods**

22 36. Defendants' non-exempt employees routinely are not provided with uninterrupted, thirty-
23 minute meal periods during which they are completely relieved of any duty, by the end of the fifth
24 hour of work, and are routinely not authorized and permitted to take rest breaks of at least ten minutes

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26 https://www.sec.gov/Archives/edgar/data/60667/000006066719000042/form10k_02012019.htm#s9AEB4112A2A35F3294B4E20C9A0BCF1A

27 ⁶ Id.

28 ⁷ Id at 13.

1 by the end of every fourth hour of work or major fraction thereof.

2 **Facts Regarding Plaintiff**

3 37. Plaintiff has worked for Lowe's as a non-exempt employee since December of 2019.

4 38. During this time, Plaintiff has not been paid for the time at the end of his shift, has not been
5 paid all overtime he is owed, has not received all meal and rest breaks to which he is entitled, and has
6 been forced to work within six feet of members of the public and without adequate safeguards.

7 ***Plaintiff's Exhaustion of Administrative Remedies***

8 39. Plaintiff is currently complying with the procedures for bringing suit specified in California
9 *Labor Code* § 2699.3.

10 40. By letter dated May 22, 2020, required notice was sent to Labor and Workforce Development
11 Agency ("LWDA"), the Division of Occupational Safety and Health ("Cal-OSHA) and Lowe's of the
12 specific provisions of the California *Labor Code* alleged to have been violated, including the facts and
13 theories to support the alleged violations.

14 41. This Complaint will be amended when Plaintiff has exhausted administrative remedies and/or
15 Defendant fails to cure within the specified timeframe.

16 **CLASS ACTION ALLEGATIONS**

17 42. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

18 43. Plaintiff brings this action on behalf of himself and all others similarly situated as a class action,
19 pursuant to California Code of Civil Procedure §382. The classes which Plaintiff seeks to
20 represent are composed of, and defined as follows:

21 **Plaintiff Class:**

22 All individuals who were or are employed by Defendant in California during
23 the Class Period as "Non-exempt employees". (collectively "Plaintiff Class"
24 or "Class Members")

25 44. The Class Period is the period from four years prior to the filing of the complaint until, through
26 and including the date judgment is rendered in this matter.

27 45. The class is so numerous that the individual joinder of all members is impracticable. While the
28 exact number and identification of class members are unknown to Plaintiff at this time and can only

1 be ascertained through appropriate discovery directed to Defendant, Plaintiff is informed and believes
2 that the class includes potentially hundreds of members.

3 46. Common questions of law and fact exist as to all members of the class which predominate over
4 any questions affecting only individual members of the class. These common legal and factual
5 questions, which do not vary from class member to class member, and which may be determined
6 without reference to the individual circumstances of any class member, include, but are not limited to,
7 the following:

- 8 a. Whether Plaintiff and members of the proposed class are subject to and entitled to the
9 benefits of California wage and hour statutes;
- 10 b. Whether Defendants complied with all OSHA requirements;
- 11 c. Whether Defendants' policies and practices (or lack thereof) for the payment of
12 overtime and double time violate California law;
- 13 d. Whether Defendants failed to provide meal and rest breaks;
- 14 e. Whether Defendants failed to keep accurate records of hours worked and wages earned
15 by non-exempt employees
- 16 f. Whether Defendants' failure to compensate Plaintiff and the other non-exempt
17 employees at the proper overtime rate has been willful, intentional or reckless
- 18 g. Whether the paychecks provided to the non-exempt employees in connection with their
19 compensation contain all the elements mandated for accurate itemized wage statements
20 under Cal. Labor Code § 226(a);
- 21 h. Whether Plaintiff and members of the Plaintiff Class sustained damages, and if so, the
22 proper measure of such damages, as well as interest, penalties, costs, attorneys' fees,
23 and equitable relief; and
- 24 i. Whether Defendant's conduct as alleged herein violates the Unfair Business Practices
25 Act of California, Bus. & Prof. Code § 17200, *et seq.*

26 47. The claims of the named Plaintiff are typical of the claims of the members of the putative class.
27 Plaintiff and other class members sustained losses, injuries and damages arising from Defendant's
28 common policies, practices, procedures, protocols, routines, and rules which were applied to other

1 class members as well as Plaintiff. Plaintiff seeks recovery for the same type of losses, injuries, and
2 damages as were suffered by other members of the proposed class.

3 48. Plaintiff is an adequate representative of the proposed classes because he is a member of the
4 class, and his interests do not conflict with the interests of the members he seeks to represent. Plaintiff
5 has retained competent counsel, experienced in the prosecution of complex class actions, and together
6 Plaintiff and his counsel intends to prosecute this action vigorously for the benefit of the classes. The
7 interests of the Class Members will fairly and adequately be protected by Plaintiff and his attorneys.

8 49. A class action is superior to other available methods for the fair and efficient adjudication of
9 this litigation since individual litigation of the claims of all Class Members is impracticable. It would
10 be unduly burdensome to the courts if these matters were to proceed on an individual basis, because
11 this would potentially result in hundreds of individuals, repetitive lawsuits. Further, individual
12 litigation presents the potential for inconsistent or contradictory judgments, and the prospect of a “race
13 to the courthouse,” and an inequitable allocation of recovery among those with equally meritorious
14 claims. By contrast, the class action device presents far fewer management difficulties, and provides
15 the benefit of a single adjudication, economics of scale, and comprehensive supervision by a single
16 court.

17 50. The various claims asserted in this action are additionally or alternatively certifiable under the
18 provisions of the California Code of Civil Procedure § 382 because:

- 19 a. The prosecution of separate actions by hundreds of individual class members
20 would create a risk of varying adjudications with respect to individual class
21 members, thus establishing incompatible standards of conduct for Defendant,
22 and
23 b. The prosecution of separate actions by individual class members would also
24 create the risk of adjudications with respect to them that, as a practical matter,
25 would be dispositive of the interest of the other class members who are not a
26 party to such adjudications and would substantially impair or impede the ability
27 of such non-party class members to protect their interests.

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1 **FIRST CAUSE OF ACTION**

2 **Failure to Pay Overtime Compensation**

3 **California Labor Code §§ 510, 515.5, 1194, and 1198**

4 **(By Plaintiff and the Plaintiff Class Against All Defendants)**

5 51. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though fully set forth
6 herein.

7 52. California Labor Code §§ 510 and 1198, provides that employees in California shall not be
8 employed more than eight (8) hours in any workday or forty (40) hours in any workweek unless they
9 receive additional compensation beyond their regular wages in amounts specified by law.

10 53. Defendants also fail to properly calculate the overtime rate by failing to include the amount of
11 the non-discretionary compensation in the regular rate.

12 54. Defendants have failed to pay Plaintiff, and other members of the Class, overtime
13 compensation for the hours they worked in excess of the maximum hours permissible by law under
14 California Labor Code §§ 510 and 1198the Wage Order. Defendants require and/or suffer and permit
15 Plaintiff and other members of the Class to work hours in excess of 8 in a day and 40 hours in a week.

16 55. Defendants' failure to pay additional, premium rate compensation to Plaintiff and members of
17 the Class for their overtime hours worked has caused Plaintiff and Class Members, and continues to
18 cause many Class Members to suffer damages in amounts which are presently unknown to them but
19 which exceed the jurisdictional threshold of this Court and which will be ascertained according to
20 proof at trial.

21 56. Pursuant to Labor Code §218.6 or Civil Code §3287(a), Plaintiff and other members of the
22 Class are entitled to recover pre-judgment interest on wages earned, but not paid every pay period.

23 57. As a direct and proximate result of the unlawful acts and/or omissions of Defendants, Plaintiff
24 and Class Members have been deprived of overtime compensation in an amount to be determined at
25 trial. Plaintiff and other members of the class request recovery of overtime and double time
26 compensation according to proof, interest, attorney's fees and costs of suit pursuant to California
27 Labor Code §§1194(a), 554, 1194.3 and 1197.1, as well as the assessment of any statutory penalties
28 against Defendants, in a sum as provided by the California Labor Code and/or other statutes.

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SECOND CAUSE OF ACTION
FAILURE TO PAY ALL WAGES AND OVERTIME COMPENSATION IN
VIOLATION OF THE FAIR LABOR STANDARDS ACT
(Against Defendants on behalf of Plaintiff
and Proposed Members of the FLSA Class (defined below))

58. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

59. The Fair Labor Standards Act, 29 U.S.C. §201, et. seq., states that an employee must be compensated for all hours worked, including straight time compensation and overtime compensation. (29 C.F.R. §778.223 and 29 C.F.R. §778.315.) This Court has concurrent jurisdiction over claims involving the Fair Labor Standards Act pursuant to 29 U.S.C. §216.

60. Plaintiff also brings this lawsuit as a collective action under the Fair Standards Labor Act, 29 U.S.C. §201, et. seq. (the “FLSA”), on behalf of all persons who were, are, or will be employed by Defendants as non-exempt employees during the period commencing three years prior to the filing of this Complaint to and through a date of judgment, who performed work in excess of forty (40) hours in one week and did not receive all compensation as required by the FLSA for the hours worked (the “FLSA Class”). To the extent equitable, tolling operates to toll claims by the against the collective employees against the Defendants, the collective statute of limitations should be adjusted accordingly.

61. This Collective Action by similarly situated persons under 29 U.S.C. 216(b) is based upon the failure of the named Defendants to properly calculate overtime. Defendants fail to include all compensation received by the employee including bonuses, commissions, wages and other forms of compensation.

62. Questions of law and fact common to collective employees as a whole include, but are not limited to the following:

- a. Whether Defendants failed to include all remuneration in calculating the appropriate rates overtime and straight time;
- b. Whether Defendants should be should be enjoined from continuing the practices which violate the FLSA; and
- c. Whether Defendants are liable to the collective employees.

1 63. The Cause of Action for the violations of the FLSA may be brought and maintained as an “opt-
2 in” collection action pursuant to Section 16(b) of FLSA, 29 U.S.C. 216(b), for all claims asserted by
3 the representative Plaintiff because the claims of Plaintiff are similar to the claims of collective
4 employees.

5 64. Plaintiff and collective employees are similarly situated, have substantially similar job
6 requirements and pay provisions, and are subject Defendants’ common and uniform policy and
7 practice of failing to pay for all actual time worked and wages earned, failed to accurately record all
8 hours worked by these employees in violation of the FLSA and the Regulations implementing the Act
9 as enacted by the Secretary of Labor, and for failing to include all remuneration in calculating overtime
10 rates and straight time rates of employees.

11 65. Defendants are engaged in communication, business, and transmission throughout the United
12 States and are, therefore, engaged in commerce within the meaning of 29 U.S.C. §203(b).

13 66. 29 U.S.C. §225 provides a three-year statute of limitations applies to willful violation of the
14 FLSA. The conduct by Defendants which violated the FLSA was willful.

15 67. Plaintiff and collective employees regularly worked in excess of forty (40) hours in a
16 workweek. Pursuant to the Fair Labor Standards Act, 29 U.S.C. §201, et. seq., Plaintiff and the
17 collective employees are entitled to compensation for all hours actually worked, and are also entitled
18 to wages at a rate not less than one and one-half times their regular rate of pay for all hours worked in
19 excess of forty (40) hours in any workweek.

20 68. Plaintiff and collective employees were all paid to Defendants on an hourly basis for the hours
21 worked up to forty (40) in a workweek, but Plaintiff and collective employees worked more than forty
22 (40) hours per workweek, and were not paid compensation for all hours worked, including overtime
23 hours.

24 69. For the purposes of the Fair Labor Standards Act, the employment practices of Defendants
25 were and are uniform throughout the United States in all respects material to the claims asserted in
26 this Complaint.

27 70. Defendants violated the Fair Labor Standards Act by failing to pay hourly employees for all
28 hours worked, including overtime hours, as alleged herein above.

1 71. As a result of Defendants' failure to pay overtime compensation for hours worked, as required
2 by the FLSA, Plaintiff and collective employees were damaged in an amount to be proved at trial.

3 72. Plaintiff, therefore, demand that they and collective employees be paid overtime compensation
4 as required by the FLSA for every hour of overtime in any workweek for miscalculation of overtime
5 and straight time, plus liquidated damages, interest and statutory costs as provided by law.

6 73. As a result of the willful actions of the named Defendants in reckless disregard of the rights of
7 the named Plaintiff and the FLSA Plaintiff Class, Plaintiff and the members of the FLSA Plaintiff
8 Class have suffered damages.

9 **THIRD CAUSE OF ACTION**

10 **Failure to Pay for All Hours Worked in Violation of**

11 **California Labor Code §§ 201, 202, 204, and 221-223**

12 **(By Plaintiff and the Plaintiff Class Against All Defendants)**

13 74. Plaintiff hereby re-alleges, and incorporates by reference as though set fully forth herein, the
14 allegations contained above.

15 75. California Labor Code §200 defines wages as "all amounts for labor performed by employees
16 of every description, whether the amount is fixed or ascertained by the standard of time, task, piece,
17 commission basis or other method of calculation."

18 76. California Labor Code §§ 201 and 202 require an employer to pay all wages earned but unpaid
19 immediately upon the involuntary discharge of an employee or within seventy-two (72) hours of an
20 employee's voluntary termination of employment.

21 77. California Labor Code §204 provides that employers must compensate employees for all hours
22 worked "twice during each calendar month, on days designated in advance by the employer as the
23 regular paydays."

24 78. California Labor Code §§221-223 prohibit employers from withholding and deducting wages,
25 or otherwise artificially lowering the wage scale of an employee.

26 79. Defendants have maintained and continues to maintain a policy of denying the non-exempt
27 employees' compensation for time spent after clock out during closing shifts. Accordingly, Defendants
28 have artificially reduced Plaintiff's and its other non-exempt employees' pay rates by denying them

1 compensation for such time.

2 80. As a proximate result of these violations, Defendants have damaged Plaintiff and the Class in
3 amounts to be determined according to proof at trial.

4 81. Pursuant to Labor Code §218.6 and/or Civil Code §3287(a), Plaintiff and other members of
5 the Class are entitled to recover pre-judgment interest on wages earned, but not paid every pay period.

6 82. Plaintiff, on behalf of himself and all others similarly situated, seek all unpaid compensation,
7 damages, penalties, interest and attorneys' fees and costs, recoverable under applicable law set forth
8 below.

9 **FOURTH CAUSE OF ACTION**

10 **Failure to Provide Meal Periods, or Compensation in Lieu Thereof**

11 **California Labor Code §§ 226.7 and 512**

12 **(By Plaintiff and the Plaintiff Class Against All Defendants)**

13 83. Plaintiff hereby re-alleges, and incorporates by reference as though set fully forth herein, the
14 allegations contained above.

15 84. California Labor Code §§ 226.7 and 512, and the IWC Wage Order require Defendants to
16 provide meal periods to Plaintiff and members of the proposed Class. California Labor Code §§ 226.7
17 and 512, and the IWC Wage Order prohibit employers from employing an employee for more than
18 five hours without a meal period no less than thirty (30) minutes and for more than ten (10) hours
19 without a second meal period. Unless the employee is relieved of all duty during the thirty (30) minute
20 meal period, the employee is considered "on-duty" and the meal or rest period is counted as time
21 worked.

22 85. Defendants do not provide the non-exempt employees with meal periods during which they
23 are completely relieved of duty for at least thirty (30) minutes by the fifth hour of work and again by
24 the tenth hour of work.

25 86. Rather, the non-exempt employees regularly work six (6) hours in a day, and often far more,
26 without the opportunity to take a meal period during which they are relieved of all duty.

27 87. Defendants have failed to perform their obligations to provide Plaintiff and Class Members
28 off-duty meal periods by the end of the fifth hour of work. Defendants also have failed to pay Plaintiff

1 and Class Members one (1) hour of pay for each off-duty meal period that they have been denied.
2 Defendants' conduct described herein violates California Labor Code §§226.7 and 512 and the IWC
3 Wage Order. Therefore, Plaintiff and members of the putative Class are entitled to compensation for
4 Defendants' failure to provide meal periods, plus interest, expenses, and costs of suit pursuant to
5 California Labor Code §§226.7(b) the IWC Wage Order.

6 **FIFTH CAUSE OF ACTION**

7 **Failure to Provide Rest Periods, or Compensation in Lieu Thereof**

8 **California Labor Code §§ 226.7 and Cal. Code Regs., Title 8 § 11050 ¶ 12**

9 **(By Plaintiff and the Plaintiff Class Against All Defendants)**

10 88. Plaintiff hereby re-alleges, and incorporates by reference as though set fully forth herein, the
11 allegations contained above.

12 89. California Labor Code §226.7 and the IWC Wage Order requires Defendants to authorize and
13 permit rest periods to Plaintiff and members of the proposed Class at the rate of ten minutes net rest
14 time per four hours or major fraction thereof.

15 90. Defendants simply do nothing to authorize or permit such rest periods, even if there were an
16 opportunity to take them.

17 91. To the contrary, the non-exempt employees regularly work twelve (12) hours in a day, and
18 often far more, without any realistic opportunity to rest for even ten minutes during a four-hour period
19 or major fraction thereof.

20 92. Defendants' policy has been to require the non-exempt employees to skip statutorily-mandated
21 rest breaks whenever a non-exempt employee's assigned patient needs treatment or monitoring, rather
22 than to maintain a system whereby other nurses relieve them at regular intervals throughout the day.
23 As a result, the non-exempt employees routinely are not authorized and permitted to take rest breaks
24 of at least ten minutes by the end of every fourth hour of work or major fraction thereof.

25 93. Under both California Labor Code § 226.7 the IWC Wage Order, an employer must pay an
26 employee who was denied a required rest period one (1) hour of pay at the employee's regular rate of
27 compensation for each workday that the rest period was not provided.

28 94. At all relevant times herein, Defendants have failed to perform their obligations to authorize

1 and permit Plaintiff and Class Members to take rest periods as set forth above. Defendants also failed
2 to pay Plaintiff and Class Members one (1) hour of pay for each rest period they have been denied.
3 Defendants' conduct described herein violates California Labor Code §§ 226.7 and the IWC Wage
4 Order. Therefore, Plaintiff and members of the putative Class are entitled to compensation for
5 Defendants' failure to authorize and permit rest periods, plus interest, and costs of suit pursuant to
6 California Labor Code §§ 226.7(b), and the IWC Wage Order.

7 **SIXTH CAUSE OF ACTION**

8 **Failure to Furnish an Accurate Itemized Wage Statement**

9 **In Violation Of California Labor Code § 226**

10 **(by Plaintiff and the Members of the Plaintiff Class against Defendant)**

11 95. Plaintiff hereby re-alleges, and incorporates by reference as though set fully forth herein, the
12 allegations contained above.

13 96. California *Labor Code* § 226(a) sets forth reporting requirements for employers when they pay
14 wages, as follows: “[e]very employer shall ... at the time of each payment of wages, furnish his or his
15 employees ... an accurate itemized statement in writing showing (1) gross wages earned; (2) total hours
16 worked by the employee.... (5) net wages earned, (6) the inclusive dates of the period for which the
17 employee is paid... (8) the name and address of the legal entity that is the employer... (9) all
18 applicable hourly rates in effect during the pay period and the corresponding number of hours worked
19 at each hourly rate by the employee.” (Emphasis added.) Section (e) provides: “An employee suffering
20 injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a)
21 shall be entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay
22 period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in
23 a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4000), and
24 shall be entitled to an award of costs and reasonable attorney’s fees.”

25 97. Defendant failed to comply with California *Labor Code* §226(a)(6) it failed to provide
26 compliant itemized wage statements.

27 98. Additionally, Defendant failed to comply with California *Labor Code* §226(a) because the
28 hours that are listed on the wage statement are incorrect and do not include the time spent “off-the-

1 clock” during closing shifts and the time worked during meal periods.

2 99. Plaintiff and Class members were damaged by these failures because, among other things, the
3 failures hindered Plaintiff and Class members from determining the amounts of wages actually owed
4 to them.

5 100. Plaintiff and Class members request recovery of California *Labor Code* § 226(e)
6 penalties according to proof, as well as interest, attorneys’ fees and costs pursuant to California *Labor*
7 *Code* § 226(e), in a sum as provided by the Labor Code and/or other statutes.

8 101. Wherefore, Plaintiff requests relief as hereinafter provided.

9 **SEVENTH CAUSE OF ACTION**

10 **Unfair Competition and Unlawful Business Practices**

11 **California Business and Professions Code §§ 17200, et seq.**

12 **(By Plaintiff and the Plaintiff Class Against All Defendants)**

13 102. Defendants have engaged and continue to engage in unfair and/or unlawful business
14 practices in California in violation of California Business and Professions Code § 17200 et seq., by
15 failing to comply with State, county and municipal codes and ordinances, failing to comply with the
16 Labor Code, and failing to implement and maintain an effective illness prevention.

17 103. Defendants other conduct, as set forth above, violates the California Unfair
18 Competition Law, Cal. Bus. & Prof. Code § 17200 et seq. (“UCL”).

19 104. Defendants’ conduct constitutes unlawful business acts or practices, in that Defendants
20 has violated California Labor Code §§ 2802, 200, 204, 226, 226.7, 512, 515, 516, 1194, 2804, 6311,
21 6400, 6401, 6401.7, 6402, and 6403.

22 105. There were reasonably available alternatives to further Defendants’ legitimate business
23 interests, other than the conduct described herein.

24 106. All of the conduct alleged herein occurs and continues to occur in Defendants’ business.
25 Defendants’ wrongful conduct is part of a pattern or generalized course of conduct repeated on
26 hundreds of occasions daily.

27 107. The acts complained of herein occurred within the last four years immediately
28 preceding the filing of the Complaint in this action.

1 108. Plaintiff was compelled to retain the services of counsel to file this court action to
2 protect his interests and those of the Class, to secure injunctive relief on behalf of Defendants' current
3 employees, and to enforce important rights affecting the public interest. Plaintiff thereby incurred the
4 financial burden of attorneys' fees and costs, which he is entitled to recover under Code of Civil
5 Procedure § 1021.5.

6 **EIGHTH CAUSE OF ACTION**

7 **Public Nuisance**

8 **(By Plaintiff and the Classes against all Defendants)**

9 109. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though fully
10 set forth herein.

11 110. Defendants' wrongful actions and inactions set forth hereinabove constitutes a public
12 nuisance under Civil Code Sections 3479 and 3480.

13 111. Defendants' failure to comply with State, municipal and county ordinances and/or
14 minimum basic health and safety standards in its workplace, including the CDC guidelines and other
15 minimum public health standards necessary to stop the spread of COVID-19, is causing, or is
16 reasonably certain to cause, community spread of the disease.

17 112. This community spread is not or will not be limited to the Defendant employees.
18 Infected workers will go home to interact with their families and with other members of the public.

19 113. Thus, increased community spread at throughout the Defendant fleet will cause
20 increased community spread in California and across the United States.

21 114. This community spread will result in disease and possibly death. It will also stress
22 healthcare resources and cause financial harm.

23 115. As a result, Defendant's current operations constitute a public nuisance because they
24 are "injurious to health."

25 116. Defendants' actions threaten to create and create a public nuisance insofar as they
26 created a nuisance as to Plaintiff as well as they "affect[] at the same time an entire community or
27 neighborhood" and they "affect[] ... a considerable number of persons although the extent of the
28 annoyance or damage inflicted upon individuals may be unequal. Cal. Civil Code §§ 3479-3480.

1 117. Pursuant to Civil Code § 3493. Plaintiff has standing to maintain an action for public
2 nuisance because the nuisance is especially injurious to Plaintiff because she is directly exposed to the
3 dangerous working conditions maintained by Defendant.

4 118. This public nuisance causes special harm to Plaintiff because of the risks she will be
5 exposed to at work or in the community, requiring her to quarantine, losing income, and putting
6 anyone she may come into close contact with at risk.

7 119. Plaintiff therefore requests a declaration that the Defendant as presently operating,
8 constitutes a public nuisance and injunctive relief to abate the nuisance.

9 **PRAYER**

10 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this
11 suit is brought against Defendants, jointly and severally, as follows:

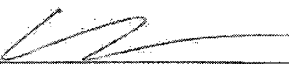
- 12 1. For an order certifying the proposed Class;
- 13 2. For an order appointing Plaintiff as representative of the Class;
- 14 3. For an order appointing Counsel for Plaintiff as Counsel for the Class;
- 15 4. For an order entering judgement for Plaintiff against Defendants;
- 16 5. For compensatory, consequential, general and special damages according to proof;
- 17 6. For an injunction requiring Defendants to conform their practices to the laws of California;
- 18 7. Declaratory Relief;
- 19 8. Entering a preliminary and final injunction to protect workers and the community from
20 transmission including but not limited to:
 - 21 a. Providing sufficient personal protective equipment, including clean masks,
22 to all Defendants employees/couriers;
 - 23 b. Creating and implementing a social distancing Plan that will allow workers to
24 remain six feet apart from customers and retailers with whom they must
25 interact;
 - 26 c. Providing handwashing stations and hand sanitizer;
 - 27 d. Providing tissues;
 - 28 e. Creating and implementing a protocol to clean surfaces;

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- f. Training employees on the use of hand sanitizers and on the safety, protocols listed above;
 - g. Developing and implementing a plan to test workers showing symptoms and perform contact tracing for those they have been near who could have been exposed;
 - h. Providing a date for sampling of inspections by Plaintiff's workplace health and safety expert to determine what additional steps may be required.
9. Prejudgment interest on all due and unpaid wages pursuant to California Labor Code § 2802(b) and Civil Code §§ 3287 and 3289;
 10. Penalties pursuant to California *Labor Code* §§ 226, 2802, 510, 1194.2, 1194.5, 512.
 11. For attorneys' fees and costs as provided by, *inter alia*, Labor Code § 1194, 226, 2802(c), and Code of Civil Procedure § 1021.5; and
 12. For such other and further relief the Court may deem just and proper.

DATED: May 22, 2020

BRADLEY/GROMBACHER LLP

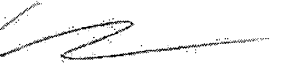
By: 
 Kiley Lynn Grombacher, Esq.
 Marcus J. Bradley, Esq.
 Lirit Ariella King, Esq.
 Attorneys for Plaintiff

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable as a matter of right.

DATED: May 22, 2020

BRADLEY/GROMBACHER LLP

By: 
 Kiley Lynn Grombacher, Esq.
 Marcus J. Bradley, Esq.
 Lirit Ariella King, Esq.
 Attorneys for Plaintiff

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Alleges Lowe's Failed to Protect Workers Amid COVID-19 Crisis, Violated Labor Laws](#)
