

1 MICHAEL J. NADER, SBN 200425  
michael.nader@ogletreedeakins.com  
2 OGLETREE, DEAKINS, NASH, SMOAK &  
STEWART, P.C.  
3 500 Capitol Mall, Suite 2500  
Sacramento, Ca 95814  
4 Telephone: 916.840.3150  
Facsimile: 916.840.3159  
5

6 RYAN H. CROSNER, SBN 278418  
ryan.crosner@ogletree.com  
7 OGLETREE, DEAKINS, NASH, SMOAK &  
STEWART, P.C.  
400 South Hope Street, Suite 1200  
8 Los Angeles, CA 90071  
Telephone: 213.239.9800  
9 Facsimile: 213.239.9045

10 Attorneys for Defendant  
W.W. Grainger, Inc.

11 **UNITED STATES DISTRICT COURT**  
12 **EASTERN DISTRICT OF CALIFORNIA**  
13

14 SELINA RANGEL, an individual, on behalf  
of herself and others similarly situated,  
15 Plaintiffs,  
v.  
16 W.W. GRAINGER, INC., an Illinois  
Corporation; and DOES 1 through 50,  
17 inclusive,  
Defendants.

Case No. CaseNumber

**DEFENDANT W.W. GRAINGER, INC.'S  
NOTICE OF REMOVAL TO FEDERAL  
COURT**

[Filed concurrently with Declarations of Henry  
F. Galatz, Sita Natarajan, and Michael J. Nader;  
and Disclosure Statement Pursuant to Federal  
Rule of Civil Procedure 7.1; and Civil Cover  
Sheet]

Stanislaus Superior Court  
Complaint Filed: September 24, 2018

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23 **TO THE CLERK OF THE UNITED STATES DISTRICT COURT, EASTERN  
24 DISTRICT OF CALIFORNIA, PLAINTIFF AND HER ATTORNEYS OF RECORD:**

25 **PLEASE TAKE NOTICE** that Defendant W.W. Grainger, Inc. (“Defendant”), through  
26 undersigned counsel, hereby removes the above-captioned action from the Superior Court of the  
27 State of California for the County of Stanislaus, to the United States District Court for the Eastern  
28 District of California, pursuant to 28 U.S.C. §§ 1332, 1441, 1446 and 1453.

1 **I. PROCEDURAL BACKGROUND AND TIMELINESS OF REMOVAL**

2 1. On September 24, 2018, Plaintiff filed an unverified Complaint in the Superior  
3 Court of the State of California, County of Stanislaus, commencing the action entitled “*Selina*  
4 *Rangel v. W.W. Grainger, Inc.*, Case No.: CV-18-003041 (“Complaint”). A true and correct copy  
5 of the Complaint is attached as “**Exhibit A**” to this Notice of Removal. The Plaintiff’s Complaint  
6 asserts claims for: (1) failure to pay minimum wages; (2) failure to pay wages and overtime under  
7 Labor Code § 510; (3) meal period liability under Labor Code § 226.7; (4) rest-break liability  
8 under Labor Code § 226.7; (5) violation of Labor Code §§ 226(a); (6) violation of Labor Code §  
9 221; (7) violation of Labor Code § 204; (8) violation of Labor Code § 203; and (9) violation of  
10 Business & Professions Code § 17200 *et seq.*

11 2. Defendant’s registered agent for service of process was served with the Complaint  
12 on September 27, 2018. True and correct copies of the documents served on Defendant’s  
13 registered agent are attached to this Notice as **Exhibit A**. On October 26, 2018, Defendant timely  
14 filed an answer to Plaintiff’s Complaint. A copy of the Answer is attached as “**Exhibit B.**”

15 3. A defendant in a civil action has thirty (30) days from the date it is served with a  
16 summons and complaint in which to remove the action to federal court. 28 U.S.C. § 1446(b);  
17 *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-48 (1999). As Defendant’s  
18 registered agent for service of process was served with the summons and Complaint on September  
19 27, 2018, this Notice of Removal is timely. 28 U.S.C. § 1446(b).

20 **II. PLAINTIFF’S COMPLAINT IS REMOVABLE PURSUANT TO CAFA**

21 4. As set forth below, Plaintiff’s claims as alleged in the Complaint are removable  
22 under the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d).

23 5. Under CAFA, the Federal District Court has jurisdiction if:

- 24 a) There are at least 100 class members in all proposed plaintiff classes; and  
25 b) The combined claims of all class members exceed \$5 million exclusive of  
26 interest and costs; and  
27 c) Any class member (named or not) is a citizen of a different state than any  
28 defendant. 28 U.S.C. §§ 1332(d)(2), 1332(d)(5)(B) and 1453(a).

1           **A. There Are At Least 100 Class Members in the Proposed Class**

2           6. Plaintiff purports to bring this action on behalf of “All individuals employed by  
3 Defendants at any time during the period of four (4) years prior to the filing of this lawsuit and  
4 ending on a date as determined by the Court (“the Class Period”), and who have been employed as  
5 non-exempt, hourly employees at Defendants’ distribution centers within the State of California.”  
6 (Exh. A, ¶ 31).

7           7. Plaintiff alleges that there are “at least hundreds of Employees who satisfy the Class  
8 definition within the State of California.” (Exh. A, ¶ 35). Based on a review of Defendant’s  
9 business records, 1,070 individuals were employed as hourly employees at Defendant’s distribution  
10 centers within the State of California (collectively referred to as the “**putative class members**” or  
11 “**PCMs**”) at some time during the period from September 24, 2014 until October 21, 2018 (the  
12 “**Relevant Period**”).<sup>1</sup> (Declaration of Sita Natarajan, ¶ 7).<sup>2</sup> With 1,070 PCMs, the first  
13 requirement of CAFA jurisdiction is satisfied.

14           **B. The Requisite \$5 Million Amount In Controversy Is Satisfied**

15           8. CAFA authorizes the removal of class-action cases in which the amount in  
16 controversy for all class members exceeds \$5 million. 28 U.S.C. § 1332(d).

17           9. In the Complaint, Plaintiff seeks, among other things, unpaid minimum and  
18 overtime wages, unpaid meal and rest break premiums, wage statement penalties, and waiting time  
19 penalties during the applicable statutory periods on behalf of herself and the putative class  
20

21 \_\_\_\_\_  
22 <sup>1</sup> Defendant acknowledges that the relevant “statutory” period is from September 24, 2018 to the present. Because of  
the need to review the data for this Notice of Removal by a date certain, Defendants have designated September 24,  
2018 to October 22, 2018 as the “Relevant Period” for purposes of this Notice of Removal.

23 <sup>2</sup> For purposes of effecting removal pursuant to 28 U.S.C. § 1332(d), declarations from Defendant and their counsel  
24 constitute sufficient evidence to establish the amount in controversy. See, e.g., *Muniz*, 2007 WL 1302504, at \*2, \*5  
25 (relying on the evidence submitted by the defendant in the form of a declaration from its employee relations manager,  
which “set[...] forth the underlying facts needed to calculate the amount in controversy,” and a declaration from its  
26 counsel, which calculated the amount in controversy based on the underlying facts and in light of the laws governing  
the plaintiff’s claims, and finding that the defendant had shown that “it is more likely than not that the jurisdictional  
27 threshold of \$5,000,000.00 is met”); *Jasso v. Money Mart Express, Inc.*, No. 11-CV-5500 YGR, 2012 WL 699465, at  
\*4 (N.D. Cal. Mar. 1, 2012) (finding there was “adequate foundation” for the declaration submitted by the defendant’s  
28 human resources director regarding “the numbers of employees, payperiods [sic] and average rates of pay during the  
applicable limitations periods,” which was derived from a compilation of “information that is kept in the normal course  
of business,” and relying on the declaration to find that the defendant had met its burden to establish the amount in  
controversy in excess of CAFA’s jurisdictional threshold).

1 members. (*See generally* Exh. A.) As set forth below, even when factoring in potential amounts in  
2 controversy for less than half of the total claims asserted, the amount in controversy still exceeds  
3 the \$5 million threshold for CAFA removal.<sup>3</sup> *See* 28 U.S.C. § 1332(d).

4 **1. Relevant Class Member Data.**

5 10. Plaintiff alleges violations of Section 17200 *et seq.* of the Business & Professions  
6 Code. A four-year statutory period applies to the class-action claims for meal/rest premiums and  
7 unpaid wages when the complaint pleads a derivative Unfair Competition (“UCL”) claim. Cal.  
8 Bus. & Prof. Code § 17208 (“Any action to enforce any cause of action pursuant to this chapter  
9 shall be commenced within four years after the cause of action accrued”); *Cortez v. Purolator Air*  
10 *Filtration Products Co.*, 23 Cal. 4th 163, 178-179 (2000) (the four-year statute of limitations  
11 applies to any UCL claim, notwithstanding that the underlying claims have shorter statutes of  
12 limitation).

13 11. Upon careful review of Defendant’s records over the Relevant Period, Defendant  
14 employed 1,070 individuals as PCMs. (Natarajan Decl. ¶ 7.)

15 12. During the Relevant Period, PCMs worked approximately 90,162 workweeks in  
16 California. (*Id.*)

17 13. During the Relevant Period, the PCMs earned an average of over \$17.00 per hour,  
18 and their pay ranged between more than \$15.50 and \$33.00 per hour. (*Id.*). PCMs worked an  
19 average of over 7 hours per day. (*Id.*).

20 14. A three-year statutory period applies to Plaintiff’s claim for waiting-time penalties  
21 under Labor Code Section 203. (*See* Cal. Labor Code § 203(b)). From September 24, 2015 to  
22 October 21, 2018, 509 PCMs terminated their employment with Defendant. (*Id.*).

23 **2. Plaintiff’s First Cause of Action - Failure to Pay Minimum Wages**

24 15. In plaintiff’s first cause of action, she alleges that “Defendants had a consistent  
25 policy of requiring Employees to misstate their time records to conform to scheduled shift times  
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27 <sup>3</sup> In alleging the amount in controversy for purposes of CAFA removal, Defendant does not concede in any way that  
28 the allegations in the Complaint are accurate, or that Plaintiff is entitled to any of the monetary relief requested in the  
operative Complaint. Nor does Defendant concede that any or all of the current or former employees are entitled to  
any recovery in this case, or are appropriately included in the putative class.

1 rather than actual hours worked and failing to pay Employees for all hours worked.” (Exh. A, ¶  
2 46). Plaintiff further alleges that “Defendants’ uniform pattern of unlawful wage and hour  
3 practices manifested, without limitation, applicable to the Class as a whole, as a result of  
4 implementing a uniform policy and practice that denied accurate compensation to Plaintiff and the  
5 other members of the Class as to minimum wage pay.” (Exh. A, ¶ 46).

6 16. Plaintiff further alleges that “she and other similarly situated Employees” were  
7 required to show up to work, under Defendant’s control, “for approximately 15 minutes before  
8 their scheduled shifts began.” (Exh. A, ¶ 12). Plaintiff also alleges that “a similar process  
9 occurred at the end of the work shift, when the Employees were required to remain under  
10 Defendants’ control to walk from work stations to the break room and then gather their personal  
11 items and pass back through security to then walk to their vehicles.” (Exh. A, ¶ 12). As such,  
12 plaintiff alleges that at PCMs are not paid for at least 30 minutes of compensable time each shift.

13 17. Plaintiff makes further allegations that Defendant “uniformly” failed to record  
14 actual time punches for both work shifts and meal periods, “systematically underpaid” employees  
15 for hours worked, and “followed a uniform policy and practice” of “generally” rounding time  
16 entries “to the detriment of Employees.” (Exh. A, ¶¶ 13-14).

17 18. Courts have recognized that “[i]t is not unreasonable to assume that when a  
18 company has unlawful policies and they are *uniformly* adopted and maintained, then the company  
19 may potentially violate the law in each and every situation where those policies are applied.”  
20 *Mejia v. DHL Express (USA), Inc.*, No. CV 15-890-GHK JCX, 2015 WL 2452755, at \*4 (C.D. Cal.  
21 May 21, 2015) (emphasis added and internal quotation marks omitted). *See also, Oda*, 2015 WL  
22 93335, at \*4-5 (holding that allegations of “policy or practice” allowed for 50 percent violation  
23 rate); *Stevenson v. Dollar Tree Stores, Inc.*, No. CIV S-11-1433 KJM DAD, 2011 WL 4928753, \*2  
24 (E.D. Cal. October 17, 2011) (where, as here, it was plaintiff’s standard practice not to pay  
25 “requisite compensation for all hours worked,” without more specific allegations to narrow the  
26 potential scope of damages, the complaint was not susceptible to precise calculations and  
27 defendant’s calculation of potential missed meal period damages at 100% of the shifts was  
28 appropriate).

1 19. Where, as here, Plaintiff alleges a systematic deprivation of rights, as well as a  
2 “uniform” policy and practice, it is appropriate to assume a 100 percent violation rate in calculating  
3 the amount in controversy. *See Amaya v. Consolidated Container Co.*, No. 2:15-cv-03369-SVW-  
4 PLA, 2015 WL 4574909 (C.D. Cal. July 28, 2015) (“[C]ourts have generally found the amount in  
5 controversy satisfied where a defendant assumes a 100% violation rate based on allegations of a  
6 ‘uniform’ illegal practice (or other similar language) and where the plaintiff offers no evidence  
7 rebutting this violation rate.”). Even though Defendant could have relied on a 100 percent violation  
8 rate here, it conservatively applied 1 hour of unpaid time, at the straight time rate, per workweek  
9 during the Relevant Period.

10 20. Based upon the conservative estimate that each PCM is entitled to one hour of  
11 unpaid wages per workweek, and conservatively applying an hourly rate of \$17.00 (which is lower  
12 than the actual average) in effect during the Relevant Period, the amount of unpaid wages in  
13 controversy during the relevant time period is at least \$1,532,754 (90,162 weeks X \$17.00).

14 3. **Plaintiff’s Third Cause of Action – Meal Period Liability under Labor**  
15 **Code § 226.7.**

16 21. Plaintiff’s Third Cause of Action alleges that “Employees were often required to  
17 work or to otherwise remain under Defendants’ control during meal periods while walking  
18 substantial distances to the required break room, or Defendants provided them after Employees  
19 worked beyond the fifth hour of their shifts or Employees otherwise had them shortened and  
20 interrupted by work demands and requirements.” (Exh. A, ¶ 69). Plaintiff further alleges that  
21 “Defendants’ policies and practices thus systematically deny Plaintiff and the Class Members full,  
22 duty-free ten-minute rest periods and thirty-minute, duty free meal periods.” (Exh. A, ¶ 18). And  
23 Plaintiff alleges a “uniform policy” that prevented plaintiff and PCMs from being able to take  
24 timely and full meal periods. (Exh. A, ¶ 19).

25 22. If an employer fails to provide an employee a meal period as required, the employee  
26 may recover one additional hour of pay at the employee’s regular rate of compensation for each  
27 work day that the meal or rest period is not provided. Cal. Labor Code § 226.7. Plaintiff seeks

28 ///

1 unpaid meal period premiums under Cal. Labor Code § 226.7 on behalf of herself and the putative  
2 class. (Exh. A, ¶¶ 70-72, Prayer for Relief.)

3 23. The Complaint does not allege the number of meal periods that were not provided to  
4 Plaintiff or the putative class members. Plaintiff’s allegations regarding the frequency of purported  
5 meal period violations are that it was “often” and a result of systematic and uniform policies. (Exh.  
6 A, ¶¶ 18, 19, 20, 22, 69). Where, as here, Plaintiff alleges a systematic deprivation of rights, and  
7 the plaintiff has alleged a “uniform” policy and practice, it is appropriate to assume a 100 percent  
8 violation rate in calculating the amount in controversy. *See Amaya v. Consolidated Container Co.*,  
9 No. 2:15-cv-03369-SVW-PLA, 2015 WL 4574909 (C.D. Cal. July 28, 2015) (“[C]ourts have  
10 generally found the amount in controversy satisfied where a defendant assumes a 100% violation  
11 rate based on allegations of a ‘uniform’ illegal practice (or other similar language) and where the  
12 plaintiff offers no evidence rebutting this violation rate.”). Even though Defendant could have  
13 relied on a 100 percent violation rate, it conservatively applied a violation rate of two meal period  
14 violations per workweek during the relevant four-year statute of limitations. At the \$17.00 rate, the  
15 amount of missed meal period premiums in controversy during the Relevant Period is **\$3,065,508**  
16 (90,162 weeks X \$17.00 X 2 violations).

17 4. **Plaintiff’s Fourth Cause of Action – Rest Break Liability under Labor**  
18 **Code § 226.7.**

19 24. Plaintiff’s Fourth Cause of Action alleges that “Employees were often required to  
20 work or to otherwise remain under Defendants’ control during rest periods while walking  
21 substantial distances to the required break room, and had breaks provided untimely as a result of  
22 the above described off the clock work. (Exh. A, ¶ 75). Plaintiff further alleges that “Defendants’  
23 policies and practices thus systematically deny Plaintiff and the Class Members full, duty-free ten-  
24 minute rest periods and thirty-minute, duty free meal periods.” (Exh. A, ¶ 18). And Plaintiff  
25 alleges a “uniform policy” that prevented plaintiff and PCMs from being able to take timely and  
26 full rest breaks. (Exh. A, ¶ 19).

27 25. If an employer fails to provide an employee a rest break as required, the employee  
28 may recover one additional hour of pay at the employee’s regular rate of compensation for each

1 work day that the rest break was not provided. Cal. Labor Code § 226.7. Plaintiff seeks unpaid  
2 rest break premiums under Cal. Labor Code § 226.7 on behalf of herself and the putative class.  
3 (Exh. A, ¶¶ 77-79, Prayer for Relief.)

4 26. The Complaint does not allege the number of rest breaks that were not provided to  
5 Plaintiff or the putative class members. Plaintiff’s allegations regarding the frequency of purported  
6 rest break violations are that it was “often” and a result of systematic and uniform policies. (Exh.  
7 A, ¶¶ 18, 19, 75). Where, as here, Plaintiff alleges a systematic deprivation of rights, and the  
8 plaintiff has alleged a “uniform” policy and practice, it is appropriate to assume a 100 percent  
9 violation rate in calculating the amount in controversy. *See Amaya v. Consolidated Container Co.*,  
10 No. 2:15-cv-03369-SVW-PLA, 2015 WL 4574909 (C.D. Cal. July 28, 2015) (“[C]ourts have  
11 generally found the amount in controversy satisfied where a defendant assumes a 100% violation  
12 rate based on allegations of a ‘uniform’ illegal practice (or other similar language) and where the  
13 plaintiff offers no evidence rebutting this violation rate.”). Even though Defendant could have  
14 relied on a 100 percent violation rate, it conservatively applied a violation rate of four rest break  
15 violations per workweek during the relevant four-year statute of limitations. At the \$17.00 rate, the  
16 amount of missed rest break premiums in controversy during the Relevant Period is **\$3,065,508**  
17 (90,162 weeks X \$17.00 X 2 violations).

#### 18 5. Waiting Time Penalties

19 27. Plaintiff seeks waiting time penalties on behalf of herself and members of the  
20 putative class who are no longer employed by Defendant. (*See* Ex. A, ¶ 66.) Cal. Labor Code §  
21 203 provides that “[i]f an employer willfully fails to pay . . . any wages of an employee who is  
22 discharged or who quits, the wages of the employee shall continue as a penalty from the due date  
23 thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not  
24 continue for more than 30 days.” The statute of limitations for penalties under Labor Code §§ 201-  
25 203 is three years. *See* Cal. Civ. Proc. Code § 338(a).

26 28. As stated above, 509 putative class members terminated their employment with  
27 Defendant between September 14, 2015 and October 21, 2018. (Natarajan Decl., ¶ 7). Further,  
28 putative class members worked at least seven hours per day on average. (*Id.*). Thus, according to



1 the allegations in the Complaint, any putative class member whose employment terminated during  
2 the Relevant Period is entitled to 30 days of wages at 7 hours per day as a penalty under California  
3 Labor Code section 203. *See Quintana v. Claire's Stores, Inc.*, No. 13-0368-PSG, 2013 WL  
4 1736671, \*4-6 (N.D. Cal. April 22, 2013) (“As to the waiting time claims, the court finds that  
5 Defendants’ calculations” of thirty-days of waiting time penalties for each putative class member  
6 terminated during the statute of limitations “are supported by Plaintiffs’ allegations and are a  
7 reasonable estimate of the potential value of the claims.”); *Hernandez v. Towne Park, Ltd.*, No. CV  
8 12-02972, 2012 WL 2373372, at \*12 (C.D. Cal. June 22, 2012) (determining that it was reasonable  
9 to infer “that each [formerly employed] class member suffered some form of Labor Code violation  
10 at some point during his or her employment, and was thus entitled to waiting time penalties”).

11 29. Thus, as of the date of this removal, the total amount of potential waiting time  
12 penalties is **\$1,817,130** (509 PCMs X \$17.00 per hour X 7 hours per day X 30 days).

#### 13 **6. Attorneys’ Fees**

14 30. Plaintiff seeks attorneys’ fees on behalf of the putative class. (Ex. A, Prayer for  
15 Relief). Attorneys’ fees are properly included in the amount in controversy. *See, Guglielmino v.*  
16 *McKee Foods Corp.*, 506 F.3d 696, 700 (9th Cir. 2007) (statutorily-mandated attorneys’ fees are  
17 properly included in the amount in controversy for CAFA jurisdiction purposes).

18 31. In class action litigation, courts routinely grant attorneys’ fees awards that range  
19 from 25% to 33% of the settlement or verdict amount. *See, e.g., Hanlon v. Center for Auto Safety*,  
20 150 F.3d 1011, 1029 (9th Cir. 1998) (“This circuit has established 25% of the common fund as a  
21 benchmark award for attorney fees”); *In re Activision Securities Litigation*, 723 F. Supp. 1373,  
22 1378 (N.D. Cal. 1989) (awarding 30% attorneys’ fee award and compiling cases where range of  
23 attorneys’ fee award ranged between 25% and more than 40%). Accordingly, including attorneys’  
24 fees of 25% is reasonable when calculating the amount in controversy. *See, e.g., Giannini v.*  
25 *Northwestern Mut. Life Ins. Co.*, 2012 WL 1535196, at \*4 (N.D. Cal. 2012) (holding that  
26 defendant’s inclusion of attorneys’ fees to satisfy amount in controversy was reasonable where  
27 defendants “base this amount by multiplying by twenty-five percent the sum of the amounts placed  
28 in controversy by the four claims” asserted by plaintiff.); *Jasso v. Money Mart Express, Inc.*, 2012

1 WL 699465, at \*6-7 (N.D. Cal. 2012) (holding that “it was not unreasonable for [Defendant] to  
 2 rely on” an “assumption about the attorneys’ fees recovery as a percentage of the total amount in  
 3 controversy” and noting that “it is well established that the Ninth Circuit ‘has established 25% of  
 4 the common fund as a benchmark award for attorney fees.’”)

5 32. The amount in controversy for the claims discussed above total **\$9,480,900**.  
 6 Twenty-five percent of this amount is **\$2,370,225**. The combined total yields an amount in  
 7 controversy of **\$11,851,125**, which easily exceeds the five million required to establish federal  
 8 jurisdiction under CAFA.

9 **7. Summary of Amount in Controversy**

10 33. As set forth above, the allegations in the Complaint satisfies the requisite \$5 million  
 11 for purposes of removal under CAFA:

<u>Damages</u>	<u>Amount</u>
Alleged Unpaid Minimum Wages	<b>\$1,532,754</b>
Alleged Meal Period Violations	<b>\$3,065,508</b>
Alleged Rest Period Violations	<b>\$3,065,508</b>
Alleged Waiting Time Penalties	<b>\$1,817,130</b>
Attorneys’ Fees	<b>\$2,370,225</b>
<b>TOTAL</b>	<b>\$11,851,125</b>

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 20 This amount is only for the First, Third, Forth, and Eighth Causes of Action. It does not include  
 21 amounts for the Second, Fifth, Sixth, Seventh, and Ninth Causes of action. Thus, by only  
 22 considering four of the plaintiff’s nine causes of action, less than half of plaintiff’s claims,  
 23 Defendant was able to clearly establish that removal under CAFA is proper under CAFA is  
 24 proper under 28 U.S.C. §1332(d).

25 **C. Any Class Member Is A Citizen Of A Different State Than Any Defendant.**

26 34. For purposes of establishing diversity under CAFA, this Court need only find that  
 27 there is diversity between one putative class member and the named Defendant, Defendant. 28  
 28 U.S.C. §§ 1332(d)(2), 1332(d)(5)(B) and 1453(a).

1                   **1.     Citizenship of Defendant**

2           35.     Defendant was at the time of the filing of this action, and still is, a corporation  
3 incorporated under the laws of Illinois. (Galatz Decl. ¶ 4.) Pursuant to 28 U.S.C. § 1332(c), “a  
4 corporation shall be deemed to be a citizen of any State by which it has been incorporated and of  
5 the State where it has its principal place of business.” The U.S. Supreme Court established the  
6 proper test for determining a corporation’s principal place of business for purposes of diversity  
7 jurisdiction in *The Hertz Corporation v. Friend*, 559 U.S. 77 (2010). The Supreme Court  
8 concluded that the “‘principal place of business’ is best read as referring to the place where a  
9 corporation’s officers direct, control, and coordinate the corporation’s activities.” *Id.* at 78. The  
10 Court further clarified that the principal place of business is the place where the corporation  
11 “maintains its headquarters – provided that the headquarters is the actual center of direction,  
12 control, and coordination.” *Id.*

13           36.     Defendant’s principal place of business and the location where its executive and  
14 senior management personnel coordinate its corporate activities is Lake Forest, Illinois. (Galatz  
15 Decl. ¶ 4.)

16           37.     Therefore, at all material times, Defendant has been a citizen of Illinois.

17           38.     There are no other named Defendants in this action. Accordingly, there is no  
18 requirement for anyone else to join in this removal. The citizenship of fictitiously-named “Doe”  
19 defendants is to be disregarded for the purposes of removal based on diversity jurisdiction. 28  
20 U.S.C. § 1441(a).

21                   **2.     Citizenship of Plaintiff and putative class members.**

22           39.     For diversity purposes, a person is a “citizen” of the state in which he or she is  
23 domiciled. *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). A person’s  
24 domicile is the place he or she resides with the intention to remain or to which he or she intends to  
25 return. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001).

26           40.     Plaintiff alleges that she is a resident of California and Stanislaus County, and  
27 “during the time period relevant to this Complaint, was employed by Defendants as a nonexempt  
28 hourly distribution center associate within the State of California at Defendant’s distribution center

1 in Patterson, California and within the County of Stanislaus. (Exh. A ¶ 2.) *See Lew v. Moss*, 797  
2 F.2d 747, 750 (9th Cir. 1986) (“place of employment” an important factor weighing in favor of  
3 citizenship). Therefore, Plaintiff is a citizen of California.

4 41. Members of the proposed class, who by definition are or were employed in  
5 California, are presumed to be primarily citizens of the State of California. *See, Lew* 797 F.2d at  
6 750 (“place of employment” an important factor weighing in favor of citizenship). Thus, even if  
7 Plaintiff was somehow not a citizen of California (despite her allegations) and was instead a citizen  
8 of Illinois (and there is no evidence that is the case), the hundreds of putative class members, all of  
9 whom worked in California (Exh. A ¶¶ 6, 31), are also citizens of California.

10 42. Accordingly, the minimal diversity of citizenship requirements under 28 U.S.C. §  
11 1332(d)(2) are met. Moreover, because Defendant is not a citizen of California, the exceptions to  
12 CAFA jurisdiction under 28 U.S.C. § 1332(d)(3) and (d)(4) are inapplicable.

13 **II. THE PROCEDURAL REQUIREMENTS OF 28 U.S.C. § 1446 ARE SATISFIED**

14 **A. Timeliness**

15 43. As related above, Defendant’s registered agent for service of process was served  
16 with the summons and Complaint on September 27, 2018. True and correct copies of the  
17 documents served on Defendant’s registered agent are attached to this Notice as **Exhibit “A.”**

18 44. A defendant in a civil action has thirty (30) days from the date it is served with a  
19 summons and complaint in which to remove the action to federal court. 28 U.S.C. § 1446(b);  
20 *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-48 (1999). As Defendant’s  
21 registered agent for service of process was served with the summons and Complaint on September  
22 27, 2018, this Notice of Removal is timely. *See* 28 U.S.C. § 1446(b).

23 **B. Procedural Requirements**

24 45. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served  
25 upon Defendant are attached as Exhibits to the Nader Declaration filed concurrently herewith.

26 46. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served  
27 upon counsel for Plaintiff and a copy is being filed with the Clerk of the Superior Court of

28 ///

1 California in Stanislaus County and with the Clerk of the Easter District of California. True and  
2 correct copies of the Notice to the Plaintiff and the state court shall be filed promptly.

3 **III. CONCLUSION**

4 47. This Court, therefore, has original jurisdiction over Plaintiff's claims by virtue of  
5 the Class Action Fairness Act 28 U.S.C. § 1332(d)(2). This action is thus properly removable to  
6 federal court pursuant to 28 U.S.C. § 1441.

7 48. In the event this Court has a question regarding the propriety of this Notice of  
8 Removal, Defendant requests that the Court issue an Order to Show Cause so that Defendant may  
9 have the opportunity to more fully brief the basis for this removal.

10 WHEREFORE, Defendant W.W. GRAINGER INC. removes the above-action to this  
11 Court.

12  
13 DATED: October 26, 2018

OGLETREE, DEAKINS, NASH, SMOAK &  
STEWART, P.C.

14  
15  
16 By: \_\_\_\_\_  
17 Michael J. Nader  
18 Ryan H. Crosner  
19 Attorneys for Defendant  
20 W.W. Grainger, Inc.  
21  
22  
23  
24  
25  
26  
27  
28

# **EXHIBIT A**

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  <b>David Yeremlan &amp; Associates, Inc.</b> <b>535 N Brand Blvd Ste 705</b> <b>Glendale, CA 91203</b> TELEPHONE NO.: <b>(818) 230-8380</b> FAX NO. (Optional):  E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): <b>Plaintiff</b>	FOR COURT USE ONLY  Electronically Filed 10/2/2018 4:51 PM Superior Court of California County of Stanislaus Clerk of the Court By: Lindsey Stringfellow, Deputy
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF STANISLAUS - CENTRAL (EFILING)</b> STREET ADDRESS: 801 10th Street, 4th floor MAILING ADDRESS: 801 10th Street, 4th floor CITY AND ZIP CODE: Modesto, CA 95354 BRANCH NAME: SUPERIOR COURT OF CALIFORNIA, COUNTY OF STANISLAUS - CENTRAL (EFILING)	CASE NUMBER: CV-18-003041
PLAINTIFF/PETITIONER: Selina Rangel DEFENDANT/RESPONDENT: W.W. Grainger, Inc.	Ref. No. or File No.: Rangel v. W.W. Grainger, Inc.
<b>PROOF OF SERVICE SUMMONS</b>	

**BY FAX**

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of: **Summons; Class Action Complaint; Civil Case Cover Sheet; Notice of Case Management Conference;**
3. a. Party served (specify name of party as shown on documents served): **W.W. Grainger, Inc., an Illinois Corporation**  
 b.  Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):  
**Catherine Webb, Agent for CSC**
4. Address where the party was served: **2710 Gateway Oaks Drive 150N Sacramento, CA 95833**
5. I served the party (check proper box)
  - a.  **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on: **9/27/2018 (2) at: 03:27 PM**
  - b.  **by substituted service.** On: at: I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
  - (1)  **(business)** a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
  - (2)  **(home)** a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
  - (3)  **(physical address unknown)** a person of at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
  - (4) I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at  
 the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents:  
 on: from: or  a declaration of mailing is attached.

PLAINTIFF/PETITIONER: Selina Rangel	CASE NUMBER: CV-18-003041
DEFENDANT/RESPONDENT: W.W. Grainger, Inc.	

(5)  I attach a **declaration of diligence** stating actions taken first to attempt personal service.

5. c.  **by mail and acknowledgment of receipt of service.** I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,

(1) on: \_\_\_\_\_ (2) from: \_\_\_\_\_

(3)  with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (*Attach completed Notice and Acknowledgment of Receipt.*) (Code Civ. Proc., § 415.30.)

(4)  to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)

d.  **by other means** (*specify means of service and authorizing code section*):

Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a.  as an individual defendant.
- b.  as the person sued under the fictitious name of (*specify*):
- c.  as occupant.

d.  On behalf of (*specify*): **W.W. Grainger, Inc., an Illinois Corporation** under the following Code of Civil Procedure section:

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> 416.10 (corporation)          | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation)             | <input type="checkbox"/> 416.60 (minor)                               |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee)                 |
| <input type="checkbox"/> 416.40 (association or partnership)      | <input type="checkbox"/> 416.90 (authorized person)                   |
| <input type="checkbox"/> 416.50 (public entity)                   | <input type="checkbox"/> 415.46 (occupant)                            |
|   | <input type="checkbox"/> other:                                       |

7. **Person who served papers**

- a. Name: **Jason Marshall**
- b. Address: **15345 Fairfield Ranch Rd Suite 200, Chino Hills, CA 91709**
- c. Telephone number: **909-664-9577**
- d. The fee for service was: **\$75.00**

- e. I am:
- (1)  not a registered California process server.
  - (2)  exempt from registration under Business and Professions Code section 22350(b).
  - (3)  a registered California process server:
    - (i)  owner  employee  independent contractor.
    - (ii) Registration No.: **1998-61**
    - (iii) County: **Sacramento**

8.  I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Jason Marshall

Date: 10/01/2018



SEP 24 2018

1 DAVID YEREMIAN & ASSOCIATES, INC.  
David Yeremian (SBN 226337)  
2 david@yeremianlaw.com  
Alvin B. Lindsay (SBN 220236)  
3 alvin@yeremianlaw.com  
535 N. Brand Blvd., Suite 705  
4 Glendale, California 91203  
Telephone: (818) 230-8380  
5 Facsimile: (818) 230-0308

PUBLIC ACCESS COPY  
NOT OFFICIAL COURT DOCUMENT

6 UNITED EMPLOYEES LAW GROUP, PC  
Walter Haines (SBN 71075)  
7 whaines@uelg.com  
5500 Bolsa Ave., Suite 201  
8 Huntington Beach, CA 92649  
Telephone: (310) 652-2242

9  
10 Attorneys for Plaintiff SELINA RANGEL,  
on behalf of herself and others similarly situated

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **FOR THE COUNTY OF STANISLAUS**

13 SELINA RANGEL, an individual, on behalf  
of herself and others similarly situated,

Case No.: **CV-18-003041**

14  
15 Plaintiff,

CLASS ACTION

16 vs.

Assigned for All Purposes To:  
Hon.  
Dept.:

17 W.W. GRAINGER, INC., an Illinois  
Corporation; and DOES 1 through 50,  
18 inclusive,

**CLASS ACTION COMPLAINT FOR:**

19 Defendants.

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Violation of Labor Code §§ 226(a)
6. Violation of Labor Code § 221;
7. Violation of Labor Code § 204;
8. Violation of Labor Code § 203; and
9. Violation of Business & Professions Code § 17200 *et seq.*

**DEMAND FOR JURY TRIAL**

1 Plaintiff SELINA RANGEL, (hereinafter “Plaintiff”) on behalf of herself and all others  
2 similarly situated (collectively, “Employees”; individually, “Employee”) complains of  
3 Defendants, and each of them, as follows:

4 **INTRODUCTION**

5 1. Plaintiff brings this action on behalf of herself and all current and former  
6 Employees within the State of California who, at any time from four (4) years prior to the filing of  
7 this lawsuit, are or were employed as non-exempt, hourly distribution center associates by  
8 Defendants W.W. GRAINGER, INC. and DOES 1 through 50 (all defendants being collectively  
9 referred to herein as “Defendants”). Plaintiff alleges that Defendants, and each of them, violated  
10 various provisions of the California Labor Code, relevant orders of the Industrial Welfare  
11 Commission (IWC), and the California Business & Professions Code, and seeks redress for these  
12 violations.

13 2. Plaintiff is a resident of California and Stanislaus County, and during the time  
14 period relevant to this Complaint, was employed by Defendants as a non-exempt hourly  
15 distribution center associate within the State of California at Defendants’ distribution center in  
16 Patterson, California and within the County of Stanislaus.

17 3. Plaintiff and the other similarly situated distribution center Employees of  
18 Defendants worked in the Supply Chain category and Order Fulfilment portion of the operations,  
19 and consistently worked at Defendants’ behest without being paid all wages due. More  
20 specifically, Defendants employed Plaintiff and the other similarly situated distribution center  
21 associates to perform assigned warehouse functions utilizing company established processes,  
22 policies, and procedures, with job responsibilities including but not limited to unloading, put-  
23 away, sorting, labeling, picking, packing, replenishing, auditing, shipping, making boxes,  
24 performing housekeeping duties, and similar and related duties. Upon information and belief,  
25 Plaintiff was employed by Defendants and (1) shared similar job duties and responsibilities; (2)  
26 was subjected to the same policies and practices; and (3) endured similar violations at the hands of  
27 Defendants as the other Employee Class members who served in similar and related positions.

28 4. Defendants required Plaintiff and the Employees in the Class to work off the clock

1 and failed to record accurate time worked by these Employees, including by rounding hours  
2 worked to the nearest quarter-hour or half-hour to their detriment, failed to pay them at the  
3 appropriate rates for all hours worked, and provided Plaintiff and the Class members with  
4 inaccurate wage statements that prevented them from learning of these unlawful pay practices.  
5 Defendants also failed to provide Plaintiff and the Class with lawful meal and rest periods, as  
6 Employees were not provided with the opportunity to take full uninterrupted and duty-free rest  
7 periods and meal breaks as required by the Labor Code.

8         5. Defendant W.W. GRAINGER, INC. is an Illinois corporation, and its Fact Book,  
9 available through its web-site, explains that: “W.W. Grainger, Inc. is a broad line, business-to-  
10 business distributor of maintenance, repair and operating (MRO) supplies and other related  
11 products and services. More than 3 million businesses and institutions worldwide rely on Grainger  
12 for products ...”, including customers in the commercial, government, healthcare and  
13 manufacturing fields. Defendants’ Fact Book further explains the Distribution Centers where  
14 Plaintiff and the Class members worked offer an “endless” assortment of products “across all  
15 business-to-business categories at competitive prices.” Upon information and belief, thousands of  
16 suppliers provide Defendants with millions of products stocked at Defendants’ distribution centers  
17 and branch store location. Plaintiff and the other similarly situated distribution center Employees  
18 of Defendants worked in the Supply Chain category and Order Fulfilment portion of the  
19 operations, with the majority of the MRO products purchased by Defendants’ customers being  
20 shipped directly from Defendants to their customers.

21         6. Upon information and belief, W.W. GRAINGER, INC. operates distribution  
22 centers throughout California, including in Mira Loma, California in Riverside County and in  
23 Patterson, California in Stanislaus County, where Plaintiff worked. W.W. GRAINGER, INC. lists  
24 is principal executive office in Lake Forest, Illinois, and lists a principal California office in  
25 Riverside, California. W.W. GRAINGER, INC. was also listed as the employer on the wage  
26 statements issued to Plaintiff. W.W. Grainger, Inc. describes its type of business with the  
27 California Secretary of State as “Distribution.” The wage statements Defendant issued to Plaintiff,  
28 and upon information and belief the other Class members, listed Defendant as the employer, with

1 the Lake Forest, Illinois address.

2 7. This Court has jurisdiction over this Action pursuant to California Code of Civil  
3 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought  
4 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California  
5 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district  
6 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the  
7 obligations and liabilities giving rise to this lawsuit occurred in part in the County of Stanislaus  
8 and Defendant W.W. GRAINGER, INC. maintains and operates facilities in Patterson, California,  
9 thus employing Plaintiff and other Class members in Stanislaus County, as well as throughout  
10 California.

11 8. The true names and capacities, whether individual, corporate, associate, or  
12 whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently  
13 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of  
14 Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that Defendants  
15 designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in  
16 some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend  
17 this Complaint to reflect the true names and capacities of the Defendants designated herein as  
18 Does 1 through 50 when their identities become known.

19 9. Plaintiff is informed and believes and thereon alleges that each Defendant acted in  
20 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried  
21 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of  
22 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in  
23 all respects as the employers or joint employers of Employees. Defendants, and each of them,  
24 exercised control over the wages, hours or working conditions of Employees, or suffered or  
25 permitted Employees to work, or engaged, thereby creating a common law employment  
26 relationship, with Employees. Therefore, Defendants, and each of them, employed or jointly  
27 employed the Employee Class members.

28 ///

**FACTUAL BACKGROUND**

1  
2 10. The Employees who comprise the Class, including Plaintiff, are non-exempt  
3 employees pursuant to the applicable Wage Order of the IWC. Defendants hire Employees who  
4 work in non-exempt positions at the direction of Defendants in the State of California. Plaintiff  
5 and the Class members were either not paid by Defendants for all hours worked or were not paid  
6 at the appropriate minimum, regular and overtime rates. Plaintiff also contends that Defendants  
7 failed to pay Plaintiff and the Class members all wages due and owing, including by unlawful  
8 rounding to their detriment or under-recording of hours worked, made unlawful deductions from  
9 their pay, failed to provide meal and rest breaks, and failed to furnish accurate wage statements,  
10 all in violation of various provisions of the California Labor Code and applicable Wage Orders.

11 11. During the course of Plaintiff and the Class members' employment with  
12 Defendants, they were not paid all wages they were owed, including for all work performed  
13 (resulting in "off the clock" work) and for all overtime hours worked, and were forced to work  
14 off-the-clock in part due to difficult to attain production requirements and demands Defendants'  
15 managers placed upon them and also due to security screening requirements and other pre and  
16 post work shift duties performed and hours Employees were under Defendants' control for which  
17 they were not compensated. Plaintiff and the Class generally worked five days per work week,  
18 with shifts generally ranging from eight to twelve hours for full time employees. Plaintiff's  
19 distribution center operated through multiple shifts, and Plaintiff was generally assigned to work  
20 the graveyard shift, or some portion of it, for which she and other similarly situated Employees  
21 received a 50 cent per hour shift differential for working shifts during the midnight to morning  
22 time frame. Plaintiff would begin her work shifts either around midnight to 1:00 a.m. if she was  
23 working an extended shift calling for overtime or else a shift from approximately 3:00 a.m. to  
24 3:30 a.m. through 11:30 a.m. or noon. Defendant automatically deducted thirty-minute meal  
25 periods from Plaintiff, upon information and belief, despite the fact meal periods provided were  
26 shortened or were otherwise interrupted or provided untimely after five hours of shift work.

27 12. Plaintiff would arrive at her distribution center and park, usually at least 20  
28 minutes before her scheduled shift start time (for example at 3:30 a.m.) so she could pass through

1 security screening, receive her scan gun and supplies and instructions, and then get changed into  
2 work shoes and put items in a locker in the break room, and would then would be required to be  
3 at her shift start up meeting at 3:30 a.m. sharp. If she was late, she would be counseled and feared  
4 losing her job. However, she and the other similarly situated Employees were required to  
5 complete work and were under Defendants' control before arriving at the shift start meeting  
6 location, including passing through security and getting prepared for work and situated in the  
7 break room with personal items stored in a locker. More specifically, upon entering her  
8 distribution center, Plaintiff and the other Employees had to wait in line to approach a first  
9 security window where a guard would inspect any purses or items brought in and would inspect  
10 the Employee and complete security screening. Plaintiff and the distribution center associates  
11 then proceeded to a second window, where they would receive scanners and other information  
12 and tools necessary for performing their job duties. They would then proceed to the break room,  
13 put items away in a locker if they needed to and change into work shoes and necessary clothing  
14 for the shift, and then walk to the start up meeting location. The security screening usually took  
15 anywhere from 3-5 minutes to complete and it took further time to go to the break room and then  
16 proceed to the start-up, with the whole process generally taking 15 minutes or so to complete.  
17 Plaintiff and the other distribution center associates in the Class were thus required to be under  
18 control of Defendant and working for approximately 15 minutes before their scheduled shifts  
19 began. They were also required to be standing at their start up meeting and present exactly at the  
20 shift start time, which meant Class members had to be in the building and under Defendants'  
21 control before they were considered to be on the clock by Defendants. A similar process occurred  
22 at the end of a work shift, when the Employees were required to remain under Defendants'  
23 control to walk from work stations to the break room and then gather their personal items and  
24 pass back through security to then walk to their vehicles.

25 13. Defendants' timekeeping policies and practices, which upon information and  
26 belief applied to all distribution center employees uniformly, did not record actual time punches  
27 in and out for work shifts and meal periods. Defendants did not utilize any time clocks positioned  
28 throughout the center for Class members to scan a badge or provide a finger print or any other

1 sort of real time electronic timekeeping records of when Plaintiff and the Class began and ended  
2 work shifts and meal periods. Instead, Defendant positioned several company computers in or  
3 near the breakroom which included a timekeeping system where Plaintiff and the Class members  
4 were required to input manually their own work times worked and the times when they allegedly  
5 took meal periods. However, Plaintiff and the other distribution center associates were not  
6 permitted to input their actual and real times worked. Instead, they were instructed by Defendants  
7 and their managers to input times which were rounded down to their substantial detriment to the  
8 nearest 30 minute or 15-minute increments and to input shift start and end times and meal start  
9 and end times based on their work schedules, and not based on the hours they actually worked in  
10 reality. If times other than the scheduled work hours were inputted, Employees would be  
11 counselled by managers. The Employees were not able to access the timekeeping system through  
12 their own computers or mobile devices, as one would through the internet, and the computers  
13 were the only means afforded to Employees for inputting their time. However, due to the limited  
14 number of computers and the time it took to input times, there was usually a line to use them,  
15 especially during breaks, and the system essentially required Plaintiff and the Class members to  
16 input their daily work hours either during their breaks or when they were off the clock and not  
17 being compensated. Thus Plaintiff and the Class members were systematically underpaid for their  
18 hours worked by virtue of the above detailed uncompensated time and Defendant's willful failure  
19 to comply with the Labor Code's record keeping requirements.

20 14. Defendants' policies and practices also required Plaintiff and the Class members to  
21 round down their time to their detriment. Rather than paying Plaintiff and the Class members for  
22 all hours and minutes they actually worked, Defendants followed a uniform policy and practice of  
23 rounding all time entries to the nearest quarter-hour or half-hour (i.e. to the nearest 15-minute or  
24 30-minute time increment), and generally did so to the detriment of the Employees, and Plaintiff  
25 contends this policy is not neutral and resulted, over time, to the detriment of the Class members  
26 by systematically undercompensating them. Rather than reflecting the actual hours worked by  
27 Plaintiff and the Class members, the time punches Plaintiff was required to input into Defendants'  
28 computers were rounded and reduced to reflect the scheduled work time rather than the actual

1 hours worked. These unlawfully rounded time entries were inputted into Defendants' payroll  
2 system from which wage statements and payroll checks were created. By implementing policies,  
3 programs, practices, procedures and protocols which rounded the hours worked by Class  
4 members down to their detriment and systematically failed to pay for all hours worked,  
5 Defendants' willful actions resulted in the systematic underpayment of wages to Class members,  
6 including underpayment of overtime pay to Class members over the relevant time period. For  
7 example, the above described off the clock work addressed above caused Plaintiff to begin  
8 receiving overtime pay later than she should have.

9 15. Defendants paid shift differentials to Plaintiff and the similarly situated Employees  
10 working the later shifts, but failed to correctly calculate the regular rate of pay Defendants used to  
11 calculate and pay overtime to the Employees, including by failing to factor the shift differential  
12 into the regular rate for the regular work week hours. Defendants also required Plaintiff and the  
13 Class members to work performing job duties while off the clock and without pay, including by  
14 unlawful rounding, or provided shortened or untimely breaks. Defendants have also either failed  
15 to maintain timekeeping records for Plaintiff that would permit discovery into the nature and  
16 extent of Defendants' unlawful rounding or have refused to produce them to Plaintiff in response  
17 to a timely request to be provided with them.

18 16. As a result of the above described unlawful rounding and requirements to work off  
19 the clock, the failure to calculate and pay wages at the correct rates, and the other wage violations  
20 they endured at Defendants' hands, Plaintiff and the Class members were not properly paid all  
21 wages earned and all wages owed to them by Defendants, including when working more than  
22 eight (8) hours in any given day and/or more than forty (40) hours in any given week. As a result  
23 of Defendants' unlawful policies and practices, Plaintiff and Class members incurred overtime  
24 hours worked for which they were not adequately and completely compensated, in addition to the  
25 hours they were required to work off the clock. To the extent applicable, Defendants also failed to  
26 pay Plaintiff and the Class members at an overtime rate of 1.5 times the regular rate for the first  
27 eight hours of the seventh consecutive work day in a week and overtime payments at the rate of 2  
28 times the regular rate for hours worked over eight (8) on the seventh consecutive work day, as



1 required under the Labor Code and applicable IWC Wage Orders. Defendants also failed to  
2 correctly calculate the regular rate used to calculate and pay overtime by failing to correctly  
3 factor in the shift differential Defendants paid to Plaintiff and other similarly situated Employees.

4 17. Therefore, from at least four (4) years prior to the filing of this lawsuit and  
5 continuing to the present, Defendants had a consistent policy or practice of failing to pay  
6 Employees for all hours worked, and failing to pay minimum wages for all time worked, as  
7 required by California law. Also, from at least four (4) years prior to the filing of this lawsuit and  
8 continuing to the present, Defendants had a consistent policy or practice of failing to pay  
9 Employees overtime compensation at premium overtime rates for all hours worked in excess of  
10 eight (8) hours a day and/or forty (40) hours a week, and double-time rates for all hours worked in  
11 excess of twelve (12) hours a day, in violation of Labor Code § 510 and the corresponding  
12 sections of IWC Wage Orders.

13 18. Additionally, Defendants failed to provide all the legally required unpaid, off-duty  
14 meal periods and all the legally required paid, off-duty rest periods to Plaintiff and the other Class  
15 members, as required by the applicable Wage Order and Labor Code. Defendants generally  
16 provided a break schedule tailored to the shift which would schedule a first and second 15-minute  
17 rest period and a single 30-minute meal period in between. Defendants did not schedule a second  
18 meal period on shifts over ten hours, and instead added a third rest period of ten minutes after the  
19 second 15-minute rest period. However, these rest and meal periods were impermissibly shortened  
20 due to the distance employees had to walk to get to the break room. Employees were required by  
21 Defendants managers to take their rest breaks and usually took meal periods in the break room.  
22 However, the distribution centers are huge facilities covering a large area, and Employees are  
23 stationed throughout the center such that it usually takes at least 3-4 minutes to walk to the break  
24 room for a break. Therefore, Plaintiff and the Class members were required to spend as much as 8-  
25 10 minutes of any break dedicated to walking to and from the break room. Defendants' policies  
26 and practices thus systematically deny Plaintiff and the Class members full, duty-free ten-minute  
27 rest periods and thirty-minute, duty-free meal periods. The California Supreme Court has  
28 instructed that the rest period requirement "obligates employers to permit-and authorizes

1 employees to take-off-duty rest periods. That is, during rest periods employers must relieve  
2 employees of all duties and relinquish control over how employees spend their time.” Plaintiff and  
3 the Class members were and are under Defendants’ control when they are walking to a break room  
4 where they are required to go, and an employer cannot impose any restraints on employees not  
5 inherent in the rest period requirement itself. Defendants have provided either impermissibly  
6 shortened or untimely meal and rest breaks to Plaintiff and the Class members.

7 19. Additionally, Defendants’ enforced a uniform policy that prevented Plaintiff and  
8 the Class members from leaving the distribution center premises during their rest breaks. As for  
9 meal periods, Employees are permitted leave the premises, but to the extent Employees have to  
10 spend time to pass through security after the above described walking distance and leave the  
11 premises and return during a meal period, they are still impermissibly shortened, as addressed  
12 above. Upon information and belief, there was no bell system or other alert to let Employees know  
13 when a break was supposed to begin. Instead, Plaintiff and the Class members would work until a  
14 scheduled time arrived, and if they began walking towards the break room before their schedule  
15 times, then they would be counseled by their managers to keep working. Given the above  
16 described off the clock work, these breaks were also frequently untimely, with meal periods being  
17 provided after the fifth hour of work on a shift or rest break being authorized and permitted after  
18 four hours of work, or major fraction thereof. As detailed above, meal periods and rest breaks  
19 were also impermissibly shortened due to the great distances the class members were required to  
20 walk to get to the break room or to pass through security and exit the building and return, and  
21 Plaintiff and the Class members were required to perform work duties and remain under  
22 Defendant’s control during meal periods and rest breaks, including by logging into the company’s  
23 timekeeping computers to input shift and break start and end times, in conformance with what  
24 management instructed them to input.

25 20. Defendants also did not have a policy or practice which provided or recorded all the  
26 legally required unpaid, off-duty meal periods and all the legally required paid, off-duty rest  
27 periods to Plaintiff and the other Class members. Plaintiff and other Class members were required  
28 to perform work as ordered by Defendants for more than five (5) hours during a shift, but were

1 often required to do so without receiving a compliant meal break. Defendants' managers and  
2 management were aware of Plaintiff and the Class member having to walk great distances to get to  
3 the break room and also set the schedules of when Employees were supposed to take breaks.  
4 Plaintiff was also required to meet difficult to attain productivity standards throughout the Class  
5 period, and she would be counseled if her productivity fell below 100%. When combined with  
6 instructions from Defendant to conform timekeeping records to shift schedules and the pressure to  
7 work through breaks, this productivity pressure further compelled Plaintiff, and upon information  
8 and belief the Class members, to incur substantial hours worked "off the clock" for which they  
9 were not compensated and to perform work duties or remain under Defendants' control during  
10 breaks, and this off the clock work combined with Defendants' scheduling practices in turn led to  
11 meal periods being provided after the fifth hour of work and rest periods not being authorized and  
12 permitted for every four hours or major fraction thereof.

13 21. On the occasions when Employees in the Class worked over 10 hours in a shift,  
14 Defendants also failed to provide them with a second meal period. As a result, Defendants' failure  
15 to provide the Plaintiff and the Class members with all legally required off-duty, unpaid meal  
16 periods and all the legally required off-duty, paid rest periods is and will be evidenced by  
17 Defendants' business records, or lack thereof. Defendants have either failed to maintain required  
18 records of when meal periods were actually provided or failed to produce them in response to  
19 Plaintiff's timely and lawful requests. Defendants' management also instructed Employees to  
20 input time entries to conform to their shift schedules rather than to reflect actual times worked.  
21 Defendants also failed to pay Employees "premium pay," i.e. one hour of wages at each  
22 Employee's effective hourly rate of pay, for each meal period or rest break that Defendants failed  
23 to provide or deficiently provided. While Defendant may contend that it paid Plaintiff and the  
24 Class Members for on-duty meal periods for thirty (30) minutes in a shift, the fact that the  
25 opportunity to take meal periods timely or for their full duration was not provided to Plaintiff and  
26 the Class members, including by requiring them to walk for generally five (5) to ten (10) minutes  
27 during their meal periods, requires Defendant to pay premium wages of one full hour of regular  
28 wages for each unprovided or untimely or impermissibly shortened meal period.

1           22.     Therefore, for at least four years prior to the filing of this action and through to the  
2 present, Plaintiff and the Class members were unable to take off-duty breaks or were otherwise not  
3 provided with the opportunity to take required breaks due to Defendants' policies and practices.  
4 On the occasions when Plaintiff and the Class members were provided with a meal period, it was  
5 often untimely or interrupted, or was impermissibly shortened, and Employees were not provided  
6 with one (1) hour's wages in lieu thereof. Meal period violations thus occurred in one or more of  
7 the following manners:

- 8           (a)     Class members were not provided full thirty-minute duty free meal periods  
9                   for work days in excess of five (5) hours and were not compensated one (1)  
10                  hour's wages in lieu thereof, all in violation of, among others, Labor Code  
11                  §§ 226.7, 512, and the applicable Industrial Welfare Commission Wage  
12                  Order(s);
- 13           (b)     Class members were not provided second full thirty-minute duty free meal  
14                   periods for work days in excess of ten (10) hours;
- 15           (c)     Class members were required to work through at least part of their daily  
16                   meal period(s);
- 17           (d)     Meal periods were provided after five (5) hours of continuous work during  
18                   a shift; and
- 19           (e)     Class members were restricted in their ability to take a full thirty-minute  
20                   meal period.

21           23.     Plaintiff and the Defendants' Employees in the Class were also not authorized and  
22 permitted to take lawful rest periods, were systematically required by Defendants to work through  
23 or during breaks, and were not provided with one (1) hour's wages in lieu thereof. They were  
24 required to remain on-duty during breaks or portions of their breaks, thus making them either  
25 untimely or shortened and on-duty, and they were also prevented from leaving the premises  
26 during rest breaks under Defendants' policies. Even on the occasions when Defendant provided  
27 15-minute rest periods to Plaintiff and the Class members, they were required to walk to and from  
28 the break room such that they were denied a full ten (10) minutes of net rest per period, or they

1 were untimely due to uncounted off the clock work. Rest period violations therefore arose in one  
2 or more of the following manners:

3 (a) Class members were required to work without being provided a minimum  
4 ten (10) minute rest period for every four (4) hours or major fraction  
5 thereof worked and were not compensated one (1) hour of pay at their  
6 regular rate of compensation for each workday that a rest period was not  
7 provided;

8 (b) Class members were not authorized and permitted to take timely rest  
9 periods for every four hours worked, or major fraction thereof; and

10 (c) Class members were required to remain on-duty during rest periods or  
11 otherwise had their rest periods interrupted by work demands.

12 24. From at least four (4) years prior to the filing of this lawsuit and continuing to the  
13 present, Defendants have consistently violated Labor Code § 221 by unlawfully collecting or  
14 deducting the Employees' earned wages, including by the above described off the clock work and  
15 rounding. By not compensating Employees for all hours worked, Defendant unlawfully deducted  
16 wages earned by and owed to Plaintiff and the Class members, in violation of Labor Code § 221.

17 25. As a result of these illegal policies and practices, Defendants engaged in and  
18 enforced the following additional unlawful practices and policies against Plaintiff and the Class  
19 members she seeks to represent:

20 a. failing to pay all wages owed to Class members who either were discharged, laid  
21 off, or resigned in accordance with the requirements of Labor Code §§ 201, 202,  
22 203;

23 b. failing to pay all wages owed to the Class members twice monthly in accordance  
24 with the requirements of Labor Code § 204;

25 c. failing to pay Class members all wages owed, including all meal and rest period  
26 premium wages;

27 d. failing to maintain accurate records of Class members' earned wages and meal  
28 periods in violation of Labor Code §§ 226 and 1174(d) and section 7 of the

1 applicable IWC Wage Orders; and

2 e. failing to produce timekeeping records in response to Plaintiff's timely and lawful  
3 request to receive them under these authorities.

4 26. From at least four (4) years prior to the filing of this lawsuit, and continuing to the  
5 present, Defendants have also consistently failed to provide Employees with timely, accurate, and  
6 itemized wage statements, in writing, as required by California wage-and-hour laws, including by  
7 the above-described requirement of off the clock work, unlawful rounding to the detriment of  
8 Employees, and incorrect calculation of the regular rate used to calculate and pay overtime.  
9 Defendants have also made it difficult to account with precision for the unlawfully withheld meal  
10 and rest period compensation owed to Plaintiff and the Class, during the liability period, because  
11 they did not implement and preserve a record-keeping method as required for non-exempt  
12 employees by California Labor Code §§ 226, 1174(d), and paragraph 7 of the applicable  
13 California Wage Orders. Upon information and belief, time clock punches were not maintained, or  
14 were not accurately maintained, for work shifts and meal periods, which were automatically  
15 presumed by Defendants to have been lawfully provided when they were not. Defendants also  
16 failed to accurately record and pay for all regular and overtime hours worked and submitted by  
17 Plaintiff and the Class members, as Defendants' policy of unlawfully rounding time entries to the  
18 detriment of Employees and compelling Employees to input time entries corresponding to their  
19 shift schedules rather than their actual hours worked, resulted in changed timekeeping records and  
20 corresponding payroll records reflecting that Employees worked less hours than they actually  
21 worked.

22 27. Defendants have thus also failed to comply with Labor Code § 226(a) by  
23 inaccurately reporting total hours worked and total wages earned by Plaintiff and the Class  
24 members, along with the appropriate applicable rates, among others requirements. Plaintiff and  
25 Class members are therefore entitled to penalties not to exceed \$4,000.00 for each employee  
26 pursuant to Labor Code § 226(b). Defendants have also failed to comply with paragraph 7 of the  
27 applicable California IWC Wage Orders by failing to maintain time records showing when the  
28 employee begins and ends each work period, meal periods, wages earned pursuant to Labor Code

1 § 226.7, and total daily hours worked by itemizing in wage statements all deductions from  
2 payment of wages and accurately reporting total hours worked by the Class members.

3 28. From at least four (4) years prior to filing this lawsuit and continuing to the present,  
4 Defendants have thus also had a consistent policy of failing to pay all wages owed to Plaintiff and  
5 other similarly situated Employees at the time of their termination of within seventy-two (72)  
6 hours of their resignation, as required by California wage-and-hour laws.

7 29. In light of the foregoing, Plaintiff and the Employees in the Class bring this action  
8 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.7, 510,  
9 511, 512, 558, 1174, 1185, 1194, 1194.2, and 1197 and California Code of Regulations, Title 8,  
10 section 11000 *et seq.*,

11 30. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiff  
12 and the Class members seek injunctive relief, restitution, and disgorgement of all benefits  
13 Defendants have enjoyed from their violations of Labor Code and the other unfair, unlawful, or  
14 fraudulent practices alleged in this Complaint.

15 **CLASS ALLEGATIONS**

16 31. Plaintiff brings this class action on behalf of herself and all others similarly situated  
17 pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (or “the Class” or  
18 “Class members”) defined as follows: “All individuals employed by Defendants at any time  
19 during the period of four (4) years prior to the filing of this lawsuit and ending on a date as  
20 determined by the Court (“the Class Period”), and who have been employed as non-exempt,  
21 hourly employees at Defendants’ distribution centers within the State of California.”

22 Further, Plaintiff seeks to represent the Subclasses composed of and defined as follows:

23 a. Subclass 1. Minimum Wages Subclass. All Class members who were not  
24 compensated for all hours worked for Defendants at the applicable minimum wage.

25 b. Subclass 2. Wages and Overtime Subclass. All Class members who were not  
26 compensated for all hours worked for Defendants at the required rates of pay, including for all  
27 hours worked in excess of eight in a day and/or forty in a week.

28 c. Subclass 3. Meal Period Subclass. All Class members who were subject to

1 Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-  
2 free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.

3 d. Subclass 4. Rest Break Subclass. All Class members who were subject to  
4 Defendants' policy and/or practice of failing to authorize and permit Employees to take  
5 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction  
6 thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.

7 f. Subclass 5. Wage Statement Subclass. All Class members who, within the  
8 applicable limitations period, were not provided with accurate itemized wage statements.

9 g. Subclass 6. Unauthorized Deductions from Wages Subclass. All Class members  
10 who were subject to Defendants' policy and/or practice of deducting wages earned from their pay,  
11 including by requiring off the clock work and by rounding down hours worked.

12 h. Subclass 7. Failure to Timely Pay Wages Twice Monthly Subclass. All Class  
13 members who were subject to Defendants' policy and practice of not timely paying all wages  
14 earned when they were due and payable at least twice monthly.

15 i. Subclass 8. Termination Pay Subclass. All Class members who, within the  
16 applicable limitations period, either voluntarily or involuntarily separated from their employment  
17 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon  
18 termination.

19 j. Subclass 9. UCL Subclass. All Class members who are owed restitution as a result  
20 of Defendants' business acts and practices, to the extent such acts and practices are found to be  
21 unlawful, deceptive, and/or unfair.

22 32. Plaintiff reserves the right under California Rule of Court 3.765 to amend or  
23 modify the class description with greater particularity or further division into subclasses or  
24 limitation to particular issues. To the extent equitable tolling operates to toll claims by the Class  
25 against Defendants, the Class Period should be adjusted accordingly.

26 33. Defendants, as a matter of company policy, practice and procedure, and in violation  
27 of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements,  
28 and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged



1 in a practice whereby Defendants failed to correctly calculate compensation for the time worked  
2 by the Plaintiff and the other members of the Class, even though Defendants enjoyed the benefit of  
3 this work, required Employees to perform this work and permitted or suffered to permit this work.  
4 Defendants have uniformly denied these Class members wages to which these employees are  
5 entitled, and failed to provide meal periods or authorize and permit rest periods, in order to  
6 unfairly cheat the competition and unlawfully profit.

7 34. This action has been brought and may properly be maintained as a class action  
8 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community  
9 of interest in litigation and proposed class is easily ascertainable.

10 **A. Numerosity**

11 35. The potential members of the class as defined are so numerous that joinder of all  
12 the member of the class is impracticable. While the precise number of class member has not been  
13 determined at this time, Plaintiff is informed and believes that Defendants employ or, during the  
14 time period relevant to this lawsuit, at least hundreds of Employees who satisfy the Class  
15 definition within the State of California.

16 36. Accounting for employee turnover during the relevant time period increases this  
17 number substantially. Plaintiff alleges that Defendants' employment records will provide  
18 information as to the number and location of all class members.

19 **B. Commonality**

20 37. There are questions of law and fact common to the Class that predominate over any  
21 questions affecting only individual Class members. These common questions of law and fact  
22 include:

- 23 a. Whether Defendants failed to pay Employees minimum wages;
- 24 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 25 c. Whether Defendants failed to pay Employees overtime as required under Labor  
26 Code § 510;
- 27 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable  
28 IWC Wage Orders, by failing to provide Employees with requisite meal periods or

1 premium pay in lieu thereof;

2 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage  
3 Orders, by failing to authorize and permit Employees to take requisite rest breaks  
4 or provide premium pay in lieu thereof;

5 f. Whether Defendants violated Labor Code § 226(a) by providing Employees with  
6 inaccurate wage statements;

7 g. Whether Defendants violated Labor Code § 221;

8 h. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay  
9 wages and compensation due and owing at the time of termination of employment;

10 i. Whether Defendants' conduct was willful;

11 j. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage  
12 Orders by failing to maintain accurate records of Class members' earned wages and  
13 work periods;

14 k. Whether Defendants violated Labor Code § 1194 by failing to compensate all  
15 Employees during the relevant time period for all hours worked, whether regular or  
16 overtime;

17 l. Whether Defendants violated Labor Code § 204 by failing to pay Employees all  
18 wages earned at least twice monthly;

19 m. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and

20 n. Whether Employees are entitled to equitable relief pursuant to Business and  
21 Professions Code § 17200 *et seq.*

22 **C. Typicality**

23 38. The claims of the named plaintiff are typical of those of the other Employees. The  
24 Employee Class members all sustained injuries and damages arising out of and caused by  
25 Defendants' common course of conduct in violation of statutes, as well as regulations that have  
26 the force and effect of law, as alleged herein.

27 **D. Adequacy of Representation**

28 39. Plaintiff will fairly and adequately represent and protect the interest of the

1 Employees. Counsel who represents the Employees are experienced and competent in litigating  
2 employment class actions.

3 **E. Superiority of Class Action**

4 40. A class action is superior to other available means for the fair and efficient  
5 adjudication of this controversy. Individual joinder of all Employees is not practicable, and  
6 questions of law and fact common to all Employees predominate over any questions affecting only  
7 individual Employees. Each Employee has been damaged and is entitled to recovery by reason of  
8 Defendants' illegal policies or practices of failing to compensate Employees properly.

9 41. As to the issues raised in this case, a class action is superior to all other methods for  
10 the fair and efficient adjudication of this controversy, as joinder of all Class members is  
11 impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class  
12 members. Further, as the economic or other loss suffered by vast numbers of Class members may  
13 be relatively small, the expense and burden of individual actions makes it difficult for the Class  
14 members to individually redress the wrongs they have suffered. Moreover, in the event  
15 disgorgement is ordered, a class action is the only mechanism that will permit the employment of  
16 a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in  
17 managing this case as a class action, and proceeding on a class-wide basis will permit Employees  
18 to vindicate their rights for violations they endured which they would otherwise be foreclosed  
19 from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to them.

20 42. Class action treatment will allow those persons similarly situated to litigate their  
21 claims in the manner that is most efficient and economical for the parties and the judicial system.  
22 Plaintiff is unaware of any difficulties in managing this case that should preclude class treatment.  
23 Plaintiff contemplates the eventual issuance of notice to the proposed Class members that would  
24 set forth the subject and nature of the instant action. The Defendants' own business records can be  
25 utilized for assistance in the preparation and issuance of the contemplated notices. To the extent  
26 that any further notice is required additional media and/or mailings can be used.

27 43. Defendants, as prospective and actual employers of the Employees, had a special  
28 fiduciary duty to disclose to prospective Class members the true facts surrounding Defendants'

1 pay practices, policies and working conditions imposed upon the similarly situated Employees as  
2 well as the effect of any alleged arbitration agreements that may have been forced upon them. In  
3 addition, Defendants knew they possessed special knowledge about pay practices and policies,  
4 most notably intentionally refusing to pay for all hours actually worked which should have been  
5 recorded in Defendants' pay records and the consequence of the alleged arbitration agreements  
6 and policies and practices on the Employees and Class as a whole.

7 44. Plaintiff and the Employees in the Class did not discover the fact that they were  
8 entitled to all pay under the Labor Code until shortly before the filing of this lawsuit nor was there  
9 ever any discussion about Plaintiff's and the Class' wavier of their Constitutional rights of trial by  
10 jury, right to collectively organize and oppose unlawful pay practices under California law as well  
11 as obtain injunctive relief preventing such practices from continuing. As a result, the applicable  
12 statutes of limitation were tolled until such time as Plaintiff and the Class members discovered  
13 their claims.

14 **FIRST CAUSE OF ACTION**  
15 **FAILURE TO PAY MINIMUM WAGES,**  
16 **(Against All Defendants)**

17 45. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in  
18 full herein.

19 46. Defendants failed to pay Employees minimum wages for all hours worked.  
20 Defendants had a consistent policy of requiring Employees to misstate their time records to  
21 conform to scheduled shift times rather than actual hours worked and failing to pay Employees  
22 for all hours worked. Employees would work hours and not receive wages, including as alleged  
23 above in connection with off the clock work, including all the time required to pass through  
24 security screenings, and regarding rounding of timekeeping entries and requiring Class members  
25 to remain on duty and under Defendants' control while walking to a break room during breaks  
26 and due to the production and other demands placed upon them by Defendants' management.  
27 Defendants, and each of them, have also intentionally and improperly rounded, changed, adjusted  
28 and/or modified Employee hours, or required Employees to do so, and imposed difficult to attain

1 job and shift scheduling requirements on Plaintiff and the Class members, which resulted in off  
2 the clock work and underpayment of all wages owed to Employees over a period of time, while  
3 benefiting Defendants. During the relevant time period, Defendants thus regularly failed to pay  
4 minimum wages to Plaintiff and the Class members, including by unlawful rounding to their  
5 detriment any by requiring systematic off the clock work. Defendants' uniform pattern of  
6 unlawful wage and hour practices manifested, without limitation, applicable to the Class as a  
7 whole, as a result of implementing a uniform policy and practice that denied accurate  
8 compensation to Plaintiff and the other members of the Class as to minimum wage pay.

9       47. In California, employees must be paid at least the then applicable state minimum  
10 wage for all hours worked. (IWC Wage Order MW-2014). Additionally, pursuant to California  
11 Labor Code § 204, other applicable laws and regulations, and public policy, an employer must  
12 timely pay its employees for all hours worked. Defendants failed to do so.

13       48. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"  
14 states: "The minimum wage for employees fixed by the commission is the minimum wage to be  
15 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful."

16       49. The applicable minimum wages fixed by the commission for work during the  
17 relevant period is found in the Wage Orders.

18       50. The minimum wage provisions of California Labor Code are enforceable by private  
19 civil action pursuant to Labor Code § 1194(a) which states: "Notwithstanding any agreement to  
20 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal  
21 overtime compensation applicable to the employee is entitled to recover in a civil action the  
22 unpaid balance of the full amount of this minimum wage or overtime compensation, including  
23 interest thereon, reasonable attorney's fees and costs of suit."

24       51. As described in California Labor Code §§ 1185 and 1194.2, any action for wages  
25 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,  
26 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage  
27 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for  
28

1 all hours worked. All hours must be paid at the statutory or agreed rate and no part of this rate may  
2 be used as a credit against a minimum wage obligation.

3 52. In committing these violations of the California Labor Code, Defendants  
4 inaccurately recorded, or required Plaintiff and the Class members to input times that did not  
5 reflect their actual hours worked, or calculated the correct time worked and consequently  
6 underpaid the actual time worked by Plaintiff and other members of the Class. Defendants acted  
7 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of  
8 the California Labor Code, the Industrial Welfare Commission requirements and other applicable  
9 laws and regulations. As a result of these violations, Defendant also failed to timely pay all wages  
10 earned in accordance with California Labor Code § 1194.

11 53. California Labor Code § 1194.2 also provides for the following remedies: “In any  
12 action under Section 1194 . . . to recover wages because of the payment of a wage less than the  
13 minimum wages fixed by an order of the commission, an employee shall be entitled to recover  
14 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

15 54. In addition to restitution for all unpaid wages, pursuant to California Labor Code §  
16 1197.1, Plaintiff and Class members are entitled to recover a penalty of \$100.00 for the initial  
17 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to  
18 pay each employee minimum wages.

19 55. Pursuant to California Labor Code § 1194.2, Plaintiff and Class members are  
20 further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and  
21 interest thereon.

22 56. Defendants have the ability to pay minimum wages for all time worked and have  
23 willfully refused to pay such wages with the intent to secure for Defendants a discount upon this  
24 indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

25 57. Wherefore, Plaintiff and the Employee Class members are entitled to recover the  
26 unpaid minimum wages (including double minimum wages), liquidated damages in an amount  
27 equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney’s fees  
28 and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other members of

1 the Class further request recovery of all unpaid wages, according to proof, interest, statutory costs,  
2 as well as the assessment of any statutory penalties against Defendants, in a sum as provided by  
3 the California Labor Code, including § 558, and/or other applicable statutes. To the extent  
4 minimum wage compensation is determined to be owed to the Class members who have  
5 terminated their employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202,  
6 and therefore these individuals are also be entitled to waiting time penalties under California  
7 Labor Code § 203, which penalties are sought herein on behalf of these Class members.  
8 Defendants' failure to timely pay all wages owed also violated Labor Code § 204 and resulted in  
9 violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage  
10 statements. Defendants' conduct as alleged herein was willful, intentional and not in good faith.  
11 Further, Plaintiff and other Class members are entitled to seek and recover statutory costs.

12 **SECOND CAUSE OF ACTION**

13 **FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510**

14 **(Against All Defendants)**

15 58. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in  
16 full herein.

17 59. California Labor Code § 1194 provides that "any employee receiving less than the  
18 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to  
19 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime  
20 compensation, including interest thereon, reasonable attorney's fees, and costs of suit." The action  
21 may be maintained directly against the employer in an employee's name without first filing a  
22 claim with the Division of Labor Standards and Enforcement.

23 60. By their conduct, as set forth herein, Defendants violated California Labor Code §  
24 510 (and the relevant orders of the Industrial Welfare Commission) by failing to pay Employees:  
25 (a) time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a  
26 workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked  
27 on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours  
28 worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight

1 (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not  
2 paying Employees wages for all hours worked, including by requiring off the clock work as  
3 addressed above and by unlawfully rounding down and under-reporting actual hours worked.  
4 Defendants also paid certain shift differentials to Plaintiff and the Class members, which were  
5 non-discretionary and tied to their production, and paid shift differentials to working on later  
6 shifts, but failed to correctly calculate the regular rate of pay to Employees based on these shift  
7 differentials that Defendants used to calculate and pay overtime wages to the Employees

8 61. Defendants had a consistent policy of not paying Employees wages for all hours  
9 worked. Defendants, and each of them, have intentionally and improperly rounded, changed,  
10 adjusted and/or modified certain employees' hours, including Plaintiff's, or required Plaintiff and  
11 the Class members to do so, or otherwise caused them to work off the clock to avoid paying  
12 Plaintiff and the Class members all earned and owed straight time and overtime wages and other  
13 benefits, in violation of the California Labor Code, the California Code of Regulations and the  
14 IWC Wage Orders and guidelines set forth by the Division of Labor Standards and Enforcement.  
15 Defendants have also violated these provisions by requiring Plaintiff and other similarly situated  
16 non-exempt employees to work through meal periods when they were required to be clocked out  
17 or to otherwise work off the clock to complete their daily job duties or to attend and participate in  
18 company required activities. Therefore, Employees were not properly compensated, nor were they  
19 paid overtime rates for hours worked in excess of eight hours in a given day, and/or forty hours in  
20 a given week. Based on information and belief, Defendants did not make available to Employees a  
21 reasonable protocol for correcting time records when Employees worked overtime hours or to fix  
22 incorrect time entries or those that Defendants unlawfully rounded to the Employee's detriment.  
23 Defendants have also violated these provisions by requiring Plaintiff and other similarly situated  
24 Employees in the Class to work through meal periods when they were required to be clocked out  
25 or to otherwise work off the clock to complete their daily job duties, and by failing to incorporate  
26 shift differentials or other non-hourly compensation into the regular rate used by Defendants to  
27 calculate and pay overtime compensation.

28 62. Defendants' failure to pay Plaintiff and the Class members the unpaid balance of



1 regular wages owed and overtime compensation, as required by California law, violates the  
2 provisions of Labor Code §§ 510 and 1198, and is therefore unlawful.

3         63.       Additionally, Labor Code § 558(a) provides “any employer or other person acting  
4 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any  
5 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil  
6 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each  
7 pay period for which the employee was underpaid in addition to an amount sufficient to recover  
8 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each  
9 underpaid employee for each pay period for which the employee was underpaid in addition to an  
10 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall  
11 be paid to the affected employee.” Labor Code § 558(c) states, “the civil penalties provided for in  
12 this section are in addition to any other civil or criminal penalty provided by law.” Defendants  
13 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC  
14 Wage Orders. Accordingly, Plaintiff and the Class members seek the remedies set forth in Labor  
15 Code § 558.

16         64.       Defendants’ failure to pay compensation in a timely fashion also constituted a  
17 violation of California Labor Code § 204, which requires that all wages shall be paid  
18 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct  
19 violation of that provision of the California Labor Code, Defendants have failed to pay all wages  
20 and overtime compensation earned by Employees. Each such failure to make a timely payment of  
21 compensation to Employees constitutes a separate violation of California Labor Code § 204.

22         65.       Employees have been damaged by these violations of California Labor Code §§  
23 204 and 510 (and the relevant orders of the Industrial Welfare Commission).

24         66.       Consequently, pursuant to the California Labor Code, including Labor Code §§  
25 204, 510, 558, and 1194 (and the relevant orders of the Industrial Welfare Commission),  
26 Defendants are liable to Employees for the full amount of all their unpaid wages and overtime  
27 compensation, with interest, plus their reasonable attorneys’ fees and costs, as well as the  
28 assessment of any statutory penalties against Defendants, and each of them, and any additional

1 sums as provided by the Labor Code and/or other statutes.

2 **THIRD CAUSE OF ACTION**

3 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

4 **(Against All Defendants)**

5 67. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in  
6 full herein.

7 68. Employees regularly worked shifts greater than five (5) hours and in some  
8 instances, greater than ten (10) hours. Pursuant to Labor Code § 512 an employer may not employ  
9 someone for a shift of more than five (5) hours without providing him or her with a meal period of  
10 not less than thirty (30) minutes or for a shift of more than ten (10) hours without providing him or  
11 her with a second meal period of not less than thirty (30) minutes.

12 69. Defendants failed to provide Employees with meal periods as required under the  
13 Labor Code. Employees were often required to work or to otherwise remain under Defendants'  
14 control during meal periods while walking substantial distances to the required break room, or  
15 Defendants provided them after Employees worked beyond the fifth hour of their shifts or  
16 Employees otherwise had them shortened and interrupted by work demands and requirements.  
17 Furthermore, upon information and belief, on the occasions when Employees worked more than  
18 ten (10) hours in a given shift, they did so without receiving a second uninterrupted thirty (30)  
19 minute meal period as required by law.

20 70. Defendants thus failed to provide Plaintiff and the Class members with meal  
21 periods as required by the Labor Code, including by not providing them with the opportunity to  
22 take meal breaks, by providing them late or for less than thirty (30) minutes, or by requiring them  
23 to perform work during breaks.

24 71. Moreover, Defendants failed to compensate Employees for each meal period not  
25 provided or inadequately provided, as required under Labor Code § 226.7 and paragraph 11 of the  
26 applicable IWC Wage Orders, which provide that, if an employer fails to provide an employee a  
27 meal period in accordance with this section, the employer shall pay the employee one (1) hour of  
28 pay at the employee's regular rate of compensation for each workday that the meal period is not

1 provided. Defendants failed to compensate Employees for each meal period not provided or  
2 inadequately provided, as required under Labor Code § 226.7.

3 72. Therefore, pursuant to Labor Code § 226.7, Employees in the Class are entitled to  
4 damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each  
5 meal period not provided or deficiently provided, a sum to be proven at trial, as well as the  
6 assessment of any statutory penalties against the Defendants, and each of them, in a sum as  
7 provided by the Labor Code and other statutes.

8 **FOURTH CAUSE OF ACTION**

9 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

10 **(Against All Defendants)**

11 73. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in  
12 full herein.

13 74. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders  
14 provide that employers must authorize and permit all employees to take rest periods at the rate of  
15 ten (10) minutes net rest time per four (4) work hours.

16 75. Employees consistently worked consecutive four (4) hour shifts and were generally  
17 scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and  
18 permit them to take rest periods. Pursuant to the Labor Code and the applicable IWC Wage Order,  
19 Employees were entitled to paid rest breaks of not less than ten (10) minutes for each consecutive  
20 four (4) hour shift, and Defendants failed to provide Employees with timely rest breaks of not less  
21 than ten (10) minutes for each consecutive four (4) hour shift. Employees were often required to  
22 work or to otherwise remain under Defendants' control during rest periods while walking  
23 substantial distances to the required break room, and had breaks provided untimely as a result of  
24 the above described off the clock work.

25 76. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders  
26 provide that if an employer fails to provide an employee rest period in accordance with this  
27 section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of  
28 compensation for each workday that the rest period is not provided.

1 77. Defendants, and each of them, have therefore intentionally and improperly denied  
2 rest periods to Plaintiff and the Class members in violation of Labor Code §§ 226.7 and 512 and  
3 paragraph 12 of the applicable IWC Wage Orders.

4 78. Defendants failed to authorize and permit Plaintiff and the Class members to take  
5 rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees  
6 with an additional hour of pay at each Employee's effective hourly rate for each day that  
7 Defendants failed to provide them with adequate rest breaks, as required under Labor Code §  
8 226.7.

9 79. Therefore, pursuant to Labor Code § 226.7 and paragraph 12 of the applicable IWC  
10 Wage Orders, Employees are entitled to damages in an amount equal to one (1) hour of wages at  
11 their effective hourly rates of pay for each day worked without the required rest breaks, a sum to  
12 be proven at trial, as well as the assessment of any statutory penalties against Defendants, and each  
13 of them, in a sum as provided by the Labor Code and/or other statutes.

14 **FIFTH CAUSE OF ACTION**

15 **VIOLATION OF LABOR CODE § 226(a)**

16 **(Against All Defendants)**

17 80. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in  
18 full herein.

19 81. California Labor Code § 226(a) requires an employer to furnish each of his or her  
20 employees with an accurate, itemized statement in writing showing the gross and net earnings,  
21 total hours worked, and the corresponding number of hours worked at each hourly rate; these  
22 statements must be appended to the detachable part of the check, draft, voucher, or whatever else  
23 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these  
24 statements may be given to the employee separately from the payment of wages; in either case the  
25 employer must give the employee these statements twice a month or each time wages are paid.

26 82. Defendants failed to provide Employees with accurate itemized wage statements in  
27 writing, as required by the Labor Code. Specifically, the wage statements given to Employees by  
28 Defendants failed to accurately account for wages, overtime, and premium pay for deficient meal

1 periods and rest breaks, and rounded timekeeping entries to the detriment of the Class members,  
2 all of which Defendants knew or reasonably should have known were owed to Employees, as  
3 alleged above.

4 83. Throughout the liability period, Defendants intentionally failed to furnish to  
5 Plaintiff and the Class members, upon each payment of wages, itemized statements accurately  
6 showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-  
7 rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all deductions, (5) net  
8 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of  
9 the employee and only the last four digits of his or her social security number or an employee  
10 identification number other than a social security number, (8) the name and address of the legal  
11 entity that is the employer and (9) all applicable hourly rates in effect during the pay period and  
12 the corresponding number of hours worked at each hourly rate by the employee pursuant to Labor  
13 Code § 226, amongst other statutory requirements. Defendants knowingly and intentionally failed  
14 to provide Plaintiff and the Class members with such timely and accurate wage and hour  
15 statements.

16 84. Plaintiff and the Class members suffered injury as a result of Defendants' knowing  
17 and intentional failure to provide them with the wage and hour statements as required by law and  
18 are presumed to have suffered injury and entitled to penalties under Labor Code § 226(e), as the  
19 Defendants have failed to provide a wage statement, failed to provide accurate and complete  
20 information as required by any one or more of items Labor Code § 226 (a)(1) to (9), inclusive,  
21 and the Plaintiff and Class members cannot promptly and easily determine from the wage  
22 statement alone one or more of the following: (i) The amount of the gross wages or net wages  
23 paid to the employee during the pay period or any of the other information required to be  
24 provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of  
25 subdivision (a), (ii) Which deductions the employer made from gross wages to determine the net  
26 wages paid to the employee during the pay period, (iii) The name and address of the employer  
27 and, (iv) The name of the employee and only the last four digits of his or her social security  
28 number or an employee identification number other than a social security number. For purposes

1 of Labor Code § 226(e) “promptly and easily determine” means a reasonable person [i.e. an  
2 objective standard] would be able to readily ascertain the information without reference to other  
3 documents or information.

4 85. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code  
5 § 226(a), Employees suffered injuries, including among other things confusion over whether they  
6 received all wages owed them, the difficulty and expense involved in reconstructing pay records,  
7 and forcing them to make mathematical computations to analyze whether the wages paid in fact  
8 compensated them correctly for all hours worked.

9 86. Pursuant to Labor Code §§ 226(a) and 226(e), Employees are entitled to recover  
10 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation  
11 occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not  
12 exceeding an aggregate penalty of four thousand dollars (\$4,000). They are also entitled to an  
13 award of costs and reasonable attorneys’ fees.

14 **SIXTH CAUSE OF ACTION**

15 **VIOLATION OF LABOR CODE § 221**

16 **(Against All Defendants)**

17 87. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in  
18 full herein.

19 88. Labor Code § 221 provides, “It shall be unlawful for any employer to collect or  
20 receive from an employee any part of wages theretofore paid by said employer to said employee.”  
21 Additionally, pursuant to California Labor Code § 204, other applicable laws and regulations, and  
22 public policy, an employer must timely pay its employees for all hours worked. Defendants failed  
23 to do so.

24 89. Defendants unlawfully received and/or collected wages from the Employees in the  
25 Class by implementing a policy rounding down and understating the hours worked by Employees,  
26 by requiring off the clock work including security screenings, and by automatically deducting 30  
27 minutes for meal periods when they were not lawfully provided, as alleged above.

28 90. As a direct and proximate cause of the unauthorized deductions, Employees have

1 been damaged, in an amount to be determined at trial.

2 **SEVENTH CAUSE OF ACTION**

3 **VIOLATION OF LABOR CODE § 204**

4 **(Against All Defendants)**

5 91. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in  
6 full herein.

7 92. Labor Code § 204 instructs that: "All wages, ...earned by any person in any  
8 employment are due and payable twice during each calendar month, on days designated in  
9 advance by the employer as the regular paydays. Labor performed between the 1st and 15th days,  
10 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month  
11 during which the labor was performed, and labor performed between the 16th and the last day,  
12 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following  
13 month." Additionally, the requirements of this section shall be deemed satisfied by the payment  
14 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven  
15 calendar days following the close of the payroll period." As detailed above, Defendants  
16 maintained a consistently applied policy and practice of not paying all wages earned between the  
17 1<sup>st</sup> and 15<sup>th</sup> days of a month between the 16<sup>th</sup> and 26<sup>th</sup> day and failed to pay all wages earned  
18 between the 16<sup>th</sup> and the last day of the month between the 1<sup>st</sup> and 10<sup>th</sup> day of the following month.  
19 Defendants similarly failed to pay all wages earned by not more than seven calendar days  
20 following the close of the payroll period.

21 93. All wages due and owing to Plaintiff and the Class members, including as required  
22 under Labor Code § 510, were therefore not timely paid by Defendants. Additionally, wages  
23 required by Labor Code § 1194 and other sections became due and payable to each employee in  
24 each pay period that he or she was not provided with a meal period or rest period or paid straight  
25 or overtime wages to which he or she was entitled.

26 94. Defendants violated Labor Code § 204 by systematically refusing to pay wages due  
27 under the Labor Code, as addressed above.

28 95. As a result of the unlawful acts of Defendants, Plaintiff and the Class she seeks to

1 represent has been deprived of wages in amounts to be determined at trial, and they are entitled to  
2 recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant  
3 to Labor Code § 210, 218.5 and 1194.

4 **EIGHTH CAUSE OF ACTION**  
5 **VIOLATION OF LABOR CODE § 203**  
6 **(Against All Defendants)**

7 96. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in  
8 full herein.

9 97. Plaintiff and numerous Class members are no longer employed by Defendants; they  
10 either quit Defendants' employ or were fired therefrom.

11 98. Defendants failed to pay these Employees all wages due and certain at the time of  
12 termination or within seventy-two (72) hours of resignation.

13 99. The wages withheld from these Employees by Defendants remained due and owing  
14 for more than thirty (30) days from the date of separation from employment.

15 100. Defendants failed to pay Plaintiff and the Class members without abatement, all  
16 wages as defined by applicable California law. Among other things, these Employees were not  
17 paid all regular and overtime wages, including by Defendants failing to pay for all hours worked  
18 or requiring off the clock work or by unlawful rounding of time entries to the detriment of  
19 Employees, and by failing to correctly calculate the regular rate used to calculate and pay overtime  
20 compensation, and Defendants failed to pay premium wages owed for unprovided meal periods  
21 and rest periods, as further detailed in this Complaint. Defendants' failure to pay said wages  
22 within the required time was willful within the meaning of Labor Code § 203.

23 101. Defendants' failure to pay wages, as alleged entitles these Employees to penalties  
24 under Labor Code § 203, which provides that an employee's wages shall continue until paid for up  
25 to thirty (30) days from the date they were due.

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NINTH CAUSE OF ACTION

VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.

(Against All Defendants)

102. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in full herein.

103. Plaintiff, on behalf of herself, the Employees in the Class, and the general public, brings this claim pursuant to Business & Professions Code § 17200 et seq. The conduct of Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Employees and the general public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

104. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204, has suffered injury, and therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

105. Business & Professions Code § 17200 et seq. prohibits unlawful and unfair business practices. By the conduct alleged herein, Defendants’ practices were deceptive and fraudulent in that Defendants’ policy and practice failed to provide the required amount of compensation for missed meal and rest breaks, and failed to adequately compensate Plaintiff and Class members for all hours worked, due to systematic business practices as alleged herein that cannot be justified, pursuant to the applicable California Labor Code and Industrial Welfare Commission requirements in violation of California Business and Professions Code §§ 17200, et seq., and for which this Court should issue injunctive and equitable relief, pursuant to California Business & Professions Code § 17203, including restitution of wages wrongfully withheld.

106. Wage-and-hour laws express fundamental public policies. Paying employees their wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental public policies of California. Labor Code § 90.5(a) articulates the public policies of this State vigorously to enforce minimum labor standards, to ensure that employees are not required or permitted to work under substandard and unlawful conditions, and to protect law-abiding employers and their employees from competitors who lower costs to themselves by failing to

1 comply with minimum labor standards.

2 107. Defendants have violated statutes and public policies. Through the conduct alleged  
3 in this Complaint Defendants have acted contrary to these public policies, have violated specific  
4 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in  
5 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiff,  
6 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges  
7 guaranteed to all employees under the law.

8 108. Defendants' conduct, as alleged above, constitutes unfair competition in violation  
9 of the Business & Professions Code § 17200 *et seq.*

10 109. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and  
11 overtime, failing to provide meal periods and rest breaks, etc., either knew or in the exercise of  
12 reasonable care should have known that their conduct was unlawful; therefore their conduct  
13 violates the Business & Professions Code § 17200 *et seq.*

14 110. By the conduct alleged herein, Defendants have engaged and continue to engage in  
15 a business practice which violates California and federal law, including but not limited to, the  
16 applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor  
17 Code including Sections 204, 226, 226.7, 512, 1194, 1197, and 1198 for which this Court should  
18 issue declaratory and other equitable relief pursuant to California Business & Professions Code §  
19 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair  
20 competition, including restitution of wages wrongfully withheld.

21 111. As a proximate result of the above-mentioned acts of Defendants, Employees have  
22 been damaged, in a sum to be proven at trial.

23 112. Unless restrained by this Court Defendants will continue to engage in such  
24 unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court  
25 should make such orders or judgments, including the appointment of a receiver, as may be  
26 necessary to prevent the use by Defendants or their agents or employees of any unlawful or  
27 deceptive practice prohibited by the Business & Professions Code, including but not limited to the  
28 disgorgement of such profits as may be necessary to restore Employees to the money Defendants

1 have unlawfully failed to pay.

2 **RELIEF REQUESTED**

3 WHEREFORE, Plaintiff prays for the following relief:

- 4 1. For an order certifying this action as a class action;
- 5 2. For compensatory damages in the amount of the unpaid minimum wages for work  
6 performed by Employees and unpaid overtime compensation from at least four (4) years prior to  
7 the filing of this action, as may be proven;
- 8 3. For liquidated damages in the amount equal to the unpaid minimum wage and  
9 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 10 4. For compensatory damages in the amount of all unpaid wages, including overtime  
11 and double-time pay, as may be proven;
- 12 5. For compensatory damages in the amount of the hourly wage made by Employees  
13 for each missed or deficient meal period where no premium pay was paid therefor from four (4)  
14 years prior to the filing of this action, as may be proven;
- 15 6. For compensatory damages in the amount of the hourly wage made by Employees  
16 for each day requisite rest breaks were not provided or were deficiently provided where no  
17 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may  
18 be proven;
- 19 7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
- 20 8. For restitution and/or damages and penalties for Defendants' failure to pay all  
21 wages due twice monthly under Labor Code § 221, as may be proven;
- 22 9. For restitution and/or damages for all amounts unlawfully withheld from the wages  
23 for all class members in violation of Labor Code § 221, as may be proven;
- 24 10. For penalties pursuant to Labor Code § 203 for all Employees who quit or were  
25 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;
- 26 11. For restitution for unfair competition pursuant to Business & Professions Code  
27 § 17200 *et seq.*, including disgorgement or profits, as may be proven;
- 28 12. For an order enjoining Defendants and their agents, servants, and employees, and

1 all persons acting under, in concert with, or for them, from acting in derogation of any rights or  
2 duties adumbrated in this Complaint;

3 13. For other wages and penalties under the Labor Code as may be proven;

4 14. For all general, special, and incidental damages as may be proven;

5 15. For an award of pre-judgment and post-judgment interest;

6 16. For an award providing for the payment of the costs of this suit;

7 17. For an award of attorneys' fees; and

8 18. For such other and further relief as this Court may deem proper and just.

9

10 DATED: September 21, 2018

DAVID YEREMIAN & ASSOCIATES, INC.

11

12

By



13

David Yeremian

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Alvin B. Lindsay

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Attorneys for Plaintiff SELINA RANGEL  
and all others similarly situated

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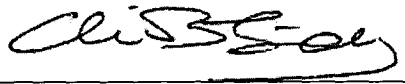
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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.

DATED: September 21, 2018

DAVID YEREMIAN & ASSOCIATES, INC.

By 

David Yeremian  
Alvin B. Lindsay  
Attorneys for Plaintiff SELINA RANGEL  
and all others similarly situated

**EXHIBIT B**

1 MICHAEL J. NADER, SBN 200425  
michael.nader@ogletreedeakins.com  
2 OGLETREE, DEAKINS, NASH, SMOAK &  
STEWART, P.C.  
3 500 Capitol Mall, Suite 2500  
Sacramento, Ca 95814  
4 Telephone: 916.840.3150  
Facsimile: 916.840.3159  
5

6 RYAN H. CROSNER, SBN 278418  
ryan.crosner@ogletree.com  
7 OGLETREE, DEAKINS, NASH, SMOAK &  
STEWART, P.C.  
400 South Hope Street, Suite 1200  
8 Los Angeles, CA 90071  
Telephone: 213.239.9800  
9 Facsimile: 213.239.9045

10 Attorneys for Defendant  
W.W. Grainger, Inc.

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **FOR THE COUNTY OF STANTISLAUS**  
13

14 SELINA RANGEL, an individual, on behalf  
of herself and others similarly situated,

15 Plaintiffs,

16 v.

17 W.W. GRAINGER, INC., an Illinois  
18 Corporation; and DOES 1 through 50,  
inclusive,

19 Defendants.  
20

Case No. CV-18-003041

**DEFENDANT W.W. GRAINGER, INC.’S  
ANSWER TO THE CLASS ACTION  
COMPLAINT**

Complaint Filed: September 24, 2018  
Trial Date: None Set

21 **TO PLAINTIFF SELINA RANGEL AND HER ATTORNEYS OF RECORD:**

22 Defendant W.W. Grainger, Inc., (“Defendant”) hereby answers the Complaint brought by  
23 plaintiff Selina Rangel (“Plaintiff”) as follows:

24 **GENERAL DENIAL**

25 The Complaint is not verified. Pursuant to Section 431.30(d) of the California Code of  
26 Civil Procedure, Defendant generally denies each and every allegation in the Complaint, including,  
27 without limitation, the allegations that Plaintiff or any members of the putative class (jointly the  
28 “Plaintiffs”) are entitled to any of the relief requested, or that Defendant has engaged in any

1 wrongful or unlawful conduct, or that Defendant's conduct or omissions caused any injury or  
2 damage to any of the Plaintiffs.

3 **AFFIRMATIVE DEFENSES**

4 Additionally, without admitting that it carries the burden of proof as to any of the issues  
5 raised by the Complaint, Defendant asserts the following separate and distinct affirmative defenses  
6 to the Complaint and each purported cause of action therein, and prays for judgment as set forth  
7 below.

8 **FIRST AFFIRMATIVE DEFENSE**

9 1. The claims alleged in the Complaint are barred insofar as the Complaint fails to  
10 state a valid cause of action against Defendant upon which relief may be granted.

11 **SECOND AFFIRMATIVE DEFENSE**

12 2. Plaintiffs' claims are barred to the extent they failed to exhaust any required internal  
13 and/or administrative remedies, or pre-filing obligations.

14 **THIRD AFFIRMATIVE DEFENSE**

15 3. Plaintiffs' claims, including claims for relief, are barred, in whole or in part, to the  
16 extent that Plaintiffs in their individual or representative capacities, lack standing to assert those  
17 claims.

18 **FOURTH AFFIRMATIVE DEFENSE**

19 4. The claims alleged in the Complaint are barred, in whole or in part, by the doctrines  
20 of estoppel, unclean hands, laches, and/or after-acquired evidence.

21 **FIFTH AFFIRMATIVE DEFENSE**

22 5. The penalties sought by the Complaint are barred because at all relevant times,  
23 Defendant did not willfully, knowingly, or intentionally fail to comply with any provision of the  
24 California *Labor Code*, the California *Business and Professions Code*, or any other law related to  
25 the matters alleged in the Complaint, but rather acted in good faith and had reasonable grounds for  
26 believing that it did not violate those provisions.

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28 ///



1 **SIXTH AFFIRMATIVE DEFENSE**

2 6. The penalties and damages sought by the Complaint are barred insofar as they  
3 would be disproportionate to the harm alleged, excessive, and would violate Defendant's Due  
4 Process rights.

5 **SEVENTH AFFIRMATIVE DEFENSE**

6 7. Any attempt to require Defendant to locate, identify or notify absent persons on  
7 whose behalf this action is allegedly prosecuted would violate the Due Process Clause.

8 **EIGHTH AFFIRMATIVE DEFENSE**

9 8. Plaintiffs' claims are barred in whole or in part because such claims have been  
10 waived, discharged, and/or abandoned.

11 **NINTH AFFIRMATIVE DEFENSE**

12 9. Plaintiffs' claims are barred in whole or in part by the principles of accord and  
13 satisfaction, and payment.

14 **TENTH AFFIRMATIVE DEFENSE**

15 10. Plaintiffs failed to take reasonable steps to mitigate their damages, if any.  
16 Accordingly, Plaintiffs are barred from recovering any damages, or any recovery of damages must  
17 be reduced.

18 **ELEVENTH AFFIRMATIVE DEFENSE**

19 11. The claims alleged in the Complaint are barred, in whole or in part, to the extent that  
20 they have released any of their purported claims against Defendant.

21 **TWELFTH AFFIRMATIVE DEFENSE**

22 12. The claims alleged in the Complaint are barred, in whole or in part, by the  
23 applicable statute(s) of limitations including, without limitation, Code of Civil Procedure Sections  
24 §§ 335.1 337, 338(a), 339(1), 340(a)-(c) and/or 343 and Business and Professions Code section  
25 17208.

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1 **THIRTEENTH AFFIRMATIVE DEFENSE**

2 13. The claim in the Complaint for improper wage statements is barred because  
3 Plaintiffs have no legally cognizable injury as a result of any allegedly improper wage statements.

4 **FOURTEENTH AFFIRMATIVE DEFENSE**

5 14. The Complaint, and each cause of action therein, fails to state a claim for penalties  
6 under California Labor Code section 203 *et. seq.* and 226 or otherwise because there is a good-faith  
7 dispute as to Defendant's obligation to pay any wages that may be found to be due.

8 **FIFTEENTH AFFIRMATIVE DEFENSE**

9 15. Plaintiffs' claims for waiting time penalties pursuant to Labor Code section 203 *et.*  
10 *seq.* are barred because Defendant did not willfully and intentionally withhold compensation over  
11 which there was no good faith dispute and in fact, acted at all times with the good faith belief that  
12 Plaintiffs were compensated as required by law.

13 **SIXTEENTH AFFIRMATIVE DEFENSE**

14 16. Any recovery of meal period premium payments is barred because Plaintiffs were  
15 authorized and permitted to take appropriate meal periods, but freely chose to forego or waive such  
16 meal periods; Defendant did not impede, discourage or dissuade Plaintiffs from taking appropriate  
17 meal periods.

18 **SEVENTEENTH AFFIRMATIVE DEFENSE**

19 17. The claims alleged in the Complaint are barred, in whole or in part, to the extent that  
20 damages, if any, resulted from the acts and/or omissions of Plaintiffs.

21 **EIGHTEENTH AFFIRMATIVE DEFENSE**

22 18. Any finding of liability pursuant to California Business and Professions Code,  
23 section 17200 *et seq.*, would violate the Due Process and Equal Protection Clauses of the United  
24 States and California Constitutions because the standards of liability under California's Unfair  
25 Competition Law are unduly vague and subjective.

26 **NINETEENTH AFFIRMATIVE DEFENSE**

27 19. To the extent that the Court declines to certify a class, then maintenance of  
28 Plaintiffs' claims as "representative" actions under the California *Business and Professions Code*

1 (assuming, *arguendo*, that some or all of these claims could be so maintained, which Defendant  
2 specifically denies) would violate the Due Process clause of the California and United States  
3 Constitutions by authorizing actions to be brought on behalf of a class without requiring class  
4 certification of persons allegedly injured by the challenged act or practice. Moreover, any finding  
5 of liability pursuant to the California *Business and Professions Code* would violate the Due Process  
6 clause of the United States and California Constitutions because, among other things, the standards  
7 of liability under the *Business and Professions Code* are unduly vague and subjective, and permit  
8 retroactive, random, arbitrary and capricious punishment that serves no legitimate governmental  
9 interest. Finally, any award of restitution under the California *Business and Professions Code*  
10 would violate the Excessive Fines and Due Process clauses of the United States and California  
11 Constitutions.

12 **TWENTIETH AFFIRMATIVE DEFENSE**

13 20. Plaintiffs lack standing to bring this Complaint because, pursuant to Section 17200  
14 of the *Business & Professions Code*, Plaintiffs did not suffer any injury in fact, and have not lost  
15 money or property as a result of alleged unfair competition by Defendant.

16 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

17 21. Plaintiffs' claims are barred to the extent that they are preempted by federal law.

18 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

19 22. The claims in the Complaint for unfair business practices are barred because  
20 Plaintiffs have suffered no injury-in-fact as a result of any alleged violation of California's Unfair  
21 Competition Law.

22 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

23 23. The claims alleged in the Complaint are barred, in whole or in part, because  
24 Plaintiffs consented to and/or acquiesced in the alleged conduct by Defendant of which Plaintiffs  
25 now complains.

26 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

27 24. The damages alleged by Plaintiffs, if any, were not proximately caused by any  
28 unlawful policy, custom, practice, or procedure promulgated or tolerated by Defendant.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

25. The claims alleged in the Complaint are barred, in whole or in part, by the doctrine of avoidable consequences.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

26. Plaintiffs' claims for relief based on any violation of California's *Labor Code* and/or wage and hour laws are barred because any such violations were *de minimis*, and ignoring the *de minimis* violation of the law, if any, Defendant complied with its obligations under the California *Labor Code* and/or wage and hour law.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

27. Plaintiffs' claims for unpaid wages, including any related claims for damages or penalties, are barred pursuant to the safe harbor provision of Cal. Labor Code § 226.2.

**RIGHT TO ADD ADDITIONAL AFFIRMATIVE DEFENSES**

Because Plaintiffs' Complaint is couched in broad and conclusory terms, and Defendant has not completed its investigation and discovery regarding the facts and claims asserted by Plaintiffs, Defendant cannot fully anticipate all defenses that may be applicable to this action. Accordingly, the right to assert additional defenses, if and to the extent that such defenses are applicable, is hereby reserved. Defendant will move to amend its Answer, if necessary, to allege new affirmative defenses as they are ascertained or according to proof at time of trial.

WHEREFORE, Defendant prays for judgment as follows:

1. That the Court deny Plaintiffs' request to certify this action as a class action;
2. That Plaintiffs take nothing by way of the Complaint;
3. That the Complaint be dismissed with prejudice;
4. That the Court enter judgment for Defendant and against Plaintiffs, on all of their alleged causes of action;
5. That the Court award Defendant its costs and attorney fees incurred, including but not limited to costs and attorney fees pursuant to California Labor Code section 218.5; and

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6. That the Court grant Defendant such other and further relief as the Court deems just and proper.

DATED: October 26, 2018

OGLETREE, DEAKINS, NASH, SMOAK &  
STEWART, P.C.

By: \_\_\_\_\_  
Michael J. Nader  
Ryan H. Crosner  
Attorneys for Defendant  
W.W. Grainger, Inc.

36071233.1

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

I am employed in the County of Sacramento, State of California; I am over the age of 18 years and not a party to this action. My business address is 500 Capitol Mall, Suite 2500, Sacramento, CA 95814.

On October 26, 2018, I served the following document(s) described as:

**Defendant W. W. Grainger, Inc.'s Answer to the Class Action Complaint**

on the persons below as follows:

David Yeremian  
Alvin B. Lindsay  
David Yeremian & Associates, Inc.  
535 N. Brand Blvd, Suite 705  
Glendale, CA 91203

*Plaintiff's Attorney*

Walter Haines  
United Employees Law Group, PC  
5500 Bolsa Avenue, Suite 201  
Huntington Beach, CA 92649

I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses as indicated above and:

- deposited the sealed envelope or package with the United States Postal Service, with the postage fully prepaid.
- placed the envelope or package for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United State Postal Service, in a sealed envelope or package with postage fully prepaid.

I am employed in the county where the mailing occurred. The envelope or package was placed in the mail at Sacramento, California.

- (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on October 26, 2018, at Sacramento, California.

Deborah J. Weidle

Type or Print Name

Signature

1 MICHAEL J. NADER, SBN 200425  
michael.nader@ogletreedeakins.com  
2 OGLETREE, DEAKINS, NASH, SMOAK &  
STEWART, P.C.  
3 500 Capitol Mall, Suite 2500  
Sacramento, Ca 95814  
4 Telephone: 916.840.3150  
Facsimile: 916.840.3159

5  
6 RYAN H. CROSNER, SBN 278418  
ryan.crosner@ogletree.com  
OGLETREE, DEAKINS, NASH, SMOAK &  
7 STEWART, P.C.  
400 South Hope Street, Suite 1200  
8 Los Angeles, CA 90071  
Telephone: 213.239.9800  
9 Facsimile: 213.239.9045

10 Attorneys for Defendant  
W.W. Grainger, Inc.

11 **UNITED STATES DISTRICT COURT**  
12 **EASTERN DISTRICT OF CALIFORNIA**

13  
14 SELINA RANGEL, an individual, on behalf  
of herself and others similarly situated,

15 Plaintiffs,

16 v.

17 W.W. GRAINGER, INC., an Illinois  
18 Corporation; and DOES 1 through 50,  
inclusive,

19 Defendants.  
20

Case No.

**DECLARATION OF HENRY F. GALATZ  
IN SUPPORT OF NOTICE OF REMOVAL**

Complaint Filed: September 24, 2018

Trial Date: None Set

21 I, Henry F. Galatz, declare as follows:

22 1. I am currently employed by W.W. Grainger, Inc. (“Defendant”) in the position of  
23 Associate General Counsel, Employment and Labor Law. I have held this position for 38 years.

24 2. My office is located at Defendant’s corporate headquarters in Lake Forest, Illinois.  
25 In my capacity as Associate General Counsel, I am familiar with Defendant’s corporate records  
26 and operations in the United States. Except where otherwise noted, I have personal knowledge of  
27 the facts set forth herein, and if called and sworn as a witness, I could and would competently  
28 testify to them.

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3. I make this Declaration in support of Defendant's Notice of Removal of Civil Action.

4. The Defendant, at the time this lawsuit was filed, was and still is a corporation incorporated under the laws of the State of Illinois, with its principal place of business in the State of Illinois. Defendant's headquarters, which is where its executive and senior management personnel coordinate the corporation's activities, are located in Lake Forest, Illinois.

5. I declare under penalty of perjury under the laws of the United States of America and the State of Illinois that the foregoing is true and correct.

Executed this 26<sup>th</sup> day of October, 2018, at Lake Forest, Illinois.

  
Henry F. Galatz

36091462.1



1 MICHAEL J. NADER, SBN 200425  
2 michael.nader@ogletreedeakins.com  
3 OGLETREE, DEAKINS, NASH, SMOAK &  
4 STEWART, P.C.  
5 500 Capitol Mall, Suite 2500  
6 Sacramento, Ca 95814  
7 Telephone: 916.840.3150  
8 Facsimile: 916.840.3159

9 RYAN H. CROSNER, SBN 278418  
10 ryan.crosner@ogletree.com  
11 OGLETREE, DEAKINS, NASH, SMOAK &  
12 STEWART, P.C.  
13 400 South Hope Street, Suite 1200  
14 Los Angeles, CA 90071  
15 Telephone: 213.239.9800  
16 Facsimile: 213.239.9045

17 Attorneys for Defendant  
18 W.W. Grainger, Inc.

19 **UNITED STATES DISTRICT COURT**  
20 **EASTERN DISTRICT OF CALIFORNIA**

21 SELINA RANGEL, an individual, on behalf  
22 of herself and others similarly situated,

23 Plaintiffs,

24 v.

25 W.W. GRAINGER, INC., an Illinois  
26 Corporation; and DOES 1 through 50,  
27 inclusive,

28 Defendants.

Case No.

**DECLARATION OF SITA NATARAJAN IN  
SUPPORT OF NOTICE OF REMOVAL**

Complaint Filed: September 24, 2018

Trial Date: None Set

I, Sita Natarajan, declare as follows:

1. I am employed as a Senior Manager of Payroll and Human Resources Systems for Defendant W.W. Grainger, Inc. ("Defendant"), and have been employed in this capacity with Defendant since March of 2016. My office is located at Defendant's corporate headquarters in Lake Forest, Illinois. Except where otherwise noted, I have personal knowledge of the facts set forth herein, and if called and sworn as a witness, I could and would competently testify to them.

2. I make this Declaration in support of Defendant's Notice of Removal of Civil Action.

1           3.       My duties include being responsible for directing and overseeing the day-to-day  
2 operations of the payroll team and ensuring that the payroll for employees is regularly processed  
3 for all of Defendant's employees, including those employed in the State of California. In my  
4 position, I use Defendant's SAP Payroll System to maintain Defendant's time and pay data for  
5 non-exempt employees, and other personnel information such as dates of employment. I shall refer  
6 to the SAP Payroll System as the "**Payroll System.**"

7           4.       I am familiar with the pay records maintained in the Payroll System, which include  
8 the pay records for all non-exempt employees in California, including the hourly distribution center  
9 associates, whom I will refer to as the putative class members or "**PCMs.**" Such records in the  
10 Payroll System are kept in the normal course of business with regard to payroll matters, and  
11 include information on the names, home addresses, dates of employment, and compensation of  
12 employees, including the PCMs. Based on my review of those records, I am able to testify to the  
13 following with regard to the employment of plaintiff, Selina Rangel, and other current and former  
14 PCMs during the "**Relevant Period**" of September 24, 2014 through October 21, 2018.

15           5.       Over the course of the last two weeks, I oversaw the creation of a Microsoft Excel  
16 file from records maintained in the Payroll System, and which are kept in the normal course of  
17 business as part of Defendant's regular recordkeeping processes ("Excel file").

18           6.       The Excel file, created from the export of data from the Payroll System, contains  
19 information for all current and former employees of Defendant who are PCMs, including, among  
20 other things, the employee identification number, address, date of hire, and termination date (if  
21 applicable).

22           7.       In my review of the Excel file containing the list of employees and corresponding  
23 employment information, I have determined the following:

- 24           a.       There were 1,070 PCMs employed with Defendant during the Relevant Period.
- 25           b.       The average hourly pay earned by PCMs during the Relevant Period is over \$17.00,  
26               and ranged from \$15.54 per hour to around \$33.00 per hour.
- 27           c.       The number of workweeks for the PCMs during the Relevant Period is 90,162;

28

1 d. The employment of 509 PCMs terminated from Defendant during the Relevant  
2 Period;

3 e. The average daily hours worked by all PCMs during the Relevant Period is more  
4 than 7 hours per day.

5 8. Based on my review of the records contained in the Pay System, the plaintiff, Ms.  
6 Rangel, was hired as a distribution center associate on or about February 8, 2017, and she retained  
7 that position until the termination of her employment on or around October 25, 2017.

8 I declare under penalty of perjury under the laws of the United States of America and the  
9 State of Illinois that the foregoing is true and correct.

10 Executed this 26<sup>th</sup> day of October, 2016, at Lake Forest, Illinois.

11

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*Sita Natarajan*

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Sita Natarajan

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1 MICHAEL J. NADER, SBN 200425  
michael.nader@ogletreedeakins.com  
2 OGLETREE, DEAKINS, NASH, SMOAK &  
STEWART, P.C.  
3 500 Capitol Mall, Suite 2500  
Sacramento, Ca 95814  
4 Telephone: 916.840.3150  
Facsimile: 916.840.3159  
5

6 RYAN H. CROSNER, SBN 278418  
ryan.crosner@ogletree.com  
OGLETREE, DEAKINS, NASH, SMOAK &  
7 STEWART, P.C.  
400 South Hope Street, Suite 1200  
8 Los Angeles, CA 90071  
Telephone: 213.239.9800  
9 Facsimile: 213.239.9045

10 Attorneys for Defendant  
W.W. Grainger, Inc.

11 **UNITED STATES DISTRICT COURT**  
12 **EASTERN DISTRICT OF CALIFORNIA**  
13

14 SELINA RANGEL, an individual, on behalf  
of herself and others similarly situated,

15 Plaintiffs,

16 v.

17 W.W. GRAINGER, INC., an Illinois  
18 Corporation; and DOES 1 through 50,  
inclusive,

19 Defendants.  
20

Case No.

**DECLARATION OF MICHAEL J. NADER  
IN SUPPORT OF NOTICE OF REMOVAL**

Complaint Filed: September 24, 2018

Trial Date: None Set

21 I, Michael J. Nader, declare as follows:

22 1. I am an attorney licensed to practice law before all Courts of the State of California  
23 with the law firm of Ogletree, Deakins, Nash, Smoak & Stewart, P.C., counsel of record for  
24 defendant W.W. GRAINGER, INC. (“Defendant”). I make this declaration in support of  
25 Defendant’s Notice of Removal of Civil Action to United States District Court (the “Notice of  
26 Removal”) that is filed concurrently herewith. The facts set forth herein are true based on my own  
27 personal knowledge, and if called upon to testify to them, I could and would competently provide  
28 that testimony under oath.



1 MICHAEL J. NADER, SBN 200425  
michael.nader@ogletreedeakins.com  
2 OGLETREE, DEAKINS, NASH, SMOAK &  
STEWART, P.C.  
3 500 Capitol Mall, Suite 2500  
Sacramento, Ca 95814  
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9 Facsimile: 213.239.9045

10 Attorneys for Defendant  
W.W. Grainger, Inc.

11 **UNITED STATES DISTRICT COURT**  
12 **EASTERN DISTRICT OF CALIFORNIA**  
13

14 SELINA RANGEL, an individual, on behalf  
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17 W.W. GRAINGER, INC., an Illinois  
18 Corporation; and DOES 1 through 50,  
inclusive,

19 Defendants.  
20

Case No.

**DEFENDANT W.W. GRAINGER, INC.'S  
DISCLOSURE STATEMENT PURSUANT  
TO FEDERAL RULE OF CIVIL  
PROCEDURE 7.1**

Complaint Filed: September 24, 2018  
Trial Date:

21 **TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE**  
22 **EASTERN DISTRICT OF CALIFORNIA:**

23 Pursuant to Federal Rule of Civil Procedure, Rule 7.1, the undersigned counsel of record  
24 for Defendant W.W. Grainger, Inc., certifies that that there is no parent corporation of Defendant,  
25 nor is there any publicly held corporation that owns ten percent or more of Defendant's stock.

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DATED: October 26, 2018

OGLETREE, DEAKINS, NASH, SMOAK &  
STEWART, P.C.

By: \_\_\_\_\_  
Michael J. Nader  
Ryan H. Crosner  
Attorneys for Defendant  
W.W. Grainger, Inc.

36070323.1

1 MICHAEL J. NADER, SBN 200425  
michael.nader@ogletreedeakins.com  
2 OGLETREE, DEAKINS, NASH, SMOAK &  
STEWART, P.C.  
3 500 Capitol Mall, Suite 2500  
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Telephone: 213.239.9800  
9 Facsimile: 213.239.9045

10 Attorneys for Defendant  
W.W. Grainger, Inc.

11 **UNITED STATES DISTRICT COURT**  
12 **EASTERN DISTRICT OF CALIFORNIA**  
13

14 SELINA RANGEL, an individual, on behalf  
of herself and others similarly situated,

15 Plaintiffs,

16 v.

17 W.W. GRAINGER, INC., an Illinois  
18 Corporation; and DOES 1 through 50,  
inclusive,

19 Defendants.  
20

Case No.

**CERTIFICATE OF SERVICE**

Complaint Filed: September 24, 2018  
Trial Date: None Set

21 I am employed in the County of Sacramento, State of California; I am over the age of 18  
years and not a party to this action. My business address is 500 Capitol Mall, Suite 2500,  
22 Sacramento, CA 95814.

23 On October 26, 2018, I served the following document(s) described as:

24 **Civil Cover sheet, Notice of Removal, Declaration of Sita Natarajan, Declaration of**  
25 **Hank Galatz, and Declaration of Michael J. Nader, and Rule 7.1 Disclosure Statement**

26 With the Clerk of the United States District Court of Eastern District of California, using  
the CM/ECF System. The Court's CM/ECF System will send an e-mail notification of the  
27 foregoing filing to the following parties and counsel of record who are registered with the Court's  
CM/ECF System **and/or**:  
28



1 By placing \_\_\_ (the original) XX (a true copy thereof) in a sealed envelope addressed as  
2 stated on the following party(ies):

3 David Yeremian  
4 Alvin B. Lindsay  
5 David Yeremian & Associates, Inc.  
6 535 N. Brand Blvd, Suite 705  
7 Glendale, CA 91203

*Plaintiff's Counsel*

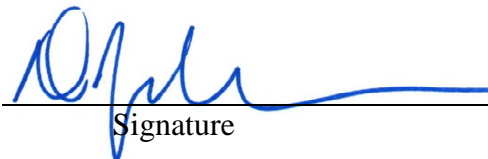
6 Walter Haines  
7 United Employees Law Group, PC  
8 5500 Bolsa Avenue, Suite 201  
9 Huntington Beach, CA 92649

9 I placed the envelope or package for collection and mailing, following our ordinary  
10 business practices. I am readily familiar with this business's practice for collecting and processing  
11 correspondence for mailing. On the same day that correspondence is placed for collection and  
12 mailing, it is deposited in the ordinary course of business with the United State Postal Service, in a  
13 sealed envelope or package with postage fully prepaid.

13 I declare that I am employed in the office of a member of the Bar of this Court at  
14 whose direction the service was made. I declare under penalty of perjury under the laws of the  
15 United States of America that the above is true and correct.

15 Executed on October 26, 2018, at Sacramento, California.

16  
17 Deborah J Weidle  
18 Type or Print Name

  
Signature

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JS 44 (Rev. 08/16)

### CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p><b>I. (a) PLAINTIFFS</b> Selina Rangel</p> <p><b>(b)</b> County of Residence of First Listed Plaintiff <u>Stanislaus</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p><b>(c)</b> Attorneys <i>(Firm Name, Address, and Telephone Number)</i> David Yeremian, Alvin B. Lindsay, David Yeremian &amp; Associates, 535 N. Brand Blvd, Suite 705, Glendale, CA 91203 Tel: 818-230-8380; Walter Haines, United Employees Law Group, 5500 Bolsa Avenue, Ste. 201, Huntington Beach, CA 92649 Tel: 310-652-2242</p>	<p><b>DEFENDANTS</b> W.W. Grainger, Inc.</p> <p>County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i> Michael J. Nader, Ogletree Deakins, 500 Capitol Mall, Ste 2500, Sacramento, CA 95814, Tel:916-840-3150; Ryan H. Crosner, Ogletree Deakins, 400 South Hope Street, Ste 1200, Los Angeles, CA 90071 Tel: 213-239-9800</p>
---	---

<p><b>II. BASIS OF JURISDICTION</b> <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input checked="" type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;"><b>PTF</b></td> <td style="text-align: center;"><b>DEF</b></td> <td></td> <td style="text-align: center;"><b>PTF</b></td> <td style="text-align: center;"><b>DEF</b></td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated <i>or</i> Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated <i>and</i> Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		<b>PTF</b>	<b>DEF</b>		<b>PTF</b>	<b>DEF</b>	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated <i>or</i> Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated <i>and</i> Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES			
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans <i>(Excludes Veterans)</i> <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p><b>PERSONAL INJURY</b></p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes			
<p><b>REAL PROPERTY</b></p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p><b>CIVIL RIGHTS</b></p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p><b>LABOR</b></p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<p><b>PROPERTY RIGHTS</b></p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<p><b>LABOR</b></p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p><b>PERSONAL PROPERTY</b></p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<p><b>IMMIGRATION</b></p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<p><b>SOCIAL SECURITY</b></p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<p><b>FEDERAL TAX SUITS</b></p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

**V. ORIGIN** *(Place an "X" in One Box Only)*

1 Original Proceeding   
  2 Removed from State Court   
  3 Remanded from Appellate Court   
  4 Reinstated or Reopened   
  5 Transferred from Another District *(specify)*   
  6 Multidistrict Litigation - Transfer   
  8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:  
 28 U.S.C. §§ 1332, 1441, 1446 and 1453

Brief description of cause:  
 putative wage and hour class action

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMAND \$ \_\_\_\_\_    CHECK YES only if demanded in complaint: JURY DEMAND:  Yes     No

**VIII. RELATED CASE(S)**

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**IF ANY**

*(See instructions):*

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

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DATE

SIGNATURE OF ATTORNEY OF RECORD

10/26/2018

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**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_

AMOUNT \_\_\_\_\_

APPLYING IFP \_\_\_\_\_

JUDGE \_\_\_\_\_

MAG. JUDGE \_\_\_\_\_

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JS 44 Reverse (Rev. 08/16)

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box. Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
Original Proceedings. (1) Cases which originate in the United States district courts.  
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.  
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C.  
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [W.W. Grainger Facing Class Action Over Alleged California Labor Law Violations](#)

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