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 all employees similarly situated [additional counsel listed below]

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 8 UNITED STATES DISTRICT COURT
 9 CENTRAL DISTRICT OF CALIFORNIA

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BRIAN ROGERS, an individual,
 and AMY CASEY, an individual,
 on behalf of themselves, and on
 behalf of all employees similarly
 situated,

Plaintiffs,

vs.

THD AT-HOME SERVICES,
 INC. dba HOME DEPOT, a
 Delaware Corporation; US
 REMODELERS dba HOME
 DEPOT INTERIORS, a Delaware
 Corporation; US HOME
 SYSTEMS. INC., an unknown
 corporation, and DOES 1 through
 100, inclusive,

Defendants.

**CASE NO. 5:14-cv-02069-JGB-SP
 FIRST AMENDED CLASS ACTION
 COMPLAINT**

Assigned for All Purposes To:
Judge: Jesus G. Bernal
Dept.: Courtroom 1

1. **FAILURE TO PAY WAGES, AND RELATED OVERTIME COMPENSATION;**
2. **FAILURE TO PAY COMMISSIONS;**
3. **UNLAWFUL PROVISION OF COMPENSATION TIME;**
4. **FAILURE TO PROVIDE MEAL PERIODS;**
5. **FAILURE TO PROVIDE REST PERIODS;**
6. **FAILURE TO PROVIDE ITEMIZED STATEMENTS;**
7. **FAILURE TO MAINTAIN ACCURATE PAY RECORDS;**
8. **FAILURE TO PAY WAGES UPON TERMINATION;**
9. **FAILURE TO REIMBURSE LAWFUL BUSINESS EXPENSES;**
10. **UNLAWFUL COMPETITION and BUSINESS PRACTICES;**
11. **FAILURE TO COMPLY WITH RECORDS REQUEST ; and**
12. **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT**

DEMAND FOR JURY TRIAL

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1 All allegations in this Complaint are based upon information and belief
2 except for those allegations, which pertain to the PLAINTIFFS and proposed
3 CLASS named herein and their counsel. Each allegation in this Complaint
4 either has evidentiary support or is likely to have evidentiary support after a
5 reasonable opportunity for further investigation and discovery.

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

7 **1. PLAINTIFFS**

8 1. Plaintiffs, BRIAN ROGERS and AMY CASEY, were at all
9 relevant times:

10 a. Residents of the State of California, assigned to several stores
11 throughout California including, but not limited to, Brea, Fullerton, Irvine,
12 Tustin, Santa Ana, Laguna Hills, Lake Forest, Costa Mesa, Corona, Riverside,
13 Moreno Valley, Temecula, and Murrieta locations.

14 b. Employees of Defendants, THD AT-HOME SERVICES, INC.,
15 (“HOME DEPOT”) a Delaware Corporation; US REMODELERS dba HOME
16 DEPOT INTERIORS, a Delaware Corporation; US HOME SYSTEMS. INC.,
17 an unknown corporation, holding the position of Design Consultant;

18 c. Employees that worked more than eight (8) hours in any given day
19 and/or more than forty (40) hours in any given week, and were not paid all
20 straight time worked or all overtime compensation pursuant to applicable
21 California LABOR CODE requirements;

22 d. Employees who did not receive a ten (10) minute rest period for
23 every three and one-half (3.5) hours worked in any given workday; and

24 e. Employees who worked more than five (5) hours in any given day
25 but did not receive a meal period of at least thirty (30) minutes on that day for
26 each consecutive five (5) hour work period.

27 2. PLAINTIFFS bring this action on their own behalf, on behalf of
28 all others similarly situated, and on behalf of all aggrieved employees, persons

1 and the general public as a private attorney general pursuant to and CAL. BUS.
2 & PROF. CODE §§ 17200 *et seq.*

3 **2. DEFENDANTS**

4 3. PLAINTIFFS are informed and believe, and based upon that
5 information and belief allege that HOME DEPOT, a Delaware Corporation;
6 US REMODELERS dba HOME DEPOT INTERIORS, a Delaware
7 Corporation; US HOME SYSTEMS. INC., an unknown corporation are, and at
8 all times herein mentioned were:

9 a. Corporations authorized to conduct and actually conducting
10 business in the County of Orange and throughout the state of California;

11 b. The former employer(s) or dual employers of PLAINTIFFS
12 herein; and,

13 c. Failed to pay straight and/or overtime pay during the class period;
14 and,

15 d. Failed to give rest breaks or meal breaks during the class period,
16 collectively all of which caused multiple derivative LABOR CODE claims.

17 4. The true names and capacities, whether individual, corporate,
18 partnership, associate or otherwise of Defendant Does 1 through 100,
19 inclusive, are unknown to PLAINTIFFS who therefore sue these
20 DEFENDANTS by such fictitious names pursuant to CAL. CODE CIV. PROC. §
21 474. PLAINTIFFS will seek leave to amend this Complaint to allege the true
22 names and capacities of Does 1 through 100, inclusive, when they are
23 ascertained.

24 5. PLAINTIFFS are informed and believe, and based upon that
25 information and belief allege, that each of the DEFENDANTS named in this
26 Complaint, including Does 1 through 100, inclusive, are responsible in some
27 manner for one or more of the events and happenings that proximately caused
28 the injuries and damages hereinafter alleged.

1 6. PLAINTIFFS are informed and believe, and based upon that
 2 information and belief allege, that each of the DEFENDANTS named in this
 3 Complaint, including Does 1 through 100, inclusive, knowingly and willfully
 4 acted in concert, conspired and agreed together among themselves and entered
 5 into a combined and systemized campaign of activity to *inter alia* damage
 6 PLAINTIFFS and all aggrieved employees and to otherwise consciously
 7 and/or recklessly act in derogation of PLAINTIFF'S rights and the trust
 8 reposed by PLAINTIFFS in each of said DEFENDANTS. Said acts being
 9 negligently and/or intentionally inflicted, said conspiracy and DEFENDANTS'
 10 concerted actions, were such that, to PLAINTIFF'S information and belief,
 11 and to all appearances, DEFENDANTS, and each of them, represented a
 12 unified body so that the actions of one DEFENDANT were accomplished with
 13 knowledge, ratification, authorization, approval, and in concert with, each of
 14 the other DEFENDANTS.

15 7. PLAINTIFFS are informed and believe, and based upon that
 16 information and belief allege, that each of the DEFENDANTS named in this
 17 Complaint, including Does 1 through 100, inclusive, is, and at all times
 18 mentioned herein were, the agent, servant and/or employee of each of the other
 19 DEFENDANTS and that each DEFENDANT was acting within the course and
 20 scope of his, her or its authority as the agent, servant and/or employee of each
 21 of the other DEFENDANTS. Consequently, all of the DEFENDANTS are
 22 jointly and severally liable to PLAINTIFFS and all aggrieved employees and
 23 the general public for the damages sustained as a proximate result of their
 24 conduct.

25 **3. FACTUAL BACKGROUND**

26 **US REMODELERS**

27 8. PLAINTIFFS and the PLAINTIFF CLASSES are Design
 28 Consultants that originally began working for US REMODELERS, INC.

1 Design Consultants are assigned the job of attending in-home consultations
2 with customers to sell the same refacing products that are sold in-store by
3 hourly employees. As a design consultant, PLAINTIFFS and the PLAINTIFF
4 CLASSES are told they must be available to take appointments at anytime
5 from the hours of 9:00 a.m. to 8:00 p.m.

6 9. Design Consultants working for US REMODELERS traveled to
7 and from in-home consultation appointments and were not required to help
8 customers in store, though they occasionally would. They were required to
9 attend mandatory in-store meetings twice a week as well as monthly one on
10 one meetings at the main office in Irvine, California.

11 10. Design Consultants were entitled to have business cards that they
12 personally paid for. As for other marketing materials needed to generate leads,
13 design consultants were required to get approval from US REMODELERS.

14 **THD AT-HOME SERVICES, INC.**

15 11. According to HOME DEPOT company documents, US
16 REMODELERS INC. aka US HOME SERVICES was purchased by HOME
17 DEPOT on **October 26, 2012** and the design consultants became HOME
18 DEPOT employees, that were then misclassified as exempt outsides
19 salespeople. Class members like CASEY received letter welcoming them to
20 “The Home Depot” from Frank Blake Chairman & CEO. Design Consultants
21 were placed on HOME DEPOT’S insurance, had HOME DEPOT restrictions
22 on advertising and cold calling, had to execute HOME DEPOT Confidentiality
23 Agreements, and allowed HOME DEPOT to conduct a background check. In
24 fact, after this time period, Design Consultants performed the exact same
25 function as HOME DEPOT’S kitchen designers, which is an hourly, non-
26 exempt position.

27 12. After US REMODELERS was purchased by HOME DEPOT,
28 Design Consultants were required to attend mandatory meetings twice a week

1 at their assigned stores, and another one on one meeting once a week at the
2 main HOME DEPOT office, which is located in Irvine, California. Most
3 recently, HOME DEPOT started requiring Design Consultants to attend three
4 mandatory meetings, three times a week, to take place on Monday, Wednesday
5 and Friday. Design Consultants are also required to spend a majority of their
6 time at their assigned stores to conduct product knowledge and sales training
7 for employees, lead generation and help customers.

8 13. Design Consultants are not permitted to have business cards or
9 other marketing materials to generate leads. Instead, Design Consultants are
10 required to work in-store in order to market their services to customers, and are
11 not allowed to give customers their personal contact information. Even if a
12 customer does not commit to a free consultation there is no guarantee that the
13 Design Consultant will get that lead, as it is up to management to decide who
14 gets the leads that are entered into the system.

15 14. When Design Consultants were not at in-home consultations, they
16 were required to be present at their assigned stores to train store employees on
17 how to convince a customer to take a “free, no cost, no obligation in home
18 consultation.” In between their in-home consultations, Design Consultants are
19 also required to go to their assigned stores to help familiarize store employees
20 with how refacing works and how to generate leads and appointments by
21 conducting product knowledge sessions in the training room two times a week
22 at each at their assigned stores. If Design Consultants are assigned leads that
23 are not near their assigned stores, then they are required to go to the closet
24 HOME DEPOT store and perform these same tasks, even though it is not their
25 assigned store, making it unlikely that they will benefit from any actions
26 performed. Design Consultants are even required to wear orange aprons,
27 which all HOME DEPOT employees are required to wear, greet customers and
28 help customers with any questions or finding products. Despite having the

1 appearance of being a HOME DEPOT employee, Design Consultants were
2 unlawfully treated as outside salespersons, a position typically exempt from
3 overtime. In fact, Plaintiffs and the Class do not customarily and regularly
4 work more than half their working time away from the employer's place of
5 business selling tangible or intangible items or obtaining orders or contracts
6 for products or services and are not exempt from the California Industrial
7 Wage Orders.

8 **4. CLASS ALLEGATIONS**

9 **A. Definition of Plaintiff Class and Subclasses**

10 15. PLAINTIFFS bring this action on behalf of themselves and all
11 other employees similarly situated as a class action pursuant to California
12 Code of Civil Procedure § 382. PLAINTIFFS seeks to represent a Class
13 composed of and defined as:

14 **All persons who are employed or have been employed by Defendants in**
15 **the State of California who, for the four years prior to the filing of this**
16 **class action to the present, have worked as Design Consultant employees.**

17 Further, PLAINTIFFS seek to represent the following subclasses
18 composed of and defined as follows:

19 16. The PLAINTIFF UNPAID WAGES AND OVERTIME
20 COMPENSATION CLASS consists of all current and former non-exempt
21 employees of DEFENDANTS who worked more than eight (8) hours in any
22 given day and/or more than forty (40) hours in any given week and who were
23 not paid overtime compensation pursuant to applicable California LABOR CODE
24 requirements.

25 17. The PLAINTIFF UNPAID COMMISSION WAGES CLASS
26 consists of all persons who are employed or have been employed by
27 Defendants in the State of California who, for the four years prior to the filing
28 of this class action to the present, were not indemnified for Defendants' losses

1 incurred by them as a condition of employment or in direct consequence of the
2 discharge of their duties or of their obedience to the direction of Defendants
3 and were subject to unlawful deductions or forfeitures of commissions
4 pursuant to LABOR CODE §§ 221, 2802, 2804.

5 18. The PLAINTIFF STRAIGHT AND OVERTIME
6 COMPENSATION CLASS consists of all current and former employees of
7 DEFENDANTS who were not paid minimum wages, in violation of LABOR
8 CODE § 1191 or overtime wages in violation of LABOR CODE 1194, § 1197 and
9 § 1198.

10 19. The PLAINTIFF MEAL PERIOD CLASS consists of all current
11 and former employees of DEFENDANTS who worked more than five (5)
12 hours in any given day but did not receive a first or second meal period of at
13 least thirty (30) minutes on that day.

14 20. The PLAINTIFF REST PERIOD CLASS consists of all current
15 and former employees of DEFENDANTS who did not receive a ten (10)
16 minute rest period for every three and one-half (3.5) hours worked in any
17 given workday.

18 21. The PLAINTIFF WAGE STATEMENT CLASS consists of all
19 current and former employees of DEFENDANTS who, upon each payment of
20 wages, did not receive an itemized statement accurately showing total hours
21 worked, the applicable hourly rates in effect during each pay period and the
22 corresponding hours worked at each hourly rate.

23 22. The PLAINTIFF TERMINATION PAY CLASS consists of all
24 current and former employees of DEFENDANTS who, when their employment
25 was terminated, were not paid, without abatement, all wages due and payable
26 as defined by applicable California law, including overtime compensation.

27 23. THE PLAINTIFF BUSINESS EXPENSES CLASS consists of all
28 persons who are employed or have been employed by Defendants in the State

1 of California who, for the four years prior to the filing of this class action to
2 the present, were not reimbursed all business expenses required by the
3 Defendants pursuant to Labor Code §§ 2800 through 2802.

4 24. THE PLAINTIFF WRITTEN REQUEST TO INSPECT OR COPY
5 RECORDS CLASS consists of all persons who are employed or have been
6 employed by Defendants in the State of California who, for the four years prior
7 to the filing of this class action to the present, were not provided all written
8 records as required by the Defendants pursuant to LABOR CODE §§ 226, 204.3
9 and 1198.5, as well as the applicable IWC Wage Orders.

10 25. The classes defined herein are collectively referred to as the
11 “PLAINTIFF CLASSES.”

12 **B. Maintenance of the Action**

13 26. PLAINTIFFS bring this action individually on behalf of
14 themselves and as representatives of all similarly situated persons pursuant to
15 CAL. BUS. & PROF. CODE §§ 17203 and 17204, CAL. CODE CIV. PROC. § 382,
16 and the provisions of Rule 23 of the FED. RULES CIV. PROC.

17 **C. Class Action Requisites**

18 27. At all material times, PLAINTIFFS were members of the
19 PLAINTIFF CLASSES described in section 3A.

20 28. This Class Action meets the statutory prerequisites for the
21 maintenance of a Class Action as set forth in CAL. CODE CIV. PROC. § 382 and
22 the provisions of Rule 23 of the FED. RULES CIV. PROC., in that:

23 (a) The persons who comprise the PLAINTIFF CLASSES are so
24 numerous that the joinder of all such persons is impracticable and the
25 disposition of their claims as a class will benefit the parties and the Court;

26 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
27 issues that are raised in this Complaint are common to the PLAINTIFF
28 CLASSES and will apply uniformly to every member of each of the

1 PLAINTIFF CLASSES;

2 (c) The claims of the representative PLAINTIFFS are typical of the
3 claims of each member of the PLAINTIFF CLASSES. PLAINTIFFS, like all
4 other members of the PLAINTIFF CLASSES, have sustained damages arising
5 from DEFENDANTS' violations of the laws of the State of California.
6 PLAINTIFFS and the members of the PLAINTIFF CLASSES were and are
7 similarly or identically harmed by the same unlawful, deceptive, unfair,
8 systematic and pervasive pattern of misconduct engaged in by the
9 DEFENDANTS;

10 (d) The representative PLAINTIFFS will fairly and adequately
11 represent and protect the interests of the Classes, and have retained counsel
12 who is competent and experienced in Class Action litigation. There are no
13 material conflicts between the claims of the representative PLAINTIFFS and
14 the members of the Classes that would make class certification inappropriate.
15 Counsel for the Classes will vigorously assert the claims of all Class Members.

16 29. In addition to meeting the statutory prerequisites to a Class
17 Action, this action is properly maintained as a Class Action pursuant to Rule
18 23(b) of the FED. RULES CIV. PROC. and CAL. CODE CIV. PROC. § 382, in that:

19 (a) Without class certification and determination of declaratory,
20 injunctive, statutory and other legal questions within the class format,
21 prosecution of separate actions by individual members of the PLAINTIFF
22 CLASSES will create the risk of:

23 1) Inconsistent or varying adjudications with respect to
24 individual members of the Classes which would establish incompatible
25 standards of conduct for the parties opposing the PLAINTIFF CLASSES; or

26 2) Adjudication with respect to individual members of the
27 PLAINTIFF CLASSES which would as a practical matter be dispositive of the
28 interests of the other members not parties to the adjudication or substantially

1 impair or impede their ability to protect their interests; or

2 (b) The parties opposing the PLAINTIFF CLASSES have acted or
3 refused to act on grounds generally applicable to the PLAINTIFF CLASSES,
4 thereby making appropriate final injunctive relief or corresponding declaratory
5 relief with respect to the PLAINTIFF CLASSES as a whole; or

6 (c) Common questions of law and fact exist as to the members of the
7 PLAINTIFF CLASSES and predominate over any questions affecting only
8 individual members, and a Class Action is superior to other available methods
9 for the fair and efficient adjudication of the controversy, including
10 consideration of:

11 1) The interests of the members of the PLAINTIFF CLASSES
12 in individually controlling the prosecution or defense of separate actions;

13 2) The extent and nature of any litigation concerning the
14 controversy already commenced by or against members of the PLAINTIFF
15 CLASSES;

16 3) The desirability or undesirability of concentrating the
17 litigation of the claims in the particular forum; and

18 4) The difficulties likely to be encountered in the management
19 of a Class Action.

20 30. This Court should permit this action to be maintained as a class
21 action pursuant to CAL. CODE CIV. PROC. § 382 because:

22 (a) The questions of law and fact common to the PLAINTIFF
23 CLASSES predominate over any question affecting only individual members;

24 (b) A class action is superior to any other available method for the fair
25 and efficient adjudication of the claims of the members of the PLAINTIFF
26 CLASSES;

27 (c) PLAINTIFFS and the other members of the PLAINTIFF
28 CLASSES will not be able to obtain effective and economic legal redress

1 unless the action is maintained as a class action;

2 (d) There is a community of interest in obtaining appropriate legal and
3 equitable relief for the common law and statutory violations and other
4 improprieties, and in obtaining adequate compensation for the damages and
5 injuries which DEFENDANTS' actions have inflicted upon the PLAINTIFF
6 CLASSES; and,

7 (e) There is a community of interest in ensuring that the combined
8 assets and available insurance of the DEFENDANTS is sufficient to
9 adequately compensate the members of the PLAINTIFF CLASSES for the
10 injuries sustained.

11 31. Class PLAINTIFFS contemplate the eventual issuance of notice to
12 the proposed Class Members of each PLAINTIFF CLASS that would set forth
13 the subject and nature of the instant action. The DEFENDANTS' own
14 business records can be utilized for assistance in the preparation and issuance
15 of the contemplated notices. To the extent that any further notices may be
16 required, Class PLAINTIFFS would contemplate the use of additional media
17 and/or mailings.

18 32. Among the many questions of law and fact common to the class
19 are:

20 (a) Whether DEFENDANTS adjusted, altered and/or changed all non-
21 exempt employees' hours to reflect no more than eight (8) hours per day and
22 no more than forty (40) hours per week;

23 (b) Whether DEFENDANTS paid failed to pay overtime wages to any
24 non-exempt employee;

25 (c) Whether DEFENDANTS failed to pay all wages due to any non-
26 exempt employee;

27 (d) Whether DEFENDANTS failed to properly pay commission wages
28 in violation of LABOR CODE §§ 221, 2802, 2804;

- 1 (e) Whether DEFENDANTS failed to keep accurate payroll records of
2 any non-exempt employee;
- 3 (f) Whether DEFENDANTS violated LABOR CODE § 204.3;
- 4 (g) Whether DEFENDANTS violated LABOR CODE § 226;
- 5 (h) Whether DEFENDANTS violated LABOR CODE § 226.7 by failing
6 to provide meal periods;
- 7 (i) Whether DEFENDANTS violated CAL. CODE. REG., Title 8, §
8 1070(12)(A) by failing to provide meal periods;
- 9 (j) Whether DEFENDANTS violated LABOR CODE § 226.7 by failing
10 to provide rest periods;
- 11 (k) Whether DEFENDANTS violated CAL. CODE REG., Title 8, §
12 11070(11)(A) by failing to provide meal periods;
- 13 (l) Whether DEFENDANTS failed to reimburse any non-exempt
14 employee for lawful business expenses
- 15 (m) Whether DEFENDANTS violated CAL. LABOR CODE §§226, 432
16 and 1198.5 and the applicable Wage Orders, section 7;
- 17 (n) Whether DEFENDANTS’ conduct is “unlawful,” “unfair” or
18 “fraudulent” within the meaning supplied by California’s Trade Practices Act,
19 BUS. & PROF. CODE § 17200, *et seq.*;
- 20 (o) Whether DEFENDANTS’ acts constitute “unfair trade practices”
21 within the meaning of California’s Trade Practices Act, BUS. & PROF. CODE §
22 17200, *et seq.*;
- 23 (p) Whether DEFENDANTS’ activities related to their failure to
24 disclose material and relevant information constitutes violations of BUS. &
25 PROF. CODE § 17200;
- 26 (q) Whether any non-exempt employees employed by DEFENDANTS
27 are entitled to overtime wages, as required by CAL. LABOR CODE §§ 1194 and
28 1198.

1 33. As to the issues raised in this case, a class action is superior to all
 2 other methods for the fair and efficient adjudication of this controversy, since
 3 joinder of all class members is impracticable and since many legal and factual
 4 questions to be adjudicated apply uniformly to all class members. Further, as
 5 the economic or other loss suffered by vast numbers of class members may be
 6 relatively small, the expense and burden of individual actions makes it difficult
 7 for the class members to individually redress the wrongs they have suffered.
 8 Moreover, in the event disgorgement is ordered, a class action is the only
 9 mechanism that will permit the employment of a fluid fund recovery to ensure
 10 that equity is achieved. There will be relatively little difficulty in managing
 11 this case as a class action as will be outlined in a complaint trial plan.

12 34. The class action is superior to other available methods for a fair
 13 and efficient adjudication of the claims presented by this Complaint and would
 14 reduce the financial, administrative and procedural burdens on the parties and
 15 on the Court which individual litigation would otherwise impose.

16 **FIRST CAUSE OF ACTION**

17 **FOR FAILURE TO PAY WAGES AND RELATED OVERTIME**

18 **COMPENSATION**

19 **[CALIFORNIA LABOR CODE §§ 1194 and 1198]**

20 **(Against All Defendants)**

21 35. PLAINTIFFS and the PLAINTIFF CLASSES (and subclasses) re-
 22 allege and incorporate by reference, as though fully set forth herein, the
 23 paragraphs previously alleged in this Complaint.

24 36. This claim is brought by PLAINTIFFS, on behalf of themselves and
 25 on behalf of the PLAINTIFF CLASSES and the subclasses thereof.

26 37. CAL. LABOR CODE §§ 1194 and 1198 provide that employees in
 27 California shall not be employed more than eight (8) hours in any work day,
 28 and/or more than forty (40) hours in any workweek, unless they receive additional

1 compensation beyond their regular wages in amounts specified by law.

2 38. CAL. LABOR CODE § 1194 provides that an employee who has not
3 been paid overtime compensation as required by § 1198 may recover the unpaid
4 balance of the full amount of such overtime compensation, together with costs of
5 suit, as well as liquidated damages in an amount equal to the overtime
6 compensation unlawfully withheld, and interest thereon, in a civil action. The
7 action may be maintained directly against the employer in his name without first
8 filing a claim with the Department of Labor Standards Enforcement.

9 39. At all times relevant hereto, the IWC Wage Orders applied, and
10 applies, to PLAINTIFF'S employment with DEFENDANTS.

11 40. At all times relevant hereto, the IWC Wage Orders provides for
12 payment of overtime wages equal to one and one-half times an employee's regular
13 rate of pay for all hours worked over eight (8) hours a day and/or forty (40) hours
14 in a work week.

15 41. DEFENDANTS, and each of them, have intentionally and improperly
16 changed, adjusted and/or modified certain employees' hours, including
17 PLAINTIFFS', to avoid payment of overtime wages and other benefits in
18 violation of California Code of Regulations and the guidelines set forth by the
19 Division of Labor Standards Enforcement.

20 42. At all times relevant hereto, from time to time, PLAINTIFFS and
21 aggrieved employees have worked more than eight (8) hours in a workday, and/or
22 more than forty (40) hours in a workweek, as employees of DEFENDANTS.

23 43. At all times relevant hereto, the DEFENDANTS, and each of them,
24 failed to pay to PLAINTIFFS and aggrieved employees overtime compensation
25 for the hours they have worked in excess of the maximum hours permissible by
26 law as required by CAL. LABOR CODE § 1194, § 1197 and § 1198 and the
27 provisions of IWC Wage Orders, CAL. CODE REG. Title 8 § 11070.

28

1 44. By virtue of the DEFENDANTS' unlawful failure to pay additional
2 compensation to PLAINTIFFS for overtime hours, PLAINTIFFS and the
3 PLAINTIFF CLASSES have suffered, and will continue to suffer, damages in
4 amounts which are presently unknown to PLAINTIFFS, but which exceed the
5 jurisdictional limits of this Court and which will be ascertained according to proof
6 at trial.

7 45. DEFENDANTS' failure to pay non-exempt employees overtime
8 wages has violated and continues to violate CAL. PEN. CODE §§ 484 and 532
9 (obtaining labor through false pretenses).

10 46. PLAINTIFFS are informed and believe, and based upon that
11 information and belief allege, that DEFENDANTS, and each of them, knew or
12 should have known that the non-exempt employees did not qualify as exempt
13 employees and purposely elected not to pay PLAINTIFFS and all non-exempt
14 employees for their overtime labor.

15 47. DEFENDANTS, and each of them, acted intentionally, oppressively
16 and maliciously toward PLAINTIFFS and all non-exempt employees with a
17 conscious disregard of the PLAINTIFF CLASSES' rights, or the consequences to
18 PLAINTIFFS and the PLAINTIFF CLASSES, with the intent of depriving the
19 PLAINTIFF CLASSES of property and legal rights and otherwise causing
20 PLAINTIFF CLASSES injury.

21 48. PLAINTIFFS, individually, and on behalf of members of the
22 PLAINTIFF CLASSES, request recovery of overtime compensation according to
23 proof, interest, attorney's fees and costs pursuant to CAL. LABOR CODE § 1194(a),
24 as well as the assessment of any statutory penalties against these DEFENDANTS,
25 and each of them, and any additional sums as provided by the Cal. Labor Code
26 and/or other statutes.

27 49. Further, PLAINTIFFS and the PLAINTIFF CLASSES are entitled to
28 seek and recover reasonable attorneys' fees and costs pursuant to CAL. LABOR

1 CODE §§ 210 and 1194.

2 **SECOND CAUSE OF ACTION**
3 **FOR FAILURE TO PAY COMMISSION WAGES**
4 **[CALIFORNIA LABOR CODE §§ 221, 2802, 2804]**
5 **(Against All Defendants)**

6 50. PLAINTIFFS and the PLAINTIFF CLASSES (and subclasses) re-
7 allege and incorporate by reference, as though fully set forth herein, the
8 paragraphs previously alleged in this Complaint.

9 51. Pursuant to LABOR CODE § 221, (entitled “Collection or receipt of
10 wages previously paid”), “It shall be unlawful for any employer to collect or
11 receive from an employee any part of wages theretofore paid by said employer
12 to said employee.”

13 52. Further, LABOR CODE § 223 provides, “Where any statute or
14 contract requires an employer to maintain the designated wage scale, it shall be
15 unlawful to secretly pay a lower wage while purporting to pay the wage
16 designated by statute or contract. LABOR CODE § 2751 provides “(a) Whenever
17 an employer enters into a contract of employment with an employee for
18 services to be rendered within this state and the contemplated method of
19 payment of the employee involves commissions, the contract shall be in
20 writing and shall set forth the method by which the commissions shall be
21 computed and paid.” Here Defendants have secretly paid a lower wage and
22 failed to set forth in writing the method by which the commissions shall be
23 computed and paid due to all the deductions applied to earned commissions.

24 53. Pursuant to Civil Code §§ 1670.5, 3275 and 3369, it is illegal for
25 an employer to require a forfeiture or penalty against an employee’s wages.
26 DEFENDANTS, through its policy illegally withheld earned commissions by
27 imposing penalties, improper liquidated damages, unlawful deductions, and/or
28 illegal forfeiture of commissions, and thereby failed to pay these employees all

1 wages due at each applicable pay period or upon termination.

2 54. At all times relevant herein, Defendant maintained and enforced a
3 policy that resulted in PLAINTIFFS and THE PLAINTIFF CLASS not being
4 paid or credited with commissions on sales which generated a business loss to
5 the employer.

6 55. PLAINTIFFS and THE PLAINTIFF CLASS should have received
7 commission and bonus wages in a sum according to proof for all unpaid
8 commissions pursuant to DEFENDANTS policy, as set forth above, during the
9 four (4) years prior to the filing of this lawsuit. DEFENDANTS, therefore,
10 owes PLAINTIFFS and THE PLAINTIFF CLASS wages, and has failed and
11 refused, and continues to fail and refuse, to pay owes PLAINTIFFS and THE
12 PLAINTIFF CLASS the amount owed.

13 56. DEFENDANTS did not timely pay commission wages owed to
14 owes PLAINTIFFS and THE PLAINTIFF CLASS at the conclusion of their
15 employment with DEFENDANTS, entitling the Class to statutory penalties
16 under LABOR CODE §§ 201-203.

17 57. PLAINTIFFS and THE PLAINTIFF CLASS, requests recovery of
18 commission wages according to proof, related penalties, interest, attorney fees,
19 and costs pursuant to LABOR CODE § 1194 and any other applicable LABOR
20 CODE sections.

21 **THIRD CAUSE OF ACTION**

22 **UNLAWFUL PROVISION OF COMPENSATION TIME**

23 **[CALIFORNIA LABOR CODE §§ 204 *et seq.*, and**

24 **CALIFORNIA CODE OF REGULATIONS, Title 8, §11070]**

25 **(Against All Defendants)**

26 58. PLAINTIFFS and the PLAINTIFF CLASSES (and subclasses) re-
27 allege and incorporate by reference, as though fully set forth herein, the
28 paragraphs previously alleged.

1 59. During all time periods covered by this action, DEFENDANTS
2 required PLAINTIFFS and the PLAINTIFF CLASSES to work overtime hours for
3 which they were not paid overtime compensation.

4 60. During all time periods covered by this action, DEFENDANTS
5 required PLAINTIFFS and the PLAINTIFF CLASSES to work under the
6 unlawful policy for which they were not paid minimum wages.

7 61. During all time periods covered by this action, DEFENDANTS
8 required that PLAINTIFFS and the PLAINTIFF CLASSES attend scheduled
9 meetings, train DEFENDANTS' employees, and assist customers in-store, without
10 getting paid.

11 62. DEFENDANTS' conduct violated LABOR CODE §§ 204, *et seq.* and
12 204.3 as DEFENDANTS failed to pay PLAINTIFFS and the PLAINTIFF
13 CLASSES proper compensation for all hours worked, which resulted in
14 PLAINTIFFS and the PLAINTIFF CLASSES not being paid minimum wages, in
15 violation of LABOR CODE § 1191 or overtime wages in violation of LABOR CODE
16 1194, § 1197 and § 1198.

17 63. Therefore, PLAINTIFFS and the PLAINTIFF CLASSES pray for
18 general and special damages, monetary compensation at the rate of time and one
19 half or double time for all overtime hours which were adjusted to a later pay
20 period in lieu of overtime compensation; overtime compensation for all
21 compensation time owed upon the termination of their employment; and
22 injunctive relief to enjoin the DEFENDANTS from this illegal conduct.

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FOURTH CAUSE OF ACTION
FOR FAILURE TO PROVIDE MEAL PERIODS
[CALIFORNIA LABOR CODE §§ 226.7 and 512, and
CALIFORNIA CODE OF REGULATION, Title 8, §11070]
(Against All Defendants)

64. PLAINTIFFS and the PLAINTIFF CLASSES (and subclasses) re-allege and incorporate by reference, as though fully set forth herein, the paragraphs previously alleged in this Complaint.

65. CAL. LABOR CODE §§ 226.7 and 512 and CAL. CODE OF REG., Title 8, § 11070(11)(A), provides that no employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes.

66. CAL. LABOR CODE § 226.7 and CAL. CODE OF REG., Title 8, § 11070(11)(D), provides that if an employer fails to provide an employee a meal period in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.

67. DEFENDANTS, and each of them, have intentionally and improperly denied meal periods to the PLAINTIFF CLASSES in violation of CAL. LABOR CODE §§ 226.7 and 512 and CAL. CODE OF REG., Title 8, § 11070(11)(A) and other regulations and statutes.

68. At all times relevant hereto, PLAINTIFFS and the PLAINTIFF CLASSES, have worked more than five hours in a workday.

69. At all times relevant hereto, the DEFENDANTS, and each of them, failed to provide meal periods as required by CAL. LABOR CODE §§ 226.7 and 512 and CAL. CODE OF REG., Title 8, §11070(11)(A).

70. By virtue of the DEFENDANTS’ unlawful failure to provide meal periods to PLAINTIFFS and the PLAINTIFF CLASSES, PLAINTIFFS and the

1 PLAINTIFF CLASSES have suffered, and will continue to suffer, damages in
2 amounts which are presently unknown to the PLAINTIFF CLASSES but which
3 exceed the jurisdictional limits of this Court and which will be ascertained
4 according to proof at trial.

5 71. The PLAINTIFF CLASSES are informed and believe, and based
6 upon that information and belief allege, that DEFENDANTS, and each of them,
7 purposely elected not to provide meal periods.

8 72. DEFENDANTS, and each of them, acted intentionally, oppressively
9 and maliciously toward PLAINTIFFS and the PLAINTIFF CLASSES with a
10 conscious disregard of their rights, or the consequences to PLAINTIFFS and the
11 PLAINTIFF CLASSES, with the intent of depriving them of property and legal
12 rights and otherwise causing PLAINTIFFS and the PLAINTIFF CLASSES injury.

13 73. PLAINTIFFS, individually, and on behalf of the PLAINTIFF
14 CLASSES, requests recovery of meal period compensation pursuant to CAL.
15 LABOR CODE §§ 226.7 and CAL. CODE OF REG., Title 8, §11070(11)(D), as well as
16 the assessment of any statutory penalties against these DEFENDANTS, and each
17 of them, in a sum as provided by the Labor Code and/or other statutes. Further,
18 the PLAINTIFF CLASSES are entitled to seek and recover reasonable attorneys'
19 fees and costs pursuant to CAL. LABOR CODE § 1194.

20 **FIFTH CAUSE OF ACTION**

21 **FOR FAILURE TO PROVIDE REST PERIODS**

22 **[CALIFORNIA LABOR CODE §§ 226.7 and 512, and**
23 **CALIFORNIA CODE OF REGULATION, Title 8, §11070]**

24 **(Against All Defendants)**

25 74. PLAINTIFFS and the PLAINTIFF CLASSES (and subclasses) re-
26 allege and incorporate by reference, as though fully set forth herein, the
27 paragraphs previously alleged in this Complaint.
28

1 75. CAL. LABOR CODE §§ 226.7 and CAL. CODE REG., Title 8, §
2 11070(12)(A), provides that employers authorize and permit all employees to take
3 rest periods at the rate of ten (10) minutes net rest time per 3.5 work hours.

4 76. CAL. LABOR CODE §§ 226.7 and CAL. CODE REG., Title 8, §
5 11070(12)(D), provides that if an employer fails to provide an employee rest
6 periods in accordance with this section, the employer shall pay the employee one
7 (1) hour of pay at the employee's regular rate of compensation for each workday
8 that the rest period is not provided.

9 77. DEFENDANTS, and each of them, have intentionally and improperly
10 denied rest periods to PLAINTIFFS and the PLAINTIFF CLASSES in violation
11 of CAL. LABOR CODE §§ 226.7 and 512 and CAL. CODE REG., Title 8, §
12 11070(12)(A).

13 78. At all times relevant hereto, PLAINTIFFS and the PLAINTIFF
14 CLASSES, have worked more than four hours in a workday.

15 79. At all times relevant hereto, the DEFENDANTS, and each of them,
16 failed to provide rest periods as required by CAL. LABOR CODE §§ 226.7 and CAL.
17 CODE REG., Title 8, § 11070(12)(A).

18 80. By virtue of the DEFENDANTS' unlawful failure to provide rest
19 periods to the PLAINTIFFS and PLAINTIFF CLASSES, PLAINTIFFS and
20 PLAINTIFF CLASSES have suffered, and will continue to suffer, damages in
21 amounts which are presently unknown to the PLAINTIFFS and PLAINTIFF
22 CLASSES but which exceed the jurisdictional limits of this Court and which will
23 be ascertained according to proof at trial.

24 81. PLAINTIFFS and the PLAINTIFF CLASSES are informed and
25 believe, and based upon that information and belief allege, that DEFENDANTS,
26 and each of them, knew or should have known that PLAINTIFFS and PLAINTIFF
27 CLASSES were entitled to rest periods and purposely elected not to provide rest
28 periods.

1 82. DEFENDANTS, and each of them, acted intentionally, oppressively
2 and maliciously toward PLAINTIFFS and the PLAINTIFF CLASSES with a
3 conscious disregard of their rights, or the consequences to PLAINTIFFS and the
4 PLAINTIFF CLASSES, with the intent of depriving PLAINTIFFS and the
5 PLAINTIFF CLASSES of property and legal rights and otherwise causing the
6 PLAINTIFF CLASSES injury.

7 83. PLAINTIFFS, individually, and on behalf of employees similarly
8 situated, request recovery of rest period compensation pursuant to LABOR CODE §§
9 226.7 and CAL. CODE REG., Title 8, § 11070(12)(B), as well as the assessment of
10 any statutory penalties against these DEFENDANTS, and each of them, in a sum
11 as provided by the LABOR CODE and/or other statutes in addition to reasonable
12 attorneys' fees and costs pursuant to LABOR CODE § 1194.

13 **SIXTH CAUSE OF ACTION**
14 **FOR FAILURE TO FURNISH ITEMIZED STATEMENTS**

15 **[CALIFORNIA LABOR CODE § 226]**

16 **(Against All Defendants)**

17 84. PLAINTIFFS and the PLAINTIFF CLASSES (and subclasses) re-
18 allege and incorporate by reference, as though fully set forth herein, the
19 paragraphs previously alleged.

20 85. Throughout the Class Period, DEFENDANTS intentionally failed to
21 furnish to PLAINTIFFS and the PLAINTIFF CLASSES, upon each payment of
22 wages, itemized statements accurately showing: total hours worked, the applicable
23 hourly rates in effect during each pay period and the corresponding hours worked
24 at each hourly rate.

25 86. PLAINTIFFS and the PLAINTIFF CLASSES were damaged by
26 these failures because, among other things, the failures led them to believe that
27 they were not entitled to be paid overtime, even though they were so entitled and
28 because the failures hindered them from determining the amounts of overtime

1 wages owed to them.

2 87. PLAINTIFFS and the PLAINTIFF CLASSES are entitled to the
3 amounts provided in CAL. LABOR CODE § 226(e), plus costs and attorneys' fees.

4 **SEVENTH CAUSE OF ACTION**
5 **FOR FAILURE TO MAINTAIN ACCURATE PAYROLL RECORDS**

6 [CALIFORNIA LABOR CODE § 1174]

7 (Against All Defendants)

8 88. PLAINTIFFS and the PLAINTIFF CLASSES (and subclasses) re-
9 allege and incorporate by reference, as though fully set forth herein, the
10 paragraphs previously alleged in this Complaint.

11 89. Throughout the Class Period, DEFENDANTS failed to keep at a
12 central location in the state or at the plants establishments at which the
13 PLAINTIFFS were or continue to be employed, payroll records for three (3) years
14 showing the hours worked daily by and the wages paid to PLAINTIFFS.

15 90. PLAINTIFFS and the PLAINTIFF CLASSES are entitled to the
16 assessment of any statutory penalties and recover reasonable attorneys' fees and
17 costs pursuant to LABOR CODE § 1174.

18 **EIGHTH CAUSE OF ACTION**
19 **FOR FAILURE TO PAY WAGES UPON TERMINATION OF**
20 **EMPLOYMENT**

21 [CALIFORNIA LABOR CODE § 203]

22 (Against All Defendants)

23 91. PLAINTIFFS and the PLAINTIFF CLASSES (and subclasses) re-
24 allege and incorporate by reference, as though fully set forth herein, the
25 paragraphs previously alleged in this Complaint.

26 92. PLAINTIFFS allege that on information and belief many members
27 of the PLAINTIFF CLASSES quit or were discharged from their employment
28 with DEFENDANTS within the applicable statute of limitations.

1 and Working Conditions in the Mercantile and Similar Occupations [or other
2 related Wage Orders].

3 97. DEFENDANTS' knowing and willful failure to reimburse lawful
4 necessary work related expenses and losses to PLAINTIFFS and the PLAINTIFF
5 CLASSES resulted in damage to them because, among other things,
6 DEFENDANTS did not inform them of their right to be reimbursed for those
7 work related expenses. As DEFENDANTS failed to inform and misled
8 PLAINTIFFS and the PLAINTIFF CLASSES with regard to their rights,
9 PLAINTIFFS and the PLAINTIFF CLASSES were led to believe that incurring
10 those lawful and necessary expenses and losses was an expected and essential
11 function of their employment with DEFENDANTS and that failure to incur those
12 expenses would have adverse consequences on their employment status.

13 98. Therefore, PLAINTIFFS and the PLAINTIFF CLASSES are entitled
14 to reimbursement for any and all necessary work related expenses, including
15 mileage, cell phone, and printing expenses, as provided for in LABOR CODE §
16 2802(b), which were incurred during the direct discharge of their duties while
17 employed by DEFENDANTS as well as accrued interest on those expenses that
18 were not reimbursed from the date they incurred those expenses. Further,
19 PLAINTIFFS and PLAINTIFF CLASSES are entitled to costs and attorney's fees
20 pursuant to LABOR CODE § 2802(c).

21 **TENTH CAUSE OF ACTION**
22 **FOR UNLAWFUL COMPETITION AND UNLAWFUL BUSINESS**
23 **PRACTICES**

24 **[CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17000, *et seq.*]**

25 **(Against All Defendants)**

26 99. PLAINTIFFS and the PLAINTIFF CLASSES (and subclasses) re-
27 allege and incorporate by reference, as though fully set forth herein, the
28 paragraphs previously alleged in this Complaint.

1 100. This claim is brought by PLAINTIFFS and the PLAINTIFF
2 CLASSES on behalf of themselves, all persons similarly situated, and the general
3 public.

4 101. At all times relevant hereto, from time to time, the PLAINTIFF
5 CLASSES have worked more than eight (8) hours in a workday, and/or more than
6 forty (40) hours in a workweek, as employees of DEFENDANTS. The
7 representative PLAINTIFFS herein, and members of the PLAINTIFF CLASSES,
8 have had their hours adjusted, changed and/or modified to not reflect their actual
9 number of hours worked per day and per pay period.

10 102. At all times relevant hereto, from time to time, PLAINTIFFS and the
11 PLAINTIFF CLASSES have been denied meal breaks by DEFENDANTS.

12 103. At all times relevant hereto, from time to time, PLAINTIFFS and the
13 PLAINTIFF CLASSES have been denied rest breaks by DEFENDANTS.

14 104. Since at least 2004, and at all times relevant hereto, by and through
15 the conduct described herein, the DEFENDANTS have engaged in unfair,
16 unlawful and fraudulent business practices, in violation of CAL. BUS. & PROF.
17 CODE §§ 17200 *et seq.*, and have thereby deprived PLAINTIFFS, and all persons
18 in interest, of fundamental rights and privileges guaranteed to all employees under
19 California law.

20 105. DEFENDANTS, and each of them, are “persons” as defined under
21 BUS. & PROF. CODE § 17021.

22 106. DEFENDANTS both provide services in California which sell to the
23 public as defined in BUS. & PROF. CODE §§ 17022 and 17024.

24 107. PLAINTIFFS and the PLAINTIFF CLASSES are informed and
25 believe, and based upon that information and belief allege, that DEFENDANTS,
26 and each of them, have intentionally and improperly denied overtime
27 compensation to PLAINTIFFS and the PLAINTIFF CLASSES for hours worked.
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1 108. PLAINTIFFS and the PLAINTIFF CLASSES are informed and
2 believe, and based upon that information and belief allege, that DEFENDANTS,
3 and each of them, have intentionally and improperly refused to pay PLAINTIFFS
4 and the Class all wages earned as well as provide meal and rest periods to
5 PLAINTIFFS and the PLAINTIFF CLASSES in violation of CAL. LABOR CODE
6 §§ 226.7 and 512 and CAL. CODE REG., Title 8, § 11070.

7 109. Furthermore, DEFENDANTS, and each of them, have under reported
8 to federal and state authorities wages earned by PLAINTIFFS and the
9 PLAINTIFF CLASSES and, therefore, have underpaid state taxes, employer
10 matching funds, state unemployment premiums, state health care and Worker's
11 Compensation premiums. The aforesaid conduct is criminal in nature and subjects
12 the DEFENDANTS, and each of them, to sanctions, fines and imprisonment, and
13 is actionable under BUS. & PROF. CODE §§ 17000, *et seq.*

14 110. PLAINTIFFS and the PLAINTIFF CLASSES are informed and
15 believe, and based upon that information and belief allege, that by failing to pay
16 overtime wages to PLAINTIFFS and the PLAINTIFF CLASSES, and failing to
17 provide meal and rest periods, DEFENDANTS have engaged in business within
18 the state of California to sell its products at less than cost as set forth and defined
19 in BUS. & PROF. CODE §§ 17026, 17029, and 17073, for the purpose of injuring
20 competitors and/or destroying competition in violation of BUS. & PROF. CODE §
21 17043.

22 111. Pursuant to BUS. & PROF. CODE §§ 17071 and 17075, the failure of
23 DEFENDANTS, and each of them, to pay overtime wages, related benefits, state
24 employment taxes, and providing meal and rest periods is admissible as evidence
25 of DEFENDANTS' intent to violate Chapter 4 of the Unfair Business Trade Act.

26 112. PLAINTIFFS and the PLAINTIFF CLASSES are informed and
27 believe, and based upon that information and belief allege, that DEFENDANTS,
28 and each of them, have instructed and directed its directors, officers, employees,

1 and/or agents to intentionally and unlawfully deny overtime compensation to
2 PLAINTIFFS and the PLAINTIFF CLASSES and to instruct them not to report
3 overtime hours worked to avoid payment of overtime wages and corresponding
4 state employment taxes, and to deny meal and rest periods in order to gain an
5 unfair advantage over their competitors in violation of BUS. & PROF. CODE §
6 17047:

- 7 (a) To meet sales and production goals and to avoid paying
8 overtime compensation, PLAINTIFFS and the PLAINTIFF
9 CLASSES were and are required to work substantial amounts
10 of hours without proper compensation or any compensation at
11 all as they are improperly classified as outside salespeople
12 when little, if any, selling occurs outside of the Stores and
13 Plaintiffs are required to be in the stores;
- 14 (b) To meet sales and production goals and to maintain lower
15 costs, PLAINTIFFS and the PLAINTIFF CLASSES were and
16 are required to work without meal and rest periods; and
- 17 (c) To meet sales and production goals and to maintain lower
18 costs, PLAINTIFFS and the PLAINTIFF CLASSES were and
19 are required to train DEFENDANTS' employees free of charge
20 among other issues.

21 113. As a direct and proximate result of these acts and omissions,
22 PLAINTIFFS and the PLAINTIFF CLASSES, are informed and believe, and
23 based upon that information and belief allege that the DEFENDANTS, and each
24 of them, were able to unfairly compete with other competitors in the state of
25 California by not paying overtime and wages and failing to provide meal and rest
26 periods. Through its unfair business practices, DEFENDANTS have been able to
27 charge lower prices for its services than the prices charged by other comparable
28 competitors doing business in the state of California that abide by California Wage

1 laws.

2 114. The victims of the unfair business practice include, but are not
3 limited to the employees of DEFENDANTS, competitors in the state of
4 California, and the general public.

5 115. PLAINTIFFS and the PLAINTIFF CLASSES are informed and
6 believe, and based upon that information and belief allege, that DEFENDANTS,
7 and each of them, performed the above-mentioned acts with the intent of gaining
8 an unfair competitive advantage and thereby injuring PLAINTIFFS and the
9 PLAINTIFF CLASSES, other employees, other competitors, and the general
10 public.

11 116. The conduct of DEFEENDANTS set forth herein violates BUS. &
12 PROF. CODE § 17000 *et, seq.* and PLAINTIFF and the PLAINTIFF CLASSES are
13 entitled to injunctive relief, treble damages and attorneys fees.

14 117. DEFENDANTS, as set forth in this Complaint, *supra*, engaged in
15 false, unfair and misleading business practices, consisting of acts and omissions
16 that include, but are not limited to:

- 17 (a) The fact that DEFENDANTS required non-exempt employees
18 to work more than forty (40) hours per week and then adjusted,
19 altered and/or changed schedules to reflect that they had not
20 worked any overtime hours;
- 21 (b) The fact that DEFENDANTS paid no overtime wages to non-
22 exempt employees;
- 23 (c) The fact that DEFENDANTS failed to provide lawful meal and
24 rest periods to non-exempt employees;
- 25 (d) The fact that DEFENDANTS kept no detailed records of non-
26 exempt employees' actual daily work activities, in part, to
27 prevent PLAINTIFF CLASSES from recovering overtime
28 wages from DEFENDANTS after the discovery of

1 DEFENDANTS’ deceptive, fraudulent, false, unfair and
2 unlawful conduct;

3 (e) The fact that all non-exempt employees employed by
4 DEFENDANTS are entitled to overtime wages, as required by
5 CAL. LABOR CODE §§ 1194 and 1198. The failure to pay
6 overtime wages is “unlawful” pursuant to CAL. BUS. & PROF.
7 CODE §§17200 *et seq.*

8 118. Pursuant to BUS. & PROF. CODE §§17071 and 17075, the failure of
9 DEFENDANTS, and each of them, to pay overtime wages, related benefits, and
10 state employment taxes, is admissible as evidence of DEFENDANT’S intent to
11 violate Chapter 4 of the UNFAIR BUSINESS TRADE ACT.

12 119. DEFENDANTS practices are unlawful, unfair, deceptive, untrue, and
13 misleading. All non-exempt employees including PLAINTIFFS, are likely to be
14 deceived by these practices.

15 120. As a direct and proximate result of these acts and omissions,
16 PLAINTIFFS are informed and believe, and based upon that information and
17 belief allege, that the DEFENDANTS, and each of them, were able to unfairly
18 compete with other insurance providers in the state of California by not paying
19 overtime and wages in violation of BUS. & PROF. CODE Chapters 4 and 5, *et al.*
20 Due to this unfair business practice, DEFENDANTS have been able to charge
21 lower prices for its goods and services than the prices charged by other
22 competitors doing business in the state of California.

23 121. The victims of this unfair business practice include, but are not
24 limited to, all non-exempt employees of DEFENDANTS, competitors in the state
25 of California, and the general public.

26 122. PLAINTIFFS are informed and believe, and based upon that
27 information and belief allege, that DEFENDANTS, and each of them, performed
28 the above-mentioned acts with the intent of gaining an unfair competitive

1 advantage and thereby injuring the PLAINTIFF, other non-exempt employees,
2 other competitors, and the general public.

3 123. By and through the conduct described above, the PLAINTIFFS, and
4 all non-exempt employees have been deprived of their right to be paid overtime
5 compensation earned by virtue of their employment with the DEFENDANTS at
6 regular intervals, in accordance with the requirements of §§ 204, 1197 and 1198 of
7 the CAL. LABOR CODE.

8 124. By and through their unfair, unlawful and/or fraudulent business
9 practices described herein, the DEFENDANTS, have obtained valuable property,
10 money and services from the PLAINTIFFS, and all persons similarly situated, and
11 has deprived the PLAINTIFFS, and all non-exempt employees of valuable rights
12 and benefits guaranteed by law, all to their detriment.

13 125. PLAINTIFFS and the PLAINTIFF CLASSES have injury-in-fact as a
14 result of DEFENDANTS' conduct. Moreover PLAINTIFFS and the PLAINTIFF
15 CLASSES have lost money as a direct result of DEFENDANTS' unfair, unlawful,
16 deceptive and fraudulent conduct.

17 126. All of the acts described herein as violations of, among other things,
18 the Cal. Labor Code and Industrial Welfare Commission Wage Orders, are
19 unlawful and in violation of public policy; and in addition are oppressive and
20 fraudulent, and thereby constitute unfair, unlawful and/or fraudulent business
21 practices in violation of CAL. BUS. & PROF. CODE §§ 17200 *et seq.*

22 127. The PLAINTIFFS, individually, and on behalf of members of the
23 PLAINTIFF CLASSES, are entitled to, and do seek such relief as may be
24 necessary to disgorge the profits which the DEFENDANTS have acquired, or of
25 which the PLAINTIFFS have been deprived, by means of the above-described
26 unfair, unlawful and/or fraudulent business practices. PLAINTIFFS, and the
27 members of the PLAINTIFF CLASSES, are not obligated to establish individual
28 knowledge of the unfair practices of DEFENDANTS in order to recover

1 restitution.

2 128. The PLAINTIFFS, individually, and on behalf of members of the
3 PLAINTIFF CLASSES, are further entitled to and do seek a declaration that the
4 above described business practices are unfair, unlawful and/or fraudulent, and
5 injunctive relief restraining the DEFENDANTS, and each of them, from engaging
6 in any of the above-described unfair, unlawful and/or fraudulent business practices
7 in the future.

8 129. The PLAINTIFFS, individually, and on behalf of members of the
9 PLAINTIFF CLASSES, have no plain, speedy, and/or adequate remedy at law to
10 redress the injuries which they have suffered as a consequence of the
11 DEFENDANT'S unfair, unlawful and/or fraudulent business practices. As a
12 result of the unfair, unlawful and/or fraudulent business practices described above,
13 the PLAINTIFFS, individually, and on behalf of members of the PLAINTIFF
14 CLASSES, have suffered and will continue to suffer irreparable harm unless the
15 DEFENDANTS, and each of them, are restrained from continuing to engage in
16 said unfair, unlawful and/or fraudulent business practices.

17 130. The PLAINTIFFS also allege that if DEFENDANTS are not enjoined
18 from the conduct set forth herein above, they will continue to fail to pay overtime
19 wages to all non-exempt employees and fail to provide lawful meal and rest
20 periods to all non-exempt employees. In addition, DEFENDANTS, and each of
21 them, will continue to avoid paying the appropriate state taxes, state health
22 insurance and state unemployment holdings.

23 131. The PLAINTIFFS, individually, and on behalf of members of the
24 PLAINTIFF CLASSES, requests that the Court issue a preliminary and permanent
25 injunction prohibiting the DEFENDANTS, and each of them, from requiring all
26 non-exempt employees from working more than eight (8) hours a work day and/or
27 forty (40) hours a week in any work week without payment of overtime wages and
28 from working without being provided lawful meal and rest periods.

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132. The PLAINTIFFS, individually, and for the PLAINTIFF CLASSES, also request that the Court order the DEFENDANTS to disgorge all illegally obtained monies from failing to pay state taxes, state disability insurance premiums, and state unemployment taxes, obtained by way of their violation of BUS. & PROF. CODE §§ 17200, *et seq.*

133. As PLAINTIFFS seek to enforce an important right affecting the public interest, to wit, the lawful payment of overtime wages as required by law, the disgorgement of ill-gotten gains, and the restitution of unlawfully withheld wages, with interest thereon, PLAINTIFFS request an award of attorneys' fees, pursuant to CODE CIV. PROC. § 1021.5.

ELEVENTH CAUSE OF ACTION
FAILURE TO COMPLY WITH WRITTEN REQUEST TO
INSPECT OR COPY RECORDS;
[CALIFORNIA LABOR CODE §§ 226, 432 and 1198.5]
(Against All Defendants)

134. PLAINTIFFS and the PLAINTIFF CLASSES (and subclasses) re-allege and incorporate by reference, as though fully set forth herein, the paragraphs previously alleged in this Complaint.

135. LABOR CODE § 226(b) requires DEFENDANTS to permit current and former employees to inspect or copy payroll records pertaining to that current or former employee. An employer who receives a written or oral request from a current or former employee to inspect or copy his or her payroll records shall comply with the request as soon as practicable, but no later than twenty-one (21) calendar days from the date of the request. A failure by an employer to permit a current or former employee to inspect or copy his or her payroll records within the aforementioned twenty (21) calendar day period entitles the current or former employee to recover a penalty from the employer in a civil action before a court of

1 competent jurisdiction. LABOR CODE §§ 226, subdivisions (c) and (f.)

2 136. DEFENDANTS are required to keep accurate payroll records on each
3 employee, and such records must be made readily available for inspection by the
4 employee upon reasonable request. Plaintiff requested complete timecards,
5 timekeeping records, and payroll information including all itemized earning
6 statements showing, but not limited to, the hours worked, the applicable rate of
7 pay for each pay period, and earning statements for each period. (See IWC Orders
8 1 through 15, Section 7, and IWC Order 16, Section 6.) Section 7 states as
9 follows:

10 7. Records

11 (A) Every employer shall keep accurate information with respect to
12 each employee including the following:

13 (1) Full name, home address, occupation and social security
14 number.

15 (2) Birth date, if under 18 years, and designation as a minor.

16 (3) Time records showing when the employee begins and
17 ends each work period. Meal periods, split shift intervals and total
18 daily hours worked shall also be recorded. Meal periods during
19 which operations cease and authorized rest periods need not be
20 recorded.

21 (4) Total wages paid each payroll period, including value of
22 board, lodging, or other compensation actually furnished to the
23 employee.

24 (5) Total hours worked in the payroll period and applicable
25 rates of pay. This information shall be made readily available to the
26 employee upon reasonable request.

27 (6) When a piece rate or incentive plan is in operation, piece
28 rates or an explanation of the incentive plan formula shall be
provided to employees. An accurate production record shall be
maintained by the employer.

(B) Every employer shall semimonthly or at the time of each
payment of wages furnish each employee, either as a detachable part of
the check, draft, or voucher paying the employee's wages, or separately,
an itemized statement in writing showing: (1) all deductions; (2) the
inclusive dates of the period for which the employee is paid; (3) the name
of the employee or the employee's social security number; and (4) the
name of the employer, provided all deductions made on written orders of

1 the employee maybe aggregated and shown as one item.

2 (C) All required records shall be in the English language and in ink
3 or other indelible form, properly dated, showing month, day, and year and
4 shall be kept on file by the employer for at least three (3) years at the place
5 of employment or at a central location within the State of California. An
employee's records shall be available for inspection by the employee
upon reasonable request.

6 137. LABOR CODE § 432 requires employers, like DEFENDANTS, to give
7 an employee or job applicant, upon request, a copy of any documents that the
8 employee or applicant has signed relating to the obtaining or holding of
9 employment.

10 138. LABOR CODE § 1198.5 requires that employers, like DEFENDANTS,
11 allow employees and former employees access to their personnel files and records
12 that relate to the employee's performance or to any grievance concerning the
13 employee. Inspections must be allowed at reasonable times and intervals. To
14 facilitate the inspection, employers must do one of the following: (1) keep a copy
15 of each employee's personnel records at the place where the employee reports to
16 work, (2) make the personnel records available at the place where the employee
17 reports to work within a reasonable amount of time following the employee's
18 request, or (3) permit the employee to inspect the records at the location where
19 they are stored with no loss of compensation to the employee.

20 139. Before PLAINTIFFS and the PLAINTIFF CLASSES filed this
21 action, PLAINTIFFS wrote a pre-litigation demand letter to DEFENDANTS in
22 which they requested DEFENDANTS produce: PLAINTIFFS' pay check stubs or
23 other wage statements; any documents signed by PLAINTIFFS relating to their
24 employment; and PLAINTIFFS' personnel file. DEFENDANTS have failed to
25 produce and explicitly refuse to produce all these documents, particularly pay
26 related documents, in response to PLAINTIFFS' written requests as required by
27 law.

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1 140. Under Labor Code § 226, subsections (e) and (f), and based on
 2 DEFENDANTS’ conduct as alleged herein, PLAINTIFFS and the PLAINTIFF
 3 CLASSES are entitled to (a) fifty dollars (\$50) for the initial pay period in which a
 4 wage and hour statement violation occurred, and one hundred dollars (\$100) per
 5 employee for each violation in subsequent pay periods, not exceeding an
 6 aggregate penalty of four thousand (\$4,000); (b) an additional seven hundred and
 7 fifty dollar (\$750) penalty for DEFENDANTS’ failure to allow PLAINTIFFS to
 8 timely inspect and copy pertinent records; and (c) injunctive relief to ensure
 9 DEFENDANTS’ compliance with Labor Code § 226; and (d) an award of costs
 10 and reasonable attorney’s fees.

11 141. DEFENDANTS’ conduct also entitles PLAINTIFFS and the
 12 PLAINTIFF CLASSES to seek preliminary and permanent injunctive relief,
 13 including but not limited to an order that DEFENDANTS comply with a lawful
 14 request to provide personnel records, copies of signed documents and that
 15 DEFENDANTS issue wage and hour statements to PLAINTIFFS and the
 16 PLAINTIFF CLASSES that comply with Labor Code § 226.

17 **TWELFTH CAUSE OF ACTION**

18 **VIOLATION OF PRIVATE ATTORNEY GENERALS ACT**

19 **[CALIFORNIA LABOR CODE §§ 2698 and 2699]**

20 **(Against All DEFENDANTS)**

21 142. PLAINTIFFS and the PLAINTIFF CLASSES (and subclasses) re-
 22 allege and incorporate by reference, as though fully set forth herein, the
 23 paragraphs previously alleged in this Complaint.

24 143. As a result of the previously alleged, including violations of the
 25 sections of the California Labor Code alleged above, PLAINTIFFS seek
 26 penalties under Labor Code §§ 2698 and 2699.

27 144. Representative PLAINTIFFS have met all of the requirements set
 28 forth in LABOR CODE §§ 2699.3 necessary to commence a civil action against

1 Defendants for violations of LABOR CODE §§ 226.7 and 512. On **June 20,**
2 **2014** the LWDA issued letters indicating that the DLSE did not intend to
3 investigate Plaintiffs' allegations.

4 145. PLAINTIFFS, for themselves and on behalf of all other similarly
5 situated current and former employees of DEFENDANTS, seek civil penalties
6 in the amount of:

- 7 (a) one hundred dollars (\$100.00) for each of the first violation
8 per employee, per pay period, and;
- 9 (b) two hundred dollars (\$200.00) for each subsequent violation
10 of each such provision, per employee, per pay period.

11 146. These penalties will be allocated 75% to the Labor Workforce
12 Development Agency ("LWDA") and 25% to the affected employees.

13 147. WHEREFORE, PLAINTIFFS and each PLAINTIFF CLASS they
14 seek to represent request relief as described herein and below and as deemed
15 just.

16 **PRAYER**

17 WHEREFORE, the PLAINTIFFS DEMAND A JURY TRIAL and pray
18 for judgment as follows:

19 ON THE FIRST CAUSE OF ACTION:

- 20 (a) For compensatory damages according to proof;
- 21 (b) For interest on any compensatory damages;
- 22 (c) For Certification of the Classes defined herein, or such other
23 Classes and/or subclasses as the Court will certify;
- 24 (d) For statutory penalties and attorneys fees.

25 ON THE SECOND CAUSE OF ACTION:

- 26 (a) For compensatory damages according to proof representing
27 the amount of unpaid commission wages;
- 28 (b) For interest on any compensatory damages;

1 (c) For Certification of the Classes defined herein, or such other
2 Classes and/or subclasses as the Court will certify;

3 (d) For statutory penalties and attorneys fees.

4 ON THE THIRD CAUSE OF ACTION:

5 (a) For compensatory damages according to proof representing
6 the amount of unpaid commission wages;

7 (b) For interest on any compensatory damages;

8 (c) For Certification of the Classes defined herein, or such other
9 Classes and/or subclasses as the Court will certify;

10 (d) For statutory penalties and attorneys fees.

11 ON THE FOURTH CAUSE OF ACTION:

12 (a) For statutory compensation, including one hour of pay for
13 each workday that a meal period was not provided;

14 (b) For interest on any compensatory damages;

15 (c) For punitive damages;

16 (d) For Certification of the Classes defined herein, or such other
17 Classes and/or subclasses as the Court will certify; and

18 (e) For attorneys' fees and costs.

19 ON THE FIFTH CAUSE OF ACTION:

20 (a) For statutory compensation, including one hour of pay for
21 each workday in which rest periods were not provided;

22 (b) For interest on any compensatory damages;

23 (c) For punitive damages;

24 (d) For Certification of the Classes defined herein, or such other
25 Classes and/or subclasses as the Court will certify; and

26 (e) For attorneys' fees and costs.

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ON THE SIXTH CAUSE OF ACTION:

- (a) For statutory penalties;
- (b) For Certification of the Classes defined herein, or such other Classes and/or subclasses as the Court will certify; and
- (c) For attorneys' fees and costs.

ON THE SEVENTH CAUSE OF ACTION:

- (a) For statutory penalties;
- (b) For Certification of the Classes defined herein, or such other Classes and/or subclasses as the Court will certify; and
- (c) For attorneys' fees and costs.

ON THE EIGHTH CAUSE OF ACTION:

- (a) For statutory penalties, including 30 days of pay for each employee not timely paid wages upon termination;
- (b) For penalty enhancements for willful conduct;
- (c) For punitive damages;
- (d) For Certification of the Classes defined herein, or such other Classes and/or subclasses as the Court will certify; and
- (e) For attorneys' fees and costs.

ON THE NINTH CAUSE OF ACTION:

- (a) For compensatory damages according to proof;
- (b) For interest on any compensatory damages;
- (c) For Certification of the Classes defined herein, or such other Classes and/or subclasses as the Court will certify;
- (d) For statutory penalties and attorneys' fees; and
- (e) Waiting period wages and penalties.

ON THE TENTH CAUSE OF ACTION:

- (a) For the equitable, injunctive and declaratory relief requested;

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- (b) Treble damages;
- (c) For Certification of the Classes defined herein, or such other Classes and/or subclasses as the Court will certify; and
- (d) For disgorgement of profits.

ON THE ELEVENTH CAUSE OF ACTION:

- (a) For the equitable, injunctive and declaratory relief requested;
- (b) For Certification of the Classes defined herein, or such other Classes and/or subclasses as the Court will certify; and
- (c) For disgorgement of profits.

ON THE TWELFTH CAUSE OF ACTION:

- (a) That DEFENDANTS be ordered to pay civil penalties pursuant to violations of Labor Code §§ 2698 and 2699, in the amount of \$100 for the first violation per employee per pay period, and \$200 for subsequent violations per employee per pay period to be allocated 75% to the LWDA and 25% to the affected employees.
- (b) For reasonable attorney’s fees and costs as allowed by statute.

ON ALL CAUSES OF ACTION:


- (a) For reasonable attorney’ fees;
- (b) For costs of suit; and,
- (c) For such other and further relief as this Court may deem just and proper.

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Dated: January 26, 2015

QUINTILONE & ASSOCIATES

By: 


RICHARD E. QUINTILONE II,
Attorneys for Plaintiffs BRIAN
ROGERS and AMY CASEY
individually and on behalf of all
employees similarly situated

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial of their claims by jury to the extent
authorized by law.

Dated: January 26, 2015

QUINTILONE & ASSOCIATES

By: 

RICHARD E. QUINTILONE II,
Attorneys for Plaintiffs BRIAN
ROGERS and AMY CASEY
individually and on behalf of all
employees similarly situated