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

14 UNITED STATES DISTRICT COURT
 15 CENTRAL DISTRICT OF CALIFORNIA

16 NYIESHA WHITE, on behalf of herself
 17 and others similarly situated,

18 Plaintiff,

19 vs.

20 HOME DEPOT U.S.A., INC., and
 21 DOES 1 to 100, inclusive,

22 Defendants.

Case No. 2:21-cv-08753

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

[Declaration of G. Edward Anderson,
 Ph.D., Declaration of Barbara J.
 Miller, Declaration of Patricia
 Olmsted, Notice of Interested Parties,
 and Civil Cover Sheet filed
 concurrently]

*(Los Angeles County Superior Court,
 Case No. 21STCV31087)*

Date Action Filed: August 23, 2021

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

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

7 1. On August 23, 2021, the above referenced action was filed and is
8 currently pending against Home Depot in the Superior Court of California, County
9 of Los Angeles, Case No. 21STCV31087. Declaration of Barbara J. Miller (“Miller
10 Decl.”) ¶ 2. The complaint was served on Home Depot on October 8, 2021. *Id.* As
11 required by 28 U.S.C. § 1446(a), a true and correct copy of all process, pleadings,
12 and orders served upon defendant as part of the above action are attached to the
13 Miller Declaration, filed concurrently in support of this Notice of Removal.

14 2. Plaintiff Nyiesha White (“plaintiff”) was formerly employed by Home
15 Depot as a nonexempt employee. Compl. ¶ 4. She alleges that Home Depot failed
16 to pay minimum wage, failed to pay overtime wages, failed to provide meal and
17 rest periods, failed to provide accurate itemized wage statements, failed to provide
18 wages when due, and that Home Depot violated California’s unfair competition
19 law. *Id.* ¶¶ 12-40.

20 3. Plaintiff seeks to bring this action on behalf of a class consisting of
21 “current, former, and/or future employees of defendants who work as hourly non-
22 exempt employees” (the “putative class”). *Id.* ¶ 3. Plaintiff also seeks to represent
23 subclasses of the putative class, including a “Minimum Wage Class,” an “Overtime
24 Class,” a “Meal Period Class,” a “Rest Period Class,” a “Pay Day Class,” a “Wage
25 Statement Class,” and a “Waiting Time Class.” *Id.* ¶ 41. Members of the
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1 subclasses are subsumed within the putative class identified as the “California
2 Class.” *Id.*¹

3 4. Timeliness. Plaintiff filed her Complaint in Los Angeles County
4 Superior Court on August 23, 2021. Compl. Plaintiff served Home Depot with the
5 Complaint on October 8, 2021. Miller Decl. ¶ 2. Home Depot’s Notice of
6 Removal is therefore timely because it is being filed within 30 days of service of
7 the complaint. *See* 28 U.S.C. § 1446(b).

8 5. Jurisdiction. This is a civil action over which this Court has original
9 jurisdiction and thus may be removed pursuant to 28 U.S.C. § 1441. Under 28
10 U.S.C. § 1441(a), a defendant may remove to federal district court “any civil action
11 brought in a State court of which the district courts of the United States have
12 original jurisdiction[.]” Pursuant to the Class Action Fairness Act (“CAFA”), 28
13 U.S.C. § 1332(d)(2), federal district courts have original jurisdiction over a class
14 action if (1) it involves 100 or more putative class members, (2) any class member
15 is a citizen of a state different from any defendant, and (3) the aggregated
16 controversy exceeds \$5,000,000 (exclusive of costs and interest). 28 U.S.C. §
17 1332(d)(2), (d)(6), and (d)(11)(B)(i). These criteria are satisfied here.

18 6. Class Size. Since August 23, 2017, over 50,000 nonexempt employees
19 were employed by Home Depot in California. Declaration of G. Edward Anderson,
20 Ph.D. (“Anderson Decl.”), filed and served concurrently, ¶ 6.² Thus, the putative
21 class includes more than 100 individuals.

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

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² A defendant may make the requisite showing by setting forth facts in the notice of removal or by affidavit. *See Lamke v. Sunstate Equip. Co.*, 319 F. Supp. 2d 1029, 1032 (N.D. Cal. 2004).

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

7 8. The putative class includes citizens of California, including plaintiff.
8 Compl. ¶¶ 2, 3 (plaintiff resides in California). According to Home Depot’s
9 records, throughout her employment with Home Depot, plaintiff maintained a
10 California residential address in Los Angeles, California and worked at a Home
11 Depot store in Inglewood, California. Declaration of Patricia Olmstead (“Olmstead
12 Decl.”), filed concurrently, ¶ 4; Compl. ¶ 3. Her employment and residence in
13 California conclusively establish California citizenship. *See Bey v. SolarWorld*
14 *Indus. Am., Inc.*, 904 F. Supp. 2d 1103, 1105 (D. Or. 2012) (residential address
15 provided by employee to employer is prima facie evidence of citizenship); *Abbott v.*
16 *United Venture Capital, Inc.*, 718 F. Supp. 823, 826-27 (D. Nev. 1988) (plaintiff
17 was a California citizen primarily because of continuous California residence over
18 multiple years).

19 9. Further, plaintiff seeks to represent a class consisting of thousands of
20 current and former California employees. Compl. ¶¶ 3, 41; Anderson Decl. ¶ 6.
21 This putative class logically includes other California citizens as well.

22 10. Home Depot is not a citizen of California. “[A] corporation shall be
23 deemed to be a citizen of every State ... by which it has been incorporated and of
24 the State ... where it has its principal place of business....” 28 U.S.C. § 1332(c)(1).
25 Home Depot is not incorporated in California. Olmstead Decl. ¶ 2. Home Depot is
26 a Delaware corporation and its headquarters is in Atlanta, Georgia. *See id.*;
27 *Ottaviano v. Home Depot, Inc., U.S.A.*, 701 F. Supp. 2d 1005, 1007 (N.D. Ill. 2010)
28 (Home Depot “is a Delaware corporation with its principal executive offices located

1 in Atlanta, Georgia”); *Novak v. Home Depot U.S.A., Inc.*, 259 F.R.D. 106, 108
2 (D.N.J. 2009) (Home Depot “is a Delaware corporation with its principal offices
3 located in Georgia”). Nor is California the state in which Home Depot has its
4 principal place of business, which is “the place where a corporation’s officers
5 direct, control, and coordinate the corporation’s activities.” *Hertz Corp. v. Friend*,
6 559 U.S. 77, 92-93 (2010). Rather, Home Depot’s principal place of business is
7 Atlanta, Georgia. Olmstead Decl. ¶ 2; *Ottaviano*, 701 F. Supp. 2d at 1007; *Novak*,
8 259 F.R.D. at 108.

9 11. Defendants DOES 1-100 are unidentified. Compl. ¶ 7, 8. Because
10 there is “no information as to who they are or where they live or their relationship
11 to the action[, it is] proper for the district court to disregard them” for the purposes
12 of removal. *McCabe v. Gen. Foods Corp.*, 811 F.2d 1336, 1339 (9th Cir. 1987)
13 (citations omitted).

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

18 13. Amount in Controversy. Home Depot avers, for purposes of this
19 Notice only and without conceding liability for the claims alleged by plaintiff or
20 that plaintiff can properly represent the putative class, that plaintiff’s claims place
21 more than \$5 million in controversy. “The amount in controversy is simply an
22 estimate of the total amount in dispute, not a prospective assessment of [the]
23 defendant’s liability.” *Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d 395, 400 (9th
24 Cir. 2010) (on removal, defendant does not “concede liability for the entire
25 amount” alleged in complaint); *Ibarra v. Manheim Invs., Inc.*, 775 F.3d 1193, 1198
26 n.1 (9th Cir. 2015) (“Even when defendants have persuaded a court upon a CAFA
27 removal that the amount in controversy exceeds \$5 million, they are still free to
28 challenge the actual amount of damages in subsequent proceedings and at trial ...

1 because they are not stipulating to damages suffered.”). As the United States
2 Supreme Court has held, a defendant’s notice of removal need only include “a
3 plausible allegation that the amount in controversy exceeds the jurisdictional
4 threshold.” *Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 89 (2014).
5 Moreover, the Ninth Circuit has instructed that removal is proper if, based on the
6 allegations of the complaint and the Notice of Removal, it is more likely than not
7 that the amount in controversy exceeds \$5 million. *See Rodriguez v. AT&T*
8 *Mobility Servs. LLC*, 728 F.3d 975, 981 (9th Cir. 2013) (overturning prior Ninth
9 Circuit precedent requiring proof of amount in controversy to a “legal certainty” in
10 some circumstances). In determining whether the amount in controversy is met, the
11 Court considers all requested relief, “including ... punitive damages, statutory
12 penalties, and attorneys’ fees.” *Lake v. Delta Air Lines, Inc.*, No. SACV 10-1775
13 DOC(Ex), 2011 WL 3102486, at *4 (C.D. Cal. July 22, 2011). Under this standard,
14 the amount in controversy is satisfied.

15 14. In the Seventh Cause of Action, plaintiff seeks waiting time penalties
16 pursuant to California Labor Code section 203 for Home Depot’s alleged failure to
17 pay all wages due to putative class members at the end of their employment.
18 Compl. ¶¶ 101-04 & Prayer for Relief, Seventh Cause of Action, ¶¶ 1-4. For this
19 claim, plaintiff seeks to represent a subclass of “[a]ll current and former hourly
20 non-exempt employees employed by Defendants in California at any time from
21 three (3) years prior to the filing of the initial Complaint in this action through the
22 date notice is mailed to a certified class who did not receive payment of all unpaid
23 wages upon separation of employment within the statutory time period.” Compl. ¶
24 41 (the “Waiting Time Class”). Under section 203, former employees who are
25 willfully denied wages due at termination may recover penalties in the amount of
26 their daily rate of pay for a period of up to thirty days. Cal. Lab. Code § 203; *see*
27 *also* Compl. ¶ 101. Plaintiff alleges that “Defendants maintained a policy or
28 practice of not paying hourly employees all wages timely upon separation of

1 employment.” Compl. ¶ 98. Plaintiff further alleges that, as a result, class
2 members are entitled to waiting time penalties pursuant to Labor Code section 203.
3 *Id.* ¶ 101; Prayer for Relief, Fourth Cause of Action, ¶¶ 2 (demanding statutory
4 penalties pursuant to Labor Code § 203).

5 15. Plaintiff alleges that she and putative class members “worked more
6 minutes per shift than Defendants credited them with having worked.” Compl. 15,
7 21. Plaintiff further alleges that defendant employed policies and practices of
8 improperly “rounding down or shaving” time and failing to provide compliant meal
9 periods. Compl. ¶ 15, 26-27. Plaintiff also alleges that “Defendants employed
10 policies, practices, and/or procedures that resulted in their failure to authorize or
11 permit all legally required and compliant rest periods.” Compl. ¶ 31-32.

12 16. Under plaintiff’s theories, all putative class members whose
13 employment has ended since August 23, 2018 (e.g., members of the Waiting Time
14 Class) are entitled to recover waiting time penalties equal to 30 days of wages.³
15 *See, e.g., Schuyler v. Morton’s of Chi., Inc.*, No. CV 10-06762 ODW (JCGx), 2011
16 WL 280993, at *5 (C.D. Cal. Jan. 25, 2011) (appropriate to assume 100 percent
17 violation rate for full 30 days of waiting time penalties where complaint alleges
18 multiple wage violations that were never paid); *Oda v. Gucci Am., Inc.*, No. 2:14-
19 cv-7468-SVW (JPRx), 2015 WL 93335, at *5 (C.D. Cal. Jan. 7, 2015) (assumption
20 of maximum penalties proper).

21 17. At least 7,000 putative class members have terminated employment
22 with Home Depot since August 23, 2018 and are, therefore, members of the
23 putative Waiting Time Class, and potentially eligible to recover section 203
24 penalties. Anderson Decl. ¶ 7. These individuals earned, on average, daily wages
25 of approximately \$95.29. *Id.* Assuming only half of the Waiting Time Penalties
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27 _____
28 ³ A three-year statute of limitations applies to claims for penalties under section 203. *Pineda v. Bank of America, N.A.*, 50 Cal. 4th 1389, 1395-96 (2010).

1 Class members are entitled to waiting time penalties, the amount of waiting time
2 penalties in controversy exceeds \$10 million ($\$95.29 \times 30 \times 3,500 = \$10,005,450$).

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

8 19. Plaintiff also alleges in her first through sixth causes of action that
9 Home Depot failed to pay minimum wage, failed to pay overtime, failed to pay
10 meal and rest period premiums, failed to timely pay wages, and failed to provide
11 accurate itemized wage statements. *See Compl.* Each of these causes of action
12 place additional amounts in controversy. Home Depot has not attempted in these
13 removal papers to quantify the additional amounts these claims place in controversy
14 because the CAFA threshold is met without considering these claims.

15 20. Plaintiff also seeks attorneys' fees (*Compl.* ¶¶ 61, 94; Prayer for
16 Relief), which are part of the amount in controversy as well. *See Fritsch v. Swift*
17 *Transp. Co. of Ariz., LLC*, 899 F.3d 785, 794 (9th Cir. 2018) (“[I]f the law entitles
18 the plaintiff to future attorneys’ fees if the action succeeds, ‘then there is no
19 question that future [attorneys’ fees] are ‘at stake’ in the litigation,’ and the
20 defendant may attempt to prove that future attorneys’ fees should be included in the
21 amount in controversy.” (citation omitted)); *Galt G/S v. JSS Scandinavia*, 142 F.3d
22 1150, 1156 (9th Cir. 1998). The Ninth Circuit has established 25 percent of total
23 potential damages as a benchmark award for attorneys’ fees. *See Hanlon v.*
24 *Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998) overruled on other grounds by
25 *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011); *see also Deaver v. BBVA*
26 *Compass Consulting & Benefits, Inc.*, No. 13-cv-00222-JSC, 2014 WL 2199645, at
27 *6, *8 (N.D. Cal. May 27, 2014) (accounting for attorneys’ fees by adding 25
28 percent of potential damages and penalties to amount in controversy); *Ford v. CEC*

1 *Entm't, Inc.*, No. CV 14-01420 RS, 2014 WL 3377990, at *6 (N.D. Cal. July 10,
2 2014) (same); *Rodriguez v. Cleansource, Inc.*, No. 14-CV-0789-L(DHB), 2014 WL
3 3818304, at *4-5 (S.D. Cal. Aug. 4, 2014) (denying motion to remand where
4 defendant showed potential damages of \$4.2 million because attorneys' fees of 25
5 percent brought the total amount in controversy to \$5.3 million). Potential
6 attorneys' fees of 25 percent place at least an additional \$2,501,362 in controversy
7 here.

8 21. In sum, the allegations in plaintiff's complaint seek waiting time
9 penalties and attorneys' fees in excess of \$5 million, and the amount in controversy
10 is satisfied.

11 22. Venue. The United States District Court for the Central District of
12 California is the judicial district "embracing the place" where this action was filed
13 by plaintiff and is the appropriate court for removal pursuant to 28 U.S.C. §
14 1441(a).

15 23. There are no grounds that would justify this Court in declining to
16 exercise its jurisdiction pursuant to 28 U.S.C. § 1332(d)(3) or requiring it to decline
17 to exercise jurisdiction pursuant to 28 U.S.C. § 1332(d)(4).

18 WHEREFORE, Home Depot requests that the above action now pending in
19 the Superior Court of California, County of Los Angeles be removed to this Court.
20 In the event the Court has any reason to question whether removal is proper, Home
21 Depot requests the opportunity to provide briefing on the issue.

22 Dated: November 5, 2021

MORGAN, LEWIS & BOCKIUS LLP

23
24 By /s/Barbara J. Miller

Barbara J. Miller
John D. Hayashi
Samuel S. Sadeghi
Attorneys for Defendant
HOME DEPOT U.S.A., INC.

PROOF OF SERVICE

Nyiesha White v. Home Depot U.S.A., Inc., et al.

I, Patricia Martin, declare:

I am a citizen of the United States and employed in Orange County, California. I am over the age of eighteen years and not a party to the within entitled action. My business address is 600 Anton Boulevard, Suite 1800, Costa Mesa, CA 92626. On November 5, 2021, I served a copy of the within document(s):

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

<input checked="" type="checkbox"/>	<p>BY MAIL: by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Costa Mesa, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.</p>
<input checked="" type="checkbox"/>	<p>BY ELECTRONIC SERVICE: the parties listed below were served electronically with the document(s) listed above by e-mailed PDF files on November 5, 2021. The transmission was reported as complete and without error. My electronic notification address is 600 Anton Boulevard, Suite 1800, Costa Mesa, California 92626. My e-mail address is patricia.martin@morganlewis.com.</p>

<p>LAVI & EBRAHIMIAN, LLP Joseph Lavi Vincent C. Granberry Kevin Joseph Farnan 8889 W. Olympic Blvd., Ste. 200 Beverly Hills, CA 90211 Tel: 310.432.0000 Fax: 310.432.0001 Email: jlavi@lelawfirm.com vgranberry@lelawfirm.com kfarnan@lelawfirm.com whteam@lelawfirm.com</p>	<p><i>Attorneys for Plaintiff NYIESHA WHITE</i></p>
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Executed on November 5, 2021, at Costa Mesa, California.

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



Patricia Martin

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 Superior Court of California
 County of Los Angeles

AUG 23 2021

Sherril R. Carter, Executive Officer/Clerk of Court
 By: Kristina Vargas, Deputy

13 Attorneys for Plaintiff NYIESHA WHITE,
 14 on behalf of herself and others similarly situated

BY FAX

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 10 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

11 NYIESHA WHITE, on behalf of herself and
 12 others similarly situated,

Case No. **21STCV31087**

CLASS ACTION

13 Plaintiff,

**PLAINTIFF NYIESHA WHITE'S
 COMPLAINT FOR DAMAGES AND
 RESTITUTION FOR:**

14 vs.

15 HOME DEPOT U.S.A., INC.; and DOES 1 to
 16 100, inclusive,

17 Defendants.

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

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

DEMAND FOR JURY TRIAL

COME NOW Plaintiff NYIESHA WHITE (“Plaintiff”), who alleges and complains against Defendants HOME DEPOT U.S.A., INC.; and DOES 1 to 100, inclusive (collectively “Defendants”) as follows:

I. INTRODUCTION

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

II. JURISDICTION AND VENUE

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

1 hours worked at the overtime rate of pay due; failure to authorize or permit all legally required
2 and/or compliant meal periods or pay meal period premium wages; failure to authorize or permit
3 all legally required and/or compliant rest periods or pay rest period premium wages; statutory
4 penalties for failure to timely pay earned wages during employment; statutory penalties for failure
5 to provide accurate wage statements; statutory waiting time penalties in the form of continuation
6 wages for failure to timely pay employees all wages due upon separation of employment; and
7 claims for injunctive relief and restitution under California Business and Professions Code
8 sections 17200, *et seq.*, for the following reasons: Defendants operate throughout California;
9 Defendants employed Plaintiff and putative class members in locations throughout California,
10 including but not limited to Los Angeles County, at 3363 W. Century Blvd., Inglewood, CA
11 90303; more than two-thirds of putative class members are California citizens; the principal
12 violations of California law occurred in California; no other class actions have been filed against
13 Defendants in the last four (4) years alleging wage and hour violations; the conduct of Defendants
14 forms a significant basis for Plaintiff's and putative class members' claims; and Plaintiff and
15 putative class members seek significant relief from Defendants.

16 **III. PARTIES**

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

23 4. Defendants employed Plaintiff as an hourly non-exempt cashier and customer
24 service representative from in or around June 19, 2017, until on or about July 10, 2021.

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

28 6. Plaintiff is informed and believes and thereon alleges that Defendant HOME

1 DEPOT U.S.A., INC. is authorized to do business within the State of California and is doing
2 business in the State of California and/or that Defendants DOES 1-50 are, and at all times relevant
3 hereto were persons acting on behalf of Defendant HOME DEPOT U.S.A., INC. in the
4 establishment of, or ratification of, the aforementioned illegal wage and hour practices or policies.
5 Defendant HOME DEPOT U.S.A., INC. operates in Los Angeles County and employed Plaintiff
6 and putative class members in Los Angeles County, including but not limited to, at 3363 W.
7 Century Blvd., Inglewood, CA 90303.

8 7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51-
9 100 are individuals unknown to Plaintiff. Each of the individual Defendants is sued individually in
10 his or her capacity as an agent, shareholder, owner, representative, supervisor, independent
11 contractor and/or employee of each Defendant and participated in the establishment of, or
12 ratification of, the aforementioned illegal wage and hour practices or policies.

13 8. Plaintiff is unaware of the true names of Defendants DOES 1-100. Plaintiff sues
14 said defendants by said fictitious names and will amend this Complaint when the true names and
15 capacities are ascertained or when such facts pertaining to liability are ascertained, or as permitted
16 by law or by the Court. Plaintiff is informed and believes that each of the fictitiously named
17 Defendants is in some manner responsible for the events and allegations set forth in this
18 Complaint.

19 9. Plaintiff is informed and believes and thereon alleges that at all relevant times, each
20 Defendant was an employer, was the principal, agent, partner, joint venturer, officer, director,
21 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
22 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
23 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
24 of the other defendants so as to be liable for their conduct with respect to the matters alleged in
25 this Complaint. Plaintiff is further informed and believe and thereon allege that each Defendant
26 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
27 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
28 controlled, aided and abetted the conduct of all other defendants. As used in this Complaint,

1 "Defendant" means "Defendants and each of them," and refers to the Defendants named in the
2 particular cause of action in which the word appears and includes Defendants HOME DEPOT
3 U.S.A., INC. and DOES 1 to 100, inclusive.

4 10. At all times mentioned herein, each Defendant was the co-conspirator, agent,
5 servant, employee, and/or joint venturer of each of the other defendants and was acting within the
6 course and scope of said conspiracy, agency, employment, and/or joint venture and with the
7 permission and consent of each of the other Defendants.

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

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

12 12. Pursuant to the applicable Industrial Welfare Commission ("IWC") Wage Order
13 ("Wage Order"), codified at California Code of Regulations, title 8, section 11070, Defendants are
14 employers of Plaintiff within the meaning of Wage Order 7 and applicable Labor Code sections.
15 Therefore, each of these Defendants is jointly and severally liable for the wrongs complained of
16 herein in violation of the Wage Order and the Labor Code.

17 13. **Failure to pay wages for all hours worked at the legal minimum wage:**
18 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
19 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
20 which includes all time that an employee is under the control of the employer and all time the
21 employee is suffered and permitted to work. This includes the time an employee spends, either
22 directly or indirectly, performing services which inure to the benefit of the employer.

23 14. Labor Code sections 1194 and 1197 require an employer to compensate employees
24 for all "hours worked" at least at the minimum wage rate of pay as established by the IWC and the
25 Wage Orders.

26 15. Plaintiff and similarly situated hourly non-exempt employees worked more minutes
27 per shift than Defendants credited them with having worked. Defendants failed to pay Plaintiff and
28 similarly situated employees all wages at the applicable minimum wage for all hours worked due

1 to Defendants' policies, practices, and/or procedures including, but not limited to, the following:

2 (a) "Rounding" down or "shaving" Plaintiff's and similarly situated
3 employees' total daily hours at the time of their clock-in and clock-out, including at the beginning
4 and ending of meal periods, to the nearest quarter of an hour, to the benefit of Defendants; and

5 (b) Requiring Plaintiff and similarly situated employees who worked closing
6 shifts to clock out for the end of their shift and, after clocking out, to gather at the front of
7 Defendants' stores, wait for all other employees working the closing shift to also assemble at the
8 front of the store, wait for Defendants' management to arm the store alarm system, and then exit
9 the store with all of the other closing shift employees into the parking lot prior to being relieved of
10 all duty. Defendants' closing shift policy results in Plaintiff and similarly situated employees who
11 worked closing shifts being subject to the exercise and control and direction of the Defendants
12 while off the clock.

13 16. Plaintiff and similarly situated employees were not paid for this time resulting in
14 Defendants' failure to pay minimum wage for all the hours Plaintiff and similarly situated
15 employees worked.

16 17. Therefore, Defendants suffered, permitted, and required their hourly non-exempt
17 employees to be subject to Defendants' control without paying wages for that time. This resulted
18 in Plaintiff and similarly situated employees working time for which they were not compensated
19 any wages, in violation of Labor Code sections 1194, 1197, and Wage Order 7.

20 18. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**
21 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
22 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
23 which includes all time that an employee is under the control of the employer and all time the
24 employee is suffered or permitted to work. This includes the time an employee spends, either
25 directly or indirectly, performing services which inure to the benefit of the employer.

26 19. Labor Code sections 510 and 1194 and Wage Order 7 require an employer to
27 compensate employees at a higher rate of pay for hours worked in excess of eight (8) hours in a
28 workday, more than forty (40) hours in a workweek, and on any seventh consecutive day of work

1 in a workweek:

2 Any work in excess of eight hours in one workday and any work in excess of 40
3 hours in any one workweek and the first eight hours worked on the seventh day of
4 work in any one workweek shall be compensated at the rate of no less than one and
5 one-half times the regular rate of pay for an employee. Any work in excess of 12
6 hours in one day shall be compensated at the rate of no less than twice the regular
7 rate of pay for an employee. In addition, any work in excess of eight hours on any
8 seventh day of a workweek shall be compensated at the rate of no less than twice
9 the regular rate of pay of an employee.

7 Labor Code section 510; Wage Order 7, §3.

8 20. Defendants failed to pay Plaintiff and similarly situated employees all wages at the
9 applicable minimum wage for all hours worked due to Defendants' policies, practices, and/or
10 procedures including, but not limited to, the following:

11 (a) "Rounding" down or "shaving" Plaintiff's and similarly situated
12 employees' total daily hours at the time of their clock-in and clock-out, including at the beginning
13 and ending of meal periods, to the nearest quarter of an hour, to the benefit of Defendants; and

14 (b) Requiring Plaintiff and similarly situated employees who worked closing
15 shifts to clock out for the end of their shift and, after clocking out, to gather at the front of
16 Defendants' stores, wait for all other employees working the closing shift to also assemble at the
17 front of the store, wait for Defendants' management to arm the store alarm system, and then exit
18 the store with all of the other closing shift employees into the parking lot prior to being relieved of
19 all duty. Defendants' closing shift policy results in Plaintiff and similarly situated employees who
20 worked closing shifts being subject to the exercise and control and direction of the Defendants
21 while off the clock.

22 21. Plaintiff and similarly situated employees were not paid for this time resulting in
23 Defendants' failure to pay wages for all the hours Plaintiff and similarly situated employees
24 worked.

25 22. To the extent Plaintiff and similarly situated employees had already worked 8 hours
26 in the day and on workweeks they had already worked 40 hours in a workweek, the employees
27 should have been paid overtime for this unpaid time. This resulted in Plaintiff and similarly
28 situated employees working time which should have been paid at the legal overtime rate but was

1 not paid any wages in violation of Labor Code sections 510, 1194, and Wage Order 7.

2 23. Defendants' foregoing policies, practices, and/or procedures resulted in Defendants
3 failing to pay Plaintiff and similarly situated employees for all overtime hours worked, in violation
4 of Labor Code sections 510, 1194, 1198, and the Wage Order.

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

9 25. California law requires an employer to authorize or permit an uninterrupted meal
10 period of no less than thirty (30) minutes no later than the end of the employee's fifth hour of
11 work and a second meal period no later than the employee's tenth hour of work. Labor Code §512;
12 Wage Order 7, §11. If the employee is not relieved of all duties during a meal period, the meal
13 period shall be considered an "on duty" meal period and counted as time worked. A paid "on
14 duty" meal period is only permitted when (1) the nature of the work prevents an employee from
15 being relieved of all duty and (2) the parties have a written agreement agreeing to on-duty meal
16 periods. If the employee is not free to leave the work premises or worksite during the meal period,
17 even if the employee is relieved of all other duty during the meal period, the employee is subject
18 to the employer's control and the meal period is counted as time worked. If an employer fails to
19 provide an employee a meal period in accordance with the law, the employer must pay the
20 employee one (1) hour of pay at the employee's regular rate of pay for each workday that a legally
21 required and compliant meal period was not provided. Labor Code §226.7; Wage Order 7, §11.

22 26. Here, Plaintiff and similarly situated employees worked shifts long enough to
23 entitle them to meal periods under California law. Nevertheless, Defendants employed policies,
24 practices, and/or procedures that resulted in their failure to authorize or permit meal periods to
25 Plaintiff and similarly situated employees of no less than thirty (30) minutes for each five-hour
26 period of work as required by law. Such policies, practices, and/or procedures included, but were
27 not limited to, "rounding" down or "shaving" Plaintiff's and similarly situated employees' total
28 daily hours at the time of their clock-in and clock-out times for meal periods to the nearest quarter

1 of an hour, to the benefit of Defendant. This results in meal periods which were not at least thirty
2 (30) minutes in length in violation of California law.

3 27. Additionally, Defendants failed to pay Plaintiff and similarly situated employees a
4 meal period premium wage of one (1) additional hour of pay at their regular rate of compensation
5 for each workday the employees did not receive all legally required and compliant meal periods.
6 Defendants employed policies and procedures which ensured that employees did not receive any
7 meal period premium wages to compensate them for workdays in which they did not receive all
8 legally required and compliant meal periods.

9 28. The aforementioned policies, practices, and/or procedures of Defendants resulted in
10 Plaintiff and similarly situated employees not being provided with all legally required and
11 compliant meal periods and/or not receiving premium wages to compensate them for such
12 instances, all in violation of California law.

13 29. **Failure to authorize and permit all legally required and compliant rest periods**
14 **and/or failure to pay rest period premiums:** Defendants often employed non-exempt
15 employees, including the named Plaintiff and similarly situated employees, for shifts of least
16 three-and-a-half (3.5) hours.

17 30. California law requires every employer to authorize and permit an employee a rest
18 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
19 Code §226.7; Wage Order 7, §12. If the employer fails to authorize or permit a required rest
20 period, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of
21 compensation for each workday the employer did not authorize or permit a legally required rest
22 period. *Id.* Under California law, “[e]mployees are entitled to 10 minutes’ rest for shifts from three
23 and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30
24 minutes for shifts of more than 10 hours up to 14 hours, and so on.” *Brinker Restaurant Corp. v.*
25 *Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code §226.7; Wage Order 7, §12. Rest
26 periods, insofar as practicable, shall be in the middle of each work period. Wage Order 7, §12.
27 Additionally, the rest period requirement “obligates employers to permit – and authorizes
28 employees to take – off-duty rest periods.” *Augustus v. ABM Security Services, Inc.*, (2016) 5

1 Cal.5th 257, 269. That is, during rest periods employers must relieve employees of all duties and
2 relinquish control over how employees spend their time. *Id.*

3 31. In this case, Plaintiff and similarly situated employees regularly worked shifts of
4 more than three-and-a-half (3.5) hours. Nevertheless, Defendants employed policies, practices,
5 and/or procedures that resulted in their failure to authorize or permit all legally required and
6 compliant rest periods to Plaintiff and similarly situated employees. Such policies, practices,
7 and/or procedures included, but were not limited to, requiring Plaintiff and similarly situated
8 employees to remain on the premises during rest periods. Defendants, therefore, exercised control
9 over how Plaintiff and similarly situated employees spent their rest periods. The continued
10 exercise of control and direction over Plaintiff and similarly situated employees by Defendants
11 during rest periods resulted in rest periods which were not duty-free as required by California law.

12 32. Additionally, Defendants failed to pay Plaintiff and similarly situated employees a
13 rest period premium wage of one (1) additional hour of pay at their regular rate of compensation
14 for each workday the employees did not receive all legally required and compliant rest periods.
15 Defendants employed policies and procedures which ensured that employees did not receive any
16 rest period premium wages to compensate them for workdays in which they did not receive all
17 legally required and compliant rest periods.

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

22 34. **Failure to timely pay earned wages during employment:** In California, wages
23 must be paid at least twice during each calendar month on days designated in advance by the
24 employer as regular paydays, subject to some exceptions. Labor Code §204(a). Wages earned
25 between the 1st and 15th days, inclusive, of any calendar month must be paid between the 16th
26 and the 26th day of that month and wages earned between the 16th and the last day, inclusive, of
27 any calendar month must be paid between the 1st and 10th day of the following month. *Id.* Other
28 payroll periods such as those that are weekly, biweekly, or semimonthly, must be paid within

1 seven (7) calendar days following the close of the payroll period in which wages were earned.
2 Labor Code §204(d).

3 35. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
4 to timely pay Plaintiff's and similarly situated employees' earned wages (including minimum
5 wages, overtime wages, meal period premium wages, and/or rest period premium wages), in
6 violation of Labor Code section 204.

7 36. Defendants' aforementioned policies, practices, and/or procedures resulted in their
8 failure to pay Plaintiff and similarly situated employees their earned wages within the applicable
9 time frames outlined in Labor Code section 204.

10 37. **Failure to provide accurate wage statements:** Labor Code section 226(a)
11 provides, *inter alia*, that, upon paying an employee his or her wages, the employer must "furnish
12 each of his or her employees ... an itemized statement in writing showing (1) gross wages earned,
13 (2) total hours worked by the employee, except for any employee whose compensation is solely
14 based on a salary and who is exempt from payment of overtime under subdivision (a) of Section
15 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate
16 units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
17 deductions, provided, that all deductions made on written orders of the employee may be
18 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the pay period
19 for which the employee is paid, (7) the name of the employee and his or her social security
20 number, (8) the name and address of the legal entity that is the employer, and (9) all applicable
21 hourly rates in effect during the pay period and the corresponding number of hours worked at each
22 hourly rate by the employee."

23 38. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
24 to provide accurate wage and hour statements to him and other similarly situated employees who
25 were subject to Defendants' control for uncompensated time and who did not receive all their
26 earned wages (including minimum wages, overtime wages, meal period premium wages, and/or
27 rest period premium wages), in violation of Labor Code section 226.

28 39. **Failure to timely pay final wages:** An employer is required to pay all unpaid

1 wages timely after an employee's employment ends. The wages are due immediately upon
2 termination or within seventy-two (72) hours of resignation. Labor Code §§201, 202.

3 40. As a result of the aforementioned violations of the Labor Code, Plaintiff alleges
4 that she, and on information and belief, other similarly situated employees, were not paid their
5 final wages in a timely manner as required by Labor Code section 203. Minimum wages for all
6 hours worked, overtime wages for overtime hours worked, meal period premium wages, and/or
7 rest period premium wages (all described above), were not paid at the time of Plaintiff's and other
8 similarly situated employees' separation of employment, whether voluntarily or involuntarily, as
9 required by Labor Code sections 201, 202, and 203.

10 **V. CLASS DEFINITIONS AND CLASS ALLEGATIONS**

11 41. Plaintiff brings this action on behalf of herself, on behalf of others similarly
12 situated, and on behalf of the general public, and as members of a Class defined as follows:

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

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

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

27 D. **Rest Period Class:** All current and former hourly non-exempt employees
28 employed by Defendants in California at any time from four (4) years prior to the filing of the

1 initial Complaint in this matter through the date notice is mailed to a certified class who worked
2 shifts of at least three-and-a-half (3.5) hours who did not receive all required duty-free rest periods
3 of a net ten (10) minutes for every four (4) hours worked or major fraction thereof.

4 **E. Pay Day Class:** All current and former hourly non-exempt employees
5 employed by Defendants in California at any time from four (4) years prior to the filing of the
6 initial Complaint in this action through the date notice is mailed to a certified class who were not
7 timely paid earned wages during their employment.

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

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

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

19 42. There is a well-defined community of interest in the litigation and the classes are
20 ascertainable:

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

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

28 i. Whether Defendants violated Labor Code sections 1194 and 1197

1 by not paying wages at the minimum wage rate for all time that the Minimum Wage Class
2 Members were subject to Defendants' control;

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

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

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

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

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

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

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

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

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

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

28 C. **Typicality:** Plaintiff's claims are typical of the claims of the class members

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

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

22 E. **Superiority:** A class action is superior to other available means for the fair
23 and efficient adjudication of this controversy. Because individual joinder of all members of each
24 class is impractical, class action treatment will permit a large number of similarly situated persons
25 to prosecute their common claims in a single forum simultaneously, efficiently, and without the
26 unnecessary duplication of effort and expense that numerous individual actions would engender.
27 The expenses and burdens of individual litigation would make it difficult or impossible for
28 individual members of each class to redress the wrongs done to them, while important public

1 interests will be served by addressing the matter as a class action. The cost to and burden on the
2 court system of adjudication of individualized litigation would be substantial, and substantially
3 more than the costs and burdens of a class action. Individualized litigation would also present the
4 potential for inconsistent or contradictory judgments.

5 F. **Public Policy Consideration:** Employers throughout the state violate wage
6 and hour laws. Current employees often are afraid to assert their rights out of fear of direct or
7 indirect retaliation. Former employees fear bringing actions because they perceive their former
8 employers can blacklist them in their future endeavors with negative references or by other means.
9 Class actions provide the class members who are not named in the Complaint with a type of
10 anonymity that allows for vindication of their rights.

11 **FIRST CAUSE OF ACTION**

12 **FAILURE TO PAY WAGES FOR ALL HOURS OF WORK AT THE LEGAL MINIMUM**
13 **WAGE RATE IN VIOLATION OF LABOR CODE SECTIONS 1194 AND 1197**
14 **(Against All Defendants by Plaintiff and the Minimum Wage Class)**

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

16 44. At all times relevant to this Complaint, Plaintiff and the Minimum Wage Class
17 were hourly non-exempt employees of Defendants.

18 45. Pursuant to Labor Code sections 1194, 1197, and the Wage Order, Plaintiff and the
19 Minimum Wage Class are entitled to receive wages for all hours worked, i.e., all time they were
20 subject to Defendants' control, and those wages must be paid at least at the minimum wage rate in
21 effect during the time the employees earned the wages.

22 46. Defendants' policies, practices, and/or procedures required Plaintiff and the
23 Minimum Wage Class to be engaged, suffered, or permitted to work without being paid wages for
24 all of the time in which they were subject to Defendants' control.

25 47. Defendants employed policies, practices, and/or procedures including, but not
26 limited to, the following:

27 (a) "Rounding" down or "shaving" Plaintiff's and the Minimum Wage Class
28 members' total daily hours at the time of their clock-in and clock-out, including at the beginning

1 and ending of meal periods, to the nearest quarter of an hour, to the benefit of Defendants; and

2 (b) Requiring Plaintiff and the Minimum Wage Class who worked closing
3 shifts to clock out for the end of their shift and, after clocking out, to gather at the front of
4 Defendants' stores, wait for all other employees working the closing shift to also assemble at the
5 front of the store, wait for Defendants' management to arm the store alarm system, and then exit
6 the store with all of the other closing shift employees into the parking lot prior to being relieved of
7 all duty. Defendants' closing shift policy results in Plaintiff and the Minimum Wage Class
8 members who worked closing shifts being subject to the exercise and control and direction of the
9 Defendants while off the clock.

10 48. Plaintiff and the Minimum Wage Class were not paid for this time resulting in
11 Defendants' failure to pay minimum wage for all the hours Plaintiff and the Minimum Wage Class
12 worked.

13 49. As a result of Defendants' unlawful conduct, Plaintiff and the Minimum Wage
14 Class have suffered damages in an amount subject to proof, to the extent that they were not paid
15 wages at a minimum wage rate for all hours worked.

16 50. Pursuant to Labor Code sections 1194 and 1194.2, Plaintiff and the Minimum
17 Wage Class are entitled to recover unpaid minimum wage, interest thereon, liquidated damages in
18 the amount of their unpaid minimum wage, and attorneys' fees and costs.

19 **SECOND CAUSE OF ACTION**

20 **FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF LABOR CODE**

21 **SECTIONS 510 and 1194**

22 **(Against All Defendants by Plaintiff and the Overtime Class)**

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

24 52. At times relevant to this Complaint, Plaintiff and the Overtime Class were hourly
25 non-exempt employees of Defendants, covered by Labor Code sections 510 and 1194 and the
26 Wage Order 7.

27 53. Pursuant to Labor Code sections 510 and 1194 and the Wage Order 7, hourly non-
28 exempt employees are entitled to receive a higher rate of pay for all hours worked in excess of

1 eight (8) hours in a workday, forty (40) hours in a workweek, and on the seventh day of work in a
2 workweek.

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

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

11 55. Further, Labor Code section 1198 provides,

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

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

19 57. Specifically, Defendants' employed policies, practices, and/or procedures
20 including, but not limited to, the following:

21 (a) "Rounding" down or "shaving" Plaintiff's and the Overtime Class
22 members' total daily hours at the time of their clock-in and clock-out, including at the beginning
23 and ending of meal periods, to the nearest quarter of an hour, to the benefit of Defendants; and

24 (b) Requiring Plaintiff and the Overtime Class who worked closing shifts to
25 clock out for the end of their shift and, after clocking out, to gather at the front of Defendants'
26 stores, wait for all other employees working the closing shift to also assemble at the front of the
27 store, wait for Defendants' management to arm the store alarm system, and then exit the store with
28 all of the other closing shift employees into the parking lot prior to being relieved of all duty.

1 Defendants' closing shift policy results in Plaintiff and the Overtime Class members' who worked
2 closing shifts being subject to the exercise and control and direction of the Defendants while off
3 the clock.

4 58. Plaintiff and the Overtime Class were not paid for this time resulting in
5 Defendants' failure to pay wages for all the hours Plaintiff and the Overtime Class worked.

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

10 60. As a result of Defendants' unlawful conduct, Plaintiff and the Overtime Class have
11 suffered damages in an amount subject to proof, to the extent that they were not paid at their
12 overtime rate of pay for all hours worked which constitute overtime.

13 61. Pursuant to Labor Code section 1194, Plaintiff and the Overtime Class are entitled
14 to recover the full amount of their unpaid overtime wages, prejudgment interest, and attorneys'
15 fees and costs.

16 **THIRD CAUSE OF ACTION**

17 **FAILURE TO AUTHORIZE OR PERMIT MEAL PERIODS IN VIOLATION OF LABOR**
18 **CODE SECTIONS 512 AND 226.7**

19 **(Against All Defendants by Plaintiff and the Meal Period Class)**

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

21 63. At all times relevant to this Complaint, Plaintiff and the Meal Period Class were
22 hourly non-exempt employees of Defendants, covered by Labor Code sections 512 and 226.7 and
23 the Wage Order.

24 64. California law requires an employer to authorize or permit an employee an
25 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of
26 all duties and the employer relinquishes control over the employee's activities no later than the
27 end of the employee's fifth hour of work and a second meal period no later than the employee's
28 tenth hour of work. Labor Code sections 226.7, 512; Wage Order 7, §11; *Brinker Rest. Corp. v.*

1 *Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. If the employer requires the employee to remain at
2 the work site or facility during the meal period, the meal period must be paid. This is true even
3 where the employee is relieved of all work duties during the meal period. *Bono Enterprises, Inc. v.*
4 *Bradshaw* (1995) 32 Cal.App.4th 968. Labor Code section 226.7 provides that if an employee
5 does not receive a required meal or rest period that “the employer shall pay the employee one
6 additional hour of pay at the employee’s regular rate of compensation for each work day that the
7 meal or rest period is not provided.”

8 65. In this case, Plaintiff and the Meal Period Class worked shifts long enough to
9 entitle them to meal periods under California law. Nevertheless, Defendants employed policies,
10 practices, and/or procedures that resulted in their failure to authorize or permit meal periods to
11 Plaintiff and the Meal Period Class of no less than thirty (30) minutes for each five-hour period of
12 work as required by law. Such policies, practices, and/or procedures included, but were not limited
13 to, “rounding” down or “shaving” Plaintiff’s and Meal Period Class members’ total daily hours at
14 the time of their clock-in and clock-out times for meal periods to the nearest quarter of an hour, to
15 the benefit of Defendant. This results in meal periods which were not at least thirty (30) minutes in
16 length in violation of California law.

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

22 67. Defendants’ unlawful conduct alleged herein occurred in the course of employment
23 of Plaintiff and the Meal Period Class and such conduct has continued through the filing of this
24 Complaint.

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

1 226.7 and the Wage Order.

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

5 **FOURTH CAUSE OF ACTION**

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

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

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

10 71. At all times relevant to this Complaint, Plaintiff and the Rest Period Class were
11 employees of Defendants, covered by Labor Code section 226.7 and Wage Order 7.

12 72. California law requires that “[e]very employer shall authorize and permit all
13 employees to take rest periods, which insofar as practicable shall be in the middle of each work
14 period. The authorized rest period time shall be based on the total hours worked daily at the rate of
15 ten (10) minutes net rest time per four (4) hours or major fraction thereof....” Wage Order 7, §12.
16 Employees are entitled to 10 minutes rest for shifts from three and one-half to six hours in length,
17 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10
18 hours up to 14 hours, and so on.” *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53
19 Cal.4th 1004, 1029; Labor Code §226.7. Additionally, the rest period requirement “obligates
20 employers to permit – and authorizes employees to take – off-duty rest periods.” *Augustus v. ABM*
21 *Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must
22 relieve employees of all duties and relinquish control over how employees spend their time. *Id.* If
23 an employer fails to provide an employee a rest period in accordance with the applicable
24 provisions of this Order, the employer shall pay the employee one (1) hour of pay at the
25 employee’s regular rate of compensation for each work day that the rest period is not provided.”
26 Wage Order 7, §12; Labor Code §226.7.

27 73. In this case, Plaintiff and the Rest Period Class regularly worked shifts of more
28 than three-and-a-half (3.5) hours. Nevertheless, Defendants employed policies, practices, and/or

1 procedures that resulted in their failure to authorize or permit all legally required and compliant
2 rest periods to Plaintiff and the Rest Period Class. Such policies, practices, and/or procedures
3 included, but were not limited to, requiring Plaintiff and similarly situated employees to remain on
4 the premises during rest periods. Defendants, therefore, exercised control over how Plaintiff and
5 similarly situated employees spent their rest periods. The continued exercise of control and
6 direction over Plaintiff and similarly situated employees by Defendants during rest periods
7 resulted in rest periods which were not duty-free as required by California law.

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

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

16 76. Because Defendants failed to provide employees with rest periods in compliance
17 with the law, Defendants are liable to Plaintiff and the Rest Period Class for one (1) hour of
18 additional pay at the regular rate of compensation for each workday that Defendants did not
19 provide all legally required and legally compliant rest periods, pursuant to Labor Code section
20 226.7 and the Wage Order.

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

24 **FIFTH CAUSE OF ACTION**

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

26 **VIOLATION OF LABOR CODE SECTION 204**

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

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

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

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

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

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

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

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

1 violation, two hundred dollars (\$200) for each failure to pay each employee, plus twenty-five
2 (25%) percent of the amount unlawfully withheld.

3 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

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

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

26 89. Defendants provided Plaintiff and the Wage Statement Class with itemized
27 statements which stated inaccurate information including, but not limited to, the number of hours
28 worked, the gross wages earned, and the net wages earned.

1 90. Defendants' failure to provide Plaintiff and the Wage Statement Class with
2 accurate wage statements was knowing and intentional. Defendants had the ability to provide
3 Plaintiff and the Wage Statement Class with accurate wage statements but intentionally provided
4 wage statements they knew were not accurate. Defendants knowingly and intentionally put in
5 place practices which deprived employees of wages and resulted in Defendants knowingly and
6 intentionally providing inaccurate wage statements. These practices included Defendants' failure
7 to include all hours worked and all wages due.

8 91. As a result of Defendants' unlawful conduct, Plaintiff and the Wage Statement
9 Class have suffered injury. The absence of accurate information on their wage statements has
10 prevented earlier challenges to Defendants' unlawful pay practices, will require discovery and
11 mathematical computations to determine the amount of wages owed, and will cause difficulty and
12 expense in attempting to reconstruct time and pay records. Defendants' conduct led to the
13 submission of inaccurate information about wages and amounts deducted from wages to state and
14 federal government agencies. As a result, Plaintiff and the Wage Statement Class are required to
15 participate in this lawsuit and create more difficulty and expense for Plaintiff and the Wage
16 Statement Class from having to reconstruct time and pay records than if Defendants had complied
17 with their legal obligations.

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

22 93. Pursuant to Labor Code section 226(h), Plaintiff and the Wage Statement Class are
23 entitled to bring an action for injunctive relief to ensure Defendants' compliance with Labor Code
24 section 226(a). Injunctive relief is warranted because Defendants continue to provide currently
25 employed Wage Statement Class members with inaccurate wage statements in violation of Labor
26 Code section 226(a) and currently employed Wage Statement Class members have no adequate
27 legal remedy for the continuing injuries that will be suffered as a result of Defendants' ongoing
28 unlawful conduct. Injunctive relief is the only remedy available for ensuring Defendants'

1 compliance with Labor Code section 226(a).

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

5 **SEVENTH CAUSE OF ACTION**

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

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

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

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

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

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

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

23 99. Defendants' failure to pay Plaintiff and the Waiting Time Class with all wages
24 earned prior to separation of employment timely in accordance with Labor Code sections 201 and
25 202 was willful. Defendants had the ability to pay all wages earned by hourly workers prior to
26 separation of employment in accordance with Labor Code sections 201 and 202, but intentionally
27 adopted policies or practices incompatible with the requirements of Labor Code sections 201 and
28 202. Defendants' practices include failing to pay at least minimum wage for all time worked,

1 overtime wages for all overtime hours worked, meal period premium wages, and/or rest period
2 premium wages. When Defendants failed to pay Plaintiff and the Waiting Time Class all earned
3 wages timely upon separation of employment, they knew what they were doing and intended to do
4 what they did.

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

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

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

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

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

19 **EIGHTH CAUSE OF ACTION**

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

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

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

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

24 106. The unlawful conduct of Defendants alleged herein constitutes unfair competition
25 within the meaning of Business and Professions Code section 17200. This unfair conduct includes
26 Defendants' use of policies, practices, and/or procedures which resulted in: failure to pay
27 employees at least at the minimum wage rate for all hours which they worked; failure to pay
28 overtime wages for all overtime hours worked; failure to authorize or permit all legally required

1 and compliant meal periods or pay meal period premium wages; failure to authorize or permit all
2 legally required and compliant rest periods or pay rest period premium wages; failure to timely
3 pay wages; failure to provide accurate wage and hour statements; and failure to timely pay all
4 wages due upon separation of employment. Due to their unfair and unlawful business practices in
5 violation of the Labor Code, Defendants have gained a competitive advantage over other
6 comparable companies doing business in the State of California that comply with their obligations
7 to pay minimum wages for all hours worked; pay overtime wages for all overtime hours worked;
8 authorize or permit all legally required and compliant meal periods or pay meal period premium
9 wages; authorize or permit all legally required and compliant rest periods or pay rest period
10 premium wages; timely pay wages; provide accurate wage and hour statements; and timely pay all
11 wages due upon separation of employment.

12 107. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
13 California Class have suffered injury in fact and lost money or property, as described in more
14 detail above.

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

21 **PRAYER FOR RELIEF**

22 **WHEREFORE, PLAINTIFF ON HER OWN BEHALF AND ON BEHALF OF**
23 **THOSE SIMILARLY SITUATED, PRAYS AS FOLLOWS:**

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

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

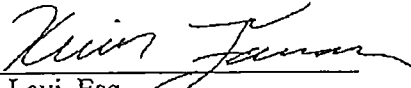
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ON THE EIGHTH CAUSE OF ACTION:

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

Dated: August 23, 2021

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

By: 
 Joseph Lavi, Esq.
 Vincent C. Granberry, Esq.
 Kevin Joseph Farnan, Esq.

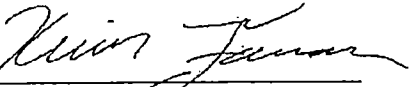
Attorneys for Plaintiff
NYIESHA WHITE
on behalf of herself and others similarly situated

DEMAND FOR JURY TRIAL

Plaintiff NYIESHA WHITE demands a trial by jury for herself and the California Class on all claims so triable.

Dated: August 23, 2021

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

By: 
 Joseph Lavi, Esq.
 Vincent C. Granberry, Esq.
 Kevin Joseph Farnan, Esq.

Attorneys for Plaintiff
NYIESHA WHITE
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7 Attorneys for Defendant
 HOME DEPOT U.S.A., INC.

8
 9
 10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 11 COUNTY OF LOS ANGELES

12 NYIESHA WHITE, on behalf of herself and
 13 others similarly situated,
 14
 Plaintiff,
 15
 vs.
 16 HOME DEPOT U.S.A., INC., and DOES 1 to
 17 100, inclusive,
 18
 Defendants.

Case No. 21STCV31087
 Assigned to for all purposes to Judge Amy
 D. Hogue, Dept. 7
**DEFENDANT HOME DEPOT U.S.A.,
 INC.'S ANSWER TO PLAINTIFF'S
 COMPLAINT**
 Complaint Filed: August 23, 2021

1 Defendant Home Depot U.S.A., Inc. (“Defendant”), by and through its undersigned
2 counsel, answers the unverified Complaint (“Complaint”) filed by Plaintiff Nyiesha White as
3 follows:

4 **GENERAL DENIAL**

5 Per California Code of Civil Procedure Section 431.30(d), Defendant generally denies
6 each and every material allegation set forth in the Complaint. Defendant specifically denies that
7 it is in any way liable to Plaintiff or any other putative class members, or that Plaintiff has been
8 damaged in any sum or sums.

9 **DEFENSES**

10 Defendant has not completed its investigation of the facts of this case, has not completed
11 discovery in this matter, and has not completed its preparations for trial. The defenses stated
12 below are based on Defendant’s knowledge, information, and belief at this time. Defendant
13 specifically reserves the right to modify, amend, or supplement any defense at any time.

14 Defendant asserts the following defenses, without admitting any obligations regarding
15 who bears the burden of proof or persuasion as to any one of them:

16 **FIRST DEFENSE**
17 (Failure to State a Cause of Action)

18 1. The Complaint, and each purported cause of action contained therein, fails to state
19 facts sufficient to constitute a cause of action.

20 **SECOND DEFENSE**
21 (Statute of Limitations)

22 2. The Complaint, and each purported cause of action contained therein, is barred, in
23 whole or in part, by the applicable statutes of limitations, including but not limited to California
24 Code of Civil Procedure sections 338, 340(2), and 343; California Labor Code Section 203; and
25 California Business and Professions Code Section 17208.

26 **THIRD DEFENSE**
27 (Other Actions Pending)

28 3. Pursuant to California Code of Civil Procedure Section 430.10(c), there are other

1 action(s) pending on behalf of the same or similar putative class of plaintiffs on the same or
2 similar causes of action.

3 **FOURTH DEFENSE**

4 **(Standing)**

5 4. Plaintiff lacks standing to bring certain claims asserted, to assert the legal rights or
6 interests of others, and/or to seek certain relief alleged.

7 **FIFTH DEFENSE**

8 **(Waiver and Release)**

9 5. The Complaint, and each purported cause of action contained therein, is barred to
10 the extent Plaintiff and any individuals Plaintiff purports to represent have waived their right to
11 recovery and/or released their claims against Defendant, whether in whole or in part, and whether
12 individually or in a class action settlement and/or release agreement.

13 **SIXTH DEFENSE**

14 **(Res Judicata and Collateral Estoppel)**

15 6. The Complaint, and each purported cause of action contained therein, is barred to
16 the extent the doctrines of collateral estoppel and/or res judicata apply.

17 **SEVENTH DEFENSE**

18 **(Not Ascertainable/Uncertain)**

19 7. The putative class action fails as to other putative class members because the
20 group is not ascertainable and is uncertain, ambiguous and conclusory.

21 **EIGHTH DEFENSE**

22 **(Not Superior Method of Adjudication)**

23 8. Plaintiff's alleged claims are barred, in whole or in part, as a putative class action,
24 because a class action is not the superior method for adjudicating this dispute.

25 **NINTH DEFENSE**

26 **(Not Appropriate for Treatment as Class Action)**

27 9. The Complaint, and each claim alleged therein, are not proper for treatment as a
28 putative class because, among other reasons: (a) Plaintiff is an inadequate representative of the

1 putative class; (b) Plaintiff’s counsel will not fairly and adequately represent the putative class;
2 (c) Plaintiff cannot establish commonality of claims; (d) Plaintiff cannot establish typicality of
3 claims; and (e) the individualized nature of Plaintiff’s claims makes class treatment inappropriate.

4 **TENTH DEFENSE**

5 **(Conflicts of Interest)**

6 10. The interests of Plaintiff and/or some of the current and former employees sought
7 to be represented are in conflict with the interests of other current and former employees sought
8 to be represented.

9 **ELEVENTH DEFENSE**

10 **(Lack of Control and Manageability)**

11 11. A putative class action fails as to other allegedly aggrieved employees because it
12 lacks control and manageability.

13 **TWELFTH DEFENSE**

14 **(Good Faith Reliance)**

15 12. Plaintiff’s claims and the claims of other current and former employees she seeks
16 to represent are barred to the extent Defendant acted in good faith reliance on an administrative
17 regulation, order, ruling and/or interpretation of the Industrial Welfare Commission, the Division
18 of Labor Standards Enforcement, and/or other governmental agency.

19 **THIRTEENTH DEFENSE**

20 **(Not Willful)**

21 13. Plaintiff and/or other current and former employees sought to be represented are
22 barred from recovering penalties pursuant to, *inter alia*, California Labor Code Sections 203
23 and/or 226, because: (a) Plaintiff has failed to plead facts sufficient to support allegations of
24 willfulness; and (b) neither Defendant nor any agent or employee of Defendant acted willfully in
25 failing to pay wages due, if any.

26 **FOURTEENTH DEFENSE**

27 **(Good Faith Dispute)**

28 14. Plaintiff’s claims for penalties for alleged violations of the Labor Code are

1 precluded because there is a good faith dispute that any wages are due to Plaintiff and/or others
2 she seeks to represent.

3 **FIFTEENTH DEFENSE**

4 **(Avoidable Consequences)**

5 15. The Complaint, and each claim alleged therein, are barred, or recovery reduced,
6 because: (a) Defendant took reasonable steps to prevent and correct the conduct alleged in the
7 Complaint; (b) Plaintiff and/or other current and former employees sought to be represented
8 unreasonably failed to use the preventive and corrective measures that Defendant provided; and
9 (c) reasonable use of Defendant’s procedures would have prevented at least some of the harm that
10 Plaintiff and/or other current and former employees sought to be represented allegedly suffered.

11 **SIXTEENTH DEFENSE**

12 **(No Waiting Time Penalties)**

13 16. The Complaint fails to state a claim for waiting time penalties under Labor Code
14 § 203 to the extent that no such penalties can continue after the commencement of an action for
15 the penalties.

16 **SEVENTEENTH DEFENSE**

17 **(Failure to Mitigate)**

18 17. The Complaint, and each claim alleged therein, are barred, or recovery reduced,
19 because Plaintiff and/or other current and former employees sought to be represented failed to
20 mitigate their damages and, to the extent of such failure, any damages awarded should be reduced
21 accordingly.

22 **EIGHTEENTH DEFENSE**

23 **(Unclean Hands)**

24 18. The Complaint, and each claim alleged therein, are barred in whole or in part by
25 the doctrine of unclean hands.

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NINETEENTH DEFENSE

(Estoppel)

19. The Complaint, and each claim alleged therein, are barred in whole or in part by the doctrine of estoppel.

TWENTIETH DEFENSE

(Consent)

20. The Complaint, and each claim alleged therein, are barred to the extent Plaintiff and/or other allegedly aggrieved employees consented to any alleged activity or conduct.

TWENTY-FIRST DEFENSE

(Laches)

21. The Complaint, and each claim alleged therein, are barred in whole or in part by the doctrine of laches.

TWENTY-SECOND DEFENSE

(De Minimis)

22. The Complaint, and each claim alleged therein, are barred in whole or in part by the *de minimis* doctrine.

TWENTY-THIRD DEFENSE

(Adequate Remedy at Law)

23. The claims Plaintiff and/or other current and former employees sought to be represented for equitable relief are barred because they have an adequate and complete remedy at law.

TWENTY-FOURTH DEFENSE

(Setoff and Recoupment)

24. If any damages have been sustained by Plaintiff and/or other current and former employees sought to be represented, Defendant is entitled under the equitable doctrine of setoff and recoupment to offset all overpayments and/or all obligations that Plaintiff and/or other current and former employees sought to be represented owed to Defendant against any judgment that may be entered against Defendant.

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TWENTY-FIFTH DEFENSE

(Payments Properly Excluded from Regular Rate)

25. Defendant properly excluded certain amounts from the regular rate pursuant to 29 U.S.C. § 207(e), its interpreting regulations, and applicable California law, for one or more of the following reasons: (a) the fact that any payment was to be made and the amount of the payment were determined at the sole discretion of Defendant at or near the end of the period and not pursuant to any prior contract, agreement, or promise; and/or (b) any amount paid was not measured by or dependent on hours worked, production or efficiency, or pursuant to any contract.

TWENTY-SIXTH DEFENSE

(No Unlawful, Unfair, or Fraudulent Conduct)

26. The Complaint, and each claim contained therein, is barred because the conduct of Defendant as alleged in the Complaint is not “unlawful,” “unfair,” or “fraudulent” as defined under the California Business and Professions Code.

TWENTY-SEVENTH DEFENSE

(Breaks Provided)

27. Defendant provided Plaintiff and other putative class members the opportunity to take full, uninterrupted 30-minute, off-duty meal breaks that commenced by the end of the fifth hour of work. On occasion, at their election and not at the direction of Defendant, Plaintiff and other putative class members did not take this opportunity and instead worked during all of, or a portion of, their provided meal break. On other occasions, at their election and not at the direction of Defendant, Plaintiff and other putative class members did not take the opportunity for a meal break by the end of the fifth hour, instead taking a 30-minute off-duty break later in the day.

TWENTY-EIGHTH DEFENSE

(Primary Rights Doctrine/Claim Splitting)

28. The Complaint and each cause of action alleged therein impermissibly seek to recover damages and penalties under multiple or different theories for the same or similar alleged unlawful acts.

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TWENTY-NINTH DEFENSE

(Rounding)

29. The Complaint, and each claim contained therein, is barred because any alleged practice of computing working time is lawful in that it is used in such a manner that it does not result, over a period of time, in failure to compensate employees properly for all the time they have actually worked. 29 C.F.R. § 785.48(b); *See’s Candy Shops, Inc. v. Superior Court*, 210 Cal. App. 4th 889 (2012).

RESERVATION OF RIGHTS

Defendant reserves the right to assert additional defenses as discovery proceeds and it becomes aware of additional facts and circumstances that provide the basis for additional defenses.

PRAYER FOR RELIEF

WHEREFORE, the Defendant prays for judgment as follows:

1. That Plaintiff take nothing by reason of her Complaint on file herein and that the Complaint be dismissed in its entirety with prejudice;
2. That the Court deny class certification of Plaintiff’s claims;
3. That judgment be entered in favor of Defendant and against Plaintiff on all causes of action contained in the Complaint;
4. That Defendant be awarded its reasonable costs of suit incurred herein
5. That Defendant be awarded its attorneys’ fees incurred by this action pursuant to applicable law; and;
6. That the Court award Defendant such other and further relief as the Court deems just and proper.

Dated: November 4, 2021

MORGAN, LEWIS & BOCKIUS LLP

By /s/Barbara J. Miller
 Barbara J. Miller
 John D. Hayashi
 Samuel S. Sadeghi
 Attorneys for Defendant
 HOME DEPOT U.S.A., INC.

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PROOF OF SERVICE

Nyiesha White v. Home Depot U.S.A., Inc., et al.
Los Angeles Superior Court Case No. 21STCV31087

I, Patricia Martin, declare:

I am a citizen of the United States and employed in Orange County, California. I am over the age of eighteen years and not a party to the within entitled action. My business address is 600 Anton Boulevard, Suite 1800, Costa Mesa, CA 92626. On November 4, 2021, I served a copy of the within document(s):

**DEFENDANT HOME DEPOT U.S.A., INC.'S
ANSWER TO PLAINTIFF'S COMPLAINT**


<input checked="" type="checkbox"/>	BY MAIL: by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Costa Mesa, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
<input checked="" type="checkbox"/>	BY ELECTRONIC SERVICE: the parties listed below were served electronically using the Court's electronic service provider ONE LEGAL with the document(s) listed above by e-mailed PDF files on November 4, 2021. The transmission was reported as complete and without error. My electronic notification address is 600 Anton Boulevard, Suite 1800, Costa Mesa, California 92626. My e-mail address is patricia.martin@morganlewis.com .

Joseph Lavi
 Vincent C. Granberry
 Kevin Joseph Farnan
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Attorneys for Plaintiff NYIESHA WHITE

Executed on November 4, 2021, at Costa Mesa, California.

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



 Patricia Martin

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Alleges Home Depot Failed to Pay Wages for Off-the-Clock Work](#)
