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R&B SALES AND MARKETING, INC; TECHTRONIC  
9 INDUSTRIES NORTH AMERICA, INC. Inc.

10 *Additional Counsel on Next Page*

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

SERGIO ARELLANO and EDGAR  
MURILLO, individually, and on behalf of  
other members of the general public  
similarly situated,

Plaintiffs,

vs.

R&B SALES AND MARKETING, INC., a  
Delaware corporation; TECHTRONIC  
INDUSTRIES NORTH AMERICA, INC., a  
Delaware corporation; and DOES 1 through  
10, inclusive,

Defendants.

Case No. 20STCV04112

**AMENDED STIPULATION AND  
AGREEMENT TO SETTLE CLASS  
ACTION**

Case Filed: January 31, 2020  
Trial Date: Not Set.

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6 Attorneys for Plaintiffs  
7 SERGIO ARELLANO and EDGAR MURILLO

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12 Fax: (510) 835-1417

13 Attorneys for Plaintiffs  
14 JOHN HENRY and CURT UYEMURA

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1 It is stipulated and agreed by and among the undersigned Parties, subject to the approval  
2 of the Court pursuant to section 382 of the California Code of Civil Procedure, that the  
3 settlement of this Litigation shall be effectuated upon and subject to the following terms and  
4 conditions. Capitalized terms used herein shall have the meanings set forth in Article I or  
5 elsewhere in this Amended Stipulation and Agreement to Settle Class Action.

6 The Parties agree that the Litigation shall be ended, settled, resolved, and concluded by  
7 agreement of Defendants to pay the maximum total sum of Two Million, One Hundred and  
8 Twelve Thousand, Five Hundred Dollars and Zero Cents (\$2,112,500.00), as provided in  
9 Section III(A) below, upon the terms and conditions of this Agreement and for the consideration  
10 set forth herein, including but not limited to a release of claims by: 1) the California Settlement  
11 Class Members who do not timely request exclusion and opt out of this Settlement, 2) the Non-  
12 California Opt-In Plaintiffs and 3) the Class and Collective Action Representatives.

13 **I. DEFINITIONS**

14 The terms set forth below shall have the meanings defined herein wherever used in this  
15 Agreement (including its exhibits):

16 1. "Agreement," "Settlement Agreement," "Settlement," or "Stipulation and  
17 Agreement" means this written Stipulation and Agreement to Settle Class, Collective, and  
18 Representative Action, which sets forth the terms of the settlement and final amicable resolution  
19 of this Litigation.

20 2. The "Second Amended Complaint" is the document attached hereto as *Exhibit 1*.

21 3. "California Class Counsel" are:

22 Raul Perez (174687)  
23 Raul.Perez@capstonelawyers.com  
24 Bevin Allen Pike (221936)  
25 Bevin.Pike@capstonelawyers.com  
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Fax: (510) 835-1417

5 4. "California Class Period" shall mean any time between January 31, 2017 and  
6 March 21, 2021.

7 5. "California Covered Job Position" means a non-exempt, hourly position in  
8 California during the California Class Period.

9 6. The "California Settlement Class" and "California Settlement Class Members"  
10 means all individuals employed: (1) in California, (2) by either Defendant, (3) in a California  
11 Covered Job Position; and (4) during the California Class Period.

12 7. "California Settlement Fund" means the portion of the Settlement Sum equal to  
13 exactly One Million Five Hundred Sixty-Two Thousand Five Hundred Dollars (\$1,562,500.00)  
14 that will be allocated toward the settlement of the claims of the California Settlement Class.

15 8. "Class Counsel" are:

16 Raul Perez (174687)  
Raul.Perez@capstonelawyers.com  
17 Bevin Allen Pike (221936)  
Bevin.Pike@capstonelawyers.com  
18 Orlando Villalba (232165)  
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27 9. "Class Notices" means, collectively, (i) the Notice of Class, Collective, and  
28 Representative Action Settlement, which will be issued to California Settlement Class Members

1 (attached hereto as *Exhibit 2*), and (ii) the Notice of Collective Action Settlement, which will be  
2 issued to Non-California Opt-in Eligible Plaintiffs (attached hereto as *Exhibit 3*).

3 10. “Class and Collective Action Representatives” or “Plaintiffs” refers to Plaintiffs  
4 Sergio Arellano, Edgar Murillo, John Henry and Curt Uyemura. John Henry and Curt Uyemura  
5 will be added as named plaintiffs in the Second Amended Complaint.

6 11. The “Court” means the Superior Court of California, County of Los Angeles  
7 located at 312 N. Spring Street, Los Angeles, California 90012. The Honorable Carolyn B.  
8 Kuhl, Department 12, presiding over the State Lawsuit.

9 12. “Defendants” are Techtronic Industries North America, Inc. and R&B Sales and  
10 Marketing, Inc.

11 13. “Defense Counsel” are:

12 PILLSBURY WINTHROP SHAW PITTMAN LLP  
13 Paula M. Weber (121144)  
14 paula.weber@pillsburylaw.com  
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25 Fax: (213) 629-1033

26 14. “Effective Date” is the date by which this Settlement is finally approved as  
27 provided herein and the Final Approval Order becomes binding. For purposes of this Settlement,  
28 the Final Approval Order becomes final upon the later of: (i) sixty-two (62) calendar days after  
entry of the Final Approval Order, and no appeal is filed within that period; (ii) if an appeal is  
filed, the date the Final Approval Order is affirmed on appeal, the date of dismissal of such  
appeal, or the expiration of the time to file a petition for writ of certiorari; or, (iii) if a petition  
for writ of certiorari is filed, the date of denial of the petition for a writ of certiorari, or the date  
the Judgment is affirmed pursuant to such petition.

1           15.     The “Federal Court” means the United States District Court presiding over the  
2 Federal Lawsuit.

3           16.     The “Federal Lawsuit” means the case filed by Plaintiffs John Henry and Curt  
4 Uyemura that was removed to the United States District Court for the Northern District of  
5 California on November 25, 2020, entitled *John Henry and Curt Uyemura, individually and on*  
6 *behalf of others similarly situated, v. Techtronic Industries of North America, Inc. and R&B*  
7 *Sales and Marketing, Inc.*, Case No. 4:20-cv-08329-WHO.

8           17.     “Final Approval Order” means the Judgment and Final Order Approving  
9 Settlement of Class Action, substantially in the form attached hereto as *Exhibit 4*, to be entered  
10 by the Court after a hearing (“Final Fairness Hearing”) that (1) grants approval to the Fair Labor  
11 Standards Act (“FLSA”) settlement described in this Agreement; (2) grants final approval to the  
12 California Class settlement described in this Agreement; and (3) dismisses the State Lawsuit  
13 with prejudice in accordance with the terms of this Agreement.

14           18.     “Individual Payment Amount” is the amount of money, inclusive of the  
15 employee’s share of payroll taxes withheld, that shall be paid to each Participating Class  
16 Member or Non-California Opt-In Plaintiff. Individual Payment Amounts will be determined in  
17 accordance with Section III(B)(65)(e) and III (C)(66)(c) herein.

18           19.     The “Litigation” means, collectively, the State Lawsuit and the Federal Lawsuit.

19           20.     “FLSA Collective Period” means the period from three years prior to Preliminary  
20 Approval through March 21, 2021. If a Non-California Opt-In Eligible Plaintiff opts into the  
21 Federal Lawsuit pursuant to 29 U.S.C. § 216(b) prior to preliminary approval, then, the “FLSA  
22 Collective Period” means three years prior to the date their opt-in was filed in court.

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1           21.    “Non-California FLSA Counsel” are:

2           Raul Perez (174687)  
3           Raul.Perez@capstonelawyers.com  
4           Bevin Allen Pike (221936)  
5           Bevin.Pike@capstonelawyers.com  
6           Orlando Villalba (232165)  
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8           CAPSTONE LAW APC  
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13          Laura L. Ho (173179)  
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20          Tel:   (510) 763-9800  
21          Fax:   (510) 835-1417

22          22.    “Non-California FLSA Fund” means the portion of the Settlement Sum equal to  
23          exactly Five Hundred and Fifty Thousand Dollars (\$550,000.00) that will be allocated toward  
24          the settlement of the FLSA claims of the Non-California Opt-in Plaintiffs.

25          23.    “Non-California FLSA Covered Job Position” means a non-exempt, hourly  
26          position in which the employee performed in-store sales at Home Depot Stores in any state other  
27          than California during the FLSA Collective Period.

28          24.    “Non-California Opt-in Eligible Plaintiffs” means all individuals employed (1) in  
any state other than California, (2) by either Defendant, (3) in a Non-California FLSA Covered  
Job Position; and (4) during the FLSA Collective Period.

29          25.    “Non-California Opt-in Plaintiffs” are all Non-California Opt-in Eligible  
30          Plaintiffs who elect to opt-in to this action pursuant to 29 U.S.C. § 216(b) in accordance with  
31          the terms of this Agreement.

32          26.    “Opt-In Form” is the form that the Non-California Opt-In Eligible Plaintiffs must  
33          complete and return to the Settlement Administrator to become a Non-California Opt-in  
34          Plaintiff and obtain a recovery as a result of this settlement, attached as *Exhibit 5*, to this  
35          Agreement.

1           27.     “PAGA Members” means all individuals employed: (1) in California, (2) by  
2 either Defendant, (3) in a California Covered Job Position; and (4) during the PAGA Period.

3           28.     “PAGA Period” shall mean any time between January 31, 2019 and March 21,  
4 2021.

5           29.     “Participating Settlement Members” means all California Settlement Class  
6 Members who do not timely request exclusion from the California Class, and all Non-California  
7 Opt-in Plaintiffs.

8           30.     “Parties” are the Plaintiffs (on behalf of themselves and all Participating  
9 Settlement Members), and Defendants.

10          31.     “Preliminary Approval Order” means the order to be entered by the Court  
11 granting preliminary approval to the settlement described in this Agreement following  
12 submission to the Court of Plaintiffs’ motion for an order granting preliminary approval to the  
13 California Class action settlement described in this Agreement, certifying the California Class  
14 for settlement purposes only, authorizing notice of this Settlement to the California Class,  
15 conditionally certifying all Non-California Opt-in Eligible Plaintiffs as an FLSA collective for  
16 purposes of providing them notice of this Settlement and an Opt-in Form through which they  
17 can opt into the FLSA collective action, authorizing issuance of such notice, and setting a date  
18 and time for a Final Fairness Hearing. The proposed Preliminary Approval Order that will be  
19 submitted to the Court in substantially the same form with the Plaintiffs’ motion is attached  
20 hereto as ***Exhibit 6***.

21          32.     “Released California Claims” means all claims which were asserted or could  
22 have been asserted at any time in the Second Amended Complaint based on the facts alleged in  
23 the Second Amended Complaint, including, but is not limited to, any claim for unpaid wages,  
24 unpaid penalties, failure to pay overtime, minimum wage or other hours worked, failure to pay  
25 overtime wages due based on the correct regular rate of pay, failure to provide compliant meal  
26 periods or rest breaks, failure to make premium payments in lieu of providing meal periods or  
27 rest breaks, failure to reimburse for expenses, failure to provide suitable seating, failure to pay  
28 reporting time pay, failure to provide timely payment of wages or wages at the time of

1 termination, failure to provide compliant wage statements, failure to maintain adequate payroll  
2 records, any alleged civil and statutory penalty, and/or any other claims under the FLSA,  
3 California Labor Code, the applicable California Wage Order, or federal law which were or  
4 could have been asserted in the Second Amended Complaint at any time during the California  
5 Class Period based on the facts alleged in the Second Amended Complaint, and/or any claim  
6 under Business and Professions Code section 17200, *et seq.*, pertaining to such claims.

7 33. “Released Non-California FLSA Claims” means all claims arising under the FLSA,  
8 which were asserted or could have been asserted at any time in the Second Amended Complaint  
9 based on the facts alleged in the Second Amended Complaint, including, but is not limited to,  
10 any claim for failure to pay overtime wages, minimum wages, unpaid wages, failure to pay  
11 overtime wages at the regular rate of pay, penalties and liquidated damages.

12 34. “Released PAGA Claims” means all claims for PAGA civil penalties that were  
13 brought, or could have been brought, based on the facts alleged in Plaintiffs’ LWDA letters,  
14 during the PAGA Period. This includes violations of California Labor Codes section 201, 202,  
15 203, 204, 204.3, 222.5, 226, 226.3, 226.7, 256, 510, 512, 513, 516, 558, 1182.12, 1174, 1174.5,  
16 1194, 1194.2, 1197, 1197.1, 1198, 2802, 2810.5, the related provisions of California Wage  
17 Order 7 and violation of California Code of Regulations Title 8, Section 11070, Subdivision 5  
18 (A),14(A) and (B).

19 35. “Released Parties” means Defendants and their past and present parents,  
20 subsidiaries, related entities, and affiliates, and their respective present and former officers,  
21 directors, stockholders, agents, employees, insurers, co-insurers, reinsurers, attorneys,  
22 accountants, auditors, advisors, representatives, consultants, pension and welfare benefit plans,  
23 plan fiduciaries, administrators, trustees, partners, predecessors, successors and assigns.

24 36. “Service Award” is the amount that shall be paid to Plaintiffs and Class  
25 Representatives Sergio Arellano, Edgar Murillo, John Henry and Curt Uyemura pursuant to  
26 Section II(B) (65) (c below).

27 37. “Settlement Administrator” means CPT Group, Inc., which will be responsible  
28 for the administration of the payments to be made by Defendants from the Settlement Sum and

1 related matters as set forth in this Agreement.

2 38. The “State Lawsuit” means the lawsuit entitled *Sergio Arellano and Edgar*  
3 *Murillo, individually and on behalf of other members for the general public similarly situated,*  
4 *v. R&B Sales and Marketing, inc. and Techtronic Industries North America Inc.*, Case No.  
5 20STCV04112, filed on January 31, 2020 in the Superior Court of California for the County of  
6 Los Angeles.

7 39. The “Stipulated Stay and, Pending Settlement Approval, Dismissal of the  
8 Federal Lawsuit” “ is the document attached hereto as ***Exhibit 7***.

9 **II. APPROVAL AND NOTICE PROCEDURES**

10 40. The Parties and their respective counsel shall take all steps that may be requested  
11 by the Courts presiding over the Federal Lawsuit and the State Lawsuit relating to the approval  
12 and implementation of this Agreement and shall otherwise use their respective best efforts to  
13 obtain Court approval and implement this Agreement. The procedure for obtaining Court  
14 approval of and implementing this Agreement shall be as follows:

15 **A. Joint Stipulation to Stay the Federal Lawsuit.**

16 41. Not later than fourteen (14) calendar days following the date on which this  
17 Agreement is executed by all Parties, the Parties will jointly submit to the Federal Court the  
18 Stipulated Stay and Pending Settlement Approval, Dismissal of the Federal Lawsuit. Pursuant to  
19 that document, the Federal Lawsuit will be stayed and held in abeyance pending approval of the  
20 Settlement; if and when the Effective Date occurs, the Parties will jointly request that the  
21 Federal Lawsuit be dismissed with prejudice. No payment shall be made by Defendants unless  
22 and until the Federal Lawsuit has been dismissed with prejudice in its entirety.

23 **B. Stipulation for Leave to Amend the State Lawsuit.**

24 42. Not later than fourteen (14) calendar days following the date on which this  
25 Agreement is executed by all Parties, the Parties will file a stipulation for leave to further amend  
26 the complaint in the State Lawsuit to (i) add the claims that were originally pleaded in the  
27 Federal Lawsuit, with an FLSA claim asserted to encompass a nationwide collective action, and  
28 (ii) add John Henry and Curt Uyemura as named plaintiffs, contingent on the Court issuing a

1 Final Approval Order. The Second Amended Complaint is attached hereto as *Exhibit 1*. The  
2 stipulation will be filed at the same time as the motion for entry of the Preliminary Approval  
3 Order. If a Final Approval Order is not granted for any reason, Plaintiffs agree to dismiss the  
4 Second Amended Complaint and make the First Amended Complaint filed in the State Lawsuit  
5 the operative complaint in the State Lawsuit.

6 **C. Preliminary Approval.**

7 43. Not later than fourteen (14) calendar days following the date on which this  
8 Agreement is executed by all Parties, Plaintiffs will file an unopposed motion for Preliminary  
9 Approval Order, which will be provided to Defendants' Counsel at least five (5) days prior to  
10 filing for approval. The proposed Preliminary Approval Order, attached as *Exhibit 6*, shall ask  
11 the Court to: grant preliminary approval of this Agreement as fair and reasonable; certify the  
12 California Class for settlement purposes only; appoint Class Counsel for settlement purposes  
13 only; appoint the Settlement Administrator; set the date and time for a Final Fairness Hearing;  
14 and approve the form and issuance of the Class Notices, substantially in the form as attached  
15 hereto as *Exhibits 2-3*.

16 **D. Notice to California Settlement Class Members and Non-California Opt-in**  
17 **Eligible Plaintiffs.**

18 The Settlement Administrator shall disseminate the Class Notices as follows:

19 44. No later than ten (10) business days after the Court enters the Preliminary  
20 Approval Order, Defendants will provide the Settlement Administrator with lists of all  
21 California Settlement Class Members and all Non-California Opt-in Eligible Plaintiffs (the  
22 "Settlement Class Lists").

23 45. The list of California Settlement Class Members shall state, for each employee:  
24 (i) full name; (ii) social security number; (iii) last known home address and if known, phone  
25 number; and (iv) dates of employment worked in a California Covered Job Position during the  
26 California Class Period.

27 46. The list of Non-California Opt-in Eligible Plaintiffs shall state, for each  
28 employee: (i) full name; (ii) social security number; (iii) last known home address; and (iv)

1 dates of employment worked in Non-California FLSA Covered Job Position during the FLSA  
2 Collective Action Period.

3 47. Within fourteen (14) calendar days after Defendants produce the Settlement  
4 Class Lists, the Settlement Administrator shall, via First Class United States mail, mail to the  
5 California Settlement Class Members a Notice of Class, Collective, and Representative Action  
6 Settlement, and mail to the Non-California Opt-in Eligible Plaintiffs a Notice of Collective  
7 Action Settlement. The Settlement Administrator shall perform a national change of address  
8 (“NCOA”) database review prior to mailing. If any Class Notice is returned as undeliverable,  
9 the Settlement Administrator shall promptly notify Class Counsel and attempt to locate such  
10 employee through one skip trace and, if a new address is identified, shall promptly mail an  
11 additional Class Notice to such person. If the Settlement Administrator requests further  
12 information from Defendants to perform a skip trace, Defendants will make reasonable efforts  
13 to provide the information. In the case of any employee who is known to be deceased, the  
14 Settlement Administrator shall mail the employee’s notice to the legal representative of the  
15 estate.

16 48. The Settlement Administrator shall mail with the Class Notices, a Statement of  
17 Weeks Worked and Estimated Individual Payment Amount. The Statement of Weeks Worked  
18 and Estimated Individual Payment Amount will state the dates that the employee worked during  
19 the applicable time period (either the California Class Period or the FLSA Collective Period, as  
20 the case may be) as indicated in Defendants’ records and the estimated Individual Payment  
21 Amount based on the formula set forth in Sections III(B)(65)(e) and III (C)(66)(c) below. The  
22 Class Notice sent to the Non-California Opt-in Eligible Plaintiffs will include an Opt-In Form  
23 by which they can opt in to the FLSA Collective Action Settlement.

24 49. The Class Notices shall include contact information for California Class Counsel  
25 and Non-California FLSA Counsel (where applicable) to answer questions, and a URL to a  
26 website maintained by the Settlement Administrator which will be publically available on the  
27 date of the initial mailing of the Class Notices by the Settlement Administrator. The website  
28 maintained by the Settlement Administrator shall include links to: the Class Notices; the Second

1 Amended Complaint; the Settlement Agreement; the Motion for Preliminary Approval; the  
2 Preliminary Approval Order; the Motion for Final Approval and for Service Awards and  
3 Attorneys' Fees and Costs (once filed); and the Order Granting Final Approval (once entered).  
4 The URL will not include any logos, trademarks, service marks, or other intellectual property  
5 belonging to Defendants or any of their parents, subsidiaries, or related companies.

6 50. The Settlement Administrator shall provide an address and toll-free telephone  
7 number to respond to inquiries about the Class Notices and determination of the estimated  
8 Individual Payment Amounts. The Settlement Administrator shall provide weekly updates to the  
9 Parties on the status of notice mailings, including the numbers of notices returned as  
10 undeliverable, remailings to forwarding addresses, skip traces successfully and unsuccessfully  
11 performed, disputes and resolutions concernings the Statement of Weeks Worked, Requests for  
12 Exclusion, and objections.

13 **E. Declaration of Compliance.**

14 51. No later than ten (10) calendar days before the deadline to file the Motion for  
15 Final Approval, the Settlement Administrator shall provide Defense Counsel and Class Counsel  
16 with a declaration attesting to completion of the notice process and results (and to any ongoing  
17 attempt to obtain valid mailing addresses for, and the re-sending of, any returned Class Notices),  
18 including the steps that the Settlement Administrator is required to take under Section II(D),  
19 which shall be filed with the Court by Class Counsel with the final approval motion.

20 52. Compliance with the procedures described in Sections II(D) (46)-(49) shall  
21 constitute due and sufficient notice of this proposed Settlement and the Final Fairness Hearing,  
22 shall not be subject to objection or collateral attack by any person or entity, and shall satisfy the  
23 requirement of due process. Nothing else shall be required of the Parties, Class Counsel,  
24 Defense Counsel, or the Settlement Administrator to provide notice of the proposed Settlement  
25 and the Final Fairness Hearing.

26 **F. Requests for Exclusion from the California Class.**

27 53. Any California Settlement Class Member who does not wish to become a  
28 Participating Class Member may request exclusion from the California Settlement Class by

1 submitting a request for exclusion (“Request for Exclusion” or “Opt Out Letter”), as explained  
2 in the Notice of Class, Collective, and Representative Action Settlement. A Request for  
3 Exclusion is valid if the California Settlement Class Member sends a letter to the Settlement  
4 Administrator setting forth: i) his or her name, address, telephone number and last four digits of  
5 the Social Security number and ii) a signed statement requesting to be excluded from the  
6 California Class and from participation in the Settlement. Any such request will be timely and  
7 valid only if postmarked no later than sixty (60) days after the date of the initial mailing of the  
8 Class Notices by the Settlement Administrator, or in the case of remailings, sixty (60) days after  
9 the date of the remailing. This response period may not be extended for any reason unless  
10 ordered by the Court. The Parties will not encourage California Settlement Class Members to  
11 exclude themselves.

12 **G. Objections to Settlement.**

13 54. Any California Settlement Class Member wishing to object to the approval of  
14 this Settlement (“Objecting California Settlement Class Members”) can either appear at the  
15 Final Approval Hearing to voice an objection to the Settlement, or postmark no later than sixty  
16 (60) days after the date of the initial mailing of the Notice by the Settlement Administrator a  
17 written objection to the Settlement, or in the case of remailings, sixty (60) days after the date of  
18 the remailing. This response period may not be extended for any reason unless ordered by the  
19 Court. The Parties will not encourage California Settlement Class Members to object to the  
20 Settlement.

21 **H. No Right to Exclusion from or Objections to the PAGA Portion of the**  
22 **Settlement by PAGA Members.**

23 55. Because this settlement resolves claims and actions brought pursuant to PAGA  
24 by Plaintiffs acting as a proxy and as a Private Attorney General of, and for, the State of  
25 California and the LWDA, the Parties agree that no PAGA Member has the right to exclude  
26 himself or herself from the PAGA portion of the settlement. PAGA Members will be bound by  
27 the terms of the Settlement and the release of the PAGA claims contained herein, upon its  
28 approval by the Court, regardless of whether he or she cashes any payment received as a result

1 of this Settlement. The Parties also agree that no PAGA Member has the right to object to the  
2 terms of the PAGA settlement.

3 **I. Settlement Administrator's Receipt of an Objection or Request for**

4 **Exclusion.**

5 56. The Settlement Administrator shall: (a) date stamp all original Requests for  
6 Exclusion and objections to the Settlement that it receives; (b) serve copies on Class Counsel  
7 and Defense Counsel no later than five (5) business days after receipt, or immediately if  
8 received within five (5) business days of the Final Fairness Hearing; and (c) file (or provide to  
9 Class Counsel to file) the date-stamped originals with the Clerk of the Court no later than five  
10 (5) business days prior to the deadline for filing the Motion for Final Approval or immediately if  
11 received less than five (5) business days prior to the Final Fairness Hearing.

12 57. The Settlement Administrator shall also (a) date stamp all original rescission of  
13 Request for Exclusions and withdrawal of objections it receives; (b) serve copies on Class  
14 Counsel and Defense Counsel no later than five (5) business days after receipt, or immediately  
15 if received within five (5) business days of the Final Fairness Hearing; and (c) file (or provide to  
16 Class Counsel to file) the date-stamped originals with the Clerk of the Court no later than five  
17 (5) business days prior to the deadline for filing the Motion for Final Approval or immediately if  
18 received less than five (5) business days prior to the Final Fairness Hearing.

19 **J. Responses to Objections.**

20 58. Counsel for the Parties shall file any response to the objections submitted by  
21 Objecting California Settlement Class Members at least five (5) court days before the date of the  
22 Final Fairness Hearing or, if the objection is received less than five (5) business days prior to the  
23 Final Fairness Hearing, Class Counsel may file a response within five (5) court days after  
24 receiving the objection.

25 **K. Options Available to Non-California Opt-in Eligible Plaintiffs.**

26 59. Non-California Opt-in Eligible Plaintiffs shall have two options: either  
27 participate in the Settlement by timely completing and returning the Opt-In Form that will be  
28 mailed to them with the Notice of Collective Action Settlement or decline to participate in the

1 Settlement by not completing and/or returning the Opt-in Form. Any Non-California Opt-in  
2 Eligible Plaintiffs who elect not to opt into the FLSA settlement will not release the Released  
3 Non-California FLSA Claims and will not receive any settlement payment. Non-California Opt-  
4 in Eligible Plaintiffs who do not wish to participate in the settlement do not need to submit any  
5 exclusion request; they can exclude themselves simply by not timely completing and/or  
6 returning the Opt-In Form. Non-California Opt-in Eligible Plaintiffs' only options are to  
7 participate or not to participate; they shall not have the option of participating and submitting  
8 objections to the Settlement. Requests for Non-California Opt-in Eligible Plaintiffs to opt into  
9 the FLSA settlement will be timely and valid only if postmarked no later than sixty (60) days  
10 after the date of the initial mailing of the Class Notices by the Settlement Administrator. This  
11 response period may not be extended for any reason unless ordered by the Court. The Parties  
12 shall not encourage Non-California Opt-in Eligible Plaintiffs to exclude themselves by not  
13 opting into the FLSA settlement.

14 **L. Final Fairness Hearing.**

15 60. Pursuant to the Court or State Lawsuit motion filing deadlines, Class Counsel  
16 shall move the Court for entry of the Final Approval Order and, at the same time, move the  
17 Court for an award of attorneys' fees, litigation costs, and Service Awards.

18 61. A Final Fairness Hearing shall be held before the Court on the date specified in  
19 the Preliminary Approval Order, which shall be approximately ninety (90) calendar days after  
20 the mailing of the Notice of Class Settlement, or as soon thereafter as may be heard by the  
21 Court. At the Final Fairness Hearing, the Parties will ask the Court to consider the level of  
22 participation in the Settlement by California Settlement Class Members, as well as any valid and  
23 timely objections and all responses by the Parties to such objections. At the Final Fairness  
24 Hearing, the Parties shall ask the Court to give final approval to this Agreement. If the Parties'  
25 request for final approval is granted, the Final Approval Order shall be entered in the Litigation.  
26 Within three (3) business days of receipt of the signed Final Approval Order by Class Counsel,  
27 Class Counsel shall furnish a copy of the Final Approval Order to the Settlement Administrator.  
28

1 **III. SETTLEMENT PAYMENT PROCEDURES**

2 **A. Settlement Sum.**

3 62. The maximum and all-inclusive Settlement Sum to be paid by the Defendants  
4 shall be limited to a total of Two Million One Hundred and Twelve Thousand Five Hundred  
5 Dollars and Zero Cents (\$2,112,500.00). Employer payroll taxes will be paid separately from,  
6 and in addition to, the Settlement Sum. As described in this Section, Defendants' monetary  
7 obligation under this Agreement shall be limited to the Settlement Sum and all payments shall  
8 be paid from the Settlement Sum. All amounts to be paid by Defendants from the Settlement  
9 Sum shall be paid to a qualified settlement fund ("Qualified Settlement Fund"), which shall be  
10 administered by the Settlement Administrator. All amounts to be paid to anyone pursuant to this  
11 Agreement ("Settlement Amounts") shall be paid out of the Qualified Settlement Fund. Such  
12 Settlement Amounts, as set forth in detail below, shall include all amounts to be paid to  
13 Plaintiffs, Participating Settlement Members; all amounts to be paid to Class Counsel as  
14 attorneys' fees; all amounts to be paid to Class Counsel as litigation costs not to exceed \$20,000  
15 (of which half will be deducted from the California Settlement Fund, and the other half will be  
16 deducted from the Non-California FLSA Fund); all amounts to be paid as Service Awards to  
17 Plaintiffs; all amounts to be paid as Settlement Administration Costs; all amounts required to be  
18 paid as federal, state and local payroll taxes (not including the employer's share of payroll  
19 taxes), with respect to the Participating Settlement Members' Individual Payment Amounts; the  
20 payment to the Labor Workforce Development Agency ("LWDA") for its portion of the amount  
21 paid to settle alleged PAGA claims; and any other Settlement Amounts to be paid under this  
22 Agreement.

23 63. Within three (3) business days after the Effective Date, the Settlement  
24 Administrator shall provide wiring instructions to Defendants to wire the Settlement Sum to the  
25 Settlement Administrator for deposit into the Qualified Settlement Fund. Within fifteen (15)  
26 business days after receiving the wiring instructions or five (5) business days after dismissal of  
27 the Federal Lawsuit with prejudice, whichever is later, Defendants shall wire the Settlement  
28 Amount to the Settlement Administrator. The Settlement Administrator shall issue and mail

1 checks for the Individual Payment Amounts to any California Settlement Class Members who  
2 did not timely exclude themselves, and to all Non-California Opt-in Eligible Plaintiffs  
3 (withholding the employee’s share of payroll taxes) within seven (7) business days of receiving  
4 the Settlement Amount from Defendants.

5 64. Any and all employer tax obligations on any amounts paid to Plaintiffs and  
6 Participating Settlement Members under this Settlement (including any employer FICA or  
7 FUTA taxes owed by Defendants or by the Qualified Settlement Fund) are to be paid by  
8 Defendants separately and in addition to the Settlement Sum.

9 65. The Parties are mindful that the total consideration payable hereunder is  
10 comprised of a number of separate and distinct claims for damages and penalties by Plaintiffs  
11 and the other Participating Settlement Members. Accordingly, having considered the matter in  
12 detail, having performed their own separate and independent computations and estimation of the  
13 damages and penalties potentially awardable to Plaintiffs at trial or arbitration, and having done  
14 the foregoing with complete and satisfactory access to, and advice from, accounting and legal  
15 advisors, the Parties mutually consent and agree that the Participating Settlement Members’  
16 Individual Payment Amounts be apportioned among the Participating Settlement Members’  
17 various wage and non-wage claims in this Litigation as set forth below. Moreover, the Parties  
18 mutually consent and agree, and hereby represent to the Court in this judicially supervised  
19 settlement transaction, that the apportionment of the Participating Settlement Members’  
20 Individual Payment Amounts as stated above and below is a reasonable and arm’s length  
21 determination of the character of the Individual Payment Amounts for all purposes, including  
22 for tax purposes. Counsel for the Parties are not tax attorneys and are not providing tax advice.  
23 All Parties to this Settlement are responsible for their own compliance with applicable tax laws.

24 **B. California Settlement Fund.**

25 66. The California Settlement Fund of \$1,562,500.00 will be allocated toward the  
26 settlement of the Released California Claims (“California Settlement”). The amount of the  
27 California Settlement Fund was negotiated with the understanding that California Settlement  
28 Class Members worked a total of approximately 27,277 workweeks from January 31, 2017

1 though October 3, 2020. The California Settlement Fund is inclusive of:

2 a. CA Settlement Administration Costs: All costs of administering the  
3 California Settlement, including but not limited to all tax obligations, custodial fees, and  
4 accounting fees incurred by the Settlement Administrator; all costs and fees associated with  
5 preparing, issuing and mailing any and all notices or reminders to California Settlement Class  
6 Members; all costs and fees associated with computing, processing, reviewing, issuing and  
7 paying the Service Awards, Settlement Amounts, interest, taxes, and any other payments to be  
8 made out of or into the California Settlement Fund; all costs and fees associated with preparing  
9 any tax returns and any other filings required by any governmental taxing authority or agency;  
10 all costs and fees associated with preparing any other notices, reminders, reports, or filings to be  
11 prepared in the course of the settlement or in administering disbursements from the California  
12 Settlement Fund; and any other costs and fees incurred and/or charged by the Settlement  
13 Administrator in connection with the execution of its duties as part of the California Settlement  
14 (“CA Settlement Administration Costs”), which is estimated at \$7,000 and shall also be paid  
15 from the California Settlement Fund.

16 b. CA Class Counsel Attorneys’ Fees and Costs: Subject to Court approval,  
17 California Class Counsel will be paid up to one-third (1/3) of the California Settlement Fund,  
18 which equals \$520,833.33 for attorneys’ fees (“CA Attorneys’ Fees”). Subject to Court  
19 approval, California Class Counsel will also be paid reasonable and actual costs actually  
20 expended in prosecuting this Litigation (“CA Litigation Costs”) from the California Settlement  
21 Fund in a sum not to exceed \$10,000. Any amount not approved by the Court will revert to the  
22 CA Net Settlement Fund to be split pro rata among the California Settlement Class Members  
23 who do not opt out of the California Settlement Class. The Court-ordered California Class  
24 Counsel Attorneys’ Fees and Litigation Costs shall be due and payable no later than seven (7)  
25 business days after the Settlement Administrator receives the funds from Defendants. California  
26 Class Counsel will divide the CA Attorneys’ Fees as follows: 2/3 to Capstone Law APC and 1/3  
27 to Goldstein, Borgen, Dardarian & Ho.

28 c. Service Awards Payable to the California Class Representatives: Subject

1 to Court approval, named Plaintiffs and Class Representatives shall each receive a Service  
2 Award of Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) from the  
3 California Settlement Fund. In order to receive said Service Award, Plaintiffs Sergio Arellano,  
4 Edgar Murillo, John Henry and Curt Uyemura must sign a Complete and General Release of all  
5 Claims (in substantially the form of *Exhibit 8*), known or unknown, suspected or unsuspected,  
6 that each of the Plaintiffs had, now have, or may hereafter claim to have against the Released  
7 Parties arising out of, or relating in any way to, their hiring by, employment with, separation of  
8 employment with the Released Parties (“Class Representatives’ Released Claims”), arising or  
9 accruing from the beginning of time up through the Preliminary Approval Order date (“Class  
10 Representatives’ Released Period”). The Releases signed by Sergio Arellano, Edgar Murillo,  
11 John Henry and Curt Uyemura will include an acknowledgment and voluntary release of  
12 California Civil Code Section 1542. The Service Awards shall be due and payable no later than  
13 seven (7) business days after the Settlement Administrator receives the funds from Defendants.  
14 The Settlement Administrator will report the Service Awards on Form 1099s, which it will  
15 provide to Plaintiffs and to the pertinent taxing authorities as required by law.

16 d. Payment of PAGA Penalties to the LWDA and California Settlement

17 Class Members: The Parties agree to allocate One Hundred Thousand Dollars and Zero Cents  
18 (\$100,000.00) (“PAGA Settlement Sum”) from the California Settlement Fund to the settlement  
19 of the PAGA penalties alleged in the Second Amended Complaint, which the Parties believe in  
20 good faith is a fair and reasonable apportionment. The Settlement Administrator shall pay  
21 seventy-five percent (75%), or \$75,000.00, of this amount to the LWDA, and twenty-five  
22 percent (25%), or \$25,000.00 (“PAGA Fund”), of this amount to the PAGA Members calculated  
23 as a pro rata share of the PAGA Fund based upon their workweeks in California during the  
24 PAGA Period in a California Covered Position. Payment shall be made to the LWDA no later  
25 than seven (7) business days after the Settlement Administrator receives the funds from  
26 Defendants. All PAGA Members will receive their shares of the PAGA Fund, regardless  
27 whether they opt out of the California Settlement Class.

28 e. Individual Payment Amounts Payable to Participating Settlement

1 Members: After deducting the CA Settlement Administration Costs, CA Attorneys' Fees, CA  
2 Litigation Costs, Service Awards, and PAGA Settlement Sum, the balance of the California  
3 Settlement Fund ("CA Net Settlement Fund") will be allocated to California Settlement Class  
4 Members who do not opt out, calculated as a pro rata share of the CA Net Settlement Fund  
5 based upon their workweeks in California during the California Class Period in a California  
6 Covered Position. To determine the value for each Qualifying Work Week, the Settlement  
7 Administrator will divide the California Settlement Fund (after all applicable deductions for  
8 fees, costs and awards) by the total number of Qualifying Work Weeks worked by all California  
9 Class Members. That dollar amount equals the weekly recovery value ("Weekly Recovery") for  
10 each Qualifying Work Week. Next, for each California Class Member, the Settlement  
11 Administrator shall compute the California Class Member's Individual Payment Amount by  
12 multiplying the California Class Member's total Qualifying Work Weeks by the Weekly  
13 Recovery. If there are any valid and timely Requests for Exclusion, the Settlement  
14 Administrator will proportionately increase the payment for each participating Class Member so  
15 that the amount actually distributed to the Settlement Class equals 100% of the Net Settlement  
16 Fund. Seventy-five percent (75%) of each Individual Payment Amount from the CA Net  
17 Settlement Fund shall be allocated as interest, penalties, liquidated damages, and other non-  
18 wage recovery (which shall not be subject to withholdings or deductions and shall be reported as  
19 non-wage income), and twenty-five percent (25%) shall be allocated as wages. That portion of  
20 each Participating Class Member's Individual Payment Amount constituting: (i) interest or  
21 penalties will be reported on a Form 1099 provided to each Participating Class Member, with  
22 the required copies of the Form 1099s provided to the pertinent taxing authorities; and (ii)  
23 wages will be reported on a W-2 Form and provided to each Participating Class Member, with  
24 the required copies of the Form W-2s provided to the pertinent taxing authorities.

25 f. No Spillover of Residuals for California Settlement Class Members: To  
26 the extent there are any payments made to California Settlement Class Members that remain  
27 uncashed one hundred and eighty (180) days after the initial mailing of the checks, all such  
28 uncashed payments and interest from the date of entry of judgment shall be paid in equal shares

1 to Worksafe and California Rural Legal Assistance, subject to Court approval, or any other  
2 recipient that the Court is willing to approve, in the names of the California Settlement Class  
3 Members who did not cash their checks. The Parties agree that this disposition results in no  
4 “unpaid residue” under California Code of Civil Procedure section 384, as the entire Net  
5 Settlement Fund will be paid out to California Settlement Class Members, whether or not they  
6 all cash their Settlement.

7 **C. Non-California FLSA Fund.**

8 67. The Non-California FLSA Fund of \$550,000.00 will be allocated toward the  
9 settlement of the Released Non-California FLSA Claims (“Non-California FLSA Settlement”).  
10 The Non-California FLSA Fund is inclusive of:

11 a. Non-CA Settlement Administration Costs: All costs of administering the  
12 Non-California FLSA Settlement, including but not limited to all tax obligations, custodial fees,  
13 and accounting fees incurred by the Settlement Administrator; all costs and fees associated with  
14 preparing, issuing and mailing any and all notices or reminders to Non-California Opt-In  
15 Plaintiffs; all costs and fees associated with computing, processing, reviewing, issuing and  
16 paying the Settlement Amounts, interest, taxes, and any other payments to be made out of or  
17 into the Non-California FLSA Fund; all costs and fees associated with preparing any tax returns  
18 and any other filings required by any governmental taxing authority or agency; all costs and fees  
19 associated with preparing any other notices, reminders, reports, or filings to be prepared in the  
20 course of the settlement or in administering disbursements from the Non-California FLSA Fund  
21 including notice to the Attorney General and state attorneys general under the Class Action  
22 Fairness Act; and any other costs and fees incurred and/or charged by the Settlement  
23 Administrator in connection with the execution of its duties under this Agreement (“Non-CA  
24 Settlement Administration Costs”), which is estimated at \$7,500 and shall also be paid from the  
25 Non-California FLSA Fund.

26 b. Non-CA Attorneys’ Fees and Costs: Subject to Court approval, Non-  
27 California FLSA Counsel will be paid up to one-third (1/3) of the Non-California FLSA Fund,  
28 which equals \$183,333.33 for attorneys’ fees (“Non-CA Attorneys’ Fees”). Subject to Court

1 approval, Non-California FLSA Counsel will also be paid reasonable and actual costs actually  
2 expended in prosecuting this Litigation (“Non-CA Litigation Costs”) from the Non-California  
3 FLSA Fund in a sum not to exceed \$10,000. Any amount not approved by the Court will revert  
4 to the Non-CA Net Settlement Fund. The Court-ordered Attorneys’ Fees and Litigation Costs  
5 shall be due and payable no later than five (5) business days after the Settlement Administrator  
6 receives the funds from Defendants. Non-California FLSA Counsel will divide the Non-CA  
7 Attorneys’ Fees as follows: 2/3 to Capstone Law APC and 1/3 to Goldstein, Borgen, Dardarian  
8 & Ho.

9 c. Individual Payment Amounts Payable to Non-California Opt-in Plaintiffs:

10 After deducting the Non-CA Settlement Administration Costs, Non-CA Attorneys’ Fees, and  
11 Non-CA Litigation Costs, the balance of the Non-California FLSA Fund (“Non-CA Net  
12 Settlement Fund”) will be allocated to Non-California Opt-in Plaintiffs, calculated as a pro rata  
13 share of the Non-CA Net Settlement Fund based upon their workweeks in a Non-California  
14 FLSA Covered Job Position during the FLSA Collective Period. To determine the value for  
15 each Qualifying Work Week, the Settlement Administrator will divide the Non-California  
16 FLSA Fund (after all applicable deductions for fees, costs and awards) by the total number of  
17 Qualifying Work Weeks worked by all Non-California Opt-In Eligible Plaintiffs. That dollar  
18 amount equals the weekly recovery value (“Weekly Recovery”) for each Qualifying Work  
19 Week. Next, for each Non-California Opt-In Eligible Plaintiff, the Settlement Administrator  
20 shall compute the Non-California Opt-In Eligible Plaintiff’s Individual Payment Amount by  
21 multiplying the Non-California Opt-In Eligible Plaintiff’s total Qualifying Work Weeks by the  
22 Weekly Recovery. All amounts allocated to Non-California Opt-In Eligible Plaintiffs who do  
23 not opt-in to the collective action, will be reallocated on a pro rata basis to the Non-California  
24 Opt-in Plaintiffs by increasing the Weekly Recovery value. Fifty percent (50%) of each Non-  
25 California Opt-in Plaintiffs’ Individual Payment Amount shall be allocated as wages (which  
26 shall be subject to required withholdings and deductions and reported as wage income), and the  
27 remaining fifty percent (50%) shall be allocated as liquidated damages, interest and other non-  
28 wage recovery (which shall not be subject to withholdings or deductions and shall be reported as

1 non-wage income).

2 **D. No Additional Contribution by Defendants.**

3 68. Defendants' monetary obligations under this Agreement are limited to the  
4 amount as defined as the Settlement Sum, as well as the employer's share of payroll taxes.  
5 Defendants may not be called upon or required to contribute additional monies above the  
6 Settlement Sum under any circumstances whatsoever.

7 **E. Disbursement of Funds.**

8 69. The Settlement Administrator will administer disbursements from the Settlement  
9 Sum paid by Defendants into the Qualified Settlement Fund, including, but not limited to,  
10 calculating claims against the Qualified Settlement Fund, calculating interest owed, preparing  
11 and issuing all disbursements of the Settlement Amounts required to be paid to the Participating  
12 Settlement Members, Plaintiffs, Class Counsel, the LWDA, and the local state and federal  
13 payroll tax authorities, tracking whether California Settlement Class Members and Non-  
14 California Opt-in Eligible Plaintiffs have cashed issued checks, and handling inquiries about the  
15 calculation of the Individual Payment Amounts. The Settlement Administrator shall be  
16 responsible for the timely filing of all federal, state and local tax returns of the Qualified  
17 Settlement Fund and making the timely payment of any and all taxes and withholdings required  
18 with such returns.

19 70. All Settlement Administration Costs associated with administering disbursements  
20 from the Qualified Settlement Fund including, but not limited to, the fees and costs of the  
21 Settlement Administrator and the cost of the Class Notices, shall be paid entirely from the  
22 Settlement Sum paid by Defendants into the Qualified Settlement Fund. The Parties expect that  
23 the Settlement Administrator shall conduct all administration of all disbursements of the  
24 Settlement Sum.

25 **F. Resolution of Disputes.**

26 71. Any California Settlement Class Member or Non-California Opt-in Eligible  
27 Plaintiff who disputes the information shown on his or her Statement of Weeks Worked and  
28 Estimated Individual Payment Amount may so indicate and explain such disagreement on the

1 form and return it postmarked within sixty (60) calendar days of its initial mailing, or in the case  
2 of remailings, sixty (60) days after the date of the remailing. Any such employee must submit  
3 any documentation relating to his or her dispute along with his or her completed Statement of  
4 Weeks Worked and Estimated Individual Payment Amount form. The Settlement Administrator  
5 shall notify Defense Counsel and Class Counsel of any such dispute no later than three  
6 (3) business days after receiving notice of the dispute. The Settlement Administrator shall  
7 attempt to resolve the disagreement and may request any information or assistance from  
8 Defense Counsel and/or Class Counsel that the Settlement Administrator, in its sole discretion,  
9 believes may assist it in resolving the disagreement. However, the Settlement Administrator  
10 shall have final and binding authority to resolve any disputes based on Defendants' records. The  
11 Parties and their counsel shall use their best efforts to ensure that any and all such disputes are  
12 resolved.

13 **G. Payment of Individual Payment Amounts.**

14 72. Within ten (10) business days after the Effective Date, the Settlement  
15 Administrator shall calculate the final Individual Payment Amount to be paid to each California  
16 Class Member and Non-California Opt-in Eligible Plaintiff and prepare a Final Statement of  
17 Individual Payment Amounts. The Settlement Administrator shall issue and mail the settlement  
18 checks within seven (7) business days after receiving the funds from the Defendants. The  
19 mailing shall be by First Class United States mail to the last known mailing address of each  
20 employee on the Class Lists.

21 **H. Opt-In for FLSA Claims by California Settlement Class Members.**

22 73. The cashing of the settlement check by a California Settlement Class Member  
23 shall be deemed to be an opt-in for purposes of the FLSA claims referred to in the Released  
24 California Claims. The Settlement Administrator shall include a recital on the settlement checks  
25 stating, "By cashing this check, I am opting into *Arellano v. R&B Sales, Corp. et al.* Case No.  
26 20STCV04112, and releasing the Released California Claims defined in the Settlement  
27 Agreement, including but not limited to claims under the Fair Labor Standards Act.."  
28

1 **IV. LIMITATIONS ON USE OF THIS SETTLEMENT**

2 **A. No Admission.**

3 74. Neither the acceptance nor the performance by Defendants of the terms of this  
4 Agreement nor any of the related negotiations or proceedings is or shall be claimed to be,  
5 construed as, or deemed to be an admission by Defendants of the truth of any of the allegations  
6 in the Lawsuits, the representative character of the Litigation, the validity of any of the claims  
7 that were or could have been asserted by Plaintiffs and/or Participating Settlement Members in  
8 the Litigation, or of any liability or guilt of Defendants in the Litigation.

9 **B. Non-Evidentiary Use.**

10 75. Neither this Agreement nor any of its terms shall be offered or used as evidence  
11 by any of the Parties, Participating Settlement Members, or their respective counsel in the  
12 Litigation or in any other action or proceeding either as evidence or in discovery; provided,  
13 however, that nothing contained in this section shall prevent this Agreement from being used,  
14 offered, or received in evidence in any proceeding to enforce, construe, or finalize this  
15 Agreement.

16 **C. No Public Comment.**

17 76. Plaintiffs and Class Counsel agree they will not make any public disclosure of  
18 the Settlement or the previously signed Memorandum of Understanding until after this  
19 Stipulation of Settlement filed with the Court. Class Counsel will take all steps necessary to  
20 ensure Plaintiffs are aware of, and will encourage them to adhere to, the restriction against any  
21 public disclosure of this Stipulation of Settlement or the previously signed Memorandum of  
22 Understanding until after this Stipulation of Settlement is filed with the Court. Following the  
23 filing of this Stipulation of Settlement, Plaintiffs and Class Counsel agree they will not have any  
24 communications with the media, other than to direct the media to the public records of the  
25 Lawsuits on file with the Court. Class Counsel will take all steps necessary to ensure the  
26 Plaintiffs are aware of, and will adhere to, the restriction against any media comment on this  
27 Stipulation of Settlement and its terms.  
28

1           **D.     No Collateral Attack.**

2           77.     This Agreement shall not be subject to collateral attack by any Participating  
3 Class Member or any recipient of the Class Notices after the Judgment and Final Order is  
4 entered. Such prohibited collateral attacks shall include but not be limited to claims that the  
5 number of work weeks attributed to the Participating Class Member was erroneous or that the  
6 Participating Class Member failed for any reason to receive timely notice of the procedure for  
7 disputing the calculation of his or her Individual Payment Amount.

8           **E.     Nullification.**

9           78.     If (a) the Court should for any reason fail to certify a class for settlement; or  
10 (b) the Court should for any reason fail to approve this Settlement materially in the form agreed  
11 to by the Parties; or (c) the Court should for any reason fail to enter the Judgment and Final  
12 Order; or (d) the Judgment and Final Order is reversed, modified, or declared or rendered void,  
13 then (i) this Agreement shall be considered null and void, (ii) neither this Agreement nor any of  
14 the related negotiations or proceedings shall be of any force or effect, (iii) all Parties to this  
15 Agreement shall stand in the same position, without prejudice, as if the Agreement had been  
16 neither entered into nor filed with the Court, and (iv) Class Counsel shall make repayment of  
17 any disbursements it received from the Settlement Sum.

18           79.     If five percent (5%) or more of the California Settlement Class Members request  
19 exclusion and opt out of this Settlement, then Defendants in their sole discretion may nullify and  
20 void this Agreement in its entirety. Defendants shall have ten (10) calendar days after receiving  
21 notice that five percent (5%) or more of the California Class has requested exclusion to inform  
22 the Parties of its decision to nullify and void this Agreement. Defendants shall pay all  
23 reasonable costs incurred by the Settlement Administrator should it exercise its rights under this  
24 section.

25           80.     Invalidation of any material term of this Agreement shall invalidate this  
26 Agreement in its entirety unless the Parties shall subsequently agree in writing that the  
27 remaining provisions shall remain in full force and effect.

28           81.     In the event that for any reason final distribution of the Settlement Sum does not

1 occur (for example, because this Agreement and/or the Judgment and Final Order is materially  
2 modified or reversed on appeal), the entire Settlement Sum shall remain the sole property of  
3 Defendants and any sums previously paid or distributed shall be returned to Defendants (minus  
4 any administrative expense and fees incurred by the Settlement Administrator).

5 82. In the event of a timely appeal from the Judgment and Final Order, the Judgment  
6 and Final Order shall be stayed and the Settlement Sum shall not be distributed to Participating  
7 Settlement Members pending the completion of the appeal.

8 **V. RELEASE**

9 **A. Released California Claims.**

10 83. Upon the date on which Defendants fund the Settlement Sum, Plaintiffs and each  
11 and every California Settlement Class Member who does not opt out shall be bound by this  
12 Agreement and shall have recourse to the benefits, rights, and remedies exclusively as provided  
13 hereunder, and shall be deemed to have, and by operation of the Judgment and Final Order shall  
14 have fully, finally, and forever released, relinquished, and discharged each and all of the  
15 Released Parties from any and all Released California Claims during the California Class  
16 Period. California Settlement Class Members shall be deemed to have opted-in and to have, and  
17 by operation of the Judgment and Final Order, shall have fully, finally, and forever released,  
18 relinquished, and discharged each and all of the Released Parties from any and all FLSA claims  
19 by cashing the settlement check.

20 84. In light of the payment by Defendants of all amounts due under this Agreement,  
21 Plaintiff and each and every California Settlement Class Member who does not submit a timely  
22 Request for Exclusion from the Class, shall be deemed to have acknowledged and agreed that  
23 California Labor Code section 206.5 is not applicable to the Parties hereto. That section  
24 provides in pertinent part as follows:

25 85. An employer shall not require the execution of any release of a release of a claim  
26 or right on account of wages due, or to become due, or made as an advance on wages to be  
27 earned, unless payment of those wages has been made.

28 86.

1            87. Each California Class Member who does not submit a timely Request for  
2 Exclusion from the Class and opt out of this Settlement shall be deemed to have made the  
3 foregoing release as if by manually signing it.

4            88. Additionally, all PAGA Members will release the PAGA Released Claims  
5 accruing during the PAGA Period.

6            **B. Released Non-California FLSA Claims.**

7            89. Upon the date on which Defendants fund the Settlement Sum, Plaintiffs and all  
8 Non-California Opt-in Plaintiffs shall be bound by this Agreement and shall have recourse to  
9 the benefits, rights, and remedies exclusively as provided hereunder, and shall be deemed to  
10 have, and by operation of the Judgment and Final Order shall have fully, finally, and forever  
11 released, relinquished, and discharged each and all of the Released Parties from any and all  
12 Released Non-California FLSA Claims during the FLSA Collective Period.

13 **VI. MISCELLANEOUS PROVISIONS**

14            **A. Amendments.**

15            90. The terms and provisions of this Agreement may be amended only by a written  
16 agreement that is both (a) signed by the Parties, Class Counsel, and Defense Counsel who  
17 executed this Agreement and (b) approved by the Court.

18            **B. Assignment.**

19            91. None of the rights, commitments, or obligations recognized under this  
20 Agreement may be assigned by any Party, Participating Class Member, Class Counsel, or  
21 Defense Counsel without the express written consent of each Party and their respective counsel  
22 hereto. The representations, warranties, covenants, and agreements contained in this Agreement  
23 are for the sole benefit of the Parties under this Agreement and shall not be construed to confer  
24 any right or to avail any remedy to any other person.

25            **C. Governing Law.**

26            92. This Agreement shall be governed, construed, and interpreted, and the rights of  
27 the Parties shall be determined, in accordance with the laws of the State of California,  
28 irrespective of the State of California's choice of law principles.

1           **D. Entire Agreement.**

2           93. This Agreement, including the Exhibits referred to herein, which form an integral  
3 part hereof, contains the entire understanding of the Parties hereto with respect to the subject  
4 matter contained herein. In case of any conflict between text contained in Sections I through VI  
5 of this Agreement and text contained in *Exhibits 1-7* to this Agreement, the former shall be  
6 controlling. There are no restrictions, promises, representations, warranties, covenants, or  
7 undertakings governing the subject matter of this Agreement other than those expressly set forth  
8 or referred to herein. This Agreement supersedes all prior agreements and understandings  
9 among the Parties hereto with respect to the settlement of the Litigation.

10           **E. Waiver of Compliance.**

11           94. Any failure of any Party, Defense Counsel, and/or Class Counsel hereto to  
12 comply with any obligation, covenant, agreement, or condition herein may be expressly waived  
13 in writing, to the extent permitted under applicable law, by the Party or Parties and their  
14 respective counsel hereto entitled to the benefit of such obligation, covenant, agreement, or  
15 condition. A waiver or failure to insist upon strict compliance with any representation, warranty,  
16 covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to,  
17 any subsequent or other failure.

18           **F. Counterparts.**

19           95. This Agreement, and any amendments hereto, may be executed in any number of  
20 counterparts and any Party and/or their respective counsel hereto may execute any such  
21 counterpart, each of which when executed and delivered shall be deemed to be an original and  
22 all of which counterparts taken together shall constitute but one and the same instrument. It shall  
23 not be necessary in making proof of this Agreement or any counterpart hereof to produce or  
24 account for any of the other counterparts.

25           **G. Meet and Confer Regarding Disputes.**

26           96. Should any dispute arise among the Parties or their respective counsel regarding  
27 the implementation or interpretation of this Agreement, Class Counsel and Defense Counsel  
28 shall meet and confer in an attempt to resolve such disputes prior to submitting such disputes to

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the Court.

**H. Jurisdiction of the Court.**

97. The Parties agree that this Settlement Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6. The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and the Parties and their counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the settlement embodied in this Agreement and all orders and judgments entered in connection therewith.

**IT IS SO STIPULATED.**

Dated: 2/21/2022, 2022

PLAINTIFF

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\_\_\_\_\_  
Sergio Arellano

Dated: 2/21/2022, 2022

PLAINTIFF

DocuSigned by:  
  
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\_\_\_\_\_  
Edgar Murillo

Dated: \_\_\_\_\_, 2022

PLAINTIFF

\_\_\_\_\_  
John Henry

Dated: \_\_\_\_\_, 2022

PLAINTIFF

\_\_\_\_\_  
Curt Uyemura

1 the Court.

2 **H. Jurisdiction of the Court.**

3 97. The Parties agree that this Settlement Agreement shall be enforceable by the  
4 Court pursuant to California Code of Civil Procedure section 664.6. The Court shall retain  
5 jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of  
6 this Agreement and all orders and judgments entered in connection therewith, and the Parties  
7 and their counsel submit to the jurisdiction of the Court for purposes of interpreting,  
8 implementing, and enforcing the settlement embodied in this Agreement and all orders and  
9 judgments entered in connection therewith.

10 **IT IS SO STIPULATED.**

11 Dated: \_\_\_\_\_, 2022 PLAINTIFF

12 \_\_\_\_\_  
13 Sergio Arellano

14 Dated: \_\_\_\_\_, 2022 PLAINTIFF

15 \_\_\_\_\_  
16 Edgar Murillo

17 Dated: 2/23, 2022

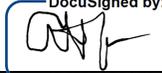
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John Henry

21 Dated: 2/23, 2022

22 PLAINTIFF

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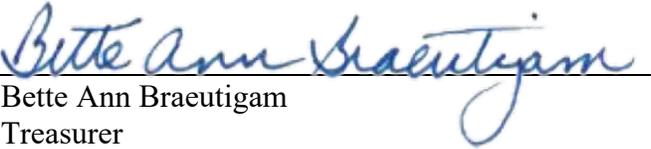
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Dated: February 21, 2022

TECHTRONIC INDUSTRIES NORTH AMERICA, INC.

By:   
Bette Ann Braeutigam  
Treasurer

**APPROVED AS TO FORM**

Dated: February 28, 2022

PILLSBURY WINTHROP SHAW PITTMAN LLP

By:   
Paula M. Weber  
Kimberly Y. Higgins  
Attorneys for Defendants  
TECHTRONIC INDUSTRIES NORTH AMERICA, INC.  
and R&B SALES & MARKETING INC.

Dated: \_\_\_\_\_, 2022

CAPSTONE LAW APC

By: \_\_\_\_\_  
Raul Perez  
Bevin Allen Pike  
Orlando Villalba  
Attorneys for Plaintiffs SERGIO ARELLANO and  
EDGAR MURILLO

Dated: \_\_\_\_\_, 2022

GOLDSTEIN, BORGEN, DARDARIAN & HO

By: \_\_\_\_\_  
Laura L. Ho  
Byron Goldstein  
Attorneys for Plaintiffs JOHN HENRY and CURT  
UYEMURA

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Dated: \_\_\_\_\_, 2022

TECHTRONIC INDUSTRIES NORTH AMERICA, INC.

By: \_\_\_\_\_

Sean Dougherty  
President

**APPROVED AS TO FORM**

Dated: \_\_\_\_\_, 2022

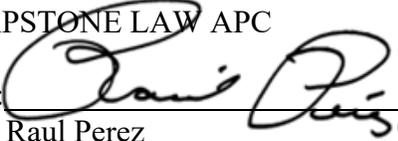
PILLSBURY WINTHROP SHAW PITTMAN LLP

By: \_\_\_\_\_

Paula M. Weber  
Kimberly Y. Higgins  
Attorneys for Defendants  
TECHTRONIC INDUSTRIES NORTH AMERICA, INC.  
and R&B SALES & MARKETING INC.

Dated: February 22, 2022

CAPSTONE LAW APC

By:  \_\_\_\_\_

Raul Perez  
Bevin Allen Pike  
Orlando Villalba  
Attorneys for Plaintiffs SERGIO ARELLANO and  
EDGAR MURILLO

Dated: \_\_\_\_\_, 2022

GOLDSTEIN, BORGEN, DARDARIAN & HO

By: \_\_\_\_\_

Laura L. Ho  
Byron Goldstein  
Attorneys for Plaintiffs JOHN HENRY and CURT  
UYEMURA

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Dated: \_\_\_\_\_, 2022                      TECHTRONIC INDUSTRIES NORTH AMERICA, INC.

By: \_\_\_\_\_  
Sean Dougherty  
President

**APPROVED AS TO FORM**

Dated: \_\_\_\_\_, 2022                      PILLSBURY WINTHROP SHAW PITTMAN LLP

By: \_\_\_\_\_  
Paula M. Weber  
Kimberly Y. Higgins  
Attorneys for Defendants  
TECHTRONIC INDUSTRIES NORTH AMERICA, INC.  
and R&B SALES & MARKETING INC.

Dated: \_\_\_\_\_, 2022                      CAPSTONE LAW APC

By: \_\_\_\_\_  
Raul Perez  
Bevin Allen Pike  
Orlando Villalba  
Attorneys for Plaintiffs SERGIO ARELLANO and  
EDGAR MURILLO

Dated: February 24, 2022                      GOLDSTEIN, BORGEN, DARDARIAN & HO

By:  \_\_\_\_\_  
Laura L. Ho  
Byron Goldstein  
Attorneys for Plaintiffs JOHN HENRY and CURT  
UYEMURA

# Exhibit 1

1 Bevin Allen Pike (SBN 221936)  
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2 Orlando Villalba (SBN 232165)  
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10 155 Grand Ave, Suite 900  
Oakland, CA 94612  
11 Tel: (510) 763-9800  
12 Fax: (510) 835-1417

13 Attorneys for Plaintiffs Sergio Arellano  
14 and Edgar Murillo

15  
16 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
17 FOR THE COUNTY OF LOS ANGELES COUNTY

18  
19 SERGIO ARELLANO, EDGAR  
MURILLO, JOHN HENRY, and CURT  
20 UYEMURA, individually, and on behalf of  
21 other members of the general public  
similarly situated,

22 Plaintiffs,

23 vs.

24  
25 R&B SALES AND MARKETING, INC., a  
Delaware corporation; TECHTRONIC  
26 INDUSTRIES NORTH AMERICA, INC., a  
Delaware corporation; and DOES 1 through  
27 10, inclusive,

28 Defendants.

Case No.: 20STCV04112

**SECOND AMENDED CLASS AND  
COLLECTIVE ACTION COMPLAINT &  
ENFORCEMENT ACTION UNDER THE  
PRIVATE ATTORNEYS GENERAL ACT,  
CALIFORNIA LABOR CODE §§ 2698, ET  
SEQ.**

- (1) Violation of California Labor Code §§ 204.3, 510, 513, and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);

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- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 5(A) (Failure to Provide Reporting Time Pay);
- (9) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (10) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (12) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)
- (13) Violation of Fair Labor Standards Act (Unpaid Overtime)

**Jury Trial Demanded**

1 Plaintiffs Sergio Arellano, Edgar Murillo, John Henry, and Curt Uyemura individually  
2 and on behalf of all other members of the public similarly situated, and as aggrieved  
3 employees and on behalf of all other aggrieved employees, allege as follows:

4 **JURISDICTION AND VENUE**

5 1. This class action is brought pursuant to California Code of Civil Procedure  
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil  
7 penalties and any other available relief on behalf of Plaintiffs, the State of California, and  
8 other current and former employees who worked for Defendants in California as non-exempt,  
9 hourly paid employees and received at least one wage statement and against whom one or  
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any  
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission  
12 (“IWC”) Wage Order were committed, as set forth in this complaint.

13 2. This is also a collective action brought pursuant to the Fair Labor Standards Act  
14 (“FLSA”), 29 U.S.C. § 216(b) to recover unpaid wages, liquidated damages, and other  
15 available relieve on behalf of Plaintiffs and all others employed by Defendants in the United  
16 States as Field Representatives, Field Sales and Marketing Representatives, Single Store  
17 Representative, or Multi Store Representatives and who covered one or more Home Depot  
18 stores at any time from three years prior to the Preliminary Approval Order of this action  
19 through March 21, 2021.

20 3. The monetary damages, penalties, and restitution sought by Plaintiffs exceed  
21 the minimal jurisdiction limits of the Superior Court and will be established according to  
22 proof at trial. This Court has jurisdiction over this action pursuant to the California  
23 Constitution, Article VI, section 10. The statutes under which this action is brought do not  
24 specify any other basis for jurisdiction. Plaintiffs’ share of damages, penalties, and other  
25 relief sought in this action does not exceed \$75,000.

26 4. This Court has jurisdiction over Defendants because Defendants are either  
27 citizens of California, have sufficient minimum contacts in California, or otherwise  
28 intentionally avail themselves of the California market so as to render the exercise of

1 jurisdiction over them by the California courts consistent with traditional notions of fair play  
2 and substantial justice.

3 5. Venue is proper in this Court because Defendants employ persons in this county,  
4 and employed Plaintiffs this county, and thus a substantial portion of the transactions and  
5 occurrences related to this action occurred in this county.

6 **THE PARTIES**

7 6. Plaintiff Sergio Arellano is a resident of Pico Rivera, in Los Angeles County,  
8 California. Defendants employed Plaintiff Arellano as an hourly paid, non-exempt Single  
9 Store Sales Representative from approximately October 2013 to September 2019. Plaintiff  
10 Arellano worked for Defendants out of a Home Depot store location in Whittier, California.  
11 During his employment, Plaintiff Arellano typically worked eight (8) hours or more per day,  
12 five (5) days per week, from 7:00 a.m. to 3:30 p.m. Plaintiff Arellano's primary job duties  
13 included, without limitation, selling Defendants' products to Home Depot customers by  
14 answering customer questions at a sales table and demonstrating products; training Home  
15 Depot associates about the products; communicating with Home Depot managers about the  
16 brand and how to sell product; installing, moving, and rearranging product displays; and  
17 picking up, analyzing, and transporting product shipments.

18 7. Plaintiff Edgar Murillo is a resident of Los Angeles, in Los Angeles County,  
19 California. Defendants employed Plaintiff Murillo as an hourly paid, non-exempt Single  
20 Store Representative from approximately August 2010 to June 2019. Plaintiff Murillo worked  
21 for Defendants out of a Home Depot store location in Marina del Rey, California. During his  
22 employment, Plaintiff Murillo typically worked eight (8) hours or more per day, five (5) days  
23 per week, from 6:00 a.m. to 2:30 p.m. Plaintiff Murillo's primary job duties included, without  
24 limitation, picking up product shipments (opening boxes, reviewing contents, loading them  
25 into his truck, and transporting product to the store), organizing inventory at the store in  
26 product displays, planning and holding sales events, manning the sales table, and providing  
27 customer service and outreach.

28 8. Plaintiff John Henry was employed as a Multi-Store Representative from

1 approximately July 2011 or July 2012 through February 2020. Mr. Henry is a resident of  
2 Desert Hot Springs, California. He worked for Techtronic in Riverside County, San  
3 Bernardino County, and Yuma County. Mr. Henry was assigned to a Home Depot store in  
4 Arizona until about October 2019.

5 9. Plaintiff Curt Uyemura was employed as a Field Representative from  
6 approximately January 2013 through September 1, 2020. Mr. Uyemura is a resident of  
7 Orange County, California. He worked for Techtronic in Orange County.

8  
9 10. R&B SALES AND MARKETING, INC. was and is, upon information and  
10 belief, a Delaware corporation, and at all times hereinafter mentioned, an employer whose  
11 employees are engaged throughout this county, the State of California, or the various states of  
12 the United States of America.

13 11. TECHTRONIC INDUSTRIES NORTH AMERICA, INC. was and is, upon  
14 information and belief, a Delaware corporation, and at all times hereinafter mentioned, an  
15 employer whose employees are engaged throughout this county, the State of California, or the  
16 various states of the United States of America.

17 12. Plaintiffs are unaware of the true names or capacities of the Defendants sued  
18 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to  
19 amend the complaint and serve such fictitiously named Defendants once their names and  
20 capacities become known.

21 13. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10  
22 were the partners, agents, owners, or managers of R&B SALES AND MARKETING, INC.  
23 and TECHTRONIC INDUSTRIES NORTH AMERICA, INC. at all relevant times.

24 14. Plaintiffs are informed and believe, and thereon allege, that each and all of the  
25 acts and omissions alleged herein was performed by, or is attributable to, R&B SALES AND  
26 MARKETING, INC.; TECHTRONIC INDUSTRIES NORTH AMERICA, INC. and/or DOES  
27 1 through 10 (collectively, "Defendants" or "R&B"), each acting as the agent, employee, alter  
28 ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and

1 was acting within the course and scope of such agency, employment, joint venture, or  
2 concerted activity with legal authority to act on the others' behalf. The acts of any and all  
3 Defendants were in accordance with, and represent, the official policy of Defendants.

4 15. At all relevant times, Defendants, and each of them, ratified each and every act  
5 or omission complained of herein. At all relevant times, Defendants, and each of them, aided  
6 and abetted the acts and omissions of each and all the other Defendants in proximately causing  
7 the damages herein alleged.

8 16. Plaintiffs are informed and believe, and thereon allege, that each of said  
9 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,  
10 omissions, occurrences, and transactions alleged herein.

11 17. Under California law, Defendants are jointly and severally liable as employers  
12 for the violations alleged herein because they have each exercised sufficient control over the  
13 wages, hours, working conditions, and employment status of Plaintiffs and class members.  
14 Each Defendant had the power to hire and fire Plaintiffs and class members, supervised and  
15 controlled their work schedule and/or conditions of employment, determined their rate of pay,  
16 and maintained their employment records. Defendants suffered or permitted Plaintiffs and  
17 class members to work and/or "engaged" Plaintiffs and class members so as to create a  
18 common law employment relationship. As joint employers of Plaintiffs and class members,  
19 Defendants are jointly and severally liable for the civil penalties and all other relief available  
20 to Plaintiffs and class members under the law.

21 18. Plaintiffs are informed and believe, and thereon allege, that at all relevant  
22 times, Defendants, and each of them, have acted as joint employers with respect to Plaintiffs  
23 and class members because Defendants have:

- 24 (a) jointly exercised meaningful control over the work performed by  
25 Plaintiffs and class members;
- 26 (b) jointly exercised meaningful control over Plaintiffs' and class members'  
27 wages, hours, and working conditions, including the quantity, quality  
28 standards, speed, scheduling, and operative details of the tasks

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- performed by Plaintiffs and class members;
- (c) jointly required that Plaintiffs and class members perform work which is an integral part of Defendants’ businesses; and
- (d) jointly exercised control over Plaintiffs and class members as a matter of economic reality in that Plaintiffs and class members were dependent on Defendants, who shared the power to set the wages of Plaintiffs and class members and determine their working conditions, and who jointly reaped the benefits from the underpayment of their wages and noncompliance with other statutory provisions governing their employment.

19. Plaintiffs are informed and believe, and thereon allege, that at all relevant times there has existed a unity of interest and ownership between Defendants such that any individuality and separateness between the entities has ceased.

20. R&B SALES AND MARKETING, INC.; TECHTRONIC INDUSTRIES NORTH AMERICA, INC.; and DOES 1-10 are therefore alter egos of each other.

21. Adherence to the fiction of the separate existence of Defendants would permit an abuse of the corporate privilege, and would promote injustice by protecting Defendants from liability for the wrongful acts committed by them under the name R&B.

22. Plaintiffs further allege, upon information and belief, that Defendants are alter egos of each other for the additional following reasons:

- (a) On information and belief, R&B SALES AND MARKETING, INC. is a subsidiary of TECHTRONIC INDUSTRIES NORTH AMERICA, INC., which is a subsidiary of Techtronic Industries;
- (b) On information and belief, Lee Sowell served as President of R&B SALES AND MARKETING, INC. and has served as President/Group President of the Outdoor Products Group of TECHTRONIC INDUSTRIES NORTH AMERICA, INC. since 2006;
- (c) On the Delaware Division of Corporations website

1 (https://corp.delaware.gov/), R&B SALES AND MARKETING, INC.  
2 and TECHTRONIC INDUSTRIES NORTH AMERICA, INC. list their  
3 agent for service of process as “Corporation Service Company;” and

4 (d) On information and belief, R&B SALES AND MARKETING, INC. and  
5 TECHTRONIC INDUSTRIES NORTH AMERICA, INC. utilize the  
6 same standardized employment forms and issue the same employment  
7 policies.

### 8 **GENERAL ALLEGATIONS**

9 23. Defendants are a leader in quality consumer and professional products  
10 marketed to the home improvement and construction industries. Defendants’ brand portfolio  
11 includes Milwaukee, AEG, Ryobi, Homelite, Empire, Stiletto, Hoover US, Hart, Oreck, Vax,  
12 and Dirt Devil. Upon information and belief, Defendants maintain a single, centralized  
13 Human Resources (“HR”) department at their company headquarters in Fort Lauderdale,  
14 Florida, which is responsible for recruiting and hiring of new employees, and communicating  
15 and implementing Defendants’ company-wide policies, including timekeeping policies and  
16 meal and rest period policies, to employees throughout California.

17 24. In particular, Plaintiffs and class members, on information and belief, received  
18 the same standardized documents and/or written policies. Upon information and belief, the  
19 usage of standardized documents and/or written policies, including new-hire documents,  
20 indicate that Defendants dictated policies at the corporate level and implemented them  
21 company-wide, regardless of their employees’ assigned locations or positions. Upon  
22 information and belief, Defendants set forth uniform policies and procedures in several  
23 documents provided at an employee’s time of hire.

24 25. Upon information and belief, Defendants maintain a centralized Payroll  
25 department at their company headquarters in Fort Lauderdale, Florida, which processes  
26 payroll for all non-exempt, hourly paid employees working for Defendants at their various  
27 locations and jobsites in California, including Plaintiffs and class members. Based upon  
28 information and belief, Defendants issue the same formatted wage statements to all non-

1 exempt, hourly paid employees in California, irrespective of their work locations. Upon  
2 information and belief, Defendants process payroll for departing employees in the same  
3 manner throughout the State of California, regardless of the manner in which each employee's  
4 employment ends.

5 26. Defendants continue to employ non-exempt or hourly paid employees in  
6 California.

7 27. Plaintiffs are informed and believe, and thereon allege, that at all times herein  
8 mentioned, Defendants were advised by skilled lawyers and other professionals, employees  
9 and advisors knowledgeable about California labor and wage law, employment and personnel  
10 practices, and about the requirements of California law.

11 28. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and class  
12 members were not paid for all hours worked because all hours worked were not recorded.

13 29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or  
14 should have known that Plaintiffs and class members were entitled to receive certain wages  
15 for overtime compensation and that they were not receiving certain wages for overtime  
16 compensation.

17 30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or  
18 should have known that Plaintiffs and class members were entitled to be paid at a regular rate  
19 of pay, and corresponding overtime rate of pay, that included as eligible income all income  
20 derived from incentive pay, nondiscretionary bonuses, and/or other forms of compensation.

21 31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or  
22 should have known that Plaintiffs and class members were entitled to receive at least  
23 minimum wages for compensation and that they were not receiving at least minimum wages  
24 for work that was required to be done off-the-clock. In violation of the California Labor  
25 Code, Plaintiffs and class members were not paid at least minimum wages for work done off-  
26 the-clock.

27 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew  
28 or should have known that Plaintiffs and class members were entitled to meal periods in

1 accordance with the Labor Code or payment of one (1) additional hour of pay at their regular  
2 rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal  
3 periods and that Plaintiffs and class members were not provided with all meal periods or  
4 payment of one (1) additional hour of pay at their regular rates of pay when they did not  
5 receive a timely, uninterrupted, thirty (30) minute meal period.

6 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew  
7 or should have known that Plaintiffs and class members were entitled to rest periods in  
8 accordance with the Labor Code and applicable IWC Wage Order or payment of one (1)  
9 additional hour of pay at their regular rates of pay when they were not authorized and  
10 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiffs  
11 and class members were not authorized and permitted to take compliant rest periods, nor did  
12 Defendants provide Plaintiffs and class members with payment of one (1) additional hour of  
13 pay at their regular rates of pay when they were not authorized and permitted to take a  
14 compliant rest period.

15 34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or  
16 should have known that Plaintiffs and class members were entitled to receive complete and  
17 accurate wage statements in accordance with California law. In violation of the California  
18 Labor Code, Plaintiffs and class members were not provided complete and accurate wage  
19 statements.

20 35. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or  
21 should have known that they had a duty to maintain accurate and complete payroll records in  
22 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,  
23 and intentionally failed to do so.

24 36. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or  
25 should have known that Plaintiffs and class members were entitled to timely payment of all  
26 wages earned upon termination of employment. In violation of the California Labor Code,  
27 Plaintiffs and class members did not receive payment of all wages due, including, but not  
28 limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting

1 time pay, within permissible time periods.

2 37. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or  
3 should have known that Plaintiffs and class members were entitled to timely payment of  
4 wages during their employment. In violation of the California Labor Code, Plaintiffs and  
5 class members did not receive payment of all wages, including, but not limited to, overtime  
6 wages, minimum wages, meal and rest period premiums, and/or reporting time pay, within  
7 permissible time periods.

8 38. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or  
9 should have known that Plaintiff Arellano and class members were entitled to receive all  
10 reporting time pay when Defendants required Plaintiff Arellano and class members were  
11 required to report to work but were put to work for less than half of their regular scheduled  
12 shift. In violation of the California Labor Code, Plaintiff Arellano and class members were  
13 not paid all reporting time pay.

14 39. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or  
15 should have known that Plaintiffs and/or class members were entitled to suitable seating  
16 and/or were entitled to sit when it did not interfere with the performance of their duties and  
17 also have seats nearby to use during a lull in tasks that do require moving about or standing.

18 40. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or  
19 should have known that they had a duty to cover the costs and expenses other non-party  
20 aggrieved employees incurred undergoing mandatory physical examinations and/or drug  
21 testing, but willfully, knowingly, and intentionally failed to do so

22 41. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or  
23 should have known that Plaintiffs and class members were entitled to receive full  
24 reimbursement for all business-related expenses and costs they incurred during the course and  
25 scope of their employment and that they did not receive full reimbursement of applicable  
26 business-related expenses and costs incurred.

27 42. Plaintiffs are informed and believe, and thereon allege, that at all times herein  
28 mentioned, Defendants knew or should have known that they had a duty to compensate

1 Plaintiffs and class members for all hours worked, and that Defendants had the financial  
2 ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so,  
3 and falsely represented to Plaintiffs and class members that they were properly denied wages,  
4 all in order to increase Defendants' profits.

### 5 **PAGA REPRESENTATIVE ALLEGATIONS**

6 43. At all times herein set forth, PAGA provides that any provision of law under  
7 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be  
8 assessed and collected by the LWDA for violations of the California Labor Code and  
9 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a  
10 civil action brought on behalf of themselves and other current or former employees pursuant  
11 to procedures outlined in California Labor Code section 2699.3.

12 44. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any  
13 person who was employed by the alleged violator and against whom one or more of the  
14 alleged violations was committed."

15 45. Plaintiffs and other current and former employees of Defendants are "aggrieved  
16 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current  
17 or former employees and one or more of the alleged violations were committed against them.

18 46. Pursuant to California Labor Code sections 2699.3 and 2699.5, aggrieved  
19 employees, including Plaintiffs, may pursue a civil action arising under PAGA after the  
20 following requirements have been met:

21 (a) The aggrieved employee or representative shall give written notice by  
22 online filing with the LWDA and by certified mail to the employer of  
23 the specific provisions of the California Labor Code alleged to have  
24 been violated, including the facts and theories to support the alleged  
25 violation.

26 (b) An aggrieved employee's notice filed with the LWDA pursuant to  
27 2699.3(a) and any employer response to that notice shall be  
28 accompanied by a filing fee of seventy-five dollars (\$75).

1 (c) The LWDA shall notify the employer and the aggrieved employee or  
2 representative by certified mail that it does not intend to investigate the  
3 alleged violation (“LWDA’s Notice”) within sixty (60) calendar days of  
4 the postmark date of the aggrieved employee’s notice. Upon receipt of  
5 the LWDA Notice, or if no LWDA Notice is provided within sixty-five  
6 (65) calendar days of the postmark date of the aggrieved employee’s  
7 notice, the aggrieved employee may commence a civil action pursuant  
8 to California Labor Code section 2699 to recover civil penalties.

9 47. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,  
10 through Plaintiffs, may pursue a civil action arising under PAGA for violations of any  
11 provision other than those listed in Section 2699.5 after the following requirements have been  
12 met:

- 13 (a) The aggrieved employee or representative shall give written notice by  
14 online filing with the LWDA and by certified mail to the employer of  
15 the specific provisions of the California Labor Code alleged to have  
16 been violated (other than those listed in Section 2699.5), including the  
17 facts and theories to support the alleged violation.
- 18 (b) An aggrieved employee’s notice filed with the LWDA pursuant to  
19 2699.3(c) and any employer response to that notice shall be  
20 accompanied by a filing fee of seventy-five dollars (\$75).
- 21 (c) The employer may cure the alleged violation within thirty-three (33)  
22 calendar days of the postmark date of the notice sent by the aggrieved  
23 employee or representative. The employer shall give written notice  
24 within that period of time by certified mail to the aggrieved employee or  
25 representative and by online filing with the LWDA if the alleged  
26 violation is cured, including a description of actions taken, and no civil  
27 action pursuant to Section 2699 may commence. If the alleged violation  
28 is not cured within the 33-day period, the aggrieved employee may

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commence a civil action pursuant to Section 2699.

48. On February 21, 2020, Plaintiff Arellano provided written notice by online filing to the LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff Arellano’s written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA Administrator confirmed receipt of Plaintiff Arellano’s written notice and assigned Plaintiff Arellano PAGA Case Number LWDA-CM-774058-20. A true and correct copy of Plaintiff Arellano’s written notice to the LWDA and Defendants is attached hereto as “Exhibit 1.”

49. On February 21, 2020, Plaintiff Murillo provided written notice by online filing to the LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff Murillo’s written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA Administrator confirmed receipt of Plaintiff Murillo’s written notice and assigned Plaintiff Murillo PAGA Case Number LWDA-CM-774063-20. A true and correct copy of Plaintiff Murillo’s written notice to the LWDA and Defendants is attached hereto as “Exhibit 2.”

50. As of the filing date of this complaint, over 65 days have passed since Plaintiffs sent the notices described above to the LWDA, and the LWDA has not responded that it intends to investigate Plaintiffs’ claims and Defendants have not cured the violations.

51. Thus, Plaintiffs have satisfied the administrative prerequisites under California Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for violations of California Labor Code sections 201, 202, 203, 204, 204.3, 222.5, 226(a), 226.7, 510, 512(a), 513, 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

52. Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any

1 provision regulating hours and days of work in any order of the Industrial Welfare  
2 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty  
3 dollars (\$50) for each underpaid employee for each pay period for which the employee was  
4 underpaid . . . . (2) For each subsequent violation, one hundred dollars (\$100) for each  
5 underpaid employee for each pay period for which the employee was underpaid . . . .” Labor  
6 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition  
7 to any other civil or criminal penalty provided by law.”

8 53. Defendants, at all times relevant to this complaint, were employers or persons  
9 acting on behalf of an employer(s) who violated Plaintiffs’ and other aggrieved employees’  
10 rights by violating various sections of the California Labor Code as set forth above.

11 54. As set forth below, Defendants have violated numerous provisions of both the  
12 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage  
13 Order.

14 55. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),  
15 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiffs, acting in the public interest as  
16 private attorneys general, seek assessment and collection of civil penalties for themselves, all  
17 other aggrieved employees, and the State of California against Defendants for violations of  
18 California Labor Code sections 201, 202, 203, 204, 204.3, 222.5, 226(a), 226.7, 510, 512(a),  
19 513, 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

20 **CLASS ACTION ALLEGATIONS**

21 56. Plaintiffs bring this action on their own behalf, as well as on behalf of each and  
22 all other persons similarly situated, and thus seek class certification under California Code of  
23 Civil Procedure section 382.

24 57. All claims alleged herein arise under California law for which Plaintiffs seek  
25 relief authorized by California law.

26 58. Plaintiffs’ proposed class consists of and is defined as follows:

27 All persons who worked for Defendants as non-exempt, hourly  
28 paid employees in California, within four years prior to the filing  
of the initial complaint until the date of trial (“Class”).

1           59.     Plaintiffs’ proposed subclass consists of and is defined as follows:

2                     All persons who worked for Defendants as non-exempt, hourly  
3                     paid employees in California and who received at least one wage  
4                     statement within one (1) year prior to the filing of the initial  
                      complaint until the date of trial (“Subclass”).

5           60.     Members of the Class and Subclass are referred to herein as “class members.”

6           61.     Plaintiffs reserve the right to redefine the Class and Subclass and to add  
7           additional subclasses as appropriate based on further investigation, discovery, and specific  
8           theories of liability.

9           62.     There are common questions of law and fact as to class members that  
10           predominate over questions affecting only individual members, including, but not limited to:

- 11                     (a)     Whether Defendants required Plaintiffs and class members to work over  
12                               eight (8) hours per day, over twelve (12) hours per day, or over forty  
13                               (40) hours per week and failed to pay all legally required overtime  
14                               compensation to Plaintiffs and class members;
- 15                     (b)     Whether Defendants failed to properly calculate the “regular rate” of  
16                               pay on which Plaintiffs’ and class members’ overtime rate of pay was  
17                               based;
- 18                     (c)     Whether Defendants failed to pay Plaintiffs and class members at least  
19                               minimum wages for all hours worked;
- 20                     (d)     Whether Defendants failed to provide Plaintiffs and class members with  
21                               meal periods;
- 22                     (e)     Whether Defendants failed to authorize and permit Plaintiffs and class  
23                               members to take rest periods;
- 24                     (f)     Whether Defendants provided Plaintiffs and class members with  
25                               complete and accurate wage statements as required by California Labor  
26                               Code section 226(a);
- 27                     (g)     Whether Defendants maintained accurate payroll records as required by  
28                               California Labor Code section 1174(d);

- 1 (h) Whether Defendants failed to pay earned overtime wages, minimum  
2 wages, meal and rest period premiums, and/or reporting time pay due to  
3 Plaintiffs and class members upon their discharge;
- 4 (i) Whether Defendants failed timely to pay overtime wages, minimum  
5 wages, meal and rest period premiums, and/or reporting time pay to  
6 Plaintiffs and class members during their employment;
- 7 (j) Whether Defendants required Plaintiff Arellano and class members to  
8 report to work, but failed to provide them with work or provided them  
9 with less than half their scheduled day's work, without properly  
10 compensating them as required by California Code of Regulations, Title  
11 8, section 11070, subsection 5;
- 12 (k) Whether Defendants failed to provide Plaintiffs and class members with  
13 suitable seating;
- 14 (l) Whether Defendants failed to reimburse Plaintiffs and class members  
15 for necessary and required business-related expenditures and/or losses  
16 incurred by them in the scope of their employment;
- 17 (m) Whether Defendants engaged in unlawful and unfair business practices  
18 in violation of California Business & Professions Code sections 17200,  
19 *et seq.*; and
- 20 (n) The appropriate amount of damages, restitution, or monetary penalties  
21 resulting from Defendants' violations of California law.

22 63. There is a well-defined community of interest in the litigation and the class  
23 members are readily ascertainable:

- 24 (a) Numerosity: The class members are so numerous that joinder of all  
25 members would be unfeasible and impractical. The membership of the  
26 entire class is unknown to Plaintiffs at this time; however, the class is  
27 estimated to be greater than one hundred (100) individuals and the  
28 identity of such membership is readily ascertainable by inspection of

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Defendants’ employment records.

- (b) Typicality: Plaintiffs are qualified to, and will, fairly and adequately protect the interests of each class member with whom they have a well-defined community of interest, and Plaintiffs’ claims (or defenses, if any) are typical of all class members as demonstrated herein.
- (c) Adequacy: Plaintiffs are qualified to, and will, fairly and adequately protect the interests of each class member with whom they have a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiffs acknowledge that they have an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiffs’ attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiffs have incurred, and throughout the duration of this action, will continue to incur costs and attorneys’ fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.
- (d) Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort, and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.
- (e) Public Policy Considerations: Employers in the State of California violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class

1 actions provide the class members who are not named in the complaint  
2 with a type of anonymity that allows for the vindication of their rights  
3 while simultaneously protecting their privacy.

4 64. **COLLECTIVE ACTION ALLEGATIONS** Plaintiffs also bring this action on  
5 behalf of themselves and other employees similarly situated as a collective action under the  
6 FLSA, 29 U.S.C. § 216(b). The employees similarly situated are:

7 All Field Representatives, Field Sales and Marketing  
8 Representatives, Single Store Representative, or Multi Store  
9 Representatives who covered one or more Home Depot stores  
10 and who were employed by Defendants in the United States at  
any time from three years prior to the Preliminary Approval  
Order in this action through March 21, 2021 (“Collective  
Class”).

11 65. Defendants suffered and permitted Reps to work more than forty hours per  
12 week without appropriate overtime compensation.

13 66. Defendants’ unlawful conduct has been widespread, repeated, and consistent.

14 67. Upon information and belief, Defendants knew that Plaintiffs and the  
15 Collective Class performed work that required overtime pay. Defendants have operated under  
16 a scheme to deprive these employees of appropriate overtime compensation owed.

17 68. Defendants’ conduct was willful and in bad faith, and has caused significant  
18 damages to Plaintiffs and the Collective Class.

19 69. Notice should be sent to the Collective Class informing them of this lawsuit and  
20 their opportunity to affirmatively join and stop the statute of limitations from running. There  
21 are numerous similarly situated current and former Reps who have been denied overtime pay  
22 in violation of the FLSA who would benefit from the issuance of such Notice. The names and  
23 addresses of the proposed collective class members are available from Defendants.

24 **FIRST CAUSE OF ACTION**

25 **Violation of California Labor Code §§ 204.3, 510, 513 and 1198—Unpaid Overtime**  
26 **(Against all Defendants)**

27 70. Plaintiffs incorporate by reference and re-allege as if fully stated herein each  
28 and every allegation set forth above.

1           71. Labor Code section 1198 makes it illegal to employ an employee under  
2 conditions of labor that are prohibited by the applicable wage order. California Labor Code  
3 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall  
4 be the . . . standard conditions of labor for employees. The employment of any employee . . .  
5 under conditions of labor prohibited by the order is unlawful.”

6           72. California Labor Code section 1198 and the applicable IWC Wage Order  
7 provide that it is unlawful to employ persons without compensating them at a rate of pay  
8 either time-and-one-half or two-times that person’s regular rate of pay, depending on the  
9 number of hours worked by the person on a daily or weekly basis.

10           73. Specifically, the applicable IWC Wage Order provides that Defendants are and  
11 were required to pay Plaintiffs and class members working more than eight (8) hours in a day  
12 or more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all  
13 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a  
14 workweek.

15           74. The applicable IWC Wage Order further provides that Defendants are and were  
16 required to pay Plaintiffs and class members working more than twelve (12) hours in a day,  
17 overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s  
18 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the  
19 employee, including nondiscretionary bonuses and incentive pay.

20           75. California Labor Code section 510 codifies the right to overtime compensation  
21 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)  
22 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the  
23 seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate  
24 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours  
25 in a day on the seventh (7th) day of work.

26           76. During the relevant time period, Defendants willfully failed to pay all overtime  
27 wages owed to Plaintiffs and class members. During the relevant time period, Plaintiffs and  
28 class members were not paid overtime premiums for all of the hours they worked in excess of

1 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)  
2 hours in a week, because all hours worked were not recorded.

3 77. First, during the relevant time period, Defendants had a policy and/or practice  
4 of discouraging and impeding Plaintiffs and class members from recording hours worked that  
5 were outside of their scheduled shifts in order to limit the amount of overtime employees  
6 could accrue. On information and belief, this limitation on overtime accrual was based on a  
7 company-wide policy of staffing job sites or locations strictly based on the labor hours or  
8 labor budget set by corporate. This policy of limiting overtime, coupled with Defendants’  
9 single-staffing and/or understaffing policy (*see infra*) and assigning strict deadlines and heavy  
10 workloads, led Plaintiffs and class members to work off-the-clock before and after their  
11 scheduled shift times in order to complete their assigned tasks. Defendants discouraged  
12 Plaintiffs and class members from earning overtime wages by requiring and then denying  
13 approval of overtime hours, but made them to finish “re-sets” or other projects within a single  
14 eight-hour shift. Thus, Plaintiffs would clock out at their designated shift end-time and would  
15 continue working to finish their assignments, such as performing “re-sets” and preparing  
16 product displays. As a result of this restriction on overtime accrual, Defendants also forced  
17 Plaintiffs to perform work off-the-clock outside of their scheduled shifts, such as preparing  
18 “re-sets” of store displays, including receiving packages at home, organizing product boxes,  
19 and loading company vehicles with inventory; filling their company vehicles with gas, taking  
20 them in for maintenance or service, and getting car washes; responding to phone calls and  
21 texts on their company cellular phones; and traveling to and from Defendants’ meetings or  
22 other Home Depot store locations to assist other employees. Defendants failed to track this  
23 time spent working before and after scheduled shifts, and Plaintiffs and class members  
24 received no compensation for this time.

25 78. Second, during the relevant time period, on information and belief, Defendants  
26 had a policy of improperly adjusting Plaintiffs’ and class members’ clock-in and clock-out  
27 duration times in their Kronos timekeeping system. Defendants’ time-shaving policy resulted  
28 in the failure to compensate Plaintiffs and class members fully for all hours worked, causing

1 Plaintiffs and class members to not be paid overtime wages for all of the overtime hours they  
2 actually worked. Upon information and belief, Defendants' time-shaving policy is, and  
3 continues to be, unfair and has, over time, resulted in the underpayment of wages to Plaintiffs  
4 and class members. To the extent Defendants' policy has taken away time worked that was  
5 eligible for overtime, Plaintiffs and class members were denied overtime pay for all hours  
6 worked.

7 79. Third, Defendants have systematically, and on a company-wide basis,  
8 understaffed their posts by adopting a single-staffing model for their job sites, pursuant to  
9 their labor budget practices, thereby failing to provide adequate meal period coverage to  
10 permit employees to take compliant meal periods. Because Defendants understaff their job  
11 sites, there is no one available to relieve Plaintiffs and class members needing meal period  
12 coverage. For example, Plaintiffs' meal periods were missed or interrupted due to customer  
13 demand, contractors asking questions, and calls from Defendants' management on company  
14 cellular phones.

15 80. Fourth, during the relevant period, as stated above, Defendants had, and  
16 continue to have, a company-wide policy and/or practice of understaffing their worksites  
17 while assigning heavy workloads and/or strict deadlines for re-sets, resulting in a failure to  
18 provide Plaintiffs and class members with adequate meal period coverage. As a result of this  
19 lack of meal period coverage, Plaintiffs and class members were not always afforded  
20 uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal  
21 period. For example, Plaintiffs and class members were required to perform their duties, such  
22 as working at promotional events, manning product displays, or responding to work-related  
23 calls from Defendants' management during unpaid meal periods, or would have their meal  
24 periods interrupted to complete such work-related tasks.

25 81. Additionally, Defendants, on a company-wide basis, had a practice of failing to  
26 schedule (or adhere to a schedule of) meal periods, which further caused Plaintiffs and class  
27 members to not be relieved of their duties for compliant meal periods. Thus, Plaintiffs and  
28 class members missed or had meal periods interrupted in order to complete their assigned

1 workloads. Defendants did not pay Plaintiffs and class members for the time they continued  
2 to perform tasks during meal periods. Further, on information and belief, because Defendants  
3 frowned upon employees accruing meal period penalties, when Plaintiffs and class members  
4 failed to clock themselves out at designated meal period start times, they were subject to  
5 Defendants altering their time records and deducting time for meal periods that were not  
6 taken. Alternatively, Defendants' supervisors adjusted employee time records to show  
7 compliant meal periods, even if none were taken. Consequently, Plaintiffs and class members  
8 performed work during meal periods for which they were not paid.

9         82. Defendants knew or should have known that as a result of these company-wide  
10 practices and/or policies, Plaintiffs and class members were performing assigned duties during  
11 their meal periods and performing work off-the-clock before or after their shifts, and were  
12 suffered or permitted to perform work for which they were not paid. Because Plaintiffs and  
13 class members worked shifts of eight (8) hours a day or more or forty (40) hours a week or  
14 more, some of this off-the-clock work qualified for overtime premium pay. Therefore,  
15 Plaintiffs and class members were not paid overtime wages for all of the overtime hours they  
16 actually worked.

17         83. Furthermore, on information and belief, Defendants did not pay Plaintiffs and  
18 class members the correct overtime rate for the recorded overtime hours that they generated.  
19 In addition to an hourly wage, Defendants paid Plaintiffs and class members incentive pay,  
20 nondiscretionary bonuses, and/or other forms of remuneration. For example, Defendants paid  
21 Plaintiffs and class members nondiscretionary bonuses and incentive pay, such as sales  
22 bonuses (based on a percentage of a store's total sales). However, in violation of the  
23 California Labor Code, Defendants failed to incorporate all compensation, including incentive  
24 pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the  
25 regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during  
26 times when Plaintiffs and class members worked overtime and received these other forms of  
27 pay, Defendants failed to pay all overtime wages by paying a lower overtime rate than  
28 required.





1           93.     At all relevant times herein set forth, California Labor Code sections 226.7,  
2 512(a), 516, and 1198 provide that no employer shall require an employee to work during any  
3 meal period mandated by an applicable order of the IWC.

4           94.     At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and  
5 the applicable IWC Wage Order also require employers to provide a second meal period of  
6 not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an  
7 employee one (1) additional hour of pay at the employee's regular rate, except that if the total  
8 hours worked is no more than twelve (12) hours, the second meal period may be waived by  
9 mutual consent of the employer and the employee only if the first meal period was not waived.

10          95.     First, during the relevant time period, as stated, Defendants had, and continue  
11 to have, a uniform policy and/or practice of single-staffing and understaffing pursuant to a  
12 labor budget, which resulted in a lack of meal period coverage and prevented Plaintiffs and  
13 class members from taking all timely, uninterrupted meal periods to which they were entitled.  
14 Because Defendants understaff their job sites, there is no one available to relieve Plaintiffs  
15 and class members needing meal period coverage.

16          96.     Additionally, as stated, Defendants on a company-wide basis, have  
17 systematically discouraged and impeded Plaintiffs and class members from taking meal  
18 periods by failing to schedule (or failing to adhere to a schedule of) meal periods, while  
19 assigning strict deadlines and heavy workloads, even though they are aware and know that  
20 employees are entitled to such meal periods. As a result of this uniform failure to schedule (or  
21 failure to adhere to a schedule of) meal periods, Plaintiffs and class members have not been  
22 provided timely, uninterrupted 30-minute meal periods during their shifts in which they were  
23 entitled to receive a meal period. Additionally, Defendants required Plaintiffs and class  
24 members to respond to phone calls to their company cellular phones at all times, which further  
25 caused Plaintiffs and class members to not be relieved of their duties for compliant meal  
26 periods. As a result of Defendants' practices and/or policies, Plaintiffs and class members  
27 had to work through part or all of their meal periods, have their meal periods interrupted,  
28 and/or wait extended periods of time before taking meal periods.

1           97.     Furthermore, because Defendants frowned upon employees accruing meal  
2 period penalties, Defendants' management would adjust Plaintiffs' and class members' time  
3 records to reflect compliant meal periods, regardless of whether they had received a compliant  
4 meal period or not, in order to strictly limit meal penalties that would need to be paid by  
5 Defendants. However, Plaintiffs and class members worked through meal periods or had their  
6 meal periods interrupted, because there were not enough employees on duty to handle the  
7 heavy workload and tend to customers.

8           98.     As a result of Defendants' company-wide practices and/or policies, Plaintiffs  
9 and class members would be forced to work in excess of five (5) hours before taking a meal  
10 period and, at times, had their meal periods interrupted and/or had to forgo their meal periods  
11 altogether. For example, during their employment, Plaintiffs would start their meal periods  
12 late or would have their meal periods interrupted by Defendants' supervisors calling about  
13 status updates on projects or to assist with customer inquiries. As a further example, Plaintiffs  
14 would also miss their meal periods due to the heavy workload and deadlines for completing  
15 re-sets and other projects in one eight-hour shift on their own. Plaintiffs and class members  
16 did not sign valid meal period waivers on days that they were entitled to meal periods and  
17 were not relieved of all duties.

18           99.     At all times herein mentioned, Defendants knew or should have known that, as  
19 a result of these policies, Plaintiffs and class members were prevented from being relieved of  
20 all duties and required to perform some of their assigned duties during meal periods.  
21 Defendants further knew or should have known that Defendants did not pay Plaintiffs and  
22 class members meal period premium wages when meal periods were late, interrupted,  
23 shortened, or missed because Defendants adjusted employee time records to reflect compliant  
24 meal periods, even if none were taken.

25           100.    Moreover, Defendants engaged in a company-wide practice and/or policy of  
26 not paying all meal period premiums owed when compliant meal periods are not provided.  
27 Because of Defendants' practices and/or policies, Plaintiffs and class members have not  
28 received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the

1 extent that Defendants did pay Plaintiffs and class members premium pay for missed, late, and  
2 interrupted meal periods, Defendants did not pay Plaintiffs and class members at the correct  
3 rate of pay for premium wages because Defendants systematically failed to include all forms  
4 of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of  
5 remuneration, in the regular rate of pay. As a result, Defendants failed to provide Plaintiffs  
6 and class members compliant meal periods in violation of California Labor Code sections  
7 226.7, 512, and 516 and failed to pay the full meal period premiums due.

8 101. Defendants’ conduct violates the applicable IWC Wage Order, and California  
9 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiffs and class members are therefore  
10 entitled to recover from Defendants one (1) additional hour of pay at the employee’s regular  
11 rate of compensation for each work day that the meal period was not provided.

12 //

13 //

14 **FOURTH CAUSE OF ACTION**

15 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations**  
16 **(Against all Defendants)**

17 102. Plaintiffs incorporate by reference and re-allege as if fully stated herein each  
18 and every allegation set forth above.

19 103. At all relevant times herein set forth, the applicable IWC Wage Order and  
20 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiffs and class  
21 members’ employment by Defendants.

22 104. At all relevant times, the applicable IWC Wage Order provides that “[e]very  
23 employer shall authorize and permit all employees to take rest periods, which insofar as  
24 practicable shall be in the middle of each work period” and that the “rest period time shall be  
25 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)  
26 hours or major fraction thereof” unless the total daily work time is less than three and one-half  
27 (3½) hours.

28 105. At all relevant times, California Labor Code section 226.7 provides that no

1 employer shall require an employee to work during any rest period mandated by an applicable  
2 order of the California IWC. To comply with its obligation to authorize and permit rest  
3 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an  
4 employer must “relinquish any control over how employees spend their break time, and  
5 relieve their employees of all duties — including the obligation that an employee remain on  
6 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*  
7 *Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and  
8 California Labor Code section 226.7(b), Plaintiffs and class members are entitled to recover  
9 from Defendants one (1) additional hour of pay at their regular rates of pay for each work day  
10 that a required rest period was not authorized and permitted.

11 106. During the relevant time period, Defendants regularly failed to authorize and  
12 permit Plaintiffs and class members to take a ten (10) minute rest period per each four (4)  
13 hour period worked or major fraction thereof. As with meal periods, Defendants’ company-  
14 wide practices, including assigning deadlines and heavy workloads, prevented Plaintiffs and  
15 class members from being relieved of all duty to take their rest periods. For example,  
16 Defendants actively discouraged Plaintiff Murillo from taking rest periods by threatening him  
17 with discipline or write-ups. Additionally, Defendants failed schedule rest periods, which,  
18 coupled with Defendants’ failure to provide adequate rest period coverage, further led to  
19 Plaintiffs and class members not being authorized and permitted to take compliant rest  
20 periods. Moreover, Plaintiffs and class members were assigned company-issued cellular  
21 phones and were expected to carry and respond to them at all times, including during rest  
22 periods. As a result of Defendants’ practices and policies, Plaintiffs and class members  
23 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without  
24 receiving all uninterrupted 10-minute rest periods to which they were entitled.

25 107. Furthermore, upon information and belief, during the relevant time period,  
26 Defendants maintained implemented a company-wide on-premises rest period policy, which  
27 mandated that Plaintiffs and class members remain on the work premises during their rest  
28 periods. Upon information and belief, Defendants’ company-wide on-premises rest period

1 policy prevented Plaintiffs and class members from being relieved of all duties for rest periods  
2 and caused them to perform work during rest periods.

3 108. Defendants have also engaged in a systematic, company-wide practice and/or  
4 policy of not paying rest period premiums owed when rest periods are not authorized and  
5 permitted. As a result, Defendants denied Plaintiffs and class members rest periods and failed  
6 to pay them rest period premium wages due, in violation of Labor Code section 226.7 and the  
7 applicable IWC Wage Order.

8 109. Defendants have also engaged in a systematic, company-wide practice and/or  
9 policy of not paying rest period premiums owed when rest periods are not authorized and  
10 permitted. Alternatively, to the extent that Defendants did pay Plaintiffs and class members  
11 one (1) additional hour of premium pay for missed rest periods, Defendants did not pay  
12 Plaintiffs and class members at the correct rate of pay for premium wages because Defendants  
13 failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses,  
14 and/or other forms of remuneration, in the regular rate of pay. As a result, Defendants denied  
15 Plaintiffs and class members rest periods and failed to pay them rest period premium wages  
16 due, in violation of Labor Code section 226.7, 516, and the applicable IWC Wage Order.

17 110. Defendants' conduct violates the applicable IWC Wage Order and California  
18 Labor Code sections 226.7, 516, and 1198. Plaintiffs and class members are therefore entitled  
19 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of  
20 compensation for each work day that a compliant rest period was not authorized and  
21 permitted.

22 **FIFTH CAUSE OF ACTION**

23 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage**  
24 **Statements and Failure to Maintain Accurate Payroll Records**  
25 **(Against all Defendants)**

26 111. Plaintiffs incorporate by reference and re-allege as if fully stated herein each  
27 and every allegation set forth above.

28 112. At all relevant times herein set forth, California Labor Code section 226(a)

1 provides that every employer shall furnish each of his or her employees an accurate and  
2 complete itemized wage statement in writing, including, but not limited to, the name and  
3 address of the legal entity that is the employer, the inclusive dates of the pay period, total  
4 hours worked, and all applicable rates of pay.

5 113. At all relevant times, Defendants have knowingly and intentionally provided  
6 Plaintiffs and Subclass members with uniform, incomplete, and inaccurate wage statements.  
7 For example, Defendants issued uniform wage statements to Plaintiffs and Subclass members  
8 that fail to correctly list: gross wages earned; total hours worked; net wages earned; the  
9 correct name of the legal entity that is the employer; and all applicable hourly rates in effect  
10 during the pay period, including overtime rates of pay, and the corresponding number of hours  
11 worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2),  
12 226(a)(5), 226(a)(8), and 226(a)(9).

13 114. First, because Defendants did not record the time Plaintiffs and Subclass  
14 members spent working off the clock and underreported Plaintiffs' and Subclass members'  
15 hourly clock-in and clock-out times in their timekeeping system, Defendants did not list the  
16 correct amount of gross wages and net wages earned by Plaintiffs and Subclass members in  
17 compliance with section 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to  
18 accurately list the total number of hours worked by Plaintiffs and Subclass members in  
19 violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect  
20 during the pay period and corresponding accurate number of work hours worked at each  
21 hourly rate in violation of section 226(a)(9).

22 115. Second, because Defendants did not calculate Plaintiffs' and Subclass  
23 members' regular rate of pay correctly for purposes of paying overtime, Defendants did not  
24 list the correct amount of gross wages earned by Plaintiffs and Subclass members in  
25 compliance with section 226(a)(1). For the same reason, Defendants failed to list the correct  
26 amount of net wages earned by Plaintiffs and Subclass members in violation of section  
27 226(a)(5). Defendants also failed to correctly list all applicable hourly rates in effect during  
28 the pay period, namely, correct overtime rates of pay and correct rates of pay for premium

1 wages, in violation of section 226(a)(9).

2 116. Third, and separate from these violations, Defendants issued uniform wage  
3 statements to Plaintiffs and Subclass members that failed to correctly list the name of the legal  
4 entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to  
5 provide California employees with transparency as to the true identity of their employer, to  
6 allow the employee to contact their employer during employment in the future for various  
7 reasons, including, filing an administrative claim, judicial claim, or other action to seek relief  
8 against their employer, to obtain unemployment benefits, etc.

9 117. Defendants systematically, and on a company-wide basis, issued wage  
10 statements to Plaintiffs and Subclass members that incorrectly list the employing entity's  
11 name. Plaintiffs' wage statements list the entity "R & B SALES AND MARKETING INC,"  
12 but, according to the California Secretary of State's website, there is no such entity by that  
13 name.

14 118. The wage statement deficiencies also include, without limitation, failing to list  
15 the number of piece-rate units earned and any applicable piece rate if the employee is paid on  
16 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and  
17 only the last four digits of his or her social security number or an employee identification  
18 number other than a social security number; failing to list the address of the legal entity that is  
19 the employer; failing to list the inclusive dates of the period for which class members were  
20 paid; and/or failing to state all hours worked as a result of not recording or stating hours  
21 worked off-the-clock.

22 119. California Labor Code section 1198 provides that the maximum hours of work  
23 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as  
24 set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he  
25 employment of any employees for longer hours than those fixed by the order or under  
26 conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC  
27 Wage Order, employers are required to keep accurate time records showing when the  
28 employee begins and ends each work period and meal period. During the relevant time

1 period, Defendants failed, on a company-wide basis, to keep accurate records of work period  
2 and meal period start and stop times for Plaintiffs and Subclass members, in violation of  
3 section 1198. Also, as stated, Defendants engaged in a company-wide practice and/or policy  
4 of falsifying Plaintiffs’ and Subclass members’ time records by recording that compliant meal  
5 periods were taken regardless of if or when meal periods were actually taken, and thereby  
6 failed to keep accurate records of meal start and end times for Plaintiffs and Subclass  
7 members.

8 120. California Labor Code section 1174(d) provides that “[e]very person employing  
9 labor in this state shall ... [k]eep a record showing the names and addresses of all employees  
10 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the  
11 plants or establishments at which employees are employed, payroll records showing the hours  
12 worked daily by and the wages paid to, and the number of piece-rate units earned by and any  
13 applicable piece rate paid to, employees employed at the respective plants or establishments . .  
14 . . .” At all relevant times, and in violation of Labor Code section 1174(d), Defendants  
15 willfully failed to maintain accurate payroll records for Plaintiffs and Subclass members  
16 showing the daily hours they worked and the wages paid thereto as a result of failing to record  
17 the off-the-clock hours that they worked and underreporting Plaintiffs’ and Subclass  
18 members’ hourly clock-in and clock-out times in their timekeeping system.

19 121. Plaintiffs and Subclass members are entitled to recover from Defendants the  
20 greater of their actual damages caused by Defendants’ failure to comply with California Labor  
21 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per  
22 employee.

23 **SIXTH CAUSE OF ACTION**

24 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid**

25 **Upon Termination**

26 **(Against all Defendants)**

27 122. Plaintiffs incorporate by reference and re-allege as if fully stated herein each  
28 and every allegation set forth above.





1                                   **11070 Subdivision 5(A)—Failure to Provide Reporting Time Pay**  
2                                   **(By Plaintiff Arellano on behalf of all other persons similarly situated, against all**  
3   **Defendants)**

4           134. Plaintiff Arellano incorporates by reference and re-alleges as if fully stated  
5 herein each and every allegation set forth above.

6           135. California Labor Code section 1198 dictates that no employer may employ an  
7 employee under conditions of labor that are prohibited by the applicable IWC wage order.  
8 California Labor Code section 1198 further requires that “. . . the standard conditions of labor  
9 fixed by the commission shall be the . . . standard conditions of labor for employees. The  
10 employment of any employee . . . under conditions of labor prohibited by the order is  
11 unlawful.”

12           136. The applicable IWC wage order, California Code of Regulations, Title 8,  
13 section 11070(5)(A), provides that “[e]ach workday an employee is required to report for  
14 work and does report, but is not put to work or is furnished less than half said employee’s  
15 usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled  
16 day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the  
17 employee’s regular rate of pay, which shall not be less than the minimum wage.”

18           137. During the relevant time period, Defendants violated California Labor Code  
19 section 1198 and California Code of Regulations, Title 8, section 11070(5)(A), because  
20 Defendants failed to pay Plaintiff Arellano and class members reporting time pay when they  
21 reported to work for their scheduled shift but were put to work for less than half of the  
22 regularly scheduled day’s work.

23           138. Defendants had a company-wide practice of sending Plaintiff Arellano and  
24 class members home early from their shifts, including before they had worked at least half of  
25 their regular shift, but would not pay Plaintiff Arellano and class members for half of their  
26 scheduled shift, due to Defendants’ labor budget. For example, Plaintiff Arellano would  
27 report to work the day after a quarterly meeting, but would be sent home early by Defendants’  
28 management after being told he had accrued too much overtime. Although Plaintiff Arellano

1 and class members would report to work based on the schedule that Defendants provided to  
2 them, Defendants would send them home before they had worked at least half of their  
3 scheduled shifts without giving them reporting time pay.

4 139. Accordingly, Plaintiff Arellano and class members were not properly  
5 compensated with reporting time pay in violation of California Labor Code section 1198.

6 **NINTH CAUSE OF ACTION**

7 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses**

8 **(Against all Defendants)**

9 140. Plaintiffs incorporate by reference and re-allege as if fully stated herein each  
10 and every allegation set forth above.

11 141. At all times herein set forth, California Labor Code section 2802 provides that  
12 an employer must reimburse employees for all necessary expenditures and losses incurred by  
13 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is  
14 to prevent employers from passing off their cost of doing business and operating expenses on  
15 to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144  
16 (2014). The applicable wage order, IWC Wage Order 7-2001, provides that: “[w]hen tools or  
17 equipment are required by the employer or are necessary to the performance of a job, such  
18 tools and equipment shall be provided and maintained by the employer, except that an  
19 employee whose wages are at least two (2) times the minimum wage provided herein may be  
20 required to provide and maintain hand tools and equipment customarily required by the trade  
21 or craft.”

22 142. First, during the relevant time period, Defendants had a company-wide policy  
23 of requiring Plaintiffs and class members to utilize their own personal vehicles for work  
24 purposes, but failed to reimburse them for the costs of travel, including mileage. For example,  
25 Plaintiff Arellano was required to take his company vehicle for maintenance at a service  
26 station that was 30 miles from his home, and pick up the vehicle later using his wife’s vehicle,  
27 but was not reimbursed for travel expenses or mileage from using his personal vehicle.  
28 Additionally, while Plaintiff Murillo’s company vehicle was being serviced for a flat tire, he

1 was required to utilize his personal vehicle to drive to and from the job site, but was not  
2 reimbursed for his travel or mileage. Although Defendants required Plaintiffs and class  
3 members to use their own vehicles or obtain alternate transportation to carry out their work-  
4 related responsibilities, Defendants never reimbursed them for all their travel expenses.

5 143. Second, Defendants, on a company-wide basis, expected Plaintiffs and class  
6 members to maintain clean and presentable company vehicles. Plaintiffs and class members  
7 were required to take their vehicles to car washes at least once a week and incur expenses in  
8 doing so. Although Defendants required Plaintiffs and class members to maintain their  
9 company vehicles as part of their work-related responsibilities, Defendants never reimbursed  
10 them for all their expenses.

11 144. Third, Defendants, on a company-wide basis, expected Plaintiffs and class  
12 members to report to work in clean and presentable uniforms, including a uniform polo shirt  
13 emblazoned with one of Defendants' brand logos (e.g. Milwaukee, Ryobi, or Empire), which  
14 forced Plaintiffs and class members to wash their uniforms more frequently than they would  
15 otherwise do laundry, and incur expenses for doing so. For example, Plaintiffs were only  
16 provided two (2) uniform shirts each, but were scheduled to work five (5) days in a week, and  
17 thus incurred laundry expenses for the upkeep of their uniforms, as the nature of their work  
18 resulted in their uniforms becoming sweaty and/or dirty. As a further example, Plaintiff  
19 Arellano was required to dry-clean his uniform shirts in order to prevent wear and tear,  
20 incurring a cost of approximately \$50.00 per month on dry-cleaning, and was also required to  
21 purchase replacement uniforms at a cost of \$60.00 per shirt.

22 145. Defendants could have provided Plaintiffs and class members with the actual  
23 tools for use on the job, such as company-provided transportation to get to and from vehicle  
24 maintenance/service appointments, and with an adequate number of uniform shirts or access  
25 to a cleaning service. Or, Defendants could have reimbursed employees for the costs of their  
26 travel, mileage, maintenance of company vehicles, and laundry or dry-cleaning expenses.  
27 Instead, Defendants passed these operating costs off onto Plaintiffs and class members.

28 146. Defendants' company-wide policy and/or practice of passing on their operating

1 costs to Plaintiffs and class members violates California Labor Code section 2802.  
2 Defendants have intentionally and willfully failed to reimburse Plaintiffs and other class  
3 members for necessary business-related expenses and costs.

4 147. Plaintiffs and class members are entitled to recover from Defendants their  
5 business-related expenses incurred during the course and scope of their employment, plus  
6 interest.

7 **TENTH CAUSE OF ACTION**

8 **For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.***

9 **(Against all Defendants)**

10 148. Plaintiffs incorporate by reference and re-allege as if fully stated herein each  
11 and every allegation set forth above.

12 149. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiffs to recover  
13 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code  
14 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 204.3,  
15 222.5, 226(a), 226.7, 510, 512(a), 513, 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor  
16 Code section 2699.3(c) permits aggrieved employees, including Plaintiffs, to recover civil  
17 penalties for violations of those Labor Code sections not found in section 2699.5, including  
18 sections 516 and 1182.12.

19 150. Defendants’ conduct, as alleged herein, violates numerous sections of the  
20 California Labor Code, including, but not limited to, the following:

- 21 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC  
22 wage order for Defendants’ failure to compensate Plaintiffs and other  
23 aggrieved employees with all required overtime and failure to properly  
24 calculate the overtime rates paid to Plaintiffs and other aggrieved  
25 employees, as alleged herein;
- 26 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198,  
27 and the applicable IWC wage order for Defendants’ failure to  
28 compensate Plaintiffs and other aggrieved employees with at least

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- minimum wages for all hours worked, as alleged herein;
- (c) Violation of Labor Code sections 226.7, 512, 516, 1198, and the applicable IWC wage order for Defendants’ failure to provide Plaintiffs and other aggrieved employees with meal periods, as alleged herein;
- (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable IWC wage order for Defendants’ failure to authorize and permit Plaintiffs and other aggrieved employees to take rest periods, as alleged herein;
- (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC wage order for failure to provide accurate and complete wage statements to Plaintiffs and other aggrieved employees, as alleged herein;
- (f) Violation of Labor Code sections 1174(d), 1198, and the applicable IWC wage order for failure to maintain payroll records as alleged herein;
- (g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination as alleged herein;
- (h) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as alleged herein;
- (i) Violation of Labor Code section 1198 and the applicable IWC wage order for failure to pay reporting time pay when Plaintiffs and other aggrieved employees were put to work for less than half of their regular scheduled shifts, as alleged herein;
- (j) Violation of Labor Code section 1198 for failing to provide suitable seating to Plaintiffs and other aggrieved employees, as set forth below;
- (k) Violation of Labor Code section 222.5 for failing to pay the costs of mandatory drug tests and/or physical examinations as set forth below;  
and
- (l) Violation of Labor Code section 2802 for failure to reimburse Plaintiffs

1 and other aggrieved employees for all business expenses necessarily  
2 incurred, as alleged herein.

3 151. At all relevant times herein, California Labor Code section 1198 makes it  
4 illegal to employ an employee under conditions of labor that are prohibited by the applicable  
5 wage order. California Labor Code section 1198 requires that “. . . the standard conditions of  
6 labor fixed by the commission shall be the . . . standard conditions of labor for employees.  
7 The employment of any employee . . . under conditions of labor prohibited by the order is  
8 unlawful.”

9 152. California Code of Regulations, Title 8, section 11070(14)(A) provides that  
10 “[a]ll working employees shall be provided with suitable seats when the nature of the work  
11 reasonably permits the use of seats.”

12 153. Plaintiffs allege that Defendants’ California job sites are generally similar in  
13 their layout and design and there is space behind sales/demonstration tables to allow for the  
14 presence and use of a seat or stool by Plaintiffs and other aggrieved employees during the  
15 performance of their work duties. Defendants could have provided Plaintiffs and other  
16 aggrieved employees with a seat or stool at their sales/demonstration tables, with reasonable  
17 or no modification to these work areas, but instead denies employees seating and forces  
18 Plaintiffs and other aggrieved employees to stand throughout the day.

19 154. Plaintiffs and other aggrieved employees have spent a substantial portion of  
20 their day at or behind these sales/demonstration tables. The nature of the work of an  
21 employee performing sales representative duties at sales/demonstration tables can reasonably  
22 be accomplished from a seated position. However, Defendants systematically, and on a  
23 company-wide basis, did not provide seats or stools at or near the sales/demonstration tables,  
24 forcing Plaintiffs and other aggrieved employees to stand throughout their work shifts.

25 155. During the relevant time period, Defendants violated California Labor Code  
26 section 1198 and California Code of Regulations, Title 8, section 11070(14)(A), because  
27 Plaintiffs and other aggrieved employees were not allowed to sit, even when the nature of  
28 their work would reasonably permit the use of seats, nor were they provided with suitable

1 seats.

2 156. A substantial portion of Plaintiffs’ and other aggrieved employees’ duties were  
3 performed from and connected to sales/demonstration tables and could have been performed  
4 from a seated position. For example, Plaintiffs and other aggrieved employees could have  
5 performed their sales representative duties, while seated without interference to their ability to  
6 complete these duties.

7 157. Defendants could have placed seats or stools near each sales/demonstration  
8 table for use by Plaintiffs and other aggrieved employees with reasonable or no modification  
9 to these work areas. However, on a company-wide basis, Defendants did not provide seats or  
10 stools at their sales/demonstration tables. Defendants’ management did not inform Plaintiffs  
11 and other aggrieved employees that they were allowed to sit down, provide any means for  
12 them to sit down, or mention any policy regarding sitting.

13 158. As a result of Defendants’ company-wide policy and/or practice prohibiting  
14 employees from sitting during their shifts and failure to provide suitable seating to these  
15 employees, Plaintiffs and other aggrieved employees were forced to stand during shifts and  
16 denied seats. Defendants’ failure to provide suitable seating to Plaintiffs and other aggrieved  
17 employees violated and continues to violate California Labor Code section 1198 and IWC  
18 Wage Order 7-2001, Section 14(A). Plaintiffs and other aggrieved employees are therefore  
19 entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

20 159. At all relevant times herein, California Labor Code section 1198 makes it  
21 illegal to employ an employee under conditions of labor that are prohibited by the applicable  
22 wage order. California Labor Code section 1198 requires that “. . . the standard conditions of  
23 labor fixed by the commission shall be the . . . standard conditions of labor for employees.  
24 The employment of any employee . . . under conditions of labor prohibited by the order is  
25 unlawful.”

26 160. California Code of Regulations, Title 8, section 11070(14)(B) provides that  
27 “[w]hen employees are not engaged in the active duties of their employment and the nature of  
28 the work requires standing, an adequate number of suitable seats shall be placed in reasonable

1 proximity to the work area and employees shall be permitted to use such seats when it does  
2 not interfere with the performance of their duties.”

3 161. During the relevant time period, Defendants violated California Labor Code  
4 section 1198 and California Code of Regulations, Title 8, section 11070(14)(B), because  
5 Plaintiffs and other aggrieved employees are not allowed to sit, even during lulls in their work  
6 duties, nor are they provided with suitable seats in reasonable proximity to their work areas.

7 162. Defendants did not provide Plaintiffs and other aggrieved employees with seats  
8 or stools in reasonable proximity to their work area to allow them to use seats when it would  
9 not interfere with the performance of their duties for times when they were not engaged in  
10 active duties that require standing. In other words, to the extent Plaintiffs and other aggrieved  
11 employees have engaged in duties in which the nature of the work required standing,  
12 Defendants denied them the use of seats nearby when they were not engaged in those duties.  
13 Even though the layout of Defendants’ workplaces could accommodate seats or stools with  
14 reasonable or no modification to these work areas, Defendants have, on a company-wide  
15 basis, denied Plaintiffs and other aggrieved employees suitable seating altogether.

16 163. As a result of Defendants’ company-wide policy and/or practice prohibiting  
17 employees from sitting at any time, even when they are not engaged in active duties requiring  
18 standing, and company-wide failure to provide seats in reasonable proximity to their work  
19 areas, Plaintiffs and other aggrieved employees were forced to stand during shifts and denied  
20 seats. Defendants’ failure to provide suitable seating to Plaintiffs and other aggrieved  
21 employees violated and continues to violate California Labor Code section 1198 and IWC  
22 Wage Order 7-2001, Section 14(B). Plaintiffs and other aggrieved employees are therefore  
23 entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

24 164. In addition, during the relevant time period, Defendants maintained and  
25 implemented a company-wide policy of requiring newly-hired employees to undergo a  
26 mandatory drug test. At all times, Defendants were in control of scheduling the date and time  
27 for the exam, selecting the provider/facility where the exam was to take place, and  
28 determining the scope of the exam. Defendants gave other non-party aggrieved employees

1 strict instructions to obtain a drug test and other non-party aggrieved employees underwent the  
2 drug testing for the sole benefit of Defendants. However, Defendants did not compensate  
3 other non-party aggrieved employees for the time they spent traveling to and from the drug  
4 testing facility, for the time they spent undergoing drug testing, or for the travel expenses they  
5 incurred getting to and from the medical and/or testing facility.

6 165. Defendants' company-wide policy and/or practice of not paying for all costs  
7 other non-party aggrieved employees incurred obtaining mandatory drug tests and/or physical  
8 examinations is in violation of California Labor Code section 222.5. In addition, Defendants'  
9 company-wide policy and/or practice of passing its operating costs on to non-party aggrieved  
10 employees is in violation of California Labor Code section 2802. Defendants have  
11 intentionally and willfully failed to fully reimburse other non-party aggrieved employees for  
12 necessary business-related expenses and costs.

13 166. Other non-party aggrieved employees are therefore entitled to recover  
14 penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a),  
15 (f)-(g).

## 16 **ELEVENTH CAUSE OF ACTION**

### 17 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

#### 18 **Unlawful Business Practices**

#### 19 **(Against all Defendants)**

20 167. Plaintiffs incorporate by reference and re-allege as if fully stated herein each  
21 and every allegation set forth above.

22 168. Defendants are "persons" as defined by California Business & Professions  
23 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,  
24 and/or associations.

25 169. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,  
26 unlawful and harmful to Plaintiffs, class members, and to the general public. Plaintiffs have  
27 suffered injury in fact and has lost money as a result of Defendants' unlawful business  
28 practices. Plaintiffs seek to enforce important rights affecting the public interest within the

1 meaning of Code of Civil Procedure section 1021.5.

2 170. Defendants' activities, as alleged herein, are violations of California law, and  
3 constitute unlawful business acts and practices in violation of California Business &  
4 Professions Code sections 17200, *et seq.*

5 171. A violation of California Business & Professions Code sections 17200, *et seq.*  
6 may be predicated on the violation of any state or federal law. In the instant case, Defendants'  
7 policies and practices have violated state law in at least the following respects:

- 8 (a) Requiring non-exempt, hourly paid employees, including Plaintiffs and  
9 class members, to work overtime without paying them proper  
10 compensation in violation of California Labor Code sections 204.3, 510,  
11 513 and 1198 and the applicable IWC Order, and paying Plaintiffs and  
12 class members overtime at a lower rate than required by law by failing  
13 to properly calculate the regular rate of pay for purposes of overtime, as  
14 alleged herein;
- 15 (b) Failing to pay at least minimum wage to Plaintiffs and class members in  
16 violation of California Labor Code sections 1182.12, 1194, 1197,  
17 1197.1, and 1198 and the applicable IWC Order, as alleged herein;
- 18 (c) Failing to provide uninterrupted meal periods to Plaintiffs and class  
19 members in violation of California Labor Code sections 226.7, 512(a),  
20 516, 1198, and the applicable IWC Order, as alleged herein;
- 21 (d) Failing to authorize and permit Plaintiffs and class members to take  
22 uninterrupted rest periods in violation of California Labor Code sections  
23 226.7, 516, 1198, and the applicable IWC Order, as alleged herein;
- 24 (e) Failing to provide Plaintiffs and class members with accurate wage  
25 statements and failing to maintain accurate payroll records in violation  
26 of California Labor Code sections 226(a), 1174(d), 1198, and the  
27 applicable IWC Order, as alleged herein;
- 28 (f) Failing timely to pay all earned wages to Plaintiffs and class members in

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violation of California Labor Code section 204 and the applicable IWC Order, as alleged herein;

(g) Failing to pay reporting time pay in violation of California Labor Code section 1198 and the applicable Industrial Welfare Commission Order, as alleged herein; and

(h) Failing to reimburse Plaintiffs and class members for all business expenses necessarily incurred in violation of California Labor Code sections 2802, as alleged herein.

172. As a result of the violations of California law herein described, Defendants unlawfully gained an unfair advantage over other businesses. Plaintiffs and class members have suffered pecuniary loss by Defendants’ unlawful business acts and practices alleged herein.

173. Pursuant to California Business & Professions Code sections 17200 *et seq.*, Plaintiffs and class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiffs and class members; and an award of attorneys’ fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

**TWELFTH CAUSE OF ACTION**

**Violation of California Business & Professions Code §§ 17200, et seq. –**

**Unfair Business Practices**

**(Against all Defendants)**

174. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

175. Defendants are “persons” as defined by California Business & Professions Code sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

176. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,

1 and harmful to Plaintiffs, class members, and to the general public. Plaintiffs have suffered  
2 injury in fact and has lost money as a result of Defendants’ unfair business practices.  
3 Plaintiffs seek to enforce important rights affecting the public interest within the meaning of  
4 Code of Civil Procedure section 1021.5.

5 177. Defendants’ activities, namely Defendants’ company-wide practice and/or  
6 policy of not paying Plaintiffs and class members all meal and rest period premium wages due  
7 to them under Labor Code section 226.7, deprived Plaintiffs and class members of the  
8 compensation guarantee and enhanced enforcement implemented by section 226.7. The  
9 statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to  
10 compensate employees, and secondarily to shape employer conduct. *Safeway, Inc. v. Superior*  
11 *Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were  
12 guaranteed to Plaintiffs and class members as part of their employment with Defendants, and  
13 thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an  
14 unfair business practice in violation of California Business & Professions Code sections  
15 17200, *et seq.* (Id.)

16 178. A violation of California Business & Professions Code sections 17200, *et seq.*  
17 may be predicated on any unfair business practice. In the instant case, Defendants’ policies  
18 and practices have violated the spirit of California’s meal and rest break laws and constitute  
19 acts against the public policy behind these laws.

20 179. Pursuant to California Business & Professions Code sections 17200 *et seq.*,  
21 Plaintiffs and class members are entitled to restitution for the class-wide loss of the statutory  
22 benefits implemented by section 226.7 withheld and retained by Defendants during a period  
23 that commences four years prior to the filing of this complaint; a permanent injunction  
24 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to  
25 Plaintiffs and class members; an award of attorneys’ fees pursuant to California Code of Civil  
26 Procedure section 1021.5 and other applicable laws; and an award of costs.

27 **THIRTEENTH CAUSE OF ACTION**

28 **Violation of Fair Labor Standards Act 29 U.S.C. § 207—Unpaid Overtime**

1 **(Against all Defendants)**

2 180. Plaintiffs, on behalf of themselves and others similarly situated, re-allege and  
3 incorporate by reference the allegations contained in the paragraphs above as if fully set forth  
4 herein.

5 181. Plaintiffs consent in writing to be a party to this action, pursuant to 29 U.S.C.  
6 § 216(b). Plaintiffs' written consent forms are attached hereto as Exhibit 3.  
7 Plaintiffs anticipate that other individuals will sign consent forms and join as plaintiffs.

8 182. At all relevant times, Techtronic has been, and continues to be, an "employer"  
9 engaged in interstate commerce, within the meaning of the FLSA, 29 U.S.C. § 203. Within  
10 the relevant time-period, Techtronic employed Plaintiffs, and employed and continues to  
11 employ members of the proposed collective class. At all relevant times, upon information and  
12 belief, Techtronic has had gross operating revenues in excess of \$500,000.

13 183. The FLSA requires that each covered employer, such as Techtronic,  
14 compensate all non-exempt employees at a rate of not less than one and one-half times the  
15 regular rate of pay for work performed in excess of forty hours per week.

16 184. By failing to accurately record, report, and/or preserve records of hours worked  
17 by Plaintiffs and the collective class, Techtronic has failed to make, keep, and preserve  
18 records with respect to each of its employees sufficient to determine their wages, hours, and  
19 other conditions and practice of employment, in violation of the FLSA, 29 U.S.C. § 201 et  
20 seq.

21 185. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA,  
22 within the meaning of 29 U.S.C. § 255(a).

23 186. Plaintiffs, on behalf of themselves and the collective class, seek damages in the  
24 amount of their and each class member's unpaid overtime compensation, liquidated damages  
25 from three years immediately preceding the filing of this action, plus interest and costs as  
26 allowed by law, pursuant to 29 U.S.C. §§ 216(b) and 255(a), and such other legal and  
27 equitable relief as the Court deems just and proper.

28 187. Plaintiffs, on behalf of themselves and the collective class, seek recovery of

1 their attorneys' fees and costs to be paid by Defendants, as provided by the FLSA, 29, U.S.C.  
2 § 216(b).

3 **REQUEST FOR JURY TRIAL**

4 Plaintiffs request a trial by jury.

5 **PRAYER FOR RELIEF**

6 Plaintiffs, on behalf of all others similarly situated, pray for relief and judgment  
7 against Defendants, jointly and severally, as follows:

8 1. For damages, unpaid wages, penalties, liquidated damages, injunctive relief,  
9 and attorneys' fees in excess of twenty-five thousand dollars (\$25,000), exclusive of interest  
10 and costs. Plaintiffs reserve the right to amend their prayer for relief to seek a different  
11 amount.

12 //

13 **Class Certification**

14 2. That this case be certified as a class action;

15 3. That Plaintiffs be appointed as the representatives of the Class and Subclass;

16 4. That counsel for Plaintiffs be appointed as class counsel.

17 **As to the First Cause of Action**

18 5. That the Court declare, adjudge, and decree that Defendants violated California  
19 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to  
20 pay all overtime wages due to Plaintiffs and class members;

21 6. For general unpaid wages at overtime wage rates and such general and special  
22 damages as may be appropriate;

23 7. For pre-judgment interest on any unpaid overtime compensation commencing  
24 from the date such amounts were due, or as otherwise provided by law;

25 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to  
26 California Labor Code section 1194(a); and

27 9. For such other and further relief as the Court may deem equitable and  
28 appropriate.

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**As to the Second Cause of Action**

- 10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 by willfully failing to pay minimum wages to Plaintiffs and class members;
- 11. For general unpaid wages and such general and special damages as may be appropriate;
- 12. For pre-judgment interest on any unpaid compensation from the date such amounts were due, or as otherwise provided by law;
- 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a);
- 14. For liquidated damages pursuant to California Labor Code section 1194.2; and
- 15. For such other and further relief as the Court may deem equitable and appropriate.

**As to the Third Cause of Action**

- 16. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 226.7, 512(a), 516, and 1198 and applicable IWC Wage Order(s) by willfully failing to provide all meal periods to Plaintiffs and class members;
- 17. That the Court make an award to the Plaintiffs and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a meal period was not provided;
- 18. For all actual, consequential, and incidental losses and damages, according to proof;
- 19. For premiums pursuant to California Labor Code section 226.7(b);
- 20. For pre-judgment interest on any unpaid meal period premiums from the date such amounts were due, or as otherwise provided by law;
- 21. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and
- 22. For such other and further relief as the Court may deem equitable and

1 appropriate.

2 **As to the Fourth Cause of Action**

3 23. That the Court declare, adjudge and decree that Defendants violated California  
4 Labor Code sections 226.7, 516, and 1198 and applicable IWC Wage Orders by willfully  
5 failing to authorize and permit Plaintiffs and class members to take all rest periods;

6 24. That the Court make an award to the Plaintiffs and class members of one (1)  
7 hour of pay at each employee's regular rate of pay for each workday that a rest period was not  
8 authorized and permitted;

9 25. For all actual, consequential, and incidental losses and damages, according to  
10 proof;

11 26. For premiums pursuant to California Labor Code section 226.7(b);

12 27. For pre-judgment interest on any unpaid rest period premiums from the date  
13 such amounts were due, or as otherwise provided by law;

14 28. For attorneys' fees pursuant to California Code of Civil Procedure section  
15 1021.5, or as otherwise provided by law; and

16 29. For such other and further relief as the Court may deem equitable and  
17 appropriate.

18 **As to the Fifth Cause of Action**

19 30. That the Court declare, adjudge and decree that Defendants violated the  
20 recordkeeping provisions of California Labor Code section 226(a) and applicable IWC Wage  
21 Orders as to Plaintiffs and Subclass members, and willfully failed to provide accurate itemized  
22 wage statements thereto;

23 31. For all actual, consequential, and incidental losses and damages, according to  
24 proof;

25 32. For injunctive relief pursuant to California Labor Code section 226(h);

26 33. For statutory penalties pursuant to California Labor Code section 226(e);

27 34. For attorneys' fees and costs pursuant to California Labor Code section  
28 226(e)(1); and





1 **As to the Tenth Cause of Action**

2 58. That the Court declare, adjudge and decree that Defendants violated the  
3 following California Labor Code provisions as to Plaintiffs and/or other aggrieved employees:  
4 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and  
5 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516, and  
6 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and  
7 permit all rest periods); 222.5 (by failing to pay for mandatory drug testing); 226(a), 1174(d)  
8 and 1198 (by failing to provide accurate wage statements and maintain accurate payroll  
9 records); 201, 202, 203 (by failing timely to pay all earned wages upon termination); 204 (by  
10 failing timely to pay all earned wages during employment); 1198 (by failing to pay reporting  
11 time pay); 1198 (by failing to provide suitable seating); and 2802 (by failing to reimburse  
12 business expenses);

13 59. For civil penalties pursuant to California Labor Code sections 210, 226.3, 256,  
14 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code  
15 sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,  
16 1197, 1197.1, 1198, and 2802;

17 60. For attorneys' fees and costs pursuant to California Labor Code section  
18 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California  
19 Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d),  
20 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

21 61. For pre-judgment and post-judgment interest as provided by law; and

22 62. For such other and further relief as the Court may deem equitable and  
23 appropriate.

24 **As to the Eleventh Cause of Action**

25 63. That the Court declare, adjudge and decree that Defendants' conduct of failing  
26 to provide Plaintiffs and class members all overtime wages due to them, failing to provide  
27 Plaintiffs and class members all minimum wages due to them, failing to provide Plaintiffs and  
28 class members all meal periods, failing to authorize and permit Plaintiffs and class members to

1 take all rest periods, failing to provide Plaintiffs and class members accurate and complete  
2 wage statements, failing to maintain accurate payroll records for Plaintiffs and class members,  
3 failing timely to pay Plaintiffs and class members all earned wages during employment,  
4 failing to pay Plaintiffs and class members reporting time pay, and failing to reimburse  
5 Plaintiffs and class members for business-related expenses, constitutes an unlawful business  
6 practice in violation of California Business and Professions Code sections 17200, *et seq.*;

7 64. For restitution of unpaid wages to Plaintiffs and all class members and  
8 prejudgment interest from the day such amounts were due and payable;

9 65. For the appointment of a receiver to receive, manage and distribute any and all  
10 funds disgorged from Defendants and determined to have been wrongfully acquired by  
11 Defendants as a result of violations of California Business & Professions Code sections 17200  
12 *et seq.*;

13 66. For reasonable attorneys' fees and costs of suit incurred herein pursuant to  
14 California Code of Civil Procedure section 1021.5; and

15 67. For such other and further relief as the Court may deem equitable and  
16 appropriate.

17 **As to the Twelfth Cause of Action**

18 68. That the Court declare, adjudge and decree that Defendants' conduct of denying  
19 Plaintiffs and class members the statutory benefits guaranteed under section 226.7 constitutes  
20 an unfair business practice in violation of California Business and Professions Code sections  
21 17200, *et seq.*;

22 69. For restitution of the statutory benefits under section 226.7 unfairly withheld  
23 from Plaintiffs and class members and prejudgment interest from the day such amounts were  
24 due and payable;

25 70. For the appointment of a receiver to receive, manage and distribute any and all  
26 funds disgorged from Defendants and determined to have been wrongfully acquired by  
27 Defendants as a result of violations of California Business & Professions Code sections 17200  
28 *et seq.*;

