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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11
12 IN RE THE PEP BOYS
13 OVERTIME ACTIONS

Master File No. **07-CV 01755 VBF (RZx)**

PROPOSED FLSA COLLECTIVE ACTION AND
RULE 23 CLASS ACTION

SECOND AMENDED CONSOLIDATED
COMPLAINT FOR: 1) Meal Period Violations
(Labor Code §§ 226.7, 512); 2) Rest Period
Violations (Labor Code § 226.7); 3) Minimum
Wage Violations (Labor Code §§ 1194, 1197); 4)
Overtime Violations (Labor Code §§ 510, 1194,
1198); 5) FLSA Overtime Violations (29 U.S.C. §§
207, 215); 6) FLSA Overtime Violations -
Managers (29 U.S.C. §§ 207, 215); 7) Failure to Pay
Upon Termination (Labor Code
§§201,202,203,227.3); 8) Inaccurate Wage
Statements (Labor Code § 226); 9) Uniform
Violations (Labor Code § 2802); 10) Failure to Pay
Wages for Split Shifts (IWC Wage Order 7-2001);
11) Unlawful Business Practices (Bus. and Prof.
Code § 17200); 12) Labor Code § 2699 et seq.

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1 Plaintiffs Manuel Valencia Aros, Jr., Jose Rios, Shone McEwen, Art Navarro,
2 Eddie Paez, Santos Contreras Primero, and Daniel Arbuckle-Alford, on behalf of
3 themselves and others similarly situated (collectively, “Plaintiffs”), allege upon
4 information and belief as follows:

5 **INTRODUCTION AND CERTAIN DEFINITIONS**

6 1. This is an action for violation of federal and state wage and hour laws
7 brought by and on behalf of current and former employees of Defendants Pep Boys
8 and Pep Boys of California. Plaintiffs bring this statewide class action under
9 federal and state law on behalf of themselves and similarly situated Pep Boys
10 employees in California. Pursuant to Defendants’ common decisions, policies and
11 practices, Defendants unlawfully subjected the Plaintiffs and similarly situated Pep
12 Boys employees to the wage and hour law violations detailed herein.

13 2. The proposed class of all current and former employees of Defendants
14 who were employed at a Pep Boys retail or service location in California during the
15 applicable limitations period includes two subclasses, consisting of: 1) all
16 individuals employed by Defendants in any job other than Store Manager at a Pep
17 Boys retail or service location in California at any time during the limitations period
18 (the “California Employee Subclass”); and 2) all individuals employed by
19 Defendants in the position of Store Manager at a Pep Boys retail or service location
20 in California at any time during the limitations period (the “California Store
21 Manager Subclass”).

22 3. Plaintiffs Manuel Valencia Aros, Jr., Jose Rios, Shone McEwen,
23 Santos Contreras Primero, and Daniel Arbuckle-Alford,, who are members of the
24 proposed California Employee Subclass, allege on behalf of themselves and all
25 similarly situated California Employee Subclass members the following violations:
26 failure to provide meal and rest periods and compensation as required by Labor
27 Code §§512 and 226.7; failure to pay minimum wages as required by Labor Code
28 §§1194 and 1197; failure to pay overtime wages as required by Labor Code §§510,

1 1194, and 1198, and 29 U.S.C. §§207 and 215; failure to timely pay all wages owed
2 upon termination of employment as required by Labor Code §§201, 202, and 227.3;
3 failure to provide employees with an accurate wage statement as required by Labor
4 Code §226; failure to compensate employees for purchase and cleaning of required
5 uniforms and equipment as required by Labor Code §2802; and the failure to fully
6 compensate employees for working split shifts as required by IWC Wage Order 7-
7 2001.

8 4. Plaintiffs Art Navarro and Eddie Paez, who are members of the
9 California Store Manager Subclass, allege on behalf of themselves and similarly
10 situated California Store Manager Subclass members the following violations:
11 misclassification as overtime exempt employees and failure to pay overtime wages,
12 in violation of Labor Code §§510, 1194, and 1198, and 29 U.S.C. §§207 and 215;
13 failure to provide meal and rest periods and compensation as required by Labor
14 Code §§512 and 226.7; failure to provide meal periods and compensation as
15 required by §226.7; failure to timely pay all wages owed upon termination of
16 employment as required by Labor Code §§201, 202 and 227.3; failure to provide
17 employees with an accurate wage statement as required by Labor Code §226;
18 failure to compensate employees for purchase and cleaning of required uniforms
19 and equipment as required by Labor Code §2802; and failure to fully compensate
20 employees for working split shifts as required by IWC Wage Order 7-2001.

21 5. Defendants' unlawful conduct alleged herein violates not only the
22 specific federal and state labor law provisions alleged herein, but also constitutes an
23 unlawful, unfair, and fraudulent business practice under California Business and
24 Professions Code §17200 *et seq.* Plaintiffs seek damages, statutory penalties and
25 attorney's fees, as well as equitable remedies in the form of declaratory and
26 injunctive relief and restitution.

27 **JURISDICTION AND VENUE**

28 6. This Court has federal question jurisdiction under 28 U.S.C. §1331

1 because this case is brought under the Fair Labor Standards Act, 29 U.S.C. §201 *et*
2 *seq.* (“FLSA”). This Court also has jurisdiction over Plaintiffs’ and class members’
3 California law claims pursuant to the Class Action Fairness Act of 2005, 28 U.S.C.
4 §1331(d). This Court also has supplemental jurisdiction over Plaintiffs’ and class
5 members’ California law claims under 28 U.S.C. §1367, because the state law
6 claims derive from a common nucleus of operative fact as the federal claims, and
7 are so related to the federal claims that they form part of the same case or
8 controversy under Article III of the United States Constitution.

9 7. Venue is proper in this District because a substantial part of the events
10 and omissions giving rise to the claims occurred in this District; because there is
11 personal jurisdiction over the Defendants, who presently and at all times have
12 conducted substantial, continuous, and systematic commercial activities in this
13 District; and because a substantial number of Plaintiffs and unnamed class
14 members, including Plaintiffs Rios, Aros, McEwen, Navarro, Paez, Primero, and
15 Arbuckle-Alford, reside and work for Defendants in this District.

16 **PARTIES**

17 8. Defendant PEP BOYS MANNY MOE AND JACK OF CALIFORNIA
18 (hereinafter “Pep Boys of California”) is a corporation organized and existing under
19 the laws of the State of California, with stores and offices throughout California,
20 including in this District. Pep Boys of California is an employer whose employees
21 are engaged throughout this District and the State of California.

22 9. Defendant PEP BOYS MANNY MOE AND JACK (hereinafter “Pep
23 Boys”) is a corporation organized and existing under the laws of the State of
24 Pennsylvania, doing business throughout the United States, including in this
25 District. Pep Boys has its corporate headquarters in Pennsylvania. Pep Boys is an
26 employer whose employees are engaged throughout this District and the State of
27 California.

28 10. Upon information and belief, Defendant Pep Boys of California is a

1 wholly owned subsidiary of Defendant Pep Boys.

2 11. Defendants Pep Boys and Pep Boys of California are both enterprises
3 engaged in interstate commerce or in the production of goods and services for
4 interstate commerce within the meaning of 29 U.S.C. §203(s)(1)(A) in that their
5 employees are engaged in interstate commerce and their employees handle, sell, or
6 otherwise work on goods or materials that have been moved in or produced for
7 interstate commerce and Defendants Pep Boys and Pep Boys of California both
8 have annual gross volume of sales or business done of over \$500,000.

9 12. Plaintiffs are informed and believe and therefore allege that each and
10 every one of the acts and omissions alleged herein was performed by, and/or
11 attributable to, all Defendants, each acting as agents and/or employees and/or under
12 the direction and control of each of the other Defendants, and that said acts and
13 failures to act were within the course and scope of said agency, employment, and/or
14 direction and control.

15 13. Plaintiff MANUEL VALENCIA AROS, JR. is a resident of Bell,
16 California. Plaintiff Aros was employed by Defendants from September 22, 1993
17 until January of 2006 as a mechanic at a Pep Boys location in Los Angeles,
18 California.

19 14. Plaintiff JOSE RIOS, is a resident of Torrence, California. Plaintiff
20 Rios was employed by Defendants from February 25, 1996 until February 23, 2006
21 as a mechanic technician at several Pep Boys locations in Los Angeles and East Los
22 Angeles, California.

23 15. Plaintiff SHONE D. MCEWEN is a resident of Los Angeles,
24 California who was employed by Defendants for a period of time in California
25 during the four years preceding the filing of this action. Plaintiff McEwen was
26 employed by Defendants from March 2001 through August 16, 2006, in a variety of
27 positions, including Sales Associate and Commercial Sales Manager, at a Pep Boys
28 location in North Hollywood, California.

1 16. Plaintiff ART NAVARRO is a resident of Santa Fe Springs, California.
2 Plaintiff Art Navarro was employed by Defendants in Santa Ana, California from
3 March 2005 until September 2006, first as an Assistant Manager, and then as a
4 Store Manager.

5 17. Plaintiff EDDIE PAEZ is a resident of San Gabriel, California.
6 Plaintiff Paez was employed by Defendants from January 2005 until March 7, 2007
7 as a Store Manager at a Pep Boys location in Anaheim Hills, California.

8 18. Plaintiff SANTOS CONTRERAS PRIMERO is a resident of Anaheim,
9 California. Plaintiff Primero was employed by Defendants from approximately
10 November 1998 until March 2007 at Pep Boys locations in Anaheim and Santa
11 Ana, California.

12 19. Plaintiff DANIEL ARBUCKLE-ALFORD is a resident of Redlands,
13 California. Plaintiff Arbuckle-Alford is currently employed by Pep Boys as a
14 Master Mechanic at a Pep Boys location in Redlands, California, and has been in
15 that position since 1996.

16 20. Plaintiffs are informed and believe and thereon allege that at all
17 relevant times Defendants employed Plaintiffs and other members of the Employee
18 and Store Manager subclasses, and exercised control over the wages, hours, and
19 working conditions of Plaintiffs and other members of the Employee and Store
20 Manager Subclasses.

21 **FACTUAL ALLEGATIONS**

22 21. Pep Boys has 593 stores in 36 states and Puerto Rico, including
23 California. The Pep Boys stores feature an extensive assortment of automotive
24 parts, accessories, tires and batteries, as well as automotive repair and maintenance
25 services. Pep Boys and Pep Boys of California operate 121 stores in California,
26 with each store employing an average of approximately 34 employees in retail and
27 service positions.

28 22. Pursuant to and in furtherance of Defendants' corporate policies and

1 practices, Defendants have engaged and continue to engage in a pattern and practice
2 of violating federal and state wage and hour laws with respect to their employees in
3 California.

4 23. Throughout the limitations period, Defendants have required or
5 pressured, and continue to require or pressure, Plaintiffs and members of the
6 California Employee and Store Manager Subclasses to perform work for
7 Defendants during the 30-minute meal break required by law to be given to
8 California employees who work at least five hours per shift.

9 24. Throughout the limitations period, Defendants have also required or
10 pressured, and continue to require or pressure, Plaintiffs and members of the
11 California Employee and Store Manager Subclasses to perform work for
12 Defendants during the 10-minute rest breaks required by law to be given to
13 employees who work at least four hours per shift.

14 25. When Defendants have permitted Plaintiffs and members of the
15 California Employee and Store Manager Subclasses to take meal or rest breaks,
16 Defendants have regularly interrupted those breaks by requiring Plaintiffs and
17 members of the California Employee and Store Manager Subclasses to return to
18 work.

19 26. Some Pep Boys managers have altered members of the California
20 Employee Subclass' time records to reflect meal breaks that in fact those employees
21 were not permitted to take.

22 27. As a result, Plaintiffs and class members' meal and rest breaks were
23 and are predominantly or primarily for the benefit of Defendants and not for the
24 benefit of Plaintiffs and class members.

25 28. Defendants have failed and continue to fail to provide Plaintiffs and
26 members of the California Employee and Store Manager Subclasses with the
27 compensation required by law for those missed meal and rest breaks.

28 29. Throughout the limitations period, Defendants have required and
continue to require Plaintiffs and members of the California Employee and Store

1 Manager Subclasses to perform work for Defendants more than eight hours per
2 workday or more than 40 hours per workweek without receiving the full overtime
3 compensation to which they are entitled.

4 30. Some Pep Boys managers altered members of the California Employee
5 Subclass' time records to remove hours for which those employees would have
6 been entitled to overtime compensation.

7 31. Even when members of the California Employee Subclass worked
8 hours in excess of eight hours per workday or more than 40 hours per workweek
9 that were reflected in Pep Boys' time records, members of the California Employee
10 Subclass were not paid the proper overtime compensation for those hours.

11 32. Throughout the limitations period, Defendants have required and
12 continue to require Plaintiffs and members of the California Employee and Store
13 Manager Subclasses to perform work for Defendants "off-the-clock." Plaintiffs and
14 members of the California Employee and Store Manager Subclasses are not
15 compensated for this "off-the-clock" work, nor do they receive credit for this work
16 towards overtime compensation.

17 33. Throughout the course of Plaintiff Navarro's employment, Defendants
18 required Plaintiff Navarro to work five to ten hours per week "off the clock."
19 Defendants did not pay Plaintiff Navarro for those hours, or credit this work
20 towards overtime compensation.

21 34. As a result of requiring, suffering, or permitting Plaintiffs and class
22 members to perform uncompensated "off-the-clock" work, Defendants have
23 required and continue to require Plaintiffs and members of the California Employee
24 and Store Manager Subclasses to work more than eight hours per workday or more
25 than 40 hours per workweek without receiving the full wages and overtime
26 compensation to which they are entitled.

27 35. As a result of requiring, suffering, or permitting Plaintiffs and class
28 members to perform uncompensated "off-the-clock" work, Defendants have paid
and continue to pay some members of the California Employee and Store Manager

1 Subclasses a wage less than the required minimum wage for each hour worked.

2 36. Throughout the limitations period, as a result of Defendants requiring,
3 suffering, or permitting Plaintiffs and class members to perform work through meal
4 and rest breaks, to work overtime hours without paying overtime wages, and to
5 work “off-the-clock” without the required compensation, Defendants have also
6 failed and continue to fail to make, keep, and preserve accurate records of Plaintiff
7 and subclass members’ hours of employment. As a result of Defendants’ failure to
8 make, keep, or preserve such records, such records either do not exist or are
9 insufficient to determine wages, hours, or other conditions of employment. In
10 addition, as a result of Defendants’ failure to make, keep, or preserve such records,
11 Defendants have failed and continue to fail to provide Plaintiff and subclass
12 members with accurate records of their time worked or accurate wage statements.

13 37. Throughout the limitations period, Defendants have failed and
14 continue to fail to compensate Plaintiffs and members of the California Employee
15 and Store Manager Subclasses for all earned and unpaid wages either immediately
16 at the time of discharge or within 72 hours thereafter.

17 38. Defendants did not compensate Plaintiff McEwen for all wages owed
18 within 72 hours when his employment was terminated in approximately August
19 2006.

20 39. Plaintiff Navarro provided Defendants with 72 hours notice of his
21 intention to terminate his employment. His last day of work was September 28,
22 2006. Defendants did not provide Plaintiff Navarro with his final paycheck until
23 October 3, 2006.

24 40. Throughout the limitations period, Defendants have required and
25 continue to required Plaintiffs and members of the California Employee and Store
26 Manager Subclasses to purchase clothing or uniforms required to be worn while
27 working for Defendants. Defendants have failed and continue to fail to compensate
28 Plaintiffs and members of the California Employee and Store Manager Subclasses
for the full cost of purchasing the clothing or uniforms.

1 41. Plaintiff Navarro was required by Defendants to purchase and wear
2 clothing with a Pep Boys logo, and was not compensated by Defendants for those
3 purchases.

4 42. Throughout the limitations period, Defendants have also required and
5 continue to require Plaintiffs and members of the California Employee and Store
6 Manager Subclasses to wear clean uniforms or clothing. Those required uniforms
7 and clothing are regularly dirtied by work activities during the course of the
8 workday. Defendants have failed and continue to fail to compensate Plaintiffs and
9 members of the California Employee and Store Manager Subclasses for the cost of
10 cleaning those uniforms.

11 43. Throughout the limitations period, Defendants have required and
12 continue to required Plaintiffs and members of the California Employee and Store
13 Manager Subclasses to work more than one shift during the same workday,
14 sometimes by requiring travel between Pep Boys locations without compensation
15 for the time spent traveling. Some of these “split” shifts involve second shifts of
16 less than an hour. Defendants have failed and continue to fail to provide the full
17 compensation for “split shifts” as required by law.

18 44. During his employment with Defendants, Plaintiff Navarro was often
19 required to travel between store locations. He was required to travel to another
20 store after clocking out for the day to attend store meetings. This between-store
21 travel occurred approximately once a week.

22 45. Throughout the limitations period, Defendants have misclassified and
23 continue to misclassify Store Managers as exempt from overtime compensation,
24 despite the fact that more than fifty percent of Store Manager time is spent on non-
25 managerial tasks.

26 46. Approximately 70 to 75% of the tasks Plaintiff Navarro performed for
27 Defendants were non-managerial in nature.

28 47. Defendants have not and do not compensate Store Managers for hours
worked in excess of eight hours per workday and 40 hours per workweek.

1 48. Plaintiff Navarro worked approximately 55 to 60 hours per week as a
2 Store Manager, but Defendants compensated him for the equivalent of 40 hours per
3 week.

4 49. Upon information and belief, Defendants have through their corporate
5 management, trained, supervised, instructed, authorized or encouraged managerial
6 employees to engage in the above-described unlawful practices and have ratified
7 their actions thereafter.

8 50. All of the claims alleged herein arose from the same conduct,
9 transaction or occurrence as the claims alleged in the Complaint in the earliest-filed
10 of these consolidated actions, and therefore relate back to the date of filing of that
11 Complaint.

12 **CLASS ACTION ALLEGATIONS**

13 51. Plaintiffs seek class certification, pursuant to Federal Rule of Civil
14 Procedure (“FRCP”) 23, of a class of all current and former employees of
15 Defendants who were employed at a Pep Boys retail or service location in
16 California during the applicable limitations period, including the following two
17 subclasses:

18 (a) All persons who were, are, or will be employed by Defendants in
19 positions other than Store Manager at any Pep Boys retail or service
20 location in California on or after the date that is four years before the
21 filing of the Complaint in the earliest of these consolidated actions (the
22 “California Employee Subclass”).

23 (b) All persons who were, are, or will be employed by Defendants in the
24 position of Store Manager at any Pep Boys retail or service location in
25 California on or after the date that is four years before the filing of the
26 Complaint in the earliest of these consolidated actions (the “California
27 Store Manager Subclass”).

28 52. The members of the California Employee and Store Manager
Subclasses are readily ascertainable. The numbers and identities of California

1 Employee and Store Manager Subclasses may be readily determined from the
2 records of Defendants. For purpose of notice and other purposes related to this
3 action, California Employee and Store Manager Subclass members' names and
4 addresses are readily available from Defendants. Notice can be provided by means
5 permissible under FRCP 23.

6 53. The members of the proposed California Employee and Store Manager
7 Subclasses are so numerous that joinder of all members is impracticable, and the
8 disposition of these claims as a class will benefit the parties and the Court.
9 Although the precise number of such persons is not known to Plaintiffs at this time,
10 because the facts related to that number are within the sole control of Defendants,
11 upon information and belief the number of California Employee Subclass members
12 is in the thousands, and the number of California Store Manager Subclass is in the
13 hundreds.

14 54. The claims of Plaintiffs Aros, Rios, McEwen, Primero, and Arbuckle-
15 Alford are typical of claims that could be alleged by all members of the California
16 Employee Subclass, and the relief sought by those named Plaintiffs is typical of the
17 relief that would be sought by each member of the California Employee Subclass.
18 All California Employee Subclass members were subjected to Defendants' same
19 common policies and practices, as alleged herein, including Defendants' failure to
20 provide and compensate for meal and rest periods, failure to pay overtime and
21 timely pay wages owed, and the other wage and hour violations alleged herein.
22 Defendants benefitted from the same type of unfair and/or wrongful acts as to each
23 California Employee Subclass member. Plaintiffs Aros, Rios, McEwen, Primero,
24 and Arbuckle-Alford and all California Employee Subclass members sustained
25 similar losses, injuries, and damages arising from Defendants' same unlawful
26 policies, practices, and procedures.

27 55. The claims of Plaintiffs Navarro and Paez are typical of claims that
28 could be alleged by all members of the California Store Manager Subclass, and the
relief sought by those named Plaintiffs is typical of the relief that would be sought

1 by each member of the California Store Manager Subclass. All members of the
2 California Store Manager Subclass were subject to the same common policies and
3 practices of Defendants, as alleged herein, including the misclassification of these
4 employees as overtime exempt and the failure to pay overtime and timely pay wages
5 owed, the failure to provide and compensate for meal and rest periods, and the other
6 wage and hour violations alleged herein. Defendants benefitted from the same type
7 of unfair and/or wrongful acts as to each California Store Manager Subclass
8 member. Plaintiffs Navarro and Paez and all California Store Manager Subclass
9 members sustained similar losses, injuries, and damages arising from the same
10 unlawful policies, practices, and procedures.

11 56. Plaintiffs Aros, Rios, McEwen, Primero, and Arbuckle-Alford will be
12 and are able to fairly and adequately protect the interests of the California
13 Employee Subclass and have no interests antagonistic to the California Employee
14 Subclass. Plaintiffs Navarro and Paez will and are able to fairly and adequately
15 protect the interests of the California Store Manager Subclass and have no interests
16 antagonistic to the California Store Manager Subclass. Plaintiffs are represented by
17 attorneys who are experienced and competent in both class action litigation and
18 employment litigation and who have previously represented plaintiffs in class
19 action wage and hour litigation.

20 57. A class action is superior to other available methods for the fair and
21 efficient adjudication of this controversy. Class action treatment will permit a large
22 number of similarly situated persons to prosecute their common claims in a single
23 forum simultaneously, efficiently, and without the unnecessary duplication of
24 efforts and expense that numerous individual actions engender. Because the losses,
25 injuries and damages suffered by each of the individual California Employee
26 Subclass and Store Manager Subclass members are small in the sense pertinent to a
27 class action analysis, the expenses and burden of individual litigation would make it
28 extremely difficult or impossible for the individual California Employee Subclass
or Store Manager Subclass members to redress the wrongs done to them. On the

1 other hand, important public interests will be served by addressing the matter as a
2 class action. The adjudication of individual litigation claims would result in a great
3 expenditure of court and public resources; however, treating the claims as a class
4 actions would result in a significant savings of these costs. The prosecution of
5 separate actions by individual members of the California Employee Subclass or
6 Store Manager Subclass would create a risk of inconsistent and/or varying
7 adjudications with respect to the individual members of the California Employee
8 Subclass and Store Manager Subclass, establishing incompatible standards of
9 conduct for Defendants and resulting in the impairment of the class members' rights
10 and the disposition of their interests through actions to which they were not parties.
11 The issues in this action can be decided by means of common, class-wide proof. In
12 addition, if appropriate, the court can, and is empowered to, fashion methods to
13 efficiently manage this action as a class action.

14 58. There are questions of law and fact common to members of the
15 Employee Subclass which predominate over any questions affecting only individual
16 class members, including:

- 17 a) Whether Defendants employed California Employee Class members
18 within the meaning of California law;
- 19 b) What were Defendants' policies and practices with respect to the
20 payment of overtime wages;
- 21 c) What were Defendants' policies and practices with respect to the
22 provision of rest breaks;
- 23 d) What were Defendants' policies and practices with respect to the
24 provision of meal breaks;
- 25 e) What were Defendants' policies and practices with respect to requiring
26 employees to work "off-the-clock";
- 27 f) What were Defendants' policies and practices with respect to
28 compensating employees for all time worked;
- g) What were Defendants' policies and practices with respect to the

1 accuracy of time records and wage statements;

2 h) What are Defendants' common conditions of employment and in the
3 workplace, such as record keeping, breaks, and policies and practices regarding
4 payroll and labor costs, that affect whether Defendants paid members of the
5 California Employee Subclass for work done, including overtime;

6 i) Whether Defendants failed to timely compensate employees upon
7 termination of employment;

8 j) Whether Defendants required employees to purchase and pay for the
9 cleaning of uniforms;

10 k) Whether Defendants' failure to comply with California Labor Code
11 provisions with respect to wages and hours was willful;

12 l) The proper measure of aggregate damages arising from Defendants'
13 violation of law.

14 59. There are questions of law and fact common to the California Store
15 Manager Subclass which predominate over any questions affecting only individual
16 class members, including:

17 a) Whether Defendants employed California Store Manager Subclass
18 members within the meaning of California law;

19 b) Whether Defendants misclassified California Store Manager Subclass
20 members as overtime exempt;

21 c) Whether Defendants' misclassification of the California Store Manager
22 Subclass members as overtime exempt was willful;

23 d) What were Defendants' policies and practices with respect to the
24 payment of overtime wages;

25 e) What were Defendants' policies and practices with respect to the
26 provision of rest breaks;

27 f) What were Defendants' policies and practices with respect to the
28 provision of meal breaks;

g) What were Defendants' policies and practices with respect to

1 compensating employees for all time worked;

2 h) What were the policies and practices of Defendants with respect to the
3 accuracy of time records and wage statements;

4 i) What are the common conditions of employment and in the workplace,
5 such as record keeping, breaks, and policies and practices regarding payroll and
6 labor costs, that affect whether the California Store Manager Subclass was paid
7 properly for work done, including overtime;

8 j) Whether Defendants failed to timely compensate employees upon
9 termination of employment;

10 k) Whether Defendants required employees to purchase and pay for the
11 cleaning of uniforms;

12 l) Whether Defendants' failure to comply with California Labor Code
13 provisions with respect to wages and hours was willful;

14 m) The proper aggregate measure of damages arising from Defendants'
15 violation of law.

16 **FLSA COLLECTIVE ACTION ALLEGATIONS**

17 60. Plaintiffs bring the fifth and sixth claims for relief as a collective
18 action pursuant to the FLSA, Section 16(b), 29 U.S.C. §216(b). Plaintiffs will seek
19 collective action certification of the following two subclasses:

20 a) FLSA Employee Subclass: All persons who were, are, or will be
21 employed by Defendants in positions other than Store Manager at any
22 Pep Boys retail or service location in California on or after the date
23 that is three years before the filing of the Complaint in the earliest of
24 these consolidated actions.

25 b) FLSA Store Manager Subclass: All persons who were, are, or will be
26 employed by Defendants in the position of Store Manager at any Pep
27 Boys retail or service location in California on or after the date that is
28 three years before the filing of the Complaint in the earliest of these
consolidated actions.

1 compensation for each meal period their employees do not receive.

2 66. Plaintiffs and members of the California Employee and Store Manager
3 Subclasses are entitled to the protections of California Labor Code § 226.7 and
4 Wage Order 4-2001. During the course of Plaintiffs' and members of the California
5 Employee and Store Manager Subclasses' employment, Defendants, pursuant to
6 their policies and practices, have failed and continue to fail to provide their
7 employees with the required meal periods.

8 67. Furthermore, Defendants have failed and continue to fail to
9 compensate Plaintiffs and members of the California Employee and Store Manager
10 Subclasses who are entitled to receive, and do not receive, meal periods, with the
11 required extra hour of compensation.

12 68. Defendants have committed and continue to commit the acts alleged
13 herein knowingly and willfully, with the wrongful and deliberate intention of
14 injuring Plaintiffs and members of the California Employee and Store Manager
15 Subclasses, and in conscious disregard of Plaintiffs' and members of the California
16 Employee and Store Manager Subclasses' rights. As a direct result, Plaintiffs and
17 members of the California Employee and Store Manager Subclasses have suffered,
18 and continue to suffer, substantial losses related to the use and enjoyment of such
19 wages, lost interest on such wages, and expenses and attorneys' fees in seeking to
20 compel Defendants to fully perform their obligations under state law, all to their
21 respective damages in amounts according to proof at time of trial, and within the
22 jurisdiction of this Court.

23 **SECOND CLAIM FOR RELIEF**

24 **(Failure to Provide Rest Periods and Required Compensation)**
25 **(Cal. Labor Code § 226.7 and IWC Wage Order 4-2001, § 12)**

26 69. Plaintiffs reallege and incorporate by reference all previous
27 paragraphs.

28 70. Pursuant to California Labor Code § 226.7 and Industrial Welfare
Commission Wage Order 4-2001, Defendants are required to provide a ten-minute

1 rest period to employees for every four hour work period. Furthermore, Defendants
2 are required to pay their employees one additional hour of compensation for each
3 rest period their employees do not receive.

4 71. Plaintiffs and members of the California Employee and Store
5 Manager Subclasses are entitled to the protections of California Labor Code § 226.7
6 and Wage Order 4-2001. During the course of Plaintiffs' and members of the
7 California Employee and Store Manager Subclasses' employment, Defendants,
8 pursuant to their policies and practices, have failed and continue to fail to provide
9 their employees with the required rest periods.

10 72. Furthermore, Defendants have failed and continue to fail to
11 compensate Plaintiffs and members of the California Employee and Store Manager
12 Subclasses who are entitled to receive, and do not receive, rest periods, with the
13 required extra hour of compensation.

14 73. Defendants have committed and continue to commit the acts alleged
15 herein knowingly and willfully, with the wrongful and deliberate intention of
16 injuring Plaintiffs and members of the California Employee and Store Manager
17 Subclasses, and in conscious disregard of Plaintiffs' and members of the California
18 Employee and Store Manager Subclasses' rights. As a direct result, Plaintiffs and
19 members of the California Employee and Store Manager Subclasses have suffered,
20 and continue to suffer, substantial losses related to the use and enjoyment of such
21 wages, lost interest on such wages, and expenses and attorneys' fees in seeking to
22 compel Defendants to fully perform their obligations under state law, all to their
23 respective damages in amounts according to proof at time of trial, and within the
24 jurisdiction of this Court.

25 **THIRD CLAIM FOR RELIEF**

26 **(Failure to Pay Minimum Wage - Cal. Labor Code §§ 1194, 1197 and IWC
27 Wage Order 4-2001)**

28 74. Plaintiffs reallege and incorporate by reference all previous
paragraphs.

1 75. Pursuant to California Labor Code §1197, Defendants are required to
2 pay employees the minimum wage fixed by the California Labor Commission.
3 Pursuant to Labor Code §1194 employers who do not pay employees minimum
4 wage are liable for any wages owed, along with civil penalties, interest, and
5 reasonable attorneys' fees and costs.

6 76. During the course of Plaintiffs' and members of the California
7 Employee and Store Manager Subclass' employment, Defendants, pursuant to their
8 policies and practices, have failed and continue to fail to pay their employees the
9 minimum wage because they require, suffer, or permit Plaintiffs and members of the
10 California Employee and Store Manager Subclasses to work off the clock and fail to
11 compensate them for those hours worked.

12 77. Defendants have committed and continue to commit the acts alleged
13 herein knowingly and willfully, with the wrongful and deliberate intention of
14 injuring Plaintiffs and members of the California Employee and Store Manager
15 Subclasses, and in conscious disregard of Plaintiffs' and members of the California
16 Employee and Store Manager Subclasses' rights. As a direct result, Plaintiffs and
17 members of the California Employee and Store Manager Subclasses have suffered,
18 and continue to suffer, substantial losses related to the use and enjoyment of such
19 wages, lost interest on such wages, and expenses and attorneys' fees in seeking to
20 compel Defendants to fully perform their obligations under state law, all to their
21 respective damages in amounts according to proof at time of trial, and within the
22 jurisdiction of this Court.

23 **FOURTH CLAIM FOR RELIEF**

24 **(Failure to Pay Overtime Wages - Cal. Labor Code §§ 510 and 1194)**

25 78. Plaintiffs reallege and incorporate by reference all previous
26 paragraphs.

27 79. Pursuant to California Labor Code §510(a), employers must
28 compensate employees who work in excess of eight hours per workday and 40
hours per work week and a rate of no less than one and one-half the regular rate of

1 pay. Employers also must compensate any employees who work in excess of 12
2 hours per workday at a rate of no less than twice the regular rate of pay. Labor
3 Code §1194 makes employers liable to employees for failing to pay these legally-
4 required overtime wages.

5 80. During the course of Plaintiffs' and members of the California
6 Employee and Store Manager Subclasses' employment, Defendants, pursuant to
7 their policies and practices, have failed and continue to fail to compensate Plaintiffs
8 and members of the California Employee and Store Manager Subclasses for
9 overtime work in excess of 40 hours per workweek and eight hours per workday,
10 because they require, suffer, or permit Plaintiffs and members of the FLSA
11 Employee Subclass to work excess hours without proper overtime compensation, to
12 work off the clock, and to work through required meal and rest breaks without
13 compensation for those hours.

14 81. Defendants have committed and continue to commit the acts alleged
15 herein knowingly and willfully, with the wrongful and deliberate intention of
16 injuring Plaintiffs and members of the California Employee and Store Manager
17 Subclasses, and in conscious disregard of Plaintiffs' and members of the California
18 Employee and Store Manager Subclasses' rights. As a direct result, Plaintiffs and
19 members of the California Employee and Store Manager Subclasses have suffered,
20 and continue to suffer, substantial losses related to the use and enjoyment of such
21 wages, lost interest on such wages, and expenses and attorneys' fees in seeking to
22 compel Defendants to fully perform their obligations under state law, all to their
23 respective damages in amounts according to proof at time of trial, and within the
24 jurisdiction of this Court.

25 **FIFTH CLAIM FOR RELIEF**

26 **(FLSA Overtime Violations, FLSA Employee Subclass - 29 U.S.C. §§ 207, 215)**

27 82. Plaintiffs reallege and incorporate by reference all previous
28 paragraphs.

83. During the course of Plaintiffs' and members of the FLSA Employee

1 Subclass' employment, Defendants, pursuant to their policies and practices, have
2 failed and continue to fail to pay Plaintiffs and members of the FLSA Employee
3 Subclass the overtime compensation required by the FLSA, including but not
4 limited to 29 U.S.C. §207 and §215(a), for work performed by Plaintiffs and
5 members of the FLSA Employee Subclass in excess of 40 hours per workweek,
6 because Defendants require, suffer, or permit Plaintiffs and members of the FLSA
7 Employee Subclass to work excess hours without proper overtime compensation, to
8 work off the clock, and to work through required meal and rest breaks without
9 compensation for those hours.

10 84. Defendants have also failed and continue to fail to make, keep, and
11 preserve records of Plaintiffs' and members of the FLSA Employee Subclasses'
12 employment pursuant to the FLSA, including but not limited to 29 U.S.C. §§211(c)
13 and 215(a).

14 85. Defendants have committed and continue to commit the acts alleged
15 herein knowingly and willfully, with the wrongful and deliberate intention of
16 injuring Plaintiffs and members of the FLSA Employee Subclass, and in conscious
17 disregard of Plaintiffs' and members of the FLSA Employee Subclass' rights. As a
18 direct result, Plaintiffs and members of the FLSA Employee Subclasses have
19 suffered, and continue to suffer, substantial losses related to the use and enjoyment
20 of such wages, lost interest on such wages, and expenses and attorneys' fees in
21 seeking to compel Defendants to fully perform their obligations under state law, all
22 to their respective damages in amounts according to proof at time of trial, and
23 within the jurisdiction of this Court.

24 **SIXTH CLAIM FOR RELIEF**

25 **(FLSA Overtime Violations, FLSA Store Manager Subclass -**
26 **29 U.S.C. §§ 207, 215)**

27 86. Plaintiffs reallege and incorporate by reference all previous
28 paragraphs.

87. During the course of Plaintiffs' and members of the FLSA Store

1 Manager Subclass' employment, Defendants, pursuant to their policies and
2 practices, misclassified Store Managers as exempt from overtime compensation
3 required by the FLSA despite the fact that more than fifty percent of Store
4 Managers' time was spent on non-managerial tasks. Defendants have therefore
5 failed and continue to fail to pay Plaintiffs' and members of the FLSA Store
6 Manager Subclass the overtime compensation required by the FLSA, including but
7 not limited to 29 U.S.C. §207 and §215(a), for work performed in excess of 40
8 hours per workweek.

9 88. Defendants also have failed and continue to fail to pay Plaintiffs and
10 members of the FLSA Store Manager Subclass the overtime compensation required
11 by the FLSA because they require, suffer, or permit Plaintiffs and members of the
12 FLSA Store Manager Subclass to work excess hours without proper overtime
13 compensation, to work off the clock, and to work through required meal and rest
14 breaks without compensation for those hours.

15 89. Defendants have failed and continue to fail to make, keep, and
16 preserve records of Plaintiffs' and members of the FLSA Store Manager Subclass'
17 employment pursuant to the FLSA, including but not limited to 29 U.S.C. §§211(c)
18 and 215(a).

19 90. Defendants have committed and continue to commit the acts alleged
20 herein knowingly and willfully, with the wrongful and deliberate intention of
21 injuring Plaintiffs and members of the FLSA Store Manager Subclass, and in
22 conscious disregard of Plaintiffs' and members of the FLSA Store Manager
23 Subclass' rights. As a direct result, Plaintiffs and members of the FLSA Store
24 Manager Subclass have suffered, and continue to suffer, substantial losses related to
25 the use and enjoyment of such wages, lost interest on such wages, and expenses and
26 attorneys' fees in seeking to compel Defendants to fully perform their obligations
27 under state law, all to their respective damages in amounts according to proof at
28 time of trial, and within the jurisdiction of this Court.

SEVENTH CLAIM FOR RELIEF

**(Failure to Pay Wages Upon Termination -
Cal. Labor Code §§ 201, 202, 203, 227.3)**

1
2
3 91. Plaintiffs reallege and incorporate by reference all previous
4 paragraphs.

5 92. Pursuant to California Labor Code §§201 and 202, employers,
6 including Defendants, must make timely payment of the full wages due to their
7 employees who quit or have been discharged. California Labor Code §227.3 also
8 requires employers to pay employees for vested vacation time upon termination of
9 employment. California Labor Code §203 provides waiting time penalties for
10 violations of §§201 and 202.

11 93. Because Defendants require Plaintiffs and members of the California
12 Employee and Store Manager Subclasses to work off the clock without
13 compensation and through required meal and rest breaks without compensation,
14 Defendants have failed and continue to fail to pay the full earned and unpaid wages
15 due to Plaintiffs and members of the California Employee and Store Manager
16 Subclasses upon discharge or termination.

17 94. Defendants have also failed and continue to fail to pay Plaintiffs and
18 members of the California Employee and Store Manager Subclasses the full earned
19 and unpaid wages due upon discharge or termination by failing to pay for vacation
20 time that was earned, vested, but not taken.

21 95. Defendants have also failed and continue to fail to timely pay Plaintiffs
22 and members of the California Employee and Store Manager Subclasses the full
23 earned and unpaid wages due upon discharge or termination by failing to pay all
24 wages due as required either immediately upon discharge of the employee or within
25 72 hours thereafter.

26 96. Defendants have committed and continue to commit the acts alleged
27 herein knowingly and willfully, with the wrongful and deliberate intention of
28 injuring Plaintiffs and members of the California Employee and Store Manager

1 Subclasses, and in conscious disregard of Plaintiffs' and members of the California
2 Employee and Store Manager Subclasses' rights. As a direct result, Plaintiffs and
3 members of the California Employee and Store Manager Subclasses have suffered,
4 and continue to suffer, substantial losses related to the use and enjoyment of such
5 wages, lost interest on such wages, and expenses and attorneys' fees in seeking to
6 compel Defendants to fully perform their obligations under state law, all to their
7 respective damages in amounts according to proof at time of trial, and within the
8 jurisdiction of this Court. Plaintiffs and members of the California Employee and
9 Store Manager Subclasses are therefore also entitled to waiting time penalties
10 pursuant to California Labor Code §203.

11 **EIGHTH CLAIM FOR RELIEF**

12 **(Failure to Provide an Accurate Itemized Statement of
13 All Work Performed - Cal. Labor Code §§ 226)**

14 97. Plaintiffs reallege and incorporate by reference all previous
15 paragraphs.

16 98. Pursuant to California Labor Code §226(a), employers, including
17 Defendants, are required to provide to employees at the time of each payment of
18 wages accurate itemized statement showing all wages earned, total hours worked,
19 all deductions, net wages earned, pay period dates, and wage rates applicable to
20 hours worked.

21 99. During the course of Plaintiffs' and members of the California
22 Employee and Store Manager Subclasses' employment, Defendants, pursuant to
23 their policies and practices, have failed and continue to fail to provide the required
24 accurate itemized statement, including but not limited to by failing to include in the
25 statements the time Defendants require Plaintiffs and members of the California
26 Employee and Store Manager Subclasses to work off the clock and work through
27 meal and rest breaks.

28 100. Defendants have committed and continue to commit the acts alleged
herein knowingly and willfully, with the wrongful and deliberate intention of

1 injuring Plaintiffs and members of the California Employee and Store Manager
2 Subclasses, and in conscious disregard of Plaintiffs' and members of the California
3 Employee and Store Manager Subclasses' rights.

4 **NINTH CLAIM FOR RELIEF**

5 **(Uniform Violations - Cal. Labor Code § 2802)**

6 101. Plaintiffs reallege and incorporate by reference all previous
7 paragraphs.

8 102. California Labor Code §2802 provides that employers, including
9 Defendants, must indemnify their employees for all "necessary expenditures or
10 losses incurred by the employee in direct consequence of the discharge of his or her
11 duties, or of his or her obedience to the directions of the employer"

12 103. During the course of Plaintiffs' and members of the California
13 Employee and Store Manager Subclasses' employment, Defendants have instructed
14 and directed and continue to instruct and direct Plaintiffs and members of the
15 California Employee and Store Manager Subclasses to wear certain uniforms and
16 clothing in the proper discharge of their duties.

17 104. Defendants have required and continue to require Plaintiffs and
18 members of the California Employee and Store Manager Subclasses to purchase
19 those required uniforms and clothing without providing an allowance or
20 compensating for the costs of purchasing the uniforms and clothing.

21 105. Defendants have required and continue to require that Plaintiffs and
22 members of the California Employee and Store Manager Subclasses maintain the
23 uniforms and clothing in a clean condition. The required uniforms and clothing
24 regularly become dirty as a result of working conditions. Defendants have failed
25 and continue to fail to provide Plaintiffs and members of the California Employee
26 and Store Manager Subclasses a maintenance allowance or to compensate for the
27 costs of cleaning the uniforms and clothing.

28 106. Defendants have committed and continue to commit the acts alleged
herein knowingly and willfully, with the wrongful and deliberate intention of

1 injuring Plaintiffs and members of the California Employee and Store Manager
2 Subclasses, and in conscious disregard of Plaintiffs' and members of the California
3 Employee and Store Manager Subclasses' rights. As a direct result, Plaintiffs and
4 members of the California Employee and Store Manager Subclasses have suffered,
5 and continue to suffer, substantial losses related to the use and enjoyment of these
6 expenditures, lost interest, and expenses and attorneys' fees in seeking to compel
7 Defendants to fully perform their obligations under state law, all to their respective
8 damages in amounts according to proof at time of trial, and within the jurisdiction
9 of this Court.

10 **TENTH CLAIM FOR RELIEF**

11 **(Failure to Pay Wages for Split Shifts - IWC Wage Order 7-2001)**

12 107. Plaintiffs reallege and incorporate by reference all previous
13 paragraphs.

14 108. Section 4 of IWC Wage Order 7-2001 provides in relevant part that
15 "[w]hen an employee works for a split shift, one hour's pay at the minimum wage
16 shall be paid in addition to the minimum wage for that workday, except when the
17 employee resides at the place of employment." Section 2(M) defines "split shift" as
18 a "work schedule, which is interrupted by non-paid working periods established by
19 the employer, other than bona fide rest or meal periods."

20 109. Plaintiffs and members of the California Employee and Store Manager
21 Subclasses did not reside at their place of employment with Defendants.

22 110. During the course of Plaintiffs' and members of the California
23 Employee and Store Manager Subclasses' employment, Defendants have required
24 and continue to require Plaintiffs and members of the California Employee and
25 Store Manager Subclasses to work split shifts, including by requiring employees to
26 clock out for time spent traveling between Pep Boys locations. Defendants have
27 failed and continue to fail to pay the required compensation for the split shift in the
28 amount of one hour at the minimum wage for each day that the employee was
required to work a split shift.

1 111. Defendants have committed and continue to commit the acts alleged
2 herein knowingly and willfully, with the wrongful and deliberate intention of
3 injuring Plaintiffs and members of the California Employee and Store Manager
4 Subclasses, and in conscious disregard of Plaintiffs' and members of the California
5 Employee and Store Manager Subclasses' rights. As a direct result, Plaintiffs and
6 members of the California Employee and Store Manager Subclasses have suffered,
7 and continue to suffer, substantial losses related to the use and enjoyment of such
8 wages, lost interest on such wages, and expenses and attorneys' fees in seeking to
9 compel Defendants to fully perform their obligations under state law, all to their
10 respective damages in amounts according to proof at time of trial, and within the
11 jurisdiction of this Court.

12 **ELEVENTH CLAIM FOR RELIEF**

13 **(Unlawful Business Practices - Cal. Bus. and Prof. Code § 17200)**

14 112. Plaintiffs reallege and incorporate by reference all previous
15 paragraphs.

16 113. California Business & Professions Code §17200 defines "unfair
17 competition" to include "any unlawful, unfair or fraudulent business practice or
18 act."

19 114. Through the conduct alleged above, Defendants have violated federal
20 and state minimum labor standards and the public policies embodied therein with
21 respect to Plaintiffs and members of the California Employee and Store Manager
22 Subclasses, and have thereby engaged in unfair competition in violation of Cal.
23 Bus. & Prof. Code §§17200 *et seq.*, depriving Plaintiffs and members of the
24 California Employee and Store Manager Subclasses of rights, benefits and
25 privileges guaranteed to all employees under law.

26 115. Defendants' violations of applicable federal and state minimum labor
27 standards have been routine, pervasive and ongoing. Defendants have violated
28 federal and state law willfully and for their own economic self-interest, and by their
unlawful conduct has increased their profits and otherwise benefitted economically.

1 As a result, Defendants have been unjustly enriched and have achieved an unfair
2 competitive advantage.

3 116. Defendants' violation of federal and California wage and hour laws is
4 likely to continue. These practices mislead the public and present a continuing
5 threat to the public. Plaintiffs and members of the California Employee and Store
6 Manager Subclasses have suffered an injury and have lost money or property as a
7 result of Defendants' actions.

8 117. Pursuant to Cal. Bus. & Prof. Code §17203, Plaintiffs and members of
9 the California Employee and Store Manager Subclasses seek to enjoin Defendants
10 from continuing to engage in the unfair competition alleged above and to require
11 Defendants to provide restitution to all members of the California Employee and
12 Store Manager Subclasses for unpaid wages and overtime.

13 **TWELFTH CLAIM FOR RELIEF**

14 **(Penalties under Labor Code Private Attorneys General Act -
15 Cal. Labor Code § 2699 *et seq.*)**

16 118. Plaintiffs reallege and incorporate by reference all previous
17 paragraphs.

18 119. Under the Labor Code Private Attorneys General Act, Labor Code
19 Sections 2698-99, private parties may recover civil penalties for violations of the
20 California Labor Code and applicable IWC Wage Orders. These penalties are in
21 addition to any other relief available under the Labor Code and the applicable IWC
22 Wage Orders.

23 120. As set forth above, Defendants have committed numerous violations of
24 the California Labor Code and applicable IWC Wage Orders, and are entitled to
25 civil penalties, including but not limited to:

- 26 a. By requiring Plaintiffs and members of the California Employee and
27 Store Manager Subclasses to work off the clock without compensation, to
28 work overtime without proper compensation, and through required meal and
rest breaks without compensation, Defendants have failed to pay when due

1 Plaintiffs and members of the California Employee and Store Manager
2 Subclasses all the wages they earned in violation of California Labor Code
3 §204 and Industrial Welfare Commission Wage Order 4-2001, and are
4 therefore entitled to penalties for those violations pursuant to Labor Code
5 §210;

6 b. By failing to allow Plaintiffs and members of the California Employee
7 and Store Manager Subclasses to take the meal breaks or provide the
8 compensation for missed meal breaks required by California Labor Code
9 §512, and by failing to pay Plaintiffs and members of the California
10 Employee and Store Manager Subclasses the overtime wages required by
11 California Labor Code §510, Defendants are liable for penalties pursuant to
12 Labor Code §558;

13 c. By failing to provide Plaintiffs and members of the California
14 Employee and Store Manager Subclasses accurate itemized wage statements
15 in violation of Labor Code §226, Defendants are liable for penalties
16 pursuant to Labor Code §226.3;

17 d. By requiring Plaintiffs and members of the California Employee and
18 Store Manager Subclasses to work off the clock without compensation
19 Defendants have failed to pay Plaintiffs and members of the California
20 Employee and Store Manager Subclasses the minimum wage in violation of
21 Labor Code §1197 and are therefore liable for penalties pursuant to Labor
22 Code §1197.1.

23 121. Pursuant to Labor Code §2699.3, Plaintiffs gave written notice by
24 certified mail to the Labor and Workforce Development Agency and Defendants of
25 the specific Labor Code provisions alleged to have been violated herein. The Labor
26 and Workforce Development Agency notified Plaintiffs by certified mail that it
27 does not intend to investigate the alleged violations. Accordingly, Plaintiffs have
28 exhausted administrative remedies as required by Labor Code §2699.3.

122. Under the Labor Code Private Attorneys General Act, Plaintiffs and

1 members of the California Employee and Store Manager Subclasses are entitled to
2 recover the maximum civil penalties permitted by law from Defendants for its
3 violations of the California Labor Code and the applicable California IWC Wage
4 Orders, as alleged in this Complaint. All Plaintiffs and members of the California
5 Employee and Store Manager Subclasses are also entitled to recover their attorneys'
6 fees and costs under Labor Code Section §2699.

7 **DEMAND FOR JURY TRIAL**

8 Plaintiffs request a trial by jury.

9 **PRAYER FOR RELIEF**

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

- 12 A. Certification of this action as a class action pursuant to FRCP 23;
13 B. Certification of this action as a collective action pursuant to the FLSA
14 §216(b);
15 C. Designation of Plaintiffs as representatives of the class and collective
16 actions as described herein;
17 D. Designation of Plaintiffs' Interim Lead Counsel as Class Counsel;
18 E. A declaratory judgment that the practices complained of herein are
19 unlawful under the FLSA and California law;
20 F. Restitution;
21 G. An award of damages, according to proof, including liquidated
22 damages, to be paid by Defendants, under all applicable law;
23 H. Penalties available under applicable law, including, without limitation,
24 California waiting time penalties and penalties available under the Labor Code
25 Private Attorneys General Act;
26 I. Appropriate preliminary and permanent injunctive relief to remedy
27 Defendants' violations of law;
28 J. Pre-judgment and post-judgment interest, as provided by law;
K. Costs of action incurred herein, including expert fees;

1 L. Reasonable attorneys' fees, including fees pursuant to 29 U.S.C. §216,
2 Cal. Labor Code §§ 1174 and 2699 and/or any other applicable provisions
3 providing for attorneys' fees and costs.

4 M. Equitable tolling of the FLSA claim for all FLSA plaintiffs who join
5 this action, commencing upon the date upon which the original Complaint was filed
6 in the earliest filed of these consolidated actions;

7 N. For such other and further legal and equitable relief that the Court may
8 deem necessary, just, and proper.

9 Dated: By: /s/ Danielle E. Leonard
10 Danielle E. Leonard

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