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10 SUPERIOR COURT OF CALIFORNIA
 11 COUNTY OF SAN JOAQUIN
 12

13 ERIC FARLEY and DANE RINALDI,
 14 individually and on behalf of other members
 of the general public similarly situated,

15 Plaintiffs,

16 vs.

17 DOLGEN CALIFORNIA LLC, and DOES 1
 18 through 50, inclusive,

19 Defendants.
20

Case No.: STK-CV-UOE-2016-0006714

FIRST AMENDED COMPLAINT

[CLASS ACTION]

- 1. Meal Periods and Rest Breaks
- 2. Waiting Time Penalties
- 3. Wage Statement Penalties
- 4. Unfair Business Practices
- 5. Violations of Private Attorneys General Act of 2004, Labor Code 2699 et seq.

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 FIRST AMENDED COMPLAINT
 [CLASS ACTION]

1 Plaintiffs ERIC FARLEY and DANE RINALDI (hereinafter referred to as “Plaintiffs”),
2 hereby submit their Complaint against Defendants DOLGEN California, LLC (“DOLGEN”),
3 and Does 1-50 (hereinafter collectively referred to as “Defendants”) on behalf of themselves,
4 and the class of others similarly situated, as follows:

5 **INTRODUCTION**

6 1. This class action is within the Court’s jurisdiction under California Labor Code
7 Sections 203, 226.7 and 512, and the applicable wage order(s) issued by Industrial Welfare
8 Commission (“IWC”), specifically IWC Wage Order No.7, and Business and Professions Code
9 Section § 17200 et seq.

10 2. This complaint challenges systemic illegal employment practices resulting in
11 violations of the California Labor Code and applicable IWC wage orders against employees of
12 Defendants.

13 3. Plaintiffs are informed and believe and based thereon allege Defendants, joint
14 and severally have acted intentionally and with deliberate indifference and conscious disregard
15 to the rights of all employees in providing off-duty meal periods and authorizing and permitting
16 off duty rest breaks.

17 4. Plaintiffs are informed and believe and based thereon allege Defendants have
18 engaged in, among other things, a system of willful violations of the California Labor Code and
19 applicable IWC wage orders by creating and maintaining policies, practices and customs that
20 knowingly deny employees meal periods and rest breaks.

21 **JURISDICTION AND VENUE**

22 5. This class action is brought pursuant to §382 of the California Code of Civil
23 Procedure. The monetary damages and restitution sought by Plaintiffs exceeds the minimal
24 jurisdiction limits of the Superior Court and will be established according to proof at trial. The
25 monetary damages sought on behalf of each and every member of the class and as aggregate
26 class damages exceed those jurisdictional limits as well. However, the claims of individual
27 class members, including each Plaintiff, are under the \$75,000 jurisdictional threshold for
28 federal court. For example, a class member who was or has been employed for a relatively brief

1 period could never reasonably be expected to receive a recovery of \$75,000 or more. In
2 addition, there is no federal question at issue, as all the issues related to payment of wages and
3 statutory penalties alleged herein are based solely on California law and statutes, including the
4 Labor Code, Civil Code, Code of Civil Procedure, and Business and Professions Code.

5 6. Venue is proper because the alleged wrongs regarding Plaintiffs occurred in San
6 Joaquin County. Defendants are located within California and San Joaquin County. Plaintiffs
7 worked for Defendants in San Joaquin County. The events that are the subject of this action
8 took place in San Joaquin County.

9 **PARTIES**

10 7. Plaintiffs were employed in retail stores owned and operated by Defendants
11 within one year from the filing date. Plaintiffs are and were victim of the policies, practices and
12 customs of Defendants complained of in this action in ways that have deprived them of right
13 guaranteed by California Labor Code §§ 226.7 and 512, and the applicable wage order(s) issued
14 by the Industrial Welfare Commission including IWC Wage Order No. 7 §§ 11 and 12, and
15 Business and Professions Code Section § 17200 et seq. Plaintiff Farley resides in San Joaquin
16 County, and was employed by Defendants at all times relevant to this complaint in San Joaquin
17 County. Plaintiff Rinaldi is a resident of Stanislaus County and was employed by Defendants at
18 all times relevant to this complaint in San Joaquin County.

19 8. Plaintiffs are informed and believe and based thereon allege Defendant
20 DOLGEN was and is a California Corporation doing business in the State of California with its
21 principal place of business in Goodlettsville, Tennessee. DOLGEN operates multiple retail
22 establishments throughout the State of California operating under the name “Dollar General.”

23 9. Plaintiffs are informed and believe and thereon allege that at all times herein
24 mentioned Defendants and DOES 1 through 50, are and were corporations, business entities,
25 individuals, and partnerships, licensed to do business and actually doing business in the State of
26 California. As such, and based upon all the facts and circumstances incident to Defendants’
27 business in California, Defendants are subject to California Labor Code §§ 226.7 and 512 and
28 the applicable wage order(s) issued by the Industrial Welfare Commission including IWC Wage

1 Order No.7 §§ 11 and 12, and Business and Professions Code Section § 17200 et seq.

2 10. Plaintiffs do not know the true names or capacities, whether individual, partner
3 or corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that
4 reason said Defendants are sued under such fictitious names, and Plaintiffs pray leave to amend
5 this complaint when the true names and capacities are known. Plaintiffs are informed and
6 believe and based thereon allege that each of said fictitious Defendants were responsible in
7 some way for the matters alleged herein and proximately caused Plaintiffs and members of the
8 class to be subject to the illegal employment practices, wrongs and injuries complained of
9 herein.

10 11. At all times herein mentioned, each of said Defendants participated in the doing
11 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
12 Defendants, and each of them, were the agents, servants and employees of each of the other
13 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
14 acting within the course and scope of said agency and employment.

15 12. Plaintiffs are informed and believe and based thereon allege that at all times
16 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
17 joint venturer of, or working in concert with each of the other co-Defendants and was acting
18 within the course and scope of such agency, employment, joint venture, or concerted activity.
19 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
20 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
21 Defendant.

22 13. At all times herein mentioned, Defendants, and each of them, were members of
23 and engaged in, a joint venture, partnership and common enterprise, and acting within the
24 course and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

25 14. At all times herein mentioned, the acts and omissions of various Defendants, and
26 each of them, concurred and contributed to the various acts and omissions of each and all of the
27 other Defendants in proximately causing the injuries and damages as herein alleged.

28 15. At all times herein mentioned, Defendants, and each of them, ratified each and

1 every act or omission complained of herein. At all times herein mentioned, the Defendants, and
2 each of them, aided and abetted the acts and omissions of each and all of the other Defendants
3 in proximately causing the damages as herein alleged.

4 **CLASS ACTION ALLEGATIONS**

5 16. **Definition:** The named individual Plaintiffs bring this action on behalf of
6 themselves and the class pursuant to California Code of Civil Procedure § 382. The class is
7 defined as: “All current and former individuals who work/worked for Defendants in the State of
8 California within four years of the filing date of this action, and who a) Defendants classified as
9 non-exempt workers, b) Defendants provided “key carrier” responsibilities, and c) worked one
10 or more shifts in which they were unable to be relieved of all work-related duties during rest
11 and/or meal breaks because they were the only individual on duty with “key carrier”
12 responsibility.”

13 17. **Numerosity:** The members of the class are so numerous that joinder of all
14 members would be impractical, if not impossible. The identity of the members of the class is
15 readily ascertainable by review of Defendants’ records. Plaintiffs are informed and believe and
16 based thereon allege that the number of class members who were regularly denied meal breaks
17 and/or rest breaks exceeds several hundred workers.

18 18. **Adequacy of Representation:** The named Plaintiffs are fully prepared to take all
19 necessary steps to represent fairly and adequately the interests of the class defined above
20 Plaintiffs’ attorneys are ready, willing and able to fully and adequately represent the class and
21 individual Plaintiff.

22 19. Defendants uniformly administered a corporate policy, practice and/or custom
23 concerning staffing levels, duties, responsibilities of the class members, which prevented class
24 members from being relieved of all duties during required rest and meal breaks. Specifically,
25 Plaintiffs and class members were the only key-carriers on duty and had to be available to
26 respond at a moment’s notice to resolve a variety of situations requiring a supervisorial
27 employee. Plaintiffs are informed and believe and based thereon allege this corporate conduct is
28 accomplished with the advance knowledge and designed intent to willfully withhold appropriate

1 wages for work performed by class members.

2 20. Defendants uniformly administered a corporate policy, practice and/or custom
3 concerning staffing levels, duties, responsibilities of the class members, which prevented class
4 members from being able to leave the premises during meal periods and rest breaks. Plaintiffs
5 are informed and believe and based thereon allege this corporate conduct is accomplished with
6 the advance knowledge and designed intent to willfully withhold appropriate wages for work
7 performed by class members.

8 21. **Common Question of Law and Fact:** There are predominant common question
9 of law and fact and a community of interest amongst Plaintiffs and the claims of the class
10 concerning whether:

11 (a) class members regularly were denied meal periods and rest breaks in violation of
12 California Labor Code §§ 226.7 and 512 and California Industrial Welfare Commission wage
13 Wage Order No.7, and

14 (b) whether Defendants' employment policies and practices wrongfully and illegally
15 failed to compensate Plaintiffs and the other members of the class as required by California law.

16 22. **Typicality:** The claims of Plaintiffs are typical of the claims of all members of
17 the class. The Plaintiffs are a member of the class and has suffered the alleged violations of
18 California Labor Code §§ 203, 221, 223, 400-410, 2802, 226.7, 512, 2802, CCR tit. 8, §
19 11050(8) and California Industrial Welfare Commission Wage Order No. 7.

20 23. The California Labor Code and Wage Order provisions upon which Plaintiffs
21 base their claims are broadly remedial in nature. These laws and labor standards serve an
22 important public interest in establishing minimum working conditions and standards in
23 California. These laws and labor standards protect the average working employee from
24 exploitation by employers who may seek to take advantage of superior economic and
25 bargaining power in setting onerous terms and conditions of employment.

26 24. The nature of this action and the format of laws available to Plaintiffs and
27 members of the class identified herein make the class action format a particularly efficient and
28 appropriate procedure to redress the wrongs alleged herein. If each employee were required to

1 file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable
2 advantage since it would be able to exploit and overwhelm the limited resources of each
3 individual Plaintiff with their vastly superior financial and legal resources. Requiring each class
4 member to pursue an individual remedy would also discourage the assertion of lawful claims
5 by employees who would be disinclined to file an action against their former and/or current
6 employer for real and justifiable fear of retaliation and permanent damage to their careers at
7 subsequent employment.

8 25. The prosecution of separate actions by the individual class members, even if
9 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
10 to individual class members against the Defendants and which would establish potentially
11 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
12 individual class members which would, as a practical matter, be dispositive of the interest of the
13 other class members not parties to the adjudications or which would substantially impair or
14 impede the ability of the class members to protect their interests. Further, the claims of the
15 individual members of the class are not sufficiently large to warrant vigorous individual
16 prosecution considering all of the concomitant costs and expenses.

17 26. Proof of a common business practice or factual pattern, of which the name
18 Plaintiffs experienced, are representative and will establish the right of each of the members of
19 the Plaintiffs' class to recovery on the causes of action alleged herein.

20 27. The Plaintiffs' class is commonly entitled to a specific fund with respect to the
21 compensation illegally and unfairly retained by Defendants. The Plaintiffs' class is commonly
22 entitled to restitution of those funds being improperly withheld by Defendants. This action is
23 brought for the benefit of the entire class and will result in the creation of a common fund.

24 **FACTUAL ALLEGATIONS RELEVANT TO CAUSES OF ACTION**

25 28. Defendants are a box-retail company that sell discount merchandise throughout
26 the State of California.

27 29. Plaintiffs ERIC FARLEY and DANE RINALDI were employed by Defendants
28 within one year of the filing date of this Complaint as non-exempt key carrier/supervisory

1 employees.

2 30. Plaintiffs and the class members (non-exempt employees) are often scheduled as
3 a matter of policy and/or practice as the only supervisory employees (key-carriers). As a result
4 they are required, as a matter of corporate policy, to remain on duty throughout their entire
5 shifts. Even in the event that they get an opportunity to stop working for a certain period of
6 time Plaintiffs and the class members must remain on duty to respond to any particular scenario
7 requiring a key-carrier's assistance. In addition, Plaintiffs and class members who worked shifts
8 in which they were only key-carrier on duty were not permitted to leave the premises.

9 31. Defendants willfully, intentionally and knowingly did not provide Plaintiff and
10 the class with accurate itemized statements showing all of the information required pursuant to
11 Labor Code §§ 226 and 1174 and Plaintiff and the class were injured thereby.

12 **FIRST CAUSE OF ACTION**

13 **FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO IWC WAGE**

14 **ORDER NO. 7**

15 32. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 33 as
16 though fully set for herein.

17 33. Cal. Lab. Code §226.7(a) provides, "No employer shall require any employee to
18 work during any meal or rest period mandated by an applicable order of the Industrial Welfare
19 Commission."

20 34. Industrial Welfare Commission Order No. 7-2001(11)(c) provides in relevant
21 part, "Unless the employees is relieved of all duty during a 30 minute meal period, the meal
22 period shall be considered an 'on duty' meal period and counted as time worked."

23 35. Industrial Welfare Commission Order No. 7-2001 (12)(A) authorizes employees
24 to take rest periods based on the total hours worked daily at the rate of ten minutes rest per four
25 hours or major fraction thereof.

26 36. Cal. Lab. Code Section 512, which provides in relevant part:

27 Meal periods

28 An employer may not employ an employee for a work period of more than five

1 hours per day without providing the employee with a meal period of not less than
2 30 minutes, except that if the total work period per day of the employee is no
3 more than six hours, the meal period may be waived by mutual consent of both
4 the employer and employee. An employer may not employ an employee for a
5 work period of more than 10 hours per day without providing the employee with a
6 second meal period of not less than 30 minutes, except that if the total hours
7 worked is no more than 12 hours, the second meal period may be waived by
8 mutual consent of the employer and the employee only if the first meal period was
9 not waived.

10 37. As alleged herein, Defendants routinely interrupted and/or failed to permit
11 authorize and/or provide Plaintiffs and class members with meal periods and rest breaks. By
12 requiring Plaintiffs and class members to remain on duty and by failing to allow Plaintiffs and
13 class members to leave the premises, Defendants violated Cal. Lab. Code §226.7(a), 512 and
14 Wage Order 7 and are thus liable to Plaintiffs and the Class.

15 38. As a result of the unlawful acts of defendants, Plaintiffs and class members have
16 been deprived of meal and rest breaks, and are entitled to recovery under Cal. Lab. Code
17 §226.7(b) in the amount of one additional hour of pay at the employee's regular rate of
18 compensation for each work day that a meal or rest period was not provided.

19 WHEREFORE, Plaintiffs on their own behalf and on behalf of the members of the class
20 pray for judgment as hereinafter set forth.

21 **SECOND CAUSE OF ACTION**

22 **FAILURE TO PAY COMPENSATION DUE UPON TERMINATION**

23 **[Cal. Labor Code §§ 201-203]**

24 39. Plaintiffs re-allege and incorporate by reference each and every allegation set
25 forth in the preceding paragraphs.

26 40. Sections 201 and 202 of the California Labor Code require Defendants to pay all
27 compensation due and owing to former employees in California at or around the time each
28 employee's employment is terminated or ends. Section 203 of the California Labor Code
provides that if an employer willfully fails to pay compensation promptly upon discharge or
resignation, as required by Sections 201 and 202, then the employer is liable for penalties in the
form of continued compensation up to thirty (30) work days.

1 and all monies withheld, acquired and/or converted by the Defendants by means of the unfair
2 practices complained of herein.

3 55. Plaintiffs seek, on their own behalf, on behalf of other members of the class
4 similarly situated, an injunction to prohibit Defendants from continuing to engage in the unfair
5 business practices complained of herein.

6 56. The restitution includes the equivalent of all unpaid premium compensation
7 mandated by Labor Code § 226.7 and IWC Wage Order No.7 § 11(B) and 12(B), including
8 interest thereon.

9 57. The acts complained of herein occurred within the last four years preceding the
10 filing of the complaint in this action.

11 58. Plaintiffs are informed and believe and on that basis allege that at all times herein
12 mentioned Defendants have engaged in unlawful, deceptive and unfair business practices, as
13 prescribed by California Business and Professions Code § 17200 et seq., including those set
14 forth herein above thereby depriving Plaintiffs and other members of the class the minimum
15 working condition standards and conditions due to them under the California laws and
16 Industrial Welfare Commission wage orders as specifically described therein.

17 **FIFTH CAUSE OF ACTION**

18 **PAGA**

19 **(On Behalf of Plaintiffs and the Class)**

20 59. At all times herein mentioned, PAGA was applicable to Plaintiffs' employment
21 with Defendants.

22 60. At all times herein set forth, PAGA provides that any provision of law under the
23 California Labor Code that provides for a civil penalty to be assessed and collected by the
24 LWDA for violations of the California Labor Code may, as an alternative, be recovered through
25 a civil action brought by an aggrieved employee on behalf of themselves and other current or
26 former employees pursuant to procedure outlined in the California Labor Code section 2699.3.

27 61. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved
28 employee," who is any person that was employed by the alleged violator and against whom one

1 or more of the alleged violations was committed.

2 62. Plaintiffs were employed by Defendants and the alleged violations were
3 committed against them during their employment and they are therefore aggrieved employees.
4 Plaintiffs and other employees are “aggrieved employees” as defined by California Labor Code
5 section 2699(c) in that they are all current or former employees of Defendants, and one more of
6 the alleged violations were committed against them.

7 63. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
8 employee, including Plaintiffs, may pursue a civil action arising under PAGA after the
9 following requirements have been met:

10 a. The aggrieved employee shall give written notice by certified mail (hereinafter
11 “Employee’s Notice”) to LWDA and the employer of the specific provisions of
12 the California Labor Code alleged to have been violated, including the facts and
13 theories to support the alleged violations.

14 b. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer
15 and the aggrieved employee by certified mail that it does not intend to investigate
16 the alleged violations within thirty (30) calendar days of the postmark date of the
17 Employee’s Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice
18 is not provided within thirty three (33) calendar days of the postmark date of the
19 Employee’s Notice, the aggrieved employee may commence a civil action
20 pursuant California Labor Code section 2699 to recover civil penalties in addition
21 to any other penalties to which the employee may be entitled.

22 64. On or about July 11, 2016 Plaintiffs provided written notice by certified mail to
23 the LWDA and to Defendants of the specific provisions of the California Labor Code alleged to
24 have been violated, including the facts and theories to support the alleged violations.

25 65. The LWDA did not respond within the permitted time. Therefore, the
26 administrative prerequisites under California Labor Code section 2699.3(a) to recover civil
27 penalties against Defendants in addition to other remedies, for violations of the California Labor
28 Code have been satisfied.

PRAYER FOR RELIEF

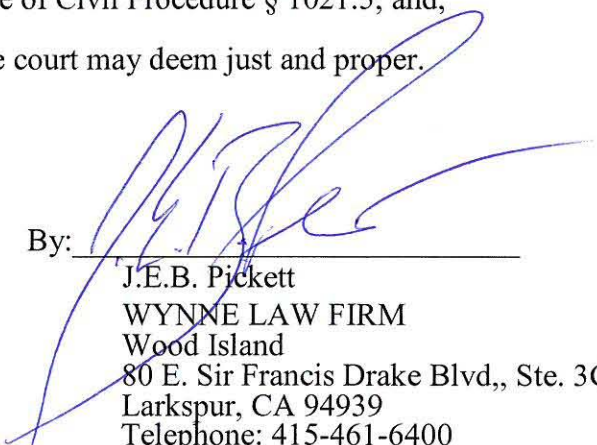
WHEREFORE, Plaintiffs on their own behalf and on the behalf of the members of the
class, prays for judgment as follows:

1. For an order certifying the proposed class;

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- 2. Upon the First and Fourth Causes of Action, for consequential damages and/or restitution according to proof;
- 3. Upon the Second and Third Causes of Action, for penalties pursuant to Cal. Labor Code §§ 201, et seq, and 226;
- 4. Upon the Fifth Cause of Action, for penalties pursuant to the PAGA.
- 5. Upon the Second Cause of Action, that Defendants be ordered to show cause why they should not be enjoined and ordered to comply with the applicable California Industrial Welfare Commission wage orders related to meal breaks and record keeping for Defendants' employees related to same; and for an order enjoining and restraining Defendants and their agents, servants and employees related thereto;
- 6. Upon the Fourth Cause of Action, for an injunction to prohibit Defendants to engage in the unfair business practices complained of herein;
- 7. For pre-judgment interest as allowed by California Labor Code §§ 218.5 or 1194 and California Civil Code § 3287;
- 8. For reasonable attorney's fees, expenses and costs as provided by California Labor Code §§ 218.5, 1194 or 2802(c) and Code of Civil Procedure § 1021.5; and,
- 9. For such other and further relief the court may deem just and proper.

Dated: September 15, 2016

By: 

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