

MAR 22 2013

CLERK OF THE SUPERIOR COURT  
By Glenn Barrio Deputy

1 LAW OFFICES OF THOMAS W. FALVEY  
THOMAS W. FALVEY, SBN 65744  
2 J.D. HENDERSON, SBN 235767  
MICHAEL H. BOYAMIAN, SBN 256107  
3 301 North Lake Avenue, Suite 800  
Pasadena, California 91101  
4 Telephone: (626) 795-0205  
Facsimile: (626) 795-3096  
5 E-mail: thomaswfalvey@gmail.com; hendersonj2004@gmail.com

6 SUNDEEN SALINAS & PYLE  
HUNTER PYLE, SBN 191125  
7 MANA BARARI, SBN 275328  
428 13th Street, 8th Floor  
8 Oakland, California 94612  
Telephone: (510) 663-9240  
9 Facsimile: (510) 663-9241  
E-mail: hpyle@ssrplaw.com

10 Attorneys for Plaintiff MARITZA STOVALL-GUSMAN,  
11 on behalf of herself, all others similarly situated, and the  
general public

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE COUNTY OF ALAMEDA

14  
15 MARITZA STOVALL-GUSMAN, an  
individual, on behalf of herself and all  
16 others similarly situated and the general  
public,

17  
18 Plaintiff,

19 vs.

20 W.W. GRAINGER, INC., and DOES 1  
through 50, inclusive,

21 Defendants.  
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CASE NO.: **RA 3672622**  
[CLASS ACTION]

**COMPLAINT FOR:**

1. UNPAID WAGES;
2. FAILURE TO PAY MINIMUM WAGE;
3. FAILURE TO PAY OVERTIME PREMIUM PAY;
4. FAILURE TO FURNISH ACCURATE WAGE AND HOUR STATEMENTS;
5. FAILURE TO PAY ALL WAGES IN A TIMELY MANNER;
6. FAILURE TO PAY ALL WAGES FOLLOWING RESIGNATION OR TERMINATION;
7. UNFAIR BUSINESS PRACTICES;
8. FAILURE TO REIMBURSE EXPENSES; and
9. PRIVATE ATTORNEYS GENERAL ACT

**JURY TRIAL DEMANDED**

1 Plaintiff MARITZA STOVALL-GUSMAN ("Plaintiff"), an individual, on behalf of  
2 herself, all others similarly situated, and the general public, complains and alleges, on  
3 information and belief, the following against DEFENDANTS W.W. GRAINGER, INC. and  
4 DOES 1-50 (individually and collectively referred to as "Defendants" or "Grainger"):

5 **GENERAL ALLEGATIONS**

6 1. This is a proposed class action brought against Defendants on behalf of Plaintiff  
7 and all other individuals who were employed as Account Managers in California at any time  
8 during the four years preceding the filing of this action, and continuing while this action is  
9 pending ("Class Period"), and who were denied the benefits and protections required under the  
10 California Labor Code and other statutes and regulations applicable to employees in the State of  
11 California (collectively, "Account Managers" or "the Class").

12 2. During the Class Period, Defendants:

- 13 a. failed to pay wages for all hours worked by Account Managers;  
14 b. failed to pay minimum wages due to the Account Managers;  
15 c. failed to pay overtime wages due to the Account Managers;  
16 d. failed to provide the Account Managers with timely and accurate wage and  
17 hour statements;  
18 e. failed to maintain complete and accurate payroll records for the Account  
19 Managers;  
20 f. wrongfully withheld wages and compensation due to the Account  
21 Managers;  
22 g. committed unfair business practices in an effort to increase profits and to  
23 gain an unfair business advantage at the expense of the Account Managers and the public.  
24 h. failed to pay the Account Managers all wages due within 24 hours of  
25 termination or within 72 hours of resignation; and  
26 i. violated the California Labor Code and owe civil penalties pursuant to the  
27 Private Attorney General Act ("PAGA"), Cal. Labor Code Section 2699(a).

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1           8.     Plaintiff is informed and believes and based thereon alleges that Grainger  
2 uniformly applies its labor staffing guidelines and overtime policies to all of Grainger's Account  
3 Managers.

4           9.     Plaintiff is currently unaware of the true names and capacities of the defendants  
5 sued in this action by the fictitious names DOES 1 through 50, inclusive, and therefore sues those  
6 defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names  
7 and capacities of such fictitiously named defendants when they are ascertained. Plaintiff  
8 is informed and believes and based thereon states that the persons sued herein as DOES are in  
9 some manner responsible for the conduct, injuries and damages herein alleged.

10          10.    Plaintiff is informed and believes and based thereon alleges that each defendant  
11 sued in this action, including each defendant sued by the fictitious names DOES 1 through 50,  
12 inclusive, is responsible in some manner for the occurrences, controversies and damages alleged  
13 below.

14          11.    Plaintiff is informed and believes and based thereon alleges that DOES 1 through  
15 50, inclusive were the agents, servants and/or employees of Defendants and, in doing the things  
16 hereinafter alleged and at all times, were acting within the scope of their authority as such agents,  
17 servants and employees, and with the permission and consent of Defendants.

18          12.    Plaintiff is informed and believes and based thereon alleges that Defendants  
19 ratified, authorized, and consented to each and all of the acts and conduct of each other as alleged  
20 herein. Each of the Defendants was the agent and/or employee of the others, and the conduct of  
21 each defendant herein alleged was authorized and/or ratified by the others. The conduct of  
22 Grainger was carried on by and through its authorized agents, including owners, officers,  
23 directors, managers and supervisors.

24                           **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

25          13.    On or about February 8, 2013, Plaintiff, individually and on behalf of the Class,  
26 provided written notice by certified mail to the Labor and Workforce Development Agency  
27 ("LWDA") and Defendants of the specific violations of the Labor Code Defendants have  
28 violated and continue to violate. Attached as Exhibit 1 is a true and correct copy of that notice.



1 she worked, including straight time and overtime premium pay, and as otherwise required  
2 pursuant to the Employment Laws and Regulations.

3 21. Plaintiff seeks restitution and disgorgement of all sums wrongfully obtained by  
4 Defendants through unfair business practices in violation of Business & Professions Code  
5 sections 17200, *et seq.*, to prevent the Defendants from benefitting from their violations of law  
6 and/or unfair acts. Such sums recovered under the Unfair Competition Act and Unfair  
7 Businesses Act are equitable in nature and are not to be considered damages. Plaintiff is also  
8 entitled to costs, attorney's fees, interest and penalties as provided for by the Labor Code and the  
9 Business & Professions Code.

10 22. To the extent that any Class Member, including Plaintiff, entered into any  
11 arbitration agreement with any Defendant and such agreement purports to require arbitration,  
12 such agreement is void and unenforceable. Any such agreement was one of adhesion, executed  
13 under duress, lacked consideration and mutuality, and was otherwise void under both California  
14 Labor Code section 229 and the California Supreme Court case of *Armendariz v. Foundation*  
15 *Health Psychare Services, Inc.* (2000) 24 Cal.4th 83.

16 **CLASS ACTION ALLEGATIONS**

17 23. All current and former Account Managers who were employed in California  
18 during the class period, including Plaintiff, are proposed class members (henceforth, "Proposed  
19 Class Members").

20 24. During the Class Period, Plaintiff and Proposed Class Members worked out of  
21 their homes and were required to log-in to Grainger's computer system at the start of each  
22 workday and log-out when they ended their work. Account Managers traveled to customer  
23 locations and met with Grainger's customers, but the vast majority of work performed by  
24 Account Managers took place at a fixed location - their residence. This can be shown through  
25 Grainger's log-in records, telephone records, and other documents.

26 25. During the Class Period, Plaintiff and all Proposed Class Members were regularly  
27 scheduled as a matter of company policy to work, and they did in fact work, in excess of eight  
28 hours per workday and/or in excess of forty hours per workweek without receiving all straight

1 time and overtime compensation for all hours worked, in violation of the Employment Laws and  
2 Regulations. Defendants have systematically and uniformly classified Account Managers as  
3 “exempt” employees in violation of the Employment Laws and Regulations when, in fact, they  
4 were “non-exempt” employees according to California law.

5 26. Grainger has not established an exemption from its legal obligations because all  
6 proposed class members regularly spend less than half their working time outside the workplace  
7 selling Grainger’s products or obtaining orders or contracts for products and services. Instead,  
8 they work a majority of the time from a fixed location. Moreover, Account Managers receive  
9 less than half of their compensation from sales commissions. Accordingly, Account Managers  
10 are not exempt under either the outside sales or inside sales exemptions.

11 27. Additionally, Grainger failed to reimburse Account Managers, including Plaintiff,  
12 for work-related costs and expenses. Grainger employs a uniform company practice of allocating  
13 a fixed amount of money to reimburse all work-related expenses. However, this pay scheme  
14 does not reimburse all work-related expenses.

15 28. During the Class Period, Account Managers have been required to work more than  
16 eight hours per day and more than forty hours per workweek. Defendants have routinely failed  
17 and refused to compensate Account Managers all of the overtime wages they are due.

18 29. During the Class Period, Defendants have failed and refused to provide Account  
19 Managers with timely and accurate wage and hour statements showing gross hours earned, total  
20 hours worked, all deductions made, net wages earned, and all applicable hourly rates in effect  
21 during each pay period and the corresponding number of hours worked at each hourly rate.

22 30. During the Class Period, Defendants have failed and refused to comply with the  
23 employer’s legal obligation to maintain complete and accurate payroll records, including records  
24 showing the gross amount earned, total hours worked, and all applicable hourly rates in effect  
25 during each pay period and the corresponding number of hours worked at each hourly rate.

26 31. During the Class Period, Defendants have wrongfully withheld and failed to pay  
27 Account Managers all wages and other compensation due them, in violation of the Employment  
28 Laws and Regulations.

1           32. Plaintiff seeks payment for her and the Proposed Class Members of unpaid wages,  
2 including straight time and overtime premium pay, other compensation, reimbursement of all  
3 work-related expenses, all benefits required pursuant to the Employment Laws and Regulations,  
4 plus applicable penalties and interest. Plaintiff also seeks attorney's fees and costs as provided  
5 by statute.

6           33. The Proposed Class is ascertainable in that its members can be identified using  
7 information contained in Defendants' payroll and personnel records.

8           34. The Account Managers are so numerous and geographically dispersed throughout  
9 California that joinder of each individual Account Manager would be impracticable, and the  
10 disposition of their claims in a class action, rather than numerous individual actions, will benefit  
11 the parties, the Court and the interests of justice.

12           35. As alleged herein, Defendants' conduct was fraudulent, deceitful and despicable  
13 in that Defendants' had a scheme and plan to knowingly circumvent California wage and hour  
14 laws for Defendants' benefit. Defendants' conduct was despicable in that it was carried on with  
15 a willful and conscious disregard of the rights of others. Defendants' conduct was oppressive in  
16 that it subjected people to cruel and unjust hardship in conscious disregard of the rights of others.  
17 Defendants' conduct was fraudulent in that consisted of intentional misrepresentations, deceit,  
18 and/or concealment of a material fact known to Defendants with the intention of thereby  
19 depriving a person of property or legal rights or otherwise causing injury. Defendants' conduct  
20 violated the Employment Laws and Regulations. Defendants' systematic acts and practices also  
21 violated, *inter alia*, California Business & Professions Code section 17200, *et seq.*

22           36. The proposed Class that Plaintiff seeks to represent is defined as follows:

23           All Account Managers who are or have been employed by Defendants in  
24           the State of California at any time during the four years prior to the  
              commencement of this action.

25           37. There is a well-defined community of interest in the litigation and the  
26 proposed Class is easily ascertainable:

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1 a. Numerosity: While the precise number of Proposed Class Members has not been  
2 determined at this time, Plaintiff is informed and believes that Defendants have employed in  
3 excess of 40 persons as Account Managers during the proposed Class Period.

4 b. Commonality: There is a well-defined community of interest in the questions of  
5 law and fact involved in this action because Defendants' failure to pay Account Managers their  
6 wages or afford them the protections required under the Employment Laws and Regulations  
7 affects all Account Managers. Common questions of law and fact predominate over questions  
8 that affect only individual Account Managers because all Account Managers' duties and  
9 activities have been controlled and directed by Defendants. The predominant questions of law  
10 and fact include, but are not limited to:

- 11 i. Was the Class properly classified as exempt by Defendants from overtime  
12 compensation?;
- 13 ii. How was the Class compensated?;
- 14 iii. Was the Class expected to, and/or did as a matter of company policy and  
15 practice, regularly work hours in excess of eight hours per day and/or forty  
16 per week?;
- 17 iv. Did Defendants devise a scheme and plan to circumvent California wage  
18 and hour laws?;
- 19 v. Was/is Defendants' conduct fraudulent and deceitful?;
- 20 vi. Was/is Defendants' conduct despicable in that it was carried on with a  
21 willful and conscious disregard of the rights of others?;
- 22 vii. Was/is Defendant's conduct oppressive in that it subjected people to cruel  
23 and unjust hardship in conscious disregard of the rights of others?;
- 24 viii. Was/is Defendant's conduct fraudulent in that consisted of intentional  
25 misrepresentations, deceit, or concealment of a material fact known to  
26 Defendant with the intention of thereby depriving a person of property or  
27 legal rights or otherwise causing injury?;

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1 ix. Did/does Defendants' conduct violate the Employment Laws and  
2 Regulations?; and

3 x. Do/did Defendants' systematic acts and practices violate, *inter alia*,  
4 California Business & Professions Code section 17200, *et seq.*?

5 c. Typicality: Plaintiff's claims are typical of those of the other Account Managers  
6 because all Account Managers share the same or similar employment duties and activities and all  
7 have been denied the benefits and protections of the Employment Laws and Regulations in the  
8 same manner. As Defendants have uniformly applied the same labor staffing guidelines and  
9 overtime policies to all Account Managers, Plaintiff's claims are typical of the claims of all  
10 Account Managers. Plaintiff's claims are also typical because they suffered the same damages as  
11 those suffered by all Account Managers.

12 d. Adequacy of Representation: Plaintiff is a member of the proposed Class.  
13 Plaintiff can fairly and adequately represent and protect the interests of all Account Managers in  
14 that Ms. Stovall-Gusman does not have any disabling conflicts of interest which are antagonistic  
15 to those of all other Account Managers. Plaintiff seeks no relief which is antagonistic or adverse  
16 to the other Account Managers, and the infringement of their rights and the damages they have  
17 suffered are typical of all other Account Managers. Plaintiff's counsel are competent and  
18 experienced in litigating class actions in California based on large employers' violations of the  
19 Employment Laws and Regulations.

20 e. Superiority of Class Action: A class action is superior to other available means for  
21 the fair and efficient adjudication of this controversy. The nature of this action and the nature of  
22 laws available to Plaintiff and the other Account Managers in the putative Class make use of the  
23 class action a particularly efficient and effective procedure because:

24 i. For many of the Account Managers, individual actions or other individual  
25 remedies would be impracticable and litigating individual actions would  
26 be too costly;

27 ii. The action involves a large corporate employer (Grainger) and a large  
28 number of individual employees (Plaintiff and the other Account

1 Managers), many with relatively small claims and all with common issues  
2 of law and fact;

- 3 iii. If the Account Managers are forced to bring individual lawsuits, the  
4 corporate defendant would necessarily gain an unfair advantage, the ability  
5 to exploit and overwhelm the limited resources of individual Class  
6 members with vastly superior financial and legal resources;
- 7 iv. The costs of individual suits would likely consume the amounts recovered;
- 8 v. Requiring each Class member to pursue an individual remedy would also  
9 discourage the assertion of lawful claims by current employees of  
10 Defendants, who would be disinclined to pursue an action against their  
11 present and/or former employer due to an appreciable and justified fear of  
12 retaliation and permanent damage to their immediate and/or future  
13 employment; and
- 14 vi. Common business practices Plaintiff experienced are representative of  
15 those experienced by all Account Managers and can establish the right of  
16 all Account Managers to recover on the alleged claims.

17  
18 **FIRST CAUSE OF ACTION**

19 **(UNPAID WAGES - By Plaintiff Individually and on Behalf of All Proposed Class**  
20 **Members: Labor Code §§ 216 and 1194)**

21 38. As a separate and distinct cause of action, Plaintiff complains and realleges all of  
22 the allegations contained in this complaint, and incorporates them by reference into this cause of  
23 action as though fully set forth herein, excepting those allegations which are inconsistent with  
24 this cause of action.

25 39. Plaintiff bring this action to recover unpaid compensation for all hours worked as  
26 defined by the applicable Industrial Welfare Commission wage order as the time during which an  
27 employee is subject to the control of an employer, and includes all the time the employee is  
28 suffered or permitted to work, whether or not required to do so.



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2 Defendants. The Wage Orders and California law provided, among other things, that Plaintiff  
3 must receive minimum wage earnings for all hours worked.

4 46. During the Class Period, Defendants have routinely failed to pay Proposed Class  
5 Members, including Plaintiff, the minimum wage required by the Employment Laws and  
6 Regulations for all hours worked.

7 47. The Proposed Class Members, including Plaintiff, have been deprived of their  
8 rightfully earned minimum wages as a direct and proximate result of Defendants' policies and  
9 practices and Defendants' failure and refusal to pay said wages for all hours worked. The  
10 Proposed Class Members, including Plaintiff, are entitled to recover the past wages owed to  
11 them, under the minimum wage laws, plus an additional equal amount as liquidated damages as  
12 permitted under the Wage Orders and California law, plus interest thereon and attorneys' fees  
13 and costs, pursuant to Labor Code §§ 1194 and 2698, in an amount according to proof at the time  
14 of trial.

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16 **THIRD CAUSE OF ACTION**

17 **(FAILURE TO PAY OVERTIME PREMIUM PAY - By Plaintiff Individually and on**  
18 **Behalf of All Proposed Class Members: Labor Code §§ 510 and 1194)**

19 48. As a separate and distinct cause of action, Plaintiff complains and realleges all of  
20 the allegations contained in this complaint, and incorporates them by reference into this cause of  
21 action as though fully set forth herein, excepting those allegations which are inconsistent with  
22 this cause of action.

23 49. During the Class Period, Defendants have routinely required Proposed Class  
24 Members, including Plaintiff, to work over eight hours in a day and over forty hours in a  
25 workweek.

26 50. Defendants are not entitled to an overtime exemption because Plaintiff and the  
27 Proposed Class Members are non-exempt employees under the Employment Laws and  
28 Regulations.

1 51. Defendants have failed and refused to pay the Proposed Class Members, including  
2 Plaintiff, overtime premium compensation as required by the Employment Laws and  
3 Regulations.

4 52. The Proposed Class Members, including Plaintiff, have been deprived of their  
5 rightfully earned overtime premium compensation as a direct and proximate result of  
6 Defendants' policies and practices and Defendants' failure and refusal to pay that compensation.

7 53. As a result of Defendants', and each of their unlawful acts, Plaintiff and the  
8 Proposed Class Members have been deprived of compensation in an amount according to proof  
9 at the time of trial, and are entitled to recovery of such amounts, plus interest thereon and  
10 attorneys' fees and costs, pursuant to Labor Code §§ 1194 and 2698, in an amount according to  
11 proof at the time of trial.

12  
13 **FOURTH CAUSE OF ACTION**

14 **(FAILURE TO FURNISH ACCURATE WAGE AND HOUR STATEMENTS- By Plaintiff**

15 **Individually and on Behalf of All Account Managers: Labor Code § 226)**

16 54. As a separate and distinct cause of action, Plaintiff complains and realleges all of  
17 the allegations contained in this complaint, and incorporates them by reference into this cause of  
18 action as though fully set forth herein, excepting those allegations which are inconsistent with  
19 this cause of action.

20 55. During the Class Period, Defendants have routinely failed to provide Account  
21 Managers, including Plaintiff, with timely and accurate wage and hour statements showing gross  
22 hours earned, total hours worked, and all applicable hourly rates in effect during each pay period  
23 and the corresponding number of hours worked at each hourly rate.

24 56. As a consequence of Defendants' actions, Account Managers are entitled to all  
25 available statutory penalties, costs and reasonable attorney's fees, including those provided in  
26 California Labor Code section 226(e), as well as all other available remedies.

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1 **FIFTH CAUSE OF ACTION**

2 **(FAILURE TO PAY ALL WAGES IN A TIMELY MANNER - By Plaintiff Individually**  
3 **and on Behalf of All Account Managers: Labor Code § 204)**

4 57. As a separate and distinct cause of action, Plaintiff complains and realleges all of  
5 the allegations contained in this complaint, and incorporates them by reference into this cause of  
6 action as though fully set forth herein, excepting those allegations which are inconsistent with  
7 this cause of action.

8 58. Labor Code § 204 applied to Defendants' employment of Account Managers,  
9 including Plaintiff. At all times relevant hereto, Labor Code § 204 provided that all wages  
10 earned by Managers, including Plaintiff, in any employment between the 1st and 15th days,  
11 inclusive, of any calendar month, other than those wages due upon termination of an employee,  
12 are due and payable between the 16th and 26th day of the month during which the work was  
13 performed. Furthermore, at all times relevant hereto, Labor Code § 204 provided that all wages  
14 earned by Managers, including Plaintiff, in any employment between the 16th and the last day,  
15 inclusive, of any calendar month, other than those wages due upon termination of an employee,  
16 are due and payable between the 1st and 10th day of the following month.

17 59. Defendants failed to pay Account Managers, including Plaintiff, wages for all  
18 hours worked.

19 60. Defendants failed to pay Account Managers, including Plaintiff, for all wages  
20 earned, and, therefore violated Labor Code § 204. Accordingly, Plaintiff, on behalf of herself  
21 and all others similarly situated, is entitled to recover all damages, penalties and other remedies  
22 available for violation of Labor Code § 204.

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1 SIXTH CAUSE OF ACTION

2 (FAILURE TO PAY ALL WAGES FOLLOWING RESIGNATION OR TERMINATION

3 - By Plaintiff Individually and on Behalf of All Proposed Class Members: Labor Code §§  
4 201-203)

5 61. As a separate and distinct cause of action, Plaintiff complains and realleges all of  
6 the allegations contained in this complaint, and incorporates them by reference into this cause of  
7 action as though fully set forth herein, excepting those allegations which are inconsistent with  
8 this cause of action.

9 62. During the Class Period, Defendants failed to pay accrued wages and other  
10 compensation due immediately to each Proposed Class Member who was terminated, and failed  
11 to pay accrued wages and other compensation due within seventy-two hours to each proposed  
12 Class Member, including Plaintiff, who ended his or her employment.

13 63. Labor Code § 201 requires an employer who discharges an employee to pay  
14 compensation due and owing to said employee immediately upon discharge. Labor Code § 203  
15 provides that if an employer willfully fails to pay compensation promptly upon discharge, as  
16 required by § 201, the employer is liable for waiting time penalties in the form of continued  
17 compensation for up to 30 work days.

18 64. Defendants, and each of them, willfully failed and refused, and continue to  
19 willfully fail and refuse, to timely pay compensation due to proposed Class Members upon  
20 termination or resignation, as required by Labor Code § 201. As a result, Defendants, and each  
21 of them, are liable to Plaintiff and all Proposed Class Members similarly situated for waiting time  
22 penalties, together with interest thereon and attorneys' fees and costs, pursuant to California  
23 Labor Code § 203, as well as all other available remedies, in an amount according to proof at the  
24 time of trial.

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1 SEVENTH CAUSE OF ACTION

2 (UNFAIR BUSINESS PRACTICES - By Plaintiff Individually and on Behalf of All  
3 Account Managers: Business & Professions Code §§ 17200, *et seq.*)

4 65. As a separate and distinct cause of action, Plaintiff complains and realleges all of  
5 the allegations contained in this complaint, and incorporates them by reference into this cause of  
6 action as though fully set forth herein, excepting those allegations which are inconsistent with  
7 this cause of action.

8 66. Defendants violated the Employment Laws and Regulations by their:

9 a. Failure and refusal to pay Account Managers, including Plaintiff, wages  
10 for all hours worked;

11 b. Failure and refusal to pay Account Managers, including Plaintiff, overtime  
12 wages;

13 c. Failure and refusal to provide Account Managers, including Plaintiff, with  
14 timely and accurate wage and hour statements; and

15 d. Failure to maintain complete and accurate payroll records for Account  
16 Managers, including Plaintiff;

17 all of which constitute unfair business practices in violation of the Business &  
18 Professions Code section 17200, *et seq.*

19 67. Defendants have avoided payment of wages, overtime wages and other benefits as  
20 required by the Employment Laws and Regulations. Further, Defendants have failed to record,  
21 report and pay the correct sums of assessment to the State authorities under the California Labor  
22 Code and other applicable regulations.

23 68. As a result of Defendants' unfair business practices, Defendants have reaped  
24 unfair benefits and illegal profits at the expense of Account Managers, including Plaintiff, and  
25 members of the public. Defendants should be made to disgorge their ill-gotten gains and to  
26 restore them to Account Managers, including Plaintiff.

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1 **EIGHTH CAUSE OF ACTION**

2 **(FAILURE TO REIMBURSE EXPENSES - By Plaintiff Individually and on Behalf of All**

3 **Proposed Class Members: Labor Code §§ 1197.1(a) and 2802(a)**

4 69. As a separate and distinct cause of action, Plaintiff complains and realleges all of  
5 the allegations contained in this complaint, and incorporates them by reference into this cause of  
6 action as though fully set forth herein, excepting those allegations which are inconsistent with  
7 this cause of action.

8 70. Defendants failed to reimburse Account Managers for expenses incurred in  
9 servicing Grainger's customers through its uniform company policy of allocating a fixed amount  
10 of money for all work-related expenses. Labor Code § 2802(a) states in relevant part:

11 An employer shall indemnify his or her employee for all necessary  
12 expenditures or losses incurred by the employee in direct  
consequence of the discharge of his or her duties[.]

13 Subsection (c) of Labor Code § 2802 further states that "[f]or purposes of this section, the terms  
14 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to,  
15 attorneys' fees incurred by the employee enforcing the rights granted by this section."

16 71. Plaintiff and Proposed Class Members were and continue to be required to pay for  
17 costs incurred in connection with discharging work-related duties for the benefit of Grainger's  
18 customers. As such, Plaintiff and members of the putative class seek reimbursement for costs  
19 incurred, civil penalties as set forth in Sections 225.5, 558, and 1197.1 and other provisions of  
20 the Labor Code, interest, costs of suit and attorneys' fees pursuant to Section 2802(c) and the  
21 other sections of the Labor Code referenced herein, and the relief as described below.

22 **NINTH CAUSE OF ACTION**

23 **(PRIVATE ATTORNEY GENERAL ACT - By Plaintiff Individually and on Behalf of All**

24 **Proposed Class Members: Labor Code §§ 201, 202, 203, 204, 210, 216, 225.5, 226, 226.3,**

25 **510, 558, 1194, 1194.2, 1197.1, 1198, 2802 and 2698 et seq.)**

26 72. As a separate and distinct cause of action, Plaintiff complains and realleges all of  
27 the allegations contained in this complaint, and incorporates them by reference into this cause of  
28 action as though fully set forth herein, excepting those allegations which are inconsistent with

1 this cause of action.

2 73. Plaintiff is an aggrieved employee as defined in Labor Code § 2699 (a). She  
3 brings this cause on behalf of herself and other current or former employees affected by the labor  
4 law violations alleged in this complaint.

5 74. Defendants, at all times relevant to this complaint, were employers or persons  
6 acting on behalf of an employer who violated Plaintiff's rights by violating California labor laws  
7 regulating payment of wages and/or the hours and days of work, and are subject to civil penalties  
8 as set forth above.

9 75. Defendants committed the following violations of the California Labor Code  
10 against Plaintiff, and, on information and belief, against other current or former employees while  
11 they were employed by Defendants:

12 a. Defendants violated Labor Code §§ 201-202 by failing to pay Proposed  
13 Class Members, including Plaintiff, all wages due on the date of the employee's involuntary  
14 termination or within 72 hours of the employee's voluntary termination.

15 b. Defendants violated Labor Code § 204 by failing to pay all wages due, to  
16 Proposed Class Members, including Plaintiff, at least twice during each calendar month, in  
17 compliance with those provisions.

18 c. Defendants violated Labor Code § 216 by, having the ability to pay,  
19 willfully refusing to pay wages due and payable after demand has been made to Proposed Class  
20 Members, including Plaintiff.

21 d. Defendants violated Labor Code § 226 by failing to provide accurate  
22 itemized wage statements to Proposed Class Members, including Plaintiff.

23 e. Defendants violated Labor Code § 510 and provisions of IWC Wage Order  
24 7-2001 by failing to compensate Proposed Class Members, including Plaintiff, at one and one-  
25 half times the regular rate of pay for any work in excess of 8 hours/day and 40 hours/week.

26 f. Defendants violated Labor Code § 1174 by failing to maintain payroll  
27 records showing the daily hours worked by Proposed Class Members, including Plaintiff.

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1 g. Defendants violated Labor Code § 1194 and provisions of IWC Wage  
2 Order 7-2001 by failing to pay Proposed Class Members, including Plaintiff, the legal minimum  
3 wage.

4 h. Defendants violated Labor Code § 1199 by requiring or causing Proposed  
5 Class Members, including Plaintiff, to work for longer hours than those fixed, or under  
6 conditions of labor prohibited by IWC Wage Order 7-2001, by paying Proposed Class Members,  
7 including Plaintiff, a wage less than the minimum fixed by IWC Wage Order 7-2001, or by  
8 violating or refusing or neglecting to comply with the provisions of Labor Code Division 2, Part  
9 4, Chapter 1 or IWC Wage Order 7-2001.

10 76. Plaintiff, individually and on behalf of all others similarly situated, provided  
11 written notice on or about February 8, 2013 by certified mail to the Labor and Workforce  
12 Development Agency and to Grainger of the specific violations of the California Labor Code  
13 Defendants have violated and continue to violate. Attached as Exhibit 1 is a true and correct  
14 copy of the letter sent to the LWDA and Grainger.

15 77. Plaintiff has permitted 33 calendar days to transpire from the postmark of  
16 Plaintiff's notice without having received notice from the LWDA advising whether or not the  
17 agency intended to investigate Plaintiff's claims. During this time, Grainger has failed to provide  
18 notice that the alleged violations have been cured. Therefore, Plaintiff is entitled to commence  
19 her civil action pursuant to Labor Code § 2699.

20 78. Plaintiff and all aggrieved persons have therefore exhausted all administrative  
21 procedures required of them under Labor Code §§ 2698, 2699 and 2699.3, and as a result, are  
22 justified as a matter of right in bringing forward this cause of action.

23 79. Pursuant to Labor Code § 2699(a) Plaintiff seeks to recover civil penalties, as  
24 otherwise provided by statute, for which Defendants are liable as a result of their violations of the  
25 California Labor Code and provisions of the applicable Industrial Wage Orders as follows:

26 a. For violations of Labor Code §§ 201-202 and 204, penalties under Labor  
27 Code § 210: for an initial violation, one hundred dollars (\$100) for each failure to pay each  
28 employee; for each subsequent violation, or any willful or intentional violation, two hundred

1 dollars (\$200) for each failure to pay each employee, plus 25% of the amount unlawfully  
2 withheld.

3 b. For violations of Labor Code § 216, penalties under Labor Code § 225.5:  
4 for an initial violation, one hundred dollars (\$100) for each failure to pay each employee; for  
5 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for  
6 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

7 c. For violations of Labor Code § 226, a civil penalty under Labor Code §  
8 226.3 in the amount of \$250 per employee per violation in the initial citation and \$1,000 per  
9 employee for each violation in a subsequent citation.

10 d. For violations of Labor Code § 510, and provisions of IWC  
11 Wage Order 7-2001 relating to hours and days of work, penalties under Labor Code § 558 in the  
12 amount of \$50 for each underpaid employee for each pay period, \$100 for each subsequent  
13 violation, in addition to an amount sufficient to recover underpaid wages.

14 e. For violations of Labor Code § 1174, civil penalties under Labor Code §  
15 1174.5.

16 f. For violations of Labor Code § 1194 and provisions of IWC Wage Order  
17 7-2001 relating to payment of the legal minimum wage, penalties under Labor Code § 1197.1 in  
18 the amount of \$100 for each underpaid employee for each pay period, \$250 for each subsequent  
19 violation.

20 g. For violations of Labor Code § 1199, provisions of IWC Wage Order 7-  
21 2001 relating to conditions of labor and payment of the legal minium wage, or the violation or  
22 refusal or neglect to comply with the provisions of Labor Code Division 2, Part 4, Chapter 1 or  
23 IWC Wage Order 7-2001, penalties under Labor Code § 1199 in an amount not less than \$100.

24 80. Pursuant to PAGA, Plaintiff should be awarded twenty-five percent (25%) of all  
25 penalties due under California law, including attorneys' fees and costs.

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of all Proposed Class Members, prays that the Court enter judgment in her favor and against Defendants as follows:

1. For an Order requiring and certifying this action as a class action;
2. For an Order appointing Plaintiff's counsel as Class counsel;
3. For compensatory damages in an amount to be ascertained at trial;
4. For restitution in an amount to be ascertained at trial;
5. For penalties as required by law;
6. For civil penalties pursuant to California Labor Code § 2699(a);
7. That the Ninth Cause of Action (PAGA) be maintained as a representative action;
8. For prejudgment interest;
9. For attorneys' fees pursuant to California Labor Code §§ 1194 and 2698;
10. For costs of suit incurred herein;
11. For disgorgement of profits garnered as a result of Defendants' unlawful failure to pay wages, including overtime wages, earned; and
12. For such further relief as the Court may deem appropriate.

DATED: March 21, 2013

LAW OFFICES OF THOMAS W. FALVEY  
SUNDEEN SALINAS & PYLE

By:   
HUNTER PYLE  
Attorneys for Plaintiff Maritza Stovall-Gusman,  
individually and on behalf of all similarly  
situated individuals

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1 DEMAND FOR JURY TRIAL

2 Plaintiff Maritza Stovall-Gusman, individually and on behalf of all similarly situated  
3 individuals, demands jury trial of this matter.

4 DATED: March 21, 2013

LAW OFFICES OF THOMAS W. FALVEY

5 SUNDEEN SALINAS & PYLE

6  
7 By:   
8 HUNTER PYLE  
9 Attorneys for Plaintiff Maritza Stovall-Gusman,  
10 individually and on behalf of all similarly  
11 situated individuals  
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