

1 Carney R. Shegerian, State Bar No. 150461
CShegerian@Shegerianlaw.com
2 Anthony Nguyen, State Bar No. 259154
ANguyen@Shegerianlaw.com
3 Cheryl A. Kenner, State Bar No. 305758
CKenner@Shegerianlaw.com
4 **SHEGERIAN & ASSOCIATES, INC.**
145 South Spring Street, Suite 400
5 Los Angeles, California 90012
Telephone Number: (310) 860-0770
6 Facsimile Number: (310) 860-0771

7 Attorneys for Plaintiff PEDRO
VALDOVINOS, individually, and on
8 behalf of all others similarly aggrieved

9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12

13 PEDRO VALDOVINOS, an
14 individual, on behalf of himself and all
15 others similarly situated,

16 Plaintiff,

17 vs.

18 MACY'S WEST STORES, INC., an
Ohio Corporation; and DOES 1 to 100,
19 inclusive,

20 Defendants.

Case No.: 2:20-cv-02115-DMG-PLA

**FIRST AMENDED PAGA
ENFORCEMENT ACTION COMPLAINT**

(1) Civil Penalties for Violations of California
Labor Code, Pursuant to PAGA, §§ 2698, *et*
seq.

DEMAND FOR JURY TRIAL

1 Plaintiff PEDRO VALDOVINOS (“Plaintiff”), as an aggrieved employee and on
2 behalf of himself and all others similarly aggrieved, by and through his attorneys,
3 Shegerian & Associates, Inc., hereby files this Private Attorneys General Act (“PAGA”)
4 Complaint against Defendant MACY’S WEST STORES, INC. (“Defendant”), a
5 California corporation, and DOES 1 through 100 inclusive, (collectively, “Defendants”),
6 and states as follows:

7 8 **I. INTRODUCTION**

9 1. Plaintiff brings this representative enforcement action on behalf of himself
10 and all other similarly situated aggrieved hourly, nonexempt retail store employees of
11 MACY’S WEST STORES, INC. in California at any time during the period beginning
12 one year prior to the filing of the PAGA Letter dated January 31, 2020, attached hereto as
13 **Exhibit 1**, through the present (“PAGA Period”).

14 2. Defendants operate a chain of retail department stores across the State of
15 California and the United States. Defendants sell a variety of merchandise (furniture,
16 apparel, housewares, cosmetics, jewelry, etc.) to customers, both at its brick-and-mortar
17 stores and online.

18 3. Defendants’ policy and practice is to deny earned wages, including premium
19 and overtime pay, to their hourly, nonexempt employees at Defendants’ locations in
20 California. Defendants do not provide their employees with legally compliant meal
21 periods and rest breaks or premium pay in lieu thereof. Additionally, Defendants require
22 their employees to be present and to perform work in excess of eight (8) hours per day
23 and/or forty (40) hours per work week by mandating that these employees perform work
24 off-the-clock including, but not limited to, performing work during meal periods and rest
25 breaks and after their shifts end. Likewise, Defendants have implemented and continue
26 to implement a rounding policy that is not fair and neutral and has resulted, over a period
27 of time, in Defendants failing to compensate its employees properly for all time worked.
28 Additionally, Defendants do not provide minimum wages and overtime pay for the time

1 employees spend waiting for the receiving area to clear so employees can exit the premises
2 to leave after their shift ends. Plaintiff estimates employees' waiting time in these
3 instances was several minutes. These off-the-clock waiting periods exist for the sole
4 benefit of Defendants and occurred frequently and regularly at Defendants' location in
5 California. This illegal practice has been in effect by Defendants for years, but Defendants
6 continue to require their hourly, nonexempt retail store employees to endure these off-the-
7 clock waiting periods.

8 4. Moreover, Defendants fail to timely compensate employees for all wages
9 earned upon separation and fail to properly and accurately calculate minimum wages and
10 overtime wages and report wages earned, hours worked, and wage rates. For these
11 reasons, Plaintiff brings this action on behalf of himself and other hourly, nonexempt retail
12 store employees of Defendants to recover.

13 **II. JURISDICTION AND VENUE**

14 5. This is an enforcement action under the Labor Code Private Attorneys
15 General Act of 2004, California Labor Code section 2698 *et seq.* to recover civil penalties
16 and any other relief available under PAGA on behalf of Plaintiff, the State of California,
17 and other current and former employees who worked for Defendants in California as non-
18 exempt, hourly employees and who received at least one wage statement during their
19 employment, and against whom one or more violations of any provision in Division 2,
20 Part 2, Chapter 1 of the Labor Code or any provision regulating hours and days of work
21 in the applicable Industrial Welfare Commission ("IWC") Wage Order were committed,
22 as set forth in this complaint, at any time between one year prior to the filing of this
23 complaint until judgment ("Aggrieved Employees"). Plaintiff's share of civil penalties
24 sought in this action does not exceed \$75,000.

25 6. This Court has jurisdiction over this action pursuant to the California
26 Constitution, Article VI, section 10. The statute under which this action is brought does
27 not specify any other basis for jurisdiction.
28

1 \$18.65 per hour with periodic incentive bonuses.

2 11. Defendant MACY’S WEST STORES, INC. (“MACY’S”) is a for-profit
3 corporation incorporated in the State of Ohio with its principal place of business at 7 West
4 7th Street, Cincinnati, Ohio 45202. Defendant is doing business in the State of California,
5 operating in the State of California, and is availing itself of the privileges and obligations
6 associated therewith.

7 12. Plaintiff is unaware of the true names or capacities of the Defendants sued
8 herein under the fictitious names DOES 1 through 100 but will seek leave of this Court to
9 amend the complaint and serve such fictitiously named Defendants once their names and
10 capacities become known.

11 13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through
12 100 are the partners, agents, owners, shareholders, managers or employees of MACY’S
13 WEST STORES, INC. at all relevant times.

14 14. Plaintiff is informed and believes, and thereon alleges, that each and all of
15 the acts and omissions alleged herein was performed by, or is attributable to, MACY’S
16 WEST STORES, INC. and/or DOES 1 through 100 (collectively “Defendants”), each
17 acting as the agent for the other, with legal authority to act on the other’s behalf. The acts
18 of any and all Defendants were in accordance with, and represent, the official policy of
19 Defendants.

20 15. At all relevant times, Defendants, and each of them, ratified each and every
21 act or omission complained of herein. At all relevant times, Defendants, and each of them,
22 aided and abetted the acts and omissions of each and all the other Defendants in
23 proximately causing the violations herein alleged.

24 16. Plaintiff is informed and believes, and thereon alleges, that each of said
25 Defendants is in some manner intentionally, negligently, or otherwise responsible for the
26 acts, omissions, occurrences, and transactions alleged herein.

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1 **IV. PAGA REPRESENTATIVE ALLEGATIONS**

2 17. At all times relevant herein, Defendants operate a chain of retail department
3 stores across the State of California and the United States. Macy's sells a variety of
4 merchandise (furniture, apparel, housewares, cosmetics, jewelry, etc.) to customers, both
5 at its brick-and-mortar stores and online.

6 18. According to Defendants' website, Defendants maintain their corporate
7 operations headquarters, including their Human Resources, Training Center, and
8 Customer Support Center in New York, New York and Cincinnati, Ohio. Upon
9 information and belief, Defendants maintain a centralized Human Resources ("HR")
10 department at their operations headquarters in New York, New York and Cincinnati, Ohio,
11 which is responsible for setting Defendants' guidelines for recruiting and hiring of new
12 employees, as well as communicating and implementing Defendants' company-wide
13 policies, including timekeeping policies, to employees throughout California. In
14 particular, Plaintiff and other non-party Aggrieved Employees, on information and belief,
15 received the same standardized documents and/or written policies upon hire. Upon
16 information and belief, the use of standardized documents and/or written policies,
17 including new hire documents, indicate that Defendants dictated policies at the corporate-
18 level and implemented them company-wide, regardless of their employees' assigned
19 locations or positions. On information and belief, all transactions regarding hiring,
20 terminations, promotions, pay increases, and employee transfers, etc., relating to
21 Defendants' California employees were submitted to and processed by Defendants' HR
22 department in New York, New York and/or Cincinnati, Ohio.

23 19. Upon information and belief, Defendants' corporate records, business
24 records, data, and other information related to MACY'S WEST STORES, INC.,
25 including, in particular, HR records pertaining to Defendants' California employees, are
26 also maintained at MACY'S WEST STORES, INC.'S operations headquarters in New
27 York, New York and Cincinnati, Ohio.

28 20. Upon information and belief, Defendants set forth uniform policies and

1 procedures in several documents provided at an employee's time of hire. Upon further
2 information and belief, at the time Plaintiff was hired, he received documents informing
3 him that he would be subject to the policies and rules set forth in the documents provided.

4 21. Upon information and belief, Plaintiff and other non-party Aggrieved
5 Employees suffered the same meal break violations arising out of Defendants'
6 maintenance and implementation of meal break policies and adoption of an understaffed
7 staffing model.

8 22. Upon information and belief, Defendants maintain a centralized Payroll
9 department at their corporate and operations headquarters in New York, New York and/or
10 Cincinnati, Ohio, which processes payroll for all non-exempt, hourly-paid Employees
11 working for Defendants at their various locations in California, including Plaintiff and
12 other non-party Aggrieved Employees.

13 23. Upon information and belief, Defendants issue the same formatted wage
14 statements to all non-exempt, hourly paid employees in California, irrespective of their
15 work location. Upon further information and belief, during the relevant time period,
16 Defendants processed and issued uniform, standardized wage statements to Plaintiff and
17 other non-party Aggrieved Employees. Thus, Plaintiff is informed and believes that other
18 non-party Aggrieved Employees throughout California were also affected by Defendants'
19 alleged noncompliance with wage statement reporting requirements.

20 24. Upon information and belief, Defendants process payroll for departing
21 employees in the same manner throughout the State of California, regardless of the manner
22 in which the employees' employment ends.

23 25. Defendants continue to employ non-exempt, hourly-paid employees
24 throughout California.

25 26. Plaintiff is informed and believes, and thereon alleges, that at all times herein
26 mentioned, Defendants were advised by skilled lawyers and other professionals,
27 employees and advisors knowledgeable about California labor and wage law, employment
28 and personnel practices, and about the requirements of California law.

1 27. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
2 non-party Aggrieved Employees were not paid for all hours worked, because all hours
3 worked were not recorded.

4 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
5 or should have known that Plaintiff and other non-party Aggrieved Employees were
6 entitled to receive at least minimum wages for compensation and that, in violation of the
7 California Labor Code, they were not receiving at least minimum wages and overtime
8 wages for work that Defendants knew or should have known was performed off-the-clock.

9 29. At all times relevant herein, Plaintiff and Aggrieved Persons were assigned
10 to and required to work for periods lasting in excess of five (5) hours and were not
11 provided nor allowed to take thirty (30) minute, uninterrupted, off-duty meal periods. Due
12 to understaffing combined with large volumes of customers demanding attention and
13 service, Plaintiff and Aggrieved Persons worked through their meal periods, took them
14 after the end of the fifth hour, or were interrupted during their meal period such that
15 Defendants did not authorize and permit a full thirty (30) minutes. During the PAGA
16 Period, Defendants did not have Plaintiff and Aggrieved Employees record the times in
17 and out for their meal periods; Defendants either falsified these times or did not record
18 them at all but still deducted from Plaintiff's and Aggrieved Employees' time worked
19 thirty (30) minutes for meal periods they did not take. During the PAGA Period,
20 Defendants Plaintiff and Aggrieved Employees were required to clock in and out on a
21 limited number of cash registers, which were sometimes occupied and, therefore, required
22 employees to wait their turn to punch in on the cashier. During that time, they were in the
23 presence of customers who would then seek assistance, so Plaintiff and Aggrieved Persons
24 would begin helping customers, as this was how they were instructed to respond to
25 customers when they were in this situation. Accordingly, these meal periods were on duty
26 for which Defendants should have but did not compensate Plaintiff and Aggrieved Persons
27 with premium pay for missed meal periods. Moreover, Plaintiff and Aggrieved Persons
28 often worked in excess of ten (10) hours without a second thirty (30) minute meal period,

1 despite not signing meal period waivers.

2 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
3 or should have known that Plaintiff and other non-party Aggrieved Employees were
4 entitled to meal periods in accordance with the Labor Code or payment of one (1)
5 additional hour of pay at their regular rates of pay when they were not provided with
6 timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and other non-
7 party Aggrieved Employees were not provided with all meal periods or payment of one
8 (1) additional hour of pay at their regular rates of pay when they did not receive a timely,
9 uninterrupted, thirty (30) minute meal period.

10 31. At all times relevant herein, Plaintiff and Aggrieved Persons were assigned
11 to and required and permitted to work shifts lasting over four (4) hours and were not
12 authorized nor permitted to take a ten (10) minute rest breaks during each shift or four (4)
13 hour work period.

14 32. At all times relevant herein, Defendants failed to authorize and permit rest
15 breaks during the PAGA Period. Plaintiff and Aggrieved Persons were routinely required
16 to work through rest breaks at the direction of Defendants and/or Defendants' knowledge
17 and acquiescence. Furthermore, due to understaffing and large volumes of customers
18 demanding immediate attention and service, Plaintiff and Aggrieved Persons did not take
19 their rest breaks at all or did not take them for the full 10-minutes; accordingly, these rest
20 breaks were on duty for which Defendants should have but did not compensate Plaintiff
21 and Aggrieved Persons with premium pay for missed rest breaks.

22 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
23 or should have known that Plaintiff and other non-party Aggrieved Employees were
24 entitled to rest periods in accordance with the Labor Code and applicable IWC Wage
25 Order or payment of one (1) additional hour of pay at their regular rates of pay when they
26 were not provided with a compliant rest period and that Plaintiff and other non-party
27 Aggrieved Employees were not provided compliant rest periods or payment of one (1)
28 additional hour of pay at their regular rates of pay when they were not provided a

1 compliant rest period.

2 34. At all times relevant herein, Plaintiff and Aggrieved Persons worked in
3 excess of eight (8) hours per workday or forty (40) hours per work week. Defendants
4 failed to pay for all hours worked in excess of eight (8) hours per day, and when
5 compensated for overtime, failed to pay the correct amount of overtime by miscalculating
6 the regular rate by failing to properly count all forms of nondiscretionary, non-gift
7 bonuses. Defendants failed to pay current and former hourly, nonexempt retail store
8 employees one and one-half times (1½) their regular rate of pay for hours worked in excess
9 of eight (8) hours per day or forty (40) hours per workweek. Defendants also failed to pay
10 their employees at a rate no less than twice the regular rate of pay for work in excess of
11 twelve (12) hours in one day or for all hours worked in excess of eight (8) hours on the
12 seventh consecutive day of work in a workweek.

13 35. At all times relevant herein, Defendants subjected Plaintiff and other
14 Aggrieved Persons to wait-times after they had clocked out at the end of their shifts during
15 which they were not able to exit Defendants' premises because they were locked in the
16 store during closing shifts, which required them to wait up to 30 minutes to be let out of
17 the store by a keyholder who could unlock the door for them. Plaintiff estimates
18 employees' waiting time in these instances was up to a half hour minutes. In other
19 instances, Aggrieved Persons were required to arm and disarm the alarm system, which
20 was while they were off-the-clock and therefore uncompensated. Plaintiff's and other
21 Aggrieved Persons alerted Defendants to these wait times, however, Defendants did not
22 adjust the time worked by Plaintiff and other Aggrieved Persons to reflect the time worked
23 while not clocked in. Despite Defendants' knowledge of the wait time and the issue of
24 frequent blockages in the receiving area, Defendants continue to require their hourly,
25 nonexempt retail store employees to endure these off-the-clock waiting periods without
26 compensation. Keeping the door locked during closing to keep out customers and
27 arming/disarming the alarm system were necessary to the running of Defendants' business
28 and existed solely Defendants' benefit. Accordingly, during the PAGA Period,

1 Defendants did not provide minimum wages and overtime pay for this wait-time Plaintiff
2 and Aggrieved Employees endured.

3 36. Defendants regularly failed to pay their hourly, nonexempt retail store
4 employees the correct amount of and rate for overtime wages. Defendants have failed and
5 continue to fail to include all amounts in the regular rate of pay for purposes of calculating
6 overtime. Unrelatedly, Defendants fail to record all hours as overtime by failing to record
7 all hours worked in a workday. This work, done primarily for the employer's benefit, is
8 time that hourly, nonexempt retail store employees should be, but were not compensated
9 for, both straight hours and overtime hours worked in excess of forty (40) hours in a week,
10 hours worked in excess of eight (8) hours in a day, and for the first eight (8) hours worked
11 on the seventh consecutive day of work in a workweek.

12 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
13 or should have known that Plaintiff and other non-party Aggrieved Employees were
14 entitled to receive certain wages for overtime compensation and that they were not
15 receiving certain wages for overtime compensation.

16 38. Plaintiff is informed and believes, and thereon alleges, that Defendants did
17 not pay all commissions owed to Plaintiff and all Aggrieved Employees during the PAGA
18 Period.

19 39. Plaintiff is informed and believes, and thereon alleges, that during the PAGA
20 Period, Defendants did not pay wages owed for nonproductive time worked by Plaintiff
21 and Aggrieved Employees who earned commissions in a pay period because it exceeded
22 their pay on an hourly basis.

23 40. In light of Defendants' failure to record employees' off-the-clock time that
24 employees worked and Defendants' failure to acknowledge the noncompliant meal
25 periods and rest breaks, Defendants failed to properly calculate the hourly, nonexempt
26 retail store employees' hours and therefore, employees' premium pay, minimum wages,
27 and overtime wages due. Accordingly, Defendants failed to provide accurate wage
28 statements to their hourly, nonexempt retail store employees identifying all hours worked

1 and all rates in effect during the pay period.

2 41. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
3 or should have known that Plaintiff and other non-party Aggrieved Employees were
4 entitled to receive complete and accurate wage statements in accordance with California
5 law. In violation of the California Labor Code, Defendants did not provide Plaintiff and
6 other nonparty Aggrieved Employees with complete and accurate wage statements.

7 42. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
8 or should have known that Plaintiff and other non-party Aggrieved Employees were
9 entitled to timely payment of wages upon termination of employment. In violation of the
10 California Labor Code, Defendants did not pay Plaintiff and other non-party Aggrieved
11 Employees all wages due, including, but not limited to, overtime wages, minimum wages,
12 and premium wages, within permissible time periods.

13 43. Plaintiff is informed and believes, and thereon alleges, that Defendants knew
14 or should have known that Plaintiff and other non-party Aggrieved Employees were
15 entitled to timely payment of wages during their employment. In violation of the
16 California Labor Code, Defendants did not pay Plaintiff and other non-party Aggrieved
17 Employees all wages, including, but not limited to, meal and rest period premium wages,
18 minimum wages, including all wages owed for nonproductive time when paid on
19 commission, and all overtime wages within permissible time periods.

20 44. Plaintiff is informed and believes, and thereon alleges, that at all times herein
21 mentioned, Defendants knew or should have known that they had a duty to compensate
22 Plaintiff and other non-party Aggrieved Employees for all hours worked, and that
23 Defendants had the financial ability to pay such compensation but willfully, knowingly,
24 and intentionally failed to do so, and falsely represented to Plaintiff and other non-party
25 Aggrieved Employees that they were properly denied wages, all in order to increase
26 Defendants' profits.

27 45. At all times herein set forth, PAGA provides that any provision of law under
28 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be

1 assessed and collected by the LWDA for violations of the California Labor Code and
2 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees
3 in a civil action brought on behalf of themselves and other current or former employees
4 pursuant to procedures outlined in California Labor Code section 2699.3.

5 46. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as
6 “any person who was employed by the alleged violator and against whom one or more of
7 the alleged violations was committed.”

8 47. Plaintiff and other current and former employees of Defendants are
9 “aggrieved employees” as defined by Labor Code section 2699(c) in that they are all
10 Defendants’ current or former employees and one or more of the alleged violations were
11 committed against them.

12 48. Pursuant to Labor Code sections 2699.3 and 2699.5, aggrieved employees,
13 including Plaintiff, may pursue a civil action arising under PAGA after the following
14 requirements have been met:

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

20 (b) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
21 employer and the aggrieved employee by certified mail that it does
22 not intend to investigate the alleged violation within thirty (30)
23 calendar days of the postmark date of the Employee’s Notice. Upon
24 receipt of the LWDA Notice, or if the LWDA Notice is not provided
25 within thirty-three (33) calendar days of the postmark date of the
26 Employee’s Notice, the aggrieved employee may commence a civil
27 action pursuant to California Labor Code section 2699 to recover
28 civil penalties in addition to any other penalties to which the

employee may be entitled.

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

(a) The aggrieved employee or representative shall give written notice by certified mail to the LWDA and the employer-of the specific provisions of the California Labor Code alleged to have been violated (other than those listed in Section 2699.5), including the facts and theories to support the alleged violation.

(b) The employer may cure the alleged violation within thirty-three (33) calendar days of the postmark date of the notice. The employer shall give written notice by certified mail within that period of time to the aggrieved employee or representative and the agency if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the employee may commence a civil action pursuant to Section 2699.

50. On January 31, 2020, Plaintiff provided written notice by certified mail to the LWDA and Defendant MACY'S WEST STORES, INC. of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. A true and correct copy of Plaintiff's written notice to the LWDA and MACY'S WEST STORES, INC. dated January 31, 2020 is attached hereto as **Exhibit I**.

51. As of the filing date of this amended complaint, over 65 days have passed since Plaintiff sent the LWDA Notice described above, and the LWDA has not responded that it intends to investigate Plaintiff's claims.

52. Thus, Plaintiff has satisfied the administrative prerequisites under California

1 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants,
 2 in addition to other remedies, for violations of California Labor Code sections 201, 202,
 3 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198.

4 53. Labor Code section 558(a) provides “[a]ny employer or other person acting
 5 on behalf of an employer who violates, or causes to be violated, a section of this chapter
 6 or any provision regulating hours and days of work in any order of the Industrial Welfare
 7 Commission shall be subject to a civil penalty as follows: (1) For any initial violation,
 8 fifty dollars (\$50) for each underpaid employee for each pay period for which the
 9 employee was underpaid in addition to an amount sufficient to recover underpaid wages;
 10 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
 11 employee for each pay period for which the employee was underpaid in addition to an
 12 amount sufficient to recover underpaid wages.” Labor Code section 558(c) provides “[t]he
 13 civil penalties provided for in this section are in addition to any other civil or criminal
 14 penalty provided by law.” For avoidance of doubt, Plaintiff is not seeking to recover
 15 underpaid wages under Labor Code section 558 or any other section.

16 54. Defendants, at all times relevant to this complaint, were employers or persons
 17 acting on behalf of an employer(s) who violated Plaintiff and other non-party Aggrieved
 18 Employees’ rights by violating various sections of the California Labor Code as set forth
 19 above.

20 55. As set forth below, Defendants have violated numerous provisions of both
 21 the Labor Code sections regulating hours and days of work as well as the applicable IWC
 22 Wage Order.

23 56. Pursuant to PAGA, and in particular California Labor Code sections 2699(a),
 24 2699.3, 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney
 25 general, seeks assessment and collection of civil penalties for himself, all other non-party
 26 Aggrieved Employees, and the State of California against Defendants, in addition to any
 27 other remedies available under PAGA, for violations of California Labor Code sections
 28 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, and

1 1198.

2
3 **V. FIRST CAUSE OF ACTION**

4 **For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.* (Against All**
5 **Defendants)**

6 57. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
7 various civil penalties for the violation(s) of the Labor Code sections enumerated in Labor
8 Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204,
9 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, and 1198. Labor Code section
10 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for
11 violations of Labor Code section 1182.12.

12 58. Defendants’ conduct, as alleged herein, violates the applicable IWC Wage
13 Order and numerous sections of the California Labor Code, including, but not limited to,
14 the following:

- 15 (a) Violations of Labor Code sections 226.7, 512(a), 1198, and the
16 applicable IWC Wage Order for Defendants’ failure to provide
17 Plaintiff and other non-party Aggrieved Employees with meal and/or
18 rest periods, as set forth below;
- 19 (b) Violations of Labor Code sections 1182.12, 1194, 1197, 1197.1,
20 1198, and the applicable IWC Wage Order for Defendants’ failure to
21 compensate Plaintiff and other non-party Aggrieved Employees with
22 at least minimum wages for all hours worked as set forth below;
- 23 (c) Violations of Labor Code sections 510, 1198, and the applicable IWC
24 Wage Order for Defendants’ failure to compensate Plaintiff and other
25 non-party Aggrieved Employees with overtime wages for all hours
26 worked in excess of eight (8) in one day or forty (40) in one week, as
27 set forth below;
- 28 (d) Violations of Labor Code sections 226(a), 1198, and the applicable

IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiff and other non-party Aggrieved Employees as set forth below;

- (e) Violations of Labor Code sections 1174(d), 1198, and the applicable IWC Wage Order for failure to maintain payroll records as set forth below;
- (f) Violations of Labor Code sections 204 for failure to pay all earned wages owed every pay period as set forth below; and
- (g) Violations of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination as set forth below.

FAILURE TO PROVIDE MEAL PERIODS

VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a) AND 1198

59. At all relevant times herein set forth, the applicable IWC Wage Order(s) and California Labor Code sections 226.7, 512(a), and 1198 were applicable to Plaintiff and other non-party Aggrieved Employees' employment by Defendants.

60. At all relevant times herein set forth, California Labor Code section 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five (5) hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal.4th 1004, 1041-1042 (Cal. 2012).

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

62. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a)

1 and the applicable IWC Wage Order also require employers to provide a second meal
2 break of not less than thirty (30) minutes if an employee works over ten (10) hours per
3 day or to pay an employee one (1) additional hour of pay at the employee's regular rate,
4 except that if the total hours worked is no more than twelve (12) hours, the second meal
5 period may be waived by mutual consent of the employer and the employee only if the
6 first meal period was not waived.

7 63. As stated, Defendants' uniform adoption of an understaffed staffing model
8 for its store locations prevented Plaintiff and other non-party Aggrieved Employees from
9 being relieved of all duties to take compliant meal periods. Defendants also had no policy
10 or practice of scheduling meal breaks for Aggrieved Employees. The combination of
11 Defendants' failure to schedule meal periods, adoption of an understaffed staffing model,
12 and failure to register and compensate Aggrieved Employees for all noncompliant meal
13 periods in all instances, impeded and prevented Plaintiff and other non-party Aggrieved
14 Employees from taking timely, uninterrupted meal periods. As a result, Plaintiff and other
15 non-party Aggrieved Employees were not relieved of their duties such as that they could
16 take duty-free meal periods, and thus had to work through some or all of their meal
17 periods, have their meal periods interrupted to return to work, and/or wait extended
18 periods of time before taking meal periods. For example, Plaintiff frequently had his meal
19 periods interrupted or cut short due to a rush of customers and understaffing, causing a
20 need to return to work before his meal period was done.

21 64. As stated herein, Defendants also did not schedule second meal periods and
22 had no policy for permitting and authorizing Plaintiff and other non-party aggrieved
23 employees to take second 30-minute meal periods on days that they worked in excess of
24 10 hours in one day. Because of Defendants' company-wide understaffed staffing model,
25 Plaintiff and other nonparty Aggrieved Employees were not relieved of all duties such that
26 they could take second 30-minute meal periods and instead had to work through them.
27 Accordingly, Defendants failed to provide all meal periods in violation of California Labor
28 Code sections 226.7 and 512. Defendants knew or should have known that its company-

1 wide adoption of an understaffed staffing model and scheduling policies would result in a
 2 failure to provide Plaintiff and other non-party Aggrieved Employees with full and timely
 3 meal periods as required by the applicable IWC Wage Order and Labor Code sections
 4 226.7 and 512(a). In not all instances was premium pay for noncompliant meal periods
 5 paid, because Plaintiff's and Aggrieved Employees' time records were never corrected to
 6 reflect a noncompliant meal period.

7 **FAILURE TO PROVIDE REST PERIODS**

8 **VIOLATION OF LABOR CODE SECTION 226.7 AND 1198**

9 65. At all relevant times, the applicable IWC Wage Order and California Labor
 10 Code sections 226.7 and 1198 were applicable to Plaintiff and other non-party Aggrieved
 11 Employees' employment by Defendants.

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

18 67. At all relevant times, California Labor Code section 226.7 provides that no
 19 employer shall require an employee to work during any rest period mandated by an
 20 applicable order of the California IWC. Pursuant to the applicable IWC Wage Order,
 21 Wage Order section (12)(A), "[a]uthorized rest period time shall be counted as hours
 22 worked for which there shall be no deduction from wages." Because rest periods are
 23 considered hours worked, they must be compensated.

24 68. During the relevant time period, Defendants regularly failed to authorize and
 25 permit Plaintiff and other non-party Aggrieved Employees to take 10-minute rest period
 26 per each four (4) hour period worked or major fraction thereof. As with meal periods,
 27 Defendants' scheduling policies, understaffed staffing model, and resultant lack of break
 28 coverage prevented Plaintiff and other non-party Aggrieved Employees from being

1 relieved of all duty in order to take compliant rest periods and forced Plaintiff and other
2 non-party Aggrieved Employees to forego rest breaks. As a result, Plaintiff and other non-
3 party Aggrieved Employees would work shifts in excess of 3.5 hours without 10-minute
4 rest periods to which they were entitled. Throughout his employment, Plaintiff regularly
5 worked straight through his shifts, continuing to perform his employee duties such as
6 stocking merchandise; selling merchandise; inventorying, organizing, and packing
7 merchandise; cashiering; answering phones; assisting customers; setting up deliveries of
8 merchandise to customers; arming/disarming the alarm; and general opening/closing
9 duties, among other random duties assigned each day, without taking 10-minute rest
10 periods because there were too few employees on duty to assist customers.

11 69. At the same time, Defendants implemented a company-wide policy to not
12 pay rest period premiums. And, in not all instances were premiums paid for noncompliant
13 rest breaks, because Plaintiff's and Aggrieved Employees' time records were never
14 corrected to reflect a noncompliant rest break. Additionally and/or alternatively, to the
15 extent that Defendants did pay Plaintiff and other non-party Aggrieved Employees one (1)
16 additional hour of premium pay for missed rest periods, Defendants did not pay Plaintiff
17 and other non-party Aggrieved Employees at the correct rate of pay for premium wages
18 because Defendants failed to include all forms of compensation, such as commissions,
19 incentive pay, and/or nondiscretionary bonuses, in the regular rate of pay. As a result, to
20 the extent Defendants paid Plaintiff and other non-party Aggrieved Employees premium
21 pay for missed rest periods, it did so at a lower rate than required by law. As a result,
22 Plaintiff and other non-party Aggrieved Employees were denied rest periods and failed to
23 pay the full rest period premiums due, in violation of Labor Code section 226.7 and the
24 applicable IWC Wage Order.

25 70. Defendants' conduct violates the applicable IWC Wage Order and California
26 Labor Code sections 226.7 and 1198. Plaintiff and other non-party Aggrieved Employees
27 are therefore entitled to recover civil penalties pursuant to section 2699(a), (f), and (g).

28 ///

FAILURE TO PAY MINIMUM WAGES

VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, 1197.1, AND 1198

71. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful.

72. As described above, Defendants required Plaintiff and other non-party Aggrieved Employees to work, such as stocking merchandise; selling merchandise; inventorying, organizing, and packing merchandise; cashiering; answering phones; assisting customers; setting up deliveries of merchandise to customers; arming/disarming the alarm; and general opening/closing duties, among other random duties assigned each day, during their meal periods due to Defendants' lack of coverage for its employees and decision to staff too few employees during shifts. Defendants did not pay at least minimum wages for *de minimus* time, off-the-clock hours worked, and for all nonproductive time when paid on commission instead of hourly. Also, to the extent that these off-the-clock hours qualified for overtime premium payment, Defendants did not pay overtime wages for those hours worked off-the-clock.

73. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees minimum wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to sections 1197.1 and/or 2699(a), (f), and (g).

FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

74. California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable Wage Order. California Labor Code section 1198 requires that ". . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment

1 of any employee . . . under conditions of labor prohibited by the order is unlawful.”

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

6 76. Specifically, the applicable IWC Wage Order provides that Defendants are
7 and were required to pay Plaintiff and other non-party Aggrieved Employees working
8 more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate
9 of time and one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or
10 more than forty (40) hours in a workweek.

11 77. The applicable IWC Wage Order further provides that Defendants are and
12 were required to pay Plaintiff and other non-party Aggrieved Employees working more
13 than twelve (12) hours in a day, overtime compensation at a rate of two (2) times their
14 regular rate of pay, and required to pay Plaintiff and other non-party Aggrieved Employees
15 at a rate of two (2) times their regular rate of pay for hours worked in excess of eight (8)
16 hours on the seventh (7th) consecutive day of a work in a workweek. An employee’s
17 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
18 employee, including commissions, non-discretionary bonuses, and incentive pay.

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

25 79. During the relevant time period, Defendants willfully failed to pay all
26 overtime wages owed to Plaintiff and other non-party Aggrieved Employees. During the
27 relevant time period, Plaintiff and other non-party Aggrieved Employees were not paid
28 overtime premiums for all of the hours they worked in excess of eight (8) hours in a day,

1 in excess of twelve (12) hours in a day, in excess of eight (8) hours on the seventh (7th)
2 consecutive day of a work in a workweek, and/or in excess of forty (40) hours in a week,
3 because all hours worked were not recorded.

4 80. Defendants have systematically, and on a company-wide basis, frequently
5 staffed only a few employees to work at its various store locations, which is too few to
6 adequately manage the workload and customer demand. Defendants' uniform adoption
7 of an understaffed staffing model for its business often required Plaintiff and other non-
8 party Aggrieved Employees to remain available and on duty at all times, including during
9 meal periods. Defendants had no effective policy of providing meal break coverage to
10 Plaintiff and other non-party Aggrieved Employees. At all relevant times, Defendants
11 knew or should have known that their understaffed staffing model required Plaintiff and
12 other non-party Aggrieved Employees to perform their assigned employee duties during
13 meal periods.

14 81. Defendants could have staffed additional sales agents and other support staff
15 in each department at each store location to relieve Plaintiff and other non-party Aggrieved
16 Employees of their duties for meal periods. Instead, Defendants elected to implement an
17 understaffed staffing model and provide limited, infrequent meal break coverage to
18 Plaintiff and other non-party Aggrieved Employees. Because Defendants did not provide
19 meal period coverage for Plaintiff and other non-party Aggrieved Employees and further
20 required Plaintiff and other non-party Aggrieved Employees to remain on duty, Plaintiff
21 and other non-party Aggrieved Employees were not relieved of all duties such that they
22 could take uninterrupted 30-minute meal periods.

23 82. Moreover, Defendants, on a company-wide basis, did not adhere to any
24 schedule of meal periods even though they were aware and knew that employees were
25 entitled to such meal periods. Plaintiff and/or other non-party Aggrieved Employees did
26 not receive compliant 30-minute meal breaks after clocking out for lunch, either because
27 they were missed entirely, taken late, cut short, and/or were interrupted. In these instances,
28 their time records would not reflect a noncompliant meal period, therefore, they did not

1 then receive the premium pay in lieu of a compliant meal period. Plaintiff and other non-
2 party Aggrieved Employees oftentimes had to spend time working during their meal
3 periods stocking merchandise; selling merchandise; inventorying, organizing, and packing
4 merchandise; cashiering; answering phones; assisting customers; setting up deliveries of
5 merchandise to customers, among other random duties assigned each day, but were not
6 paid for the time they spent off-the-clock.

7 83. Moreover, Defendants systematically failed to schedule and provide second
8 30-minute meal periods for employees working shifts of ten (10) hours or more and failed
9 to authorize or permit Plaintiff and other non-party Aggrieved Employees to take second
10 30-minute meal periods to which they were entitled. Because of Defendants' company-
11 wide understaffed staffing model, Plaintiff and other non-party Aggrieved Employees
12 were not relieved of all duties such that they could take second 30-minute meal periods
13 and instead had to work through them. For example, during his employment, Plaintiff
14 occasionally worked over 10 hours in a day, but did not receive a second uninterrupted
15 30-minute meal period on those days. Plaintiff and other non-party Aggrieved Employees
16 did not sign valid meal break waivers on days that they were entitled to meal periods but
17 were not relieved of all duties.

18 84. Because Plaintiff and other non-party Aggrieved Employees sometimes
19 worked shifts of eight (8) hours a day or more and/or forty (40) hours a week or more,
20 some of this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff
21 and other nonparty Aggrieved Employees were not paid overtime wages for all of the
22 overtime hours they worked. Defendants' failure to pay Plaintiff and other non-party
23 Aggrieved Employees the balance of overtime compensation, as required by California
24 law, violates the provisions of California Labor Code sections 510 and 1198.

25 85. Furthermore, Defendants did not pay Plaintiff and other non-party Aggrieved
26 Employees the correct overtime rate for the recorded overtime hours that they generated.
27 In addition to an hourly wage, Defendants paid other non-party Aggrieved Employees
28 commissions, incentive pay, and/or nondiscretionary bonuses. However, in violation of

1 the California Labor Code, Defendants failed to incorporate all remunerations, including
2 commissions, incentive pay and/or nondiscretionary bonuses, into the calculation of the
3 regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during
4 times when other non-party Aggrieved Employees worked overtime and received these
5 other forms of pay, Defendants failed to pay all overtime wages by paying a lower
6 overtime rate than required.

7 86. Defendants' failure to pay Plaintiff and other non-party Aggrieved
8 Employees the balance of overtime compensation and failure to include all applicable
9 remuneration in calculating the regular rate of pay for overtime pay, as required by
10 California law, violates the provisions of California Labor Code sections 510 and 1198.
11 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
12 penalties pursuant to sections 558 and/or 2699(a), (f), and (g).

13 87. Moreover, Defendants engaged in a systematic, company-wide policy to not
14 pay meal period premiums by failing to capture noncompliant meal periods.
15 Alternatively, to the extent that Defendants did pay Plaintiff and other non-party
16 Aggrieved Employees one (1) additional hour of premium pay for missed meal periods,
17 Defendants did not pay Plaintiff and other non-party Aggrieved Employees at the correct
18 rate of pay for premium wages because Defendants failed to include all forms of
19 compensation, such as commissions, incentive pay, and/or nondiscretionary bonuses, in
20 the regular rate of pay. As a result, to the extent Defendants paid Plaintiff and other non-
21 party Aggrieved Employees premium pay for missed meal periods, it did so at a lower rate
22 than required by law. As a result, Defendants failed to provide Plaintiff and other non-
23 party Aggrieved Employees compliant meal periods and failed to pay the full meal period
24 premiums due.

25 88. Defendants' conduct violates the applicable IWC Wage Order, and
26 California Labor Code sections 226.7, 512(a) and 1198. Plaintiff and other non-party
27 Aggrieved Employees are therefore entitled to recover civil penalties pursuant to sections
28 558 and/or 2699(a), (f), and (g).

FAILURE TO PAY WAGES DURING EMPLOYMENT

VIOLATION OF LABOR CODE SECTION 204

89. At all relevant times herein, Labor Code section 204 provides that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed. Labor Code section 204 further provides that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

90. At all relevant times herein, Labor Code section 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, at all relevant times herein, Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

91. During the relevant time period, Defendants willfully failed to pay Plaintiff and other non-party Aggrieved Employees all wages due including, but not limited to, meal and rest period premium wages, minimum wages, including all wages owed for nonproductive time when paid on commission, and all overtime wages within the time periods specified by California Labor Code section 204. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to sections 210 and/or 2699(a), (t), and (g).

FAILURE TO PAY WAGES UPON SEPARATION

VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203

92. At all relevant times herein, Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her

1 employment, his or her wages shall become due and payable not later than seventy-two
 2 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous
 3 notice of his or her intention to quit, in which case the employee is entitled to his or her
 4 wages at the time of quitting.

5 93. During the relevant time period, Defendants willfully failed to pay Plaintiff
 6 and other non-party Aggrieved Employees who are no longer employed by Defendants
 7 the earned and unpaid wages set forth above, including but not limited to, meal and rest
 8 period premium wages, minimum wages, including all wages owed for nonproductive
 9 time when paid on commission, and all overtime wages, either at the time of discharge, or
 10 within seventy-two (72) hours of their leaving Defendants' employ.

11 94. Defendants' failure to pay Plaintiff and those non-party Aggrieved
 12 Employees who are no longer employed by Defendants all of their wages earned and
 13 unpaid at the time of discharge, or within seventy-two (72) hours of their leaving
 14 Defendants' employ, violates Labor Code sections 201 and 202.

15 95. In addition, Plaintiff separated from Defendants on or about January 2020,
 16 yet Defendants still failed to tender all of Plaintiff's final wages to him and further failed
 17 to pay him his final pay within the time required by law. In fact, Defendants paid Plaintiff
 18 his last paycheck for his last pay period worked two or three weeks after his separation
 19 from Defendants, well after the time required by law. On information and belief,
 20 Defendants had a company-wide practice or policy of paying departing employees their
 21 final wages on the next regular pay cycle, instead of adhering to the time requirements set
 22 forth in Labor Code sections 201 and 202.

23 Therefore, Plaintiff and other non-party Aggrieved Employees are entitled to recover
 24 civil penalties pursuant to section 2699(a), (t), and (g).

25 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
 26 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

27 96. At all relevant times herein, California Labor Code section 226(a) provides
 28 that every employer shall furnish each of his or her employees an accurate and complete

1 itemized wage statement in writing, including, but not limited to, the name and address of
2 the legal entity that is the employer, the inclusive dates of the pay period, total hours
3 worked, and all applicable rates of pay.

4 97. During the relevant time period, Defendants have knowingly and
5 intentionally provided Plaintiff and other non-party Aggrieved Employees with uniform,
6 incomplete and inaccurate wage statements. The wage statement deficiencies include,
7 among other things, failing to list gross wages earned; failing to list total hours worked by
8 employees; failing to list all applicable hourly rates in effect during the pay period,
9 including overtime rates of pay, and the corresponding number of hours worked at each
10 hourly rate; failing to list the number of piece-rate units earned and any applicable piece
11 rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to
12 list net wages earned; failing to list the name of the employee and only the last four digits
13 of his or her social security number or an employee identification number other than a
14 social security number; failing to list the correct name of the legal entity that is the
15 employer; failing to list the inclusive dates of the period for which aggrieved employees
16 were paid; and/or failing to state all hours worked as a result of not recording or stating
17 the hours they worked off-the-clock.

18 98. California Labor Code section 1198 provides that the maximum hours of
19 work and the standard conditions of labor shall be those fixed by the Labor Commissioner
20 and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that
21 “[t]he employment of any employees for longer hours than those fixed by the order or
22 under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable
23 IWC Wage Order, employers are required to keep accurate time records showing when
24 the employee begins and ends each work period and meal period. During the relevant
25 time period, Defendants failed, on a company-wide basis, to keep records of meal period
26 start and stop times for Plaintiff and other non-party Aggrieved Employees in violation of
27 section 1198.

28 99. California Labor Code section 1174(d) provides that “[e]very person

1 employing labor in this state shall . . . [k]eep a record showing the names and addresses
 2 of all employees employed and the ages of all minors” and “[keep, at a central location in
 3 the state or at the plants or establishments at which employees are employed, payroll
 4 records showing the hours worked daily by and the wages paid to, and the number of
 5 piece-rate units earned by and any applicable piece rate paid to, employees employed at
 6 the respective plants or establishments” During the relevant time period, and in
 7 violation of Labor Code section 1174(d), Defendants willfully failed to maintain accurate
 8 payroll records for Plaintiff and other non-party Aggrieved Employees showing the daily
 9 hours they worked and the wages paid thereto as a result of failing to record the off-the-
 10 clock hours that they worked.

11 100. Because Defendants’ violations of 226(a) and 1174(d) were committed
 12 against Plaintiff and other non-party Aggrieved Employees, Plaintiff and other non-party
 13 Aggrieved Employees are entitled to recover civil penalties pursuant to sections 226(e),
 14 226.3, 1174.5, and/or 2699(a), (f), and (g).

15 **VI. PRAYER FOR RELIEF**

16 Plaintiff, on behalf of other non-party Aggrieved Employees, prays for relief and
 17 judgment against Defendants, jointly and severally, as follows:

18 1. For civil penalties and attorneys’ fees in excess of twenty-five thousand
 19 dollars (\$25,000).

20 2. For any other remedies available under PAGA.

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

22 3. That the Court declare, adjudge, and decree that Defendants violated the
 23 following California Labor Code sections as to Plaintiff and/or other non-party
 24 Aggrieved Employees: 510 and 1198 (by failing to pay all overtime wages); 1182.12,
 25 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours
 26 worked); 226.7, 512(a), and 1198 (by failing to provide meal or rest periods); 226(a) and
 27 1198 (by failing to provide accurate and complete wage statements); 1174(d) and 1198
 28

(by failing to maintain accurate and complete payroll records); 201, 202, and 203 (by failing timely to pay all unpaid wages upon termination); and 204 (by failing timely to pay all earned wages during employment);

4. For civil penalties pursuant to California Labor Code sections 210, 225.5, 226.3, 558, 1174.5, 1197.1, 2699(a), and/or 2699(f) and (g), for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198;

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

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

7. For such other and further relief as the Court may deem equitable and appropriate.

Dated: April 17, 2020

SHEGERIAN & ASSOCIATES, INC.

By: /s/ Carney Shegerian
Carney R. Shegerian
Anthony Nguyen
Cheryl A. Kenner

Attorneys for Plaintiff PEDRO
VALDOVINOS, individually, and on
behalf of all others similarly
aggrieved

1 **DEMAND FOR JURY TRIAL**

2

3 Plaintiff PEDRO VALDOVINOS, on behalf of himself and all others similarly

4 aggrieved, hereby demands a jury trial with respect to all issues triable of right by jury.

5

6 Dated: April 17, 2020

SHEGERIAN & ASSOCIATES, INC.

7

8 By: /s/ Carney Shegerian

9 Carney R. Shegerian
Anthony Nguyen
Cheryl A. Kenner

10

11 Attorneys for Plaintiff PEDRO
VALDOVINOS, individually, and on
12 behalf of all others similarly
aggrieved

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EXHIBIT 1

SHEGERIAN & ASSOCIATES, INC.

January 31, 2020

VIA ONLINE SUBMISSION

David M. Lanier, Secretary
California Labor & Workforce
Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

VIA CERTIFIED MAIL

Macy's West Stores, Inc.
7 West 7th Street
Cincinnati, OH 45202

Macy's, Inc.
7 West 7th Street
Cincinnati, OH 45202

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
CALIFORNIA LABOR CODE SECTION 2698, ET SEQ.**

To: The California Labor and Workforce Development Agency; Macy's West Stores, Inc.; Macy's Inc.

From: Pedro Valdovinos, on behalf of himself and all other current and former nonexempt, hourly retail department store employees for violations of the California Labor Code

To Whom It May Concern:

Shegerian & Associates, Inc. has been retained by former employee Pedro Valdovinos ("Mr. Valdovinos") to seek compensation and all other available relief, including civil penalties on their behalves and on the behalf of all those similarly aggrieved who have been injured by violations of the California Labor Code. Mr. Valdovinos, on behalf of himself and all other similarly aggrieved current and former hourly nonexempt retail department store employees of Macy's West Stores, Inc. and Macy's, Inc. (collectively, "Macy's"), intends to seek civil penalties, attorneys' fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.* of the Labor Code Private Attorneys General Act of 2004 ("PAGA").

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MACY'S WEST STORES, INC./MACY'S, INC.
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Factual Statement:

Macy's operates a chain of retail department stores across the State of California and the United States. Macy's sells a variety of merchandise (furniture, apparel, housewares, cosmetics, jewelry, etc.) to customers, both at its brick-and-mortar stores and online. Claimant Mr. Valdovinos worked for Macy's as an hourly, nonexempt employee, in the position of Sales Associate. Mr. Valdovinos was earning \$18.65 per hour with periodic incentive bonuses at the time of his separation. Mr. Valdovinos, on behalf of himself and all other similarly aggrieved current and former retail department store employees of Macy's are or were nonexempt, hourly retail department store employees in California who are or were engaged in effecting Macy's objectives of selling merchandise to customers. As part of their employment with Macy's, Claimants and other nonexempt, hourly retail department store employees, collectively, "nonexempt, hourly retail department store employees," are or were assigned to and required to suffer and permitted to work without pay, while performing tasks collectively including, but not limited to: stocking merchandise; selling merchandise; inventorying, organizing, and packing merchandise; cashiering; answering phones; assisting customers; setting up deliveries of merchandise to customers; arming/disarming the alarm; and general opening/closing duties.

Mr. Valdovinos regularly worked five (5) days per week for eight (8) or more hours per day at Macy's location in Los Angeles, California. During the entire course of his employment, Macy's has failed to provide Mr. Valdovinos and continues to fail to provide all others similarly situated with all overtime pay and compliant meal periods and rest breaks. As a consequence, Macy's has failed to comply with Labor Code sections 226.7, 510, and 512 and Industrial Welfare Commission ("IWC") Wage Order 7-2001, sections 3, 11, and 12. Macy's has also failed to pay minimum wages to Claimants in violation of Labor Code sections 510, 1194, 1197, and 1182.12, and IWC Wage Order No. 7-2001, section 4. Not all reporting pay owed under Wage Order No. 7-2001, section 5 was paid to Claimants either. In violation of Labor Code sections 510, 1194, 1197, and 1182.12, Macy's has failed to compensate Claimants at a rate of one and one-half (1.5) times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek.

Macy's has also failed and continues to fail to pay all wages owed every pay period in violation of Labor Code section 204. Likewise, Macy's has failed to provide Mr. Valdovinos and continues to fail provide timely, accurate wage statements to other aggrieved retail department store employees in violation of Labor Code section 226(a). With regard to those no longer employed by Macy's, including Mr. Valdovinos, Macy's

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 MACY'S WEST STORES, INC./MACY'S, INC.
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violated Labor Code section 203 by failing to pay all wages due upon separation. Mr. Valdovinos is informed and believes that such violations are ongoing, systematic, and continuous. He intends to bring an action against Macy's under the Private Attorneys General Act ("PAGA") to recover wages and penalties as provided by California law.¹

Theories of Labor Code Violations and Remedies:

For a period of at least four (4) years prior to January 2020, but for our purposes here, one (1) year, Macy's has violated the California Labor Code and all applicable IWC Wage Orders. Claimant Mr. Valdovinos was employed continuously from approximately February 2017 through the January 29, 2020 by Macy's as a Sales Associate.

First, Claimants were at all times entitled to off-duty, uninterrupted but unpaid meal periods. Macy's, however, failed to authorize and permit Mr. Valdovinos and all other similarly aggrieved retail department store employees to take compliant meal periods as required by Labor Code sections 226.7 and 512 and all applicable IWC Wage Orders, including but not limited to IWC Wage Order 7-2001, section 11. Mr. Valdovinos and all similarly aggrieved retail department store employees took their meal periods late, had their meal periods interrupted, and remained on-duty as they were required to perform work during their meal periods. This was largely due to too few staff per shift to be able to serve all the customers, especially during the holiday season, for which Macy's reasonably could have corrected with adequate staffing. Macy's also enforced a policy that did not permit employees to use the restroom or drink water unless they were on their meal period or rest break. And Macy's did not compensate Claimants with an extra hour of pay at their regular rate for noncompliant meal periods for each workday on which they occurred.

¹ Without limitation, Mr. Valdovinos, if permitted, will seek any and all penalties otherwise capable of being collected by the Commission. This includes each provision as set forth in Labor Code section 2699.5 as follows:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230A, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of, and subdivision (e) of, Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651., and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.7.

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Accordingly, since Macy's required Mr. Valdovinos and others similarly situated to work during their meal periods and did not subsequently compensate them for all noncompliant meal periods in violation of Labor Code sections 226.7(a) and 512, Claimants seek all available penalties as set forth in Labor Code section 558, all applicable IWC Wage Orders, including but not limited to IWC Wage Order 7-2001, section 20 and 2699(f).

Claimants were at all times entitled to take paid, off-duty rest breaks. However, Macy's failed to authorize and permit Mr. Valdovinos and continues to fail to provide all other similarly aggrieved retail department store employees to take off-duty rest breaks as required by Labor Code sections 226.7 and all applicable IWC Wage Orders, including but not limited to IWC Wage Order 7-2001, section 12. Macy's also enforced a policy that did not permit employees to use the restroom or drink water unless they were on their meal period or rest break. Again, this was largely due to understaffing in light of the demands of the customers for which Macy's could have reasonably anticipated. Mr. Valdovinos and all similarly aggrieved retail department store employees were required to perform work during their rest breaks by either taking no break or else having their break interrupted to return to work before a net-ten-minute break was taken, which means they were on-duty during their rest breaks. Macy's did not compensate Claimants with an extra hour of pay at their regular rate for noncompliant rest breaks for each workday on which they occurred. Therefore, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 558 and all applicable IWC Wage Orders, including but not limited to IWC Wage Order 7-2001, section 20. Furthermore, since Macy's required its nonexempt retail department store employees to work during rest periods in violation of Labor Code section 226.7(b) without premium pay, Claimants seek all available penalties as set forth in Labor Code sections 558 and 2699.

Claimants also were at all times entitled to the payment of minimum wages. Macy's has failed and continues to fail to pay Claimants minimum wages for all hours worked as required by Labor Code sections 510, 1194, and 1194.2 and all applicable IWC Wage Orders, including but not limited to IWC Wage Order 7-2001, section 4. For instance, Macy's did not authorize and permit Claimants to take compliant meal periods and rest breaks on eligible shifts. Macy's corresponding failure to provide premium pay at the regular rate in lieu of authorizing and permitting compliant meal periods and rest breaks constitutes Macy's failure to pay minimum wages for all hours worked every pay period and upon separation in violation of Labor Code sections 201, 202, 203, 204, 226(a), 510, 1182.12, 1194, and 1197. In essence, Macy's failure to pay Claimants their premium pay constitutes Macy's failure to pay minimum wages to Claimants. As a result, Claimants did not receive minimum wages for all hours worked, which also means they didn't receive all overtime wages nor all wages owed every pay period nor upon separation.

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Additionally, for Claimants who were compensated based on commission against their draws—that is, commissions reduced by customer returns—Macy's failed to pay for all of their nonproductive time and also failed to pay them minimum wage for all hours worked. Another reason Claimants didn't receive minimum wages for all hours worked is that Claimants performed work prior to clocking in as well as after clocking out. Not all nonproductive time was recorded and compensated. For example, Claimants spent time uncompensated arming and disarming the alarm system while off the clock. Likewise, Claimants, including Mr. Valdovinos, were locked in the store during closing shifts, which required them to wait up to 30 minutes to be let out of the store by a keyholder who could unlock the door for them. Claimants, including Mr. Valdovinos, also had to wait their turn to clock in for their shifts and meal periods on sometimes-occupied cash registers, during which time customers might seek assistance and Claimants would begin assisting them before clocking in. Locking the doors to keep out customers during closing, providing immediate customer assistance, and arming/disarming the alarm system are all for Macy's benefit. Claimants' time was never adjusted to account for this work performed for the benefit of Macy's at the beginning and end of their shifts. Accordingly, not all hours that Claimants worked were recorded, adjusted, nor subsequently compensated. Therefore, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 1197.1 and all applicable IWC Wage Orders, including but not limited to IWC Wage Order 7-2001, section 20.

At all times relevant herein, Claimants were entitled to the payment of overtime. That is, pursuant to Labor Code sections 510, 1194, 1197, and 1182.12, Macy's was required to compensate Claimants at a rate of one-and-one-half (1.5) times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek. Macy's has failed to and continues to fail to pay Claimants all overtime wages owed, yet regularly required them to work in excess of eight (8) hours per day and/or forty (40) hours per week without premium pay under Labor Code section 1194. Claimant Mr. Valdovinos regularly worked five (5) days per week for over eight (8) hours per day and did not receive all overtime wages owed. In short, during the entire course of his employment, Macy's failed to provide Mr. Valdovinos and continues to fail to provide all other similarly aggrieved retail department store employees with all overtime pay in violation of 226.7, 510, and 512 and all applicable IWC Wage Orders, including but not limited to IWC Wage Order 7-2001, section 3.

Pursuant to Labor Code section 204, Claimants were entitled to be paid all wages owed every pay period. As explained above, by failing to pay Claimants all meal period and rest period premiums for every instance of noncompliance and by failing to pay all

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minimum wages and overtime wages every pay period, Macy's has failed and continues to fail to pay all wages owed every pay period in violation of Labor Code section 204.

Likewise, pursuant to Labor Code sections 201–203, Claimants who have since separated from Macy's, including Mr. Valdovinos, were entitled to be paid all wages owed upon separation within the statutorily allotted time—immediately (resignation with notice and termination) or within seventy-two (72) hours (resignation without notice). Claimants did not receive all wages owed upon separation based on Macy's prior failings to pay all wages owed every pay period, as explained in the preceding paragraph.

Claimants were at all times entitled to be provided timely and accurate wage statements by Macy's pursuant to Labor Code section 226. Because Macy's failed to pay Claimants their meal period and rest break premiums for noncompliant meal periods and rest breaks, and failed to pay Claimants minimum wages for all hours worked and for all overtime wages owed as well as the correct rate for overtime hours, Claimants' wage statements were inaccurate in reflecting meal period and rest break premium compensation owed, all overtime and minimum wages owed, and all hours worked every pay period. As a consequence, Claimants' wage statements also do not reflect the accurate amount of gross wages owed. Accordingly, Claimants seek all available penalties as set forth in Labor Code sections 226(e) and 2699.

Macy's uniform failure to authorize and permit off-duty rest breaks and meal periods or pay Claimants premium compensation in lieu thereof, failure to pay all minimum and overtime wages owed, failure to pay all wages owed every pay period and upon separation, and failure to furnish timely and accurate wage statements violates Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1182.12, 1194, and 1197, and as such, penalties are recoverable as set forth in Labor Code sections 210, 1194, *et seq.*, and 2699.

Claimants are entitled to recover unpaid wages, with interest, and are entitled to an award of attorneys' fees as permitted by Labor Code section 1194, other penalties as permitted by Labor Code sections 210 and 2699, and waiting time penalties for former retail department store employees pursuant to Labor Code section 203.

Accordingly, Claimants seek the remedies set forth in the above-referenced Labor Code sections for himself, the State of California, and all other aggrieved retail department store employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, Mr. Valdovinos, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against Macy's for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198.

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Should you require any additional information, please feel free to contact me.

Very truly yours,

SHEGERIAN & SALES ASSOCIATES, INC.

A handwritten signature in black ink, reading "Carney R. Shegerian". The signature is written in a cursive, flowing style with a large, stylized initial 'C'.

Carney R. Shegerian

CRS/ck