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and as representative for the State of California on behalf of all other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

GEENA B. GORDILLO, on behalf of
herself and as representative for the State of
California on behalf of all other aggrieved
employees,

Plaintiff,

v.

SALLY BEAUTY SUPPLY LLC, a
Virginia Limited Liability Company; and
DOES 1 through 10, Inclusive,

Defendants.

Case No. **RIC2003292**

**REPRESENTATIVE ACTION COMPLAINT
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004
[Labor Code §§ 2698, *et seq.*]**

1. Civil Penalties Pursuant to the PAGA for Failure to Pay Minimum, Regular, and Overtime Wages (Lab. Code §§ 2698, *et seq.*);
2. Civil Penalties Pursuant to the PAGA for Failure to Pay Reporting Time Wages (Lab. Code §§ 2698, *et seq.*);
3. Civil Penalties Pursuant to the PAGA for Failure to Provide Meal Periods (Lab. Code §§ 2698, *et seq.*);
4. Civil Penalties Pursuant to the PAGA for Failure to Provide Rest Periods (Lab. Code §§ 2698, *et seq.*);
5. Civil Penalties Pursuant to the PAGA for Failure to Reimburse Business Expenses (Lab. Code §§ 2698, *et seq.*);

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6. Civil Penalties Pursuant to the PAGA for Failure to Provide Accurate Wage Statements (Lab. Code §§ 2698, *et seq.*);
7. Civil Penalties Pursuant to the PAGA for Failure to Timely Pay Wages Due During Employment (Lab. Code §§ 2698, *et seq.*);
8. Civil Penalties Pursuant to the PAGA for Failure to Timely Pay Wages Due Upon Separation of Employment (Lab. Code §§ 2698, *et seq.*); and
9. Civil Penalties Pursuant to the PAGA for Failure to Maintain Accurate Records (Lab. Code §§ 2698, *et seq.*);
10. Civil Penalties Pursuant to the PAGA for Failure to Provide Suitable Seats (Lab. Code §§ 2698, *et seq.*);

1 Plaintiff GEENA B. GORDILLO ("Plaintiff"), on behalf of herself and as representative
2 for the State of California, the California Labor and Workforce Development Agency
3 ("LWDA"), and on behalf of all other aggrieved employees, hereby alleges as follows:

4 **I.**

5 **INTRODUCTION**

6 1. Plaintiff brings this representative action pursuant to the Private Attorneys General
7 Act of 2004 ("PAGA"), Labor Code sections 2698, *et seq.*, against SALLY BEAUTY SUPPLY
8 LLC, a Virginia Limited Liability Company; and DOES 1 through 10, Inclusive, (collectively,
9 "Defendants") to recover civil penalties arising out of Defendants' labor code violations
10 including failure to pay all wages, including overtime and reporting time wages; inform and
11 provide off-duty meal and rest periods; reimburse business-related expenses; provide paid sick
12 leave; provide accurate itemized wage statements; maintain accurate records; and, timely pay all
13 wages due during and upon separation of employment, including vested vacation wages.

14 2. Plaintiff has given written notice of these claims and allegations to the California
15 Labor and Workforce Development Agency ("LWDA") on March 31, 2020. A true and correct
16 copy of Plaintiff's Notice showing compliance with Labor Code section 2699.3 is attached
17 hereto as **Exhibit 1**. Plaintiff submitted an amended Notice to the Defendants and the LWDA
18 on June 11, 2020, attached hereto as **Exhibit 2**. As there has been no LWDA intervention
19 within 65 days of either Notice, Plaintiff asserts claims for civil penalties as a representative for
20 and on behalf of the State of California in a representative capacity, as provided by the PAGA
21 to the extent permitted by law, as an aggrieved non-exempt employee. Plaintiff is an aggrieved
22 employee and has standing to bring a representative action on behalf of the State of California
23 and the LWDA as a private attorney general.

24 3. Plaintiff asserts claims for civil penalties as a representative of the State of
25 California, as authorized by the PAGA, and to the extent permitted by law, on behalf of
26 aggrieved employees who were employed as a non-exempt employee and suffered one or more
27 of the violations alleged. Labor Code §§ 2698, *et seq.*, 2699.3(a)(2)(C).

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JURISDICTION AND VENUE

5. Venue as to each Defendant is proper in this judicial district. Code of Civil Procedure section 395. Defendants conduct business and commit Labor Code violations in Riverside County, and each Defendant or DOE is within California for service of process. The unlawful acts alleged have a direct effect on aggrieved employees within California and within Riverside County.

6. This Court has jurisdiction over Plaintiff's claims because Defendants regularly conduct business in California; are alleged to have violated the law in California; Plaintiff's claims raise no federal question; and, PAGA civil penalty actions are not subject to federal jurisdiction.

7. This Court has jurisdiction over Plaintiff's and other aggrieved employees' claims under Labor Code sections 2698, *et seq.*

8. On information and belief, the California Superior Court has primary and original jurisdiction in this matter because there is no federal question at issue, as the issues herein are based solely on California statutes and law, including the California Labor Code, Industrial Welfare Commission Wage Orders, Code of Civil Procedure, Rules of Court, and Business and Professions Code.

THE PARTIES

9. Plaintiff GEENA B. GORDILLO is over the age of eighteen (18) and was at all relevant times a California resident. From approximately June of 2019 through March 13, 2020, Claimant worked as an Assistant Store Manager at Defendants' Lake Elsinore store location in

1 California, County of Riverside. Plaintiff was classified as a non-exempt employee and was
2 paid on an hourly basis.

3 **B. Defendants**

4 10. Plaintiff is informed, believes, and alleges SALLY BEAUTY SUPPLY LLC is a
5 Virginia Limited Liability Company and has conducted business, and employed Plaintiff and
6 other aggrieved employees during the PAGA Period, in the County of Riverside.

7 11. The true names and capacities, whether individual, corporate, associate, or
8 otherwise, of Defendants sued as DOES 1 through 10, inclusive, are unknown to Plaintiff, who
9 sues Defendants by fictitious names under Code of Civil Procedure section 474. Plaintiff is
10 informed and believes, and alleges, each DOE Defendant is legally responsible in some manner
11 for the unlawful acts alleged. Plaintiff will seek leave to amend this Complaint to reflect the true
12 names and capacities of DOE Defendants when they become known.

13 12. Plaintiff is informed and believes each Defendant acted in all respects pertinent
14 to this action as the agent of the other Defendants, carried out a joint scheme, plan or policy,
15 and the acts of each Defendant are legally attributable to the other Defendants.

16 **IV.**

17 **GENERAL ALLEGATIONS**

18 13. During the PAGA Period, Defendants conducted business in California and
19 Riverside County, and employed Plaintiff and other aggrieved employees in the State of
20 California.

21 14. During the PAGA Period, Plaintiff and other aggrieved employees of Defendants
22 worked under the same policies, practices, and procedures relating to their employment.

23 15. Responsibilities for Plaintiff and other aggrieved employees include, among
24 other things, general customer service, stocking shelves with product, cashiering, and receiving
25 incoming shipments.

26 16. Plaintiff and other aggrieved employees were not relieved of all duties during
27 meal and rest periods due to the scheduling practices of Defendants and the demands and duties
28 of the job.

1 17. During the PAGA Period, Defendants subjected Plaintiff and other aggrieved
2 employees to a uniform policy and practice of failing to pay for all hours worked, including
3 hours worked by Plaintiff and other aggrieved employees during days off and off-the-clock after
4 clocking out at the end of a shift. Defendants frequently required Plaintiff to return to the store
5 after her shift had ended to drop off keys and perform other job duties, without paying any
6 wages for these hours worked.

7 18. During the PAGA Period, Defendants failed to incorporate commission wages
8 into the calculation of the regular rate of pay for purposes of calculating the accurate overtime
9 rate of pay resulting in an underpayment of wages.

10 19. During the PAGA Period, Defendants maintained a uniform and systematic
11 policy wherein Defendants scheduled employees to work, allowed them to arrive at work, but
12 then dismissed the employees from work shifts without paying reporting time wages as required
13 by the applicable IWC Wage Order, which is a wage and hour minimum working condition
14 under California law in order to prevent abuse by employers who require employees to show up
15 for scheduled shifts but then have less work than anticipated. On information and belief,
16 employees were frequently misinformed of their scheduled shifts and reported to the store to
17 work because they were provided with incorrect information about their scheduled shift. On
18 these occasions, Defendants sent employees home without paying for reporting time pay, as
19 required under California law.

20 20. During the PAGA Period, Plaintiff and other aggrieved employees were not
21 provided duty-free 30-minute meal periods for shifts of five hours or more, which began before
22 the end of the fifth hour of work, pursuant to the Labor Code, IWC Wage Order 7-2001 and all
23 other applicable Wage Orders, or paid compensation in lieu thereof in the amount of one hour
24 of pay at their regular rate of pay. Furthermore, Plaintiff and other aggrieved employees
25 regularly worked shifts of more than 10 hours per day and were not provided with a second off-
26 duty meal period of 30 minutes for each shifts of more than 10 hours. Employees were
27 frequently scheduled to work alone in the store without being provided with the opportunity to
28 take lawful, off-duty meal periods. Plaintiff contends that due to the demand of the job,

1 Defendants required her and other aggrieved employees to be available at all times during their
2 shift, including during meal periods, to respond as needed to work-related issues. Accordingly,
3 any meal periods taken were on duty and should have been paid.

4 21. During the PAGA Period, Plaintiff and other aggrieved employees were not
5 authorized or permitted to take duty-free 10-minute rest periods for work periods of four (4)
6 hours or major fractions, pursuant to the Labor Code, IWC Wage Order 7-2001 and all other
7 applicable Wage Orders, paid compensation in lieu thereof in the amount of one hour of pay at
8 their correct regular rate of pay including all wage compensation during the pay period.
9 Furthermore, Plaintiff and other aggrieved employees regularly worked shifts of more than 10
10 hours per day and were not provided with a third duty-free rest period of 10-minutes for each
11 shifts of more than 10 hours. Employees were frequently scheduled to work alone in the store
12 without being provided with the opportunity to take lawful, off-duty rest periods. Plaintiff
13 contends that due to the demand of the job, Defendants required her and other aggrieved
14 employees to be available at all times during their shift, including during rest periods, to
15 respond as needed to work-related issues. Accordingly, any rest periods taken were on duty and
16 non-compliant.

17 22. During the PAGA Period, Defendants had a consistent policy of failing to
18 reimburse Plaintiff and other aggrieved employees for all necessary and reasonable business
19 expenses incurred by the requirement to use personal cell phones for work-related purposes, in
20 violation of California state wage and hour laws. Plaintiff and other aggrieved employees were
21 required to use their personal cell phones to download an application to check their work
22 schedules. Furthermore, Plaintiff was often required to communicate with other employees and
23 her supervisor on her personal cell phone, without receiving any reimbursement for these
24 expenses. Additionally, Defendants failed to reimburse Plaintiff and other aggrieved employees
25 for mileage expenses incurred performing their job duties for Defendants.

26 23. During the PAGA Period, Defendants knowingly and willfully failed to provide
27 accurate itemized wage statements to Plaintiff and other aggrieved employees, which did not
28 include, among other things, the total number of hours worked and/or wages due. Additionally,

1 because Defendants' failed to compensate Plaintiff and other aggrieved employees for all hours
2 worked and for any non-compliant meal or rest period, the itemized wage statements provided
3 by Defendants to Plaintiff and other aggrieved employees were inaccurate. As a result, the wage
4 statements that Defendants furnished to Plaintiff and other aggrieved employees were
5 incomplete and inaccurate and fail to comply with the requirements of Labor Code section
6 226(a).

7 24. During the PAGA Period, Defendants had a consistent policy and practice of
8 failing to timely compensate Plaintiff and other aggrieved employees for all wages owed during
9 and upon separation of employment, in violation of California state wage and hour laws.

10 25. During the PAGA Period, Defendants had a consistent policy of failing to
11 provide suitable seats to Plaintiff and other aggrieved employees although the nature of the
12 work reasonably permitted the use of seats.

13 26. By requiring Plaintiff and other aggrieved employees to work off-the-clock,
14 including by requiring them to work while clocked out for meals, Defendants did not keep
15 required records showing the accurate number of daily hours worked and wages earned by
16 Plaintiff and aggrieved employees.

17 27. For purposes of this action, Plaintiff, as a representative of the State of
18 California, will seek to invoke Labor Code section 1195.5 which states: "The Division of Labor
19 Standards Enforcement shall determine, upon request, whether the wages of employees, which
20 exceed the minimum wages fixed by the commission, have been correctly computed and paid.
21 For this purpose, the division may examine the books, reports, contracts, payrolls and other
22 documents of the employer relative to the employment of employees. The division shall enforce
23 the payment of any sums found, upon examination, to be due and unpaid to the employees."

24 28. Labor Code section 2699(a) provides: "Notwithstanding any other provision of
25 law, any provision of this code that provides for a civil penalty to be assessed and collected by
26 the Labor and Workforce Development Agency or any of its departments, divisions,
27 commissions, boards, agencies, or employees, for a violation of this code, may, as an
28 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of

1 himself or herself and other current or former employees pursuant to the procedures specified in
2 Section 2699.3.”

3 29. Labor Code section 2699(f)(2) states: “For all provisions of this code except
4 those for which a civil penalty is specifically provided, there is established a civil penalty for a
5 violation of these provisions, as follows... (2) If, at the time of the alleged violation, the person
6 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
7 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for
8 each aggrieved employee per pay period for each subsequent violation.”

9 30. Pursuant to California Labor Code section 558(a), “[a]ny employer or other
10 person acting on behalf of an employer who violates, or causes to be violated, a section of this
11 chapter or any provision regulating hours and days of work in any order of the Industrial
12 Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation,
13 fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was
14 underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each
15 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
16 period for which the employee was underpaid in addition to an amount sufficient to recover
17 underpaid wages.” Plaintiff seeks only to recover the civil penalty provided for in section 558(a)
18 for the violations alleged herein and **does not** seek to recover underpaid wages.

19 31. Pursuant to California Labor Code section 558.1, Defendants are employers of
20 Plaintiff, and/or a person acting on behalf of Plaintiff’s employer, who violated, or caused to be
21 violated, any provision regulating minimum wages or hours and days of work in the applicable
22 order of the Industrial Welfare Commission, as well as California Labor Code sections 201, 202,
23 203, 204, 226, 226.7, 510, 512, 558, 1194, 1197.1, 1198, 1199, and 2802, and as such, are liable as
24 an employer of Plaintiff and other aggrieved employees employed in the State of California.

25 32. Plaintiff, as a representative of the general public and State of California, seeks
26 to recover all civil penalties under the PAGA, Labor Code sections 2699 and 2699(f)(2), for
27 violations of sections 201-204, 226, 226.3, 226.7, 227.3, 510, 512, 1174, 1174.5, 1194, 1194.2,
28 1197, 1198, 1199, and 2802 shown to have occurred, in an amount according to proof, as to

1 those penalties that are otherwise only available in public agency enforcement actions. The
2 funds recovered will be distributed in accordance with the PAGA, with 75% of penalties
3 recovered distributed to the LWDA on and 25% distributed to the aggrieved employees, subject
4 to Court approval.

5 **V.**

6 **CAUSES OF ACTION**

7 **FIRST CAUSE OF ACTION**

8 **CIVIL PENALTIES PURSUANT TO THE PAGA FOR FAILURE TO PAY**
9 **MINIMUM, REGULAR, AND OVERTIME WAGES**
10 **[Labor Code §§ 2698, *et seq.*]**

11 33. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

12 34. Labor Code section 1194(a) provides: “(a) Notwithstanding any agreement to
13 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
14 overtime compensation applicable to the employee is entitled to recover in a civil action the
15 unpaid balance of the full amount of this minimum wage or overtime compensation, including
16 interest thereon, reasonable attorney’s fees, and costs of suit.”

17 35. Labor Code section 1197 states: “The minimum wage for employees fixed by the
18 commission is the minimum wage to be paid to employees, and the payment of a less wage than
19 minimum wage so fixed is unlawful.”

20 36. Labor Code section 2699(a) provides: “Notwithstanding any other provision of
21 law, any provision of this code that provides for a civil penalty to be assessed and collected by
22 the Labor and Workforce Development Agency or any of its departments, divisions,
23 commissions, boards, agencies, or employees, for a violation of this code, may, as an
24 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
25 himself or herself and other current or former employees pursuant to the procedures specified in
26 Section 2699.3.”

27 37. “For all provisions of this code except those for which a civil penalty is
28 specifically provided, there is established a civil penalty for a violation of these provisions, as
follows... (2) If, at the time of the alleged violation, the person employs one or more

1 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay
2 period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per
3 pay period for each subsequent violation.” Labor Code section 2699(f)(2).

4 38. Labor Code section 2699.5 provides, in pertinent part that “provisions of
5 subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions:
6 [Labor Code §§] ...1194, 1194.1” and allow for recovery of civil penalties pursuant to the
7 PAGA.

8 39. During the PAGA Period, Defendants subjected Plaintiff and other aggrieved
9 employees to a uniform policy and practice of failing to pay for all hours worked, including
10 hours worked by Plaintiff and other aggrieved employees during days off and off-the-clock after
11 clocking out at the end of a shift. Defendants frequently required Plaintiff to return to the store
12 after her shift had ended to drop off keys and perform other job duties, without paying any
13 wages for these hours worked.

14 40. During the PAGA Period, Defendants failed to incorporate commission wages
15 into the calculation of the regular rate of pay for purposes of calculating the accurate overtime
16 rate of pay resulting in an underpayment of wages.

17 41. As a result of Defendants’ failure to pay wages for all hours worked, Defendants,
18 and each of them, are liable for civil penalties within the applicable limitations period of Labor
19 Code section 2699(f)(2) for violations of Labor Code sections 1194 and 1194.2 in the amount of
20 \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each
21 subsequent violation, for Defendants’ failure to pay Plaintiff and other aggrieved employees
22 wages for all hours worked, including minimum, regular, and overtime wages.

23 42. Pursuant to California Labor Code section 558(a), “[a]ny employer or other
24 person acting on behalf of an employer who violates, or causes to be violated, a section of this
25 chapter or any provision regulating hours and days of work in any order of the Industrial
26 Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation,
27 fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was
28 underpaid in addition to an amount sufficient to recover underpaid wages; (2) For each

1 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
2 period for which the employee was underpaid in addition to an amount sufficient to recover
3 underpaid wages.” Plaintiff seeks only to recover the civil penalty provided for in section 558(a)
4 for the violations alleged herein and ***does not*** seek to recover any underpaid wages.

5 43. Defendants’ conduct also violates IWC Wage Order 7-2001 by failing to pay
6 minimum, regular, and overtime wages to employees.

7 44. Plaintiff, as a representative of the general public, will and does seek to recover
8 any and all penalties under Labor Code section 2699(f)(2) for each and every violation of Labor
9 Code shown to exist or to have occurred, in an amount according to proof, as to those penalties
10 that are otherwise only available in public agency enforcement actions. Funds will be
11 distributed in accordance with the PAGA, with 75% of the civil penalties recovered being
12 reimbursed to the LWDA on behalf of the State of California. The exact amount of the applicable
13 penalty is all in an amount to be shown according to proof at trial.

14 **SECOND CAUSE OF ACTION**
15 **CIVIL PENALTIES PURSUANT TO THE PAGA FOR FAILURE TO PAY**
16 **REPORTING TIME WAGES**
[Labor Code §§ 2698, *et seq.*]

17 45. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

18 46. Pursuant to the “Reporting Time Pay” Section of the applicable Wage Order,
19 “[e]ach workday an employee is required to report to work and does report, but is not put to
20 work or is furnished less than half said employee’s usual or scheduled day’s work, the employee
21 shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2)
22 hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less
23 than the minimum wage.”

24 47. Labor Code section 2699(a) provides: “Notwithstanding any other provision of
25 law, any provision of this code that provides for a civil penalty to be assessed and collected by
26 the Labor and Workforce Development Agency or any of its departments, divisions,
27 commissions, boards, agencies, or employees, for a violation of this code, may, as an
28 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of

1 himself or herself and other current or former employees pursuant to the procedures specified in
2 Section 2699.3.”

3 48. “For all provisions of this code except those for which a civil penalty is
4 specifically provided, there is established a civil penalty for a violation of these provisions, as
5 follows... (2) If, at the time of the alleged violation, the person employs one or more
6 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay
7 period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per
8 pay period for each subsequent violation.” Labor Code section 2699(f)(2).

9 49. During the PAGA Period, on information and belief, employees were frequently
10 misinformed of their scheduled shifts and reported to the store to work because they were
11 provided with incorrect information about their scheduled shift. On these occasions, Defendants
12 sent employees home without paying for reporting time pay, as required under California law.

13 50. Defendants’ conduct violates Labor Code sections 218, 558, 1194, 1198, and
14 1199(c) as well as the “Reporting Time Pay” section of the applicable wage order.

15 51. As a result of Defendants’ failure to pay reporting wages, Defendants, and each
16 of them, are liable for civil penalties within the applicable limitations period of Labor Code
17 section 2699(f)(2) for violations of Labor Code sections 1194 and 1194.2 in the amount of \$100
18 for each aggrieved employee per pay period for the initial violation and \$200 for each
19 subsequent violation, for Defendants’ failure to pay Plaintiff and other aggrieved employees
20 reporting time wages.

21 52. Plaintiff, as a representative of the general public, will and does seek to recover
22 any and all penalties under Labor Code section 2699(f)(2) for each and every violation of Labor
23 Code shown to exist or to have occurred, in an amount according to proof, as to those penalties
24 that are otherwise only available in public agency enforcement actions. Funds will be
25 distributed in accordance with the PAGA, with 75% of the civil penalties recovered being
26 reimbursed to the LWDA on behalf of the State of California. The exact amount of the applicable
27 penalty is all in an amount to be shown according to proof at trial.

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THIRD CAUSE OF ACTION
CIVIL PENALTIES PURSUANT TO THE PAGA FOR FAILURE TO PROVIDE
MEAL PERIODS
[Labor Code §§ 2698, *et seq.*]

53. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

54. Labor Code section 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes” Labor Code section 226.7(a) states that “no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.”

55. Labor Code section 226.7(b)(c) provides: “An employer shall not require an employee to work during a meal period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.”

56. Labor Code section 226.7(c) provides: “If an employer fails to provide an employee a meal period in accordance with a state law...the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”

57. During the PAGA Period, Plaintiff and other aggrieved employees were not provided with legally compliant, off-duty meal periods. Defendants required Plaintiff and other aggrieved employees to remain available to respond to work-related issues, including during meal periods. As such, Plaintiff and other aggrieved employees remained subject to the control of Defendants and were therefore not provided with off-duty and uninterrupted meal periods, as required under California law.

58. By failing to provide off-duty and uninterrupted meal periods of at least thirty (30) minutes for shifts of five (5) hours or more, which began before the end of the fifth hour of

1 work, and failing to pay employees one hour of pay at their regular rate of pay for each workday
2 a meal period was not provided, Defendants willfully violated Labor Code sections 226.7, 512,
3 and 558(a)(3), and IWC Wage Order 7-2001.

4 59. By failing to provide a second off-duty and uninterrupted meal period of at least
5 thirty (30) minutes for shifts of ten (10) hours or more and failing to pay employees one hour of
6 pay at their regular rate of pay for each eligible workday a second meal period was not
7 provided, Defendants willfully violated Labor Code sections 226.7, 512, and 558(a)(3), and
8 IWC Wage Order 7-2001.

9 60. Labor Code section 2699(f)(2) provides for civil penalties for violations of the
10 Labor Code for which there is no corresponding civil penalty, including Labor Code section
11 226.7. The civil penalty is \$100 for the initial violation and \$200 for each subsequent violation
12 for each underpaid employee. Labor Code § 2699(f)(2).

13 61. Plaintiff, as a representative of the general public, seeks to recover all Labor
14 Code section 2699(f)(2) penalties for each Labor Code sections 226.7 or 512(a) violation,
15 according to proof, as to those penalties otherwise only available in public agency enforcement
16 actions. Funds will be distributed in accordance with the PAGA, with 75% of the civil penalties
17 recovered being reimbursed to the LWDA on behalf of the State of California. The exact
18 amount of the applicable penalty is all in an amount to be shown according to proof at trial.

19 **FOURTH CAUSE OF ACTION**
20 **CIVIL PENALTIES PURSUANT TO THE PAGA FOR FAILURE TO PROVIDE**
21 **REST PERIODS**
[Labor Code §§ 2698, *et seq.*]

22 62. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

23 63. The “Rest Period” Section of IWC Wage Order 7-2001 states: “Every employer
24 shall authorize and permit all employees to take rest periods, which insofar as practicable shall
25 be in the middle of each work period. The authorized rest period shall be based on the total
26 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
27 fraction thereof.” If an employer fails to provide an employee a rest period in accordance with
28 the applicable provision of the order, the employer shall pay the employee one (1) hour of pay

1 at the employee's regular rate of compensation of each workday that the rest period is not
2 provided.

3 64. Labor Code section 226.7(c) states: "If an employer fails to provide an employee
4 a meal period or rest period in accordance with an applicable order of the IWC, the employer
5 shall pay the employee one additional hour of pay at the employee's regular rate of
6 compensation for each work day that the meal or rest period is not provided."

7 65. During the PAGA Period, Plaintiff and other aggrieved employees were not
8 provided with legally compliant, duty-free rest periods. Defendants required Plaintiff and other
9 aggrieved employees to remain available to respond to work-related issues at all times including
10 during rest periods. As such, Plaintiff and other aggrieved employees remained subject to the
11 control of Defendants and were therefore not provided with *duty-free* rest periods, as required
12 under California law.

13 66. By failing to authorize and permit Plaintiff to receive a duty-free rest period of at
14 least 10 minutes for every four (4) hours or major fraction thereof worked per day, and by
15 failing to provide premium wages at the regular rate of pay when these periods were not
16 permitted or authorized, Defendants willfully violated Labor Code section 226.7 and IWC
17 Wage Order 7-2001.

18 67. By failing to provide a third duty-free rest period of at least thirty (30) minutes
19 for shifts of ten (10) hours or more and failing to pay employees one hour of pay at their regular
20 rate of pay for each eligible workday a third rest period was not provided, Defendants willfully
21 violated Labor Code sections 226.7 and 558(a)(3), and IWC Wage Order 7-2001.

22 68. Labor Code section 2699(f)(2) provides for civil penalties for violations of the
23 Labor Code for which there is no corresponding civil penalty, including Labor Code section
24 226.7. The civil penalty is \$100 for the initial violation and \$200 for each subsequent violation
25 for each underpaid employee. Labor Code § 2699(f)(2).

26 69. Plaintiff, as a representative of the general public, seeks to recover all Labor
27 Code section 2699(f)(2) penalties for each Labor Code section 226.7 violation, according to
28 proof, as to those penalties otherwise only available in public agency enforcement actions.

1 Funds will be distributed in accordance with the PAGA, with 75% of the civil penalties
2 recovered being reimbursed to the LWDA on behalf of the State of California. The exact
3 amount of the applicable penalty is all in an amount to be shown according to proof at trial.

4 **FIFTH CAUSE OF ACTION**
5 **CIVIL PENALTIES PURSUANT TO THE PAGA FOR FAILURE TO REIMBURSE**
6 **BUSINESS EXPENSES**
7 **[Labor Code §§ 2698, *et seq.*]**

7 70. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

8 71. California Labor Code section 2802 provides: “An employer shall indemnify his
9 or her employee for all necessary expenditures or losses incurred by the employee in direct
10 consequence of the discharge of his or her duties, obedience to the directions of the
11 employer...[].”

12 72. For purposes of this section, the term “necessary expenditures or losses” shall
13 include all reasonable costs, including, but not limited to, attorney’s fees incurred by the
14 employee enforcing the rights granted by this section.

15 73. California Labor Code section 2804 mandates this statutory right cannot be
16 waived.

17 74. Labor Code section 2699(f)(2) states: “For all provisions of this code except
18 those for which a civil penalty is specifically provided, there is established a civil penalty for a
19 violation of these provisions, as follows... (2) If, at the time of the alleged violation, the person
20 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
21 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for
22 each aggrieved employee per pay period for each subsequent violation.”

23 75. Aggrieved employees are entitled to pursue civil penalties under the PAGA for
24 violations of Labor Code section 2802. Labor Code § 2699.5.

25 76. Because there is no established civil penalty for violations of Section 2802,
26 Labor Code section 2699(f)(2) provides the appropriate civil penalty, as Defendants employed
27 more than one person during the statutory period, and still employ more than one person.

28 ///

1 77. Defendants violated the above statutes throughout the applicable statutory period
2 by failing to fully reimburse Plaintiff and other aggrieved employees for necessary expenditures
3 incurred in direct consequence of discharging their duties, including failing to reimburse for all
4 expenses incurred by Plaintiff and aggrieved employees for the use of personal cell phones for
5 business-related purposes and for mileage.

6 78. Plaintiff, as a representative of the general public, seeks to recover all Labor
7 Code section 2699(f)(2) civil penalties for each Labor Code section 2802 violation, according to
8 proof, as to those penalties otherwise only available in public agency enforcement actions.
9 Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties
10 recovered provided to the LWDA on behalf of the State of California.

11 **SIXTH CAUSE OF ACTION**
12 **CIVIL PENALTIES PURSUANT TO THE PAGA FOR FAILURE TO PROVIDE**
13 **ACCURATE ITEMIZED WAGE STATEMENTS**
14 **[Labor Code §§ 2698, *et seq.*]**

15 79. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

16 80. Labor Code section 226(a) provides: “Every employer shall, semimonthly or at
17 the time of each payment of wages, furnish each of his or her employees... an accurate itemized
18 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee,
19 (5) net wages earned... ..and (9) all applicable hourly rates in effect during the pay period
20 and the corresponding number of hours worked at each hourly rate by the employee...”

21 81. Due to Defendants’ failure to pay for all hours worked and all meal and rest
22 periods premiums as required by the Labor Code, the wages and hours worked listed on each
23 wage statement provided to Plaintiff and other aggrieved employees were misstated and
24 violated Sections 226(a)(1), (2), (5), and (9). Defendants’ actions were intentional and willful.

25 82. Plaintiff has satisfied all prerequisites to serve as a representative of the general
26 public to enforce California’s labor laws, and the penalty provisions identified in Labor Code
27 section 226.3. Plaintiff, as a representative of the people of the State of California, seeks all
28 penalties otherwise capable of being collected by the Division of Labor Standards Enforcement
29 (“DLSE”). Labor Code section 2699.5 provides that Section 2699.3(a) applies to an alleged

1 violation of Labor Code section 226.

2 83. Labor Code section 226.3 provides for civil penalties for violations of Section
3 226. The civil penalty is \$250 for the initial violation and \$1,000 for each subsequent violation.

4 84. Plaintiff, as a representative of the general public, seeks to recover all Labor
5 Code section 2699(f)(2) penalties for each Labor Code section 226 violation, according to
6 proof, as to those penalties otherwise only available in public agency enforcement actions.
7 Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties
8 recovered provided to the LWDA on behalf of the State of California.

9 **SEVENTH CAUSE OF ACTION**
10 **PAGA CIVIL PENALTIES PURSUANT TO THE PAGA FOR FAILURE TO TIMELY**
11 **PAY WAGES DUE DURING EMPLOYMENT**
[Labor Code §§ 2698, *et seq.*]

12 85. Plaintiff incorporates all preceding paragraphs of this Complaint.

13 86. Labor Code section 204(a) requires employers to pay wages earned by
14 employees within strict time requirements. Defendants had a policy, practice, and procedure of
15 willfully failing to pay the earned wages of Defendants' employees twice during each calendar
16 month, on days designated in advance by the employer as the regular paydays.

17 87. Defendant failed to pay Plaintiff and other aggrieved employees all minimum,
18 regular, overtime, and reporting time wages and all meal and rest period premium wages during
19 their employment, as required by Labor Code section 204.

20 88. Labor Code sections 2698, *et seq.* impose upon Defendants, and each of them, a
21 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the
22 initial violation and two hundred (\$200.00) for each aggrieved employee per pay period for each
23 subsequent violation of Labor Code sections 204 and 1198.

24 89. Labor Code section 2699(f)(2) provides for civil penalties for violations of the
25 Labor Code for which there is no corresponding civil penalty, including Labor Code section
26 203. The civil penalty is \$100 for the initial violation and \$200 for each subsequent violation for
27 each underpaid employee. Labor Code § 2699(f)(2).

28 ///

1 90. Plaintiff, as a representative of the general public, seeks to recover all penalties
2 under Labor Code section 2699(f)(2) for each and every violation of Labor Code section 204(a),
3 in an amount according to proof, as to those penalties that are otherwise only available in public
4 agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA,
5 with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

6 **EIGHTH CAUSE OF ACTION**
7 **CIVIL PENALTIES PURSUANT TO THE PAGA FOR FAILURE TO TIMELY PAY**
8 **WAGES DUE UPON SEPARATION**
 [Labor Code §§ 2698, *et seq.*]

9 91. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

10 92. Labor Code sections 201-203 require employers to pay wages earned by
11 employees within strict time requirements. Defendants had a policy, practice, and procedure of
12 willfully failing to pay the earned wages of Defendants' former employees. If an employer
13 willfully fails to timely and fully pay all final wages the employer must, as a penalty, continue
14 to pay an employee's wages for 30 days, or until the back wages are paid in full.

15 93. Defendants failed to pay Plaintiff and other aggrieved employees who ended
16 their employment with the Defendant all wages, including minimum, regular, overtime,
17 reporting time wages, meal and rest period premium wages, and accrued vacation wages as
18 required by Labor Code sections 201-203.

19 94. Labor Code section 256 states: "The Labor Commissioner shall impose a civil
20 penalty in an amount not exceeding 30 day's pay as waiting time under the terms of Section
21 203."

22 95. Labor Code section 2699(f)(2) provides for civil penalties for violations of the
23 Labor Code for which there is no corresponding civil penalty, including Labor Code section
24 203. The civil penalty is \$100 for the initial violation and \$200 for each subsequent violation for
25 each underpaid employee. Labor Code § 2699(f)(2).

26 96. Plaintiff, as a representative of the general public, seeks to recover all Labor
27 Code section 2699(f)(2) penalties for each Labor Code section 201-203 violation, according to
28 proof, as to those penalties otherwise only available in public agency enforcement actions.

1 Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties
2 recovered provided to the LWDA on behalf of the State of California.

3 **NINTH CAUSE OF ACTION**
4 **PAGA CIVIL PENALTIES FOR FAILURE TO MAINTAIN ACCURATE RECORDS**
5 **[Labor Code §§ 2698, *et seq.*]**

6 97. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

7 98. Labor Code section 1174(d) states: "Every person employing labor in this state
8 shall: Keep, at a central location in the state or at the plants or establishments at which
9 employees are employed, payroll records showing the hours worked daily by and the wages
10 paid to employees employed at the respective plants or establishments. These records shall be
11 kept in accordance with rules established for this purpose by the commission, but, in any case
12 shall be kept on file for not less than three years."

13 99. Labor Code section 1174.5 states: "Any person employing labor who willfully
14 fails to maintain accurate and complete records required by subdivision (d) of Section 1174,
15 shall be subject to a civil penalty of five hundred dollars."

16 100. IWC Wage Order 7-2001 section 7 obligates an employer to keep accurate
17 information of wages earned and paid including applicable overtime, rest period, and gratuity
18 wages. IWC Wage Order 7-2001 section 7(A)(3) states in pertinent part: "Every employer shall
19 keep accurate information with respect to each employee including the following: ...(3) Time
20 records showing when the employee begins and ends each work period. Meal periods, split shift
21 intervals and total daily hours worked shall also be recorded."

22 101. During all or a substantial portion of the PAGA Period, Defendants failed to
23 maintain accurate records showing the accurate number of hours works.

24 102. As a result, Defendants willfully violated the Labor Code and are liable to
25 Plaintiff, and other aggrieved employees, for civil penalties as required by Labor Code section
26 1174(d) or, in the alternative, section 2699(f)(2).

27 103. As a proximate result of the aforementioned violations, Plaintiff has been
28 damaged in an amount according to proof at time of trial, but in an amount in excess of the
jurisdiction of this Court.

1 104. Plaintiff, as a representative of the general public, will and does seek to recover
2 any and all civil penalties for each and every violation, in an amount according to proof, as to
3 those penalties that are otherwise only available in public agency enforcement actions. Civil
4 penalties recovered will be distributed in accordance with the PAGA, with 75% of civil
5 penalties recovered provided to the LWDA on behalf of the State of California.

6 **TENTH CAUSE OF ACTION**

7 **PAGA CIVIL PENALTIES FOR FAILURE TO PROVIDE SUITABLE SEATS**
8 **[Labor Code §§ 2698, *et seq.*]**

9 105. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

10 106. Section 14 of IWC Wage Order 7-2001 states, “(A) All working employees shall
11 be provided with suitable seats when the nature of the work reasonably permits the use of seats;
12 (B) When employees are not engaged in the active duties of their employment and the nature of
13 the work requires standing, an adequate number of suitable seats shall be placed in reasonable
14 proximity to the work area and employees shall be permitted to use such seats when it does not
15 interfere with the performance of their duties.”

16 107. Labor Code section 1198 provides: “The maximum hours of work and the
17 standard conditions of labor fixed by the commission shall be the maximum hours of work and
18 the standard conditions of labor for employees. The employment of any employee for longer
19 hours than those fixed by the order or under conditions of labor prohibited by the order is
20 unlawful.”

21 108. Labor Code section 1199, which is a statute listed for which PAGA default civil
22 penalties are recoverable pursuant to Labor Code sections 2699.5 and 2699(f)((2), provides that:
23 “Every employer or other person acting either individually or as an officer, agent, or employee
24 of another person is guilty of a misdemeanor and is punishable by a fine of not less than one
25 hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any
26 of the following:

27 (a) Requires or causes any employee to work for longer hours than those fixed, or under
28 conditions of labor prohibited by an order of the commission.

 (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an

1 order of the commission.

2 (c) Violates or refuses or neglects to comply with any provision of this chapter or any
3 order or ruling of the commission.

4 109. On information and belief, Plaintiff alleges that during Plaintiff's employment,
5 and at least one year prior to the filing of this complaint, Defendants failed to provide Plaintiff
6 and other aggrieved employees with suitable seats, as required by Section 14 of the applicable
7 IWC Wage Order. The nature of the work performed by Plaintiff and other aggrieved employees
8 reasonably permitted the use of seats, but suitable seats were not provided. Additionally, an
9 adequate number of suitable seats were not provided in reasonable proximity to the work area.

10 110. As a result, Defendants willfully violated the Labor Code and are liable to
11 Plaintiff, and other aggrieved employees, for civil penalties as required by Labor Code section
12 2699(f)(2).

13 111. As a proximate result of the aforementioned violations, Plaintiff has been
14 damaged in an amount according to proof at time of trial, but in an amount in excess of the
15 jurisdiction of this Court.

16 112. Plaintiff, as a representative of the general public, will and does seek to recover
17 any and all civil penalties for each and every violation, in an amount according to proof, as to
18 those penalties that are otherwise only available in public agency enforcement actions. Civil
19 penalties recovered will be distributed in accordance with the PAGA, with 75% of civil penalties
20 recovered provided to the LWDA on behalf of the State of California.

21 **PRAYER FOR RELIEF**

22 Plaintiff prays for judgment as follows:

23 A. That this action be maintained as a Representative Action under the PAGA, and
24 Plaintiff and her counsel be provided with all enforcement capability as if the action were
25 brought by the California Division of Labor Standards Enforcement;

26 B. For recovery of all civil penalties permitted by Labor Code section 2699, for
27 unpaid minimum, regular, and overtime wages pursuant to Labor Code section 1194, according
28 to proof;

1 C. For recovery of all civil penalties permitted by Labor Code section 2699, for
2 unpaid reporting time wages as required by the applicable IWC Wage Order, according to
3 proof;

4 D. For recovery of civil penalties permitted by Labor Code section 2699, for unpaid
5 meal period premiums earned pursuant to Labor Code section 226.7, according to proof;

6 E. For recovery of civil penalties permitted by Labor Code section 2699 for unpaid
7 rest period premiums earned pursuant to Labor Code section 226.7, according to proof;

8 F. For recovery of civil penalties as permitted by Labor Code section 2699 for
9 unreimbursed business expenses pursuant to Labor Code section 2802, according to proof;

10 G. For recovery of civil penalties permitted by Labor Code section 2699, for
11 inaccurate itemized wage statements pursuant to Labor Code sections 226 and 226.3, according
12 to proof;

13 H. For recovery of civil penalties pursuant to Labor Code section 2699(f)(2) for
14 failing to timely pay all wage due pursuant to Labor Code section 204(a).

15 I. For recovery of civil penalties permitted by Labor Code section 2699(f)(2) for
16 failing to timely pay all final wages due pursuant to Labor Code sections 201-202;

17 J. For recovery of civil penalties permitted by Labor Code section 2699(f)(2) for
18 failing to pay statutory waiting time penalties due pursuant to Labor Code section 203;

19 K. For recovery of civil penalties pursuant to Labor Code section 2699(f)(2) for
20 failing to provide suitable seats pursuant to Labor Code sections 1198 and 1199;

21 L. For Pre-Judgment and Post-Judgment interest;

22 M. For the Plaintiff to be recognized by the Court as serving as a Representative of
23 the LWDA, that he has suffered sufficient harm to be deemed and “aggrieved employees” and
24 to proceed in this PAGA Action, and to be awarded some form of enhanced compensation for
25 bringing this action should he prevail and provide benefit to the State of California or other
26 “aggrieved employees,” subject to the Court’s discretion;

27 ///

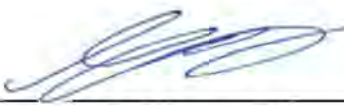
28 ///

1 N. Attorneys' fees and costs of suit, including expert fees and fees pursuant to
2 California Labor Code sections 226, 1194, 2699.3, and all other applicable state laws including
3 Code of Civil Procedure section 1021.5; and,

4 O. Such other relief as this Court deems necessary, just, equitable, and proper.

5 COHELAN KHOURY & SINGER
6 LAW OFFICES OF SAHAG MAJARIAN II

7
8 Dated: August 20, 2020

By: 

Isam C. Khoury, Esq.

Marta Manus, Esq.

Attorneys for Plaintiff Geena B. Gordillo, on behalf of
herself and as representative for the State of California
on behalf of all other aggrieved employees

EXHIBIT 1

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

TIMOTHY D. COHELAN, APLC*
ISAM C. KHOURY, APC
DIANA M. KHOURY, APC
MICHAEL D. SINGER, APLC •

(*Also admitted in the District of Columbia)
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JEFF GERACI
J. JASON HILL†
MARTA MANUS
KRISTINA DE LA ROSA

(† Also admitted in Illinois)

March 31, 2020

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency ("LWDA")

VIA CERTIFIED U.S. MAIL WITH RETURN RECEIPT

Sally Beauty Supply LLC
3001 Colorado Blvd.
Denton, TX 76210

Sally Beauty Supply LLC
c/o Corporate Creations Network, Inc.
4640 Admiralty Way, 5th Floor
Marina Del Rey, CA 90292

Re: Notice pursuant to California Labor Code sections 2698, *et seq.*, the Private Attorneys General Act ("PAGA"), sent by Geena B. Gordillo on behalf of herself and all other non-exempt employees of Sally Beauty Supply LLC in the State of California, as an individual and as a proposed Representative of the State of California

Dear PAGA Administrator and Sally Beauty Supply LLC:

This letter shall serve as Geena B. Gordillo's (hereafter "Claimant") Notice pursuant to the California Private Attorneys General Act of 2004 ("PAGA"), California Labor Code sections 2698, *et seq.* regarding claims against Sally Beauty Supply LLC (referred to herein as "the Employer"). Claimant submits this notice on behalf of herself and all current and former non-exempt employees employed by the Employer in California during the one year preceding the date of this notice suffered one or more of the violations described herein (collectively referred to as "aggrieved employees").

If the LWDA does not intend to investigate the alleged violations, Claimant intends to file a representative action for PAGA *civil penalties* on behalf of herself and all other aggrieved employees of the Employer, seeking civil penalties on behalf of herself and all other aggrieved non-exempt employees in the State of California. A copy of this notice is being sent to the Employer by certified mail at the addresses above.

Claimant and other non-exempt employees were subject to the same policies and practices alleged herein which impermissibly denied aggrieved employees their rights pursuant to the California Labor Code and caused violation of the Labor Code as set forth below.

FACTUAL STATEMENT

Claimant worked for the Employer as a non-exempt employee from approximately June 2019 through March 13, 2020. At all relevant times at least one year prior to the date of this Notice, the Employer subjected Claimant and non-exempt employees to policies and practices

which caused the violations of the Labor Code as described herein. Claimant now seeks civil penalties individually and on behalf of other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Order, including civil penalties pursuant to Labor Code section 558(a), *excluding underpaid wages per ZB, N.A. v. Superior Court* (2019) 8 Cal. 5th 175, 252 Cal. Rptr. 3d 228, 448 P.3d 239. Claimant's claims are set forth in further detail below.

For reasons set forth herein, Claimant alleges the following violations of the California Labor Code and the applicable IWC Wage Order(s) on behalf of herself and all other non-exempt employees employed by the Employer in California.

FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES

(Labor Code §§ 218, 510, 1194, 1197, 1197.1, 1198, and 1199(c) and the "Minimum Wages" and "Hours and Days of Work" Sections of the Applicable Wage Order)

Labor Code section 510 provides in pertinent part: "Eight hours of labor constitutes a day's work. Any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee."

Labor Code section 1194(a) states: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

Labor Code section 1198 provides: "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

Labor Code section 1199, which is a statute listed for which PAGA default civil penalties are recoverable pursuant to Labor Code sections 2699.5 and 2699(f)((2), provides that:

Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following:

- (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.

- (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.
- (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.

Labor Code section 1197 states: “The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.”

Labor Code section 1197.1 states: “Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203. For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.”

Pursuant to the “Hours & Days of Work” Section of the applicable Wage Order, an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

Pursuant to the “Minimum Wages” and “Hours & Days of Work” Sections of the applicable Wage Order, an employer may not pay employees less than the applicable minimum wage for all hours worked and provides that an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

The Employer violated Labor Code sections 218, 510, 1194, 1197, and 1198, and the “Minimum Wages” and “Hours and Days of Work” Sections of the Applicable Wage Order because it did not pay Claimant and other aggrieved current and former employees all minimum, regular, and overtime wages for all hours worked. The Employer failed to pay for all hours worked including hours worked by Claimant and other aggrieved employees during days off and off-the-clock after clocking out at the end of a shift. The Employer frequently required Claimant to return to the store after her shift had ended to drop off keys and perform other job duties, without paying any wages for these hours worked. Additionally, on information and belief, the Employer failed to incorporate commission wages into the calculation of the regular rate of pay for purposes of calculating the accurate overtime rate of pay resulting in an underpayment of wages.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of all aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PAY REPORTING TIME PAY

(Violation of Labor Code §§ 218, 558, 1194, 1198, 1199, 2698 and the “Reporting Time Pay”
Section of the applicable IWC Wage)

Section 5(A) of the applicable IWC Wage Order states: “Each workday an employee is required to report to work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.”

Labor Code section 218 states: “Nothing in this article shall limit the authority of the district attorney of any county or prosecuting attorney of any city to prosecute actions, either civil or criminal, for violations of this article or to enforce the provisions thereof independently and without specific direction of the division. Nothing in this article shall limit the right of any wage claimant to sue directly or through an assignee for any wages or penalty due him under this article.”

Labor Code section 1199 states:

Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following:

- (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.
- (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.
- (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.

The Employer violated California law and the applicable IWC wage order by failing to pay all wages due, including reporting time pay. On information and belief, employees were frequently misinformed of their scheduled shifts and reported to the store to work because they were provided with incorrect information about their scheduled shift. On these occasions, the Employer sent employees home without paying for reporting time pay, as required under California law.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of all aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PROVIDE MEAL AND REST PERIODS

(Labor Code §§ 226.7, 512, and 1198, and the “Meal Period” and “Rest Period” Sections of the applicable IWC Wage Order)

Labor Code section 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes” Labor Code section 226.7(a) states that “no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.”

The “Rest Period” Section of applicable IWC Wage Order states: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” If an employer fails to provide an employee a rest period in accordance with the applicable provision of the order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation of each workday that the rest period is not provided.

Labor Code section 226.7(c) states: “[I]f an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the IWC, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.”

The Employer failed to provide Claimant and other aggrieved employees with legally compliant meal and rest periods on eligible workdays. The Employer regularly failed to provide a duty-free and uninterrupted meal period before the end of the fifth hour of work and failed to provide a second meal period on shifts of more than 10 hours, as required under California law. Furthermore, the meal periods provided to Claimant and other aggrieved employees were often short insofar as they were not at least 30 minutes in length and were otherwise not off-duty and uninterrupted, as required under California law. On information and belief, Claimant and other aggrieved employees did not waive their right to receive meal periods, including second meal periods and third rest periods on eligible shifts. During Claimant’s employment, the Employer failed to provide Claimant and other aggrieved employees with legally compliant off-duty meal periods and duty-free rest periods as required by Labor Code sections 226.7 and 512, and sections 11 and 12 of the applicable IWC Wage Order. The Employer’s employment practices prevented employees, including Claimant, from taking compliant meal and rest periods because employees were frequently scheduled to work alone in the store without being provided with the opportunity to take lawful, off-duty meal and rest periods. Furthermore, on information and belief, the Employer failed to pay one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal and/or rest period was not provided, in accordance with California law.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of all aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO REIMBURSE BUSINESS-RELATED EXPENSES
(Labor Code §§ 2802 and 2804, and the “Tools and Equipment” section of the applicable IWC Wage Order)

Labor Code section 2802(a) provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

Labor Code section 2802(c) states that “[f]or purposes of [2802], the term “necessary expenditures or losses” shall include all reasonable costs, including, but not limited to attorney’s fees incurred by the employee enforcing the rights granted by [2802].”

Section 9(b) of the applicable IWC Wage Order states in pertinent part: “When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.”

Labor Code section 2802 prohibits employers, such as the Employer, from shifting their cost of doing business onto the employee. California Labor Code section 2802 states that employers must “indemnify” an employee for “all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.” This means that if the expense in question is “necessary” for performance of the job, the employer must reimburse the employee 100% of the cost. An expense is considered “necessary” if it directly results from the employee’s performance of his or her work duties. An expense is also “necessary” if it occurs because the employee is following the directions given by the employer.

“Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” Cal. Labor Code § 2804.

The Employer failed to comply with Labor Code section 2802 and the applicable IWC Wage Order by failing to reimburse Claimant and other aggrieved employees for necessary business-related expenses incurred in direct consequence of the discharge of his or her duties. Claimant and other non-exempt employees were required to use their personal cell phones to download an application to check their work schedules. Furthermore, Claimant was often required to communicate with other employees and her supervisor on her personal cell phone for work-related purposes, without receiving any reimbursement for these expenses. Additionally, the Employer failed to reimburse Claimant and other aggrieved employees for mileage expenses incurred performing their job duties for the Employer.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of all aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PAY ALL VACATION WAGES
(Labor Code §§ 218.5, 218.6, 227.3, and 2698, *et seq.*)

California Labor Code section 227.3 states, in pertinent part: “Whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply the principles of equity and fairness.”

The Employer failed to comply with Labor Code section 227.3 by failing to pay all vacation wages due and earned to Claimant and all other aggrieved employees, including accrued and unused vacation wages due upon separation of employment.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of all aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PROVIDE PAID SICK LEAVE
(Labor Code §§ 246, 248.5)

Labor Code section 246 grants the right to employees to paid sick days. Specifically, Cal. Labor Code section 246(b) states that:

- (1) An employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later, subject to the use and accrual limitations set forth in this section.
- (2) An employee who is exempt from overtime requirements as an administrative, executive, or professional employee under a wage order of the Industrial Welfare Commission is deemed to work 40 hours per workweek for the purposes of this section, unless the employee’s normal workweek is less than 40 hours, in which case the employee shall accrue paid sick days based upon that normal workweek.
- (3) An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period.

(4) An employer may satisfy the accrual requirements of this section by providing not less than 24 hours or three days of paid sick leave that is available to the employee to use by the completion of his or her 120th calendar day of employment.

Labor Code section 246(i) further requires that an employer provide employees written notice setting forth the amount of paid sick leave available either on an employee's wage statement pursuant to Section 226 or in a separate writing on the designated pay date.

The Employer failed to comply with Labor Code sections 246 and 248.5 by failing to provide all paid sick leave due and earned and failing to set forth in a written notice the accurate amount of paid sick leave Claimant and other aggrieved employees accrued.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of all aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226(a), 226.3, 1198, 2699, and the "Records" Section of the applicable IWC Wage Order)

Labor Code section 226(a) states in pertinent part that every employer shall provide an accurate itemized statement in writing with respect to each one of its employees showing: 1) gross wages earned; 2) total hours worked by an employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; (3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer...; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Furthermore, Labor Code section 226(e)(2)(A) states: "An employee is deemed to suffer injury for purposes of this subdivision if the Employer fails to provide a wage statement."

Labor Code section 226.3 imposes an additional civil penalty on the Employer of \$250.00 per employee per violation of Labor Code section 226(a) in an initial citation and \$1,000.00 per employee for each violation in a subsequent citation. In addition, Labor Code section 226(e) imposes a penalty of the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000, and Claimant is entitled to an award of costs and reasonable attorney's fees.

Due to the Employer's failure to pay all wages due at all times during Claimant's employment, including minimum, regular, overtime, vacation, and reporting time wages, the Employer violated Labor Code section 226 by failing to provide accurate itemized wage statements to Claimant and other aggrieved employees. The wage statements issued by the Employer fail to inform of the accurate number of hours worked and accurate total wages due and earned. The wage statements issued by the Employer do not accurately all wages due. Furthermore, the commission wages are not included in the regular rate of pay for purposes of calculating the accurate overtime rate of pay.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of all aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code § 1174 and the "Records" Section of the applicable IWC Wage Order)

Labor Code section 1174(d) states: "Every person employing labor in this state shall: Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years."

Labor Code section 1174.5 states: "Any person employing labor who willfully fails to maintain accurate and complete records required by subdivision (d) of Section 1174, shall be subject to a civil penalty of five hundred dollars."

IWC Wage Order 4-2001, section 7 obligates an employer to keep accurate information by underpaying minimum wages, regular wages, and overtime, and not recording accurate meal periods. IWC Wage Order 4-2001, section 7(A)(3) states in pertinent part: "Every employer shall keep accurate information with respect to each employee including the following: ... (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded."

The Employer failed to maintain accurate records showing the accurate number of hours worked and accurate wages owed.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of all aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO TIMELY PAY WAGES DUE DURING AND UPON TERMINATION OF EMPLOYMENT

(Labor Code §§ 201, 202, 203, 204, 256, 1198, and 2699)

Labor Code section 201 states: "If an Employer discharges an employee, the wages

earned and unpaid at the time of discharge are due and payable immediately.” Labor Code section 202 states: “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

Labor Code section 203(a) states, in relevant part: “If an Employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents herself or herself to avoid payment to his or her, or who refuses to receive the payment when fully tendered to his or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment.”

Labor Code section 204(a) states, in pertinent part: “All wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” The “Minimum Wages” Section of the applicable Wage Order further states “every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period.”

Labor Code section 256 states: “The Labor Commissioner shall impose a civil penalty in an amount not exceeding 30 days of pay as waiting time under the terms of Section 203.”

As detailed above, the Employer failed to pay Claimant and other aggrieved employees all wages that were due and owing to them including meal and rest period premiums, and regular, minimum, overtime, vacation, and reporting time wages within the required time during their employment and upon their separation of employment, in violation of the Labor Code and the applicable IWC Wage Order because of the violations alleged herein. Additionally, the Employer failed to timely pay Claimant all wages due upon separation of employment. As a result, the Employer violated the above sections of the Labor Code.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of all aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

**CIVIL PENALTIES FOR VIOLATION OF
THE LABOR CODE AND IWC WAGE ORDERS**
(Labor Code §§ 558, 558.1, and 1197.1)

Labor Code section 558 subjects any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of Part 2, Chapter 1, of the Labor Code or any provision regulating hours and days of work in any IWC Wage Order to a civil penalty in the amount of \$50 for any initial violation for each pay period in which an employee is

underpaid in addition to an amount sufficient to recover underpaid wages, and \$100 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

Labor Code section 558.1(a) states: “Any Employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the Employer for such violation.” Labor Code section 558.1 expressly defines “employer or other person acting on behalf of an employer” to include a “natural person who is an owner, director, officer, or managing agent of the employer.”

Labor Code section 1197.1 states that any employer or other person acting either individually or as an officer, agent or employee of another person, which pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty and restitution of wages payable to the employee in an amount of \$100 for the initial violation for each pay period in which an employee underpaid in addition to an amount sufficient to recover underpaid wages, and \$250 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

As set forth above, the Employer underpaid Claimant and other aggrieved employees by failing to provide them with compliant meal and rest periods or compensation in lieu thereof and failed to pay regular, minimum, overtime, vacation, and reporting time wages as required by Labor Code sections 218, 226.7, 227.3, 510, and 512 and sections 3, 5, 11, and 12 of the applicable IWC Wage Order. As a result, the Employer is liable for *civil penalties* under Labor Code section 558.

Accordingly, Claimant will pursue civil penalty or other lawful remedies for herself and other current and former non-exempt employees, including recovery of attorney’s fees, costs, and civil penalties to the extent allowed by law. However, pursuant to the recent California Supreme Court decision in *ZB, N.A. v. Superior Court* (2019) 8 Cal. 5th 175, 252 Cal. Rptr. 3d 228, 448 P.3d 239, Claimant does not seek underpaid wages as part of any anticipated PAGA action.

DUTIES OF EMPLOYER

(Labor Code §§ 1174, 1174.5, 1175, and 1198, and the Applicable Wage Order)

Labor Code section 1174 describes certain duties of every employer in this state. Subsection (d) of this labor code section requires that payroll records show the hours worked daily by employees and the corresponding wages to be paid for the hours worked. The Employer violated this requirement by its failure to accurately record employee hours worked and/or paid including wages owed for off-the-clock time and meal and rest period premiums. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation

California LWDA
Sally Beauty Supply LLC
Re: Geena B. Gordillo
March 31, 2020
Page | 12

of Labor Code section 1174(d). Furthermore, Claimant and all other aggrieved current and former employees are entitled to collect 25% of the penalty imposed pursuant to Section 2699.

The Employer failed to accurately record all hours worked by Claimant and other aggrieved employees and failed to record all accurate wages to be paid.

Claimant will pursue all remedies on behalf of herself and other current and former employees, including recovery of attorney's fees, costs, damages and penalties to the extent allowed by law.

ATTORNEY'S FEES, COSTS, INTEREST AND PENALTIES

(Labor Code §§ 218.6, 226(e), 1194, 1194.2, and 2699, *et seq.*)

Labor Code sections 218.6, 226(e), 1194, 1194.2, and 2699, *et seq.* give employees the right to recover in a civil action the unpaid balance of the full amount of minimum wages, regular wages, overtime compensation, damages, liquidated damages, and penalties, including interest thereon, reasonable attorney's fees, and costs of suit.

Pursuant to Labor Code sections 2699, *et seq.*, aggrieved employees are entitled to collect 25% of the penalty assessment and 100% of the underpaid wages. Accordingly, the Employer is liable for these items in addition to the unpaid wages. Claimant has already incurred in actual damages, costs and attorney's fees and will continue to incur costs as a result of the Employer's unlawful actions.

CONCLUSION

The Employer violated Labor Code sections as set forth herein. Claimant will pursue all remedies on behalf of herself and other aggrieved employees, including recovery of attorney's fees, costs, and penalties to the extent allowed by law. The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Claimant becomes aware of additional claims, he reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action in the complaint. Should you have any questions, please feel free to contact me at your convenience.

Sincerely,
COHELAN KHOURY & SINGER

A handwritten signature in blue ink, appearing to read 'Marta Manus', is written over the typed name.

Marta Manus, Esq.

Cc (via Email only)
Sahag Majarian, Esq.
Law Offices of Sahag Majarian II
18250 Ventura Blvd.
Tarzana, CA 91356
sahagii@aol.com

EXHIBIT 2

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

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DIANA M. KHOURY, APC
MICHAEL D. SINGER, APLC[•]

(*Also admitted in the District of Columbia)
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JEFF GERACI
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(† Also admitted in Illinois)

June 11, 2020

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency ("LWDA")

VIA CERTIFIED U.S. MAIL WITH RETURN RECEIPT

Sally Beauty Supply LLC
3001 Colorado Blvd.
Denton, TX 76210

Sally Beauty Supply LLC
c/o Corporate Creations Network, Inc.
4640 Admiralty Way, 5th Floor
Marina Del Rey, CA 90292

Re: Amended Notice pursuant to California Labor Code sections 2698, *et seq.*, the Private Attorneys General Act ("PAGA"), sent by Geena B. Gordillo on behalf of herself and all other non-exempt employees of Sally Beauty Supply LLC in the State of California, as an individual and as a proposed Representative of the State of California

Dear PAGA Administrator and Sally Beauty Supply LLC:

This letter shall serve as Geena B. Gordillo's (hereafter "Claimant") Amended Notice pursuant to the California Private Attorneys General Act of 2004 ("PAGA"), California Labor Code sections 2698, *et seq.* and supplements the previous Notice with additional facts and theories supporting allegations of the Labor Code violations committed by Claimant's former employer Sally Beauty Supply LLC (referred to herein as "the Employer"). Claimant incorporates all other facts and theories alleged in the Notice submitted on March 31, 2020 (LWDA Case No. LWDA-CM-781098-20), a true and correct copy of which is attached as Exhibit A, as though set forth fully herein.

SUPPLEMENTARY FACTUAL STATEMENT

Claimant worked for the Employer as a non-exempt employee from approximately June 2019 through March 13, 2020. At all relevant times at least one year prior to the date of this Notice, the Employer subjected Claimant and non-exempt employees to policies and practices which caused the violations of the Labor Code as described herein. Claimant now seeks civil penalties individually and on behalf of other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Order, including civil penalties pursuant to Labor Code section 558(a), *excluding underpaid wages per ZB, N.A. v. Superior Court* (2019) 8 Cal. 5th 175, 252 Cal. Rptr. 3d 228, 448 P.3d 239. Claimant's claims are set forth in further detail below.

For reasons set forth herein, Claimant alleges the following violations of the California Labor Code and the applicable IWC Wage Order(s) on behalf of herself and all other non-exempt employees employed by the Employer in California.

FAILURE TO PROVIDE SUITABLE SEATS

(Labor Code sections 1198 & 1199(c), and the Section 14 of the Applicable IWC Wage Order)

Section 14 of the applicable IWC Wage Order states, “(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats; (B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

Labor Code section 1198 provides: “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

Labor Code section 1199, which is a statute listed for which PAGA default civil penalties are recoverable pursuant to Labor Code sections 2699.5 and 2699(f)(2), provides that:

Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following:

- (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.
- (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.
- (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.

Claimant alleges that during Claimant’s employment, and at least one year prior to the date of this Notice, Employer failed to provide Claimant and other aggrieved employees with suitable seats, as required by Section 14 of the applicable IWC Wage Order. The nature of the work performed by Claimant and other aggrieved employees reasonably permitted the use of seats, such seats were not provided. Also, an adequate number of suitable seats were not provided in reasonable proximity to the work area.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of herself and other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Order.

California LWDA
Sally Beauty Supply LLC
Re: Geena B. Gordillo
June 11, 2020
Page | 3

CONCLUSION

The Employer violated Labor Code sections as set forth herein. Claimant will pursue all remedies on behalf of herself and other aggrieved employees, including recovery of attorney's fees, costs, and penalties to the extent allowed by law. The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Claimant becomes aware of additional claims, she reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action in the complaint. Should you have any questions, please feel free to contact me at your convenience.

Sincerely,
COHELAN KHOURY & SINGER



Marta Manus, Esq.

Cc (via Email only)
Sahag Majarian, Esq.
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EXHIBIT A

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

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DIANA M. KHOURY, APC
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MARTA MANUS
KRISTINA DE LA ROSA

(† Also admitted in Illinois)

March 31, 2020

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency ("LWDA")

VIA CERTIFIED U.S. MAIL WITH RETURN RECEIPT

Sally Beauty Supply LLC
3001 Colorado Blvd.
Denton, TX 76210

Sally Beauty Supply LLC
c/o Corporate Creations Network, Inc.
4640 Admiralty Way, 5th Floor
Marina Del Rey, CA 90292

Re: Notice pursuant to California Labor Code sections 2698, *et seq.*, the Private Attorneys General Act ("PAGA"), sent by Geena B. Gordillo on behalf of herself and all other non-exempt employees of Sally Beauty Supply LLC in the State of California, as an individual and as a proposed Representative of the State of California

Dear PAGA Administrator and Sally Beauty Supply LLC:

This letter shall serve as Geena B. Gordillo's (hereafter "Claimant") Notice pursuant to the California Private Attorneys General Act of 2004 ("PAGA"), California Labor Code sections 2698, *et seq.* regarding claims against Sally Beauty Supply LLC (referred to herein as "the Employer"). Claimant submits this notice on behalf of herself and all current and former non-exempt employees employed by the Employer in California during the one year preceding the date of this notice suffered one or more of the violations described herein (collectively referred to as "aggrieved employees").

If the LWDA does not intend to investigate the alleged violations, Claimant intends to file a representative action for PAGA *civil penalties* on behalf of herself and all other aggrieved employees of the Employer, seeking civil penalties on behalf of herself and all other aggrieved non-exempt employees in the State of California. A copy of this notice is being sent to the Employer by certified mail at the addresses above.

Claimant and other non-exempt employees were subject to the same policies and practices alleged herein which impermissibly denied aggrieved employees their rights pursuant to the California Labor Code and caused violation of the Labor Code as set forth below.

FACTUAL STATEMENT

Claimant worked for the Employer as a non-exempt employee from approximately June 2019 through March 13, 2020. At all relevant times at least one year prior to the date of this Notice, the Employer subjected Claimant and non-exempt employees to policies and practices

which caused the violations of the Labor Code as described herein. Claimant now seeks civil penalties individually and on behalf of other aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Order, including civil penalties pursuant to Labor Code section 558(a), *excluding underpaid wages per ZB, N.A. v. Superior Court* (2019) 8 Cal. 5th 175, 252 Cal. Rptr. 3d 228, 448 P.3d 239. Claimant's claims are set forth in further detail below.

For reasons set forth herein, Claimant alleges the following violations of the California Labor Code and the applicable IWC Wage Order(s) on behalf of herself and all other non-exempt employees employed by the Employer in California.

FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES

(Labor Code §§ 218, 510, 1194, 1197, 1197.1, 1198, and 1199(c) and the "Minimum Wages" and "Hours and Days of Work" Sections of the Applicable Wage Order)

Labor Code section 510 provides in pertinent part: "Eight hours of labor constitutes a day's work. Any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee."

Labor Code section 1194(a) states: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

Labor Code section 1198 provides: "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

Labor Code section 1199, which is a statute listed for which PAGA default civil penalties are recoverable pursuant to Labor Code sections 2699.5 and 2699(f)((2), provides that:

Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following:

- (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.

- (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.
- (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.

Labor Code section 1197 states: “The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.”

Labor Code section 1197.1 states: “Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203. For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.”

Pursuant to the “Hours & Days of Work” Section of the applicable Wage Order, an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

Pursuant to the “Minimum Wages” and “Hours & Days of Work” Sections of the applicable Wage Order, an employer may not pay employees less than the applicable minimum wage for all hours worked and provides that an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

The Employer violated Labor Code sections 218, 510, 1194, 1197, and 1198, and the “Minimum Wages” and “Hours and Days of Work” Sections of the Applicable Wage Order because it did not pay Claimant and other aggrieved current and former employees all minimum, regular, and overtime wages for all hours worked. The Employer failed to pay for all hours worked including hours worked by Claimant and other aggrieved employees during days off and off-the-clock after clocking out at the end of a shift. The Employer frequently required Claimant to return to the store after her shift had ended to drop off keys and perform other job duties, without paying any wages for these hours worked. Additionally, on information and belief, the Employer failed to incorporate commission wages into the calculation of the regular rate of pay for purposes of calculating the accurate overtime rate of pay resulting in an underpayment of wages.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of all aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PAY REPORTING TIME PAY

(Violation of Labor Code §§ 218, 558, 1194, 1198, 1199, 2698 and the “Reporting Time Pay”
Section of the applicable IWC Wage)

Section 5(A) of the applicable IWC Wage Order states: “Each workday an employee is required to report to work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.”

Labor Code section 218 states: “Nothing in this article shall limit the authority of the district attorney of any county or prosecuting attorney of any city to prosecute actions, either civil or criminal, for violations of this article or to enforce the provisions thereof independently and without specific direction of the division. Nothing in this article shall limit the right of any wage claimant to sue directly or through an assignee for any wages or penalty due him under this article.”

Labor Code section 1199 states:

Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following:

- (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission.
- (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission.
- (c) Violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission.

The Employer violated California law and the applicable IWC wage order by failing to pay all wages due, including reporting time pay. On information and belief, employees were frequently misinformed of their scheduled shifts and reported to the store to work because they were provided with incorrect information about their scheduled shift. On these occasions, the Employer sent employees home without paying for reporting time pay, as required under California law.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of all aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PROVIDE MEAL AND REST PERIODS

(Labor Code §§ 226.7, 512, and 1198, and the “Meal Period” and “Rest Period” Sections of the applicable IWC Wage Order)

Labor Code section 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes” Labor Code section 226.7(a) states that “no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.”

The “Rest Period” Section of applicable IWC Wage Order states: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” If an employer fails to provide an employee a rest period in accordance with the applicable provision of the order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation of each workday that the rest period is not provided.

Labor Code section 226.7(c) states: “[I]f an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the IWC, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.”

The Employer failed to provide Claimant and other aggrieved employees with legally compliant meal and rest periods on eligible workdays. The Employer regularly failed to provide a duty-free and uninterrupted meal period before the end of the fifth hour of work and failed to provide a second meal period on shifts of more than 10 hours, as required under California law. Furthermore, the meal periods provided to Claimant and other aggrieved employees were often short insofar as they were not at least 30 minutes in length and were otherwise not off-duty and uninterrupted, as required under California law. On information and belief, Claimant and other aggrieved employees did not waive their right to receive meal periods, including second meal periods and third rest periods on eligible shifts. During Claimant’s employment, the Employer failed to provide Claimant and other aggrieved employees with legally compliant off-duty meal periods and duty-free rest periods as required by Labor Code sections 226.7 and 512, and sections 11 and 12 of the applicable IWC Wage Order. The Employer’s employment practices prevented employees, including Claimant, from taking compliant meal and rest periods because employees were frequently scheduled to work alone in the store without being provided with the opportunity to take lawful, off-duty meal and rest periods. Furthermore, on information and belief, the Employer failed to pay one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal and/or rest period was not provided, in accordance with California law.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of all aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO REIMBURSE BUSINESS-RELATED EXPENSES
(Labor Code §§ 2802 and 2804, and the “Tools and Equipment” section of the applicable IWC Wage Order)

Labor Code section 2802(a) provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

Labor Code section 2802(c) states that “[f]or purposes of [2802], the term “necessary expenditures or losses” shall include all reasonable costs, including, but not limited to attorney’s fees incurred by the employee enforcing the rights granted by [2802].”

Section 9(b) of the applicable IWC Wage Order states in pertinent part: “When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.”

Labor Code section 2802 prohibits employers, such as the Employer, from shifting their cost of doing business onto the employee. California Labor Code section 2802 states that employers must “indemnify” an employee for “all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.” This means that if the expense in question is “necessary” for performance of the job, the employer must reimburse the employee 100% of the cost. An expense is considered “necessary” if it directly results from the employee’s performance of his or her work duties. An expense is also “necessary” if it occurs because the employee is following the directions given by the employer.

“Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” Cal. Labor Code § 2804.

The Employer failed to comply with Labor Code section 2802 and the applicable IWC Wage Order by failing to reimburse Claimant and other aggrieved employees for necessary business-related expenses incurred in direct consequence of the discharge of his or her duties. Claimant and other non-exempt employees were required to use their personal cell phones to download an application to check their work schedules. Furthermore, Claimant was often required to communicate with other employees and her supervisor on her personal cell phone for work-related purposes, without receiving any reimbursement for these expenses. Additionally, the Employer failed to reimburse Claimant and other aggrieved employees for mileage expenses incurred performing their job duties for the Employer.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of all aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PAY ALL VACATION WAGES
(Labor Code §§ 218.5, 218.6, 227.3, and 2698, *et seq.*)

California Labor Code section 227.3 states, in pertinent part: “Whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply the principles of equity and fairness.”

The Employer failed to comply with Labor Code section 227.3 by failing to pay all vacation wages due and earned to Claimant and all other aggrieved employees, including accrued and unused vacation wages due upon separation of employment.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of all aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PROVIDE PAID SICK LEAVE
(Labor Code §§ 246, 248.5)

Labor Code section 246 grants the right to employees to paid sick days. Specifically, Cal. Labor Code section 246(b) states that:

- (1) An employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later, subject to the use and accrual limitations set forth in this section.
- (2) An employee who is exempt from overtime requirements as an administrative, executive, or professional employee under a wage order of the Industrial Welfare Commission is deemed to work 40 hours per workweek for the purposes of this section, unless the employee’s normal workweek is less than 40 hours, in which case the employee shall accrue paid sick days based upon that normal workweek.
- (3) An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than 24 hours of accrued sick leave or paid time off by the 120th calendar day of employment or each calendar year, or in each 12-month period.

(4) An employer may satisfy the accrual requirements of this section by providing not less than 24 hours or three days of paid sick leave that is available to the employee to use by the completion of his or her 120th calendar day of employment.

Labor Code section 246(i) further requires that an employer provide employees written notice setting forth the amount of paid sick leave available either on an employee's wage statement pursuant to Section 226 or in a separate writing on the designated pay date.

The Employer failed to comply with Labor Code sections 246 and 248.5 by failing to provide all paid sick leave due and earned and failing to set forth in a written notice the accurate amount of paid sick leave Claimant and other aggrieved employees accrued.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of all aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226(a), 226.3, 1198, 2699, and the "Records" Section of the applicable IWC Wage Order)

Labor Code section 226(a) states in pertinent part that every employer shall provide an accurate itemized statement in writing with respect to each one of its employees showing: 1) gross wages earned; 2) total hours worked by an employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; (3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer...; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Furthermore, Labor Code section 226(e)(2)(A) states: "An employee is deemed to suffer injury for purposes of this subdivision if the Employer fails to provide a wage statement."

Labor Code section 226.3 imposes an additional civil penalty on the Employer of \$250.00 per employee per violation of Labor Code section 226(a) in an initial citation and \$1,000.00 per employee for each violation in a subsequent citation. In addition, Labor Code section 226(e) imposes a penalty of the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000, and Claimant is entitled to an award of costs and reasonable attorney's fees.

Due to the Employer's failure to pay all wages due at all times during Claimant's employment, including minimum, regular, overtime, vacation, and reporting time wages, the Employer violated Labor Code section 226 by failing to provide accurate itemized wage statements to Claimant and other aggrieved employees. The wage statements issued by the Employer fail to inform of the accurate number of hours worked and accurate total wages due and earned. The wage statements issued by the Employer do not accurately all wages due. Furthermore, the commission wages are not included in the regular rate of pay for purposes of calculating the accurate overtime rate of pay.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of all aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code § 1174 and the "Records" Section of the applicable IWC Wage Order)

Labor Code section 1174(d) states: "Every person employing labor in this state shall: Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years."

Labor Code section 1174.5 states: "Any person employing labor who willfully fails to maintain accurate and complete records required by subdivision (d) of Section 1174, shall be subject to a civil penalty of five hundred dollars."

IWC Wage Order 4-2001, section 7 obligates an employer to keep accurate information by underpaying minimum wages, regular wages, and overtime, and not recording accurate meal periods. IWC Wage Order 4-2001, section 7(A)(3) states in pertinent part: "Every employer shall keep accurate information with respect to each employee including the following: ... (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded."

The Employer failed to maintain accurate records showing the accurate number of hours worked and accurate wages owed.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of all aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

FAILURE TO TIMELY PAY WAGES DUE DURING AND UPON TERMINATION OF EMPLOYMENT

(Labor Code §§ 201, 202, 203, 204, 256, 1198, and 2699)

Labor Code section 201 states: "If an Employer discharges an employee, the wages

earned and unpaid at the time of discharge are due and payable immediately.” Labor Code section 202 states: “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

Labor Code section 203(a) states, in relevant part: “If an Employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents herself or herself to avoid payment to his or her, or who refuses to receive the payment when fully tendered to his or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment.”

Labor Code section 204(a) states, in pertinent part: “All wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” The “Minimum Wages” Section of the applicable Wage Order further states “every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period.”

Labor Code section 256 states: “The Labor Commissioner shall impose a civil penalty in an amount not exceeding 30 days of pay as waiting time under the terms of Section 203.”

As detailed above, the Employer failed to pay Claimant and other aggrieved employees all wages that were due and owing to them including meal and rest period premiums, and regular, minimum, overtime, vacation, and reporting time wages within the required time during their employment and upon their separation of employment, in violation of the Labor Code and the applicable IWC Wage Order because of the violations alleged herein. Additionally, the Employer failed to timely pay Claimant all wages due upon separation of employment. As a result, the Employer violated the above sections of the Labor Code.

Accordingly, Claimant now seeks *civil penalties* pursuant to the PAGA on behalf of all aggrieved employees based on the alleged violations of the California Labor Code and applicable IWC Wage Orders.

**CIVIL PENALTIES FOR VIOLATION OF
THE LABOR CODE AND IWC WAGE ORDERS**
(Labor Code §§ 558, 558.1, and 1197.1)

Labor Code section 558 subjects any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of Part 2, Chapter 1, of the Labor Code or any provision regulating hours and days of work in any IWC Wage Order to a civil penalty in the amount of \$50 for any initial violation for each pay period in which an employee is

underpaid in addition to an amount sufficient to recover underpaid wages, and \$100 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

Labor Code section 558.1(a) states: “Any Employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the Employer for such violation.” Labor Code section 558.1 expressly defines “employer or other person acting on behalf of an employer” to include a “natural person who is an owner, director, officer, or managing agent of the employer.”

Labor Code section 1197.1 states that any employer or other person acting either individually or as an officer, agent or employee of another person, which pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty and restitution of wages payable to the employee in an amount of \$100 for the initial violation for each pay period in which an employee underpaid in addition to an amount sufficient to recover underpaid wages, and \$250 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

As set forth above, the Employer underpaid Claimant and other aggrieved employees by failing to provide them with compliant meal and rest periods or compensation in lieu thereof and failed to pay regular, minimum, overtime, vacation, and reporting time wages as required by Labor Code sections 218, 226.7, 227.3, 510, and 512 and sections 3, 5, 11, and 12 of the applicable IWC Wage Order. As a result, the Employer is liable for *civil penalties* under Labor Code section 558.

Accordingly, Claimant will pursue civil penalty or other lawful remedies for herself and other current and former non-exempt employees, including recovery of attorney’s fees, costs, and civil penalties to the extent allowed by law. However, pursuant to the recent California Supreme Court decision in *ZB, N.A. v. Superior Court* (2019) 8 Cal. 5th 175, 252 Cal. Rptr. 3d 228, 448 P.3d 239, Claimant does not seek underpaid wages as part of any anticipated PAGA action.

DUTIES OF EMPLOYER

(Labor Code §§ 1174, 1174.5, 1175, and 1198, and the Applicable Wage Order)

Labor Code section 1174 describes certain duties of every employer in this state. Subsection (d) of this labor code section requires that payroll records show the hours worked daily by employees and the corresponding wages to be paid for the hours worked. The Employer violated this requirement by its failure to accurately record employee hours worked and/or paid including wages owed for off-the-clock time and meal and rest period premiums. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation

California LWDA
Sally Beauty Supply LLC
Re: Geena B. Gordillo
March 31, 2020
Page | 12

of Labor Code section 1174(d). Furthermore, Claimant and all other aggrieved current and former employees are entitled to collect 25% of the penalty imposed pursuant to Section 2699.

The Employer failed to accurately record all hours worked by Claimant and other aggrieved employees and failed to record all accurate wages to be paid.

Claimant will pursue all remedies on behalf of herself and other current and former employees, including recovery of attorney's fees, costs, damages and penalties to the extent allowed by law.

ATTORNEY'S FEES, COSTS, INTEREST AND PENALTIES

(Labor Code §§ 218.6, 226(e), 1194, 1194.2, and 2699, *et seq.*)

Labor Code sections 218.6, 226(e), 1194, 1194.2, and 2699, *et seq.* give employees the right to recover in a civil action the unpaid balance of the full amount of minimum wages, regular wages, overtime compensation, damages, liquidated damages, and penalties, including interest thereon, reasonable attorney's fees, and costs of suit.

Pursuant to Labor Code sections 2699, *et seq.*, aggrieved employees are entitled to collect 25% of the penalty assessment and 100% of the underpaid wages. Accordingly, the Employer is liable for these items in addition to the unpaid wages. Claimant has already incurred in actual damages, costs and attorney's fees and will continue to incur costs as a result of the Employer's unlawful actions.

CONCLUSION

The Employer violated Labor Code sections as set forth herein. Claimant will pursue all remedies on behalf of herself and other aggrieved employees, including recovery of attorney's fees, costs, and penalties to the extent allowed by law. The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Claimant becomes aware of additional claims, he reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action in the complaint. Should you have any questions, please feel free to contact me at your convenience.

Sincerely,
COHELAN KHOURY & SINGER

A handwritten signature in blue ink, appearing to read 'Marta Manus', is written over the typed name.

Marta Manus, Esq.

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