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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF HUMBOLDT COUNTY

LENARD MILLER, individually, and on
behalf of other members of the general
public similarly situated,

Plaintiff,

vs.

SPORTSMAN'S WAREHOUSE
SOUTHWEST, INC., a California
corporation; SPORTSMAN'S
WAREHOUSE, INC., a Utah corporation;
SPORTSMAN'S WAREHOUSE
HOLDINGS, INC., a Delaware corporation;
and DOES 1 through 10, inclusive,

Defendants.

Case No.: CV2000279

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (10) Violation of California Business &

Professions Code §§ 17200, *et seq.*
(Unlawful Business Practices); and
(11) Violation of California Business &
Professions Code §§ 17200, *et seq.* (Unfair
Business Practices)

Jury Trial Demanded

1 Plaintiff Lenard Miller, individually and on behalf of all other members of the public
2 similarly situated, and as an aggrieved employee and on behalf of all other aggrieved
3 employees, alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice.

23 3. Venue is proper in this Court because Defendants employ persons in this county,
24 and employed Plaintiff this county, and thus a substantial portion of the transactions and
25 occurrences related to this action occurred in this county.

26 THE PARTIES

27 4. Plaintiff Lenard Miller is a resident of Loleta, in Humboldt County, California.
28 Defendants employed Plaintiff as an hourly paid, non-exempt Sales Associate and Archery

1 Lead from approximately January 2019 to September 2019. Plaintiff worked for Defendants
2 at their location in Eureka, California. During his employment, Plaintiff typically worked 7.5
3 hours or more per day, five (5) days per week, and 37 hours per week. Plaintiff's primary job
4 duties included, without limitation, providing customer service for archery and hunting
5 departments, ringing up customers, stocking merchandise, filling out closing paperwork, and
6 cleaning the department.

7 5. SPORTSMAN'S WAREHOUSE SOUTHWEST, INC. was and is, upon
8 information and belief, a California corporation, and at all times hereinafter mentioned, an
9 employer whose employees are engaged throughout this county, the State of California, or the
10 various states of the United States of America.

11 6. SPORTSMAN'S WAREHOUSE, INC. was and is, upon information and
12 belief, a Utah corporation, and at all times hereinafter mentioned, an employer whose
13 employees are engaged throughout this county, the State of California, or the various states of
14 the United States of America.

15 7. SPORTSMAN'S WAREHOUSE HOLDINGS, INC. was and is, upon
16 information and belief, a Delaware corporation, and at all times hereinafter mentioned, an
17 employer whose employees are engaged throughout this county, the State of California, or the
18 various states of the United States of America.

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

23 9. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
24 were the partners, agents, owners, or managers of SPORTSMAN'S WAREHOUSE
25 SOUTHWEST, INC.; SPORTSMAN'S WAREHOUSE, INC.; and SPORTSMAN'S
26 WAREHOUSE HOLDINGS, INC. at all relevant times.

27 10. Plaintiff is informed and believes, and thereon alleges, that each and all of the
28 acts and omissions alleged herein was performed by, or is attributable to, SPORTSMAN'S

1 WAREHOUSE SOUTHWEST, INC.; SPORTSMAN’S WAREHOUSE, INC.;
2 SPORTSMAN’S WAREHOUSE HOLDINGS, INC.; and/or DOES 1 through 10 (collectively,
3 “Defendants” or “SPORTSMANS”), each acting as the agent, employee, alter ego, and/or
4 joint venturer of, or working in concert with, each of the other co-Defendants and was acting
5 within the course and scope of such agency, employment, joint venture, or concerted activity
6 with legal authority to act on the others’ behalf. The acts of any and all Defendants were in
7 accordance with, and represent, the official policy of Defendants.

8 11. At all relevant times, Defendants, and each of them, ratified each and every act
9 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
10 and abetted the acts and omissions of each and all the other Defendants in proximately causing
11 the damages herein alleged.

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

15 13. Under California law, Defendants are jointly and severally liable as employers
16 for the violations alleged herein because they have each exercised sufficient control over the
17 wages, hours, working conditions, and employment status of Plaintiff and class members.
18 Each Defendant had the power to hire and fire Plaintiff and class members, supervised and
19 controlled their work schedule and/or conditions of employment, determined their rate of pay,
20 and maintained their employment records. Defendants suffered or permitted Plaintiff and
21 class members to work and/or “engaged” Plaintiff and class members so as to create a
22 common-law employment relationship. As joint employers of Plaintiff and class members,
23 Defendants are jointly and severally liable for the civil penalties available to Plaintiff and
24 class members under the law.

25 14. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
26 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class
27 members because Defendants have:

28 (a) jointly exercised meaningful control over the work performed by

1 Plaintiff and class members;

- 2 (b) jointly exercised meaningful control over Plaintiff's and class members'
3 wages, hours, and working conditions, including the quantity, quality
4 standards, speed, scheduling, and operative details of the tasks
5 performed by Plaintiff and class members;
- 6 (c) jointly required that Plaintiff and class members perform work which is
7 an integral part of Defendants' businesses; and
- 8 (d) jointly exercised control over Plaintiff and class members as a matter of
9 economic reality in that Plaintiff and class members were dependent on
10 Defendants, who shared the power to set the wages of Plaintiff and class
11 members and determined their working conditions, and who jointly
12 reaped the benefits from the underpayment of their wages and
13 noncompliance with other statutory provisions governing their
14 employment.

15 15. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
16 there has existed a unity of interest and ownership between Defendants such that any
17 individuality and separateness between the entities has ceased.

18 16. SPORTSMAN'S WAREHOUSE SOUTHWEST, INC.; SPORTSMAN'S
19 WAREHOUSE, INC.; SPORTSMAN'S WAREHOUSE HOLDINGS, INC.; and DOES 1
20 through 10 are therefore alter egos of each other.

21 17. Adherence to the fiction of the separate existence of Defendants would permit
22 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
23 from liability for the wrongful acts committed by them under the name SPORTSMANS.

24 18. Plaintiff further alleges, upon information and belief, that Defendants
25 SPORTSMAN'S WAREHOUSE SOUTHWEST, INC.; SPORTSMAN'S WAREHOUSE,
26 INC.; and SPORTSMAN'S WAREHOUSE HOLDINGS, INC. are alter egos of each other for
27 the following reasons:

- 28 (a) According to SPORTSMAN'S WAREHOUSE HOLDINGS, INC.'s

1 most recent SEC 10-K filing, SPORTSMAN’S WAREHOUSE
2 SOUTHWEST, INC. and SPORTSMAN’S WAREHOUSE, INC. are
3 wholly owned subsidiaries of SPORTSMAN’S WAREHOUSE
4 HOLDINGS, INC.;¹

- 5 (b) On the California Secretary of State’s website
6 (<https://businesssearch.sos.ca.gov/>), SPORTSMAN’S WAREHOUSE
7 SOUTHWEST, INC. and SPORTSMAN’S WAREHOUSE, INC. share
8 the same entity address and mailing address, “7035 South High Tech
9 Dr., Midvale, UT 84047;”
- 10 (c) According to their most recent “Statement of Information” forms filed
11 with the California Secretary of State, SPORTSMAN’S WAREHOUSE
12 SOUTHWEST, INC. and SPORTSMAN’S WAREHOUSE, INC. share
13 the same Chief Executive Officer, Jon Barker;
- 14 (d) On information and belief, SPORTSMAN’S WAREHOUSE
15 SOUTHWEST, INC.; SPORTSMAN’S WAREHOUSE, INC.; and
16 SPORTSMAN’S WAREHOUSE HOLDINGS, INC. share the same
17 agent for service of process, “C T CORPORATION SYSTEM;” and
- 18 (e) On information and belief, SPORTSMAN’S WAREHOUSE
19 SOUTHWEST, INC.; SPORTSMAN’S WAREHOUSE, INC.; and
20 SPORTSMAN’S WAREHOUSE HOLDINGS, INC. utilize the same
21 standardized employment forms and issue the same employment
22 policies.

23 GENERAL ALLEGATIONS

24 19. Defendants are a leading outdoor sporting goods retailer that have the largest
25 outdoor specialty store base in the Western United States and Alaska. Defendants operate 103
26 stores across 27 states, including 11 stores in California. Upon information and belief,

27 ¹ 10-K Annual Report 03/29/2019, Sportsman’s Warehouse Holdings, Inc.,
28 <https://investors.sportsmans.com/index.php/financial-information> (last accessed Jan. 24,
2019).

1 Defendants maintain a single, centralized Human Resources (“HR”) department at their
2 company headquarters in Midvale, Utah, which is responsible for the recruiting and hiring of
3 new employees, and communicating and implementing Defendants’ company-wide policies,
4 including timekeeping policies and meal and rest period policies, to employees throughout
5 California.

6 20. In particular, Plaintiff and class members, on information and belief, received
7 the same standardized documents and/or written policies. Upon information and belief, the
8 usage of standardized documents and/or written policies, including new-hire documents,
9 indicate that Defendants dictated policies at the corporate level and implemented them
10 company-wide, regardless of their employees’ assigned locations or positions. Upon
11 information and belief, Defendants set forth uniform policies and procedures in several
12 documents provided at an employee’s time of hire, including, but not limited to, a Loss
13 Prevention Employee Acknowledgement, Fraud Awareness and Prevention form, Employee
14 Handbook, and Employee Safety Manual.

15 21. Upon information and belief, Defendants maintain a centralized Payroll
16 department at their company headquarters in Midvale, Utah, which processes payroll for all
17 non-exempt, hourly paid employees working for Defendants at their various locations and
18 jobsites in California, including Plaintiff and class members. Based upon information and
19 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
20 employees in California, irrespective of their work locations. Upon information and belief,
21 Defendants process payroll for departing employees in the same manner throughout the State
22 of California, regardless of the manner in which each employee’s employment ends.

23 22. Defendants continue to employ non-exempt or hourly paid employees in
24 California.

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

1 24. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
2 members were not paid for all hours worked because all hours worked were not recorded.

3 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and class members were entitled to receive certain wages for
5 overtime compensation and that they were not receiving certain wages for overtime
6 compensation.

7 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and class members were entitled to receive at least minimum
9 wages for compensation and that they were not receiving at least minimum wages for work
10 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
11 and class members were not paid at least minimum wages for work done off-the-clock.

12 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and class members were entitled to meal periods in
14 accordance with the Labor Code or payment of one (1) additional hour of pay at their regular
15 rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal
16 periods and that Plaintiff and class members were not provided with all meal periods or
17 payment of one (1) additional hour of pay at their regular rates of pay when they did not
18 receive a timely, uninterrupted, thirty (30) minute meal period.

19 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and class members were entitled to rest periods in
21 accordance with the Labor Code and applicable IWC Wage Order or payment of one (1)
22 additional hour of pay at their regular rates of pay when they were not authorized and
23 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff
24 and class members were not authorized and permitted to take compliant rest periods, nor did
25 Defendants provide Plaintiff and class members with payment of one (1) additional hour of
26 pay at their regular rates of pay when they were not authorized and permitted to take a
27 compliant rest period.

28 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and class members were entitled to receive complete and
2 accurate wage statements in accordance with California law. In violation of the California
3 Labor Code, Plaintiff and class members were not provided complete and accurate wage
4 statements.

5 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that they had a duty to maintain accurate and complete payroll records in
7 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
8 and intentionally failed to do so.

9 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and class members were entitled to timely payment of all
11 wages earned upon termination of employment. In violation of the California Labor Code,
12 Plaintiff and class members did not receive payment of all wages due, including, but not
13 limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within
14 permissible time periods.

15 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and class members were entitled to timely payment of wages
17 during their employment. In violation of the California Labor Code, Plaintiff and class
18 members did not receive payment of all wages, including, but not limited to, overtime wages,
19 minimum wages, and/or meal and rest period premiums, within permissible time periods.

20 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that they were prohibited from issuing instruments for the payment of
22 wages that were not payable in cash on demand, without discount and with authorization, but
23 did so, in violation of the California Labor Code.

24 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and/or class members were entitled to the portion of wages
26 previously paid and subsequently unlawfully deducted by Defendants.

27 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and/or class members were entitled to payment of wages as

1 designated by statute. In violation of the California Labor Code, Defendants secretly paid
2 Plaintiff and/or class members lower wages that required by statute while purporting to pay
3 them proper wages.

4 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and/or class members were entitled to suitable seating and/or
6 were entitled to sit when it did not interfere with the performance of their duties and also have
7 seats nearby to use during a lull in tasks that do require moving about or standing.

8 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and class members were entitled to receive full
10 reimbursement for all business-related expenses and costs they incurred during the course and
11 scope of their employment and that they did not receive full reimbursement of applicable
12 business-related expenses and costs incurred.

13 38. Plaintiff is informed and believes, and thereon alleges, that at all times herein
14 mentioned, Defendants knew or should have known that they had a duty to compensate
15 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
16 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
17 falsely represented to Plaintiff and class members that they were properly denied wages, all in
18 order to increase Defendants' profits.

19 **PAGA REPRESENTATIVE ALLEGATIONS**

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

26 40. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
27 person who was employed by the alleged violator and against whom one or more of the
28 alleged violations was committed."

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

4 42. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
5 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
6 following requirements have been met:

- 7 (a) The aggrieved employee or representative shall give written notice by
8 online filing with the LWDA and by certified mail to the employer of
9 the specific provisions of the California Labor Code alleged to have
10 been violated, including the facts and theories to support the alleged
11 violation.
- 12 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
13 2699.3(a) and any employer response to that notice shall be
14 accompanied by a filing fee of seventy-five dollars (\$75).
- 15 (c) The LWDA shall notify the employer and the aggrieved employee or
16 representative by certified mail that it does not intend to investigate the
17 alleged violation (“LWDA’s Notice”) within sixty (60) calendar days of
18 the postmark date of the aggrieved employee’s notice. Upon receipt of
19 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
20 (65) calendar days of the postmark date of the aggrieved employee’s
21 notice, the aggrieved employee may commence a civil action pursuant
22 to California Labor Code section 2699 to recover civil penalties.

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

- 27 (a) The aggrieved employee or representative shall give written notice by
28 online filing with the LWDA and by certified mail to the employer of

1 the specific provisions of the California Labor Code alleged to have
2 been violated (other than those listed in Section 2699.5), including the
3 facts and theories to support the alleged violation.

4 (b) An aggrieved employee's notice filed with the LWDA pursuant to
5 2699.3(c) and any employer response to that notice shall be
6 accompanied by a filing fee of seventy-five dollars (\$75).

7 (c) The employer may cure the alleged violation within thirty-three (33)
8 calendar days of the postmark date of the notice sent by the aggrieved
9 employee or representative. The employer shall give written notice
10 within that period of time by certified mail to the aggrieved employee or
11 representative and by online filing with the LWDA if the alleged
12 violation is cured, including a description of actions taken, and no civil
13 action pursuant to Section 2699 may commence. If the alleged violation
14 is not cured within the 33-day period, the aggrieved employee may
15 commence a civil action pursuant to Section 2699.

16 44. On March 4, 2020, Plaintiff provided written notice by online filing to the
17 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
18 Code alleged to have been violated, including facts and theories to support the alleged
19 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
20 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
21 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
22 Plaintiff PAGA Case Number LWDA-CM-776361-20. A true and correct copy of Plaintiff's
23 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

24 45. As of the filing date of this complaint, over 65 days have passed since Plaintiff
25 sent the notice described above to the LWDA, and the LWDA has not responded that it
26 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

27 46. Thus, Plaintiff has satisfied the administrative prerequisites under California
28 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for

1 violations of California Labor Code sections 201, 202, 203, 204, 212, 213, 221, 223, 224,
2 226(a), 226.7, 510, 512(a), 516, 558(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and
3 2802.

4 47. Labor Code section 558(a) provides “[a]ny employer or other person acting on
5 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
6 provision regulating hours and days of work in any order of the Industrial Welfare
7 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
8 dollars (\$50) for each underpaid employee for each pay period for which the employee was
9 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
10 underpaid employee for each pay period for which the employee was underpaid” Labor
11 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
12 to any other civil or criminal penalty provided by law.”

13 48. Defendants, at all times relevant to this complaint, were employers or persons
14 acting on behalf of an employer(s) who violated Plaintiff’s and other aggrieved employees’
15 rights by violating various sections of the California Labor Code as set forth above.

16 49. As set forth below, Defendants have violated numerous provisions of both the
17 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
18 Order.

19 50. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
20 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
21 private attorney general, seeks assessment and collection of civil penalties for himself, all
22 other aggrieved employees, and the State of California against Defendants for violations of
23 California Labor Code sections 201, 202, 203, 204, 212, 213, 221, 223, 224, 226(a), 226.7,
24 510, 512(a), 516, 558(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

25 **CLASS ACTION ALLEGATIONS**

26 51. Plaintiff brings this action on his own behalf, as well as on behalf of each and
27 all other persons similarly situated, and thus seeks class certification under California Code of
28 Civil Procedure section 382.

1 52. All claims alleged herein arise under California law for which Plaintiff seeks
2 relief authorized by California law.

3 53. Plaintiff's proposed class consists of and is defined as follows:

4 All persons who worked for Defendants as non-exempt, hourly
5 paid employees in California, within four years prior to the filing
of the initial complaint until the date of trial ("Class").

6 54. Plaintiff's proposed subclass consists of and is defined as follows:

7 All persons who worked for Defendants as non-exempt, hourly
8 paid employees in California and who received at least one wage
9 statement within one (1) year prior to the filing of the initial
complaint until the date of trial ("Subclass").

10 55. Members of the Class and Subclass are referred to herein as "class members."

11 56. Plaintiff reserves the right to redefine the Class and Subclass and to add
12 additional subclasses as appropriate based on further investigation, discovery, and specific
13 theories of liability.

14 57. There are common questions of law and fact as to class members that
15 predominate over questions affecting only individual members, including, but not limited to:

- 16 (a) Whether Defendants required Plaintiff and class members to work over
17 eight (8) hours per day, over twelve (12) hours per day, or over forty
18 (40) hours per week and failed to pay all legally required overtime
19 compensation to Plaintiff and class members;
- 20 (b) Whether Defendants failed to pay Plaintiff and class members at least
21 minimum wages for all hours worked;
- 22 (c) Whether Defendants failed to provide Plaintiff and class members with
23 meal periods;
- 24 (d) Whether Defendants failed to authorize and permit Plaintiff and class
25 members to take rest periods;
- 26 (e) Whether Defendants provided Plaintiff and class members with
27 complete and accurate wage statements as required by California Labor
28 Code section 226(a);

- (f) Whether Defendants maintained accurate payroll records as required by California Labor Code section 1174(d);
- (g) Whether Defendants failed to pay earned overtime wages, minimum wages, and meal and rest period premiums due to Plaintiff and class members upon their discharge;
- (h) Whether Defendants failed timely to pay overtime wages, minimum wages, and meal and rest period premiums to Plaintiff and class members during their employment;
- (i) Whether Defendants issued instruments for the payment of wages that were not payable in cash on demand and without discount, in violation of Labor Code sections 212 and 213;
- (j) Whether Defendants unlawfully deducted a portion of wages previously paid to Plaintiff and/or class members, in violation of Labor Code sections 221 and 224;
- (k) Whether Defendants secretly paid Plaintiff and/or class members lower wages than required by statute while purporting to pay the proper wages, in violation of Labor Code section 223;
- (l) Whether Defendants failed to provide Plaintiff and/or class members with suitable seating;
- (m) Whether Defendants failed to reimburse Plaintiff and class members for necessary and required business-related expenditures and/or losses incurred by them in the scope of their employment;
- (n) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and
- (o) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

58. There is a well-defined community of interest in the litigation and the class

members are readily ascertainable:

- (a) Numerosity: The class members are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than one hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.
- (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all class members as demonstrated herein.
- (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that he has an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.
- (d) Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort, and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.

1 (e) Public Policy Considerations: Employers in the State of California
2 violate employment and labor laws every day. Current employees are
3 often afraid to assert their rights out of fear of direct or indirect
4 retaliation. Former employees are fearful of bringing actions because
5 they believe their former employers might damage their future
6 endeavors through negative references and/or other means. Class
7 actions provide the class members who are not named in the complaint
8 with a type of anonymity that allows for the vindication of their rights
9 while simultaneously protecting their privacy.

10 **FIRST CAUSE OF ACTION**

11 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime** 12 **(Against all Defendants)**

13 59. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
14 and every allegation set forth above.

15 60. Labor Code section 1198 makes it illegal to employ an employee under
16 conditions of labor that are prohibited by the applicable wage order. California Labor Code
17 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
18 be the . . . standard conditions of labor for employees. The employment of any employee . . .
19 under conditions of labor prohibited by the order is unlawful.”

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

24 62. Specifically, the applicable IWC Wage Order provides that Defendants are and
25 were required to pay Plaintiff and class members working more than eight (8) hours in a day
26 or more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all
27 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
28 workweek.

1 63. The applicable IWC Wage Order further provides that Defendants are and were
2 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
3 overtime compensation at a rate of two (2) times their regular rate of pay. An employee's
4 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
5 employee, including shift differential pay, nondiscretionary bonuses, and incentive pay.

6 64. California Labor Code section 510 codifies the right to overtime compensation
7 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
8 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
9 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
10 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
11 in a day on the seventh (7th) day of work.

12 65. During the relevant time period, Defendants willfully failed to pay all overtime
13 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
14 class members were not paid overtime premiums for all of the hours they worked in excess of
15 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
16 hours in a week, because all hours worked were not recorded.

17 66. First, during the relevant time period, on information and belief, Defendants
18 had a company-wide policy of staffing their store locations strictly based on the labor hours
19 allocated by corporate for each store location. Defendants' uniform use of labor budgets has
20 resulted in and continues to result in chronic understaffing such that there were too few
21 employees on duty to meet store demands and provide meal period coverage. Defendants also
22 had a company-wide policy that prohibited managers/supervisors from leaving the premises
23 unless another manager/supervisor is on the premises, resulting in a lack of meal period
24 coverage for managerial employees. At the same time, the labor budgets Defendants
25 implemented did not always allow for more than one manager/supervisor to be on the
26 schedule at all times. As a result, Plaintiff and other managerial employees were sometimes
27 the only managers/supervisors on duty. Because there were too few employees and other
28 managers/supervisors on duty to handle the workload and/or attend to customers, Plaintiff and

1 class members were denied uninterrupted 30-minute meal periods.

2 67. Second, Defendants, on a company-wide basis, had a practice of failing to
3 adhere to a schedule of meal periods, which further caused Plaintiff and class members to not
4 be relieved of their duties for compliant meal periods. As a result of these policies and/or
5 practices, Plaintiff and class members were required to work through and/or to return early
6 from meal periods, in order to complete their assigned tasks. Thus, Plaintiff and class
7 members performed work during meal periods for which they were not paid.

8 68. Third, on information and belief, because Defendants frowned upon employees
9 accruing meal period penalties, when Plaintiff and class members failed to clock themselves
10 out at their designated meal period start times, they were subject to Defendants altering their
11 time records and deducting time for meal periods that were not taken. Alternatively,
12 Defendants' management falsified employee time records by clocking out Plaintiff and class
13 members at designated start and end times to reflect compliant meal periods, regardless of
14 whether they had received a compliant meal period or not, in order to strictly limit meal
15 penalties that Defendants would otherwise owe. Consequently, Plaintiff and class members
16 performed work during meal periods for which they were not paid.

17 69. Fourth, during the relevant time period, Defendants' company-wide closing
18 procedures required Plaintiff and class members to perform work after clocking out for their
19 shifts, resulting in employees working off the clock, but Plaintiff and class members were not
20 paid for those hours worked. For example, on closing shifts, the designated Manager on Duty
21 (MOD) would lock the store at closing time, while the remaining employees completed their
22 closing duties. The MOD, who was the only person with a key to let people out, would then
23 complete his or her closing duties. Meanwhile, per Defendants' store procedure, Plaintiff and
24 class members would complete their own closing tasks, clock out, and then gather by the front
25 door to wait for the MOD to complete his or her closing duties and let them out of the store.
26 Plaintiff and class members had to wait under Defendants' control and off-the-clock until the
27 MOD was ready to release them. As another example, after Plaintiff and class members
28 closed the store and clocked out for the day, they were sometimes required to perform

1 walkthroughs of the store and arm the store alarm prior to exiting. These walkthroughs could
2 take five (5) to ten (10) minutes, time for which Plaintiff and class members were not paid.

3 70. Defendants knew or should have known that as a result of these company-wide
4 practices and/or policies, Plaintiff and class members were performing assigned duties during
5 their meal periods and after their shifts, and were suffered or permitted to perform work for
6 which they were not paid. Because Plaintiff and class members worked shifts of eight (8)
7 hours a day or more or forty (40) hours a week or more, some of this off-the-clock work
8 qualified for overtime premium pay. Therefore, Plaintiff and class members were not paid
9 overtime wages for all of the overtime hours they actually worked.

10 71. Defendants' failure to pay Plaintiff and class members the balance of overtime
11 compensation as required by California law, violates the provisions of California Labor Code
12 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
13 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,
14 and attorneys' fees.

15 **SECOND CAUSE OF ACTION**

16 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 17 **Minimum Wages** 18 **(Against all Defendants)**

19 72. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
20 and every allegation set forth above.

21 73. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
22 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
23 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
24 fixed is unlawful. Compensable work time is defined in Wage Order No. 7 as "the time
25 during which an employee is subject to the control of an employer, and includes all the time
26 the employee is suffered or permitted to work, whether or not required to do so." Cal. Code.
27 Regs. tit. 8, § 11070(2)(G) (defining "Hours Worked").

28 74. As stated, due to Defendants' use of labor budgets and resultant understaffing,

1 along with their failure to adhere to a schedule of meal periods, Plaintiff and class members
2 were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise
3 not relieved of all duties during meal periods. Also, as stated, in order to prevent employees
4 from accruing meal period penalties, upon information and belief, Defendants' management
5 pressured employees to clock out for meal periods and/or adjusted employee time records to
6 reflect compliant meal periods, but required them to continue working, time for which they
7 were not paid. In addition, Defendants required that Plaintiff and class members perform
8 work off-the-clock after their scheduled shifts, including waiting to leave the store after
9 closing and performing walkthroughs after clocking out.

10 75. Further, Defendants maintained and implemented a company-wide policy of
11 requiring employees to undergo fingerprint-based background checks upon hiring. This
12 required employees to travel to a Live Scan provider or operator on their own time and using
13 their own personal vehicles, to undergo fingerprinting. For example, Plaintiff made two trips
14 to the Humboldt sheriff's office, and on each trip spent 25-30 minutes traveling the sheriff's
15 office, 30 minutes waiting and undergoing the fingerprinting, and another 20 minutes
16 traveling back home. However, Defendants did not compensate Plaintiff and class members
17 for the time they spent traveling to and from the Live Scan providers or operators or for the
18 time they spent undergoing their fingerprinting.

19 76. Defendants did not pay minimum wages for off-the-clock hours that Plaintiff
20 and class members worked through that qualified for overtime premium payment. To the
21 extent that these off-the-clock hours did not qualify for overtime premium payment,
22 Defendants did not pay at least minimum wages for those hours worked off-the-clock in
23 violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

24 77. Defendants' failure to pay Plaintiff and class members minimum wages violates
25 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
26 California Labor Code section 1194.2, Plaintiff and class members are entitled to recover
27 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

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1 **THIRD CAUSE OF ACTION**

2 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period**

3 **Violations**

4 **(Against all Defendants)**

5 78. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

7 79. At all relevant times herein set forth, California Labor Code section 512(a)
8 provides that an employer may not require, cause, or permit an employee to work for a period
9 of more than five (5) hours per day without providing the employee with a meal period of not
10 less than thirty (30) minutes, except that if the total work period per day of the employee is
11 not more than six (6) hours, the meal period may be waived by mutual consent of both the
12 employer and the employee. Under California law, first meal periods must start after no more
13 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
14 2012).

15 80. At all relevant times herein set forth, California Labor Code sections 226.7,
16 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
17 meal period mandated by an applicable order of the IWC.

18 81. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
19 the applicable IWC Wage Order also require employers to provide a second meal period of
20 not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
21 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
22 hours worked is no more than twelve (12) hours, the second meal period may be waived by
23 mutual consent of the employer and the employee only if the first meal period was not waived.

24 82. First, as stated, Defendants had, and continue to have, a company-wide policy
25 and/or practice of understaffing store locations due to labor budgeting, which resulted in a
26 lack of meal period coverage and prevented Plaintiff and class members from taking all
27 timely, uninterrupted meal periods to which they were entitled. In conjunction with
28 understaffing their stores, Defendants had a requirement that a manager/supervisor be present

1 on the store premises at all times, which exacerbated the lack of meal period coverage. As a
2 result, Plaintiff and class members were forced to forego meal periods and/or have their meal
3 periods interrupted by work or delayed by work, and were not relieved of all duties for unpaid
4 meal periods, in order to attend their assigned tasks.

5 83. Second, Defendants had a practice of failing to adhere to a schedule of meal
6 periods, which further caused Plaintiff and class members to not be relieved of their duties for
7 compliant meal periods. As a result of these policies and/or practices, Plaintiff and class
8 members were left without adequate meal period coverage and were instead required to work
9 through or to return early from meal periods, in order to complete their assigned tasks. For
10 example, Plaintiff missed meal periods and took meal periods after the end of his fifth hour of
11 work due to the lack of meal period coverage.

12 84. Third, because Defendants frowned upon employees accruing meal period
13 penalties, upon information and belief, Defendants' management would adjust employee time
14 records to reflect compliant meal periods, regardless of whether they had received a compliant
15 meal period, in order to strictly limit meal penalties that would need to be paid by Defendants.

16 85. At all times herein mentioned, Defendants knew or should have known that, as
17 a result of these policies, Plaintiff and class members were prevented from being relieved of
18 all duties and required to perform some of their assigned duties during meal periods.
19 Defendants further knew or should have known that Defendants did not pay Plaintiff and class
20 members meal period premium wages when meal periods were late, interrupted, shortened, or
21 missed.

22 86. Moreover, Defendants engaged in a company-wide practice and/or policy of
23 not paying all meal period premiums owed when compliant meal periods are not provided.
24 Because of Defendants' practices and/or policies, Plaintiff and class members have not
25 received premium pay for all missed, late, and interrupted meal periods. As a result,
26 Defendants failed to provide Plaintiff and class members compliant meal periods in violation
27 of California Labor Code sections 226.7, 512, and 516 and failed to pay the full meal period
28 premiums due.

1 87. Defendants’ conduct violates the applicable IWC Wage Order, and California
2 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
3 entitled to recover from Defendants one (1) additional hour of pay at the employee’s regular
4 rate of compensation for each work day that the meal period was not provided.

5 **FOURTH CAUSE OF ACTION**

6 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations**
7 **(Against all Defendants)**

8 88. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
9 and every allegation set forth above.

10 89. At all relevant times herein set forth, the applicable IWC Wage Order and
11 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff’s and class
12 members’ employment by Defendants.

13 90. At all relevant times, the applicable IWC Wage Order provides that “[e]very
14 employer shall authorize and permit all employees to take rest periods, which insofar as
15 practicable shall be in the middle of each work period” and that the “rest period time shall be
16 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
17 hours or major fraction thereof” unless the total daily work time is less than three and one-half
18 (3½) hours.

19 91. At all relevant times, California Labor Code section 226.7 provides that no
20 employer shall require an employee to work during any rest period mandated by an applicable
21 order of the California IWC. To comply with its obligation to authorize and permit rest
22 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
23 employer must “relinquish any control over how employees spend their break time, and
24 relieve their employees of all duties — including the obligation that an employee remain on
25 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
26 *Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and
27 California Labor Code section 226.7(b), Plaintiff and class members are entitled to recover
28 from Defendants one (1) additional hour of pay at their regular rates of pay for each work day

1 that a required rest period was not authorized and permitted.

2 92. As with meal periods, Defendants' company-wide practices, including using
3 labor budgets and resultant understaffing, prevented Plaintiff and class members from being
4 relieved of all duty to take compliant rest periods. Defendants also failed to schedule rest
5 periods, which, coupled with Defendants' failure to provide adequate rest period coverage,
6 further led to Plaintiff and class members not being authorized and permitted to take
7 compliant rest periods.

8 93. Additionally, as stated, Defendants prohibited Plaintiff and class members from
9 leaving the premises during their rest periods if they were the only managers/supervisors on
10 the floor. Because Plaintiff and class members were restricted from leaving the premises
11 during rest periods, they were denied the ability to use their rest periods freely for their own
12 purposes. Thus, Defendants effectively maintained control over Plaintiff and class members
13 during rest periods.

14 94. As a result of Defendants' practices and policies, Plaintiff and class members
15 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
16 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
17 during his employment, Plaintiff missed his rest periods or had them cut short or interrupted,
18 due to Defendants' understaffing and failure to schedule rest periods.

19 95. Defendants have also engaged in a systematic, company-wide practice and/or
20 policy of not paying rest period premiums owed when rest periods are not authorized and
21 permitted. As a result, Defendants denied Plaintiff and class members rest periods and failed
22 to pay them rest period premium wages due, in violation of Labor Code section 226.7, 516,
23 and the applicable IWC Wage Order.

24 96. Defendants' conduct violates the applicable IWC Wage Order and California
25 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
26 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
27 compensation for each work day that a compliant rest period was not authorized and
28 permitted.

1 **FIFTH CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage**
3 **Statements and Failure to Maintain Accurate Payroll Records**
4 **(Against all Defendants)**

5 97. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

7 98. At all relevant times herein set forth, California Labor Code section 226(a)
8 provides that every employer shall furnish each of his or her employees an accurate and
9 complete itemized wage statement in writing, including, but not limited to, the name and
10 address of the legal entity that is the employer, the inclusive dates of the pay period, total
11 hours worked, and all applicable rates of pay.

12 99. At all relevant times, Defendants have knowingly and intentionally provided
13 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
14 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
15 that fail to correctly list: gross wages earned; total hours worked; net wages earned; the
16 correct name of the legal entity that is the employer; and all applicable hourly rates in effect
17 during the pay period, including overtime rates of pay, and the corresponding number of hours
18 worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2),
19 226(a)(5), 226(a)(8), and 226(a)(9).

20 100. Because Defendants did not record the time Plaintiff and Subclass members
21 spent working off the clock and deducted time from Plaintiff's and Subclass members' records
22 for meal periods that were interrupted and/or missed (and therefore time for which they should
23 have been paid), Defendants did not list the correct amount of gross wages and net wages
24 earned by Plaintiff and Subclass members in compliance with section 226(a)(1) and 226(a)(5).
25 For the same reason, Defendants failed to accurately list the total number of hours worked by
26 Plaintiff and Subclass members in violation of section 226(a)(2), and failed to list the
27 applicable hourly rates of pay in effect during the pay period and corresponding accurate
28 number of work hours worked at each hourly rate in violation of section 226(a)(9).

1 101. Separate from these violations, Defendants issued uniform wage statements to
2 Plaintiff and Subclass members that failed to correctly list the name of the legal entity of the
3 actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide
4 California employees with transparency as to the true identity of their employer, to allow the
5 employee to contact their employer during employment in the future for various reasons,
6 including, filing an administrative claim, judicial claim, or other action to seek relief against
7 their employer, to obtain unemployment benefits, etc.

8 102. Defendants systematically, and on a company-wide basis, issued wage
9 statements to Plaintiff and Subclass members that incorrectly list the employing entity's name.
10 Plaintiff's and Subclass members' wage statements incorrectly list the employer as
11 "SPORTSMANS WAREHOUSE SW," and according to the California Secretary of State's
12 website, there is no such entity by the name "SPORTSMANS WAREHOUSE SW." Plaintiff
13 believes that the correct employing entity that should be listed on employees' wage statements
14 is "SPORTSMAN'S WAREHOUSE SOUTHWEST, INC."

15 103. The wage statement deficiencies also include, without limitation, failing to list
16 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
17 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and
18 only the last four digits of his or her social security number or an employee identification
19 number other than a social security number; failing to list the address of the legal entity that is
20 the employer; failing to list the inclusive dates of the period for which class members were
21 paid; and/or failing to state all hours worked as a result of not recording or stating hours
22 worked off-the-clock.

23 104. California Labor Code section 1198 provides that the maximum hours of work
24 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
25 set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he
26 employment of any employees for longer hours than those fixed by the order or under
27 conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC
28 Wage Order, employers are required to keep accurate time records showing when the

1 employee begins and ends each work period and meal period. During the relevant time
2 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
3 and meal period start and stop times for Plaintiff and Subclass members, in violation of
4 section 1198. As stated, Defendants engaged in a company-wide practice and/or policy of
5 falsifying Plaintiff's and Subclass members' time records by recording that compliant meal
6 periods were taken regardless of if or when meal periods were actually taken, and thereby
7 failed to keep accurate records of meal start and end times for Plaintiff and Subclass members.

8 105. California Labor Code section 1174(d) provides that "[e]very person employing
9 labor in this state shall ... [k]eep a record showing the names and addresses of all employees
10 employed and the ages of all minors" and "[k]eep, at a central location in the state or at the
11 plants or establishments at which employees are employed, payroll records showing the hours
12 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
13 applicable piece rate paid to, employees employed at the respective plants or establishments . .
14 . ." At all relevant times, and in violation of Labor Code section 1174(d), Defendants
15 willfully failed to maintain accurate payroll records for Plaintiff and Subclass members
16 showing the daily hours they worked and the wages paid thereto as a result of failing to record
17 the off-the-clock hours that they worked.

18 106. Plaintiff and Subclass members are entitled to recover from Defendants the
19 greater of their actual damages caused by Defendants' failure to comply with California Labor
20 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
21 employee.

22 **SIXTH CAUSE OF ACTION**

23 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid**

24 **Upon Termination**

25 **(Against all Defendants)**

26 107. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
27 and every allegation set forth above.

28 108. This cause of action is dependent upon, and wholly derivative of, the overtime

1 wages, minimum wages, and/or meal and rest period premium wages that were not timely paid
2 to Plaintiff and those class members no longer employed by Defendants upon their
3 termination.

4 109. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
5 that if an employer discharges an employee, the wages earned and unpaid at the time of
6 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
7 her employment, his or her wages shall become due and payable not later than seventy-two
8 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
9 his or her intention to quit, in which case the employee is entitled to his or her wages at the
10 time of quitting.

11 110. Defendants willfully failed to pay Plaintiff and class members who are no
12 longer employed by Defendants the earned and unpaid wages set forth above, including but
13 not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages,
14 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants'
15 employ.

16 111. Defendants' failure to pay Plaintiff and class members who are no longer
17 employed by Defendants their wages earned and unpaid at the time of discharge, or within
18 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
19 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
20 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
21 thirty (30) day maximum pursuant to California Labor Code section 203.

22 SEVENTH CAUSE OF ACTION

23 Violation of California Labor Code § 204—Failure to Timely Pay Wages During 24 Employment 25 (Against all Defendants)

26 112. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
27 and every allegation set forth above.

28 113. This cause of action is dependent upon, and wholly derivative of, the overtime

1 wages, minimum wages, and/or meal and rest period premium wages that were not timely paid
2 to Plaintiff and class members during their employment.

3 114. At all times relevant herein set forth, Labor Code section 204 provides that all
4 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
5 days, inclusive, of any calendar month, other than those wages due upon termination of an
6 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
7 the month during which the labor was performed.

8 115. At all times relevant herein, Labor Code section 204 provides that all wages
9 earned by any person in any employment between the sixteenth (16th) and the last day,
10 inclusive, of any calendar month, other than those wages due upon termination of an
11 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
12 month.

13 116. At all times relevant herein, Labor Code section 204 provides that all wages
14 earned for labor in excess of the normal work period shall be paid no later than the payday for
15 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
16 204 provides that the requirements of this section are deemed satisfied by the payment of
17 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
18 seven (7) calendar days following the close of the payroll period.

19 117. During the relevant time period, Defendants willfully failed to pay Plaintiff and
20 class members all wages due including, but not limited to, overtime wages, minimum wages,
21 and meal and rest period premium wages, within the time periods specified by California
22 Labor Code section 204.

23 118. Defendants' failure to pay Plaintiff and class members all wages due violates
24 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
25 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

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1 **EIGHTH CAUSE OF ACTION**

2 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses**
3 **(Against all Defendants)**

4 119. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
5 and every allegation set forth above.

6 120. At all times herein set forth, California Labor Code section 2802 provides that
7 an employer must reimburse employees for all necessary expenditures and losses incurred by
8 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
9 to prevent employers from passing off their cost of doing business and operating expenses on
10 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
11 (2014). The applicable wage order, IWC Wage Order 7-2001, provides that: “[w]hen tools or
12 equipment are required by the employer or are necessary to the performance of a job, such
13 tools and equipment shall be provided and maintained by the employer, except that an
14 employee whose wages are at least two (2) times the minimum wage provided herein may be
15 required to provide and maintain hand tools and equipment customarily required by the trade
16 or craft.”

17 121. During the relevant time period, Defendants had a company-wide policy of
18 requiring Plaintiff and class members to utilize their own personal vehicles for work purposes,
19 but failed to reimburse them for all costs of travel, including mileage. As stated, Defendants
20 had a company-wide policy of requiring employees to travel in their own personal vehicles to
21 obtain fingerprint-based background checks, but did not reimburse them for their travel
22 expenses. For example, as described above, Plaintiff drove his personal vehicle 20 miles
23 roundtrip to obtain his mandatory fingerprint-based background check from a Live Scan
24 provider. Although Defendants required Plaintiff and class members to utilize their own
25 vehicles to travel to and from Live Scan providers, Defendants never reimbursed them for
26 their travel expenses.

27 122. Defendants could have provided Plaintiff and class members with the actual
28 tools for use on the job, such as company vehicles, or could have reimbursed employees for

1 their mileage and travel expenses. Instead, Defendants passed these operating costs off onto
2 Plaintiff and class members. At all relevant times, Plaintiff did not earn at least two (2) times
3 the minimum wage.

4 123. Defendants' company-wide policy and/or practice of passing on their operating
5 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
6 have intentionally and willfully failed to reimburse Plaintiff and other class members for
7 necessary business-related expenses and costs.

8 124. Plaintiff and class members are entitled to recover from Defendants their
9 business-related expenses incurred during the course and scope of their employment, plus
10 interest.

11 **NINTH CAUSE OF ACTION**

12 **For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.***

13 **(Against all Defendants)**

14 125. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
15 and every allegation set forth above.

16 126. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
17 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
18 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 212, 213,
19 221, 223, 224, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802.
20 Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover
21 civil penalties for violations of those Labor Code sections not found in section 2699.5,
22 including sections 516 and 1182.12.

23 127. Defendants' conduct, as alleged herein, violates numerous sections of the
24 California Labor Code, including, but not limited to, the following:

- 25 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
26 wage order for Defendants' failure to compensate Plaintiff and other
27 aggrieved employees with all required overtime pay, as alleged herein;
- 28 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198,

1 and the applicable IWC wage order for Defendants' failure to
2 compensate Plaintiff and other aggrieved employees with at least
3 minimum wages for all hours worked, as alleged herein;

4 (c) Violation of Labor Code sections 226.7, 512, 516, 1198, and the
5 applicable IWC wage order for Defendants' failure to provide Plaintiff
6 and other aggrieved employees with meal periods, as alleged herein;

7 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
8 IWC wage order for Defendants' failure to authorize and permit
9 Plaintiff and other aggrieved employees to take rest periods, as alleged
10 herein;

11 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
12 wage order for failure to provide accurate and complete wage statements
13 to Plaintiff and other aggrieved employees, as alleged herein;

14 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable
15 IWC wage order for failure to maintain payroll records as alleged
16 herein;

17 (g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
18 earned wages upon termination as alleged herein;

19 (h) Violation of Labor Code section 204 for failure to pay all earned wages
20 during employment, as alleged herein;

21 (i) Violation of Labor Code sections 212 and 213 for issuing instruments
22 for the payment of wages that were not payable in cash on demand,
23 without discount, and with prior authorization, as set forth below;

24 (j) Violation of Labor Code sections 221 and 224 for unlawfully deducting
25 a portion of wages previously paid to Plaintiff and/or other aggrieved
26 employees, as set forth below;

27 (k) Violation of Labor Code section 223 for secretly paying Plaintiff and/or
28 other aggrieved employees lower wages than required by statute, while

purporting to pay the proper wages, as set forth below;

- (l) Violation of Labor Code section 1198 for failing to provide suitable seating to Plaintiff and/or other aggrieved employees, as set forth below; and
- (m) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other aggrieved employees for all business expenses necessarily incurred, as alleged herein.

128. At all times relevant herein, California Labor Code section 212 prohibits employers from issuing any instruments for the payment of wages unless such instruments are negotiable and payable in cash on demand and without discount. California Labor Code section 213 permits employers to pay employees via direct deposit so long as the employee authorizes payment via direct deposit.

129. Under California law, employers are permitted to fulfill their wage payment obligations to employees by using payroll debit cards, but only so long as the employee is given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson v. Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor Standards Enforcement (“DLSE”) decision deeming payroll debit card program permissible relied heavily on:

. . . [T]he fact that the pay programs were optional, thereby allowing an employee to either participate in the program or receive his or her pay in some other way, such as direct deposit. Specifically, the DLSE opined that “[t]he success of the described procedure, in practice, will of course require that . . . it is presented as an *alternative* method for wage payment for which [the employees’] participation is optional.” The DLSE also stated, “[i]t is significant that the program does not mandate employee participation in the Money Network Service and that it is designed to provide an alternative for employees receiving their wage payment. Employees are also given the option of having their pay direct deposited into an account of their choosing” (internal citations omitted).

130. In addition, California law only permits employers to utilize payroll debit card programs if they provide employees with effective access to their wages without discount.

1 The DLSE has interpreted Labor Code sections 212 and 213 as permitting employer use of
2 payroll debit cards where the following requirements are satisfied:

3 . . . (1) [T]he “wages [are] payable at some established place of
4 business in the state and there be at least 30 days of sufficient
5 funds for payment,”; (2) the employees are “fully informed of the
6 service and procedures and that it is represented as an alternative
7 method for wage payment for which their participation is
8 optional,”; (3) the employees receive “an itemized wage
9 statement,” ; and (4) “at least one transaction per pay period [is]
10 without fee.”

11 *Ortiz v. Randstad North America, L.P.*, No. C-13-5050 MMC, 2015 WL
12 6202298 at 3.

13 131. Further, the DLSE notes that the Labor Code manifests:

14 . . . [A] strong public policy that prohibits an employer (or its
15 agent) from imposing conditions or obstacles which interfere with
16 or prevent an employee’s (*sic*) from promptly receiving their due
17 wages *in full*. The imposition of a fee in order to readily access
18 one’s earned and paid wage under a payroll card program which
19 is designed to discharge the employer’s wage payment
20 obligations could impermissibly interfere with an employee’s
21 receipt of wage wages by creating a financial condition which
22 would have the *effect* of reducing or discounting wages because
23 such fee would be charged against the same account in which
24 wages are deposited.” (Emphases in original)

25 132. *DLSE opinion letter 2008.07.07*. The DLSE has also acknowledged that
26 payroll service providers “effectively act as *agents* of the client employers in discharging the
27 employer’s wage payment obligations.” *Id.* In a second opinion letter, the DLSE stated that
28 “[w]hile the Labor Code does not purport to regulate the specific arrangements between
employers and payroll service providers, both an employer and, under the express language in
Labor Code § 212- their *agent*, must comply with its requirements.” *DLSE opinion letter*
2008.07.07.2.

133. During the relevant time period, Defendants had a practice and/or policy of
automatically issuing payroll debit cards to departing employees without giving them the
option to elect their form of payment for their final wages. For example, Plaintiff received his
final wages on a payroll debit card without a choice of an alternate method of payment, such
as a written check. Instead, Defendants automatically enrolled Plaintiff in their payroll debit

1 card program for the purpose of issuing his final wages to him without prior, voluntary
2 approval from Plaintiff. Moreover, Defendants did not permit Plaintiff and/or other aggrieved
3 employees to withdraw their entire wages in at least one transaction without incurring a fee.
4 Thus, Defendants' payroll debit card program was and continues to be unlawful as it does not
5 give departing employees the choice as to whether they would like to receive their final wages
6 on a payroll debit card or via some other payment method.

7 134. California courts recognize a policy favoring the full and prompt payment of
8 wages to employees. Defendants' payroll card program is inconsistent with this policy.
9 Because Defendants' company-wide payroll debit card program is involuntary and denies
10 employees of easy access to the entirety of their wages, the program violates California Labor
11 Code sections 212 and 213. Plaintiff and/or other aggrieved employees are therefore entitled
12 to recover civil penalties pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

13 135. At all times relevant herein, California Labor Code section 221 provides that it
14 shall be unlawful for any employer to collect or receive from an employee any part of wages
15 theretofore paid by said employer to said employee. California Labor Code section 224 also
16 provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a
17 deduction is expressly authorized in writing by the employee."

18 136. During the relevant time period, Defendants unlawfully deducted a portion of
19 wages previously paid to Plaintiff and other aggrieved employees in violation of California
20 Labor Code section 221. Defendants systematically, and on a company-wide basis, provided
21 Plaintiff and other aggrieved employees with payroll debit cards as payment of their wages.
22 Under Defendants' payroll debit card program, Plaintiff and/or other aggrieved employees
23 were assessed various fees in connection with their use of the payroll debit cards. For
24 example, Plaintiff and/or other aggrieved employees were required to pay per-transaction fees,
25 ATM fees, and/or other fees to obtain and/or spend their earned and due wages. The fees
26 charged to Plaintiff and/or other aggrieved employees resulted in a discount of their wages.

27 137. Defendants' payroll debit card program, which resulted in a discount of wages
28 to employees, is tantamount to taking deductions from Plaintiff's and/or other aggrieved

1 employees' paychecks without their written authorization and therefore constitutes an
2 unlawful deduction of wages, in violation of Labor Code sections 221 and 224. Plaintiff
3 and/or other aggrieved employees are therefore entitled to recover civil penalties pursuant to
4 Labor Code sections 225.5 and/or 2699(a), (f), and (g).

5 138. At all times, California Labor Code section 223 makes it unlawful for an
6 employer to secretly pay wages lower than required by statute while purporting to pay legal
7 wages.

8 139. During the relevant time period, Defendants willfully and systematically issued
9 payroll debit cards to Plaintiff and/or other aggrieved employees that discounted their wages
10 by charging various fees in connection with the use of the payroll debit cards. Defendants'
11 payroll debit card program resulted in the payment of less than statutorily-required wages to
12 Plaintiff and/or other aggrieved employees. In doing so, Defendants acted with the intent to
13 deprive Plaintiff and/or other aggrieved employees of statutory wages, including, but not
14 limited to, overtime wages, minimum wages, and/or meal and rest period premiums, to which
15 they were entitled to under California law. Thus, Defendants paid Plaintiff and/or other
16 aggrieved employees lower wages than those they were entitled to while purporting that
17 Plaintiff and/or other aggrieved employees were properly paid.

18 140. Defendants' failure to pay Plaintiff and/or other aggrieved employees the
19 correct designated wage, while purporting to pay legal wages, is a violation of California
20 Labor Code section 223. Plaintiff and/or other aggrieved employees are therefore entitled to
21 recover civil penalties pursuant to sections 225.5 and/or 2699(a), (f), and (g).

22 141. At all relevant times herein, California Labor Code section 1198 makes it
23 illegal to employ an employee under conditions of labor that are prohibited by the applicable
24 wage order. California Labor Code section 1198 requires that "... the standard conditions of
25 labor fixed by the commission shall be the ... standard conditions of labor for employees.
26 The employment of any employee ... under conditions of labor prohibited by the order is
27 unlawful."

28 142. California Code of Regulations, Title 8, section 11070(14)(A) provides that

1 “[a]ll working employees shall be provided with suitable seats when the nature of the work
2 reasonably permits the use of seats.”

3 143. Plaintiff alleges that Defendants’ California retail stores are generally similar in
4 their layout and design and there was, and continues to be, space behind cash wraps to allow
5 for the presence and use of a seat or stool by other aggrieved employees during the
6 performance of their work duties. Defendants could have provided other aggrieved employees
7 with a seat or stool at their cash wraps, with reasonable or no modification to these work
8 areas, but instead denies employees seating and forces other aggrieved employees to stand
9 throughout the day.

10 144. Other aggrieved employees have spent a substantial portion of their day behind
11 these cash wraps. The nature of the work of an employee performing cashier duties can
12 reasonably be accomplished from a seated position. However, Defendants systematically, and
13 on a company-wide basis, did not provide seats or stools at or near cash wraps, forcing other
14 aggrieved employees to stand throughout their work shifts.

15 145. During the relevant time period, Defendants violated California Labor Code
16 section 1198 and California Code of Regulations, Title 8, section 11070(14)(A), because other
17 aggrieved employees were not allowed to sit, even when the nature of their work would
18 reasonably permit the use of seats, nor were they provided with suitable seats. Other
19 aggrieved employees were assigned cashier duties, which were performed from and connected
20 to a cash wrap, and could have been performed from a seated position. Other aggrieved
21 employees could have handled transactions at the cash registers while seated without
22 interference to their ability to complete these duties.

23 146. Defendants could have placed seats or stools near each cash wrap for use by
24 other aggrieved employees with reasonable or no modification to these work areas. However,
25 on a company-wide basis, Defendants did not provide seats or stools at cash wraps.
26 Defendants’ management did not inform other aggrieved employees that they were allowed to
27 sit down, provide any means for them to sit down, or mention any policy regarding sitting.

28 147. As a result of Defendants’ company-wide policy and/or practice prohibiting

1 employees performing cashier duties from sitting during their shifts and failure to provide
2 suitable seating to these employees, other aggrieved employees were forced to stand during
3 shifts and denied seats. Defendants' failure to provide suitable seating to other aggrieved
4 employees violated and continues to violate California Labor Code section 1198 and IWC
5 Wage Order 7-2001, Section 14(A). Other aggrieved employees are therefore entitled to
6 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

7 148. At all relevant times herein, California Labor Code section 1198 makes it
8 illegal to employ an employee under conditions of labor that are prohibited by the applicable
9 wage order. California Labor Code section 1198 requires that "... the standard conditions of
10 labor fixed by the commission shall be the ... standard conditions of labor for employees.
11 The employment of any employee ... under conditions of labor prohibited by the order is
12 unlawful."

13 149. California Code of Regulations, Title 8, section 11070(14)(B) provides that
14 "[w]hen employees are not engaged in the active duties of their employment and the nature of
15 the work requires standing, an adequate number of suitable seats shall be placed in reasonable
16 proximity to the work area and employees shall be permitted to use such seats when it does
17 not interfere with the performance of their duties."

18 150. During the relevant time period, Defendants violated California Labor Code
19 section 1198 and California Code of Regulations, Title 8, section 11070(14)(B), because
20 Plaintiff and other aggrieved employees are not allowed to sit, even during lulls in their work
21 duties, nor are they provided with suitable seats in reasonable proximity to their work areas.

22 151. Defendants did not provide Plaintiff and other aggrieved employees with seats
23 or stools in reasonable proximity to their work areas to allow them to use seats when it would
24 not interfere with the performance of their duties for times when they were not engaged in
25 active duties that require standing. In other words, to the extent Plaintiff and other aggrieved
26 employees have engaged in duties in which the nature of the work required standing,
27 Defendants denied them the use of seats nearby when they were not engaged in those duties.
28 Even though the layout of Defendants' workplaces could accommodate seats or stools with

1 reasonable or no modification to these work areas, Defendants have, on a company-wide
2 basis, denied Plaintiff and other aggrieved employees suitable seating altogether.

3 152. As a result of Defendants' company-wide policy and/or practice prohibiting
4 employees from sitting at any time, even when they are not engaged in active duties requiring
5 standing, and company-wide failure to provide seats in reasonable proximity to their work
6 areas, Plaintiff and other aggrieved employees were forced to stand during shifts and denied
7 seats. Defendants' failure to provide suitable seating to Plaintiff and other aggrieved
8 employees violated and continues to violate California Labor Code section 1198 and IWC
9 Wage Order 7-2001, Section 14(B). Plaintiff and other aggrieved employees are therefore
10 entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

11 **TENTH CAUSE OF ACTION**

12 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

13 **Unlawful Business Practices**

14 **(Against all Defendants)**

15 153. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
16 and every allegation set forth above.

17 154. Defendants are "persons" as defined by California Business & Professions
18 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
19 and/or associations.

20 155. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
21 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
22 suffered injury in fact and has lost money as a result of Defendants' unlawful business
23 practices. Plaintiff seeks to enforce important rights affecting the public interest within the
24 meaning of Code of Civil Procedure section 1021.5.

25 156. Defendants' activities, as alleged herein, are violations of California law, and
26 constitute unlawful business acts and practices in violation of California Business &
27 Professions Code sections 17200, *et seq.*

28 157. A violation of California Business & Professions Code sections 17200, *et seq.*

1 may be predicated on the violation of any state or federal law. In the instant case, Defendants'
2 policies and practices have violated state law in at least the following respects:

- 3 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
4 class members, to work overtime without paying them proper
5 compensation in violation of California Labor Code sections 510 and
6 1198 and the applicable IWC Order, as alleged herein;
- 7 (b) Failing to pay at least minimum wage to Plaintiff and class members in
8 violation of California Labor Code sections 1182.12, 1194, 1197,
9 1197.1, and 1198 and the applicable IWC Order, as alleged herein;
- 10 (c) Failing to provide uninterrupted meal periods to Plaintiff and class
11 members in violation of California Labor Code sections 226.7, 512(a),
12 516, 1198, and the applicable IWC Order, as alleged herein;
- 13 (d) Failing to authorize and permit Plaintiff and class members to take
14 uninterrupted rest periods in violation of California Labor Code sections
15 226.7, 516, 1198, and the applicable IWC Order, as alleged herein;
- 16 (e) Failing to provide Plaintiff and class members with accurate wage
17 statements and failing to maintain accurate payroll records in violation
18 of California Labor Code sections 226(a), 1174(d), 1198, and the
19 applicable IWC Order, as alleged herein;
- 20 (f) Failing timely to pay all earned wages to Plaintiff and class members in
21 violation of California Labor Code section 204 and the applicable IWC
22 Order, as alleged herein;
- 23 (g) Issuing instruments to Plaintiff and/or class members for the payment of
24 wages that were not payable in cash on demand and without discount, in
25 violation of Labor Code sections 212 and 213, as set forth below;
- 26 (h) Collecting or receiving wages already paid from Plaintiff and/or class
27 members in violation of California Labor Code sections 221 and 224, as
28 set forth below;

- 1 (i) Failing to pay the statutorily designated wage scale in violation of
2 California Labor Code section 223, as set forth below; and
3 (j) Failing to reimburse Plaintiff and class members for all business
4 expenses necessarily incurred in violation of California Labor Code
5 sections 2802, as alleged herein.

6 158. At all times relevant herein, California Labor Code section 212 prohibits
7 employers from issuing any instruments for the payment of wages unless such instruments are
8 negotiable and payable in cash on demand and without discount. California Labor Code
9 section 213 permits employers to pay employees via direct deposit so long as the employee
10 authorizes payment via direct deposit.

11 159. Under California law, employers are permitted to fulfill their wage payment
12 obligations to employees by using payroll debit cards, but only so long as the employee is
13 given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson*
14 *v. Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL
15 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor
16 Standards Enforcement (“DLSE”) decision deeming payroll debit card program permissible
17 relied heavily on:

18 . . . [T]he fact that the pay programs were optional, thereby
19 allowing an employee to either participate in the program or
20 receive his or her pay in some other way, such as direct deposit.
21 Specifically, the DLSE opined that “[t]he success of the
22 described procedure, in practice, will of course require that . . .
23 it is presented as an *alternative* method for wage payment for
24 which [the employees’] participation is optional.” The DLSE
also stated, “[i]t is significant that the program does not
mandate employee participation in the Money Network Service
and that it is designed to provide an alternative for employees
receiving their wage payment. Employees are also given the
option of having their pay direct deposited into an account of
their choosing . . .” (internal citations omitted).

25 160. In addition, California law only permits employers to utilize payroll debit card
26 programs if they provide employees with effective access to their wages without discount.
27 The DLSE has interpreted Labor Code sections 212 and 213 as permitting employer use of
28 payroll debit cards where the following requirements are satisfied:

1 . . . (1) [T]he “wages [are] payable at some established place of
2 business in the state and there be at least 30 days of sufficient
3 funds for payment,”; (2) the employees are “fully informed of
4 the service and procedures and that it is represented as an
5 alternative method for wage payment for which their
6 participation is optional,”; (3) the employees receive “an
7 itemized wage statement,” ; and (4) “at least one transaction per
8 pay period [is] without fee.”

9 *Ortiz v. Randstad North America, L.P.*, No. C-13-5050 MMC, 2015 WL 6202298 at 3.

10 161. Further, the DLSE notes that the Labor Code manifests:

11 . . . [A] strong public policy that prohibits an employer (or its
12 agent) from imposing conditions or obstacles which interfere
13 with or prevent an employee’s (*sic*) from promptly receiving
14 their due wages *in full*. The imposition of a fee in order to
15 readily *access* one’s earned and paid wage under a payroll card
16 program which is designed to discharge the employer’s wage
17 payment obligations could impermissibly interfere with an
18 employee’s receipt of *page* wages by creating a financial
19 condition which would have the *effect* of reducing or discounting
20 wages because such fee would be charged against the same
21 account in which wages are deposited.” (Emphases in original)

22 *DLSE opinion letter 2008.07.07*. The DLSE has also acknowledged that payroll service
23 providers “effectively act as *agents* of the client employers in discharging the employer’s
24 wage payment obligations.” *Id.* In a second opinion letter, the DLSE stated that “[w]hile the
25 Labor Code does not purport to regulate the specific arrangements between employers and
26 payroll service providers, both an employer and, under the express language in Labor Code §
27 212- their *agent*, must comply with its requirements.” *DLSE opinion letter 2008.07.07.2*.

28 162. During the relevant time period, Defendants had a practice and/or policy of
automatically issuing payroll debit cards to departing employees without giving them the
option to elect their form of payment for their final wages. For example, Plaintiff received his
final wages on a payroll debit card without a choice of an alternate method of payment, such
as a written check. Instead, Defendants automatically enrolled Plaintiff in their payroll debit
card program for the purpose of issuing his final wages to them without prior, voluntary
approval from Plaintiff. Moreover, Defendants did not permit Plaintiff and/or class members
to withdraw their entire wages in at least one transaction without incurring a fee. Thus,
Defendants’ payroll debit card program was and continues to be unlawful as it does not give

1 departing employees the choice as to whether they would like to receive their final wages on a
2 payroll debit card or via some other payment method.

3 163. California courts recognize a policy favoring the full and prompt payment of
4 wages to employees. Defendants' payroll card program is inconsistent with this policy
5 because Defendants' program is involuntary and denies Plaintiff and/or class members of easy
6 access to the entirety of their wages. Thus, Defendants' company-wide payroll debit card
7 program violates California Labor Code sections 212 and 213.

8 164. At all times relevant herein, California Labor Code section 221 provides that it
9 shall be unlawful for any employer to collect or receive from an employee any part of wages
10 theretofore paid by said employer to said employee. California Labor Code section 224 also
11 provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a
12 deduction is expressly authorized in writing by the employee."

13 165. During the relevant time period, Defendants unlawfully deducted a portion of
14 wages previously paid to Plaintiff and/or class members in violation of California Labor Code
15 section 221. Defendants systematically, and on a company-wide basis, provided Plaintiff
16 and/or class members with payroll debit cards as payment of their wages. Under Defendants'
17 payroll debit card program, Plaintiff and/or class members were assessed various fees in
18 connection with their use of the payroll debit cards. For example, Plaintiff and/or class
19 members were required to pay per-transaction fees, ATM fees, and/or other fees to obtain
20 and/or spend their earned and due wages. The fees charged to Plaintiff and/or class members
21 resulted in a discount of their wages.

22 166. Defendants' payroll debit card program, which resulted in a discount of wages
23 to employees, is tantamount to taking deductions from Plaintiff's and/or class members'
24 paychecks without their written authorization and therefore constitutes an unlawful deduction
25 of wages, in violation of Labor Code sections 221 and 224.

26 167. At all times, California Labor Code section 223 makes it unlawful for an
27 employer to secretly pay wages lower than required by statute while purporting to pay legal
28 wages.

1 168. During the relevant time period, Defendants willfully and systematically issued
2 payroll debit cards to Plaintiff and/or class members that discounted their wages by charging
3 various fees in connection with the use of the payroll debit cards. Defendants' payroll debit
4 card program resulted in the payment of less than statutorily-required wages to Plaintiff and/or
5 class members. In doing so, Defendants acted with the intent to deprive Plaintiff and/or class
6 members of statutory wages, including, but not limited to, overtime wages, minimum wages,
7 and/or meal and rest period premiums, to which they were entitled to under California law.
8 Thus, Defendants paid Plaintiff and/or class members lower wages than those they were
9 entitled to while purporting that Plaintiff and/or class members were properly paid.

10 169. Defendants' failure to pay Plaintiff and/or class members the correct designated
11 wage, while purporting to pay legal wages, is a violation of California Labor Code section
12 223.

13 170. As a result of the violations of California law herein described, Defendants
14 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
15 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
16 herein.

17 171. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
18 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
19 Defendants during a period that commences four years prior to the filing of this complaint; a
20 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
21 class members; and an award of attorneys' fees pursuant to California Code of Civil
22 Procedure section 1021.5 and other applicable laws; and an award of costs.

23 **ELEVENTH CAUSE OF ACTION**

24 **Violation of California Business & Professions Code §§ 17200, et seq. –**

25 **Unfair Business Practices**

26 **(Against all Defendants)**

27 172. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
28 and every allegation set forth above.

1 173. Defendants are “persons” as defined by California Business & Professions
2 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
3 and/or associations.

4 174. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
5 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered
6 injury in fact and has lost money as a result of Defendants’ unfair business practices. Plaintiff
7 seeks to enforce important rights affecting the public interest within the meaning of Code of
8 Civil Procedure section 1021.5.

9 175. Defendants’ activities, namely Defendants’ company-wide practice and/or
10 policy of not paying Plaintiff and class members all meal and rest period premium wages due
11 to them under Labor Code section 226.7, deprived Plaintiff and class members of the
12 compensation guarantee and enhanced enforcement implemented by section 226.7. The
13 statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to
14 compensate employees, and secondarily to shape employer conduct. *Safeway, Inc. v. Superior*
15 *Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were
16 guaranteed to Plaintiff and class members as part of their employment with Defendants, and
17 thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an
18 unfair business practice in violation of California Business & Professions Code sections
19 17200, *et seq.* (Id.)

20 176. A violation of California Business & Professions Code sections 17200, *et seq.*
21 may be predicated on any unfair business practice. In the instant case, Defendants’ policies
22 and practices have violated the spirit of California’s meal and rest period laws and constitute
23 acts against the public policy behind these laws.

24 177. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
25 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
26 benefits implemented by section 226.7 withheld and retained by Defendants during a period
27 that commences four years prior to the filing of this complaint; a permanent injunction
28 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to

1 Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil
2 Procedure section 1021.5 and other applicable laws; and an award of costs.

3 **REQUEST FOR JURY TRIAL**

4 Plaintiff requests a trial by jury.

5 **PRAYER FOR RELIEF**

6 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment
7 against Defendants, jointly and severally, as follows:

8 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
9 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
10 reserves the right to amend his prayer for relief to seek a different amount.

11 **Class Certification**

12 2. That this case be certified as a class action;

13 3. That Plaintiff be appointed as the representative of the Class and Subclass;

14 4. That counsel for Plaintiff be appointed as class counsel.

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

16 5. That the Court declare, adjudge, and decree that Defendants violated California
17 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to
18 pay all overtime wages due to Plaintiff and class members;

19 6. For general unpaid wages at overtime wage rates and such general and special
20 damages as may be appropriate;

21 7. For pre-judgment interest on any unpaid overtime compensation commencing
22 from the date such amounts were due, or as otherwise provided by law;

23 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
24 California Labor Code section 1194(a); and

25 9. For such other and further relief as the Court may deem equitable and
26 appropriate.

27 **As to the Second Cause of Action**

28 10. That the Court declare, adjudge and decree that Defendants violated California

1 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 by willfully failing to pay
2 minimum wages to Plaintiff and class members;

3 11. For general unpaid wages and such general and special damages as may be
4 appropriate;

5 12. For pre-judgment interest on any unpaid compensation from the date such
6 amounts were due, or as otherwise provided by law;

7 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
8 California Labor Code section 1194(a);

9 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

10 15. For such other and further relief as the Court may deem equitable and
11 appropriate.

12 **As to the Third Cause of Action**

13 16. That the Court declare, adjudge, and decree that Defendants violated California
14 Labor Code sections 226.7, 512(a), 516, and 1198 and applicable IWC Wage Order(s) by
15 willfully failing to provide all meal periods to Plaintiff and class members;

16 17. That the Court make an award to the Plaintiff and class members of one (1)
17 hour of pay at each employee's regular rate of pay for each workday that a meal period was
18 not provided;

19 18. For all actual, consequential, and incidental losses and damages, according to
20 proof;

21 19. For premiums pursuant to California Labor Code section 226.7(b);

22 20. For pre-judgment interest on any unpaid meal period premiums from the date
23 such amounts were due, or as otherwise provided by law;

24 21. For attorneys' fees pursuant to California Code of Civil Procedure section
25 1021.5, or as otherwise provided by law; and

26 22. For such other and further relief as the Court may deem equitable and
27 appropriate.

28 //

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198 and applicable IWC Wage Orders by willfully failing to authorize and permit Plaintiff and class members to take all rest periods;

24. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a rest period was not authorized and permitted;

25. For all actual, consequential, and incidental losses and damages, according to proof;

26. For premiums pursuant to California Labor Code section 226.7(b);

27. For pre-judgment interest on any unpaid rest period premiums from the date such amounts were due, or as otherwise provided by law;

28. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

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

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For injunctive relief pursuant to California Labor Code section 226(h);

33. For statutory penalties pursuant to California Labor Code section 226(e);

34. For attorneys' fees and costs pursuant to California Labor Code section 226(e)(1); and

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

appropriate.

As to the Sixth Cause of Action

36. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages, and/or meal and rest period premiums owed at the time of termination of the employment of Plaintiff and other terminated class members;

37. For all actual, consequential and incidental losses and damages, according to proof;

38. For waiting time penalties according to proof pursuant to California Labor Code section 203 for all employees who have left Defendants' employ;

39. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

40. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

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

As to the Seventh Cause of Action

42. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to timely pay Plaintiff and class members overtime wages, minimum wages, and/or meal and rest period premiums during their employment;

43. For all actual, consequential and incidental losses and damages, according to proof;

44. For statutory penalties according to proof pursuant to California Labor Code section 210;

45. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

46. For attorneys' fees pursuant to California Code of Civil Procedure section

1021.5, or as otherwise provided by law; and

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

As to the Eighth Cause of Action

48. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-related expenses and costs incurred by Plaintiff and class members;

49. For unpaid business-related expenses and such general and special damages as may be appropriate;

50. For pre-judgment interest on any unpaid business-related expenses from the date such amounts were due, or as otherwise provided by law;

51. For all actual, consequential, and incidental losses and damages, according to proof;

52. For attorneys' fees and costs pursuant to California Labor Code section 2802(c), or as otherwise provided by law; and

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

As to the Ninth Cause of Action

54. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201, 202, 203 (by failing timely to pay all earned wages upon termination); 204 (by failing timely to pay all earned wages during employment); 212 and 213 (by failing to make earned wages accessible without discount); 221 and 224 (by collecting and/or receiving wages already paid); 223 (by secretly paying

wages lower than required by statute); 1198 (by failing to provide suitable seating); and 2802 (by failing to reimburse business expenses);

55. For civil penalties pursuant to California Labor Code sections 210, 225.5, 226.3, 256, 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code sections 201, 202, 203, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

56. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 203, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

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

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

As to the Tenth Cause of Action

59. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiff and class members all overtime wages due to them, failing to provide Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and class members all meal periods, failing to authorize and permit Plaintiff and class members to take all rest periods, failing to provide Plaintiff and class members accurate and complete wage statements, failing to maintain accurate payroll records for Plaintiff and class members, failing timely to pay Plaintiff and class members all earned wages during employment, failing to provide access to wages without discount, unlawfully deducting a portion of wages previously paid, secretly paying a lower wage, and failing to reimburse Plaintiff and class members for business-related expenses, constitutes an unlawful business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

60. For restitution of unpaid wages to Plaintiff and all class members and prejudgment interest from the day such amounts were due and payable;

61. For the appointment of a receiver to receive, manage and distribute any and all

1 funds disgorged from Defendants and determined to have been wrongfully acquired by
2 Defendants as a result of violations of California Business & Professions Code sections 17200
3 *et seq.*;

4 62. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
5 California Code of Civil Procedure section 1021.5; and

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

8 **As to the Eleventh Cause of Action**

9 64. That the Court declare, adjudge and decree that Defendants' conduct of denying
10 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
11 an unfair business practice in violation of California Business and Professions Code sections
12 17200, *et seq.*;

13 65. For restitution of the statutory benefits under section 226.7 unfairly withheld
14 from Plaintiff and class members and prejudgment interest from the day such amounts were
15 due and payable;

16 66. For the appointment of a receiver to receive, manage and distribute any and all
17 funds disgorged from Defendants and determined to have been wrongfully acquired by
18 Defendants as a result of violations of California Business & Professions Code sections 17200
19 *et seq.*;

20 67. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
21 California Code of Civil Procedure section 1021.5;

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

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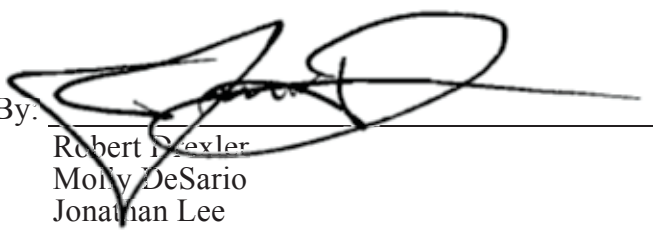
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1 69. For such other and further relief as the Court may deem equitable and
2 appropriate.

3
4 Dated: June 19, 2020

Respectfully submitted,

Capstone Law APC

5
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7 By: 

Robert Deyler
Molly DeSario
Jonathan Lee

8
9 Attorneys for Plaintiff Lenard Miller

Exhibit 1

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

March 4, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/266>)

Subject: *Lenard Miller v. Sportsman's Warehouse Southwest, Inc., et al.*

Dear PAGA Administrator:

This office represents Lenard Miller in connection with his claims under the California Labor Code. Mr. Miller was an employee of SPORTSMAN'S WAREHOUSE SOUTHWEST, INC.; SPORTSMAN'S WAREHOUSE, INC; and/or SPORTSMAN'S WAREHOUSE HOLDINGS, INC. For the purpose of this letter, Mr. Miller collectively refers to these entities as "SPORTSMANS."

The employers may be contacted directly at the addresses below:

SPORTSMAN'S WAREHOUSE SOUTHWEST, INC.
7035 SOUTH HIGH TECH DR.
MIDVALE UT 84047

SPORTSMAN'S WAREHOUSE, INC.
7035 SOUTH HIGH TECH DR.
MIDVALE UT 84047

SPORTSMAN'S WAREHOUSE HOLDINGS, INC.
1475 WEST 9000 SOUTH SUITE A
WEST JORDAN UT 84088

Mr. Miller intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Miller seeks relief on behalf of himself, the State of California, and other persons who are or were employed by SPORTSMANS as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

SPORTSMANS employed Mr. Miller as an hourly paid, non-exempt employee from approximately January 2019 to September 2019. Mr. Miller worked for SPORTSMANS as a Sales Associate and Archery Lead at the SPORTSMANS retail store located in Eureka, California. During his employment, Mr. Miller typically worked 7.5 hours or more per day, five (5) days per week, and 37 hours per week. Mr. Miller was compensated approximately \$15.00 per hour. His job duties included, without limitation, providing customer service for archery and hunting departments, ringing up customers, stocking merchandise, filling out closing paperwork, and cleaning the department.

SPORTSMANS committed one or more of the following Labor Code violations against Mr. Miller, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

SPORTSMANS’s Company-Wide and Uniform Payroll and HR Practices

SPORTSMAN’S WAREHOUSE SOUTHWEST, INC.; SPORTSMAN’S WAREHOUSE, INC.; and SPORTSMAN’S WAREHOUSE HOLDINGS, INC. are California, Utah, and Delaware corporations, respectively, and a leading outdoor sporting goods retailer that has the largest outdoor specialty store base in the Western United States and Alaska. SPORTSMANS operates 103 stores across 27 states, including 11 stores in California. Upon information and belief, SPORTSMANS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Midvale, Utah, for all non-exempt, hourly paid employees working for SPORTSMANS in California, including Mr. Miller and other aggrieved employees. At all relevant times, SPORTSMANS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Miller and other aggrieved employees, regardless of its location or position.

Upon information and belief, SPORTSMANS maintains a centralized Payroll department at its corporate headquarters in Midvale, Utah, which processes payroll for all non-exempt, hourly paid employees working for SPORTSMANS in California, including Mr. Miller and other aggrieved employees. Further, SPORTSMANS issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Miller and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, SPORTSMANS utilized the same methods and formulas when calculating wages due to Mr. Miller and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a

¹ These facts, theories, and claims are based on Mr. Miller’s experience and counsel’s review of those records currently available relating to Mr. Miller’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Miller reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

SPORTSMANS willfully failed to pay all overtime wages owed to Mr. Miller and other aggrieved employees. During the relevant time period, Mr. Miller and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant time period, on information and belief, SPORTSMANS had a company-wide policy of staffing its store locations strictly based on the labor hours allocated by corporate for each store location. SPORTSMANS's uniform use of labor budgets has resulted in and continues to result in chronic understaffing such that there were too few employees on duty to meet store demands and provide meal period coverage. SPORTSMANS also had a company-wide policy that prohibited managers/supervisors from leaving the premises unless another manager/supervisor is on the premises, resulting in a lack of meal period coverage for managerial employees. At the same time, the labor budgets SPORTSMANS implemented did not always allow for more than one manager/supervisor to be on the schedule at all times. As a result, Mr. Miller and other managerial employees were sometimes the only managers/supervisors on duty. Because there were too few employees and other managers/supervisors on duty to handle the workload and/or attend to customers, Mr. Miller and other aggrieved employees were denied uninterrupted 30-minute meal periods.

Second, SPORTSMANS, on a company-wide basis, had a practice of failing to adhere to a schedule of meal periods, which further caused Mr. Miller and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result of these policies and/or practices, Mr. Miller and other aggrieved employees were required to work through and/or to return early from meal periods, in order to complete their assigned tasks. Thus, Mr. Miller and other aggrieved employees performed work during meal periods for which they were not paid.

Third, on information and belief, because SPORTSMANS frowned upon employees accruing meal period penalties, when Mr. Miller and other aggrieved employees failed to clock themselves out at their designated meal period start times, they were subject to SPORTSMANS altering their time records and deducting time for meal periods that were not taken. Alternatively, SPORTSMANS's management falsified employee time records by clocking out Mr. Miller and other aggrieved employees at designated start and end times to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that SPORTSMANS would otherwise owe. Consequently, Mr. Miller and other aggrieved employees performed work during meal periods for which they were not paid.

Fourth, during the relevant time period, SPORTSMANS's company-wide closing procedures required Mr. Miller and other aggrieved employees to perform work after clocking out for their shifts, resulting in employees working off the clock, but Mr. Miller and other aggrieved employees were not paid for those hours worked. For example, on closing shifts, the designated Manager on

Duty (MOD) would lock the store at closing time, while the remaining employees completed their closing duties. The MOD, who was the only person with a key to let people out, would then complete his or her closing duties. Meanwhile, per SPORTSMANS's store procedure, Mr. Miller and other aggrieved employees would complete their own closing tasks, clock out, and then gather by the front door to wait for the MOD to complete his or her closing duties and let them out of the store. Mr. Miller and other aggrieved employees had to wait under SPORTSMANS's control and off-the-clock until the MOD was ready to release them. As another example, after Mr. Miller and other aggrieved employees closed the store and clocked out for the day, they were sometimes required to perform walkthroughs of the store and arm the store alarm prior to exiting. These walkthroughs could take five (5) to ten (10) minutes, time for which Mr. Miller and other aggrieved employees were not paid.

Fifth, during the relevant period, SPORTSMANS had a company-wide practice and/or policy of requiring other aggrieved employees to perform work-related tasks while off-the-clock, such as promoting SPORTSMANS's business on their days off. For example, other aggrieved employees were directed to post on their social media profiles and hand out fliers about store promotions. SPORTSMANS further encouraged such off-the-clock work by having other aggrieved employees fill out log sheets with the number of fliers they handed out. However, SPORTSMANS failed to track this time spent working before and after scheduled shifts, and other aggrieved employees received no compensation for this time.

SPORTSMANS knew or should have known that as a result of these company-wide practices and/or policies, Mr. Miller and other aggrieved employees were working before and after their shifts and/or during their meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Miller and other aggrieved employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Miller and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, SPORTSMANS did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, SPORTSMANS paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. For example, other aggrieved employees earned quarterly sales bonuses during the same pay periods when they earned overtime wages. However, in violation of the California Labor Code, SPORTSMANS failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, SPORTSMANS failed to pay all overtime wages by paying a lower overtime rate than required.

Mr. Miller and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 7 as "the time during

which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11070(2)(G) (defining “Hours Worked”).

First, as stated, due to SPORTSMANS’s use of labor budgets and resultant understaffing, along with its failure to adhere to a schedule of meal periods, Mr. Miller and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods. Also, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, SPORTSMANS’s management pressured employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, but required them to continue working, time for which they were not paid. In addition, SPORTSMANS required that Mr. Miller and/or other aggrieved employees perform work off-the-clock before and after their scheduled shifts, including waiting to leave the store after closing, performing walkthroughs after clocking out, and posting on social media and handing out fliers about store promotions.

Second, SPORTSMANS maintained and implemented a company-wide policy of requiring employees to undergo fingerprint-based background checks upon hiring. This required employees to travel to a Live Scan provider or operator on their own time and using their own personal vehicles, to undergo fingerprinting. For example, Mr. Miller made two trips to the Humboldt sheriff’s office, and on each trip spent 25-30 minutes traveling the sheriff’s office, 30 minutes waiting and undergoing the fingerprinting, and another 20 minutes traveling back home. However, SPORTSMANS did not compensate Mr. Miller and other aggrieved employees for the time they spent traveling to and from the Live Scan providers or operators or for the time they spent undergoing their fingerprinting.

Third, during the relevant time period, on information and belief, SPORTSMANS also maintained and implemented a company-wide policy of requiring all employees to travel to a medical facility on their own time and using their own personal vehicles to undergo mandatory drug tests and/or physical examinations. At all times, upon information and belief, SPORTSMANS was in control of scheduling the date and time for the testing and/or physical examination, selecting the provider/facility where the testing and/or physical examination was to take place, and determining the scope of the testing and/or physical examination. However, SPORTSMANS did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities and undergoing the mandatory drug testing and/or physical examinations.

Thus, SPORTSMANS did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, SPORTSMANS did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1. Accordingly, SPORTSMANS regularly failed to pay at least minimum wages to Mr. Miller and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Mr. Miller and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal and rest period and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal break of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, as stated, SPORTSMANS had, and continues to have, a company-wide policy and/or practice of understaffing store locations due to labor budgeting, which resulted in a lack of meal period coverage and prevented Mr. Miller and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. In conjunction with understaffing its stores, SPORTSMANS had a requirement that a manager/supervisor be present on the store premises at all times, which exacerbated the lack of meal period coverage. As a result, Mr. Miller and other aggrieved employees were forced to forego meal periods and/or have their meal periods interrupted by work or delayed by work, and were not relieved of all duties for unpaid meal periods, in order to attend their assigned tasks.

Second, SPORTSMANS had a practice of failing to adhere to a schedule of meal periods, which further caused Mr. Miller and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result of these policies and/or practices, Mr. Miller and other aggrieved employees were left without adequate meal period coverage and were instead required to work through or to return early from meal periods, in order to complete their assigned tasks. For example, Mr. Miller missed meal periods and took meal periods after the end of his fifth hour of work due to the lack of meal period coverage.

Third, because SPORTSMANS frowned upon employees accruing meal period penalties, upon information and belief, SPORTSMANS's management would adjust employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that would need to be paid by SPORTSMANS.

Fourth, SPORTSMANS did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. Mr. Miller and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

SPORTSMANS knew or should have known that as a result of its company-wide policies and/or practices, that Mr. Miller and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. SPORTSMANS further knew or should have known that it did not pay Mr. Miller and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted.

Furthermore, SPORTSMANS engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Miller and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that SPORTSMANS did pay meal period premium wages to other aggrieved employees, it did so at the incorrect rates. Because SPORTSMANS did not properly calculate other aggrieved employees' regular rates of pay by including all remunerations, such incentive pay and/or nondiscretionary bonuses, any premiums paid for meal period violations were also paid at an incorrect rate and resulted in an underpayment of meal period premium wages.

Accordingly, SPORTSMANS failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Miller and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time 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” unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties — including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, SPORTSMANS regularly failed to authorize and permit Mr. Miller and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, SPORTSMANS's company-wide practices, including using labor budgets and resultant understaffing, prevented Mr. Miller and other aggrieved employees from being relieved of all duty to take compliant rest periods. SPORTSMANS also failed to schedule rest periods, which, coupled with SPORTSMANS's failure to provide adequate rest period coverage, further led to Mr. Miller and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Additionally, as stated, SPORTSMANS prohibited Mr. Miller and other aggrieved employees from leaving the premises during their rest periods if they were the only managers/supervisors on the floor.

Because Mr. Miller and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, SPORTSMANS effectively maintained control over Mr. Miller and other aggrieved employees during rest periods.

As a result of SPORTSMANS's practices and policies, Mr. Miller and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, during his employment, Mr. Miller missed his rest periods or had them cut short or interrupted, due to SPORTSMANS's understaffing and failure to schedule rest periods.

SPORTSMANS also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Miller and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that SPORTSMANS did pay rest period premium wages to other aggrieved employees, it did so at the incorrect rates. Because SPORTSMANS did not properly calculate other aggrieved employees' regular rates of pay by including all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, any premiums paid for rest period violations were also paid at an incorrect rate and resulted in an underpayment of rest period premium wages.

Accordingly, SPORTSMANS failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Miller and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. SPORTSMANS has not provided Mr. Miller and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, SPORTSMANS has knowingly and intentionally provided Mr. Miller and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, SPORTSMANS issued uniform wage statements to Mr. Miller and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the correct name of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, SPORTSMANS violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because SPORTSMANS did not record the time Mr. Miller and other aggrieved employees spent working off-the-clock and deducted time from Mr. Miller's and other aggrieved employees' records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), SPORTSMANS did not list the correct amount of gross wages and net wages earned by Mr. Miller and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, SPORTSMANS failed to accurately list the total number of hours worked by Mr. Miller and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Second, because SPORTSMANS did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, SPORTSMANS did not list the correct amount of gross wages earned by other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by other aggrieved employees in violation of section 226(a)(5). SPORTSMANS also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for premium wages, in violation of section 226(a)(9).

Separate from these violations, SPORTSMANS issued uniform wage statements to Mr. Miller and other aggrieved employees that failed to correctly list the name of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including, filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc.

SPORTSMANS systematically, and on a company-wide basis, issued wage statements to Mr. Miller and other aggrieved employees that incorrectly list the employing entity's name. Mr. Miller's and other aggrieved employees' wage statements incorrectly list the employer as "SPORTSMANS WAREHOUSE SW," and according to the California Secretary of State's website, there is no such entity by the name "SPORTSMANS WAREHOUSE SW." Mr. Miller believes that the correct employing entity that should be listed on employees' wage statements is "SPORTSMAN'S WAREHOUSE SOUTHWEST, INC." *See example wage statement below.*

		Pay Statement Period Start Date 08/15/2019 Period End Date 08/28/2019 Pay Date 10/04/2019 Document 111392 Net Pay \$728.44	
Sportsman's Warehouse SW 7035 S. High Tech Drive Midvale, UT 84047 801-304-2829			
Pay Details			
Lenard Alan Miller 	Employee Number  SSN XXX-XX-XXXX Job Archery Lead H Pay Rate \$15.0000 Pay Frequency Biweekly	Pay Group CA Hourly Location Eureka Department 03 - Hunting GL Location 0184 - Eureka District DM6 - District - 6 Region RMB - Region - B	

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall ... [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, 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, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments...” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), SPORTSMANS willfully failed to maintain accurate payroll records for Mr. Miller and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, SPORTSMANS failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Miller and other aggrieved employees, in violation of section 1198. As stated, SPORTSMANS engaged in a company-wide practice and/or policy of falsifying Mr. Miller’s and other aggrieved employees’ time records by deducting meal periods or recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Mr. Miller and other aggrieved employees. Furthermore, in light of SPORTSMANS’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, SPORTSMANS kept no records of meal start and end times for second meal periods.

Because SPORTSMANS failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Miller and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Miller and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Miller and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, SPORTSMANS failed to pay Mr. Miller and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Mr. Miller and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (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.

SPORTSMANS willfully failed to pay Mr. Miller and other aggrieved employees who are no longer employed by SPORTSMANS all their earned wages, including, but not limited to, overtime wages, minimum wages, and meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving SPORTSMANS's employ in violation of California Labor Code sections 201, 202, and 203.

Mr. Miller and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 212 and 213 – Unlawful Direct Deposit and Discount of Wages

California Labor Code section 212 prohibits employers from issuing any instruments for the payment of wages unless such instruments are negotiable and payable in cash on demand and without discount. California Labor Code section 213 permits employers to pay employees via direct deposit so long as the employee authorizes payment via direct deposit. Under California law, employers are also permitted to fulfill their wage payment obligations to employees by using payroll debit cards, but only

under certain circumstances. Employer use of payroll debit cards is permitted only so long as the employee is given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson v. Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor Standards Enforcement (“DLSE”) decision deeming payroll debit card program permissible relied heavily on:

. . . [T]he fact that the pay programs were optional, thereby allowing an employee to either participate in the program or receive his or her pay in some other way, such as direct deposit. Specifically, the DLSE opined that “[t]he success of the described procedure, in practice, will of course require that . . . it is presented as an *alternative* method for wage payment for which [the employees’] participation is optional.” The DLSE also stated, “[i]t is significant that the program does not mandate employee participation in the Money Network Service and that it is designed to provide an alternative for employees receiving their wage payment. Employees are also given the option of having their pay direct deposited into an account of their choosing . . .” (internal citations omitted).

In addition, employers can only utilize payroll debit card programs if they provide employees with effective access to their wages without discount. The DLSE has interpreted Labor Code sections 212 and 213 as permitting employer use of payroll debit cards where the following requirements are satisfied:

- (1) [T]he “wages [are] payable at some established place of business in the state and there be at least 30 days of sufficient funds for payment,”
- (2) the employees are “fully informed of the service and procedures and that it is represented as an alternative method for wage payment for which their participation is optional,”
- (3) the employees receive “an itemized wage statement,” and
- (4) “at least one transaction per pay period [is] without fee.”

Ortiz v. Randstad North America, L.P., No. C-13-5050 MMC, 2015 WL 6202298 at 3.

Further, the DLSE notes that the Labor Code manifests:

. . . [A] strong public policy that prohibits an employer (or its agent) from imposing conditions or obstacles which interfere with or prevent an employee’s (*sic*) from promptly receiving their due wages *in full*. The imposition of a fee in order to readily *access* one’s earned and paid wages under a payroll card program which is designed to discharge the employer’s wage payment obligations could impermissibly interfere with an employee’s receipt of paid wages by creating a financial condition which would have the *effect* of reducing or discounting wages because such fee would be charged against the same account in which wages are deposited. (emphases in original)

DLSE opinion letter 2008.07.07. The DLSE has also acknowledged that payroll service providers “effectively act as *agents* of the client employers in discharging the employer’s wage payment obligations.” *Id.* In a second opinion letter, the DLSE stated that “[w]hile the Labor Code does not

purport to regulate the specific arrangements between employers and payroll service providers, both an employer and, under the express language in Labor Code § 212- their *agent*, must comply with its requirements.” *DLSE opinion letter 2008.07.07.2*.

During the relevant time period, SPORTSMANS had a practice and/or policy of automatically issuing payroll debit cards to departing employees without giving them the option to elect their form of payment for their final wages. For example, Mr. Miller received his final wages on a payroll debit card without a choice of an alternate method of payment, such as a written check. Instead, SPORTSMANS automatically enrolled Mr. Miller in its payroll debit card program for the purpose of issuing his final wages to them without prior, voluntary approval from Mr. Miller. Moreover, SPORTSMANS did not permit Mr. Miller and/or other aggrieved employees to withdraw their entire wages in at least one transaction without incurring a fee. Thus, SPORTSMANS’s payroll debit card program was and continues to be unlawful as it does not give departing employees the choice as to whether they would like to receive their final wages on a payroll debit card or via some other payment method.

California courts recognize a policy favoring the full and prompt payment of wages to employees. SPORTSMANS’s payroll card program is inconsistent with this policy. Because SPORTSMANS’s company-wide payroll debit card program is involuntary and denies aggrieved employees of easy access to the entirety of their wages, the program violates California Labor Code sections 212 and 213. Mr. Miller and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 221 and 224 – Unlawful Deductions

California Labor Code section 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. California Labor Code section 224 also provides in pertinent part that it is lawful to withhold a portion of the employee’s wages if “a deduction is expressly authorized in writing by the employee.”

During the relevant time period, SPORTSMANS unlawfully deducted a portion of wages previously paid to Mr. Miller and other aggrieved employees in violation of California Labor Code section 221. SPORTSMANS systematically, and on a company-wide basis, provided Mr. Miller and other aggrieved employees with payroll debit cards as payment of their wages. Under SPORTSMANS’s payroll debit card program, Mr. Miller and/or other aggrieved employees were assessed various fees in connection with their use of the payroll debit cards. For example, Mr. Miller and/or other aggrieved employees were required to pay per-transaction fees, ATM fees, and/or other fees to obtain and/or spend their earned and due wages. The fees charged to Mr. Miller and/or other aggrieved employees resulted in a discount of their wages.

SPORTSMANS’s payroll debit card program, which resulted in a discount of wages to employees, is tantamount to taking deductions from Mr. Miller’s and/or other aggrieved employees’ paychecks without their written authorization and therefore constitutes an unlawful deduction of wages, in violation of Labor Code sections 221 and 224. Mr. Miller and/or other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 223 – Secret Payment of Lower Wages

California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

During the relevant time period, SPORTSMANS willfully and systematically issued payroll debit cards to Mr. Miller and/or other aggrieved employees that discounted their wages by charging various fees in connection with the use of the payroll debit cards. SPORTSMANS's payroll debit card program resulted in the payment of less than statutorily-required wages to Mr. Miller and/or other aggrieved employees. In doing so, SPORTSMANS acted with the intent to deprive Mr. Miller and/or other aggrieved employees of statutory wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, to which they were entitled to under California law. Thus, SPORTSMANS paid Mr. Miller and/or other aggrieved employees lower wages than those they were entitled to while purporting that Mr. Miller and/or other aggrieved employees were properly paid.

Mr. Miller and/or other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, SPORTSMANS implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo mandatory drug tests and/or physical examinations, but required them to do so at their own expense. As stated, SPORTSMANS had a company-wide policy requiring that other aggrieved employees travel to a specified medical facility on their own time and use their own means of transportation to undergo drug testing and/or physical examinations. At all times, SPORTSMANS was in control of scheduling the date and time for the drug testing and/or physical examinations, selecting the provider/facility where the drug testing and/or physical examinations were to take place, and determining the scope of the drug test and/or physical examinations.

However, SPORTSMANS did not compensate other aggrieved employees for the time they spent traveling to and from their drug tests and/or physical examinations, or for the time they spent undergoing the testing and/or examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. SPORTSMANS's policy and/or practice of not paying for all costs and other aggrieved employees incurred obtaining mandatory drug tests and/or physical examinations violates California Labor Code section 222.5.

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14(A) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11070(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

“The ‘nature of the work’ refers to an employee’s tasks performed at a given location for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the entire range of an employee’s duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for.” *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). “Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer’s business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee’s characteristics.” *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is “infeasible because no suitable seating exists.” *See id.*

SPORTSMANS’s California retail stores are generally similar in their layout and design and there was, and continues to be, space behind cash wraps to allow for the presence and use of a seat or stool by other aggrieved employees during the performance of their work duties. SPORTSMANS could provide other aggrieved employees with a seat or stool at its cash wraps, with reasonable or no modification to these work areas, but instead denies employees seating and forces other aggrieved employees to stand throughout the day.

Other aggrieved employees spent a substantial portion of their day behind or at these cash wraps. The nature of the work of an employee performing cashier duties can reasonably be accomplished from a seated position. However, as set forth herein, SPORTSMANS systematically, and on a company-wide basis, does not provide seats or stools at or near cash wraps, forcing other aggrieved employees to stand throughout their work shifts.

SPORTSMANS violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because other aggrieved employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats. SPORTSMANS’s management did not inform other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of SPORTSMANS’s company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, other aggrieved employees were forced to stand during shifts and denied seats. SPORTSMANS’s failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 7-2001, Section 14(A).

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring SPORTSMANS into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11070(14)(B) provides that “[w]hen 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.”

The IWC states that section 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under section 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under section 14(B) during “lulls in operation.” *Id.*

As stated, SPORTSMANS's California retail stores are generally similar in their layout and design and there was, and continues to be, space near their work areas to allow for the presence and use of a seat or stool by Mr. Miller and other aggrieved employees during lulls in operation. SPORTSMANS could provide Mr. Miller and other aggrieved employees with a seat or stool in its work areas, with reasonable or no modification to these work areas, but instead denies employees seating and forces Mr. Miller and other aggrieved employees to stand throughout the day.

SPORTSMANS did not provide Mr. Miller and other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Mr. Miller and other aggrieved employees engaged in duties in which the nature of the work required standing, SPORTSMANS denied them the use of seats nearby during lulls in their work duties. Moreover, SPORTSMANS did not inform Mr. Miller and other aggrieved employees of their rights to a seat or stool under California law.

As a result of SPORTSMANS's company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, and Mr. Miller and other aggrieved employees were forced to stand during shifts and denied seats. SPORTSMANS's failure to provide suitable seating to Mr. Miller and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 7-2001, Section 14(B).

Mr. Miller and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring SPORTSMANS into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 7-2001, provides that: "[w]hen 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, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

First, during the relevant time period, SPORTSMANS had a company-wide policy of requiring Mr. Miller and other aggrieved employees to utilize their own personal vehicles for work purposes, but failed to reimburse them for all costs of travel, including mileage. As stated, SPORTSMANS had a company-wide policy of requiring employees to travel in their own personal vehicles to obtain fingerprint-based background checks, but did not reimburse them for their travel expenses. For example, as described above, Mr. Miller drove his personal vehicle 20 miles roundtrip to obtain his mandatory fingerprint-based background check from a Live Scan provider. Although SPORTSMANS required Mr. Miller and other aggrieved employees to utilize their own vehicles to travel to and from Live Scan providers, SPORTSMANS never reimbursed them for their travel expenses.

Second, as stated, SPORTSMANS had a company-wide policy and/or practice of requiring other aggrieved employees to travel in their own personal vehicles to medical facilities to undergo mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses. Although SPORTSMANS required other aggrieved employees to undergo drug testing and/or physical examinations, SPORTSMANS failed to reimburse them for these expenses.

Third, during the relevant time period, SPORTSMANS had a company-wide policy of requiring other aggrieved employees to utilize their own personal cellular phones and cellular data to carry out their job duties, but SPORTSMANS failed to reimburse them for the costs of their work-related cellular phone expenses. Other aggrieved employees were required to use their personal cellular phones to complete their work-related tasks, such as posting about store promotions on their social media accounts. Although SPORTSMANS required other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, SPORTSMANS failed to fully reimburse them for this cost.

SPORTSMANS could have provided Mr. Miller and/or other aggrieved employees with the actual tools for use on the job, such as company phones and company vehicles, or, SPORTSMANS could have reimbursed employees for their travel, mileage, and cellular phone expenses. Instead, SPORTSMANS passed these operating costs off onto Mr. Miller and/or other aggrieved employees. At all relevant times, Mr. Miller did not earn at least two (2) times the minimum wage.

Thus, SPORTSMANS had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Miller and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid" Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." SPORTSMANS, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Miller's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Miller seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Miller, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against SPORTSMANS for violations of California Labor Code sections 201, 202, 203, 204, 212, 213, 221, 222.5, 223, 224, 226(a), 226.7, 510, 512(a), 516, 558(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Mr. Miller seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Anthony Castillo
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

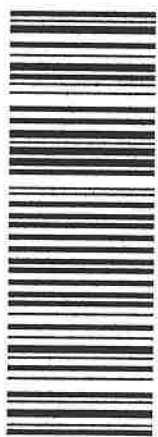
Best Regards,


Anthony Castillo

Copy: SPORTSMAN'S WAREHOUSE SOUTHWEST, INC. (via U.S. Certified Mail);
SPORTSMAN'S WAREHOUSE, INC. (via U.S. Certified Mail); SPORTSMAN'S WAREHOUSE
HOLDINGS, INC. (via U.S. Certified Mail)

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W APC
Park East, Ste 1000
CA 90067

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MIDVALE UT 84047



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Extra Services & Fees (check box, add fee as appropriate)
☒ Return Receipt (hardcopy) \$ 2.80
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage
\$ 1.63

Total Postage and Fees

\$ 7.93
Sent To

SPORTSMAN'S WAREHOUSE
SOUTHWEST, INC.
Street and Apt. No., or PO Box No.
7035 SOUTH HIGH TECH DR.
City, State, ZIP+4®
MIDVALE UT 84047

Postmark
Here
Miller v. Sportsman's
Warehouse Southwest
Inc.

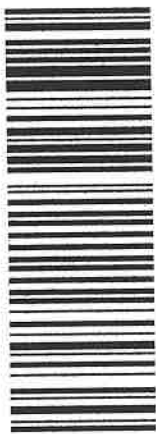
PS Form 3800, April 2015 PSN 7530-02-000-9047

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MIDVALE UT 84047



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A. Signature

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- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

- D. Is delivery address different from item 1?** ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
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☒ Return Receipt (hardcopy) \$ **2.80**

☐ Return Receipt (electronic) \$

☐ Certified Mail Restricted Delivery \$

☐ Adult Signature Required \$

☐ Adult Signature Restricted Delivery \$

Postage
\$ **1.63**

Total Postage and Fees
\$ **7.93**

Postmark
Here

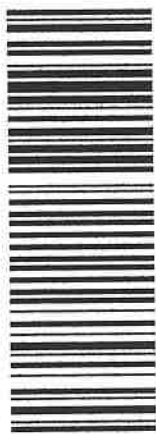
Miller v. Sportsman's
Warehouse, Inc.

Sent To
SPORTSMAN'S WAREHOUSE, INC.
Street and Apt. No., or PO Box No.
7035 SOUTH HIGH TECH DR.
City, State, ZIP+4®
MIDVALE UT 84047

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Park East, Ste 1000
CA 90067



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SPORTSMAN'S WAREHOUSE HOLDINGS, INC.
1475 WEST 9000 SOUTH SUITE A
WEST JORDAN UT 84088

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Certified Mail Fee \$ 3.50	Postmark Here Miller v. Sportsman's Warehouse Holdings Inc.
Extra Services & Fees (check box, add fee as appropriate) ☒ Return Receipt (hardcopy) \$ 2.80 ☐ Return Receipt (electronic) \$ ☐ Certified Mail Restricted Delivery \$ ☐ Adult Signature Required \$ ☐ Adult Signature Restricted Delivery \$	
Postage \$ 1.63	
Total Postage and Fees \$ 7.93	
Sent To SPORTSMAN'S WAREHOUSE HOLDINGS, INC. 1475 WEST 9000 SOUTH SUITE A WEST JORDAN UT 84088	
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	



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1. Article Addressed to:
SPORTSMAN'S WAREHOUSE HOLDINGS, INC.
1475 WEST 9000 SOUTH SUITE A
WEST JORDAN UT 84088



9590 9402 4882 9032 7435 81

2. Article Number (Transfer from service label)

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PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

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- ☐ Agent
- ☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail[®]
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express[®]
- ☐ Registered MailTM
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature ConfirmationTM
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

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I am employed in the County of Los Angeles. I declare that I am over the age of eighteen (18) and not a party to this action. My business address is: Capstone Law APC, 1875 Century Park East, Suite 1000, Los Angeles, California 90067.

**FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, *ET SEQ.***

John F. Baum
Felicia R. Reid
Adam Maldonado
Hirschfeld Kraemer LLP
456 Montgomery Street, Suite 2200
San Francisco, CA 94104
jbaum@hkemploymentlaw.com
amaldonado@hkemploymentlaw.com

- EXECUTED** this document on June 19, 2020, at Los Angeles, California.


Sandy S. Acevedo