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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

STK-CV-WDE-2020-4857

JAZZMIN MENDEZ, as an aggrieved
employee pursuant to the Private Attorneys
General Act ("PAGA"), on behalf of the
State of California and other aggrieved
employees,

Plaintiff,

vs.

DILLARD STORE SERVICES, INC., an
Arizona corporation; DILLARDS, INC., a
Delaware corporation; and DOES 1 through
10, inclusive,

Defendants.

Case No.:

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

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

Jury Trial Demanded

1 Plaintiff Jazzmin Mendez, as an aggrieved employee and on behalf of the State of
2 California and all other aggrieved employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698 *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations
9 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on April 6, 2020, until judgment (“non-party Aggrieved Employees”).
14 Plaintiff’s share of civil penalties sought in this action does not exceed \$75,000.

15 2. This Court has jurisdiction over this action pursuant to the California
16 Constitution, Article VI, section 10. The statute under which this action is brought does not
17 specify any other basis for jurisdiction.

18 3. This Court has jurisdiction over all Defendants because, on information and
19 belief, Defendants are either citizens of California, have sufficient minimum contacts in
20 California, or otherwise intentionally avail themselves of the California market so as to render
21 the exercise of jurisdiction over them by the California courts consistent with traditional
22 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
23 in this action given that the State of California, as the real party in interest in this action, is not
24 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
25 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
26 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
27 in this action, and that diversity jurisdiction cannot be established when Plaintiff’s share of the
28 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

4. Venue is proper in this Court, because Defendants employ persons in this county, and thus a substantial portion of the transactions and occurrences related to this action occurred in this county.

5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private attorneys general their current or former employers for various civil penalties for violations of various provisions in the California Labor Code.

THE PARTIES

6. Plaintiff Jazzmin Mendez is a resident of Imperial, in Imperial County, California. Defendants employed Plaintiff as an hourly paid, non-exempt Sales Associate from approximately April 2019 to August 2019. Plaintiff worked for Defendants at their retail store location in El Centro, California. During her employment, Plaintiff typically worked four (4) to seven (7) hours or more per day, three (3) or more days per week, and 28 to 30 hours per week. Plaintiff earned approximately \$14.00 per hour. Her job duties included, without limitation, providing customer service in the jewelry/handbags department, ringing up customers, processing returns and exchanges, and stocking displays.

7. On information and belief, Defendants required some employees, including Plaintiff, to execute a dispute resolution policy and/or arbitration agreement at the time of their hire or during their employment. On further information and belief, Defendants' dispute resolution policy and/or arbitration agreement was and is both procedurally and substantively unconscionable. Specifically, Defendants presented new hires with an "Agreement to Arbitrate Legal Claims" ("Arbitration Agreement") during the onboarding process, which had to be reviewed and signed immediately. In fact, upon information and belief, the Arbitration Agreement was one of several documents presented to new employees for signature during the orientation process. Also, employees did not have a meaningful opportunity to negotiate the terms of the Arbitration Agreement. Rather, it was provided to Defendants' employees for them to sign on a take-it or leave-it basis at the time they were hired, along with other onboarding documents. Further, Defendants did not set forth in the agreement the rules which

1 will govern the arbitration, instead forcing employees to seek this information out on their
2 own.

3 8. DILLARD STORE SERVICES, INC. was and is, upon information and belief,
4 an Arizona corporation, and at all times hereinafter mentioned, an employer whose employees
5 are engaged throughout this county and the State of California.

6 9. DILLARDS, INC. was and is, upon information and belief, a Delaware
7 corporation, and at all times hereinafter mentioned, an employer whose employees are
8 engaged throughout this county and the State of California.

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

13 11. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
14 were the partners, agents, owners, or managers of DILLARD STORE SERVICES, INC. and
15 DILLARDS, INC. at all relevant times.

16 12. Plaintiff is informed and believes, and thereon alleges, that each and all of the
17 acts and omissions alleged herein was performed by, or is attributable to, DILLARD STORE
18 SERVICES, INC.; DILLARDS, INC.; and/or DOES 1 through 10 (collectively, "Defendants"
19 or "DILLARDS"), each acting as the agent, employee, alter ego, and/or joint venturer of, or
20 working in concert with, each of the other co-Defendants and was acting within the course and
21 scope of such agency, employment, joint venture, or concerted activity with legal authority to
22 act on the others' behalf. The acts of any and all Defendants were in accordance with, and
23 represent, the official policy of Defendants.

24 13. At all relevant times, Defendants, and each of them, ratified each and every act
25 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
26 and abetted the acts and omissions of each and all the other Defendants in proximately causing
27 the damages herein alleged.

28 14. Plaintiff is informed and believes, and thereon alleges, that each of said

Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

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

16. Plaintiff is informed and believes, and thereon alleges, that at all relevant times, Defendants, and each of them, have acted as joint employers with respect to Plaintiff and other non-party Aggrieved Employees because Defendants have:

- (a) jointly exercised meaningful control over the work performed by Plaintiff and other non-party Aggrieved Employees;
- (b) jointly exercised meaningful control over Plaintiff’s and other non-party Aggrieved Employees’ wages, hours, and working conditions, including the quantity, quality standards, speed, scheduling, and operative details of the tasks performed by Plaintiff and other non-party Aggrieved Employees;
- (c) jointly required that Plaintiff and other non-party Aggrieved Employees perform work which is an integral part of Defendants’ businesses; and
- (d) jointly exercised control over Plaintiff and other non-party Aggrieved Employees as a matter of economic reality in that Plaintiff and other non-party Aggrieved Employees were dependent on Defendants, who

1 shared the power to set the wages of Plaintiff and other non-party
2 Aggrieved Employees and determined their working conditions, and
3 who jointly reaped the benefits from the underpayment of their wages
4 and noncompliance with other statutory provisions governing their
5 employment.

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

9 18. DILLARD STORE SERVICES, INC.; DILLARDS, INC.; and DOES 1 through
10 10 are therefore alter egos of each other.

11 19. Adherence to the fiction of the separate existence of Defendants would permit
12 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
13 from liability for the wrongful acts committed by them under the name DILLARDS.

14 20. Plaintiff further alleges, upon information and belief, that Defendants
15 DILLARD STORE SERVICES, INC. and DILLARDS, INC. are alter egos of each other for
16 the following reasons:

- 17 (a) According to DILLARDS, INC.'s most recent SEC 10-K filing,
18 DILLARD STORE SERVICES, INC. is a wholly owned subsidiary of
19 DILLARDS, INC.;¹
20 (b) On the California Secretary of State's website
21 (<https://businesssearch.sos.ca.gov/>) and the U.S Securities and
22 Exchange Commission's website
23 (<https://www.sec.gov/edgar/searchedgar/companysearch.html>),
24 DILLARD STORE SERVICES, INC. and DILLARDS, INC. have the
25 same mailing address and principal address, which is "1600 Cantrell
26 Rd., Little Rock AR 72201;"

27 ¹ 10-K Annual Report 03/20/20, DILLARDS, INC.,
28 <http://investor.dillards.com/financial-information/sec-filings/default.aspx> (last accessed June 3, 2020).

- (c) DILLARD STORE SERVICES, INC. and DILLARDS, INC. share the same agent for service of process, C T CORPORATION SYSTEM; and
- (d) On information and belief, DILLARD STORE SERVICES, INC. and DILLARDS, INC. utilize the same standardized employment forms and issue the same employment policies.

PAGA REPRESENTATIVE ALLEGATIONS

21. Defendants own and operate a chain of department stores throughout the United States. Defendants operate approximately 285 department stores and 28 clearance centers in 29 states, including three (3) retail locations in California. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their corporate headquarters in Little Rock, Arkansas, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

22. In particular, Plaintiff and other non-party Aggrieved Employees, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees’ assigned locations or positions. Upon information and belief, Defendants set forth uniform policies and procedures in several documents provided at an employee’s time of hire.

23. Upon information and belief, Defendants maintain a centralized Payroll department at their corporate headquarters in Little Rock, Arkansas, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations and jobsites in California, including Plaintiff and other non-party Aggrieved Employees. Based upon information and belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid employees in California, irrespective of their work locations. Upon information and belief, Defendants process payroll for departing employees in the same

manner throughout the State of California, regardless of the manner in which each employee's employment ends.

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

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

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

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

28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that other non-party Aggrieved Employees were entitled to be paid at a regular rate of pay, and corresponding overtime rates of pay, that included as eligible income all income derived from incentive pay, nondiscretionary bonuses, and/or other forms of compensation.

29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to receive at least minimum wages for compensation and that they were not receiving at least minimum wages for work that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at least minimum wages for work done off-the-clock.

30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and/or other non-party Aggrieved Employees were entitled

1 to meal periods in accordance with the Labor Code or payment of one (1) additional hour of
2 pay at their regular rates of pay when they were not provided with timely, uninterrupted, thirty
3 (30) minute meal periods and that Plaintiff and/or other non-party Aggrieved Employees were
4 not provided with all meal periods or payment of one (1) additional hour of pay at their
5 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
6 period.

7 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
9 rest periods in accordance with the Labor Code and applicable IWC Wage Order or payment
10 of one (1) additional hour of pay at their regular rates of pay when they were not authorized
11 and permitted to take a compliant rest period. In violation of the California Labor Code,
12 Plaintiff and other non-party Aggrieved Employees were not authorized and permitted to take
13 compliant rest periods, nor did Defendants provide Plaintiff and other non-party Aggrieved
14 Employees with payment of one (1) additional hour of pay at their regular rates of pay when
15 they were not authorized and permitted to take a compliant rest period.

16 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
18 receive complete and accurate wage statements in accordance with California law. In
19 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees
20 were not provided complete and accurate wage statements.

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

25 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
27 timely payment of all wages earned upon termination of employment. In violation of the
28 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive

1 payment of all wages due, including, but not limited to, overtime wages, minimum wages, and
2 meal and rest period premiums, within permissible time periods.

3 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
5 timely payment of wages during their employment. In violation of the California Labor Code,
6 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
7 including, but not limited to, overtime wages, minimum wages, and meal and rest period
8 premiums, within permissible time periods.

9 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
11 suitable seating and/or were entitled to sit when it did not interfere with the performance of
12 their duties and also have seats nearby to use during a lull in tasks that do require moving
13 about or standing.

14 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
16 receive reimbursement for all business-related expenses and costs they incurred during the
17 course and scope of their employment and that they did not receive reimbursement of
18 applicable business-related expenses and costs incurred.

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

25 39. At all times herein set forth, PAGA provides that any provision of law under
26 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
27 assessed and collected by the LWDA for violations of the California Labor Code and
28 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a

1 civil action brought on behalf of themselves and other current or former employees pursuant
2 to procedures outlined in California Labor Code section 2699.3.

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

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

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

- 12 (a) The aggrieved employee shall give written notice by online filing
13 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail
14 to the employer of the specific provisions of the California Labor Code
15 alleged to have been violated, including the facts and theories to support
16 the alleged violations.
- 17 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
18 2699.3(a) and any employer response to that notice shall be
19 accompanied by a filing fee of seventy-five dollars (\$75).
- 20 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
21 employer and the aggrieved employee by certified mail that it does not
22 intend to investigate the alleged violation within sixty (60) calendar
23 days of the postmark date of the Employee’s Notice. Upon receipt of
24 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
25 five (65) calendar days of the postmark date of the Employee’s Notice,
26 the aggrieved employee may commence a civil action pursuant to
27 California Labor Code section 2699 to recover civil penalties in addition
28 to any other penalties to which the employee may be entitled.

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

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

10 (b) An aggrieved employee's notice filed with the LWDA pursuant to
11 2699.3(c) and any employer response to that notice shall be
12 accompanied by a filing fee of seventy-five dollars (\$75).

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

21 44. On April 6, 2020, Plaintiff provided written notice by online filing to the
22 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
23 Code alleged to have been violated, including facts and theories to support the alleged
24 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
25 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
26 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
27 Plaintiff PAGA Case Number LWDA-CM-781842-20. A true and correct copy of Plaintiff's
28 written notice to the LWDA and Defendants dated April 6, 2020, is attached hereto as

1 “Exhibit 1.”

2 45. As of the filing date of this complaint, over 65 days have passed since Plaintiff
3 sent the initial LWDA Notice described above, and the LWDA has not responded that it
4 intends to investigate Plaintiff’s claims, and Defendants have not cured the violations.

5 46. Thus, Plaintiff has satisfied the administrative prerequisites under California
6 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
7 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a),
8 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

9 47. Labor Code section 558(a) provides “[a]ny employer or other person acting on
10 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
11 provision regulating hours and days of work in any order of the Industrial Welfare
12 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
13 dollars (\$50) for each underpaid employee for each pay period for which the employee was
14 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
15 underpaid employee for each pay period for which the employee was underpaid” Labor
16 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
17 to any other civil or criminal penalty provided by law.” Plaintiff, acting in the public interest
18 as a private attorney general, seeks assessment and collection of civil penalties under Labor
19 Code section 558 for herself, all other non-party Aggrieved Employees, and the State of
20 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198,
21 and the applicable IWC wage order. Plaintiff, acting in the public interest as private attorney
22 general, does not seek the recovery of unpaid wages under Labor Code section 558 from
23 Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the applicable
24 IWC wage order.

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

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

50. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other non-party Aggrieved Employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

FIRST CAUSE OF ACTION

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

(Against all Defendants)

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

52. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 516 and 1182.12.

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

(a) Violation of Labor Code sections 510, 1198, and the applicable IWC wage order for Defendants' failure to compensate Plaintiff and other non-party Aggrieved Employees with all required overtime pay and failure to properly calculate the overtime rates paid to other non-party Aggrieved Employees, as set forth below;

(b) Violation of Labor Code sections 1182.12, 1194, 1197, 1198, and the

1 applicable IWC wage order for Defendants' failure to compensate
2 Plaintiff and other non-party Aggrieved Employees with at least
3 minimum wages for all hours worked as set forth below;

4 (c) Violation of Labor Code sections 226.7, 512(a), 516, 1198, and the
5 applicable IWC wage order for Defendants' failure to provide Plaintiff
6 and/or other non-party Aggrieved Employees with meal periods, as set
7 forth below;

8 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
9 IWC wage order for Defendants' failure to authorize and permit
10 Plaintiff and other non-party Aggrieved Employees to take rest periods,
11 as set forth below;

12 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
13 wage order for failure to provide accurate and complete wage statements
14 to Plaintiff and other non-party Aggrieved Employees, as set forth
15 below;

16 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable
17 IWC wage order for failure to maintain payroll records as set forth
18 below;

19 (g) Violation of Labor Code section 204 for failure to pay all earned wages
20 during employment as set forth below;

21 (h) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
22 earned wages upon termination as set forth below;

23 (i) Violation of Labor Code section 1198 for failing to provide suitable
24 seating to Plaintiff and other non-party Aggrieved Employees, as set
25 forth below; and

26 (j) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
27 and other non-party Aggrieved Employees for all business expenses
28 necessarily incurred, as set forth below.

1 **FAILURE TO PAY OVERTIME**

2 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

3 54. Labor Code section 1198 makes it illegal to employ an employee under
4 conditions of labor that are prohibited by the applicable wage order. California Labor Code
5 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
6 be the . . . standard conditions of labor for employees. The employment of any employee . . .
7 under conditions of labor prohibited by the order is unlawful.”

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

12 56. Specifically, the applicable IWC Wage Order provides that Defendants are and
13 were required to pay Plaintiff and other non-party Aggrieved Employees working more than
14 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
15 one-half (1½) for all hours worked in excess of eight (8) hours in a day or more than forty (40)
16 hours in a workweek.

17 57. The applicable IWC Wage Order further provides that Defendants are and were
18 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
19 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
20 An employee’s regular rate of pay includes all remuneration for employment paid to, or on
21 behalf of, the employee, including nondiscretionary bonuses and incentive pay.

22 58. California Labor Code section 510 codifies the right to overtime compensation
23 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
24 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
25 seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate
26 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
27 in a day on the seventh (7th) day of work.

28 59. During the relevant time period, Defendants willfully failed to pay all overtime

1 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
2 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
3 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
4 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
5 not recorded.

6 60. First, during the relevant period, Defendants had a company-wide and systemic
7 policy and/or practice of rounding employees' total hours worked to the nearest tenth (0.1) of
8 an hour. Defendants' rounding policies resulted in the failure to compensate Plaintiff and
9 other non-party Aggrieved Employees for all hours worked, causing Plaintiff and other non-
10 party Aggrieved Employees to not be paid overtime wages for all overtime hours they actually
11 worked. Upon information and belief, Defendants' timekeeping and rounding policies and/or
12 practices are, and continue to be, unfair and have, over time, resulted in the underpayment of
13 wages to Plaintiff and other non-party Aggrieved Employees. To the extent Defendants'
14 timekeeping and rounding policies have taken away time worked that was eligible for
15 overtime, Plaintiff and other non-party Aggrieved Employees were denied overtime pay for all
16 hours worked.

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

1 62. Third, Defendants had a company-wide loss prevention policy requiring
2 employees to undergo mandatory security checks by a managerial employee before leaving
3 the store premises. As a result of Defendants' policy, Plaintiff and other non-party Aggrieved
4 Employees were required to undergo security screenings after clocking out at the end of a shift
5 prior to leaving the store premises. For example, after clocking out at the end of their shifts,
6 Plaintiff and other non-party Aggrieved Employees were required to wait up to two (2) or
7 three (3) minutes for a manager to check their belongings. Although Defendants' requirement
8 that Plaintiff and other non-party Aggrieved Employees undergo security checks was
9 mandatory, Defendants did not compensate them for the time it took them to wait in line and
10 undergo these checks. Thus, Plaintiff and other non-party Aggrieved Employees were not
11 compensated for the time spent waiting and undergoing security screenings while off-the-
12 clock.

13 63. Fourth, during the relevant period, Defendants had a company-wide practice
14 and/or policy of requiring other non-party Aggrieved Employees to perform work-related
15 tasks while off-the-clock, such as promoting Defendants' business on their days off. For
16 example, other non-party Aggrieved Employees were directed to post on their social media
17 profiles about store promotions. However, Defendants failed to track this time spent working
18 before and after scheduled shifts, and other non-party Aggrieved Employees received no
19 compensation for this time.

20 64. Fifth, during the relevant period, Defendants had, and continue to have, a
21 company-wide policy and/or practice of understaffing their store locations. Defendants'
22 company-wide understaffing of their locations led to a failure to provide other non-party
23 Aggrieved Employees with adequate meal period coverage. As a result, other non-party
24 Aggrieved Employees missed meal periods and/or had their meal periods interrupted, but were
25 not compensated for this time.

26 65. Defendants knew or should have known that, as a result of these company-wide
27 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
28 their assigned duties off-the-clock, and were suffered or permitted to perform work for which

1 they were not paid. Because Plaintiff and other non-party Aggrieved Employees sometimes
2 worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this
3 off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and other non-
4 party Aggrieved Employees were not paid overtime wages for all of the overtime hours they
5 actually worked.

6 66. Furthermore, Defendants did not pay other non-party Aggrieved Employees the
7 correct overtime rate for the recorded overtime hours that they generated. In addition to an
8 hourly wage, Defendants paid other non-party Aggrieved Employees incentive pay,
9 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the
10 California Labor Code, Defendants failed to incorporate all compensation, including incentive
11 pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the
12 regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during
13 times when other non-party Aggrieved Employees worked overtime and received these other
14 forms of pay, Defendants failed to pay all overtime wages by paying a lower overtime rate
15 than required.

16 67. Specifically, Defendants paid other non-party Aggrieved Employees
17 nondiscretionary bonuses or incentive pay for selling certain luxury brand items. On
18 information and belief, some of these nondiscretionary bonuses and/or incentive pay was
19 listed on other non-party Aggrieved Employees' wage statements as "PS BONUS." During
20 pay periods that other non-party Aggrieved Employees were paid overtime wages, Defendants
21 failed to incorporate the nondiscretionary bonus and/or incentive pay into other non-party
22 Aggrieved Employees' regular rate of pay and, as a result, paid them at incorrect and lower
23 rates of pay for overtime hours worked. Specifically, Defendants paid other non-party
24 Aggrieved Employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate
25 of pay. Defendants' failure to properly calculate the overtime rates of pay based on all
26 remuneration paid has resulted in an underpayment of overtime wages to other non-party
27 Aggrieved Employees on a company-wide basis.

28 68. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees

1 the balance of overtime compensation as required by California law, violates the provisions of
2 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
3 Employees are entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
4 2699(a), (f), and (g).

5 **FAILURE TO PAY MINIMUM WAGES**

6 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

7 69. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
8 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
9 to be paid to employees, and the payment of a wage less than the minimum so fixed is
10 unlawful. Compensable work time is defined by the applicable wage order as “the time
11 during which an employee is subject to the control of an employer, and includes all the time
12 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code.
13 Regs. tit. 8, § 11070(2)(G) (defining “Hours Worked”).

14 70. As set forth above, Defendants had a policy of rounding employee’s hours to
15 the nearest tenth (0.1) of an hour, resulting in the failure to compensate Plaintiff and other
16 non-party Aggrieved Employees for all hours worked. As also stated, during the relevant time
17 period, Defendants required that Plaintiff and/or other non-party Aggrieved Employees
18 perform work off-the-clock after their scheduled shifts, including waiting to leave the store
19 after closing, submitting to off-the-clock security checks, and posting on social media
20 accounts about store promotions. In addition, due to Defendants’ company-wide
21 understaffing and resultant lack of meal period coverage, other non-party Aggrieved
22 Employees were forced to forego meal periods and/or had their meal periods interrupted by
23 work.

24 71. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
25 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did
26 not qualify for overtime premium payment, Defendants did not pay at least minimum wages
27 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
28 1194, 1197, and 1198.

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

FAILURE TO PROVIDE AND RECORD MEAL PERIODS
VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198

73. At all relevant times herein set forth, the applicable IWC Wage Order(s) and California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff and non-party Aggrieved Employees' employment by Defendants.

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

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

76. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198, and the applicable IWC Wage Order also require employers to provide a second meal period 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.

77. As stated, Defendants have, and continues to have, a uniform policy and/or

1 practice of understaffing, which resulted in a lack of meal period coverage and prevented
2 Plaintiff and/or other non-party Aggrieved Employees from taking all timely, uninterrupted
3 meal periods to which they were entitled. In addition, Defendants had a practice of failing to
4 adhere to a schedule of meal periods, which further caused Plaintiff and/or other non-party
5 Aggrieved Employees to not be relieved of their duties for compliant meal periods. As a
6 result of Defendants' practices and/or policies, Plaintiff and/or other non-party Aggrieved
7 Employees had to work through part or all of their meal periods, have their meal periods
8 interrupted, and/or wait extended periods of time before taking meal periods. For example, on
9 several occasions, Plaintiff took meal periods after the end of her fifth hour of work due to the
10 lack of meal period coverage and failure to adhere to a schedule of meal periods.

11 78. Moreover, Defendants did not provide other non-party Aggrieved Employees
12 with second 30-minute meal periods on days that they worked in excess of ten (10) hours in
13 one day. Other non-party Aggrieved Employees worked shifts in excess of ten (10) hours
14 without receiving an uninterrupted second 30-minute meal period. Plaintiff and other non-
15 party Aggrieved Employees did not sign valid meal period waivers on days that they were
16 entitled to meal periods and were not relieved of all duties.

17 79. Defendants knew or should have known that as a result of their company-wide
18 policies and/or practices, that Plaintiff and/or other non-party Aggrieved Employees were not
19 actually relieved of all duties to take timely, uninterrupted meal periods. Defendants further
20 knew or should have known that it did not pay Plaintiff and/or other non-party Aggrieved
21 Employees meal period premium wages when meal periods were missed, late, short, and/or
22 interrupted.

23 80. Defendants also have engaged in a company-wide practice and/or policy of not
24 paying meal period premiums owed when compliant meal periods are not provided. Because
25 of this practice and/or policy, Plaintiff and/or other non-party Aggrieved Employees have not
26 received premium pay for missed, interrupted, or late meal periods. Alternatively, to the
27 extent that Defendants did pay meal period premium wages to other non-party Aggrieved
28 Employees, it did so at the incorrect rates. Because Defendants did not properly calculate

1 other non-party Aggrieved Employees’ regular rates of pay by including all remunerations,
2 such as incentive pay and/or nondiscretionary bonuses, any premiums paid for meal period
3 violations were also paid at an incorrect rate and resulted in an underpayment of meal period
4 premium wages.

5 81. Thus, Defendants failed to provide Plaintiff and/or other non-party Aggrieved
6 Employees compliant meal periods and failed to pay the full meal period premiums due.
7 Defendants’ conduct violates the applicable IWC Wage Order, and California Labor Code
8 sections 226.7, 512(a), 516, and 1198. Plaintiff and/or other non-party Aggrieved Employees
9 are entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f),
10 and (g).

11 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

12 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

13 82. At all relevant times herein set forth, the applicable IWC Wage Order and
14 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and other
15 non-party Aggrieved Employees’ employment by Defendants.

16 83. At all relevant times, the applicable IWC Wage Order provides that “[e]very
17 employer shall authorize and permit all employees to take rest periods, which insofar as
18 practicable shall be in the middle of each work period” and that the “rest period time shall be
19 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
20 hours or major fraction thereof” unless the total daily work time is less than three and one-half
21 (3½) hours.

22 84. At all relevant times, California Labor Code section 226.7 provides that no
23 employer shall require an employee to work during any rest period mandated by an applicable
24 order of the California IWC. To comply with its obligation to authorize and permit rest
25 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
26 employer must “relinquish any control over how employees spend their break time, and
27 relieve their employees of all duties—including the obligation that an employee remain on
28 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services*,

1 *Inc.*, 2 Cal. 5th 257, 269-270 (2016).

2 85. Pursuant to the applicable IWC Wage Order and California Labor Code section
3 226.7(b), Plaintiff and other non-party Aggrieved Employees are entitled to recover from
4 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
5 required rest period was not authorized and permitted.

6 86. During the relevant time period, Defendants regularly failed to authorize and
7 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest
8 period per each four (4) hour period worked or major fraction thereof. As with meal periods,
9 Defendants' company-wide policy and practice of understaffing and the resultant lack of rest
10 period coverage, prevented Plaintiff and other non-party Aggrieved Employees from being
11 relieved of all duty to take their rest periods. Defendants also failed to schedule rest periods,
12 which, coupled with Defendants' failure to provide adequate rest period coverage, further led
13 to Plaintiff and other non-party Aggrieved Employees not being authorized and permitted to
14 take compliant rest periods. Furthermore, Defendants had a policy that rest periods could not
15 be taken after 7:00 p.m., causing employees who worked closing shifts to miss the rest periods
16 to which they were entitled.

17 87. Furthermore, upon information and belief, Defendants maintained and
18 implemented a company-wide on-premises rest period policy, which mandated that Plaintiff
19 and other non-party Aggrieved Employees remain on Defendants' premises during their rest
20 periods. Upon information and belief, Defendants' company-wide on-premises rest period
21 policy prevented Plaintiff and other non-party Aggrieved Employees from being relieved of
22 all duties for rest periods and caused them to perform work during rest periods.

23 88. As a result of Defendants' practices and policies, Plaintiff and other non-party
24 Aggrieved Employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
25 excess of 10 hours without receiving all ten (10) minute rest periods to which they were
26 entitled. For example, on three (3) or four (4) occasions, Plaintiff's rest periods were cut short
27 by Defendants' management paging her over the P.A. system to return to the salesfloor to
28 attend to customers' needs. Other times, Plaintiff missed her rest periods or took them late in

1 order to complete her work duties.

2 89. Defendants also have engaged in a company-wide practice and/or policy of not
3 paying all rest period premiums owed when compliant rest periods are not authorized or
4 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
5 Employees have not received premium pay for all missed rest periods. Alternatively, to the
6 extent that Defendants did pay meal period premium wages to other non-party Aggrieved
7 Employees, it did so at the incorrect rates. Because Defendants did not properly calculate
8 other non-party Aggrieved Employees' regular rates of pay by including all remunerations,
9 such as incentive pay and/or nondiscretionary bonuses, any premiums paid for meal period
10 violations were also paid at an incorrect rate and resulted in an underpayment of meal period
11 premium wages.

12 90. Defendants' conduct violates the applicable IWC Wage Order and California
13 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved
14 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
15 558 and/or 2699(a), (f), and (g).

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

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

23 92. During the relevant time period, Defendants have knowingly and intentionally
24 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
25 inaccurate wage statements. For example, Defendants issued uniform wage statements to
26 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
27 earned; total hours worked; net wages earned; the correct name of the legal entity that is the
28 employer; and all applicable hourly rates in effect during the pay period, including overtime

1 rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically,
2 Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

3 93. First, because Defendants did not record the time Plaintiff and other non-party
4 Aggrieved Employees spent working off-the-clock and improperly rounded Plaintiff's and
5 other non-party Aggrieved Employees' total hours worked, Defendants did not list the correct
6 amount of gross wages and net wages earned by Plaintiff and other non-party Aggrieved
7 Employees in compliance with section 226(a)(1) and 226(a)(5). For the same reason,
8 Defendants failed to accurately list the total number of hours worked by Plaintiff and other
9 non-party Aggrieved Employees in violation of section 226(a)(2), and failed to list the
10 applicable hourly rates of pay in effect during the pay period and corresponding accurate
11 number of work hours worked at each hourly rate in violation of section 226(a)(9).

12 94. Second, because Defendants did not calculate other non-party Aggrieved
13 Employees' regular rate of pay correctly for purposes of paying overtime wages, Defendants
14 did not list the correct amount of gross wages earned by other non-party Aggrieved
15 Employees in compliance with section 226(a)(1) and did not list the correct amount of net
16 wages earned by other non-party Aggrieved Employees in violation of section 226(a)(5).
17 Defendants also failed to correctly list all applicable hourly rates in effect during the pay
18 period, namely, correct overtime rates of pay and correct rates of pay for premium wages, in
19 violation of section 226(a)(9).

20 95. Third, and separate from these violations, Defendants issued uniform wage
21 statements to Plaintiff and other non-party Aggrieved Employees that failed to correctly list
22 the name of the legal entity of the actual employer in violation of 226(a)(8). The purpose of
23 section 226(a)(8) is to provide California employees with transparency as to the true identity
24 of their employer, to allow the employee to contact their employer during employment in the
25 future for various reasons, including filing an administrative claim, judicial claim, or other
26 action to seek relief against their employer, to obtain unemployment benefits, etc. Plaintiff's
27 and other non-party Aggrieved Employees' wage statements incorrectly list the employer as
28 "Dillard's," but, according to the California Secretary of State's website, there is no such

1 entity by that name, nor is it a registered fictitious business name in the County of Imperial.
2 However, a similarly named entity, “DILLARD STORE SERVICES, INC.,” is listed on the
3 California Secretary of State’s website with the same address.

4 96. The wage statement deficiencies also include, without limitation, failing to list
5 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
6 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and
7 only the last four digits of his or her social security number or an employee identification
8 number other than a social security number; failing to list the address of the legal entity that is
9 the employer; failing to list the inclusive dates of the period for which aggrieved employees
10 were paid; and/or failing to state all hours worked as a result of not recording or stating hours
11 worked off-the-clock. In addition, Defendants failed to provide Plaintiff and other non-party
12 Aggrieved Employees the option to elect to receive hard copies of their wage statements at
13 any time and/or failed to provide them with the ability to easily access the information and
14 convert the electronic wage statements into hard copies at no expense to them.

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

25 98. California Labor Code section 1174(d) provides that “[e]very person employing
26 labor in this state shall ... [k]eep a record showing the names and addresses of all employees
27 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
28 plants or establishments at which employees are employed, payroll records showing the hours

1 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
2 applicable piece rate paid to, employees employed at the respective plants or
3 establishments...” At all relevant times, and in violation of Labor Code section 1174(d),
4 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-
5 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto
6 as a result of failing to record the off-the-clock hours that they worked and improperly
7 rounding Plaintiff’s and other non-party Aggrieved Employees’ total hours worked.

8 99. Because Defendants’ violations of 226(a) and 1174(d) were committed against
9 Plaintiff and other non-party Aggrieved Employees, Plaintiff and other non-party Aggrieved
10 Employees are entitled to recover civil penalties pursuant to Labor Code sections 226.3,
11 1174.5, and/or 2699(a), (f), and (g).

12 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

13 **VIOLATION OF LABOR CODE SECTION 204**

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

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

28 102. During the relevant time period, Defendants willfully failed to pay Plaintiff and

1 other non-party Aggrieved Employees all wages due to them within any time period specified
2 by California Labor Code section 204 including, but not limited to, overtime wages, minimum
3 wages, and meal and rest period premium wages.

4 103. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
5 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

6 **FAILURE TO PAY WAGES UPON TERMINATION**

7 **VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

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

15 105. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved
16 Employees who are no longer employed by Defendants the earned and unpaid wages set forth
17 above, including but not limited to, overtime wages, minimum wages, and meal and rest
18 period premium wages, either at the time of discharge, or within seventy-two (72) hours of
19 their leaving Defendants' employ.

20 106. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
21 who are no longer employed by Defendants their wages earned and unpaid at the time of
22 discharge, or within seventy-two (72) hours of their leaving Defendant's employ, violates
23 Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are
24 therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or
25 2699(a), (f), and (g).

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FAILURE TO PROVIDE SUITABLE SEATING
VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF
REGULATIONS, TITLE 8, SECTION 11070(14)(A)

107. At all relevant times herein, 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.”

108. 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.”

109. Plaintiff alleges that Defendants’ 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 Plaintiff and other non-party Aggrieved Employees during the performance of their work duties. Defendants could have provided Plaintiff and other non-party Aggrieved Employees with a seat or stool at their cash wraps with reasonable or no modification to these work areas, but instead denied them seating and forced Plaintiff and other non-party Aggrieved Employees to stand throughout the day.

110. Plaintiff and other non-party 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, Defendants systematically, and on a company-wide basis, did not provide seats or stools at or near each cash wraps, forcing employees, including Plaintiff and other non-party Aggrieved Employees, to stand throughout their work shifts.

111. During the relevant time period, Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A), because Plaintiff and other non-party Aggrieved Employees were not allowed to sit, even when it

1 would not have interfered with the performance of their duties, nor were they provided with
2 suitable seats. Plaintiff and other non-party Aggrieved Employees were assigned cashier
3 duties, which were performed from and connected to a cash wrap, and could have been
4 performed from a seated position. Plaintiff and other non-party Aggrieved Employees could
5 have handled transactions at the cash registers and provided customer service, while seated
6 without interference to their ability to complete these duties.

7 112. Defendants could have placed seats or stools at each cash wrap for use by
8 Plaintiff and other non-party Aggrieved Employees with reasonable or no modification to
9 these work areas. However, on a company-wide basis, Defendants did not provide seats or
10 stools at cash wraps. Defendants' management did not inform Plaintiff and other non-party
11 Aggrieved Employees that they were allowed to sit down, provide any means for them to sit
12 down, or mention any policy regarding sitting.

13 113. As a result of Defendants' company-wide policy and/or practice of prohibiting
14 employees from sitting during their shifts and company-wide failure to provide suitable
15 seating, Plaintiff and other non-party Aggrieved Employees were forced to stand during shifts
16 and denied seats. Defendants' failure to provide suitable seating to Plaintiff and other non-
17 party Aggrieved Employees violated and continues to violate California Labor Code section
18 1198 and IWC Wage Order 7-2001, Section 14(A).

19 114. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
20 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

21 **FAILURE TO PROVIDE SUITABLE SEATING**

22 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
23 **REGULATIONS, TITLE 8, SECTION 11070(14)(B)**

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

1 unlawful.”

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

7 117. During the relevant time period, Defendants violated California Labor Code
8 section 1198 and California Code of Regulations, Title 8, section 11070(14)(B), because
9 Plaintiff and other non-party Aggrieved Employees were not allowed to sit, even during lulls
10 in their work duties, nor were they provided with suitable seats in reasonable proximity to
11 their work areas.

12 118. Defendants did not provide other non-party Aggrieved Employees with seats or
13 stools in reasonable proximity to their work areas to allow them to use seats when it would not
14 interfere with the performance of their duties for times when they were not engaged in active
15 duties that require standing. In other words, to the extent Plaintiff and other non-party
16 Aggrieved Employees engaged in duties in which the nature of the work required standing,
17 Defendants denied them the use of seats nearby when they were not engaged in those duties.
18 Even though the layout of Defendants’ workplaces could accommodate seats or stools with
19 reasonable or no modification to these work areas, Defendants have, on a company-wide
20 basis, denied Plaintiff and other non-party Aggrieved Employees suitable seating altogether.

21 119. As a result of Defendants’ company-wide policy and/or practice prohibiting
22 employees from sitting at any time, even when they were not engaged in active duties
23 requiring standing, and company-wide failure to provide seats in reasonable proximity to their
24 work areas, Plaintiff and other non-party Aggrieved Employees were forced to stand during
25 shifts and denied seats. Defendants’ failure to provide suitable seating to Plaintiff and other
26 non-party Aggrieved Employees violated and continues to violate California Labor Code
27 section 1198 and IWC Wage Order 7-2001, Section 14(B).

28 120. Plaintiff and other non-party Aggrieved Employees are therefore entitled to

1 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

2 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

3 **VIOLATION OF LABOR CODE SECTION 2802**

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

14 122. During the relevant time period, Defendants had a company-wide policy of
15 requiring Plaintiff and other non-party Aggrieved Employees to utilize their own personal
16 cellular phones and cellular data to carry out their job duties, but Defendants failed to fully
17 reimburse them for the costs of their work-related cellular phone expenses. Plaintiff and other
18 non-party Aggrieved Employees were required to use their personal cellular phones to
19 complete their work-related tasks, such as communicating with customers about store events
20 or inventory arrivals. Other non-party Aggrieved Employees were also required to use their
21 personal cellular phones to post about store promotions on their social media accounts.
22 Although Defendants required Plaintiff and other non-party Aggrieved Employees to utilize
23 their personal cellular phones to carry out their work-related responsibilities, Defendants
24 failed to fully reimburse them for this cost.

25 123. Defendants could have provided Plaintiff and other non-party Aggrieved
26 Employees with the actual tools for use on the job, such as company phones, or could have
27 reimbursed employees for their cellular phone expenses. Instead, Defendants passed these
28 operating costs off onto Plaintiff and other non-party Aggrieved Employees. At all relevant

1 times, Plaintiff and other non-party Aggrieved Employees did not earn at least two (2) times
2 the minimum wage.

3 124. Defendants' company-wide policy and/or practice of passing on their operating
4 costs to Plaintiff and other non-party Aggrieved Employees violates California Labor Code
5 section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiff and
6 other non-party Aggrieved Employees for necessary business-related expenses and costs.

7 125. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
8 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

9 **REQUEST FOR JURY TRIAL**

10 Plaintiff requests a trial by jury.

11 **PRAYER FOR RELIEF**

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

14 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
15 (\$25,000). Plaintiff reserves the right to amend her prayer for relief to seek a different amount.

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

17 2. That the Court declare, adjudge and decree that Defendants violated the
18 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
19 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
20 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516,
21 and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize
22 and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
23 statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay
24 all earned wages upon termination); 204 (by failing timely to pay all earned wages during
25 employment); 1198 (by failing to provide suitable seating); and 2802 (by failing to reimburse
26 business expenses).

27 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
28 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202,

203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802;

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

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

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

Dated: June 11, 2020

Respectfully submitted,

Capstone Law APC

By: 

Mark A. Ozzello
Brandon K. Brouillette
Brooke W. Waldrop

Attorneys for Plaintiff Jazzmin Mendez

EXHIBIT 1

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

April 6, 2020

VIA ONLINE SUBMISSION

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

Subject: *Jazzmin Mendez v. Dillard Store Services, Inc., et al.*

Dear PAGA Administrator:

This office represents Jazzmin Mendez in connection with her claims under the California Labor Code. Ms. Mendez was an employee of DILLARD STORE SERVICES, INC. and/or DILLARDS, INC. For the purpose of this letter, Ms. Mendez collectively refers to these entities as “DILLARDS.”

The employers may be contacted directly at the addresses below:

DILLARD STORE SERVICES, INC.
1600 CANRELL RD.
LITTLE ROCK, AR 72201

DILLARDS, INC.
1600 CANRELL ROAD
LITTLE ROCK, AR 72201

Ms. Mendez 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”). Ms. Mendez seeks relief on behalf of herself, the State of California, and other persons who are or were employed by DILLARDS 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.

DILLARDS employed Ms. Mendez as an hourly paid, non-exempt employee from approximately April 2019 to August 2019. Ms. Mendez worked for DILLARDS as a Sales Associate at the Dillard’s store in El Centro, California. During her employment, Ms. Mendez typically worked four (4) to seven (7) hours or more per day, three (3) or more days per week, and 28 to 30 hours per week. Ms. Mendez was compensated approximately \$14.00 per hour. Her job duties included, without

limitation, providing customer service in the jewelry/handbags department, ringing up customers, processing returns and exchanges, and stocking displays.

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

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

DILLARD STORE SERVICES, INC. and DILLARDS, INC. are Arizona and Delaware corporations, respectively, that own and operate a chain of department stores throughout the United States. DILLARDS operates approximately 265 department stores and 26 clearance centers in 29 states, including 3 retail locations in California. Upon information and belief, DILLARDS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Little Rock, Arkansas, for all non-exempt, hourly paid employees working for DILLARDS in California, including Ms. Mendez and other aggrieved employees. At all relevant times, DILLARDS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Mendez and other aggrieved employees, regardless of its location or position.

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

¹ These facts, theories, and claims are based on Ms. Mendez’s experience and counsel’s review of those records currently available relating to Ms. Mendez’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, Ms. Mendez reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

DILLARDS willfully failed to pay all overtime wages owed to Ms. Mendez and other aggrieved employees. During the relevant time period, Ms. Mendez 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 period, DILLARDS had a company-wide and systemic policy and/or practice of rounding employees' total hours worked to the nearest tenth (0.1) of an hour. DILLARDS's rounding policies resulted in the failure to compensate Ms. Mendez and other aggrieved employees for all hours worked, causing Ms. Mendez and other aggrieved employees to not be paid overtime wages for all overtime hours they actually worked. Upon information and belief, DILLARDS's timekeeping and rounding policies and/or practices are, and continue to be, unfair and have, over time, resulted in the underpayment of wages to Ms. Mendez and other aggrieved employees. To the extent DILLARDS's timekeeping and rounding policies have taken away time worked that was eligible for overtime, Ms. Mendez and other aggrieved employees were denied overtime pay for all hours worked.

Second, during the relevant time period, DILLARDS's company-wide closing procedures required Ms. Mendez and other aggrieved employees to perform work after clocking out for their shifts, resulting in employees working off the clock, but Ms. Mendez 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 DILLARDS's store procedure, Ms. Mendez 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. Ms. Mendez and other aggrieved employees had to wait under DILLARDS's control and off-the-clock until the MOD was ready to release them.

Third, DILLARDS has a company-wide loss prevention policy requiring employees to undergo mandatory security checks by a managerial employee before leaving the store premises. As a result of DILLARDS's policy, Ms. Mendez and other aggrieved employees were required to undergo security screenings after clocking out at the end of a shift prior to leaving the store premises. For example, after clocking out at the end of their shifts, Ms. Mendez and other aggrieved employees were required to wait up to two (2) or three (3) minutes for a manager to check their belongings. Although DILLARDS's requirement that Ms. Mendez and other aggrieved employees undergo security checks was mandatory, DILLARDS did not compensate them for the time it took them to wait in line and undergo these checks. Thus, Ms. Mendez and other aggrieved employees were not compensated for the time spent waiting and undergoing security screenings while off-the-clock.

Fourth, during the relevant period, DILLARDS 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 DILLARDS's business on their days off. For example, other aggrieved employees were directed to post on their social media profiles about store promotions. However, DILLARDS failed to track this time spent working before and after scheduled shifts, and other aggrieved employees received no compensation for this time.

Fifth, during the relevant period, DILLARDS had, and continues to have, a company-wide policy and/or practice of understaffing its store locations. DILLARDS's company-wide understaffing of its

locations led to a failure to provide other aggrieved employees with adequate meal period coverage. As a result, other aggrieved employees missed meal periods and/or had their meal periods interrupted, but were not compensated for this time.

Furthermore, DILLARDS did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, DILLARDS paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, DILLARDS 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, DILLARDS failed to pay all overtime wages by paying a lower overtime rate than required.

Specifically, DILLARDS paid other aggrieved employees nondiscretionary bonuses or incentive pay for selling certain luxury brand items. On information and belief, some of these nondiscretionary bonuses and/or incentive pay was listed on other aggrieved employees' wage statements as "PS BONUS." During pay periods that other aggrieved employees were paid overtime wages, DILLARDS failed to incorporate the nondiscretionary bonus and/or incentive pay into other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, DILLARDS paid other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. DILLARDS's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to other aggrieved employees on a company-wide basis.

Ms. Mendez 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").

As set forth above, DILLARDS had a policy of rounding employee's hours to the nearest tenth (0.1) of an hour, resulting in the failure to compensate Ms. Mendez and other aggrieved employees for all hours worked. As also stated, during the relevant time period, DILLARDS required that Ms. Mendez and/or other aggrieved employees perform work off-the-clock after their scheduled shifts, including waiting to leave the store after closing, submitting to off-the-clock security checks, and posting on social media accounts about store promotions. In addition, due to DILLARDS's company-wide understaffing and resultant lack of meal period coverage, other aggrieved employees were forced to forego meal periods and/or had their meal periods interrupted by work.

Thus, DILLARDS 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, DILLARDS 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, DILLARDS regularly failed to pay at least minimum wages to Ms. Mendez 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.

Ms. Mendez 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 period 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.

As stated, DILLARDS has, and continues to have, a uniform policy and/or practice of understaffing, which resulted in a lack of meal period coverage and prevented Ms. Mendez and/or other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. In addition, DILLARDS had a practice of failing to adhere to a schedule of meal periods, which further caused Ms. Mendez and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result of DILLARDS's practices and/or policies, Ms. Mendez and/or other aggrieved employees had to work through part or all of their meal periods, have their meal periods interrupted, and/or wait extended periods of time before taking meal periods. For example, on several occasions, Ms. Mendez took meal periods after the end of her fifth hour of work due to the lack of meal period coverage and failure to adhere to a schedule of meal periods.

Moreover, DILLARDS 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. Ms. Mendez 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.

DILLARDS knew or should have known that as a result of its company-wide policies and/or practices, that Ms. Mendez and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. DILLARDS further knew or should have known that it did

not pay Ms. Mendez and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted.

Furthermore, DILLARDS 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, other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that DILLARDS did pay meal period premium wages to other aggrieved employees, it did so at the incorrect rates. Because DILLARDS did not properly calculate other aggrieved employees' regular rates of pay by including all remunerations, such as 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, DILLARDS failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Mendez 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, DILLARDS regularly failed to authorize and permit Ms. Mendez 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, DILLARDS's company-wide policy and practice of understaffing and the resultant lack of rest period coverage, prevented Ms. Mendez and other aggrieved employees from being relieved of all duty to take their rest periods. DILLARDS also failed to schedule rest periods, which, coupled with DILLARDS's failure to provide adequate rest period coverage, further led to Ms. Mendez and other aggrieved employees not being authorized and permitted to take compliant rest periods. Furthermore, DILLARDS had a policy that rest periods could not be taken after 7:00 p.m., causing employees who worked closing shifts to miss the rest periods to which they were entitled.

Additionally, upon information and belief, during the relevant time period, DILLARDS maintained implemented a company-wide on-premises rest period policy, which mandated that Ms. Mendez and other aggrieved employees remain on the work premises during their rest periods. Upon information

and belief, DILLARDS's company-wide on-premises rest period policy prevented Ms. Mendez and other aggrieved employees from being relieved of all duties for rest periods and caused them to perform work during rest periods.

As a result of DILLARDS's practices and policies, Ms. Mendez 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, on three (3) or four (4) occasions, Ms. Mendez's rest periods were cut short by DILLARDS's management paging her over the P.A. system to return to the salesfloor to attend to customers' needs. Other times, Ms. Mendez missed her rest periods or took them late in order to complete her work duties.

DILLARDS 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, Ms. Mendez and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that DILLARDS did pay rest period premium wages to other aggrieved employees, it did so at the incorrect rates. Because DILLARDS 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, DILLARDS failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Mendez 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. DILLARDS has not provided Ms. Mendez 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, DILLARDS has knowingly and intentionally provided Ms. Mendez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, DILLARDS issued uniform wage statements to Ms. Mendez 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, DILLARDS violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, DILLARDS failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay in violation of section 226(a)(9). For example, Ms. Mendez's paystub for the pay period ending August 10, 2020, lists an overtime rate of pay of \$7.00 per hour. Ms. Mendez's overtime rate of pay on her wage statement should have displayed 1.5 times her regular rate of pay (\$21.00 hourly pay plus applicable other forms of remuneration). *See example paystub excerpt below.*

EARNINGS/ CONTRIBUTIONS	HOURS	RATE	CURRENT	CALENDAR YTD	CALENDAR YTD HOURS
Regular Pay	25.70	14.00	359.80	6283.20	448.80
Overtime	1.30	7.00	9.10	18.34	2.60
Worked Holiday				109.20	7.80
Premium				54.60	7.80
Instant Credit				12.00	
IPS Bonus				67.20	
Sales Prep	2.10	14.00	29.40	75.60	5.40
TOTAL EARNINGS			398.30	6620.14	

Second, because DILLARDS did not record the time Ms. Mendez and other aggrieved employees spent working off-the-clock and improperly rounded Ms. Mendez's and other aggrieved employees' total hours worked, DILLARDS did not list the correct amount of gross wages and net wages earned by Ms. Mendez and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, DILLARDS failed to accurately list the total number of hours worked by Ms. Mendez 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).

Third, because DILLARDS did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, DILLARDS 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). DILLARDS 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).

Fourth, and separate from these violations, DILLARDS issued uniform wage statements to Ms. Mendez 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. Ms. Mendez's and other aggrieved employees' wage statements incorrectly list the employer as "Dillard's," but, according to the California Secretary of State's website, there is no such entity by that name, nor is it a registered fictitious business name in the County of Imperial. However, a similarly named entity, "DILLARD STORE SERVICES, INC.," is listed on the California Secretary of State's website with the same address. *See example paystub below.*

**DILLARD'S
1600 CANTRELL ROAD
LITTLE ROCK, AR 72201**

STATEMENT OF EARNINGS AND DEDUCTIONS	
PAY SUMMARY	
NAME: JAZZMIN M MENDEZ	CHECK TYPE: Regular
SSN: [REDACTED]	PAYMENT METHOD: Direct Deposit
EFFECTIVE: 08/15/2019	

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. In addition, DILLARDS failed to provide Ms. Mendez and other aggrieved employees the option to elect to receive hard copies of their wage statements at any time and/or failed to provide them with the ability to easily access the information and convert the electronic wage statements into hard copies at no expense to them.

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 “[keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, 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), DILLARDS willfully failed to maintain accurate payroll records for Ms. Mendez 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 and improperly rounding Ms. Mendez’s and other aggrieved employees’ total hours 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, DILLARDS failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Ms. Mendez and other aggrieved employees, in violation of section 1198. Furthermore, in light of DILLARDS’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, DILLARDS kept no records of meal start and end times for second meal periods.

Because DILLARDS failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Mendez 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, Ms. Mendez 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.

Ms. Mendez 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, DILLARDS failed to pay Ms. Mendez 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.

Ms. Mendez 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.

On information and belief, DILLARDS has a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Ms. Mendez was terminated on August 27, 2019. However, DILLARDS did not provide her with her final paycheck until August 29, 2019. Thus, DILLARDS failed to pay Ms. Mendez her final wages immediately, in violation of Labor Code section 201.

Additionally, DILLARDS willfully failed to pay Ms. Mendez and other aggrieved employees who are no longer employed by DILLARDS 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 DILLARDS's employ in violation of California Labor Code sections 201, 202, and 203.

Ms. Mendez 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 § 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.*

DILLARDS'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 Ms. Mendez and other aggrieved employees during the performance of their work duties. DILLARDS could provide Ms. Mendez and 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.

Ms. Mendez and 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, DILLARDS systematically, and on a company-wide basis, does not provide seats or stools at or near cash wraps, forcing Ms. Mendez and other aggrieved employees to stand throughout their work shifts.

DILLARDS violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because Ms. Mendez and 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. DILLARDS's management did not inform Ms. Mendez and 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 DILLARDS's company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, Ms. Mendez and other aggrieved employees were forced to stand during shifts and denied seats. DILLARDS's failure to provide suitable seating to Ms. Mendez and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 7-2001, Section 14(A).

Ms. Mendez and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring DILLARDS 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, DILLARDS'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 Ms. Mendez and other aggrieved employees during lulls in operation. DILLARDS could provide Ms. Mendez 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 Ms. Mendez and other aggrieved employees to stand throughout the day.

DILLARDS did not provide Ms. Mendez 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 Ms. Mendez and other aggrieved employees engaged in duties in which the nature of the work required standing, DILLARDS denied them the use of seats nearby during lulls in their work duties. Moreover, DILLARDS did not inform Ms. Mendez and other aggrieved employees of their rights to a seat or stool under California law.

As a result of DILLARDS'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 Ms. Mendez and other aggrieved employees were forced to stand during shifts and denied seats. DILLARDS's failure to provide suitable seating to Ms. Mendez and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 7-2001, Section 14(B).

Ms. Mendez and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring DILLARDS 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."

During the relevant time period, DILLARDS had a company-wide policy of requiring Ms. Mendez and other aggrieved employees to utilize their own personal cellular phones and cellular data to carry out their job duties, but DILLARDS failed to fully reimburse them for the costs of their work-related cellular phone expenses. Ms. Mendez and other aggrieved employees were required to use their personal cellular phones to complete their work-related tasks, such as communicating with customers about store events or inventory arrivals. Other aggrieved employees were also required to use their personal cellular phones to post about store promotions on their social media accounts. Although DILLARDS required Ms. Mendez and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, DILLARDS failed to fully reimburse them for this cost.

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

Thus, DILLARDS 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. Ms. Mendez 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.” DILLARDS, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Mendez’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Ms. Mendez seeks the remedies set forth in Labor Code section 558 for herself, 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, Ms. Mendez, 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 DILLARDS for violations of California Labor Code sections 201, 202, 203, 204, 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, Ms. Mendez seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Ms. Mendez’s reasonable attempt to settle her dispute with DILLARDS prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform DILLARDS of Ms. Mendez’s aforementioned grievances and the proposed remedies as detailed below, while affording DILLARDS a reasonable opportunity to satisfy Ms. Mendez’s demands.

Demand is hereby made that DILLARDS shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. DILLARDS shall pay Ms. Mendez and all other aggrieved employees employed by DILLARDS at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. DILLARDS shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked and provided lawful meal and rest periods.
3. DILLARDS shall conduct a survey or interview all current and former aggrieved employees in California who worked for DILLARDS in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of

meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for cellular phone expenses, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.

4. DILLARDS shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512, 516, and 1198. DILLARDS also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. DILLARDS shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for DILLARDS's benefit, including, but not limited to, cellular phone expenses, as required by Labor Code sections 2802.
6. DILLARDS shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. DILLARDS shall provide Ms. Mendez and all aggrieved employees employed by DILLARDS at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. DILLARDS shall implement and provide suitable seating to all aggrieved employees.
9. DILLARDS shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
10. DILLARDS shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, 1199, and 2699, and Wage Order No. 7-2001, section 20.

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,

A handwritten signature in black ink, appearing to read "Anthony Castillo", with a stylized, cursive script.

Anthony Castillo

Copy: DILLARD STORE SERVICES, INC. (via U.S. Certified Mail); DILLARDS, INC. (via U.S. Certified Mail)