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Superior Court of California
County of Santa Barbara
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Attorneys for Plaintiff and the Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA**

LESHA PERRY, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

PREMIUM RETAIL SERVICES, INC., a
Missouri corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No.: 20CV01914

**CLASS ACTION COMPLAINT FOR
DAMAGES FOR:**

- (1) VIOLATION OF LABOR CODE §§ 510,
558, AND 1194;**
- (2) VIOLATION OF LABOR CODE §§ 226.7
AND 512;**
- (3) VIOLATION OF LABOR CODE § 226.7;**
- (4) VIOLATION OF LABOR CODE § 226;**
- (5) VIOLATION OF LABOR CODE § 2802;**
- (6) VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200, ET SEQ.;
AND**
- (7) VIOLATION OF LABOR CODE § 2698,
ET SEQ.**

DEMAND OVER \$25,000.00

Plaintiff Lesha Perry ("Plaintiff"), hereby submits this Class Action Complaint against Defendant Premium Retail Services, Inc. ("Defendant"), and Does 1-50 (hereinafter collectively referred to as "Defendants"), as an individual and on behalf of the class of all other similarly situated current and former employees of Defendants for penalties and/or damages for failure to

1 pay all overtime wages for hours worked, provide off-duty meal and rest periods, pay all wages
2 owed upon separation of employment, provide accurate itemized wage statements, reimburse
3 business expenses, and provide suitable seating under the California Labor Code and IWC Wage
4 Orders, and restitution for unfair business practices in violation of Business and Professions
5 Code § 17200, *et seq.*, as follows:

6 **INTRODUCTION**

7 1. This class action is within the Court’s jurisdiction under California Labor Code
8 §§ 201-203, 226, 226.7, 510, 512, 558, 1194, 2802, and 2698 *et seq.*, the California Industrial
9 Welfare Commission’s (“IWC”) Wage Orders, and the California Unfair Competition Law (the
10 “UCL”), codified at California Business and Professions Code § 17200, *et seq.*

11 2. This Complaint challenges systemic illegal employment practices resulting in
12 violations of the California Labor Code, IWC Wage Orders, and Business and Professions Code
13 against employees of Defendants.

14 3. Plaintiff is informed and believes and based thereon alleges that Defendants
15 jointly and severally have acted intentionally and with deliberate indifference and conscious
16 disregard to the rights of all employees by failing to pay overtime wages for all hours worked,
17 provide off-duty meal and rest breaks, pay all wages owed upon separation of employment,
18 provide compliant wage statements, reimburse business expenses, and provide suitable seating.

19 4. Plaintiff is informed and believes and based thereon alleges that Defendants have
20 engaged in, among other things a system of willful violations of the California Labor Code,
21 Business and Professions Code, and applicable IWC Wage Orders by creating and maintaining
22 policies, practices and customs that knowingly deny employees the above stated rights and
23 benefits.

24 5. The policies, practices and customs of defendants described above and below
25 have resulted in unjust enrichment of Defendants and an unfair business advantage over
26 businesses that routinely adhere to the strictures of the California Labor Code, IWC Wage
27 Orders, and the California Business and Professions Code.

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7. Venue is proper in Santa Barbara County because Plaintiff worked for Defendants in Lompoc, California and Santa Maria, California.

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1 based thereon alleges that each of said fictitious Defendants were responsible in some way for
2 the matters alleged herein and proximately caused Plaintiff and members of the general public
3 and class to be subject to the illegal employment practices, wrongs and injuries complained of
4 herein.

5 14. At all times herein mentioned, each of said Defendants participated in the doing
6 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
7 Defendants, and each of them, were the agents, servants and employees of each of the other
8 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
9 acting within the course and scope of said agency and employment.

10 15. Plaintiff is informed and believes and based thereon alleges that at all times
11 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
12 joint venturer of, or working in concert with each of the other co-defendants and was acting
13 within the course and scope of such agency, employment, joint venture, or concerted activity.
14 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
15 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
16 Defendants.

17 16. At all times herein mentioned, Defendants, and each of them, were members of,
18 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
19 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

20 17. At all times herein mentioned, the acts and omissions of various Defendants, and
21 each of them, concurred and contributed to the various acts and omissions of each and all of the
22 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
23 herein mentioned, Defendants, and each of them, ratified each and every act or omission
24 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided
25 and abetted the acts and omissions of each and all of the other Defendants in proximately causing
26 the damages as herein alleged.

27 **CLASS ACTION ALLEGATIONS**

28 18. **Definition:** The named individual Plaintiff seeks class certification, pursuant to

1 California Code of Civil Procedure § 382, of a class of all current and former non-exempt
2 employees who worked for Defendants at any time during the period of time from April 6, 2016,
3 through the present, in the State of California (the “Class”). The Class also consists of the
4 following subclasses:

5 a. All current and former non-exempt employees who worked for
6 Defendants in the State of California at any time during the period of time from April 6,
7 2016, through the present, who earned non-discretionary remuneration, including, but not
8 limited to bonuses and/or commissions in the same workweek as overtime wages
9 (“Regular Rate Sub-Class”);

10 b. All current and former non-exempt employees who worked for
11 Defendants in the State of California at any time during the period of time from April 6,
12 2016, through the present, who worked more than 5 hours in any shift (“Meal Period
13 Sub-Class”); and

14 c. All current and former non-exempt employees who worked for
15 Defendants in the State of California at any time during the period of time from April 6,
16 2016, through the present, who worked 3.5 hours or more in any shift (“Rest Period Sub-
17 Class”).

18 d. All current and former non-exempt employees who worked for
19 Defendants in the State of California and was paid overtime and/or double time wages at
20 any time during the period of time from April 6, 2019, through the present (“Overtime
21 Wage Statement Sub-Class”).

22 e. All current and former non-exempt employees who worked for
23 Defendants in the State of California and was paid “Meal Period” wages at any time
24 during the period of time from April 6, 2019, through the present (“Meal Period Wage
25 Statement Sub-Class”)

26 f. All current and former non-exempt employees who worked for
27 Defendants in the State of California and was paid “Bonus” wages at any time during the
28 period of time from April 6, 2019, through the present (“Bonus Wage Statement Sub-

Class”).

19. **Numerosity and Ascertainability:** The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identity of the members of the Class is readily ascertainable by review of Defendants’ records, including payroll records. Plaintiff alleges that Defendants: (a) failed to pay overtime for all hours worked in violation of Labor Code §§ 510, 558, and 1194; (b) failed to provide off-duty meal and rest breaks in violation of Labor Code §§ 226.7 and 512; (c) failed to provide accurate, itemized wage statements in violation of Labor Code § 226(a); (d) failed to reimburse employees for work-related expenses in violation of Labor Code § 2802; (e) failed to provide suitable seating in violation of IWC Wage Order No. 7-2001(14); and (f) engaged in Unfair Business Practices in violation of the UCL, the California Labor Code, including without limitation, California Labor Code §§ 226, 226.7, 510, 512, 558, 1194, 2802, and the applicable IWC Wage Orders.

20. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the Class defined above. Plaintiff’s attorneys are ready, willing and able to fully and adequately represent the Class and individual Plaintiff. Plaintiff’s attorneys have prosecuted and settled wage-and-hour class actions in the past and currently have a number of wage-and-hour class actions pending in California courts.

21. Defendants uniformly administered a corporate policy, practice of: (a) failing to pay overtime for all hours worked in violation of Labor Code §§ 510, 558, and 1194; (b) failing to provide off-duty meal and rest breaks in violation of Labor Code §§ 226.7 and 512; (c) failing to provide accurate, itemized wage statements in violation of Labor Code § 226(a); (d) failing to reimburse employees for work-related expenses in violation of Labor Code § 2802; (e) failing to provide suitable seating in violation of IWC Wage Order No. 7-2001(14); and (f) engaging in Unfair Business Practices in violation of the UCL, the California Labor Code, including without limitation, California Labor Code §§ 226, 226.7, 510, 512, 558, 1194, 2802, and the applicable IWC Wage Orders.

22. Plaintiff is informed and believes and based thereon alleges Defendants, in

violation of California Labor Code §§ 201 and 202, *et seq.*, had a consistent and uniform policy, practice and procedure of willfully failing to comply with Labor Code § 203. Plaintiff and other members of the Class did not secret or absent themselves from Defendants, nor refuse to accept the earned and unpaid wages from Defendants. Accordingly, Defendants are liable for waiting time compensation for the unpaid wages to separated employees pursuant to California Labor Code § 203.

23. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst Plaintiff and the claims of the Class concerning Defendants: (a) failing to pay overtime for all hours worked in violation of Labor Code §§ 510, 558, and 1194; (b) failing to provide off-duty meal and rest breaks in violation of Labor Code §§ 226.7 and 512; (c) failing to provide accurate, itemized wage statements in violation of Labor Code § 226(a); (d) failing to reimburse employees for work-related expenses in violation of Labor Code § 2802; (e) failing to provide suitable seating in violation of IWC Wage Order No. 7-2001(14); and (f) engaging in Unfair Business Practices in violation of the UCL, the California Labor Code, including without limitation, California Labor Code §§ 226, 226.7, 510, 512, 558, 1194, 2802, and the applicable IWC Wage Orders.

24. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class in that Plaintiff has suffered the harm alleged in this Complaint in a similar and typical manner as the Class members. Like other employees, Plaintiff regularly earned non-discretionary remuneration such as bonuses, commissions, and other performance-related pay. Defendants, however, failed to calculate the non-discretionary remuneration into the regular rate of pay for the purposes of paying overtime and double time. Thus, Plaintiff is owed additional overtime pay based on the correct, higher regular rate of pay. In addition, due to Defendants' policy requiring Plaintiff and other employees to work continuously throughout their entire shift, Plaintiff was not allowed to take off-duty, 30-minute meal breaks for shifts in excess of 5 hours and off-duty 10-minute rest breaks for every 4 hours worked. Plaintiff seldom received meal and rest period premiums for these missed or late breaks. Due to the above-stated regular rate miscalculation, Plaintiff did not receive proper and accurate itemized wage statements. The

1 wage statements failed to identify the correct rates of pay for overtime and double time wages,
2 and gross and net wages earned during pay periods when overtime and non-discretionary wages
3 were paid. Separate and apart from this error, the wage statements provided to Plaintiff failed to
4 identify the correct total hours worked and rate of pay whenever overtime or double time wages
5 were paid, the rate of pay or number of hours used to calculate meal period premiums on the rare
6 occasions when they were paid, and the applicable piece-rate and piece-rate units earned when
7 “Bonus” wages were paid. Moreover, Defendants required Plaintiff to use her personal cellular
8 phone for work and drive between two sites during her shifts. Plaintiff was not reimbursed for
9 her cell phone costs, nor was she reimbursed for the mileage incurred. Given that Defendants
10 willfully failed to pay Plaintiff and other separated employees all wages owed, Defendants are
11 liable for waiting time-penalties pursuant to Labor Code §§ 201, 202, and 203. Furthermore,
12 Defendants failed to provide suitable seating to Plaintiff and other employees during their shifts.
13 As such, Plaintiff is a member of the Class and has suffered the alleged violations of California
14 Labor Code §§ 201-203, 226, 226.7, 510, 512, 558, 1194, 2802, and the applicable IWC Wage
15 Orders.

16 25. The California Labor Code and upon which Plaintiff bases these claims is broadly
17 remedial in nature. These laws and labor standards serve an important public interest in
18 establishing minimum working conditions and standards in California. These laws and labor
19 standards protect the average working employee from exploitation by employers who may seek
20 to take advantage of superior economic and bargaining power in setting onerous terms and
21 conditions of employment.

22 26. The nature of this action and the format of laws available to Plaintiff and
23 members of the Class identified herein make the class action format a particularly efficient and
24 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
25 file an individual lawsuit, the corporate Defendant would necessarily gain an unconscionable
26 advantage since it would be able to exploit and overwhelm the limited resources of each
27 individual Plaintiff with Defendants’ vastly superior financial and legal resources. Requiring
28 each Class member to pursue an individual remedy would also discourage the assertion of lawful

claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damage to their careers at subsequent employment.

27. The prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual Class members against Defendants and which would establish potentially incompatible standards of conduct for Defendants, and/or (b) adjudications with respect to individual Class members which would, as a practical matter, be dispositive of the interest of the other Class members not parties to the adjudications or which would substantially impair or impede the ability of the Class members to protect their interests. Further, the claims of the individual members of the Class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses.

28. Such a pattern, practice and uniform administration of corporate policy regarding illegal employee compensation described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class identified herein, in a civil action, for unpaid wages, including interest thereon, applicable penalties, reasonable attorneys' fees, and costs of suit according to the mandate of California Labor Code §§ 201-203, 218.5, 226, 558, 1197.1, 2698, *et seq.*, the applicable IWC Wage Orders, and Code of Civil Procedure § 1021.5.

29. Proof of a common business practice or factual pattern, which the named Plaintiff experienced and is representative of, will establish the right of each of the members of the Class to recovery on the causes of action alleged herein.

30. The Class is commonly entitled to a specific fund with respect to the compensation illegally and unfairly retained by Defendants. The Class is commonly entitled to restitution of those funds being improperly withheld by Defendants. This action is brought for the benefit of the entire class and will result in the creation of a common fund.

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1 **FIRST CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE §§ 510, 558, AND 1194**

3 **(BY PLAINTIFF, THE CLASS, AND THE REGULAR RATE SUB-CLASS AGAINST ALL**
4 **DEFENDANTS)**

5 31. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
6 though fully set forth herein.

7 32. This cause of action is brought pursuant to Labor Code §§ 510, 558, and 1194,
8 which require an employer to pay employees overtime at a rate of one and one-half the
9 employee's regular rate of pay for any work in excess of eight hours in a workday or 40 hours in
10 a workweek.

11 33. As a pattern and practice, Defendants suffered and permitted employees to work
12 in excess of eight hours in a workday and/or over 40 hours in a workweek without proper
13 overtime pay. Specifically, during their employment with Defendants, including workweeks
14 when they worked overtime, Plaintiff and Regular Rate Sub-Class members earned non-
15 discretionary remuneration such as bonuses, commissions, and other performance-related pay.
16 Defendants, however, failed to calculate and/or factor such remuneration into the regular rate of
17 pay for the purposes of paying overtime wages. As a result of such policy and practice,
18 Defendants underpaid overtime wages to Plaintiff and Regular Rate Sub-Class members, and
19 thus owe additional overtime wages to Plaintiff and Regular Rate Sub-Class members.

20 34. Such a pattern, practice, and uniform administration of corporate policy regarding
21 illegal employee compensation as described herein is unlawful and creates an entitlement to
22 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of
23 damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according
24 to the mandate of California Labor Code §§ 218.5, 510, 558, and 1194.

25 35. Plaintiff is informed and believes, and based thereon allege, that Defendants'
26 willful failure to provide all overtime wages due and owing Plaintiff and Class members upon
27 separation from employment results in a continued payment of wages up to thirty (30) days from
28 the time the wages were due. Therefore, Plaintiff and other members of the Class who have

1 separated from employment are entitled to compensation pursuant to Labor Code § 203.

2 **SECOND CAUSE OF ACTION**

3 **FOR VIOLATION OF LABOR CODE §§ 226.7 AND 512**

4 **(BY PLAINTIFF, THE CLASS, AND THE MEAL PERIOD SUB-CLASS AGAINST ALL**
5 **DEFENDANTS)**

6 36. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
7 though fully set forth herein.

8 37. At all relevant times, Defendants failed in their affirmative obligation to ensure
9 that Plaintiff and Meal Period Sub-Class members had the opportunity to take, and were
10 provided with, off-duty meal periods in accordance with the mandates of the California Labor
11 Code and the applicable IWC Wage Order. At all relevant times, Plaintiff and Class members
12 were suffered and permitted to work through legally required meal breaks and were denied the
13 opportunity to take their off-duty meal breaks.

14 38. Plaintiff and Meal Period Sub-Class members regularly worked shifts of five
15 hours or more per day and accordingly had a right to take a 30-minute off-duty meal period each
16 day. However, Defendants' policy required that Plaintiff and Meal Period Sub-Class members
17 work continuously throughout their entire shift, including their breaks. This policy of requiring
18 employees to work through their legally mandated meal periods and not allowing them to take
19 proper meal periods is a violation of California law. As such, Defendants are responsible for
20 paying premium compensation for missed meal periods pursuant to Labor Code sections 226.7
21 and 512, and the applicable IWC Wage Order. Defendants, as a matter of corporate policy and
22 procedure, regularly failed to pay such premium compensation for each 30-minute duty-free
23 meal period Plaintiff and Meal Period Sub-Class members missed.

24 39. Such a pattern, practice and uniform administration of corporate policy as
25 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class
26 identified herein, in a civil action, for the unpaid balance of the unpaid premium compensation
27 pursuant to Labor Code §§ 226.7 and 512, and the applicable IWC Wage Order, including
28 interest thereon, penalties, and costs of suit.

40. Plaintiff is informed and believes, and based thereon allege, that Defendants' willful failure to provide all meal period premium wages due and owing to Plaintiff and Class Members upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and other members of the Class who have separated from employment are entitled to compensation pursuant to Labor Code § 203.

THIRD CAUSE OF ACTION

VIOLATION OF LABOR CODE § 226.7

**(BY PLAINTIFF, THE CLASS, AND THE REST PERIOD SUB-CLASS AGAINST ALL
DEFENDANTS)**

41. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

42. At all relevant times, Defendants failed in their affirmative obligation to ensure that Plaintiff and Rest Period Sub-Class members had the opportunity to take, and were provided with, off-duty 10-minute rest periods in accordance with the mandates of the California Labor Code and the applicable IWC Wage Order.

43. Plaintiff and Rest Period Sub-Class members regularly worked shifts of three and one-half hours (3.5) hours or more per day and accordingly had a right to take a 10-minute rest period each day. Furthermore, Plaintiff and Rest Period Sub-Class members who worked shifts of seven and one-half (7.5) hours or more per day had a right to take a second 10-minute rest period. However, Defendants' policy required that Plaintiff and Rest Period Sub-Class members work continuously throughout their entire shift, including their breaks. This policy of requiring employees to work through their legally mandated rest periods and not allowing them to take proper rest periods is a violation of California law. As such, Defendants are responsible for paying premium compensation for missed rest periods pursuant to Labor Code section 226.7 and the applicable IWC Wage Order. Defendants, as a matter of corporate policy and procedure, regularly failed to pay such premium compensation for each 10-minute duty-free rest period Plaintiff and Rest Period Sub-Class members missed.

1 44. Such a pattern, practice and uniform administration of corporate policy as
2 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and other
3 members of Class identified herein, in a civil action, for the unpaid balance of the unpaid
4 premium compensation pursuant to Labor Code § 226.7, including interest thereon, penalties,
5 and costs of suit.

6 45. Plaintiff is informed and believes, and based thereon allege, that Defendants'
7 willful failure to provide all rest period premium wages due and owing to Plaintiff and Class
8 members upon separation from employment results in a continued payment of wages up to thirty
9 (30) days from the time the wages were due. Therefore, Plaintiff and other members of the Class
10 who have separated from employment are entitled to compensation pursuant to Labor Code
11 § 203.

12 **FOURTH CAUSE OF ACTION**

13 **VIOLATION OF LABOR CODE § 226**

14 **(BY PLAINTIFF, THE CLASS, AND ALL SUB-CLASSES AGAINST ALL**
15 **DEFENDANTS)**

16 46. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
17 though fully set forth herein.

18 47. Defendants failed in their affirmative obligation to provide accurate itemized
19 wage statements. Defendants, as a matter of policy and practice, did not provide accurate
20 records in violation of Labor Code § 226 by failing to provide accurate payroll records for
21 Plaintiff and the Class.

22 48. Here, Plaintiff and the Class were paid hourly. As such, the wage statements
23 should have reflected the correct total hour hours worked, applicable hourly rates and number of
24 hours worked at each rate, gross and net wages earned, and number of piece-rate units earned
25 and applicable piece-rate, pursuant to Labor Code § 226(a)(1), (2), (3), (5), and (9). However,
26 the wage statements provided to Plaintiff and the Class failed to identify such information.
27 During pay periods when overtime and non-discretionary wages such as bonuses and
28 commissions were paid, the wage statements listed incorrect rates of pay for overtime and double

time wages, as well as inaccurate gross and net wages earned (due to the rate miscalculation). During pay periods when overtime or double time wages were paid, the wage statements listed incorrect total hours worked and pay rates. Specifically, “Doubletime” and/or “Overtime” hours were listed twice on the wage statements, which resulted in the incorrect total hours worked. Moreover, the overtime rate was listed as 0.5 times the base rate of pay, rather than 1.5 times the regular rate of pay, and the double time rate was not listed as 2 times the regular rate of pay. Additionally, on the rare occasions when meal period premiums were paid, the wage statements failed to identify the rate of pay or number of hours used to calculate the payment. Finally, whenever “Bonus” wages were paid, the wage statements failed to identify the applicable piece-rate units and piece-rate used to calculate such wages, as the “Bonus” wages appear to be paid on a piece-rate payment system.

49. Such a pattern, practice and uniform administration of corporate policy as described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class identified herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226, including interest thereon, attorneys’ fees, and costs of suit according to the mandate of California Labor Code § 226.

FIFTH CAUSE OF ACTION

VIOLATION OF LABOR CODE § 2802

(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)

50. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

51. Pursuant to Labor Code § 2802, an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of his or her duties.

52. Defendants violated Labor Code § 2802 by failing to reimburse Plaintiff and other members of the Class for expenses incurred in the performance of their duties, including expenses associated with the use of personal cellular phones and mileage incurred, which Plaintiff and other members of the Class were required to do in performance of their duties.

53. As a direct and proximate result of Defendants' failure to reimburse Plaintiff and other members of the Class for work related expenses, Plaintiff and Class members are entitled to recover their out of pocket expenses, including interest, and attorneys' fees and costs pursuant to Labor Code § 2802 in an amount to be determined at trial.

SIXTH CAUSE OF ACTION

**VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, *ET SEQ.*
(BY PLAINTIFF, THE CLASS, THE REGULAR RATE SUB-CLASS, THE MEAL
PERIOD SUB-CLASS, AND THE REST PERIOD SUB-CLASS AGAINST ALL
DEFENDANTS)**

54. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

55. Defendants, and each of them, have engaged and continue to engage in unfair and unlawful business practices in California by practicing, employing and utilizing the employment practices outlined above, include, to wit, by: (a) failing to pay overtime for all hours worked in violation of Labor Code §§ 510, 558, and 1194; (b) failing to provide off-duty meal and rest breaks in violation of Labor Code §§ 226.7 and 512; (c) failing to provide accurate, itemized wage statements in violation of Labor Code § 226(a); (d) failing to reimburse employees for work-related expenses in violation of Labor Code § 2802; and (e) failing to provide suitable seating in violation of IWC Wage Order No. 7-2001(14).

56. Defendants' utilization of such unfair and unlawful business practices constitutes unfair, unlawful competition and provides an unfair advantage over Defendants' competitors.

57. Plaintiff seeks, individually and on behalf of other members of the Class similarly situated, full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by the Defendants by means of the unfair practices complained of herein.

58. Plaintiff is informed and believes, and based thereon alleges, that at all times herein mentioned Defendants have engaged in unlawful, deceptive and unfair business practices, as proscribed by California Business and Professions Code § 17200, *et seq.*, including those set

1 forth herein above thereby depriving Plaintiff and other members of the Class the minimum
2 working condition standards and conditions due to them under the California laws and the
3 applicable IWC Wage Orders as specifically described therein.

4 **SEVENTH CAUSE OF ACTION**

5 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

6 **(BY PLAINTIFF, ON BEHALF OF THE STATE AND AGGRIEVED EMPLOYEES,**
7 **AGAINST ALL DEFENDANTS)**

8 59. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
9 though fully set forth herein.

10 60. Plaintiff brings this cause of action as a proxy for the State of California and in
11 this capacity, seeks penalties on behalf of all Aggrieved Employees from May 7, 2019, through
12 the present, for Defendant's violations of Labor Code §§ 201-203, 226(a), 226.7, 510, 512, 558,
13 1194, 1197, 1197.1, and 2802, arising from Defendant's failure to pay all minimum and overtime
14 wages for hours worked, reimburse business expenses, provide off-duty meal and rest periods,
15 pay all wages upon separation of employment, and provide proper payroll records.

16 61. Defendants failed in their obligation to provide suitable seating to Plaintiff and
17 Aggrieved Employees. Pursuant to IWC Wage Order No. 7-2001(14), Cal. Code Regs. tit. 8, §
18 11070(14), "[a]ll working employees shall be provided with suitable seats when the nature of the
19 work reasonably permits the use of seats."

20 62. Defendants failed to provide suitable seats even though the nature of the work
21 performed by Plaintiff and other employees reasonably permitted the use of seats. Plaintiff and
22 Class members' job duties as salespeople did not require that they stand during the entirety of
23 their shifts.

24 63. Further, IWC Wage Order No. 7-2001(14)(B) provides that "[w]hen employees
25 are not engaged in the active duties of their employment and the nature of the work requires
26 standing, an adequate number of suitable seats shall be placed in reasonable proximity to the
27 work area and employees shall be permitted to use such seats when it does not interfere with the
28 performance of their duties." Defendants failed to provide Plaintiff and Aggrieved Employees

1 with suitable seats in reasonable proximity in the work area when they were not engaged in the
2 active duties of employment, and prohibited Plaintiff and Aggrieved Employees to use any such
3 seats.

4 64. On or about May 7, 2020, Plaintiff sent written notice to the California Labor &
5 Workforce Development Agency (“LWDA”) of Defendant’s violations of Labor Code §§ 201-
6 203, 226(a), 226.7, 510, 512, 558, 1194, 2802, and IWC Wage Order No. 7-2001(14), pursuant
7 to Labor Code section 2698, *et seq.*, the Private Attorneys General Act (“PAGA”). To date, the
8 LWDA has not responded to Plaintiff’s written notice.

9 65. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any
10 and all applicable civil penalties for Defendants’ violation of Labor Code §§ 201-203, 226(a),
11 226.7, 510, 512, 558, 1194, 2802, and IWC Wage Order No. 7-2001(14) for the time period
12 described above, on behalf of herself and other Aggrieved Employees.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff prays for judgment as an individual and on behalf of all others
15 that this suit is brought against Defendants, jointly and severally, as follows:

- 16 1. For an order certifying the proposed Class;
- 17 2. For an order appointing Plaintiff as the representative of the Class as described
18 herein;
- 19 3. For an order appointing counsel for Plaintiff as Class counsel;
- 20 4. Upon the First Cause of Action, for damages and/or penalties pursuant to
21 California Labor Code §§ 201-203, 510, 558, and 1194, and for costs and attorneys’ fees;
- 22 5. Upon the Second Cause of Action, for damages and/or penalties pursuant to
23 California Labor Code §§ 201-203, 226.7, and 512, and for costs and attorneys’ fees;
- 24 6. Upon the Third Cause of Action, for damages and/or penalties pursuant to
25 California Labor Code §§ 201-203 and 226.7, and for costs and attorneys’ fees;
- 26 7. Upon the Fourth Cause of Action, for damages or penalties pursuant to statute as
27 set forth in California Labor Code § 226, and for costs and attorneys’ fees;
- 28 8. Upon the Fifth Cause of Action, for damages and/or penalties pursuant to

1 California Labor Code § 2802, and for costs and attorneys' fees;

2 9. Upon the Sixth Cause of Action, for restitution to Plaintiff and other similarly
3 affected members of the general public of all funds unlawfully acquired by Defendants by means
4 of any acts or practices declared by this Court to be in violation of Business and Professions
5 Code § 17200, *et seq.*, for the time periods described above;

6 10. Upon the Seventh Cause of Action, for civil penalties according to proof pursuant
7 to Labor Code § 2698, *et seq.*, Labor Code § 226.3, and for costs and attorneys' fees;

8 11. On all causes of action, for attorneys' fees and costs as provided by California
9 Labor Code § 218.5 and Code of Civil Procedure § 1021.5; and

10 12. For such other and further relief as the Court may deem just and proper.
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12 DATED: May 20, 2020

DIVERSITY LAW GROUP, P.C.

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14 By: 
15 Larry W. Lee
16 Max W. Gavron
17 Attorneys for Plaintiff and the Class
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