

EXHIBIT “A”

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SHERICE DUNCAN, individually,
and on behalf of other members of
the general public similarly situated,

Plaintiff,

vs.

CLAIRE'S BOUTIQUES, INC., a
Colorado corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No.: 2:20-cv-5266-JFW-PJWx

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

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

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- (9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

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

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to Rule 23 of the Federal Rules
6 of Civil Procedure to recover wages and all other available relief on behalf of
7 Plaintiff and all similarly situated current and former non-exempt, hourly paid
8 employees of Defendants, and a non-class representative enforcement action
9 brought pursuant to the Labor Code Private Attorneys General Act of 2004,
10 California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
11 and any other available relief on behalf of Plaintiff, the State of California, and
12 other current and former employees who worked for Defendants in California as
13 non-exempt, hourly paid employees and received at least one wage statement and
14 against whom one or more violations of any provision in Division 2 Part 2
15 Chapter 1 of the Labor Code or any provision regulating hours and days of work
16 in the applicable Industrial Welfare Commission (“IWC”) Wage Order were
17 committed, as set forth in this complaint.

18 2. This Court has original jurisdiction over this action pursuant to 28
19 U.S.C. § 1332(d) and based on 28 U.S.C. §§ 1441, 1446.

20 3. Venue is proper in this Court because this case was originally filed in
21 the Superior Court of California for the County of Los Angeles. Venue properly
22 lies in the United States District Court for the Central District of California
23 pursuant to 28 U.S.C. §§ 84(a), 1391(b), and 1441(a).

24 4. The PAGA statute authorizes aggrieved employees to sue directly as
25 the proxy of the State of California for civil penalties for violations of various
26 provisions in the California Labor Code.

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THE PARTIES

5. Plaintiff Sherice Duncan is a resident of Elk Grove, in Sacramento County, California. Defendants employed Plaintiff as an hourly paid, non-exempt Store Manager from approximately October 2019 to January 2020. Plaintiff worked for Defendants at their retail store in Elk Grove, California (Store #5522). During her employment, Plaintiff typically worked eight (8) hours or more per day and five (5) to six (6) days per week. Plaintiff's primary job duties included, without limitation, merchandising the store, communicating the store's daily targets to employees, and ensuring that the store team met sales goals.

6. CLAIRE'S BOUTIQUES, INC. was and is, upon information and belief, a Colorado corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California, or the various states of the United States of America.

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

8. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 were the partners, agents, owners, or managers of CLAIRE'S BOUTIQUES, INC. at all relevant times.

9. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein was performed by, or is attributable to, CLAIRE'S BOUTIQUES, INC. and/or DOES 1 through 10 (collectively, "Defendants" or "CLAIRE'S"), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the

1 others' behalf. The acts of any and all Defendants were in accordance with, and
2 represent, the official policy of Defendants.

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

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

10 **GENERAL ALLEGATIONS**

11 12. Defendants are specialty retailer of jewelry and accessories for
12 young women, teens, tweens, and kids. Upon information and belief, Defendants
13 maintain a single, centralized Human Resources ("HR") department at their
14 company headquarters in Pembroke Pines, Florida, which is responsible for the
15 recruiting and hiring of new employees, and communicating and implementing
16 Defendants' company-wide policies, including timekeeping policies and meal
17 and rest period policies, to employees throughout California.

18 13. In particular, Plaintiff and class members, on information and belief,
19 received the same standardized documents and/or written policies. Upon
20 information and belief, the usage of standardized documents and/or written
21 policies, including new-hire documents, indicate that Defendants dictated
22 policies at the corporate level and implemented them company-wide, regardless
23 of their employees' assigned locations or positions. Upon information and
24 belief, Defendants set forth uniform policies and procedures in several
25 documents provided at an employee's time of hire.

26 14. Upon information and belief, Defendants maintain a centralized
27 Payroll department at their company headquarters in Pembroke Pines, Florida,
28 which processes payroll for all non-exempt, hourly paid employees working for

1 Defendants at their various locations and jobsites in California, including
2 Plaintiff and class members. Based upon information and belief, Defendants
3 issue the same formatted wage statements to all non-exempt, hourly paid
4 employees in California, irrespective of their work locations. Upon information
5 and belief, Defendants process payroll for departing employees in the same
6 manner throughout the State of California, regardless of the manner in which
7 each employee's employment ends.

8 15. Defendants continue to employ non-exempt or hourly paid
9 employees in California.

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

15 17. Plaintiff is informed and believes, and thereon alleges, that Plaintiff
16 and class members were not paid for all hours worked because all hours worked
17 were not recorded.

18 18. Plaintiff is informed and believes, and thereon alleges, that
19 Defendants knew or should have known that Plaintiff and class members were
20 entitled to receive certain wages for overtime compensation and that they were
21 not receiving certain wages for overtime compensation.

22 19. Plaintiff is informed and believes, and thereon alleges, that
23 Defendants knew or should have known that Plaintiff and class members were
24 entitled to be paid at a regular rate of pay, and corresponding overtime rate of
25 pay, that included as eligible income all remuneration required by law, including
26 but not limited to, all income derived from incentive pay, nondiscretionary
27 bonuses, and/or other forms of compensation.

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1 20. Plaintiff is informed and believes, and thereon alleges, that
2 Defendants knew or should have known that Plaintiff and class members were
3 entitled to receive at least minimum wages for compensation and that they were
4 not receiving at least minimum wages for work that was required to be done off-
5 the-clock. In violation of the California Labor Code, Plaintiff and class members
6 were not paid at least minimum wages for work done off-the-clock.

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

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

25 23. Plaintiff is informed and believes, and thereon alleges, that
26 Defendants knew or should have known that Plaintiff and class members were
27 entitled to receive complete and accurate wage statements in accordance with
28 California law. In violation of the California Labor Code, Plaintiff and class

1 members were not provided complete and accurate wage statements.

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

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

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

19 27. Plaintiff is informed and believes, and thereon alleges, that
20 Defendants knew or should have known that they were not permitted to compel
21 or coerce Plaintiff and class members to patronize their business in the purchase
22 of anything of value, but did in fact require Plaintiff and class members to
23 purchase various items, including jewelry and accessories, from Defendants.

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

1 29. Plaintiff is informed and believes, and thereon alleges, that
2 Defendants knew or should have known that Plaintiff and/or class members were
3 entitled to be paid reporting time pay when they reported to work for their
4 scheduled shift but were put to work for less than half of the regular schedule. In
5 violation of the California Labor Code, Defendants did not pay Plaintiff and/or
6 class members all reporting time pay due.

7 30. Plaintiff is informed and believes, and thereon alleges, that
8 Defendants knew or should have known that Plaintiff and/or class members were
9 entitled to be paid a split-shift premium when they returned to work for an
10 additional shift in the same day, after having been clocked out for more than an
11 hour.

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

18 32. Plaintiff is informed and believes, and thereon alleges, that at all
19 times herein mentioned, Defendants knew or should have known that Defendants
20 had a duty to provide Plaintiff and class members with written notice of the
21 material terms of their employment with Defendants as required by the
22 California Wage Theft Prevention Act, but willfully, knowingly, and
23 intentionally failed to do so.

24 33. Plaintiff is informed and believes, and thereon alleges, that at all
25 times herein mentioned, Defendants knew or should have known that they had a
26 duty to compensate Plaintiff and class members for all hours worked, and that
27 Defendants had the financial ability to pay such compensation, but willfully,
28 knowingly, and intentionally failed to do so, and falsely represented to Plaintiff

1 and class members that they were properly denied wages, all in order to increase
2 Defendants' profits.

3 **PAGA REPRESENTATIVE ALLEGATIONS**

4 34. At all times herein set forth, PAGA provides that any provision of
5 law under the Labor Code and applicable IWC Wage Order that provides for a
6 civil penalty to be assessed and collected by the LWDA for violations of the
7 California Labor Code and applicable IWC Wage Order may, as an alternative,
8 be recovered by aggrieved employees in a civil action brought on behalf of
9 themselves and other current or former employees pursuant to procedures
10 outlined in California Labor Code section 2699.3.

11 35. PAGA defines an "aggrieved employee" in Labor Code section
12 2699(c) as "any person who was employed by the alleged violator and against
13 whom one or more of the alleged violations was committed."

14 36. Plaintiff and other current and former employees of Defendants are
15 "aggrieved employees" as defined by Labor Code section 2699(c) in that they are
16 all Defendants' current or former employees and one or more of the alleged
17 violations were committed against them.

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

21 (a) The aggrieved employee or representative shall give written
22 notice by online filing with the LWDA and by certified mail
23 to the employer of the specific provisions of the California
24 Labor Code alleged to have been violated, including the facts
25 and theories to support the alleged violation.

26 (b) An aggrieved employee's notice filed with the LWDA
27 pursuant to 2699.3(a) and any employer response to that
28 notice shall be accompanied by a filing fee of seventy-five

dollars (\$75).

(c) The LWDA shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation (“LWDA’s Notice”) within sixty (60) calendar days of the postmark date of the aggrieved employee’s notice. Upon receipt of the LWDA Notice, or if no LWDA Notice is provided within sixty-five (65) calendar days of the postmark date of the aggrieved employee’s notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties.

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

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

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

(c) The employer may cure the alleged violation within thirty-three (33) calendar days of the postmark date of the notice sent by the aggrieved employee or representative. The

1 employer shall give written notice within that period of time
2 by certified mail to the aggrieved employee or representative
3 and by online filing with the LWDA if the alleged violation is
4 cured, including a description of actions taken, and no civil
5 action pursuant to Section 2699 may commence. If the
6 alleged violation is not cured within the 33-day period, the
7 aggrieved employee may commence a civil action pursuant to
8 Section 2699.

9 39. On May 5, 2020, Plaintiff provided written notice by online filing to
10 the LWDA and by Certified Mail to Defendants of the specific provisions of the
11 California Labor Code alleged to have been violated, including facts and theories
12 to support the alleged violations, in accordance with California Labor Code
13 section 2699.3. Plaintiff's written notice was accompanied with the applicable
14 filing fee of seventy-five dollars (\$75). The LWDA PAGA Administrator
15 confirmed receipt of Plaintiff's written notice and assigned Plaintiff PAGA Case
16 Number LWDA-CM-785539-20. A true and correct copy of Plaintiff's written
17 notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

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

22 41. Thus, Plaintiff has satisfied the administrative prerequisites under
23 California Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties
24 against Defendants for violations of California Labor Code sections 201, 202,
25 203, 204, 226(a), 226.7, 450, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197,
26 1197.1, 1198, 2802, and 2810.5.

27 42. Labor Code section 558(a) provides "[a]ny employer or other person
28 acting on behalf of an employer who violates, or causes to be violated, a section

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

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

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

16 45. Pursuant to PAGA, and in particular, California Labor Code
17 sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff,
18 acting in the public interest as a private attorney general, seeks assessment and
19 collection of civil penalties for herself, all other aggrieved employees, and the
20 State of California against Defendants for violations of California Labor Code
21 sections 201, 202, 203, 204, 226(a), 226.7, 450, 510, 512(a), 516, 1174(d),
22 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

23 **CLASS ACTION ALLEGATIONS**

24 46. Plaintiff brings this action on her own behalf, as well as on behalf of
25 each and all other persons similarly situated, and thus seeks class certification
26 under Rule 23 of the Federal Rules of Civil Procedure.

27 47. All claims alleged herein arise under California law for which
28 Plaintiff seeks relief authorized by California law.

1 48. Plaintiff's proposed class consists of and is defined as follows:

2 All persons who worked for Defendants as non-exempt,
3 hourly paid employees in California, at any time from
 September 22, 2018, until the date of trial ("Class").

4 49. Plaintiff's proposed subclass consists of and is defined as follows:

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

8 50. Members of the Class and Subclass are referred to herein as "class
9 members."

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

13 52. This action is brought and properly may be maintained as a class
14 action pursuant to the provisions of Federal Rules of Civil Procedure 23(a)(1)-(4)
15 and 23(b)(1), (b)(2) or (b)(3) and satisfies the requirements thereof.

16 53. According to Defendant's removal papers, there are at least 1,766
17 non-exempt, hourly paid employees working for Defendants across California
18 during the relevant period. Thus, it is reasonable to presume that the members of
19 the class are so numerous that joinder of all members is impracticable. The
20 disposition of their claims in a class action will provide substantial benefits to
21 the parties and the Court.

22 54. Plaintiff's claims are typical of those of the class members, because
23 Plaintiff suffered the violations set forth in this First Amended Complaint.

24 55. Plaintiff will adequately protect the interests of class members.
25 Plaintiff has no interests that are adverse to or conflict with class members and is
26 committed to the vigorous prosecution of this action. To that end, Plaintiff has
27 retained counsel who is competent and experienced in handling class actions on
28 behalf of employees.

1 56. A class action is superior to all other available methods for the fair
2 and efficient adjudication of this controversy since joinder of all members is
3 impracticable. Furthermore, as the amount suffered by individual class members
4 may be relatively small, the expense and burden of individual litigation make it
5 impossible for members of the Class to individually redress the wrongs done to
6 them. There will be no difficulty in the management of this case as a class
7 action.

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

- 11 (a) Whether Defendants required Plaintiff and class members to
12 work over eight (8) hours per day, over twelve (12) hours per
13 day, or over forty (40) hours per week and failed to pay all
14 legally required overtime compensation to Plaintiff and class
15 members;
- 16 (b) Whether Defendants failed to properly calculate the “regular
17 rate” of pay on which Plaintiff’s and class members’ overtime
18 rate of pay was based;
- 19 (c) Whether Defendants failed to pay Plaintiff and class members
20 at least minimum wages for all hours worked;
- 21 (d) Whether Defendants failed to provide Plaintiff and class
22 members with meal periods;
- 23 (e) Whether Defendants failed to authorize and permit Plaintiff
24 and class members to take rest periods;
- 25 (f) Whether Defendants provided Plaintiff and class members
26 with complete and accurate wage statements as required by
27 California Labor Code section 226(a);
- 28 (g) Whether Defendants maintained accurate payroll records as

- 1 required by California Labor Code section 1174(d);
- 2 (h) Whether Defendants failed to pay earned overtime wages,
- 3 minimum wages, and meal and rest period premiums due to
- 4 Plaintiff and class members upon their discharge;
- 5 (i) Whether Defendants failed timely to pay overtime wages,
- 6 minimum wages, and meal and rest period premiums to
- 7 Plaintiff and class members during their employment;
- 8 (j) Whether Defendants compelled and/or coerced Plaintiff and
- 9 class members to patronize their business;
- 10 (k) Whether Defendants failed to provide Plaintiff and class
- 11 members with suitable seating;
- 12 (l) Whether Defendants required Plaintiff and/or class members
- 13 to report to work, but failed to provide them with work or
- 14 provided them with less than half their scheduled day's work,
- 15 without properly compensating them as required by California
- 16 Code of Regulations, Title 8, section 11070, subsection 5;
- 17 (m) Whether Defendants required Plaintiff and/or class members
- 18 to return to work for an additional shift in the same day, after
- 19 having been clocked out for more than an hour, without
- 20 paying Plaintiff and/or class members an addition hour of pay
- 21 at the minimum wage as required by California Code of
- 22 Regulations, Title 8, section 11070(4)(C);
- 23 (n) Whether Defendants failed to reimburse Plaintiff and class
- 24 members for necessary and required business-related
- 25 expenditures and/or losses incurred by them in the scope of
- 26 their employment;
- 27 (o) Whether Defendants failed to provide written notice of
- 28 information material to Plaintiff's and class members'

employment with Defendants;

(p) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and

(q) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

FIRST CAUSE OF ACTION

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

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

59. 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.”

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

61. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and class members 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) for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

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

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

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

20 65. First, during the relevant time period, Defendants had a policy
21 and/or practice of discouraging and impeding Plaintiff and class members from
22 recording hours worked that were outside of their scheduled shifts in order to
23 limit the amount of overtime employees could accrue. On information and
24 belief, this limitation on overtime accrual was based on a company-wide policy
25 of staffing store locations strictly based on the labor hours or labor budget set by
26 corporate. This policy of limiting overtime, coupled with Defendants'
27 understaffing policy, as well as the assignment of strict deadlines and heavy
28 workloads (*see infra*), led Plaintiff and class members to work off-the-clock

1 before and after their scheduled shift times in order to complete their assigned
2 tasks. As a result of this restriction on overtime accrual, Defendants forced
3 Plaintiff and class members to perform work off-the-clock outside of their
4 scheduled shifts, such as unlocking the store and booting up the register prior to
5 clocking in; re-stocking inventory and making sales after clocking out;
6 performing closing shift duties after clocking out, including locking the store,
7 cleaning the store and taking out the trash, completing and reviewing logs, and
8 depositing money from the cash register at the bank; and responding to phone
9 calls and text messages from management on their personal cellular phones.
10 Defendants failed to track this time spent working before and after scheduled
11 shifts, and Plaintiff and class members received no or incomplete compensation
12 for this time.

13 66. Second, Defendants had, and continue to have, a loss prevention
14 policy requiring Plaintiff and class members to undergo security checks at the
15 end of their shifts before leaving the store premises. After clocking out at the
16 end of their shifts, Plaintiff and class members were required to wait off-the-
17 clock for a store Key Holder to become available to perform a security check
18 before they could leave, which could take 2-3 minutes per instance. As a result,
19 Plaintiff and class members were subject to Defendants' control until being
20 released by a store Key Holder performing the security check, but were not
21 compensated for this time.

22 67. Third, as stated, Defendants had, and continue to have, a company-
23 wide policy and/or practice of staffing their store locations strictly based on a
24 labor budget set by the corporate office. Defendants' use of a labor budget
25 resulted in chronic understaffing, such that there were too few employees on
26 duty to handle the heavy workload, which included sales goals and daily tasks to
27 be completed on a deadline, and provide uninterrupted meal period coverage. In
28 conjunction with understaffing their stores, Defendants had a requirement that a

1 managerial employee, such as a keyholder, be present in the store at all times and
2 prohibited managers from leaving the store premises unless another manager was
3 also on duty, resulting in a lack of meal period coverage for managerial
4 employees. At the same time, the labor budgets Defendants implemented did not
5 always allow for more than one manager to be on the schedule at all times. As a
6 result, Plaintiff and other managerial employees were sometimes the only
7 managers on duty, and were the only employees authorized to open and close the
8 store and grant or access certain permissions in Defendants' point-of-sale
9 system, including processing returns. Because managerial employees were
10 effectively prohibited from leaving Defendants' premises for meal periods
11 without coverage, and because there were too few employees and other managers
12 on duty to handle the workload and attend to customers, Plaintiff and class
13 members were denied uninterrupted 30-minute meal periods, and were required
14 to work through and/or to return early from meal periods.

15 68. Furthermore, Defendants had a company-wide practice of failing to
16 adhere to a schedule of meal periods, which further caused Plaintiff and class
17 members to not be relieved of their duties for compliant meal periods.
18 Moreover, Defendants had a company-wide policy and/or practice of requiring
19 that Plaintiff and class members respond to text messages and calls from
20 supervisors and management on their personal cellular phones, even during
21 unpaid meal periods. Thus, Plaintiff and class members suffered missed and/or
22 interrupted meal periods, work for which they were not paid. Finally, on
23 information and belief, because Defendants frowned upon employees accruing
24 meal period penalties, Defendants pressured Plaintiff and class members to clock
25 out for meal periods and/or adjusted employee time records to reflect compliant
26 meal periods, regardless of whether they had received a compliant meal period or
27 not, in order to strictly limit meal penalties that Defendants would otherwise
28 owe. Consequently, Plaintiff and class members performed work during meal

1 periods for which they were not paid.

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

11 70. Furthermore, Defendants did not pay Plaintiff and class members
12 the correct overtime rate for the recorded overtime hours that they generated. In
13 addition to an hourly wage, Defendants paid Plaintiff and class members
14 incentive pay, nondiscretionary bonuses, and/or other forms of remuneration.
15 However, in violation of the California Labor Code, Defendants failed to
16 incorporate all compensation, including but not limited to, all incentive pay,
17 nondiscretionary bonuses, and/or other forms of remuneration, into the
18 calculation of the regular rate of pay for purposes of calculating the overtime
19 wage rate. Therefore, during times when Plaintiff and class members worked
20 overtime and received these other forms of pay, Defendants failed to pay all
21 overtime wages by paying a lower overtime rate than required.

22 71. Specifically, Defendants paid Plaintiff and class members
23 nondiscretionary bonuses or incentive pay for reaching certain volume-based
24 goals, such as product sales or ear piercing, on a monthly or quarterly basis. On
25 information and belief, these nondiscretionary bonuses and/or incentive pay were
26 listed on Plaintiff's and class members' wage statements as "Bonus" and "Contst
27 Non Cash." During pay periods that Plaintiff and class members were paid
28 overtime wages, Defendants failed to incorporate the nondiscretionary bonus

1 and/or incentive pay into Plaintiff's and class members' regular rate of pay and,
2 as a result, paid them at incorrect and lower rates of pay for overtime hours
3 worked. Specifically, Defendants paid Plaintiff and class members 1.5 times
4 their hourly rate of pay instead of 1.5 times their regular rate of pay.
5 Defendants' failure to properly calculate the overtime rates of pay based on all
6 remuneration paid has resulted in an underpayment of overtime wages to
7 Plaintiff and class members on a company-wide basis.

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

13 **SECOND CAUSE OF ACTION**

14 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and**
15 **1198—Unpaid Minimum Wages**
16 **(Against all Defendants)**

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

19 74. At all relevant times, California Labor Code sections 1182.12, 1194,
20 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by
21 the IWC is the minimum wage to be paid to employees, and the payment of a
22 wage less than the minimum so fixed is unlawful. Compensable work time is
23 defined in Wage Order No. 7 as "the time during which an employee is subject to
24 the control of an employer, and includes all the time the employee is suffered or
25 permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, §
26 11070(2)(G) (defining "Hours Worked").

27 75. As stated, as a result of Defendants' policy of limiting the amount of
28 overtime employees could accrue by discouraging and impeding Plaintiff and

1 class members from recording hours worked that were outside of their scheduled
2 shifts, Plaintiff and class members were forced to work off-the-clock before and
3 after their scheduled shift start and end times to complete their assigned job
4 duties. Furthermore, Plaintiff and class members were required to work off-the-
5 clock undergoing security checks and performing other work-related tasks, such
6 as unlocking the store and booting up the register prior to clocking in; re-
7 stocking inventory and making sales after clocking out; performing closing shift
8 duties after clocking out; and responding to work-related phone calls and text
9 messages on their personal cellular phones.

10 76. As also stated, due to Defendants' policy and/or practice of
11 understaffing while assigning heavy workloads and strict deadlines, failure to
12 adhere to a schedule of meal periods, and subsequent lack of meal period
13 coverage, Plaintiff and class members were forced to forego meal periods, have
14 their meal periods interrupted, and/or were otherwise not relieved of all duties
15 during meal periods. In conjunction with understaffing their stores and failing to
16 adhere to a schedule of meal periods, Defendants had a requirement that a
17 managerial employee be present in the store premises at all times, which
18 exacerbated the lack of meal period coverage.

19 77. Defendants did not pay minimum wages for off-the-clock hours that
20 Plaintiff and class members worked through that qualified for overtime premium
21 payment. To the extent that these off-the-clock hours did not qualify for
22 overtime premium payment, Defendants did not pay at least minimum wages for
23 those hours worked off-the-clock in violation of California Labor Code sections
24 1182.12, 1194, 1197, 1197.1, and 1198.

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

1 wages unlawfully unpaid and interest thereon.

2 **THIRD CAUSE OF ACTION**

3 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal**
4 **Period Violations**
5 **(Against all Defendants)**

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

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

17 81. At all relevant times herein set forth, California Labor Code sections
18 226.7, 512(a), 516, and 1198 provide that no employer shall require an employee
19 to work during any meal period mandated by an applicable order of the IWC.

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

28 83. During the relevant time period, Defendants had, and continue to

1 have, a company-wide policy and/or practice of understaffing locations due to
2 labor budgeting, which resulted in a lack of meal period coverage and prevented
3 Plaintiff and class members from taking all timely, uninterrupted meal periods to
4 which they were entitled. In conjunction with understaffing their stores, as
5 stated above, Defendants had a requirement that a managerial employee be
6 present on the store premises at all times, but Defendants' labor budgets did not
7 always allow for more than one manager to be on the schedule at all times. As a
8 result, Plaintiff and other managerial employees were sometimes the only
9 managers on duty, and would have their meal periods interrupted or would work
10 through them in order to assist their coworkers and customers. Moreover, as
11 stated previously, Defendants had a company-wide policy and/or practice of
12 requiring that Plaintiff and class members respond to text messages and calls
13 from supervisors and management on their personal cellular phones, even during
14 unpaid meal periods. Consequently, Plaintiff and class members suffered missed
15 and/or interrupted meal periods, work for which they were not paid.

16 84. As also stated above, Defendants had a company-wide practice of
17 failing to adhere to a schedule of meal periods, which further caused Plaintiff
18 and class members to not be relieved of their duties for compliant meal periods.
19 Furthermore, on information and belief, because Defendants frowned upon
20 employees accruing meal period penalties, Defendants' management would
21 adjust Plaintiff's and class members' time records and/or pressured employees to
22 clock out for meal periods to reflect compliant meal periods, regardless of
23 whether they had received a compliant meal period or not, in order to strictly
24 limit meal penalties that would need to be paid by Defendants.

25 85. Defendants' practice of labor budgeting, resultant understaffing, and
26 lack of adequate meal period coverage prevented Plaintiff and class members
27 from taking all compliant meal periods to which they were entitled. As a result,
28 Plaintiff and class members would be forced to work in excess of five (5) hours

1 before taking a meal period and, at times, had their meal periods interrupted
2 and/or had to forgo their meal periods altogether. For example, Plaintiff had to
3 wait five (5) hours or more into her shifts to take a meal period, due to a lack of
4 coverage resulting from understaffing and being the only managerial employee
5 scheduled to work. As a further example, when Plaintiff was able to take meal
6 periods, she was unable to leave the premises, and other employees interrupted
7 her meal periods to ask questions regarding work-related issues.

8 86. Additionally, Defendants did not provide Plaintiff and class
9 members with second 30-minute meal periods on days that they worked in
10 excess of ten (10) hours in one day. During her employment, Plaintiff worked a
11 shift in excess of ten (10) or more hours per day, but was not provided a second
12 30-minute meal period. Plaintiff and class members did not sign valid meal
13 period waivers on days that they were entitled to meal periods and were not
14 relieved of all duties.

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

21 88. Moreover, Defendants engaged in a company-wide practice and/or
22 policy of not paying all meal period premiums owed when compliant meal
23 periods are not provided. Because of Defendants' practices and/or policies,
24 Plaintiff and class members have not received premium pay for all missed, late,
25 and interrupted meal periods. Alternatively, to the extent that Defendants did
26 pay Plaintiff and class members premium pay for missed, late, and interrupted
27 meal periods, Defendants did not pay Plaintiff and class members at the correct
28 rate of pay for premium wages because Defendants systematically failed to

1 include all forms of compensation, such as incentive pay, nondiscretionary
2 bonuses, and/or other forms of remuneration, in the regular rate of pay. As a
3 result, Defendants failed to provide Plaintiff and class members compliant meal
4 periods in violation of California Labor Code sections 226.7, 512, and 516 and
5 failed to pay the full meal period premiums due.

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

11 **FOURTH CAUSE OF ACTION**

12 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period**

13 **Violations**

14 **(Against all Defendants)**

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

17 91. At all relevant times herein set forth, the applicable IWC Wage
18 Order and California Labor Code sections 226.7, 516, and 1198 were applicable
19 to Plaintiff and class members' employment by Defendants.

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

26 93. At all relevant times, California Labor Code section 226.7 provides
27 that no employer shall require an employee to work during any rest period
28 mandated by an applicable order of the California IWC. To comply with its

1 obligation to authorize and permit rest periods under California Labor Code
2 section 226.7 and the applicable IWC Wage Order, an employer must “relinquish
3 any control over how employees spend their break time, and relieve their
4 employees of all duties — including the obligation that an employee remain on
5 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security*
6 *Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC
7 Wage Order and California Labor Code section 226.7(b), Plaintiff and class
8 members are entitled to recover from Defendants one (1) additional hour of pay
9 at their regular rates of pay for each work day that a required rest period was not
10 authorized and permitted.

11 94. During the relevant time period, Defendants regularly failed to
12 authorize and permit Plaintiff and class members to take a ten (10) minute rest
13 period per each four (4) hour period worked or major fraction thereof. As with
14 meal periods, Defendants’ company-wide practices, including assigning heavy
15 workloads and understaffing, prevented Plaintiff and class members from being
16 relieved of all duty to take their rest periods. Additionally, Defendants failed to
17 schedule rest periods, which, coupled with Defendants’ failure to provide
18 adequate rest period coverage, further led to Plaintiff and class members not
19 being authorized and permitted to take compliant rest periods. Moreover,
20 Plaintiff and class members were expected to respond to their personal cellular
21 phones at all times, including during rest periods.

22 95. Furthermore, upon information and belief, as stated, Defendants
23 prohibited Plaintiff and class members from leaving the premises during their
24 rest periods if they were the only managers/supervisors on schedule. Because
25 Plaintiff and class members were restricted from leaving the premises during rest
26 periods, they were denied the ability to use their rest periods freely for their own
27 purposes. Thus, Defendants effectively maintained control over Plaintiff and
28 class members during rest periods.

1 96. As a result of Defendants' practices and policies, Plaintiff and class
2 members worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
3 excess of 10 hours without receiving all uninterrupted 10-minute rest periods to
4 which they were entitled. For example, during her employment, Plaintiff missed
5 her rest periods due to understaffing and the lack of coverage for rest periods.

6 97. Defendants have also engaged in a systematic, company-wide
7 practice and/or policy of not paying rest period premiums owed when rest
8 periods are not authorized and permitted. Alternatively, to the extent that
9 Defendants did pay Plaintiff and class members one (1) additional hour of
10 premium pay for missed rest periods, Defendants did not pay Plaintiff and class
11 members at the correct rate of pay for premium wages because Defendants failed
12 to include all forms of compensation, such as incentive pay, nondiscretionary
13 bonuses, and/or other forms of remuneration, in the regular rate of pay. As a
14 result, Defendants denied Plaintiff and class members rest periods and failed to
15 pay them rest period premium wages due, in violation of Labor Code section
16 226.7, 516, and the applicable IWC Wage Order.

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

22 **FIFTH CAUSE OF ACTION**

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

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

1 100. At all relevant times herein set forth, California Labor Code section
2 226(a) provides that every employer shall furnish each of his or her employees
3 an accurate and complete itemized wage statement in writing, including, but not
4 limited to, the name and address of the legal entity that is the employer, the
5 inclusive dates of the pay period, total hours worked, and all applicable rates of
6 pay.

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

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

26 103. Second, because Defendants did not calculate Plaintiff's and
27 Subclass members' regular rate of pay correctly for purposes of paying overtime,
28 Defendants did not list the correct amount of gross wages earned by Plaintiff and

1 Subclass members in compliance with section 226(a)(1). For the same reason,
2 Defendants failed to list the correct amount of net wages earned by Plaintiff and
3 Subclass members in violation of section 226(a)(5). Defendants also failed to
4 correctly list all applicable hourly rates in effect during the pay period, namely,
5 correct overtime rates of pay and correct rates of pay for premium wages, in
6 violation of section 226(a)(9).

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

16 105. California Labor Code section 1198 provides that the maximum
17 hours of work and the standard conditions of labor shall be those fixed by the
18 Labor Commissioner and as set forth in the applicable IWC Wage Orders.
19 Section 1198 further provides that “[t]he employment of any employees for
20 longer hours than those fixed by the order or under conditions of labor prohibited
21 by the order is unlawful.” Pursuant to the applicable IWC Wage Order,
22 employers are required to keep accurate time records showing when the
23 employee begins and ends each work period and meal period. During the
24 relevant time period, Defendants failed, on a company-wide basis, to keep
25 accurate records of work period and meal period start and stop times for Plaintiff
26 and class members, in violation of section 1198. As stated, Defendants engaged
27 in a company-wide practice and/or policy of falsifying Plaintiff’s and Subclass
28 members’ time records by automatically deducting meal periods or recording

1 that compliant meal periods were taken regardless of if or when meal periods
2 were actually taken, and thereby failed to keep accurate records of meal start and
3 end times for Plaintiff and Subclass members. Furthermore, in light of
4 Defendants' failure to provide Plaintiff and Subclass members with second 30-
5 minute meal periods to which they were entitled, Defendants kept no records of
6 meal start and end times for second meal periods.

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

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

23 **SIXTH CAUSE OF ACTION**

24 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely** 25 **Paid Upon Termination** 26 **(Against all Defendants)**

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

1 109. This cause of action is dependent upon, and wholly derivative of,
2 the overtime wages, minimum wages, and/or meal and rest period premium
3 wages that were not timely paid to Plaintiff and those class members no longer
4 employed by Defendants upon their termination.

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

13 111. On information and belief, Defendants had a company-wide practice
14 or policy of paying departing employees their final wages on the next regular pay
15 cycle, instead of adhering to the time requirements set forth in Labor Code
16 sections 201 and 202. For example, Plaintiff was terminated on or about January
17 17, 2020. However, Defendants did not provide Plaintiff with her final paycheck
18 for some of her last days worked until approximately one week later. Thus,
19 Defendants failed to pay Plaintiff her final wages immediately, in violation of
20 Labor Code section 201.

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

26 113. Defendants' failure to pay Plaintiff and class members who are no
27 longer employed by Defendants their wages earned and unpaid at the time of
28 discharge, or within seventy-two (72) hours of their leaving Defendants' employ,

1 violates Labor Code sections 201 and 202. Plaintiff and class members are
2 therefore entitled to recover from Defendants the statutory penalty wages for
3 each day they were not paid, at their regular rate of pay, up to a thirty (30) day
4 maximum pursuant to California Labor Code section 203.

5 **SEVENTH CAUSE OF ACTION**

6 **Violation of California Labor Code § 204—Failure to Timely Pay Wages**
7 **During Employment**
8 **(Against all Defendants)**

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

11 115. This cause of action is dependent upon, and wholly derivative of,
12 the overtime wages, minimum wages, and/or meal and rest period premium
13 wages, that were not timely paid to Plaintiff and those class members by
14 Defendants during their employment.

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

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

26 118. At all times relevant herein, Labor Code section 204 provides that
27 all wages earned for labor in excess of the normal work period shall be paid no
28 later than the payday for the next regular payroll period. Alternatively, at all

1 times relevant herein, Labor Code section 204 provides that the requirements of
2 this section are deemed satisfied by the payment of wages for weekly, biweekly,
3 or semimonthly payroll if the wages are paid not more than seven (7) calendar
4 days following the close of the payroll period.

5 119. During the relevant time period, Defendants willfully failed to pay
6 Plaintiff and class members all wages due including, but not limited to, overtime
7 wages, minimum wages, and meal and rest period premium wages, within the
8 time periods specified by California Labor Code section 204.

9 120. Defendants' failure to pay Plaintiff and class members all wages due
10 violates Labor Code section 204. Plaintiff and class members are therefore
11 entitled to recover from Defendants the statutory penalty wages pursuant to
12 California Labor Code section 210.

13 **EIGHTH CAUSE OF ACTION**

14 **Violation of California Labor Code § 2802—Unpaid Business-Related** 15 **Expenses** 16 **(Against all Defendants)**

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

19 122. At all times herein set forth, California Labor Code section 2802
20 provides that an employer must reimburse employees for all necessary
21 expenditures and losses incurred by the employee in the performance of his or
22 her job. The purpose of Labor Code section 2802 is to prevent employers from
23 passing off their cost of doing business and operating expenses on to their
24 employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137,
25 1144 (2014). The applicable wage order, IWC Wage Order 7-2001, provides
26 that: "[w]hen tools or equipment are required by the employer or are necessary to
27 the performance of a job, such tools and equipment shall be provided and
28 maintained by the employer, except that an employee whose wages are at least

1 two (2) times the minimum wage provided herein may be required to provide
2 and maintain hand tools and equipment customarily required by the trade or
3 craft.”

4 123. During the relevant time period, Defendants had a company-wide
5 policy of requiring Plaintiff and class members to utilize their own personal
6 cellular phones and cellular data to carry out their job duties, but Defendants
7 failed to reimburse them for the costs of their work-related cellular phone
8 expenses. Plaintiff and class members were required to use their personal
9 cellular phones to complete their work-related tasks, such as discussing requests
10 from management and work assignments. Plaintiff would spend approximately
11 one (1) hour per week texting or speaking with her supervisors. Although
12 Defendants required Plaintiff and class members to utilize their personal cellular
13 phones to carry out their work-related responsibilities, Defendants failed to fully
14 reimburse them for this cost.

15 124. Additionally, during the relevant time period, Defendants had a
16 company-wide policy requiring Plaintiff and class members to wear
17 approximately \$150.00 worth of Defendants’ merchandise as a “uniform” while
18 working and thus incur expenses in doing so. Plaintiff and class members were
19 required to purchase uniform items, including jewelry, purses, and other
20 accessories, directly from Defendants and were not reimbursed for this cost.

21 125. Defendants could have provided Plaintiff and class members with
22 the actual tools for use on the job, such as company phones to be used for
23 fulfilling work-related tasks and uniform items, or Defendants could have
24 reimbursed employees for the costs of their cellular phone and uniform expenses.
25 Instead, Defendants passed these operating costs off onto Plaintiff and class
26 members. At all relevant times, Plaintiff did not earn at least two (2) times the
27 minimum wage.

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

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

9 **NINTH CAUSE OF ACTION**

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

11 **(Against all Defendants)**

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

14 129. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff
15 to recover civil penalties for the violation(s) of the Labor Code sections
16 enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor
17 Code sections 201, 202, 203, 204, 226(a), 226.7, 450, 510, 512(a), 1174(d),
18 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c) permits
19 aggrieved employees, including Plaintiff, to recover civil penalties for violations
20 of those Labor Code sections not found in section 2699.5, including sections
21 516, 1182.12, and 2810.5.

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

- 24 (a) Violation of Labor Code sections 510, 1198, and the
25 applicable IWC wage order for Defendants' failure to
26 compensate Plaintiff and other aggrieved employees with all
27 required overtime pay and failure to properly calculate the
28 overtime rates paid to Plaintiff and other aggrieved

employees, as alleged herein;

(b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198, and the applicable IWC wage order for Defendants' failure to compensate Plaintiff and other aggrieved employees with at least minimum wages for all hours worked, as alleged herein;

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

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

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

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

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

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

(i) Violation of California Labor Code section 450 for Defendants' compelling and/or coercing Plaintiff and other

1 aggrieved employees to patronize Defendants' business, as set
2 forth below;

3 (j) Violation of Labor Code section 1198 for failing to provide
4 suitable seating to Plaintiff and other aggrieved employees, as
5 set forth below;

6 (k) Violation of Labor Code section 1198 and the applicable IWC
7 wage order for failure to pay reporting time pay when other
8 aggrieved employees were put to work for less than half of
9 their regular scheduled shifts, as set forth below;

10 (l) Failing to pay other aggrieved employees a split-shift
11 premium wage of an additional hour of pay at the minimum
12 wage, when they returned to work for an additional shift in
13 the same day, after having been clocked out for more than an
14 hour, in violation of California Labor Code section 1198 and
15 the application IWC Order, as set forth below;

16 (m) Violation of Labor Code section 2802 for failure to reimburse
17 Plaintiff and other aggrieved employees for all business
18 expenses necessarily incurred, as alleged herein; and

19 (n) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for
20 failure to provide written notice of information material to
21 Plaintiff's and other aggrieved employees' employment with
22 Defendants, as set forth below.

23 131. California Labor Code section 450 provides that an employer may
24 not "compel or coerce any employee, or applicant for employment, to patronize
25 his or her employer, or any other person, in the purchase of anything of value."
26 An employer violates section 450 by forcing an employee to patronize the
27 employer's business in the purchase of a company-provided good.

28 //

1 132. During the relevant time period, Defendants had a company-wide
2 policy of requiring all employees to purchase uniform items, such as jewelry,
3 purses, and other accessories, directly from Defendants' stores. During her
4 employment, Plaintiff was required to purchase multiple accessory items from
5 Defendants in order to wear as a "uniform" during her shifts.

6 133. Defendants' conduct of compelling and/or coercing Plaintiff and
7 other aggrieved employees to purchase goods from them is in violation of
8 California Labor Code section 450. Plaintiff and other aggrieved employees are
9 entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and
10 (g).

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

17 135. California Code of Regulations, Title 8, section 11070(14)(A)
18 provides that "[a]ll working employees shall be provided with suitable seats
19 when the nature of the work reasonably permits the use of seats."

20 136. Plaintiff alleges that Defendants' California retail store are generally
21 similar in their layout and design and there is space behind cash wraps to allow
22 for the presence and use of a seat or stool by Plaintiff and other aggrieved
23 employees during the performance of their work duties. Defendants could have
24 provided Plaintiff and other aggrieved employees with a seat or stool at their
25 cash wraps, with reasonable or no modification to these work areas, but instead
26 denies employees seating and forces Plaintiff and other aggrieved employees to
27 stand throughout the day.

28 ///

1 137. Plaintiff and other aggrieved employees have spent a substantial
2 portion of their day at or behind these cash wraps. The nature of the work of an
3 employee performing cashier duties can reasonably be accomplished from a
4 seated position. However, Defendants systematically, and on a company-wide
5 basis, did not provide seats or stools at or near the cash wraps, forcing Plaintiff
6 and other aggrieved employees to stand throughout their work shifts.

7 138. During the relevant time period, Defendants violated California
8 Labor Code section 1198 and California Code of Regulations, Title 8, section
9 11070(14)(A), because Plaintiff and other aggrieved employees were not allowed
10 to sit, even when the nature of their work would reasonably permit the use of
11 seats, nor were they provided with suitable seats.

12 139. A substantial portion of Plaintiff's and other aggrieved employees'
13 duties were performed from and connected to cash wraps and could have been
14 performed from a seated position. For example, Plaintiff and other aggrieved
15 employees could have performed their cashier duties, while seated without
16 interference to their ability to complete these duties.

17 140. Defendants could have placed seats or stools near each cash wrap
18 for use by Plaintiff and other aggrieved employees with reasonable or no
19 modification to these work areas. However, on a company-wide basis,
20 Defendants did not provide seats or stools at their cash wraps. Defendants'
21 management did not inform Plaintiff and other aggrieved employees that they
22 were allowed to sit down, provide any means for them to sit down, or mention
23 any policy regarding sitting.

24 141. As a result of Defendants' company-wide policy and/or practice
25 prohibiting employees from sitting during their shifts and failure to provide
26 suitable seating to these employees, Plaintiff and other aggrieved employees
27 were forced to stand during shifts and denied seats. Defendants' failure to
28 provide suitable seating to Plaintiff and other aggrieved employees violated and

1 continues to violate California Labor Code section 1198 and IWC Wage Order 7-
2 2001, Section 14(A). Plaintiff and other aggrieved employees are therefore
3 entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f),
4 and (g).

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

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

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

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

1 though the layout of Defendants’ workplaces could accommodate seats or stools
2 with reasonable or no modification to these work areas, Defendants have, on a
3 company-wide basis, denied Plaintiff and other aggrieved employees suitable
4 seating altogether.

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

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

21 148. California Code of Regulations, Title 8, section 11070(5)(A)
22 provides that “[e]ach workday an employee is required to report for work and
23 does report, but is not put to work or is furnished less than half said employee’s
24 usual or scheduled day’s work, the employee shall be paid for half the usual or
25 scheduled day’s work, but in no event for less than two (2) hours nor more than
26 four (4) hours, at the employee’s regular rate of pay, which shall not be less than
27 the minimum wage.” The “primary purpose of the reporting time regulation” is
28 “to guarantee at least partial compensation for employees who report to work

1 expecting to work a specified number of hours, and who are deprived of that
2 amount because of inadequate scheduling or lack of proper notice by the
3 employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012)

4 149. During the relevant time period, Defendants violated California
5 Labor Code section 1198 and California Code of Regulations, Title 8, section
6 11070(5), because Defendants failed to pay other aggrieved employees reporting
7 time pay when they reported to work for their scheduled shift but were put to
8 work for less than half of the regularly scheduled day’s work.

9 150. Defendants failed to pay other aggrieved employees reporting time
10 pay when they presented themselves ready for work by waiting “on-call” and
11 awaiting instructions on whether to show up at the store and work a scheduled
12 shift, but ultimately were not called. Defendants did not pay other aggrieved
13 employees for at least half of their scheduled day’s work when they were subject
14 to Defendants’ on-call policy and were not called or told not to come into the
15 store. For example, other aggrieved employees waited at home throughout the
16 duration of their on-call shift, as instructed by Defendants’ supervisors, but were
17 sometimes not called or told that the store did not need them to work. When this
18 occurred, Defendants did not pay them for at least half of their scheduled
19 standby time or the required minimum reporting time pay. Accordingly, other
20 aggrieved employees were not properly compensated with reporting time pay in
21 violation of California Labor Code section 1198.

22 151. Other aggrieved employees are therefore entitled to recover civil
23 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

24 152. At all times relevant herein, Labor Code section 1198 provides that
25 no employer may employ an employee under conditions of labor that are
26 prohibited by the applicable IWC wage order. California Code of Regulations,
27 Title 8, section 11070(4)(C) provides that, “When an employee works a split
28 shift, one (1) hour’s pay at the minimum wage shall be paid in addition to the

1 minimum wage for that workday, except when the employee resides at the place
2 of employment.” Other aggrieved employees did not reside at Defendants’ retail
3 locations. California Code of Regulations, Title 8, defines a split shift as “a
4 work schedule, which is interrupted by non-paid non-working periods
5 established by the employer, other than bona fide rest or meal periods.”

6 153. Defendants violated California Labor Code section 1198 and
7 California Code of Regulations, Title 8, section 11070(4)(C), because
8 Defendants failed to pay other aggrieved employees a split-shift premium when
9 they returned to work for an additional shift in the same day, after having been
10 clocked out for more than an hour.

11 154. For instance, Defendants sometimes scheduled other aggrieved
12 employees to work double shifts separated by more than one (1) hour of time,
13 such as a morning shift separated by a midday break, and then an afternoon shift,
14 but failed to pay them one (1) additional hour’s pay at minimum wage in
15 addition to the minimum wage for that day. Defendants would also schedule
16 other aggrieved employees to attend team meetings and then require them to
17 report to work for their scheduled shifts several hours after the meeting’s
18 conclusion. When this occurred, Defendants did not always pay other aggrieved
19 employees an additional hour at minimum wage.

20 155. Accordingly, Defendants required other aggrieved employees to
21 work split shifts but failed to pay them the split-shift premium wage in violation
22 of California Labor Code section 1198. Defendants’ failure to compensate other
23 aggrieved employees with split-shift pay when they returned to work for an
24 additional shift in the same day, after having been clocked out for more than an
25 hour, violates California Labor Code section 1198. Other aggrieved employees
26 are therefore entitled to recover civil penalties pursuant to Labor Code sections
27 2699(a), (f), and (g).

28 ///

156. California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees containing basic and material payroll information, including, among other things, the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Labor Code section 2810.5(a)(1)(A)-(C).

157. During the relevant time period, Defendants failed to provide Plaintiff and other aggrieved employees with written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure to provide Plaintiff and other aggrieved employees with written notice of basic information regarding their employment with Defendants is in violation of Labor Code section 2810.5. Plaintiff and other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

TENTH CAUSE OF ACTION

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

Unlawful Business Practices

(Against all Defendants)

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

159. Defendants are "persons" as defined by California Business & Professions Code sections 17201, as they are corporations, firms, partnerships,

1 joint stock companies, and/or associations.

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

8 161. Defendants' activities, as alleged herein, are violations of California
9 law, and constitute unlawful business acts and practices in violation of California
10 Business & Professions Code sections 17200, *et seq.*

11 162. A violation of California Business & Professions Code sections
12 17200, *et seq.* may be predicated on the violation of any state or federal law. In
13 the instant case, Defendants' policies and practices have violated state law in at
14 least the following respects:

- 15 (a) Requiring non-exempt, hourly paid employees, including
16 Plaintiff and class members, to work overtime without paying
17 them proper compensation in violation of California Labor
18 Code sections 510 and 1198 and the applicable IWC Order,
19 and paying Plaintiff and class members overtime at a lower
20 rate than required by law by failing to properly calculate the
21 regular rate of pay for purposes of overtime, as alleged herein;
- 22 (b) Failing to pay at least minimum wage to Plaintiff and class
23 members in violation of California Labor Code sections
24 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable
25 IWC Order, as alleged herein;
- 26 (c) Failing to provide uninterrupted meal periods to Plaintiff and
27 class members in violation of California Labor Code sections
28 226.7, 512(a), 516, 1198, and the applicable IWC Order, as

1 alleged herein;

2 (d) Failing to authorize and permit Plaintiff and class members to
3 take uninterrupted rest periods in violation of California
4 Labor Code sections 226.7, 516, 1198, and the applicable
5 IWC Order, as alleged herein;

6 (e) Failing to provide Plaintiff and class members with accurate
7 wage statements and failing to maintain accurate payroll
8 records in violation of California Labor Code sections 226(a),
9 1174(d), 1198, and the applicable IWC Order, as alleged
10 herein;

11 (f) Failing timely to pay all earned wages to Plaintiff and class
12 members in violation of California Labor Code section 204
13 and the applicable IWC Order, as alleged herein;

14 (g) Compelling and/or coercing Plaintiff and class members to
15 patronize Defendants' business in violation of California
16 Labor Code section 450, as set forth below;

17 (h) Failing to reimburse Plaintiff and class members for all
18 business expenses necessarily incurred in violation of
19 California Labor Code sections 2802, as alleged herein; and

20 (i) Failing to provide written notice of information material to
21 Plaintiff's and class members' employment with Defendants
22 in violation of Labor Code section 2810.5(a)(1)(A)-(C), as set
23 forth below.

24 163. At all relevant times herein, California Labor Code section 450
25 provides that an employer may not "compel or coerce any employee, or applicant
26 for employment, to patronize his or her employer, or any other person, in the
27 purchase of anything of value." An employer violates section 450 by forcing an
28 employee to patronize the employer's business in the purchase of a company-

1 provided good.

2 164. During the relevant time period, Defendants had a company-wide
3 policy of requiring all employees to purchase uniform items, such as jewelry,
4 purses, and other accessories, directly from Defendants' stores. During her
5 employment, Plaintiff was required to purchase multiple accessory items from
6 Defendants in order to wear as a "uniform" during her shifts.

7 165. Defendants' conduct of compelling and/or coercing Plaintiff and
8 class members to purchase goods from them violates California Labor Code
9 section 450.

10 166. At all relevant times herein, California's Wage Theft Prevention Act
11 was enacted to ensure that employers provide employees with basic information
12 material to their employment relationship at the time of hiring, and to ensure that
13 employees are given written and timely notice of any changes to basic
14 information material to their employment. Codified at California Labor Code
15 section 2810.5, the Wage Theft Prevention Act provides that at the time of
16 hiring, an employer must provide written notice to employees containing basic
17 and material payroll information, including, among other things, the rate(s) of
18 pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece,
19 commission, or otherwise, including any rates for overtime, the regular payday
20 designated by the employer, and any allowances claims as part of the minimum
21 wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-(C).

22 167. At all relevant times, on information and belief, Defendants failed,
23 on a company-wide basis, to provide written notice to Plaintiff and class
24 members that lists the requisite information set forth in Labor Code section
25 2810.5(a)(1)(A)-(C). Defendants' failure to provide Plaintiff and class members
26 with written notice of basic information regarding their employment with
27 Defendants is in violation of Labor Code section 2810.5.

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1 168. As a result of the violations of California law herein described,
2 Defendants unlawfully gained an unfair advantage over other businesses.
3 Plaintiff and class members have suffered pecuniary loss by Defendants'
4 unlawful business acts and practices alleged herein.

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

12 **ELEVENTH CAUSE OF ACTION**

13 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**
14 **Unfair Business Practices**
15 **(Against all Defendants)**

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

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

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

26 173. Defendants' activities, namely Defendants' company-wide practice
27 and/or policy of not paying Plaintiff and class members all meal and rest period
28 premium wages due to them under Labor Code section 226.7, deprived Plaintiff

1 and class members of the compensation guarantee and enhanced enforcement
2 implemented by section 226.7. The statutory remedy provided by section 226.7
3 is a “‘dual-purpose’ remedy intended primarily to compensate employees, and
4 secondarily to shape employer conduct. *Safeway, Inc. v. Superior Court*, 238
5 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were
6 guaranteed to Plaintiff and class members as part of their employment with
7 Defendants, and thus Defendants’ practice and/or policy of denying these
8 statutory benefits constitutes an unfair business practice in violation of California
9 Business & Professions Code sections 17200, *et seq.* (Id.)

10 174. A violation of California Business & Professions Code sections
11 17200, *et seq.* may be predicated on any unfair business practice. In the instant
12 case, Defendants’ policies and practices have violated the spirit of California’s
13 meal and rest break laws and constitute acts against the public policy behind
14 these laws.

15 175. Pursuant to California Business & Professions Code sections 17200
16 *et seq.*, Plaintiff and class members are entitled to restitution for the class-wide
17 loss of the statutory benefits implemented by section 226.7 withheld and retained
18 by Defendants during a period that commences four years prior to the filing of
19 this complaint; a permanent injunction requiring Defendants to pay all statutory
20 benefits implemented by section 226.7 due to Plaintiff and class members; an
21 award of attorneys’ fees pursuant to California Code of Civil Procedure section
22 1021.5 and other applicable laws; and an award of costs.

23 **REQUEST FOR JURY TRIAL**

24 Plaintiff requests a trial by jury.

25 **PRAYER FOR RELIEF**

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

28 ///

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

5 **Class Certification**

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

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

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

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

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

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

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

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

21 9. For such other and further relief as the Court may deem equitable
22 and appropriate.

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

24 10. That the Court declare, adjudge and decree that Defendants violated
25 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 by
26 willfully failing to pay minimum wages to Plaintiff and class members;

27 11. For general unpaid wages and such general and special damages as
28 may be appropriate;

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

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

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

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

As to the Third Cause of Action

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

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

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

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

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

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

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

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198 and applicable IWC Wage

1 Orders by willfully failing to authorize and permit Plaintiff and class members to
2 take all rest periods;

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

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

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

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

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

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

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

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

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

22 32. For injunctive relief pursuant to California Labor Code section
23 226(h);

24 33. For statutory penalties pursuant to California Labor Code section
25 226(e);

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

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

1 and appropriate.

2 **As to the Sixth Cause of Action**

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

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

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

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

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

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

18 **As to the Seventh Cause of Action**

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

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

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

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

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

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

5 **As to the Eighth Cause of Action**

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

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

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

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

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

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

20 **As to the Ninth Cause of Action**

21 54. That the Court declare, adjudge and decree that Defendants violated
22 the following California Labor Code provisions as to Plaintiff and/or other
23 aggrieved employees: 510 and 1198 (by failing to pay all overtime
24 compensation); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least
25 minimum wages for all hours worked); 226.7, 512, 516, and 1198 (by failing to
26 provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
27 permit all rest periods); 226(a), 1174(d) and 1198 (by failing to provide accurate
28 wage statements and maintain accurate payroll records); 201, 202, 203 (by

1 failing timely to pay all earned wages upon termination); 204 (by failing timely
2 to pay all earned wages during employment); 450 (by compelling and/or
3 coercing employees to patronize employer's business); 1198 (by failing to
4 provide suitable seating); 1198 (by failing to provide reporting time pay); 1198
5 (by failing to provide split-shift pay); 2802 (by failing to reimburse business
6 expenses); and 2810.5 (by failing to provide written notice of information
7 material to employment);

8 55. For civil penalties pursuant to California Labor Code sections 210,
9 226.3, 256, 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of
10 California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 450, 510,
11 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

12 56. For attorneys' fees and costs pursuant to California Labor Code
13 section 2699(g)(1), and any and all other relevant statutes, for Defendant's
14 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7,
15 450, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and
16 2810.5;

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

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

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

22 59. That the Court declare, adjudge and decree that Defendants' conduct
23 of failing to provide Plaintiff and class members all overtime wages due to them,
24 failing to provide Plaintiff and class members all minimum wages due to them,
25 failing to provide Plaintiff and class members all meal periods, failing to
26 authorize and permit Plaintiff and class members to take all rest periods, failing
27 to provide Plaintiff and class members accurate and complete wage statements,
28 failing to maintain accurate payroll records for Plaintiff and class members,

1 failing timely to pay Plaintiff and class members all earned wages during
2 employment, compelling and/or coercing Plaintiff and class members to
3 patronize Defendants' business, failing to reimburse Plaintiff and class members
4 for business-related expenses, and failing to provide written notice of
5 information material to employment, constitutes an unlawful business practice in
6 violation of California Business and Professions Code sections 17200, *et seq.*;

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

9 61. For the appointment of a receiver to receive, manage and distribute
10 any and all funds disgorged from Defendants and determined to have been
11 wrongfully acquired by Defendants as a result of violations of California
12 Business & Professions Code sections 17200 *et seq.*;

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

15 63. For such other and further relief as the Court may deem equitable
16 and appropriate.

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

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

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

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

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

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

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

7
8 Dated: July 17, 2020

Respectfully submitted,

9 Capstone Law APC

10
11 By: 

12 Bevin Allen Pike
13 Orlando Villalba
14 Joseph Hakakian

15 Attorneys for Plaintiff Sherice Duncan
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EXHIBIT “1”



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

JAMIE R. GREENE
310.556.4165 Direct
Jamie.Greene@capstonelawyers.com

May 5, 2020

VIA U.S. CERTIFIED MAIL

Department of Industrial Relations
Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

Subject: LWDA-CM-785539-20 - Filing Fee for 05.05.20 Notice
Sherice Duncan v. Claire's Boutiques, Inc.

To Whom It May Concern:

On May 5, 2020, our office submitted a written PAGA Claim Notice via online submission to the Labor and Workforce Development Agency's PAGA Filing portal located at <https://dir.tfaforms.net/266>. Enclosed please find the filing fee, Check No. 7312, for the LWDA Notice with the subject line "Sherice Duncan v. Claire's Boutiques, Inc."

Also enclosed is a copy of the LWDA Notice for reference. Please contact me if you have any questions. You can reach me on my direct line at (310) 556-4165.

Best Regards,

A handwritten signature in black ink, appearing to read "J. Greene".

Jamie R. Greene

Enclosures (2)

BANK OF AMERICA, NA
11-035/1210

7312

Capstone Law
1875 Century Park East, Suite 1000
Los Angeles, CA 90067

03/13/2020

PAY TO THE
ORDER OF LWDA

\$ **75.00

Seventy-five and 00/100*****

DOLLARS

PROTECTED AGAINST FRAUD

LWDA
Dept. of Industrial Relations, Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102



Refallu

MEMO Sherice Duncan v. Claire's Boutiques, Inc.

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Capstone Law APC

7312

03/13/2020

LWDA Sherice Duncan v. Claire's Boutiques, Inc.

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Operating Account

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MAO SHIOKURA
310.712.8030 Direct
Mao.Shiokura@capstonelawyers.com

May 5, 2020

VIA ONLINE SUBMISSION

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

Subject: *Sherice Duncan v. Claire's Boutiques, Inc.*

Dear PAGA Administrator:

This office represents Sherice Duncan in connection with her claims under the California Labor Code. Ms. Duncan was an employee of CLAIRE'S BOUTIQUES, INC. ("CLAIRES").

The employer may be contacted directly at the address below:

CLAIRES BOUTIQUES, INC.
3 SW 129TH AVENUE
PEMBROKE PINES FL 33027

Ms. Duncan 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. Duncan seeks relief on behalf of herself, the State of California, and other persons who are or were employed by CLAIRES 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.

CLAIRES employed Ms. Duncan as an hourly paid, non-exempt employee from approximately October 2019 to January 2020. Ms. Duncan worked for CLAIRES as a Store Manager at the Claire's retail store in Elk Grove, California (Store #5522). During her employment, Ms. Duncan typically worked eight (8) hours or more per day and five (5) to six (6) days per week. At the time her employment ended, Ms. Duncan was compensated approximately \$25.00 per hour. Her job duties included, without limitation, merchandising the store, communicating the store's daily targets to employees, and ensuring that the store team met sales goals.

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

CLAIRES’ Company-Wide and Uniform Payroll and HR Practices

CLAIRES BOUTIQUES, INC. is a Colorado corporation and a specialty retailer of jewelry and accessories for young women, teens, tweens, and kids. CLAIRES operates more than 3,300 stores nationwide, including at least 107 retail locations in California. Upon information and belief, CLAIRES maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Pembroke Pines, Florida, for all non-exempt, hourly paid employees working for CLAIRES in California, including Ms. Duncan and other aggrieved employees. At all relevant times, CLAIRES issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Duncan and other aggrieved employees, regardless of its location or position.

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

CLAIRES willfully failed to pay all overtime wages owed to Ms. Duncan and other aggrieved employees. During the relevant time period, Ms. Duncan 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

¹ These facts, theories, and claims are based on Ms. Duncan’s experience and counsel’s review of those records currently available relating to Ms. Duncan’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. Duncan 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.

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, CLAIRE'S had a policy and/or practice of discouraging and impeding Ms. Duncan and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. On information and belief, this limitation on overtime accrual was based on a company-wide policy of staffing store locations strictly based on the labor hours or labor budget set by corporate. This policy of limiting overtime, coupled with CLAIRE'S' understaffing policy, as well as the assignment of strict deadlines and heavy workloads (*see infra*), led Ms. Duncan and other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete their assigned tasks. As a result of this restriction on overtime accrual, CLAIRE'S forced Ms. Duncan and other aggrieved employees to perform work off-the-clock outside of their scheduled shifts, such as unlocking the store and booting up the registers prior to clocking in; re-stocking inventory and making sales after clocking out; performing closing shift duties after clocking out, including locking the store, cleaning the store and taking out the trash, completing and reviewing logs, and depositing money from the cash register at the bank; and responding to phone calls and text messages from management on their personal cellular phones. CLAIRE'S failed to track this time spent working before and after scheduled shifts, and Ms. Duncan and other aggrieved employees received no or incomplete compensation for this time.

Second, CLAIRE'S had, and continues to have, a loss prevention policy requiring Ms. Duncan and other aggrieved employees to undergo security checks at the end of their shifts before leaving the store premises. After clocking out at the end of their shifts, Ms. Duncan and other aggrieved employees were required to wait off-the-clock for a store Key Holder to become available to perform a security check before they could leave, which could take 2-3 minutes per instance. As a result, Ms. Duncan and other aggrieved employees were subject to CLAIRE'S' control until being released by a store Key Holder performing the security check, but were not compensated for this time.

Third, during the relevant period, CLAIRE'S had, and continues to have, a company-wide policy and/or practice of failing to compensate other aggrieved employees for the time they spend donning or doffing required uniform items. During the relevant time period, CLAIRE'S had a company-wide policy requiring employees to wear approximately \$150.00 worth of CLAIRE'S' merchandise as a "uniform," such as jewelry, purses, and other accessories. If, at the end of a shift, they did not purchase the uniform items worn during their shifts, CLAIRE'S would not allow them to report time spent removing their uniform items, re-tagging all items worn, and re-shelving the items as hours worked, despite the employees being on CLAIRE'S' premises and under CLAIRE'S' control. As a result, other aggrieved employees were required to spend approximately 15 minutes removing their borrowed uniform items, re-tagging all items worn, and then re-shelving the items, after they clocked out. Thus, CLAIRE'S suffered and/or permitted other aggrieved employees to perform work for which they were not paid.

Fourth, during the relevant period, CLAIRE'S had a company-wide "call-in" policy, whereby it scheduled other aggrieved employees to work "on-call." These "on-call" shifts worked to CLAIRE'S' benefit and to the detriment of other aggrieved employees. By utilizing "on-call" shifts, CLAIRE'S received the benefit of being able to maximize revenue by having an "on-call" workforce they could choose to utilize or not, depending on store traffic and sales metrics, without incurring the cost of compensating employees who show up to work and work a full or partial scheduled day's work. When scheduled for a "call-in" or "on-call" shift, other aggrieved employees were required to

call in 30 minutes before their scheduled “standby” shift to see if they were required to come in and work. Other aggrieved employees were engaged to wait and could not engage in personal activities throughout the duration of their on-call shift, as they had to be ready to travel to their respective stores on short notice and work their on-call shift. When scheduled to be on-call for a standby shift, other aggrieved employees were controlled by CLAIREs because they were forced to put their lives on hold and could not use that time freely for their own purposes. For example, other aggrieved employees refrained from making plans altogether while “on-call” because they knew that they had to drop whatever they were doing at a moment’s notice if they were instructed to work their standby shift. CLAIREs did not pay other aggrieved employees for the time they spent waiting to hear whether they needed to report to their stores for work on days they ultimately were not called in. CLAIREs also did not compensate other aggrieved employees for the time they spent calling in to see if they were needed.

Fifth, as stated, CLAIREs had, and continues to have, a company-wide policy and/or practice of staffing its store locations strictly based on a labor budget set by the corporate office. CLAIREs’ use of a labor budget resulted in chronic understaffing, such that there were too few employees on duty to handle the heavy workload, which included sales goals and daily tasks to be completed on a deadline, and provide uninterrupted meal period coverage. In conjunction with understaffing its stores, CLAIREs had a requirement that a managerial employee, such as a Key Holder, be present in the store at all times and prohibited managers from leaving the store premises unless another manager was also on duty, resulting in a lack of meal period coverage for managerial employees. At the same time, the labor budgets CLAIREs implemented did not always allow for more than one manager to be on the schedule at all times. As a result, Ms. Duncan and other managerial employees were sometimes the only managers on duty, and were the only employees authorized to open and close the store and grant or access certain permissions in CLAIREs’ point-of-sale system, including processing returns. Because managerial employees were effectively prohibited from leaving CLAIREs’ premises for meal periods without coverage, and because there were too few employees and other managers on duty to handle the workload and attend to customers, Ms. Duncan and other aggrieved employees were denied uninterrupted 30-minute meal periods, and were required to work through and/or to return early from meal periods.

Furthermore, CLAIREs had a company-wide practice of failing to adhere to a schedule of meal periods, which further caused Ms. Duncan and other aggrieved employees to not be relieved of their duties for compliant meal periods. Moreover, CLAIREs had a company-wide policy and/or practice of requiring that Ms. Duncan and other aggrieved employees respond to text messages and calls from supervisors and management on their personal cellular phones, even during unpaid meal periods. Thus, Ms. Duncan and other aggrieved employees suffered missed and/or interrupted meal periods, work for which they were not paid. Finally, on information and belief, because CLAIREs frowned upon employees accruing meal period penalties, CLAIREs pressured Ms. Duncan and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that CLAIREs would otherwise owe. Consequently, Ms. Duncan and other aggrieved employees performed work during meal periods for which they were not paid.

CLAIREs knew or should have known that, as a result of these company-wide practices and/or policies, Ms. Duncan and other aggrieved employees were performing their assigned duties off-the-clock and during meal periods, and were suffered or permitted to perform work for which they were

not paid. CLAIRE'S also knew, or should have known, that it did not compensate Ms. Duncan and other aggrieved employees applicable overtime rates of pay for overtime hours that they worked. Because Ms. Duncan and other aggrieved employees regularly worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Ms. Duncan and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. CLAIRE'S' failure to pay Ms. Duncan and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

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

Specifically, CLAIRE'S paid Ms. Duncan and other aggrieved employees nondiscretionary bonuses or incentive pay for reaching certain volume-based goals, such as product sales or ear piercing, on a monthly or quarterly basis. On information and belief, these nondiscretionary bonuses and/or incentive pay were listed on Ms. Duncan's and other aggrieved employees' wage statements as "Bonus" and "Contst Non Cash." During pay periods that Ms. Duncan and other aggrieved employees were paid overtime wages, CLAIRE'S failed to incorporate the nondiscretionary bonus and/or incentive pay into Ms. Duncan's and 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, CLAIRE'S paid Ms. Duncan and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. CLAIRE'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. Duncan 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, as a result of CLAIRE'S' policy of limiting the amount of overtime employees could accrue by discouraging and impeding Ms. Duncan and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, Ms. Duncan and other aggrieved employees were forced to work off-the-clock before and after their scheduled shift start and end

times to complete their assigned job duties. Furthermore, Ms. Duncan and other aggrieved employees were required to work off-the-clock undergoing security checks and performing other work-related tasks, such as unlocking the store and booting up the registers prior to clocking in; restocking inventory and making sales after clocking out; performing closing shift duties after clocking out; and responding to work-related phone calls and text messages on their personal cellular phones.

Also, as stated, CLAIRES had a policy of failing to compensate other aggrieved employees for their time spent donning or doffing their required uniform items. Further, as stated above, CLAIRES systematically, and on a company-wide basis, required other aggrieved employees to work “on-call” shifts during which they had to put their lives on hold and were restricted from using that time freely for their own purposes. Even though other aggrieved employees were subject to CLAIRES’ control during an “on-call” shift, CLAIRES did not pay other aggrieved employees at least minimum wages for all hours that they were suffered or permitted to work.

Moreover, as also stated, due to CLAIRES’ policy and/or practice of understaffing while assigning heavy workloads and strict deadlines, failure to adhere to a schedule of meal periods, and subsequent lack of meal period coverage, Ms. Duncan and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods. In conjunction with understaffing its stores and failing to adhere to a schedule of meal periods, CLAIRES had a requirement that a managerial employee be present in the store premises at all times, which exacerbated the lack of meal period coverage.

Thus, CLAIRES 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, CLAIRES 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, CLAIRES regularly failed to pay at least minimum wages to Ms. Duncan 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. Duncan 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, CLAIRES had, and continues to have, a company-wide policy and/or practice of understaffing locations due to labor budgeting, which resulted in a lack of meal period coverage and prevented Ms. Duncan and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. In conjunction with understaffing its stores, as stated above, CLAIRES had a requirement that a managerial employee be present on the store premises at all times, but CLAIRES' labor budgets did not always allow for more than one manager to be on the schedule at all times. As a result, Ms. Duncan and other managerial employees were sometimes the only managers on duty, and would have their meal periods interrupted or would work through them in order to assist their coworkers and customers. Moreover, as stated previously, CLAIRES had a company-wide policy and/or practice of requiring that Ms. Duncan and other aggrieved employees respond to text messages and calls from supervisors and management on their personal cellular phones, even during unpaid meal periods. Consequently, Ms. Duncan and other aggrieved employees suffered missed and/or interrupted meal periods, work for which they were not paid.

As also stated above, CLAIRES had a company-wide practice of failing to adhere to a schedule of meal periods, which further caused Ms. Duncan and other aggrieved employees to not be relieved of their duties for compliant meal periods. Furthermore, on information and belief, because CLAIRES frowned upon employees accruing meal period penalties, CLAIRES' management would adjust Ms. Duncan's and other aggrieved employees' time records and/or pressured employees to clock out for meal periods to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by CLAIRES.

CLAIRES' practices and policies prevented Ms. Duncan and other aggrieved employees from taking all compliant meal periods to which they were entitled. As a result, Ms. Duncan and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted and/or had to forgo their meal periods altogether. For example, Ms. Duncan had to wait five (5) hours or more into her shifts to take a meal period, due to a lack of coverage resulting from understaffing and being the only managerial employee scheduled to work. As a further example, when Ms. Duncan was able to take meal periods, she was unable to leave the premises, and other employees interrupted her meal periods to ask questions regarding work-related issues.

Moreover, CLAIRES did not provide Ms. Duncan and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During her employment, Ms. Duncan worked a shift in excess of ten (10) hours or more per day, but was not provided a second 30-minute meal period. Ms. Duncan 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.

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

Furthermore, CLAIREs 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, Ms. Duncan and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that CLAIREs did pay meal period premium wages to Ms. Duncan and other aggrieved employees, it did so at the incorrect rates. Because CLAIREs did not properly calculate Ms. Duncan's and 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, CLAIREs failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Duncan 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, CLAIREs regularly failed to authorize and permit Ms. Duncan 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, CLAIREs' practices, including assigning heavy workloads and understaffing, prevented Ms. Duncan and other aggrieved employees from being relieved of all duty to take their rest periods. Additionally, CLAIREs failed to schedule rest periods, which, coupled with CLAIREs' failure to provide adequate rest period coverage, further led to Ms. Duncan and other aggrieved employees not being authorized and permitted to take compliant rest periods. Moreover, Ms. Duncan and other aggrieved employees were expected to respond to their personal cellular phones at all times, including during rest periods.

Additionally, upon information and belief, during the relevant time period, CLAIREs prohibited Ms. Duncan and other aggrieved employees from leaving the premises during their rest periods if they were the only managers/supervisors on schedule. Because Ms. Duncan and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, CLAIREs effectively maintained control over Ms. Duncan and other aggrieved employees during rest periods.

As a result of CLAIRE'S practices and policies, Ms. Duncan and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, during her employment, Ms. Duncan missed her rest periods due to understaffing and the lack of coverage for rest periods.

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

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

226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Second, because CLAIRE'S did not calculate Ms. Duncan's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, CLAIRE'S did not list the correct amount of gross wages earned by Ms. Duncan and other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by Ms. Duncan and other aggrieved employees in violation of section 226(a)(5). CLAIRE'S 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).

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 name and address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

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

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

Because CLAIRE'S failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Duncan 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. Duncan 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. Duncan 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, CLAIRE failed to pay Ms. Duncan 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. Duncan 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, CLAIRE 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. Duncan was terminated on or about January 17, 2020. However, CLAIRE did not provide her with her final paycheck for some of her last days worked until approximately one week later. Thus, CLAIRE failed to pay Ms. Duncan her final wages immediately, in violation of Labor Code section 201.

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

Ms. Duncan 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 450 – Compelling Patronization

California Labor Code section 450 provides that an employer may not “compel or coerce any employee, or applicant for employment, to patronize his or her employer, or any other person, in the purchase of anything of value.” An employer violates section 450 by forcing an employee to patronize the employer's business in the purchase of a company-provided good.

CLAIRE'S had a company-wide policy of requiring all employees to purchase uniform items, such as jewelry, purses, and other accessories, directly from CLAIRE'S' stores. During her employment, Ms. Duncan was required to purchase multiple accessory items from CLAIRE'S in order to wear as a “uniform” during her shifts.

CLAIRE'S' conduct of compelling and/or coercing Ms. Duncan and other aggrieved employees to purchase goods from them is in violation of California Labor Code section 450. Ms. Duncan 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).

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.*

CLAIRES' 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. Duncan and other aggrieved employees during the performance of their work duties. CLAIREs could provide Ms. Duncan 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. Duncan 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, CLAIREs systematically, and on a company-wide basis, does not provide seats or stools at or near cash wraps, forcing Ms. Duncan and other aggrieved employees to stand throughout their work shifts.

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

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

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

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

Ms. Duncan and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring CLAIRE’S 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 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further 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(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012)

Upon information and belief, CLAIRE'S violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(5), because CLAIRE'S failed to pay other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the regular schedule.

CLAIRE'S failed to pay other aggrieved employees reporting time pay when they presented themselves ready for work by waiting "on-call" and awaiting instructions on whether to show up at the store and work a scheduled shift, but ultimately were not called. CLAIRE'S did not pay other aggrieved employees for at least half of their scheduled day's work when they were subject to CLAIRE'S' on-call policy and were not called or told not to come into the store. For example, other aggrieved employees waited at home throughout the duration of their on-call shift, as instructed by CLAIRE'S' supervisors, but were sometimes not called or told that the store did not need them to work. When this occurred, CLAIRE'S did not pay them for at least half of their scheduled standby time or the required minimum reporting time pay. Accordingly, other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198.

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

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 4(C) – Failure to Pay Split-Shift Premiums

California Labor Code section 1198 provides that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further 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(4)(C) provides that, "When an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment." California Code of Regulations, Title 8, defines a split shift as "a work schedule, which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods."

CLAIRE'S willfully violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(4)(C), because CLAIRE'S failed to pay other aggrieved employees a split-shift premium when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour. CLAIRE'S sometimes scheduled other aggrieved employees to work double shifts separated by more than one (1) hour of time, such as a morning shift separated by a midday break, and then an afternoon shift, but failed to pay them one (1) additional hour's pay at minimum wage in addition to the minimum wage for that day. CLAIRE'S also would schedule other aggrieved employees to attend team meetings and then report to work for their scheduled shifts several hours after the meeting's conclusion. Accordingly, CLAIRE'S required other aggrieved employees to work split shifts but failed to pay them an additional hour at minimum wage in violation of California Labor Code section 1198.

CLAIRE'S' failure to provide other aggrieved employees with split-shift pay when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour, violates California Labor Code section 1198 and California Code of Regulations Title 8, Section

11070(4)(C). Other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 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, CLAIREs had a company-wide policy of requiring Ms. Duncan and other aggrieved employees to utilize their own personal cellular phones and cellular data to carry out their job duties, but CLAIREs failed to fully reimburse them for the costs of their work-related cellular phone expenses. Ms. Duncan and other aggrieved employees were required to use their personal cellular phones to complete their work-related tasks, such as discussing requests from management and work assignments. Ms. Duncan would spend approximately one (1) hour per week texting or speaking with her supervisors. Although CLAIREs required Ms. Duncan and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, CLAIREs failed to fully reimburse them for this cost.

Additionally, during the relevant time period, CLAIREs had a company-wide policy requiring Ms. Duncan and other aggrieved employees to wear approximately \$150.00 worth of CLAIREs' merchandise as a “uniform” while working and thus incur expenses in doing so. Ms. Duncan and other aggrieved employees were required to purchase uniform items, including jewelry, purses, and other accessories, directly from CLAIREs, and were not reimbursed for this cost.

CLAIREs could have provided Ms. Duncan and other aggrieved employees with the actual tools for use on the job, such as company phones to be used for fulfilling work-related tasks and uniform items, or could have reimbursed employees for their cellular phone and uniform expenses. Instead, CLAIREs passed these operating costs off onto Ms. Duncan and other aggrieved employees.

Thus, CLAIREs 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. Duncan 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).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s)

of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

CLAIRES failed to provide Ms. Duncan and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). CLAIRES' failure to provide Ms. Duncan and other aggrieved employees with written notice of basic information regarding their employment with CLAIRES is in violation of Labor Code section 2810.5.

Ms. Duncan and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 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." CLAIRES, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Duncan's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Ms. Duncan 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. Duncan, 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 CLAIRES for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 450, 510, 512(a), 516, 558(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

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

Mao Shiokura
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 "Mao Shiokura", with a stylized flourish at the end.

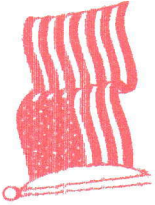
Mao Shiokura

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Stipulation

[2:20-cv-05266-JFW-PJW Sherice Duncan v. Claires Boutiques, Inc., et al](#)

ACCO,(PJWx),DISCOVERY,MANADR

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Notice of Electronic Filing

The following transaction was entered by Pike, Bevin on 7/17/2020 at 12:19 PM PDT and filed on 7/17/2020

Case Name: Sherice Duncan v. Claires Boutiques, Inc., et al

Case Number: [2:20-cv-05266-JFW-PJW](#)

Filer: Sherice Duncan

Document Number: [19](#)

Docket Text:

First STIPULATION to AMEND Complaint - (Discovery), filed by Plaintiff Sherice Duncan. (Attachments: # (1) Exhibit FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ., # (2) Proposed Order [PROPOSED] ORDER ALLOWING PLAINTIFF TO FILE FIRST AMENDED COMPLAINT)(Pike, Bevin)

2:20-cv-05266-JFW-PJW Notice has been electronically mailed to:

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Document description:Proposed Order [PROPOSED] ORDER ALLOWING PLAINTIFF TO FILE FIRST AMENDED COMPLAINT

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