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8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF ALAMEDA
11

12 JESSE CRUZ and TIARE RAMIREZ, as
13 aggrieved employees pursuant to the Private
Attorneys General Act ("PAGA"), on
14 behalf of the State of California and other
aggrieved employees,

15 Plaintiffs,

16 vs.
17

18 BURLINGTON COAT FACTORY OF
TEXAS, INC., a Florida corporation;
19 BURLINGTON MERCHANDISING
CORPORATION, a Delaware corporation;
20 BURLINGTON STORES, INC., a
Delaware corporation; and DOES 1 through
21 10, inclusive,

22 Defendants.
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ENDORSED
FILED
ALAMEDA COUNTY

JUN 16 2021

CLERK OF ANITA D. HERRERA COURT

Case No.: RG19031527

**SECOND AMENDED COMPLAINT –
PAGA ENFORCEMENT ACTION**

- (1) Claim for Civil Penalties Pursuant to PAGA § 2699 for Violations of California Labor Code and Wage Order 7-2001, Section 14(A); and
- (2) Claim for Civil Penalties Pursuant to PAGA § 2699 for Violations of California Labor Code and Wage Order 7-2001, Section 14(B).

Jury Trial Demanded

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**SECOND AMENDED COMPLAINT –
PAGA ENFORCEMENT ACTION**

- (1) Claim for Civil Penalties Pursuant to
PAGA § 2699 for Violations of California
Labor Code and Wage Order 7-2001,
Section 14(A); and
- (2) Claim for Civil Penalties Pursuant to
PAGA § 2699 for Violations of California
Labor Code and Wage Order 7-2001,
Section 14(B).

Jury Trial Demanded

Plaintiffs Jesse Cruz and Tiare Ramirez, as aggrieved employees and on behalf of the State of California and all other aggrieved employees, allege as follows:

JURISDICTION AND VENUE

1. This is an enforcement action under the Labor Code Private Attorneys General Act of 2004, California Labor Code section 2698 *et seq.* (“PAGA”) to recover civil penalties on behalf of Plaintiffs, the State of California, and other current and former employees who worked for Defendants in California as non-exempt, hourly paid employees, including, but not limited to, Loss Prevention Associates/Exit Security, Retail Sales Associates, Cashiers, Retail Store Managers, Assistant Store Managers, or other positions assigned entrance/exit security, cashier, or greeter duties, in a California retail store location and who suffered violations of 7-2001 Wage Order Section 14(A) and/or (B) as set forth in this complaint at any time between one year prior to the filing of the pre-filing written notice to the Labor and Workforce Development Agency (“LWDA”) in this case on June 11, 2019, until judgment (“non-party Aggrieved Employees”). Plaintiffs’ share of civil penalties sought in this action does not exceed \$75,000.

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, section 10. The overall amount in controversy exceeds \$ 25,000. The statute under which this action is brought does not specify any other basis for jurisdiction.

3. This Court has jurisdiction over all Defendants because, on information and belief, Defendants are either citizens of California, have sufficient minimum contacts in California, and otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice. Also, the Plaintiffs and all other aggrieved employees were employed by Defendants in California.

4. There is no basis for federal diversity jurisdiction in this action given that the State of California, as the real party in interest in this action, is not a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be aggregated to satisfy the amount

1 in controversy requirement for federal diversity jurisdiction in this action, and that diversity
2 jurisdiction cannot be established when Plaintiffs' share of the civil penalties attributable to
3 violations personally suffered are less than \$75,000. *Id.* at 1122.

4 5. Venue is proper in this Court because Defendants are non-California citizens
5 and have their principal place of business in New Jersey, and because they have not filed a
6 statement with the California Secretary of State designating a county in which they maintain a
7 principal place of business in accordance with California Corporations Code sections 16959
8 and 18200. Cal. Code Civ. P. § 395.2. Thus, Defendants have no right to any particular
9 venue and Plaintiffs may file this complaint in any county in California. *See Juneau Spruce*
10 *Corp. v. International Longshoremen's & Warehousemen's Union*, 37 Cal.2d 760, 763-764
11 (1951); *see also, Easton v. Sup.Ct. (Schneider Bros., Inc.)*, 12 Cal. App. 3d 243, 246-247
12 (1970). Cal. Code Civ. P. § 395.5.

13 6. Further, venue is proper in this Court because Defendants employ persons,
14 including Plaintiff Cruz, in multiple stores located within the County of Alameda, and have
15 violated the seating requirements of the applicable Wage Order in this county which give rise
16 to the civil penalties sought in this action. Cal. Code Civ. P. § 393. Specifically, Defendants
17 have violated the seating requirements at multiple stores within the County of Alameda,
18 including Defendants' stores at 1000 La Playa Drive, Hayward, California 94545; 1933 Davis
19 Street, San Leandro, California 94577; 6900 Amador Plaza Road, Dublin, California 94568;
20 and 300 Newpark Mall, Newark, California 94560. Pursuant to California Civil Code of
21 Procedure section 393, venue is proper for the recovery of a penalty imposed by statute in the
22 county in which the cause, or some part of the cause, arose. Because Defendants have
23 employees in Alameda County and the State of California could bring this action to recover
24 penalties in Alameda County, venue is proper. *Id.*

25 7. California Labor Code sections 2698 *et seq.*, the "Labor Code Private Attorneys
26 General Act of 2004" ("PAGA"), authorize aggrieved employees to sue as private attorneys
27 general their current or former employers for various civil penalties for violations of various
28 provisions in the California Labor Code. Labor Code section 1198 makes a violation of a

Wage Order such as Section 14(A) or 14(B) a violation of the Labor Code.

THE PARTIES

8. Plaintiff Jesse Cruz worked for Defendants as an hourly paid, non-exempt employee from approximately December 11, 2017 to August 26, 2018. Plaintiff Cruz worked as a Loss Prevention Associate at Defendants' retail store located at 1000 La Playa Drive, Hayward, California 94545. During his employment, Plaintiff Cruz typically worked four (4) to eight (8) hours per day and four (4) to five (5) days per week. Plaintiff Cruz's job duties included guarding the entrance/exit of the store, evaluating customer behavior to identify theft and/or potential theft, and monitoring the security and safety of the store.

9. Plaintiff Tiare Ramirez worked for Defendants as an hourly paid, non-exempt employee from approximately November 2019 to March 3, 2020. Plaintiff Ramirez worked as a Cashier at Defendants' retail store located at 3671 N. Freeway Blvd., Sacramento, California 95834. During her employment, Plaintiff Ramirez typically worked four (4) to eight (8) hours per day and three (3) to five (5) days per week. Plaintiff Ramirez's job duties included processing purchases, providing customer service, and bagging items.

10. Defendant BURLINGTON COAT FACTORY OF TEXAS, INC. was and is, upon information and belief, a Florida corporation doing business in California, 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.

11. Defendant BURLINGTON MERCHANDISING CORPORATION was and is, upon information and belief, a Delaware corporation doing business in California, 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.

12. Defendant BURLINGTON STORES, INC. was and is, upon information and belief, a Delaware corporation doing business in California, 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.

13. Plaintiffs are unaware of the true names or capacities of the Defendants sued

1 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
2 amend the complaint and serve such fictitiously named Defendants once their names and
3 capacities become known.

4 14. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10
5 are the partners, agents, owners, shareholders, managers, or employees of BURLINGTON
6 COAT FACTORY OF TEXAS, INC.; BURLINGTON MERCHANDISING
7 CORPORATION; and BURLINGTON STORES, INC., at all relevant times.

8 15. Plaintiffs are informed and believe, and thereon allege, that each and all of the
9 acts and omissions alleged herein was performed by, or is attributable to, BURLINGTON
10 COAT FACTORY OF TEXAS, INC.; BURLINGTON MERCHANDISING
11 CORPORATION; BURLINGTON STORES, INC.; and/or DOES 1 through 10 (collectively
12 “Defendants” or “BURLINGTON”), each acting as the agent, employee, alter ego, and/or
13 joint venturer of, or working in concert with, each of the other co-Defendants and was acting
14 within the course and scope of such agency, employment, joint venture, or concerted activity
15 with legal authority to act on the others’ behalf. The acts of any and all Defendants were in
16 accordance with, and represent, the official policy of Defendants.

17 16. At all relevant times, Defendants, and each of them, ratified each and every act
18 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
19 and abetted the acts and omissions of each and all the other Defendants in proximately causing
20 the damages herein alleged.

21 17. Plaintiffs are informed and believe, and thereon allege, that each of said
22 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
23 omissions, occurrences, and transactions alleged herein.

24 18. Under California law, Defendants are jointly and severally liable as employers
25 for the violations alleged herein because they have each exercised sufficient control over the
26 wages, hours, working conditions, and employment status of Plaintiffs and other non-party
27 Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiffs and other
28 non-party Aggrieved Employees, supervised and controlled their work schedule and/or

1 conditions of employment, determined their rate of pay, and maintained their employment
2 records. Defendants suffered or permitted Plaintiffs and other non-party Aggrieved
3 Employees to work and/or “engaged” Plaintiffs and other non-party Aggrieved Employees so
4 as to create a common-law employment relationship. As joint employers of Plaintiffs and
5 other non-party Aggrieved Employees, Defendants are jointly and severally liable for the civil
6 penalties and all other relief available to Plaintiffs and other non-party Aggrieved Employees
7 under the law.

8 19. Plaintiffs are informed and believe, and thereon allege, that at all relevant
9 times, Defendants, and each of them, have acted as joint employers with respect to Plaintiffs
10 and other non-party Aggrieved Employees because Defendants have:

- 11 (a) jointly exercised meaningful control over the work performed by
12 Plaintiffs and other non-party Aggrieved Employees;
- 13 (b) jointly exercised meaningful control over Plaintiffs’ and other non-party
14 Aggrieved Employees’ wages, hours, and working conditions, including
15 the quantity, quality standards, speed, scheduling, and operative details
16 of the tasks performed by Plaintiffs and other non-party Aggrieved
17 Employees;
- 18 (c) jointly required that Plaintiffs and other non-party Aggrieved
19 Employees perform work which is an integral part of Defendants’
20 businesses; and
- 21 (d) jointly exercised control over Plaintiffs and other non-party Aggrieved
22 Employees as a matter of economic reality in that Plaintiffs and other
23 non-party Aggrieved Employees were dependent on Defendants, who
24 shared the power to set the wages of Plaintiffs and other non-party
25 Aggrieved Employees and determined their working conditions, and
26 who jointly reaped the benefits from the underpayment of their wages
27 and noncompliance with other statutory provisions governing their
28 employment.

1 20. Plaintiffs are informed and believe, and thereon allege, that at all relevant times
2 there has existed a unity of interest and ownership between Defendants such that any
3 individuality and separateness between the entities has ceased.

4 21. BURLINGTON COAT FACTORY OF TEXAS, INC.; BURLINGTON
5 MERCHANDISING CORPORATION; BURLINGTON STORES, INC.; and DOES 1
6 through 10 are therefore alter egos of each other.

7 22. Adherence to the fiction of the separate existence of Defendants would permit
8 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
9 from liability for the wrongful acts committed by them under the name BURLINGTON.

10 23. Plaintiffs further allege, upon information and belief, that Defendants
11 BURLINGTON COAT FACTORY OF TEXAS, INC.; BURLINGTON MERCHANDISING
12 CORPORATION; and BURLINGTON STORES, INC. are alter egos of each other for the
13 following reasons:

14 (a) According to BURLINGTON STORES, INC.’s most recent SEC 10-K
15 filing, BURLINGTON COAT FACTORY OF TEXAS, INC. and
16 BURLINGTON MERCHANDISING CORPORATION are wholly-
17 owned subsidiaries of BURLINGTON STORES, INC.;¹

18 (b) On the California Secretary of State’s website
19 (<https://businesssearch.sos.ca.gov/>), BURLINGTON COAT FACTORY
20 OF TEXAS, INC. and BURLINGTON MERCHANDISING
21 CORPORATION have the same entity address and/or mailing address,
22 which is “1830 Route 130 North, Burlington, NJ 08016”;

23 (c) According to their most recent “Statement of Information” forms filed
24 with the California Secretary of State, BURLINGTON COAT
25 FACTORY OF TEXAS, INC. and BURLINGTON MERCHANDISING
26 CORPORATION share the same Chief Executive Officer—Thomas

27 ¹ 10-K Annual Report 02/2/2019, Burlington Stores, Inc.,
28 <https://www.burlingtoninvestors.com/financial-information/sec-filings> (last accessed August
14, 2019).

1 Kingsbury, and the same Chief Financial Officer—Marc Katz;

2 (d) On information and belief, BURLINGTON STORES, INC.;
3 BURLINGTON COAT FACTORY OF TEXAS, INC.; and
4 BURLINGTON MERCHANDISING CORPORATION utilize the same
5 standardized employment forms and issue the same employment
6 policies; and

7 (e) BURLINGTON STORES, INC.; BURLINGTON COAT FACTORY
8 OF TEXAS, INC.; and BURLINGTON MERCHANDISING
9 CORPORATION share the same agent for service of process, CT
10 Corporation.

11 **PAGA REPRESENTATIVE ALLEGATIONS**

12 24. Defendants own and operate a chain of discount retail stores throughout North
13 America. Defendants operate approximately 675 retail stores in North America, including
14 approximately 75 locations in California.

15 25. On information and belief, Defendants maintain their corporate headquarters in
16 Burlington, New Jersey, with operations in the United States based out of Burlington, New
17 Jersey. Upon information and belief, Defendants maintain a single, centralized Human
18 Resources department in Burlington, New Jersey, which is responsible for conducting
19 Defendants' recruiting and hiring of new employees, as well as communicating and
20 implementing Defendants' company-wide policies to employees throughout California.

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

28 27. Plaintiffs allege that Defendants' California retail stores are generally similar in

1 their layout and design and there was and continues to be space near each store entrance/exit
2 and near each cash wrap to allow for the presence and use of a seat or stool by Defendants'
3 Loss Prevention Associates/Exit Security, Retail Sales Associates, Cashiers, Retail Store
4 Managers, Assistant Store Managers, or other positions assigned entrance/exit security,
5 cashier, or greeter duties during the performance of their work duties. Defendants could have
6 provided Plaintiffs and other non-party Aggrieved Employees with a seat or stool at cash
7 wraps and store entrances and/or exits, with reasonable or no modification to these work
8 areas, but instead denied them seating and forced Plaintiffs and other non-party Aggrieved
9 Employees to stand throughout the day.

10 28. Plaintiffs and other non-party Aggrieved Employees have spent a substantial
11 portion of their day near Defendants' store entrances/exits and/or behind cash wraps. The
12 nature of the work of employees assigned entrance/exit security, cashier, or greeter duties can
13 reasonably be accomplished from a seated position. However, as set forth herein, Defendants
14 have not provided and do not provide Loss Prevention Associates/Exit Security, Retail Sales
15 Associates, Cashiers, Retail Store Managers, Assistant Store Managers, or other positions
16 assigned entrance/exit security, cashier, or greeter duties, including Plaintiffs and other non-
17 party Aggrieved Employees, with seats or stools at or near their store entrances/exits or cash
18 wraps.

19 29. Defendants continue to employ non-exempt or hourly paid Loss Prevention
20 Associates/Exit Security, Retail Sales Associates, Cashiers, Retail Store Managers, Assistant
21 Store Managers, or other positions assigned entrance/exit security, cashier, or greeter duties at
22 retail store locations throughout California.

23 30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
24 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
25 suitable seating and/or were entitled to sit when it did not interfere with the performance of
26 their entrance/exit security, cashier, or greeter duties, and also have seats nearby to use during
27 a lull in tasks that do require moving about or standing.

28 31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or

1 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
2 have seats in reasonable proximity to their work area and be permitted to use such seats when
3 it does not interfere with the performance of their duties during a lull in tasks that do require
4 moving about or standing.

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

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

14 34. Plaintiffs and other current and former California employees of Defendants are
15 “aggrieved employees” as defined by Labor Code section 2699(c) in that they are all
16 Defendants’ current or former California employees who experienced violations of 7-2001
17 Wage Order, Section 14(A) and 14(B).

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

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

26 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
27 2699.3(a) and any employer response to that notice shall be
28 accompanied by a filing fee of seventy-five dollars (\$75).

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

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

- 13 (a) The aggrieved employee or representative shall give written notice by
14 online filing with the LWDA and by certified mail to the employer of
15 the specific provisions of the California Labor Code alleged to have
16 been violated (other than those listed in Section 2699.5), including the
17 facts and theories to support the alleged violation.
- 18 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
19 2699.3(c) and any employer response to that notice shall be
20 accompanied by a filing fee of seventy-five dollars (\$75).
- 21 (c) The employer may cure the alleged violation within thirty-three (33)
22 calendar days of the postmark date of the notice sent by the aggrieved
23 employee or representative. The employer shall give written notice
24 within that period of time by certified mail to the aggrieved employee or
25 representative and by online filing with the LWDA if the alleged
26 violation is cured, including a description of actions taken, and no civil
27 action pursuant to Section 2699 may commence. If the alleged violation
28 is not cured within the 33-day period, the aggrieved employee may

1 commence a civil action pursuant to Section 2699.

2 37. On June 11, 2019, Plaintiff Cruz provided written notice by online filing to the
3 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
4 Code alleged to have been violated, including facts and theories to support the alleged
5 violations, in accordance with California Labor Code section 2699.3. Plaintiff Cruz's written
6 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). That
7 same day, the LWDA PAGA Administrator confirmed receipt of Plaintiff Cruz's written
8 notice and assigned Plaintiff Cruz PAGA Case Number LWDA-CM-704904-19. On May 1,
9 2020, Plaintiff Cruz sent an amended written notice by online filing to the LWDA and by
10 certified mail to Defendants of the specific provisions of the California Labor Code alleged to
11 have been violated, supplementing and clarifying the facts and theories to support the alleged
12 violations set forth in his original LWDA notice, in accordance with California Labor Code
13 section 2699.3. True and correct copies of Plaintiff Cruz's written notices to the LWDA and
14 Defendants dated June 11, 2019, and May 1, 2020, are attached hereto as "Exhibit 1."

15 38. On May 1, 2020, Plaintiff Ramirez provided written notice by online filing to
16 the LWDA and by Certified Mail to Defendants of the specific provisions of the California
17 Labor Code alleged to have been violated, including facts and theories to support the alleged
18 violations, in accordance with California Labor Code section 2699.3. Plaintiff Ramirez's
19 written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75).
20 That same day, the LWDA PAGA Administrator confirmed receipt of Plaintiff Ramirez's
21 written notice and assigned Plaintiff Ramirez PAGA Case Number LWDA-CM-785185-20.
22 A true and correct copy of Plaintiff Ramirez's written notice to the LWDA and Defendants
23 dated May 1, 2020, is attached hereto as "Exhibit 2."

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

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

violations of California Labor Code section 1198.

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

42. As set forth below, Defendants have violated provisions of both the Labor Code sections regulating hours and days of work as well as the applicable IWC Wage Order, specifically, Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A)-(B).

43. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, Plaintiffs, acting in the public interest as a private attorney general, seek assessment and collection of civil penalties for themselves, all other non-party Aggrieved Employees, and the State of California against Defendants for violations of California Labor Code section 1198.

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE SUITABLE SEATING

VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTION 11070(14)(A)

(By Plaintiffs on Behalf of the State of California and Aggrieved Employees Against all Defendants)

44. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

45. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiffs to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code section 1198, among others. Defendants' conduct, as alleged herein, violates section 1198 of the California Labor Code, by failing to provide suitable seating to Plaintiffs and other non-party Aggrieved Employees as set forth below.

46. At all relevant times herein, California Labor Code section 1198 makes it

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

6 47. California Code of Regulations, Title 8, section 11070(14)(A) provides that
7 “[a]ll working employees shall be provided with suitable seats when the nature of the work
8 reasonably permits the use of seats.”

9 48. During the relevant time period, Defendants violated California Labor Code
10 section 1198 and California Code of Regulations, Title 8, section 11070(14)(A), because
11 Plaintiffs and other non-party Aggrieved Employees were not allowed to sit, even when the
12 nature of their work would reasonably permit the use of seats, nor were they provided with
13 suitable seats. As Loss Prevention Associates/Exit Security, Retail Sales Associates,
14 Cashiers, Retail Store Managers, Assistant Store Managers, or other positions assigned
15 entrance/exit security, cashier, or greeter duties, a substantial amount of Plaintiffs’ and other
16 non-party Aggrieved Employees’ tasks could have been performed from a seated position near
17 store entrances/exits and at their cash wraps or registers. Plaintiff Cruz and other non-party
18 Aggrieved Employees could have guarded the store entrances/exits, evaluated customer
19 behavior, and monitored store security and safety, and Plaintiff Ramirez and other non-party
20 Aggrieved Employees could have handled transactions at the cash registers, provided
21 customer service, and/or greeted customers, all while seated without interference in their
22 ability to perform those duties.

23 49. Defendants could have placed seats or stools at store entrances/exits and cash
24 wraps, with reasonable or no modification to these work areas, for use by Plaintiffs and other
25 non-party Aggrieved Employees while assigned to the entrance/exit security, cashier, or
26 greeter positions. However, on a company-wide basis, Defendants did not provide seats or
27 stools at store entrances/exits or cash wraps. Defendants’ management did not inform
28 Plaintiffs that they were allowed to sit down, provide any means for them to sit down, or

1 mention any policy regarding sitting.

2 50. For example, throughout their employment, Plaintiffs were required to stand
3 the entire time because Defendants did not provide seats or stools in their retail stores,
4 including at the store's entrance/exit and at cash wraps. Other non-party Aggrieved
5 Employees similarly were not permitted to sit while performing entrance/exit security, cashier,
6 or greeter duties, because Defendants did not provide seats or stools at store entrances/exits or
7 cash wraps.

8 51. As a result of Defendants' company-wide policy and/or practice prohibiting
9 Loss Prevention Associates/Exit Security, Retail Sales Associates, Cashiers, Retail Store
10 Managers, Assistant Store Managers, or other positions assigned entrance/exit security,
11 cashier, or greeter duties from sitting during their shifts and failure to provide suitable seating
12 to these employees, Plaintiffs and other non-party Aggrieved Employees were forced to stand
13 during shifts and denied seats. Defendants' failure to provide suitable seating to Plaintiffs and
14 other non-party Aggrieved Employees violated and continues to violate California Labor Code
15 section 1198 and IWC Wage Order 7-2001, Section 14(A).

16 52. Plaintiffs and other non-party Aggrieved Employees and the State of California
17 are therefore entitled to recover civil penalties pursuant to Labor Code section 2699(a), (f),
18 and (g).

19 **SECOND CAUSE OF ACTION**

20 **FAILURE TO PROVIDE SUITABLE SEATING**

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

23 **(By Plaintiffs on Behalf of the State of California and Aggrieved Employees Against all**
24 **Defendants)**

25 53. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
26 and every allegation set forth above.

27 54. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiffs to recover
28 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code

1 section 2699.5. Section 2699.5 enumerates Labor Code section 1198, among others.
2 Defendants' conduct, as alleged herein, violates section 1198 of the California Labor Code, by
3 failing to provide suitable seating to Plaintiffs and other non-party Aggrieved Employees as
4 set forth below.

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

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

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

21 58. Defendants did not provide Plaintiffs and other non-party Aggrieved
22 Employees with seats or stools in reasonable proximity to their work areas to allow them to
23 use seats when it would not interfere with the performance of their duties for times when they
24 were not engaged in active duties that require standing. In other words, to the extent Plaintiffs
25 and other non-party Aggrieved Employees engaged in duties in which the nature of the work
26 required standing, Defendants denied them the use of seats nearby when they were not
27 engaged in those duties. Even though the layout of Defendants' workplaces could
28 accommodate seats or stools, with reasonable or no modification to Defendants' workplaces,

1 Defendants have, on a company-wide basis, denied Plaintiffs and other non-party Aggrieved
2 Employees suitable seating altogether.

3 59. As a result of Defendants' company-wide policy and/or practice of prohibiting
4 employees from sitting at any time, even when they were not engaged in active duties
5 requiring standing, and company-wide failure to provide seats in reasonable proximity to their
6 work areas, Plaintiffs and other non-party Aggrieved Employees were forced to stand during
7 shifts and denied seats. Defendants' failure to provide suitable seating to Plaintiffs and other
8 non-party Aggrieved Employees violated and continues to violate California Labor Code
9 section 1198 and IWC Wage Order 7-2001, Section 14((B).

10 60. Plaintiffs and other non-party Aggrieved Employees and the State of California
11 are therefore entitled to recover civil penalties pursuant to Labor Code section 2699(a), (f),
12 and (g).

13 **REQUEST FOR JURY TRIAL**

14 Plaintiffs request a trial by jury.

15 **PRAYER FOR RELIEF**

16 Plaintiffs, on behalf of the State of California and all other non-party Aggrieved
17 Employees, pray for relief and judgment against Defendants, jointly and severally, as follows:

18 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
19 (\$25,000) to the State of California and aggrieved employees.

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

21 2. That the Court declare, adjudge and decree that Defendants violated California
22 Labor Code section 1198 and IWC 7-2001 Wage Order, Section 14(A) as to Plaintiffs and
23 other non-party Aggrieved Employees (by failing to provide suitable seating);

24 3. For civil penalties pursuant to California Labor Code sections 2699(a), (f)-(g)
25 for violations of California Labor Code section 1198;

26 4. For attorneys' fees and costs pursuant to California Labor Code section
27 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
28 Labor Code section 1198;

- 1 5. For pre-judgment and post-judgment interest as provided by law; and
2 6. For such other and further relief as the Court may deem equitable and
3 appropriate.

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

5 7. That the Court declare, adjudge and decree that Defendants violated California
6 Labor Code section 1198 and IWC 7-2001 Wage Order, Section 14(B) as to Plaintiffs and
7 other non-party Aggrieved Employees (by failing to provide suitable seating);

8 8. For civil penalties pursuant to California Labor Code sections 2699(a), (f)-(g)
9 for violations of California Labor Code section 1198;

10 9. For attorneys' fees and costs pursuant to California Labor Code section
11 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
12 Labor Code section 1198;

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

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

16
17 Dated: April 2, 2021

Respectfully submitted,

Capstone Law APC

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19
20 By: 

21 Bevin Allen Pike
22 Orlando Villalba
23 Joseph Hakakian

24 Attorneys for Plaintiffs Jesse Cruz and Tiare
25 Ramirez
26
27
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PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000, Los Angeles, California 90067.

On **June 16, 2021**, I served the document(s) described as: **SECOND AMENDED COMPLAINT – PAGA ENFORCEMENT ACTION** on the interested parties in this action by sending [] the original [✓] a true copy thereof [✓] to interested parties as follows [or] [] as stated on the attached service list:

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TEXAS, INC.; BURLINGTON
MERCHANDISING CORPORATION,
and BURLINGTON STORES, INC.

() **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

() **BY ELECTRONIC SERVICE:** Pursuant to Court Order, I hereby certify that I caused a true and correct copy of the document(s) listed above to be served electronically on counsel of record via transmission to an electronic service provider.

() **BY UPLOAD:** I hereby certify that this document was uploaded by my office to the State of California Labor and Workforce Development Agency Online Filing Site <https://dir.tfaforms.net/209>.

(X) **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **June 16, 2021**, at Los Angeles, California.

Xochitl Tapia
Type or Print Name


Signature