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June 30, 2020

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Labor and Workforce Development Agency

Certified Mail # 7018 0680 0000 9878 0851

Ross Dress for Less, Inc.
CT Corporation System
818 W. 7th St., Ste. 930
Los Angeles, CA 90017

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 et seq., 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir or Madam,

“Aggrieved Employees” refers to all individuals who are or previously were employed by Defendant Ross Dress for Less, Inc. in California and classified as exempt employees during the time period of July 1, 2019 until a date as determined by the Court. Our offices represent Plaintiff Mario Oropeza and Plaintiff Kayla Miller (“Plaintiffs”), and other Aggrieved Employees in a lawsuit against Defendant Ross Dress for Less, Inc. (“Defendant”).

Plaintiff Miller was employed by Defendant, in California, from February 2017, to June 2018, classified as an exempt store manager, but by virtue of her work was regularly entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Plaintiff Oropeza was employed by Defendant, in California, from September 1, 2016, to present, classified as an exempt store manager, but by virtue of his work was regularly entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiffs and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock.

Moreover, when Defendant required Plaintiffs and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 §11040, subd. 5(A) by failing to pay Plaintiffs and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay.

In addition, when Defendant required Plaintiffs and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B).

Further, Defendant failed to advise Plaintiffs and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017).

Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiffs and other Aggrieved Employees with their wages. Plaintiffs further contend that Defendant failed to provide accurate wage statements to them, and other Aggrieved Employees, in violation of California Labor Code section 226(a).

Additionally, Plaintiffs contend that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiffs began and ended each shift and meal period. Plaintiffs and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant fails to provide Plaintiff and other Aggrieved Employees with suitable seats.

Additionally, Plaintiffs contend that Defendant failed to comply with Labor Code section 2802 in that Defendant failed to reimburse employees for “all necessary business expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.”

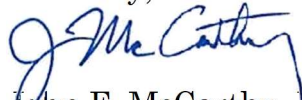
Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiffs against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiffs, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiffs, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiffs therefore incorporate the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiffs to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The filing fee of \$75 is being mailed to the Department of Industrial Relations Accounting unit with an identification of the Plaintiff, the Defendant and the notice. The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiffs and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions, please do not hesitate to call.

Sincerely,



John F. McCarthy, Esq.

JFM:me

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Counsel for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

MARIO OROPEZA, and KAYLA
MILLER, on behalf of the general public
as a private attorney general,

Plaintiffs,

vs.

ROSS DRESS FOR LESS, INC., a
Virginia Corporation, and DOES 1
through 10, inclusive,
Defendants.

Case No.:

REPRESENTATIVE ACTION

COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code §2699, et seq. for violations of Labor Code §§201, 202, 203, 204, 210, 226(a), 226.7, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, and California Code of Regulations, Title 8 § 1 1070(14) (Failure to Provide Seating)

Plaintiff Mario Oropeza, and Plaintiff Kayla Miller, (PLAINTIFFS) on behalf of the people of the State of California and as an “aggrieved employee” acting as a private attorney general under the Labor Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on information and belief, except for his or her own acts and knowledge which are based on personal knowledge, the following:



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3. Accordingly, PLAINTIFFS seek to obtain all applicable relief for DEFENDANT's violations under PAGA and solely for the relief as permitted by PAGA – that is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this complaint should be construed as attempting to obtain any relief that would not be available in a PAGA-only action.

4. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10.

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1 **THE PARTIES**

2 6. Ross Dress for Less, Inc. ("DEFENDANT") is a corporation that at all
3 relevant times mentioned herein conducted and continues to conduct substantial
4 business in the state of California.

5 7. DEFENDANT is an American chain of discount department stores
6 headquartered in Dublin, California.

7 8. PLAINTIFF Oropeza has been employed by DEFENDANT from September
8 2016 to present and was at all times classified by DEFENDANT as an exempt
9 employee, paid on an salary basis, but regularly entitled to the legally required meal
10 and rest periods and payment of minimum and overtime wages due for all time
11 worked by virtue of his actual work. PLAINTIFF Oropeza has worked at
12 DEFENDANT's store located at 3522 National Avenue, San Diego, CA 92113.

13 9. PLAINTIFFS, and such persons that may be added from time to time who
14 satisfy the requirements and exhaust the administrative procedures under the
15 Private Attorney General Act, bring this Representative Action on behalf of the State
16 of California with respect to himself and herself and all individuals who worked for
17 DEFENDANT in California and who were classified by Defendant as exempt
18 employees ("AGGRIEVED EMPLOYEES") during the time period of July 1, 2019
19 until a date as determined by the Court (the "PAGA PERIOD").

20 10. PLAINTIFFS, on behalf of himself and herself and all AGGRIEVED
21 EMPLOYEES presently or formerly employed by DEFENDANT during the PAGA
22 PERIOD, bring this representative action pursuant to Labor Code § 2699, *et seq.*
23 seeking fixed civil penalties for DEFENDANT's violation of California Labor Code §§
24 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198,
25 2802, and California Code of Regulations, Title 8, Section 1 1070(14) (Failure to
26 Provide Seating), and the applicable Wage Order. Based upon the foregoing,
27 PLAINTIFFS and all AGGRIEVED EMPLOYEES are aggrieved employees within
28 the meaning of Labor Code § 2699, *et seq.*



11. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 10, inclusive, are presently unknown to PLAINTIFFS who therefore sue these Defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 10, inclusive, when they are ascertained. PLAINTIFFS are informed and believe, and based upon that information and belief allege, that the Defendants named in this Complaint, including DOES 1 through 10, inclusive, are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

12. The agents, servants and/or employees of the Defendants and each of them acting on behalf of the Defendants acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally liable to PLAINTIFFS and the other AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants' agents, servants and/or employees.

FACTS SUPPORTING CLAIM

13. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFFS and AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFFS and AGGRIEVED EMPLOYEES to work without paying them for all the time they were under DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFFS to work while clocked out during what was supposed to be PLAINTIFFs' off-duty meal break.



1 PLAINTIFFS were from time to time interrupted by work assignments. Indeed there
2 were many days where PLAINTIFFS did not even receive a partial lunch. As a result,
3 the PLAINTIFFS and other AGGRIEVED EMPLOYEES forfeited overtime
4 compensation by regularly working without their time being accurately recorded and
5 without compensation at the applicable overtime rates. DEFENDANT's uniform
6 policy and practice not to pay PLAINTIFFS and other AGGRIEVED EMPLOYEES
7 for all time worked is evidenced by DEFENDANT's business records.

8 14. As a result of their rigorous work schedules, PLAINTIFFS and other
9 AGGRIEVED EMPLOYEES were from time to time unable to take thirty (30) minute
10 off duty meal breaks and were not fully relieved of duty for their meal periods.
11 PLAINTIFFS and other AGGRIEVED EMPLOYEES were required to perform work
12 as ordered by DEFENDANT for more than five (5) hours during some shifts without
13 receiving a meal break. Further, DEFENDANT failed to provide PLAINTIFFS and
14 AGGRIEVED EMPLOYEES with a second off-duty meal period for some workdays
15 in which these employees were required by DEFENDANT to work ten (10) hours of
16 work. As a result, DEFENDANT's failure to provide PLAINTIFFS and the
17 AGGRIEVED EMPLOYEES with legally required meal breaks is evidenced by
18 DEFENDANT's business records. PLAINTIFFS and other AGGRIEVED
19 EMPLOYEES therefore forfeited meal breaks without additional compensation and
20 in accordance with DEFENDANT's strict corporate policy and practice. Neither
21 PLAINTIFFS nor the AGGRIEVED EMPLOYEES were given the opportunity to take
22 a timely meal period when they were scheduled to work a shift of less than six (6)
23 hours, but ultimately worked in excess of six (6) hours. Simply put, it was not possible
24 for PLAINTIFFS and other AGGRIEVED EMPLOYEES to decide whether or not to
25 take a timely first meal period when DEFENDANT scheduled these employees for a
26 shift of six (6) hours or less such that these employees did not know they were eligible
27 for a meal period at the fifth hour of work. In such instances, PLAINTIFFS and the
28



1 other AGGRIEVED EMPLOYEES were denied a timely meal period within the first
2 five (5) hours of their shift in violation of Labor Code sections 226.7 and 512.

3 15. During the PAGA PERIOD, PLAINTIFFS and other AGGRIEVED
4 EMPLOYEES were also required from time to time to work in excess of four (4) hours
5 without being provided ten (10) minute rest periods. Further, these employees were
6 denied their first rest periods of at least ten (10) minutes for some shifts worked of at
7 least two (2) to four (4) hours from time to time, a first and second rest period of at
8 least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours
9 from time to time, and a first, second and third rest period of at least ten (10) minutes
10 for some shifts worked of ten (10) hours or more from time to time. PLAINTIFFS and
11 other AGGRIEVED EMPLOYEES were also not provided with one hour wages in lieu
12 thereof. As a result of their rigorous work schedules, PLAINTIFFS and other
13 AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods
14 by DEFENDANT and DEFENDANT's managers. Additionally, the applicable
15 California Wage Order requires employers to provide employees with off-duty rest
16 periods, which the California Supreme Court defined as time during which an
17 employee is relieved from all work related duties and free from employer control. In
18 so doing, the Court held that the requirement under California law that employers
19 authorize and permit all employees to take rest period means that employers must
20 relieve employees of all duties and relinquish control over how employees spend their
21 time which includes control over the locations where employees may take their rest
22 period. Employers cannot impose controls that prohibit an employee from taking a
23 brief walk - five minutes out, five minutes back. Here, DEFENDANT's uniform policy
24 restricted PLAINTIFFS and other AGGRIEVED EMPLOYEES from unconstrained
25 walks and was unlawful based on Defendant's rule which stated PLAINTIFFS and
26 other AGGRIEVED EMPLOYEES could not leave the work premises during their
27 rest period.



1 16. DEFENDANT as a matter of corporate policy, practice and procedure,
2 intentionally, knowingly and systematically failed to reimburse and indemnify
3 PLAINTIFFS and the other AGGRIEVED EMPLOYEES for required business
4 expenses incurred by PLAINTIFFS and other AGGRIEVED EMPLOYEES in direct
5 consequence of discharging their duties on behalf of DEFENDANT. Under California
6 Labor Code Section 2802, employers are required to indemnify employees for all
7 expenses incurred in the course and scope of their employment. Cal. Lab. Code § 2802
8 expressly states that "an employer shall indemnify his or her employee for all
9 necessary expenditures or losses incurred by the employee in direct consequence of
10 the discharge of his or her duties, or of his or her obedience to the directions of the
11 employer, even though unlawful, unless the employee, at the time of obeying the
12 directions, believed them to be unlawful."

13 17. In the course of their employment PLAINTIFFS and other AGGRIEVED
14 EMPLOYEES as a business expense, were required by DEFENDANT to use their
15 own personal cellular phones as a result of and in furtherance of their job duties as
16 employees for DEFENDANT but were not reimbursed or indemnified by
17 DEFENDANT for the cost associated with the use of their personal cellular phones
18 for DEFENDANT's benefit. Specifically, PLAINTIFFS and other AGGRIEVED
19 EMPLOYEES were required by DEFENDANT to use their personal cell phones for
20 work related issues. As a result, in the course of their employment with
21 DEFENDANT, PLAINTIFFS and other AGGRIEVED EMPLOYEES incurred
22 unreimbursed business expenses which included, but were not limited to, costs
23 related to the use of their personal cellular phones all on behalf of and for the benefit
24 of DEFENDANT.

25 18. Further, PLAINTIFFS allege that the sales counters in DEFENDANT's
26 California stores are generally similar in their layout and design and that there is
27 ample space behind each counter area to allow for the presence and use of a stool or
28 seat by DEFENDANT's classified exempt employees during the performance of their



1 work duties. DEFENDANT's classified exempt employees working at DEFENDANT's
2 locations spend a very substantial portion of their working time behind these
3 counters. The nature of the classified exempt hourly employee position can
4 reasonably be accomplished while using a seat/stool.

5 19. In violation of the applicable sections of the California Labor Code and the
6 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
7 DEFENDANT as a matter of company policy, practice and procedure, intentionally,
8 knowingly and systematically failed to provide PLAINTIFFS and the other
9 AGGRIEVED EMPLOYEES suitable seating when the nature of these employees'
10 work reasonably permitted sitting.

11 20. DEFENDANT knew or should have known that PLAINTIFFS and other
12 AGGRIEVED EMPLOYEES were entitled to suitable seating and/or were entitled to
13 sit when it did not interfere with the performance of their duties, and that
14 DEFENDANT did not provide suitable seating and/or did not allow them to sit when
15 it did not interfere with the performance of their duties.

16 21. By reason of this conduct applicable to PLAINTIFFS and all Aggrieved
17 Employees, DEFENDANT violated California Labor Code Section 1198 and Wage
18 Order 4-2001, Section 14 by failing to provide suitable seats.

19 22. From time to time, DEFENDANT also failed to provide PLAINTIFFS and
20 the other AGGRIEVED EMPLOYEES with complete and accurate wage statements
21 which failed to show, among other things, the correct gross and net wages earned.
22 Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
23 employees with an accurate itemized wage statement in writing showing, among
24 other things, gross wages earned and all applicable hourly rates in effect during the
25 pay period and the corresponding amount of time worked at each hourly rate. Aside,
26 from the violations listed above in this paragraph, DEFENDANT failed to issue to
27 PLAINTIFFS an itemized wage statement that lists all the requirements under
28 California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time



1 provided PLAINTIFFS and the other AGGRIEVED EMPLOYEES with wage
2 statements which violated Cal. Lab. Code § 226.

3 23. In violation of the applicable sections of the California Labor Code and the
4 requirements of the Industrial Welfare Commission ("IWC") Wage Order,
5 DEFENDANT as a matter of company policy, practice and procedure, intentionally,
6 knowingly and systematically failed to compensate PLAINTIFFS and the other
7 AGGRIEVED EMPLOYEES for missed meal and rest periods. This uniform policy
8 and practice of DEFENDANT is intended to purposefully avoid the payment for all
9 time worked as required by California law which allows DEFENDANT to illegally
10 profit and gain an unfair advantage over competitors who complied with the law. To
11 the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES
12 against DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

13 24. All of the conduct and violations alleged herein occurred during the PAGA
14 PERIOD. To the extent that any of the conduct and violations alleged herein did not
15 affect PLAINTIFFS during the PAGA PERIOD, PLAINTIFFS seek penalties for
16 those violations that affected other AGGRIEVED EMPLOYEES pursuant to
17 *Carrington v. Starbucks Corp.* 2018 AJDAR 12157 (Certified for Publication
18 12/19/18).

19 **FIRST CAUSE OF ACTION**
20 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**
21 **(Cal. Lab. Code §§2698, *et seq.*)**
22 **BY PLAINTIFF AGAINST ALL DEFENDANTS**

23 25. Plaintiffs incorporate each paragraph of this complaint into this cause of
24 action as though fully set forth herein.

25 26. PAGA is a mechanism by which the State of California itself can enforce
26 state labor laws through the employee suing under the PAGA who do so as the proxy
27 or agent of the state's labor law enforcement agencies. An action to recover civil
28 penalties under PAGA is fundamentally a law enforcement action designed to protect
the public and not to benefit private parties. The purpose of the PAGA is not to



1 recover damages or restitution, but to create a means of "deputizing" citizens as
2 private attorneys general to enforce the Labor Code. In enacting PAGA, the
3 California Legislature specified that "it was ... in the public interest to allow
4 aggrieved employees, acting as private attorneys general to recover civil penalties for
5 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot
6 be subject to arbitration.

7 27. PLAINTIFFS, and such persons that may be added from time to time who
8 satisfy the requirements and exhaust the administrative procedures under the
9 Private Attorney General Act, bring this Representative Action on behalf of the State
10 of California with respect to himself and herself and all individuals who are or
11 previously were employed by DEFENDANT in California and who were classified as
12 exempt employees (the "AGGRIEVED EMPLOYEES") during the time period of July
13 1, 2019 until a date as determined by the Court (the "PAGA PERIOD").

14 28. On June 30, 2020, PLAINTIFF gave written notice by electronic mail to the
15 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
16 employer of the specific provisions of this code alleged to have been violated as
17 required by Labor Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated
18 by this reference herein. The statutory waiting period for PLAINTIFF to add these
19 allegations to the Complaint has expired. As a result, pursuant to Section 2699.3,
20 PLAINTIFFS may now commence a representative civil action under PAGA pursuant
21 to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
22 EMPLOYEES as herein defined.

23 29. The policies, acts and practices heretofore described were and are an
24 unlawful business act or practice because DEFENDANT (a) failed to provide
25 PLAINTIFFS and the other AGGRIEVED EMPLOYEES accurate itemized wage
26 statements, (b) failed to properly record and provide legally required meal and rest
27 periods, (c) failed to pay overtime wages, (d) failed to pay wages when due, (e) failed
28 to reimburse necessary business expenses incurred, and (f) failed to provide suitable



1 seating, all in violation of the applicable Labor Code sections listed in Labor Code
2 Sections §§ 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512, 558(a)(1)(2), 1194, 1197,
3 1197.1, 1198, 2802, and California Code of Regulations, Title 8, Section 1 1070(14)
4 (Failure to Provide Seating), and the applicable Industrial Wage Order(s), and
5 thereby gives rise to civil penalties as a result of such conduct. Plaintiffs specifically
6 exclude and/or does not allege any claims under California Labor Code §§558(a)(3)
7 here. PLAINTIFFS hereby seek recovery of only civil penalties as prescribed by the
8 Labor Code Private Attorney General Act of 2004 as representatives of the State of
9 California for the illegal conduct perpetrated on PLAINTIFFS and the other
10 AGGRIEVED EMPLOYEES.

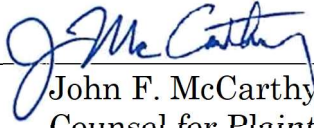
11 **PRAYER FOR RELIEF**

12 WHEREFORE, PLAINTIFFS pray for relief and judgment against all
13 DEFENDANTS, jointly and severally, as follows:

- 14 1. On behalf of the State of California and with respect to all
15 AGGRIEVED EMPLOYEES:
- 16 a) Recovery of civil penalties as prescribed by the Labor Code Private
17 Attorneys General Act of 2004; and,
 - 18 b) An award of attorneys' fees and cost of suit, as allowable under the
19 law, including, but not limited to, pursuant to Labor Code §2699.

20 McCARTHY LAW

21
22 Dated: June 30, 2020

23 By: 
24 John F. McCarthy
25 Counsel for Plaintiff
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Exhibit 1