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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

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

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

Plaintiff,

vs.

HOMEGOODS, INC., a Delaware
corporation; THE TJX COMPANIES, INC.,
a Delaware corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No. **CIV DS 2017556**

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

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

Jury Trial Demanded

BY FAX

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

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698 *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations
9 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on June 3, 2020, until judgment (“non-party Aggrieved Employees”).
14 Plaintiff’s share of civil penalties sought in this action does not exceed \$75,000.

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

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

4. Venue is proper in this Court, because Defendants employ persons in multiple stores located within the County of San Bernardino and have violated various sections of the California Labor Code and applicable Wage Orders in this county, which give rise to the civil penalties sought in this action. Cal. Code Civ. P. § 393. Specifically, Defendants have committed wage and hour violations at multiple stores within the County of San Bernardino, including Defendants' stores at 27651-D San Bernardino Road, Redlands, CA 92374; 12625 Frederick St., Moreno Valley, CA 92553; and 10788 Foothill Blvd., Rancho Cucamonga, CA 91730. Pursuant to California Civil Code of Procedure section 393, venue is proper for the recovery of a penalty imposed by statute in the county in which the cause, or some part of the cause, arose. Because Defendants have employees in San Bernardino County and the State of California could bring this action to recover penalties in San Bernardino County, venue is proper. *Id.*

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

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

THE PARTIES

7. Plaintiff Dennis Gutierrez is a resident of Pico Rivera, in Los Angeles County, California. Defendants employed Plaintiff as an hourly paid, non-exempt Loss Prevention

1 Specialist from approximately November 2018 to February 2020. Plaintiff worked for
2 Defendants at their HomeGoods retail store location in Whittier, California. During his
3 employment, Plaintiff typically worked seven (7) to eight (8) hours or more per day and five
4 (5) days per week. At the time his employment ended, Plaintiff earned approximately \$15.25
5 per hour. His job duties included, without limitation, monitoring HomeGoods stores,
6 identifying safety hazards, managing store incidents, drafting narratives, filing police reports,
7 and conducting safety audits.

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

11 9. THE TJX COMPANIES, INC. was and is, upon information and belief, a
12 Delaware corporation, and at all times hereinafter mentioned, an employer whose employees
13 are engaged throughout this county and the State of California.

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

18 11. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
19 were the partners, agents, owners, or managers of HOMEGOODS, INC. and THE TJX
20 COMPANIES, INC. at all relevant times.

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

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

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

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

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

- 22 (a) jointly exercised meaningful control over the work performed by
23 Plaintiff and other non-party Aggrieved Employees;
24 (b) jointly exercised meaningful control over Plaintiff’s and other non-party
25 Aggrieved Employees’ wages, hours, and working conditions, including
26 the quantity, quality standards, speed, scheduling, and operative details
27 of the tasks performed by Plaintiff and other non-party Aggrieved
28 Employees;

- 1 (c) jointly required that Plaintiff and other non-party Aggrieved Employees
2 perform work which is an integral part of Defendants' businesses; and
3 (d) jointly exercised control over Plaintiff and other non-party Aggrieved
4 Employees as a matter of economic reality in that Plaintiff and other
5 non-party Aggrieved Employees were dependent on Defendants, who
6 shared the power to set the wages of Plaintiff and other non-party
7 Aggrieved Employees and determined their working conditions, and
8 who jointly reaped the benefits from the underpayment of their wages
9 and noncompliance with other statutory provisions governing their
10 employment.

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

14 18. HOMEGOODS, INC.; THE TJX COMPANIES, INC.; and DOES 1 through 10
15 are therefore alter egos of each other.

16 19. Adherence to the fiction of the separate existence of Defendants would permit
17 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
18 from liability for the wrongful acts committed by them under the name HOMEGOODS.

19 20. Plaintiff further alleges, upon information and belief, that Defendants
20 HOMEGOODS, INC. and THE TJX COMPANIES, INC. are alter egos of each other for the
21 following reasons:

22 (a) According to THE TJX COMPANIES, INC.'s SEC 10-K filing for
23 2019, HOMEGOODS, INC. is a wholly owned subsidiary of THE TJX
24 COMPANIES, INC.;¹

25 (b) On the California Secretary of State's website
26 (<https://businesssearch.sos.ca.gov/>), HOMEGOODS, INC. and THE

27 ¹ 10-K Annual Report 3/27/2020, "SEC FILINGS | The TJX Companies, Inc.,"
28 <https://investor.tjx.com/sec-filings/sec-filing/10-k/0000109198-20-000004> (last accessed August 5, 2020).

1 TJX COMPANIES, INC. share the same entity address and mailing
2 address, “770 COCHITUATE ROAD, FRAMINGHAM, MA 01701;”

3 (c) On information and belief, HOMEGOODS, INC. and THE TJX
4 COMPANIES, INC. share the same agent for service of process, “C T
5 CORPORATION SYSTEM;” and

6 (d) On information and belief, HOMEGOODS, INC. and THE TJX
7 COMPANIES, INC. utilize the same standardized employment forms
8 and issue the same employment policies.

9 **PAGA REPRESENTATIVE ALLEGATIONS**

10 21. Defendants are a leading off-price retailer of home fashions in the United
11 States. Defendants operate approximately 800 HomeGoods retail stores nationwide, including
12 approximately 93 store locations in California. Upon information and belief, Defendants
13 maintain a single, centralized Human Resources (“HR”) department at their corporate
14 headquarters in Framingham, Massachusetts, which is responsible for the recruiting and hiring
15 of new employees, and communicating and implementing Defendants’ company-wide
16 policies, including timekeeping policies and meal and rest period policies, to employees
17 throughout California.

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

25 23. Upon information and belief, Defendants maintain a centralized Payroll
26 department at their corporate headquarters in Framingham, Massachusetts, which processes
27 payroll for all non-exempt, hourly paid employees working for Defendants at their various
28 locations and jobsites in California, including Plaintiff and other non-party Aggrieved

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

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

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

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

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

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

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

1 least minimum wages for work done off-the-clock.

2 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
4 meal periods in accordance with the Labor Code or payment of one (1) additional hour of pay
5 at their regular rates of pay when they were not provided with timely, uninterrupted, thirty
6 (30) minute meal periods and that Plaintiff and other non-party Aggrieved Employees were
7 not provided with all meal periods or payment of one (1) additional hour of pay at their
8 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
9 period.

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

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

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

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

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

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

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

23 38. Plaintiff is informed and believes, and thereon alleges, that at all times herein
24 mentioned, Defendants knew or should have known that Defendants had a duty to provide
25 Plaintiff and other non-party Aggrieved Employees with written notice of the material terms
26 of their employment with Defendants as required by the California Wage Theft Prevention
27 Act, but willfully, knowingly, and intentionally failed to do so.

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

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

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

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

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

22 (a) The aggrieved employee shall give written notice by online filing
23 (hereinafter "Employee's Notice") to the LWDA and by certified mail
24 to the employer of the specific provisions of the California Labor Code
25 alleged to have been violated, including the facts and theories to support
26 the alleged violations.

27 (b) An aggrieved employee's notice filed with the LWDA pursuant to
28 2699.3(a) and any employer response to that notice shall be

1 accompanied by a filing fee of seventy-five dollars (\$75).

- 2 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
3 employer and the aggrieved employee by certified mail that it does not
4 intend to investigate the alleged violation within sixty (60) calendar
5 days of the postmark date of the Employee’s Notice. Upon receipt of
6 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
7 five (65) calendar days of the postmark date of the Employee’s Notice,
8 the aggrieved employee may commence a civil action pursuant to
9 California Labor Code section 2699 to recover civil penalties in addition
10 to any other penalties to which the employee may be entitled.

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

- 15 (a) The aggrieved employee or representative shall give written notice by
16 online filing to the LWDA and by certified mail to the employer of the
17 specific provisions of the California Labor Code alleged to have been
18 violated (other than those listed in Section 2699.5), including the facts
19 and theories to support the alleged violation.
- 20 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
21 2699.3(c) and any employer response to that notice shall be
22 accompanied by a filing fee of seventy-five dollars (\$75).
- 23 (c) The employer may cure the alleged violation within thirty-three (33)
24 calendar days of the postmark date of the notice. The employer shall
25 give written notice by certified mail within that period of time to the
26 aggrieved employee or representative and the agency if the alleged
27 violation is cured, including a description of actions taken, and no civil
28 action pursuant to Section 2699 may commence. If the alleged violation

1 is not cured within the 33-day period, the employee may commence a
2 civil action pursuant to Section 2699.

3 45. On June 3, 2020, Plaintiff provided written notice by online filing to the
4 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
5 Code alleged to have been violated, including facts and theories to support the alleged
6 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
7 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
8 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
9 Plaintiff PAGA Case Number LWDA-CM-792092-20. A true and correct copy of Plaintiff's
10 written notice to the LWDA and Defendants dated June 3, 2020, is attached hereto as "Exhibit
11 1."

12 46. As of the filing date of this complaint, over 65 days have passed since Plaintiff
13 sent the LWDA Notice described above, and the LWDA has not responded that it intends to
14 investigate Plaintiff's claims, and Defendants have not cured the violations.

15 47. Thus, Plaintiff has satisfied the administrative prerequisites under California
16 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
17 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a),
18 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

19 48. Labor Code section 558(a) provides "[a]ny employer or other person acting on
20 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
21 provision regulating hours and days of work in any order of the Industrial Welfare
22 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
23 dollars (\$50) for each underpaid employee for each pay period for which the employee was
24 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
25 underpaid employee for each pay period for which the employee was underpaid" Labor
26 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
27 to any other civil or criminal penalty provided by law." Plaintiff, acting in the public interest
28 as a private attorney general, seeks assessment and collection of civil penalties under Labor

1 Code section 558 for himself, all other non-party Aggrieved Employees, and the State of
2 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198,
3 and the applicable IWC wage order. Plaintiff, acting in the public interest as private attorney
4 general, does not seek the recovery of unpaid wages under Labor Code section 558 from
5 Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the applicable
6 IWC wage order.

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

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

14 51. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
15 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a
16 private attorney general, seeks assessment and collection of civil penalties for himself, all
17 other non-party Aggrieved Employees, and the State of California against Defendants for
18 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a),
19 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

20 **FIRST CAUSE OF ACTION**

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

22 **(Against all Defendants)**

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

25 53. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
26 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
27 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 226(a),
28 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c)

1 permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of
2 those Labor Code sections not found in section 2699.5, including sections 516, 1182.12, and
3 2810.5.

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

- 6 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
7 wage order for Defendants' failure to compensate Plaintiff and other
8 non-party Aggrieved Employees with all required overtime pay and
9 failure to properly calculate the overtime rates paid to other non-party
10 Aggrieved Employees, as set forth below;
- 11 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1198, and the
12 applicable IWC wage order for Defendants' failure to compensate
13 Plaintiff and other non-party Aggrieved Employees with at least
14 minimum wages for all hours worked as set forth below;
- 15 (c) Violation of Labor Code sections 226.7, 512(a), 516, 1198, and the
16 applicable IWC wage order for Defendants' failure to provide Plaintiff
17 and other non-party Aggrieved Employees with meal periods, as set
18 forth below;
- 19 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
20 IWC wage order for Defendants' failure to authorize and permit
21 Plaintiff and other non-party Aggrieved Employees to take rest periods,
22 as set forth below;
- 23 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
24 wage order for failure to provide accurate and complete wage statements
25 to Plaintiff and other non-party Aggrieved Employees, as set forth
26 below;
- 27 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable
28 IWC wage order for failure to maintain payroll records as set forth

below;

- (g) Violation of Labor Code section 204 for failure to pay all earned wages during employment as set forth below;
- (h) Violation of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination as set forth below;
- (i) Violation of Labor Code section 1198 for failing to provide suitable seating to other non-party Aggrieved Employees, as set forth below;
- (j) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below; and
- (k) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to provide written notice of information material to Plaintiff's and other non-party Aggrieved Employees' employment with Defendants, as set forth below.

FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

55. 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."

56. 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.

57. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and other non-party Aggrieved 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

1 one-half (1½) for all hours worked in excess of eight (8) hours in a day or more than forty (40)
2 hours in a workweek.

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

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

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

20 61. First, during the relevant period, Defendants had, and continue to have, a
21 company-wide policy and/or practice of discouraging and impeding Plaintiff and other non-
22 party Aggrieved Employees from recording hours worked that were outside of their scheduled
23 shifts in order to 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 of staffing
25 their stores strictly based on the labor hours or labor budget set by corporate. For example,
26 Defendants restricted Plaintiff from earning overtime wages by explicitly prohibiting him
27 from working more than 40 hours per week. This policy of limiting overtime, coupled with
28 Defendants' practice of single-staffing and/or understaffing, as well as assigning heavy

workloads (*see infra*), led Plaintiff and other non-party Aggrieved Employees to work off-the-clock after their scheduled shift times in order to complete their assigned tasks. For example, at least twice times per month, Plaintiff would spend 15-30 minutes after clocking out drafting and submitting incident reports, a task he was required to complete before leaving at the end of his shift. Furthermore, twice per week, upon the instruction of Defendants' management, Plaintiff would spend five (5) minutes after clocking out conducting a final walk-through of the store premises. Thus, Defendants failed to track this time spent working after scheduled shifts, and Plaintiff and other non-party Aggrieved Employees received no compensation for this time.

62. Second, Defendants had, and continue to have, a company-wide policy and/or practice of requiring employees to use their personal cellular phones to communicate with supervisors at all times, including during unpaid meal periods, before and after shifts, and on days off. Defendants expected that Plaintiff and other non-party Aggrieved Employees promptly respond to calls and text messages on their cellular phones at all times, to discuss work-related matters. For example, Plaintiff spent approximately two (2) to three (3) hours per week off-the-clock responding to work-related calls and texts from store managers regarding issues with store incidents and emergencies. However, Defendants did not compensate Plaintiff and other non-party Aggrieved Employees for the time they spent communicating with supervisors regarding work-related issues while off-the-clock.

63. Third, Defendants had, and continue to have, a loss prevention policy requiring Plaintiff and other non-party Aggrieved Employees to undergo security checks at the beginning of their meal periods and/or at the end of their shifts before leaving the store premises. For example, before being permitted to leave the store premises for their meal periods or at the end of their shifts, Plaintiff and other non-party Aggrieved Employees were required to wait off-the-clock for a store Manager to become available to perform a security check, which could take 2-3 minutes per instance. As a result, Plaintiff and other non-party Aggrieved Employees were subject to Defendants' control until being released by a store Manager performing the security check, but were not compensated for this time.

1 64. Fourth, other non-party Aggrieved Employees were required to work off-the-
2 clock or on their off-days traveling to attend mandatory training or meetings. For example,
3 other non-party Aggrieved Employees were required to drive in their personal vehicles for
4 over two (2) hours roundtrip to and from mandatory trainings in Ontario, California, but were
5 not paid for the time they spent traveling to and from the meeting.

6 65. Fifth, as stated, Defendants had, and continue to have, a company-wide policy
7 and/or practice of staffing their locations strictly based on the labor hours or labor budget set
8 by the corporate office. Defendants' use of a labor budget resulted in chronic understaffing,
9 such that there were too few employees on duty to handle the heavy workloads and provide
10 meal period coverage. Also, Defendants have systematically, and on a company-wide basis,
11 understaffed their locations by adopting a single-staffing model for some of their positions,
12 pursuant to their labor budget practices, thereby failing to provide adequate meal period
13 coverage to permit those employees to take compliant meal periods. As a result of this lack of
14 meal period coverage, Plaintiff and other non-party Aggrieved Employees were not always
15 afforded uninterrupted 30-minute meal periods during shifts when they were entitled to
16 receive a meal period. For example, Plaintiff was forced to forego meal periods two (2) to
17 three (3) times per month in order to complete the tasks and duties Defendants assigned to
18 him, including handling incidents, reviewing security footage, and drafting incident reports.
19 In addition, Plaintiff would have his meal periods interrupted and cut short one (1) to two (2)
20 days per week by requests from management and/or supervisors to provide updates, review
21 store returns, or detain shoplifters. Thus, Plaintiff and other non-party Aggrieved Employees
22 missed or had meal periods interrupted in order to complete their assigned workloads.

23 66. Defendants knew or should have known that, as a result of these company-wide
24 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
25 their assigned duties off-the-clock, and were suffered or permitted to perform work for which
26 they were not paid. Because Plaintiff and other non-party Aggrieved Employees regularly
27 worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this
28 off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and other non-

1 party Aggrieved Employees were not paid overtime wages for all of the overtime hours they
2 actually worked.

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

13 68. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
14 the balance of overtime compensation as required by California law, violates the provisions of
15 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
16 Employees are entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
17 2699(a), (f), and (g).

18 **FAILURE TO PAY MINIMUM WAGES**

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

20 69. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
21 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
22 to be paid to employees, and the payment of a wage less than the minimum so fixed is
23 unlawful. Compensable work time is defined by the applicable wage order as "the time
24 during which an employee is subject to the control of an employer, and includes all the time
25 the employee is suffered or permitted to work, whether or not required to do so." Cal. Code.
26 Regs. tit. 8, § 11070(2)(G) (defining "Hours Worked").

27 70. As set forth above, during the relevant time period, as a result of Defendants'
28 policy of limiting the amount of overtime employees could accrue, coupled with the practice

1 of utilizing labor budgets, resultant single-staffing and/or understaffing, assignment of heavy
2 workloads, and subsequent lack of meal period coverage, Plaintiff and other non-party
3 Aggrieved Employees were impeded from taking all uninterrupted meal periods to which they
4 were entitled and were required to work off-the-clock before and after their scheduled shifts.
5 Furthermore, as stated above, Plaintiff and other non-party Aggrieved Employees were
6 required to work off-the-clock undergoing security checks, responding to phone calls from
7 supervisors, traveling to and from mandatory meetings, and/or performing other work-related
8 tasks, such as completing incident reports and conducting store walk-throughs..

9 71. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
10 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did
11 not qualify for overtime premium payment, Defendants did not pay at least minimum wages
12 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
13 1194, 1197, and 1198.

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

18 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**

19 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

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

23 74. At all relevant times herein set forth, California Labor Code section 512(a)
24 provides that an employer may not require, cause, or permit an employee to work for a period
25 of more than five (5) hours per day without providing the employee with a meal period of not
26 less than thirty (30) minutes, except that if the total work period per day of the employee is
27 not more than six (6) hours, the meal period may be waived by mutual consent of both the
28 employer and the employee. Under California law, first meal periods must start after no more

1 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
2 2012).

3 75. At all relevant times herein set forth, California Labor Code section 226.7,
4 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
5 meal period mandated by an applicable order of the IWC.

6 76. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198,
7 and the applicable IWC Wage Order also require employers to provide a second meal period
8 of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay
9 an employee one (1) additional hour of pay at the employee's regular rate, except that if the
10 total hours worked is no more than twelve (12) hours, the second meal period may be waived
11 by mutual consent of the employer and the employee only if the first meal period was not
12 waived.

13 77. As stated, Defendants had, and continue to have, a company-wide policy and/or
14 practice of single-staffing and understaffing their stores pursuant to their labor budget
15 practices, while assigning heavy workloads, resulting in a failure to provide Plaintiff and other
16 non-party Aggrieved Employees with adequate meal period coverage. Because Defendants
17 understaffed their locations, there was no one available to relieve Plaintiff and other non-party
18 Aggrieved Employees needing meal period coverage. As also stated, Defendants had a
19 company-wide policy and/or practice of expecting employees to use their personal cellular
20 phones to communicate with supervisors at all times, including during unpaid meal periods.

21 78. As a result of Defendants' practices and/or policies, Plaintiff and other non-
22 party Aggrieved Employees were forced to work in excess of five (5) hours before taking a
23 meal period and, at times, had their meal periods interrupted, and/or had to forgo their meal
24 periods altogether. For example, approximately two (2) or three (3) times per month, Plaintiff
25 was forced to work in excess of six (6) hours before taking meal periods or work through meal
26 periods altogether, in order to complete the tasks and duties Defendants assigned to him,
27 including handling incidents, reviewing security footage, and drafting incident reports. In
28 addition, Plaintiff's meal periods were interrupted or shortened one (1) or two (2) days per

1 week by requests from Defendants' management and/or supervisors to provide updates,
2 review store returns, or detain shoplifters.

3 79. Moreover, Defendants did not provide Plaintiff and other non-party Aggrieved
4 Employees with second 30-minute meal periods on days that they worked in excess of ten (10)
5 hours in one day. During his employment, Plaintiff worked shifts in excess of ten (10) hours
6 or more hours per day, but was not provided an uninterrupted second 30-minute meal period.
7 Plaintiff and other non-party Aggrieved Employees did not sign valid meal period waivers on
8 days that they were entitled to meal periods and were not relieved of all duties.

9 80. Defendants knew or should have known that as a result of their company-wide
10 policies and/or practices, that Plaintiff and other non-party Aggrieved Employees were not
11 actually relieved of all duties to take timely, uninterrupted meal periods. Defendants further
12 knew or should have known that it did not pay Plaintiff and other non-party Aggrieved
13 Employees meal period premium wages when meal periods were missed, late, short, and/or
14 interrupted.

15 81. Defendants also have engaged in a company-wide practice and/or policy of not
16 paying meal period premiums owed when compliant meal periods are not provided. Because
17 of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees have not
18 received premium pay for missed, interrupted, or late meal periods. Alternatively, to the
19 extent that Defendants did pay meal period premium wages to other non-party Aggrieved
20 Employees, they did so at the incorrect rates. Because Defendants did not properly calculate
21 other non-party Aggrieved Employees' regular rates of pay by including all remunerations,
22 such as incentive pay and/or nondiscretionary bonuses, any premiums paid for meal period
23 violations were also paid at an incorrect rate and resulted in an underpayment of meal period
24 premium wages.

25 82. Thus, Defendants failed to provide Plaintiff and other non-party Aggrieved
26 Employees compliant meal periods and failed to pay the full meal period premiums due.
27 Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
28 sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved Employees are

1 entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and
2 (g).

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

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

5 83. At all relevant times herein set forth, the applicable IWC Wage Order and
6 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other
7 non-party Aggrieved Employees' employment by Defendants.

8 84. At all relevant times, the applicable IWC Wage Order provides that "[e]very
9 employer shall authorize and permit all employees to take rest periods, which insofar as
10 practicable shall be in the middle of each work period" and that the "rest period time shall be
11 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
12 hours or major fraction thereof" unless the total daily work time is less than three and one-half
13 (3½) hours.

14 85. At all relevant times, California Labor Code section 226.7 provides that no
15 employer shall require an employee to work during any rest period mandated by an applicable
16 order of the California IWC. To comply with its obligation to authorize and permit rest
17 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
18 employer must "relinquish any control over how employees spend their break time, and
19 relieve their employees of all duties—including the obligation that an employee remain on
20 call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services,*
21 *Inc.*, 2 Cal. 5th 257, 269-270 (2016).

22 86. Pursuant to the applicable IWC Wage Order and California Labor Code section
23 226.7, Plaintiff and other non-party Aggrieved Employees are entitled to recover from
24 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
25 required rest period was not authorized and permitted.

26 87. During the relevant time period, Defendants regularly failed to authorize and
27 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest
28 period per each four (4) hour period worked or major fraction thereof. As with meal periods,

1 Defendants' company-wide policies and practices, including single-staffing and/or
2 understaffing while assigning heavy workloads, prevented Plaintiff and other non-party
3 Aggrieved Employees from being relieved of all duty to take compliant rest periods.
4 Defendants also failed to schedule rest periods, which, coupled with Defendants' failure to
5 provide adequate rest period coverage, further led to Plaintiff and other non-party Aggrieved
6 Employees not being authorized and permitted to take rest periods. Moreover, Plaintiff and
7 other non-party Aggrieved Employees were expected to respond to their personal cellular
8 phones at all times, including during rest periods.

9 88. Furthermore, upon information and belief, Defendants maintained and
10 implemented a company-wide on-premises rest period policy, which mandated that Plaintiff
11 and other non-party Aggrieved Employees remain on the work premises during their rest
12 periods. Upon information and belief, Defendants' company-wide on-premises rest period
13 policy prevented Plaintiff and other non-party Aggrieved Employees from being relieved of
14 all duties for rest periods and caused them to perform work during rest periods.

15 89. As a result of Defendants' practices and policies, Plaintiff and other non-party
16 Aggrieved Employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
17 excess of 10 hours without receiving all ten (10) minute rest periods to which they were
18 entitled. For example, Plaintiff missed his rest periods five (5) times per week, or had his rest
19 periods interrupted or cut short 3-4 times per week, due to Defendants' practice of
20 understaffing and assignment of heavy workloads.

21 90. Defendants also have engaged in a company-wide practice and/or policy of not
22 paying all rest period premiums owed when compliant rest periods are not authorized or
23 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
24 Employees have not received premium pay for all missed rest periods. Alternatively, to the
25 extent that Defendants did pay rest period premium wages to other non-party Aggrieved
26 Employees, they did so at the incorrect rates. Because Defendants did not properly calculate
27 other non-party Aggrieved Employees' regular rates of pay by including all remunerations,
28 such as incentive pay and/or nondiscretionary bonuses, any premiums paid for rest period

1 violations were also paid at an incorrect rate and resulted in an underpayment of rest period
2 premium wages.

3 91. Defendants' conduct violates the applicable IWC Wage Order and California
4 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved
5 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
6 558 and/or 2699(a), (f), and (g).

7 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**

8 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

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

14 93. During the relevant time period, Defendants have knowingly and intentionally
15 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
16 inaccurate wage statements. For example, Defendants issued uniform wage statements to
17 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
18 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
19 the pay period, including overtime rates of pay, and the corresponding number of hours
20 worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2),
21 226(a)(5), and 226(a)(9).

22 94. First, because Defendants did not record the time Plaintiff and other non-party
23 Aggrieved Employees spent working off-the-clock, Defendants did not list the correct amount
24 of gross wages and net wages earned by Plaintiff and other non-party Aggrieved Employees in
25 compliance with section 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to
26 accurately list the total number of hours worked by Plaintiff and other non-party Aggrieved
27 Employees in violation of section 226(a)(2), and failed to list the applicable hourly rates of
28 pay in effect during the pay period and corresponding accurate number of work hours worked

1 at each hourly rate in violation of section 226(a)(9).

2 95. Second, because Defendants did not calculate other non-party Aggrieved
3 Employees' regular rate of pay correctly for purposes of paying overtime wages, Defendants
4 did not list the correct amount of gross wages earned by other non-party Aggrieved
5 Employees in compliance with section 226(a)(1) and did not list the correct amount of net
6 wages earned by other non-party Aggrieved Employees in violation of section 226(a)(5).
7 Defendants also failed to correctly list all applicable hourly rates in effect during the pay
8 period, namely, correct overtime rates of pay and correct rates of pay for premium wages, in
9 violation of section 226(a)(9).

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

18 97. California Labor Code section 1198 provides that the maximum hours of work
19 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
20 set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he
21 employment of any employees for longer hours than those fixed by the order or under
22 conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC
23 Wage Order, employers are required to keep accurate time records showing when the
24 employee begins and ends each work period and meal period. During the relevant time
25 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
26 and meal period start and stop times for Plaintiff and other non-party Aggrieved Employees,
27 in violation of section 1198. Furthermore, in light of Defendants' failure to provide Plaintiff
28 and other non-party Aggrieved Employees with second 30-minute meal periods to which they

1 were entitled, Defendants kept no records of meal start and end times for second meal periods.

2 98. California Labor Code section 1174(d) provides that “[e]very person employing
3 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
4 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
5 plants or establishments at which employees are employed, payroll records showing the hours
6 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
7 applicable piece rate paid to, employees employed at the respective plants or establishments
8 . . .” At all relevant times, and in violation of Labor Code section 1174(d), Defendants
9 willfully failed to maintain accurate payroll records for Plaintiff and other non-party
10 Aggrieved Employees showing the daily hours they worked and the wages paid thereto as a
11 result of failing to record the off-the-clock hours that they worked.

12 99. Because Defendants’ violations of 226(a) and 1174(d) were committed against
13 Plaintiff and other non-party Aggrieved Employees, Plaintiff and other non-party Aggrieved
14 Employees are entitled to recover civil penalties pursuant to Labor Code sections 226.3,
15 1174.5, and/or 2699(a), (f), and (g).

16 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

17 **VIOLATION OF LABOR CODE SECTION 204**

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

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

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

4 102. During the relevant time period, Defendants willfully failed to pay Plaintiff and
5 other non-party Aggrieved Employees all wages due to them within any time period specified
6 by California Labor Code section 204 including, but not limited to, overtime wages, minimum
7 wages, and meal and rest period premium wages.

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

10 **FAILURE TO PAY WAGES UPON TERMINATION**

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

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

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

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

1 2699(a), (f), and (g).

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

5 107. 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.”

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

14 109. Plaintiff alleges that Defendants’ retail stores are generally similar in their
15 layout and design and there was, and continues to be, space behind each cash wrap and near
16 each entrance/exit to allow for the presence and use of a seat or stool by other non-party
17 Aggrieved Employees during the performance of their work duties. Defendants could have
18 provided other non-party Aggrieved Employees with a seat or stool at their cash wraps and
19 entrances/exits with reasonable or no modification to these work areas, but instead denied
20 them seating and forced other non-party Aggrieved Employees to stand throughout the day.

21 110. Other non-party Aggrieved Employees spent a substantial portion of their day
22 behind or at these cash wraps. The nature of the work of an employee performing cashier
23 duties and/or performing exit security duties can reasonably be accomplished from a seated
24 position. However, Defendants systematically, and on a company-wide basis, did not provide
25 seats or stools at or near each cash wrap or entrance/exit, forcing other non-party Aggrieved
26 Employees to stand throughout their work shifts.

27 111. During the relevant time period, Defendants violated California Labor Code
28 section 1198 and California Code of Regulations, Title 8, section 11070(14)(A), because other

1 non-party Aggrieved Employees were not allowed to sit, even when it would not have
2 interfered with the performance of their duties, nor were they provided with suitable seats.
3 Other non-party Aggrieved Employees could have handled transactions at the cash registers,
4 provided customer service, and/or guarded store entrances/exits, while seated, without
5 interference to their ability to complete these duties.

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

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

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

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)**

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

116. 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.”

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

118. Defendants did not provide other non-party 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 other non-party Aggrieved Employees engaged in duties in which the nature of the work required standing, Defendants denied them the use of seats nearby when they were not engaged in those duties. Even though the layout of Defendants’ workplaces could accommodate seats or stools with reasonable or no modification to these work areas, Defendants have, on a company-wide basis, denied other non-party Aggrieved Employees suitable seating altogether.

119. As a result of Defendants’ company-wide policy and/or practice 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, other non-party Aggrieved Employees were forced to stand during shifts and denied seats. Defendants’ failure to provide suitable seating to other non-party Aggrieved Employees violated and continues to violate California Labor Code section 1198 and IWC Wage Order 7-2001, Section 14(B).

120. Other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

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1 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

2 **VIOLATION OF LABOR CODE SECTION 2802**

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

13 122. First, during the relevant time period, Defendants, on a company-wide basis,
14 required Plaintiff and other non-party Aggrieved Employees to utilize their own personal
15 cellular phones and cellular data to carry out their job duties, but Defendants failed to fully
16 reimburse them for the costs of their work-related cellular phone expenses. For example,
17 Plaintiff and other non-party Aggrieved Employees were required to use their personal
18 cellular phones to complete their work-related tasks, such as discussing assignments with
19 managers and supervisors. Specifically, Plaintiff was required to use his personal cellular
20 phone for 15-30 minutes per day to report store incidents to his supervisors or Defendants’
21 Loss Prevention Department. Although Defendants required Plaintiff and other non-party
22 Aggrieved Employees to utilize their personal cellular phones to carry out their work-related
23 responsibilities, Defendants failed to fully reimburse them for this cost.

24 123. Second, Defendants had a company-wide policy of requiring Plaintiff and other
25 non-party Aggrieved Employees to utilize their own personal vehicles or obtain alternate
26 transportation to carry out company business, but failed to reimburse them for all costs of
27 travel, including mileage. For example, Plaintiff would drive 100-150 miles each month in his
28 personal vehicle to police stations to file police reports or to other store locations to handle

1 emergencies. As another example, other non-party Aggrieved Employees were required to
2 attend mandatory training sessions in Ontario, California. Although Defendants required that
3 Plaintiff and other non-party Aggrieved Employees use their own vehicles or obtain alternate
4 transportation to complete these tasks as part of their job duties, Defendants never reimbursed
5 them for all of their travel expenses.

6 124. Defendants could have provided Plaintiff and other non-party Aggrieved
7 Employees with the actual tools for use on the job, such as company phones and company
8 vehicles, or Defendants could have reimbursed employees for their cellular phone, mileage,
9 and travel expenses. Instead, Defendants passed these operating costs off onto Plaintiff and
10 other non-party Aggrieved Employees. At all relevant times, Plaintiff and other non-party
11 Aggrieved Employees did not earn at least two (2) times the minimum wage.

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

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

18 **FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF**
19 **EMPLOYMENT - VIOLATION OF LABOR CODE SECTION 2810.5(a)(1)(A)-(C)**

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

1 of the minimum wage, including meal or lodging allowances. Labor Code section
2 2810.5(a)(1)(A)-(C).

3 128. During the relevant time period, Defendants failed to provide Plaintiff and
4 other non-party Aggrieved Employees with written notice that lists all the requisite
5 information set forth in Labor Code section 2810.5(a)(1)(A)-(C).

6 129. Defendants' failure to provide Plaintiff and other non-party Aggrieved
7 Employees with written notice of basic information regarding their employment with
8 Defendants are in violation of Labor Code section 2810.5. Plaintiff and other non-party
9 Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code
10 sections 2699(a), (f), and (g).

11 **REQUEST FOR JURY TRIAL**

12 Plaintiff requests a trial by jury.

13 **PRAYER FOR RELIEF**

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

16 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
17 (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different amount.

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

19 2. That the Court declare, adjudge and decree that Defendants violated the
20 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
21 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
22 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516,
23 and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize
24 and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
25 statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay
26 all earned wages upon termination); 204 (by failing timely to pay all earned wages during
27 employment); 1198 (by failing to provide suitable seating); 2802 (by failing to reimburse
28 business expenses); and 2810.5 (by failing to provide written notice of information material to

1 employment).

2 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
3 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202,
4 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and
5 2810.5;

6 4. For attorneys' fees and costs pursuant to California Labor Code section
7 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
8 Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12,
9 1194, 1197, 1198, 2802, and 2810.5;

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

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

13
14 Dated: August 13, 2020

Respectfully submitted,

15 Capstone Law APC

16
17 By: 
18 Bevin Allen Pike
19 Orlando Villalba
Joseph Hakakian

20 Attorneys for Plaintiff Dennis Gutierrez
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EXHIBIT “1”

JULIAN QUATTLEBAUM
310.712.8154 Direct
Julian.Quattlebaum@capstonelawyers.com

June 3, 2020

VIA ONLINE SUBMISSION

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

Subject: *Dennis Gutierrez v. HomeGoods, Inc., et al.*

Dear PAGA Administrator:

This office represents Dennis Gutierrez in connection with his claims under the California Labor Code. Mr. Gutierrez was an employee of HOMEGOODS, INC. and/or THE TJX COMPANIES, INC. For the purpose of this letter, Mr. Gutierrez collectively refers to these entities as “TJX.”

The employer may be contacted directly at the addresses below:

HOMEGOODS, INC.
770 COCHITUATE ROAD
FRAMINGHAM MA 01701

THE TJX COMPANIES, INC.
770 COCHITUATE ROAD
FRAMINGHAM MA 01701

Mr. Gutierrez 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”). Mr. Gutierrez seeks relief on behalf of himself, the State of California, and other persons who are or were employed by TJX in California as a non-exempt, hourly paid employee 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.

TJX employed Mr. Gutierrez as a non-exempt, hourly paid Loss Prevention Specialist from approximately November 2018 to February 2020. Mr. Gutierrez worked for TJX out of the HomeGoods retail store in Whittier, California. During his employment, Mr. Gutierrez typically worked seven (7) to eight (8) hours or more per day and five (5) days per week. Mr. Gutierrez’s primary job duties included, without limitation, monitoring HomeGoods stores, identifying safety

hazards, managing store incidents, drafting narratives, filing police reports, and conducting safety audits.

TJX has committed one or more of the following Labor Code violations against Mr. Gutierrez, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

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

HOMEGOODS, INC. and THE TJX COMPANIES, INC. are Delaware corporations. Together, they are a leading off-price retailer of home fashions in the United States. Upon information and belief, TJX maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Framingham, Massachusetts, for all non-exempt, hourly paid employees working for TJX in California, including Mr. Gutierrez and other aggrieved employees. At all relevant times, TJX issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Gutierrez and other aggrieved employees, regardless of their location or position.

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

TJX willfully failed to pay all overtime wages owed to Mr. Gutierrez and other aggrieved employees. During the relevant time period, Mr. Gutierrez and other aggrieved employees were not paid

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

overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, TJX has and continues to have, a policy and/or practice of discouraging and impeding Mr. Gutierrez 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 its stores strictly based on the labor hours or labor budget set by corporate. For example, TJX restricted Mr. Gutierrez from earning overtime wages by explicitly prohibiting him from working more than 40 hours per week. This policy of limiting overtime, coupled with TJX's practice of single-staffing and/or understaffing, as well as assigning heavy workloads (*see infra*), led Mr. Gutierrez and other aggrieved employees to work off-the-clock after their scheduled shift times in order to complete their assigned tasks. For example, at least two (2) times per month, Mr. Gutierrez would spend 15-30 minutes after clocking out drafting and submitting incident reports, a task he was required to complete before leaving at the end of his shift. Furthermore, twice per week, on the instruction of TJX's management, Mr. Gutierrez would spend five (5) minutes after clocking out conducting a final walk-through of the store premises. Thus, TJX failed to track this time spent working after scheduled shifts, and Mr. Gutierrez and other aggrieved employees received no compensation for this time.

Second, TJX had, and continues to have, a company-wide policy and/or practice of requiring employees to use their personal cellular phones to communicate with supervisors at all times, including during unpaid meal periods, before and after shifts, and on days off. TJX expected that Mr. Gutierrez and other aggrieved employees promptly respond to calls and text messages on their cellular phones at all times, to discuss work-related matters. For example, Mr. Gutierrez spent approximately two (2) to three (3) hours per week off-the-clock responding to work-related calls and texts from store managers regarding issues with store incidents and emergencies. However, TJX did not compensate Mr. Gutierrez or other aggrieved employees for the time they spent communicating with supervisors regarding work-related issues while off-the-clock.

Third, TJX had, and continues to have, a loss prevention policy requiring Mr. Gutierrez and/or other aggrieved employees to undergo security checks at the beginning of their meal periods and/or at the end of their shifts before leaving the store premises. For example, before being permitted to leave the store premises for their meal periods or at the end of their shifts, Mr. Gutierrez and/or other aggrieved employees were required to wait off-the-clock for a store Manager to become available to perform a security check, which could take 2-3 minutes per instance. As a result, Mr. Gutierrez and/or other aggrieved employees were subject to TJX's control until being released by a store Manager performing the security check, but were not compensated for this time.

Fourth, other aggrieved employees were required to work off-the-clock or on their off-days traveling to attend mandatory training or meetings. For example, other aggrieved employees were required to drive in their personal vehicles for over two (2) hours roundtrip to and from mandatory trainings in Ontario, California, but were not paid for the time they spent traveling to and from the meeting.

Fifth, as stated, TJX had, and continues to have, a company-wide policy and/or practice of staffing its locations strictly based on the labor hours or labor budget set by the corporate office. TJX's use of a labor budget resulted in chronic understaffing, such that there were too few employees on duty to handle the heavy workloads and provide meal period coverage. Also, TJX has systematically, and on

a company-wide basis, understaffed its locations by adopting a single-staffing model for some of its positions, pursuant to its labor budget practices, thereby failing to provide adequate meal period coverage to permit those employees to take compliant meal periods. As a result of this lack of meal period coverage, Mr. Gutierrez and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Mr. Gutierrez was forced to forego meal periods two (2) to three (3) times per month in order to complete the tasks and duties TJX assigned to him, including handling incidents, reviewing security footage and drafting incident reports. In addition, Mr. Gutierrez would have his meal periods interrupted and cut short one (1) to two (2) days per week by requests from management and/or supervisors to provide updates, review store returns or detain shoplifters. Thus, Mr. Gutierrez and other aggrieved employees missed or had meal periods interrupted in order to complete their assigned workloads.

TJX knew or should have known that, as a result of these company-wide practices and/or policies, Mr. Gutierrez and other aggrieved employees were performing their assigned duties off-the-clock and/or during their meal periods, and were suffered or permitted to perform work for which they were not paid. TJX also knew, or should have known, that it did not compensate Mr. Gutierrez and other aggrieved employees applicable overtime rates of pay for overtime hours that they worked.

Because Mr. Gutierrez 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, Mr. Gutierrez and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. TJX's failure to pay Mr. Gutierrez 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, TJX did not pay other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, TJX paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, TJX failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, TJX failed to pay all overtime wages by paying a lower overtime rate than required.

Mr. Gutierrez 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, during the relevant time period, as a result of TJX's policy of limiting the amount of overtime employees could accrue, coupled with the practice of utilizing labor budgets, resultant single-staffing and/or understaffing, assignment of heavy workloads, and subsequent lack of meal period coverage, Mr. Gutierrez and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock before and after their scheduled shifts. Furthermore, as stated above, Mr. Gutierrez and/or other aggrieved employees were required to work off-the-clock undergoing security checks, responding to phone calls from supervisors, traveling to and from mandatory meetings, and performing other work-related tasks, such as completing incident reports and conducting store walk-throughs.

Moreover, TJX maintained and implemented a company-wide policy of requiring all employees to travel to a medical facility on their own time and using their own personal means of transportation to undergo mandatory drug testing and/or physical examinations. However, TJX did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities or for the time they spent undergoing drug testing and/or physical examinations. At all times, TJX was in control of scheduling the time period for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. However, TJX did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities and undergoing the mandatory drug testing and/or physical examinations.

Thus, TJX 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, TJX 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, 1197.1, and 1198. Accordingly, TJX regularly failed to pay at least minimum wages to Mr. Gutierrez 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.

Mr. Gutierrez 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, and 1198 and the applicable IWC Wage Order require employers to provide meal and rest periods 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 break 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, TJX had, and continues to have, a company-wide policy and/or practice of single-staffing and understaffing its stores pursuant to its labor budget practices, while assigning heavy workloads, resulting in a failure to provide Mr. Gutierrez and other aggrieved employees with adequate meal period coverage. Because TJX understaffs its locations, there is no one available to relieve Mr. Gutierrez and other aggrieved employees needing meal period coverage. As also stated, TJX had a company-wide policy and/or practice of expecting employees to use their personal cellular phones to communicate with supervisors at all times, including during unpaid meal periods.

TJX's practices and policies prevented Mr. Gutierrez and other aggrieved employees from taking all compliant meal periods to which they were entitled. As a result, Mr. Gutierrez and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period, had their meal periods interrupted, and/or had to forgo their meal periods altogether in order to complete their assigned workloads. For example, approximately two (2) or three (3) times per month, Mr. Gutierrez was forced to work in excess of six (6) hours before taking meal periods or work through meal periods altogether, in order to complete the tasks and duties TJX assigned to him, including handling incidents, reviewing security footage and drafting incident reports. In addition, Mr. Gutierrez's meal periods were interrupted or shortened one (1) or two (2) days per week by requests from TJX's management and/or supervisors to provide updates, review store returns or detain shoplifters.

Moreover, TJX did not provide Mr. Gutierrez and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, Mr. Gutierrez was not provided with second meal periods when he worked shifts longer than ten (10) hours. Mr. Gutierrez 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.

At all times herein mentioned, TJX knew or should have known that, as a result of these company-wide policies or practices, Mr. Gutierrez and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. TJX further knew or should have known that it did not pay Mr. Gutierrez and other aggrieved employees all meal period premium wages when meal periods were missed, late, short, and/or interrupted.

Furthermore, TJX has engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Gutierrez and other aggrieved employees have not received all premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that TJX did pay meal period premium wages to other aggrieved employees, it did so at the incorrect rates. Because TJX did not properly calculate other aggrieved employees' regular rates of pay by including all remunerations, such as incentive pay and/or nondiscretionary bonuses, any premiums paid for meal period violations were also paid at an incorrect rate and resulted in an underpayment of meal period premium wages.

Accordingly, TJX failed to provide all meal periods in violation of California Labor Code sections 226.7, 512, 516, and 1198. Mr. Gutierrez and other aggrieved employees are therefore 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, TJX regularly failed to authorize and permit Mr. Gutierrez 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, TJX’s company-wide practices, including single-staffing and/or understaffing while assigning heavy workloads, prevented Mr. Gutierrez and other aggrieved employees from being relieved of all duty to take compliant rest periods. Additionally, TJX failed to schedule rest periods, which, coupled with TJX’s failure to provide adequate rest period coverage, further led to Mr. Gutierrez and other aggrieved employees not being authorized and permitted to take compliant rest periods. Moreover, Mr. Gutierrez 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, TJX maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Gutierrez and other aggrieved employees remain on the work premises during their rest periods. Upon information and belief, TJX’s company-wide on-premises rest period policy prevented Mr. Gutierrez and other aggrieved employees from being relieved of all duties for rest periods and caused them to perform work during rest periods.

As a result of TJX’s practices and policies, Mr. Gutierrez 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, Mr. Gutierrez missed his rest periods five (5) times per week, or had his rest periods interrupted or cut short 3-4 times per week, due to TJX’s practice of understaffing and assignment of heavy workloads.

TJX 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, Mr. Gutierrez and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that TJX did pay rest period premium wages to other aggrieved employees, it did so at the incorrect rates. Because TJX did not properly calculate other aggrieved employees’ regular rates of pay by including all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, any premiums paid for

rest period violations were also paid at an incorrect rate and resulted in an underpayment of rest period premium wages.

Accordingly, TJX failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Gutierrez and other aggrieved employees are therefore 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. TJX has not provided Mr. Gutierrez 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, TJX has knowingly and intentionally provided Mr. Gutierrez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, TJX issued uniform wage statements to Mr. Gutierrez and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; 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, TJX violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

First, because TJX did not record the time Mr. Gutierrez and other aggrieved employees spent working off-the-clock, TJX did not list the correct amount of gross wages and net wages earned by Mr. Gutierrez and other aggrieved employees, in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, TJX failed to accurately list the total number of the hours worked by Mr. Gutierrez 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 TJX did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, TJX did not list the correct amount of gross wages earned by other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by other aggrieved employees in violation of section 226(a)(5). TJX 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, without limitation, 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 hours 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), TJX willfully failed to maintain accurate payroll records for Mr. Gutierrez 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. At all relevant times, TJX failed, on a company-wide basis, to record actual hours worked, and thereby failed to keep records of work period and meal period start and stop times for Mr. Gutierrez and other aggrieved employees in violation of section 1198. Furthermore, in light of TJX’s failure to provide Mr. Gutierrez and other aggrieved employees with second 30-minute meal periods to which they were entitled, TJX kept no records of meal start and end times for second meal periods.

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

Mr. Gutierrez 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, TJX failed to pay Mr. Gutierrez and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages, within any time period specified by California Labor Code section 204. Mr. Gutierrez 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.

TJX willfully failed to pay Mr. Gutierrez and other aggrieved employees who are no longer employed by TJX all their earned wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving TJX's employ in violation of California Labor Code sections 201, 202, and 203.

Mr. Gutierrez 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 § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

At all times relevant herein, TJX implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo a mandatory drug test and/or physical examination, but required them to do so at their own expense. As stated, TJX had a company-wide policy requiring that all employees travel to a designated medical facility on their own time and using their own personal means of transportation or obtain alternate transportation to undergo drug testing and/or physical examinations. At all times, TJX was in control of scheduling the time period for the testing and/or physical examinations, selecting the provider/facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations.

However, TJX did not compensate other aggrieved employees for the time they spent traveling to and from their drug tests and/or physical examinations, or for the time they spent undergoing the testing and/or examinations, or reimburse them for the travel expenses they incurred getting to and

from the medical facilities. TJX's policy and/or practice of not paying for all costs other aggrieved employees incurred obtaining mandatory drug tests and/or physical examinations violates California Labor Code section 222.5.

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 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.*

TJX California retail stores are generally similar in their layout and design and there was, and continues to be, space behind each cash wrap and near each entrance/exit to allow for the presence and use of a seat or stool by other aggrieved employees during the performance of their work duties. TJX could provide other aggrieved employees with a seat or stool at its cash wraps and entrances/exits, but instead denies them seating and forces aggrieved employees to stand throughout the day.

Other aggrieved employees spent a substantial portion of their day behind these cash wraps and/or by the store entrances/exits. The nature of the work of an employee performing cashier duties, greeting customers, and/or performing exit security duties can reasonably be accomplished from a seated position. However, TJX systematically, and on a company-wide basis, does not provide seats or stools at or near each cash register or entrance/exit, forcing other aggrieved employees to stand throughout their work shifts.

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

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

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

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

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring TJX into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order 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."

First, during the relevant time period, TJX had a company-wide policy of requiring Mr. Gutierrez and other aggrieved employees to utilize their own personal cellular phones and cellular data to carry out their job duties, but TJX failed to reimburse them for the costs of their work-related cellular phone expenses. Mr. Gutierrez and other aggrieved employees were required to use their personal cellular phones to complete their work-related tasks, such as discussing assignments with managers and supervisors. For example, Mr. Gutierrez was required to use his personal cellular phone for 15-30 minutes per day to report store incidents to his supervisors or TJX's Loss Prevention Department. Although TJX required Mr. Gutierrez and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, TJX failed to reimburse them for this cost.

Second, as stated, TJX had and continues to have, a company-wide policy of requiring other aggrieved employees to travel in their own personal vehicles or obtain alternate transportation to attend requisite trainings or carry out company business, but failed to reimburse them for all costs of travel, including mileage. For example, Mr. Gutierrez would drive 100-150 miles each month in his personal vehicle to police stations to file police reports or to other store locations to handle emergencies. As another example, other aggrieved employees were required to attend mandatory training sessions in Ontario, California. Although TJX required Mr. Gutierrez and other aggrieved employees to utilize their own personal vehicles or obtain alternate transportation to complete these work-related duties, TJX never reimbursed them for all of their travel expenses.

Third, as mentioned, TJX had a company-wide policy and/or practice of requiring other aggrieved employees to travel in their own personal vehicles to medical facilities to undergo mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses. Although TJX required other aggrieved employees to undergo the testing, TJX failed to reimburse them for these expenses.

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

Thus, TJX 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. Mr. Gutierrez and other aggrieved employees are 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 § 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.

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

Mr. Gutierrez and/or 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." TJX, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Gutierrez's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Gutierrez seeks the remedies set forth in Labor Code section 558 for himself, 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, Mr. Gutierrez, 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 TJX for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

Pre-Litigation Demand

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

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

1. TJX shall pay Mr. Gutierrez and all other aggrieved employees employed by TJX at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. TJX shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked and provided lawful meal and rest periods.
3. TJX shall conduct a survey or interview all current and former aggrieved employees in California who worked for TJX in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for mandatory medical examinations, travel, cellular phone expenses, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. TJX shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512, 516, and 1198. TJX also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. TJX shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for TJX's benefit, including, but not limited to, costs of mandatory medical examinations, cellular phone expenses, mileage, and travel, as required by Labor Code sections 222.5 and 2802.

6. TJX shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. TJX shall provide Mr. Gutierrez and all aggrieved employees employed by TJX at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. TJX shall implement and provide suitable seating to all aggrieved employees.
9. TJX shall provide Mr. Gutierrez and all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
10. TJX shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1194.5, 1197.1, and 2699, and Wage Order No. 7-2001, section 20.

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

Julian Quattlebaum
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,



Julian Quattlebaum

Copy: HOMEGOODS, INC. (via U.S. Certified Mail); THE TJX COMPANIES, INC. (via U.S. Certified Mail)

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- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

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PS Form 3811, July 2015 PSN 7530-02-000-9053

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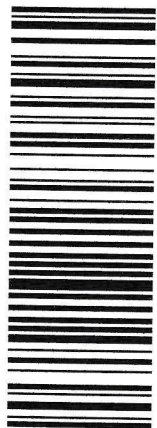
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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

THE TJX COMPANIES, INC.
770 COCHITUATE ROAD
FRAMINGHAM MA 01701



9590 9402 4882 9032 7448 78

2. Article Number (Transfer from service label)

7020 0090 0001 3768 4056

PS Form 3811, July 2015 PSN 7530-02-000-9053

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A. Signature

X

- ☐ Agent
- ☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

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CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$ 3.50

Extra Services & Fees (check box, add fee as appropriate)

- ☒ Return Receipt (hardcopy) \$ 2.80
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

Sent To

THE TJX COMPANIES, INC.
770 COCHITUATE ROAD
FRAMINGHAM MA 01701

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

Postmark
Here

Gutierrez v. The
TJX Companies, Inc.

7020 0090 0001 3768 4056

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

THE TJX COMPANIES, INC.
770 COCHITUATE ROAD
FRAMINGHAM MA 01701



9590 9402 4882 9032 7448 78

2. Article Number (Transfer from service label)

7020 0090 0001 3768 4056

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

6/1/20

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No



3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

HOMEGOODS, INC.
770 COCHITUATE ROAD
FRAMINGHAM MA 01701



9590 9402 4882 9032 7448 85

2. Article Number (Transfer from service label)

7020 0090 0001 3768 4049

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

6/1/20

D. Is delivery address different from item 1?

☒ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery over \$500

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt