

1 Mark Ozzello (SBN 116595)
2 Mark.Ozzello@capstonelawyers.com
3 Brandon Brouillette (SBN 273156)
4 Brandon.Brouillette@capstonelawyers.com
5 Joseph Hakakian (SBN 323011)
6 Joseph.Hakakian@capstonelawyers.com
7 Capstone Law APC
8 1875 Century Park East, Suite 1000
9 Los Angeles, California 90067
10 Telephone: (310) 556-4811
11 Facsimile: (310) 943-0396

12 Attorneys for Plaintiff Jose Ruiz

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

DEC 17 2020

BY 
LILIANA MARISCAL, DEPUTY

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

JOSE RUIZ, individually, and on behalf of
other members of the general public
similarly situated,

Plaintiff,

vs.

DISNEY STORE USA, LLC, a Delaware
limited liability company; DISNEY
WORLDWIDE SERVICES, INC., a Florida
corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: CIVDS2016983

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

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision (A) (Failure to

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Provide Reporting Time Pay);

- (9) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (10) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (12) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

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

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action
23 because there is no complete diversity, and this case falls within the statutory exceptions to
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).
25 Upon information and belief, two-thirds or more of the class members and Defendants are
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant
28 relief is being sought against Defendants whose violations of California wage and hour laws

form a significant basis for Plaintiff's claims; and (d) no other class action has been filed within the past three (3) years on behalf of the same proposed class against Defendants asserting the same or similar factual allegations.

3. Venue is proper in this Court because Defendants employ persons within the County of San Bernardino and have violated the requirements of the California Labor Code and applicable Wage Order in this county which give rise to the penalties sought in this action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of the California Labor Code and applicable Wage Order in at least one store within the County of San Bernardino, including Defendants' stores in San Bernardino (428 Inland Center San Bernardino, CA 92408), Ontario (1 Mills Circle Ontario, CA 91764-5200), and Montclair (5060 East Montclair Plaza Lane Montclair, CA 91763). 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 Plaintiff could bring this action to recover penalties in San Bernardino County, venue is proper. *Id.*

THE PARTIES

4. Plaintiff Jose Ruiz is a resident of Los Angeles, in Los Angeles County, California. Defendants employed Plaintiff as an hourly paid, non-exempt Sales Associate from approximately November 2019 to March 2020. Plaintiff worked for Defendants at their retail store in Commerce, California. During his employment, Plaintiff typically worked six (6) hours or more per day and five (5) days per week. Plaintiff's primary job duties included, without limitation, receiving incoming shipping and freight, unloading pallets, organizing and restocking product shelves, and occasionally performing customer service.

5. DISNEY STORE USA, LLC was and is, upon information and belief, a Delaware limited liability company, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California, or the various states of the United States of America.

6. DISNEY WORLDWIDE SERVICES, INC. was and is, upon information and

1 belief, a Florida corporation, and at all times hereinafter mentioned, an employer whose
2 employees are engaged throughout this county, the State of California, or the various states of
3 the United States of America.

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

8 8. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
9 were the partners, agents, owners, or managers of DISNEY STORE USA, LLC and DISNEY
10 WORLDWIDE SERVICES, INC. at all relevant times.

11 9. Plaintiff is informed and believes, and thereon alleges, that each and all of the
12 acts and omissions alleged herein was performed by, or is attributable to, DISNEY STORE
13 USA, LLC; DISNEY WORLDWIDE SERVICES, INC.; and/or DOES 1 through 10
14 (collectively, “Defendants” or “DISNEY STORE”), each acting as the agent, employee, alter
15 ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and
16 was acting within the course and scope of such agency, employment, joint venture, or
17 concerted activity with legal authority to act on the others’ behalf. The acts of any and all
18 Defendants were in accordance with, and represent, the official policy of Defendants.

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

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

26 12. Under California law, Defendants are jointly and severally liable as employers
27 for the violations alleged herein because they have each exercised sufficient control over the
28 wages, hours, working conditions, and employment status of Plaintiff and class members.

Each Defendant had the power to hire and fire Plaintiff and class members, supervised and controlled their work schedule and/or conditions of employment, determined their rate of pay, and maintained their employment records. Defendants suffered or permitted Plaintiff and class members to work and/or “engaged” Plaintiff and class members so as to create a common-law employment relationship. As joint employers of Plaintiff and class members, Defendants are jointly and severally liable for the civil penalties and all other relief available to Plaintiff and class members under the law.

13. Plaintiff is informed and believes, and thereon alleges, that at all relevant times, Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class members because Defendants have:

- (a) jointly exercised meaningful control over the work performed by Plaintiff and class members;
- (b) jointly exercised meaningful control over Plaintiff’s and class members’ wages, hours, and working conditions, including the quantity, quality standards, speed, scheduling, and operative details of the tasks performed by Plaintiff and class members;
- (c) jointly required that Plaintiff and class members perform work which is an integral part of Defendants’ businesses; and
- (d) jointly exercised control over Plaintiff and class members as a matter of economic reality in that Plaintiff and class members were dependent on Defendants, who shared the power to set the wages of Plaintiff and class members and determined their working conditions, and who jointly reaped the benefits from the underpayment of their wages and noncompliance with other statutory provisions governing their employment.

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

15. DISNEY STORE USA, LLC and DISNEY WORLDWIDE SERVICES, INC. and DOES 1 through 10 are therefore alter egos of each other.

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

17. Plaintiff further alleges, upon information and belief, that Defendants DISNEY STORE USA, LLC and DISNEY WORLDWIDE SERVICES, INC. are alter egos of each other for the following reasons:

- (a) On the California Secretary of State's website (<https://businesssearch.sos.ca.gov/>), DISNEY STORE USA, LLC and DISNEY WORLDWIDE SERVICES, INC. share the same mailing address, "500 S BUENA VISTA ST, BURBANK CA 91521;"
- (b) According to The Walt Disney Company's SEC 10-K filing for 2019, DISNEY STORE USA, LLC and DISNEY WORLDWIDE SERVICES, INC. are subsidiaries of The Walt Disney Company;¹
- (c) On information and belief, paystubs issued by Defendants to employees, including Plaintiff and class members, list the employer as "DISNEY WORLDWIDE SERVICES, INC. Paying agent for DISNEY STORE USA, LLC;"
- (d) On information and belief, DISNEY STORE USA, LLC and DISNEY WORLDWIDE SERVICES, INC. share the same agent for service of process, "CORPORATION SERVICE COMPANY;" and
- (e) On information and belief, DISNEY STORE USA, LLC and DISNEY WORLDWIDE SERVICES, INC. utilize the same standardized employment forms and issue the same employment policies.

//

¹ 10-K Annual Report 6/24/2020, "The Walt Disney Company – Investor Relations," <http://thewaltdisneycompany.com/investor-relations/#reports> (last accessed July 28, 2020).

GENERAL ALLEGATIONS

18. Defendants are chain of specialty stores selling only Disney-branded items. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their company headquarters in Glendale or Burbank, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

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

20. Upon information and belief, Defendants maintain a centralized Payroll department at their company headquarters in Glendale or Burbank, California, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations and jobsites in California, including Plaintiff and class members. Based upon information and belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid employees in California, irrespective of their work locations. Upon information and belief, Defendants process payroll for departing employees in the same manner throughout the State of California, regardless of the manner in which each employee’s employment ends.

21. Defendants continue to employ non-exempt or hourly paid employees in California.

22. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants were advised by skilled lawyers and other professionals, employees and advisors knowledgeable about California labor and wage law, employment and personnel

1 practices, and about the requirements of California law.

2 23. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
3 members were not paid for all hours worked because all hours worked were not recorded.

4 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and class members were entitled to receive certain wages for
6 overtime compensation and that they were not receiving certain wages for overtime
7 compensation.

8 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and class members were entitled to receive at least minimum
10 wages for compensation and that they were not receiving at least minimum wages for work
11 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
12 and class members were not paid at least minimum wages for work done off-the-clock.

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

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

1 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and class members were entitled to receive complete and
3 accurate wage statements in accordance with California law. In violation of the California
4 Labor Code, Plaintiff and class members were not provided complete and accurate wage
5 statements.

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

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

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

22 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that they were not permitted to compel or coerce Plaintiff and/or class
24 members to patronize their business in the purchase of anything of value, but did in fact
25 require Plaintiff and/or class members to purchase various items, including merchandise, from
26 Defendants.

27 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and class members were entitled to receive all reporting time

1 pay when Defendants required Plaintiff and class members were required to report to work but
2 were put to work for less than half of their regular scheduled shift. In violation of the
3 California Labor Code, Plaintiff and class members were not paid all reporting time pay.

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

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

13 36. Plaintiff is informed and believes, and thereon alleges, that at all times herein
14 mentioned, Defendants knew or should have known that they had a duty to compensate
15 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
16 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
17 falsely represented to Plaintiff and class members that they were properly denied wages, all in
18 order to increase Defendants' profits.

19 **PAGA REPRESENTATIVE ALLEGATIONS**

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

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

1 39. Plaintiff and other current and former employees of Defendants are “aggrieved
2 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
3 or former employees and one or more of the alleged violations were committed against them.

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

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

12 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
13 2699.3(a) and any employer response to that notice shall be
14 accompanied by a filing fee of seventy-five dollars (\$75).

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

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

27 (a) The aggrieved employee or representative shall give written notice by
28 online filing with the LWDA and by certified mail to the employer of

1 the specific provisions of the California Labor Code alleged to have
2 been violated (other than those listed in Section 2699.5), including the
3 facts and theories to support the alleged violation.

4 (b) An aggrieved employee's notice filed with the LWDA pursuant to
5 2699.3(c) and any employer response to that notice shall be
6 accompanied by a filing fee of seventy-five dollars (\$75).

7 (c) The employer may cure the alleged violation within thirty-three (33)
8 calendar days of the postmark date of the notice sent by the aggrieved
9 employee or representative. The employer shall give written notice
10 within that period of time by certified mail to the aggrieved employee or
11 representative and by online filing with the LWDA if the alleged
12 violation is cured, including a description of actions taken, and no civil
13 action pursuant to Section 2699 may commence. If the alleged violation
14 is not cured within the 33-day period, the aggrieved employee may
15 commence a civil action pursuant to Section 2699.

16 42. On August 7, 2020, Plaintiff provided written notice by online filing to the
17 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
18 Code alleged to have been violated, including facts and theories to support the alleged
19 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
20 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
21 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
22 Plaintiff PAGA Case Number LWDA-CM-801736-20. A true and correct copy of Plaintiff's
23 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

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

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

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

45. 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 “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

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

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

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

CLASS ACTION ALLEGATIONS

49. Plaintiff brings this action on his own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under California Code of Civil Procedure section 382.

50. All claims alleged herein arise under California law for which Plaintiff seeks

1 relief authorized by California law.

2 51. Plaintiff's proposed class consists of and is defined as follows:

3 All persons who worked for Defendants as non-exempt, hourly
4 paid employees in California, within four years prior to the filing
of the initial complaint until the date of trial ("Class").

5 52. Plaintiff's proposed subclass consists of and is defined as follows:

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

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

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

13 55. There are common questions of law and fact as to class members that
14 predominate over questions affecting only individual members, including, but not limited to:

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

California Labor Code section 1174(d);

- (g) Whether Defendants failed to pay earned overtime wages, minimum wages, meal and rest period premiums, and reporting time pay due to Plaintiff and class members upon their discharge;
- (h) Whether Defendants failed timely to pay overtime wages, minimum wages, meal and rest period premiums, and reporting time pay to Plaintiff and class members during their employment;
- (i) Whether Defendants compelled and/or coerced Plaintiff and/or class members to patronize their business;
- (j) Whether Defendants required Plaintiff and class members to report to work, but failed to provide them with work or provided them with less than half their scheduled day's work, without properly compensating them as required by California Code of Regulations, Title 8, section 11070, subsection 5;
- (k) Whether Defendants failed to provide Plaintiff and class members with suitable seating;
- (l) Whether Defendants failed to reimburse Plaintiff and class members for necessary and required business-related expenditures and/or losses incurred by them in the scope of their employment;
- (m) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and
- (n) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

56. There is a well-defined community of interest in the litigation and the class members are readily ascertainable:

- (a) Numerosity: The class members are so numerous that joinder of all members would be unfeasible and impractical. The membership of the

1 entire class is unknown to Plaintiff at this time; however, the class is
2 estimated to be greater than one hundred (100) individuals and the
3 identity of such membership is readily ascertainable by inspection of
4 Defendants' employment records.

5 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
6 protect the interests of each class member with whom he has a well-
7 defined community of interest, and Plaintiff's claims (or defenses, if
8 any) are typical of all class members as demonstrated herein.

9 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately
10 protect the interests of each class member with whom he has a well-
11 defined community of interest and typicality of claims, as demonstrated
12 herein. Plaintiff acknowledges that he has an obligation to make known
13 to the Court any relationship, conflicts or differences with any class
14 member. Plaintiff's attorneys, the proposed class counsel, are versed in
15 the rules governing class action discovery, certification, and settlement.
16 Plaintiff has incurred, and throughout the duration of this action, will
17 continue to incur costs and attorneys' fees that have been, are, and will
18 be necessarily expended for the prosecution of this action for the
19 substantial benefit of each class member.

20 (d) Superiority: The nature of this action makes the use of class action
21 adjudication superior to other methods. A class action will achieve
22 economies of time, effort, and expense as compared with separate
23 lawsuits, and will avoid inconsistent outcomes because the same issues
24 can be adjudicated in the same manner and at the same time for the
25 entire class.

26 (e) Public Policy Considerations: Employers in the State of California
27 violate employment and labor laws every day. Current employees are
28 often afraid to assert their rights out of fear of direct or indirect

1 retaliation. Former employees are fearful of bringing actions because
2 they believe their former employers might damage their future
3 endeavors through negative references and/or other means. Class
4 actions provide the class members who are not named in the complaint
5 with a type of anonymity that allows for the vindication of their rights
6 while simultaneously protecting their privacy.

7 **FIRST CAUSE OF ACTION**

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

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

12 58. Labor Code section 1198 makes it illegal to employ an employee under
13 conditions of labor that are prohibited by the applicable wage order. California Labor Code
14 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
15 be the . . . standard conditions of labor for employees. The employment of any employee . . .
16 under conditions of labor prohibited by the order is unlawful.”

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

21 60. Specifically, the applicable IWC Wage Order provides that Defendants are and
22 were required to pay Plaintiff and class members working more than eight (8) hours in a day
23 or more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all
24 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
25 workweek.

26 61. The applicable IWC Wage Order further provides that Defendants are and were
27 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
28 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.

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

63. During the relevant time period, Defendants willfully failed to pay all overtime wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and class members were not paid 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 worked were not recorded.

64. First, during the relevant time period, Defendants had a policy and/or practice of discouraging and impeding Plaintiff and class members from recording hours worked that were outside of their scheduled shifts, in order to limit the amount of overtime employees could accrue. On information and belief, this limitation on overtime accrual was based on a company-wide policy of staffing store locations strictly based on the labor hours or labor budget set by corporate. This policy of limiting overtime, coupled with Defendants' understaffing policy, as well as the assignment of heavy workloads (*see infra*), led Plaintiff and class members to work off-the-clock before and after their scheduled shift times in order to complete their assigned tasks. As a result of this restriction on overtime accrual, Defendants forced Plaintiff and class members to perform work off-the-clock outside of their scheduled shifts, prior to clocking in and after clocking out. For example, Defendants' managers expected that the store be reset for the following day; thus, before Plaintiff and class members could leave at the end of their shifts, but after clocking out, Plaintiff and class members were required to unload product, re-shelve product, clear boxes, sweep the floor, and take out trash, which could take a minimum of five (5) minutes and up to an hour each

1 instance. Moreover, Defendants had a company-wide policy and/or practice of requiring that
2 Plaintiff and class members respond to work-related text messages and calls from supervisors
3 and management on their personal cellular phones, even on their off-days. Defendants failed
4 to track this time spent working before and after scheduled shifts, and Plaintiff and class
5 members received no or incomplete compensation for this time.

6 65. Second, Defendants had, and continue to have, a loss prevention policy
7 requiring Plaintiff and class members to undergo security checks before leaving the store
8 premises at the end of their shifts or for their meal periods. After clocking out at the end of
9 their shifts or at the start of their meal periods, Plaintiff and class members were required to
10 wait off-the-clock for a managerial employee to become available to perform a security check
11 before they could leave, which could take 2-5 minutes per instance. Although Defendants'
12 requirement that Plaintiff and class members undergo security checks prior to exiting the store
13 was mandatory, Defendants did not compensate them for the time it took them to wait for a
14 managerial employee to become available and to undergo these security checks. Thus,
15 Plaintiff and class members were not compensated for the time spent undergoing security
16 screenings while off-the-clock.

17 66. Third, as stated, Defendants had, and continue to have, a company-wide policy
18 and/or practice of staffing their store locations strictly based on a labor budget set by the
19 corporate office. Defendants' practice of labor budgeting resulted in chronic understaffing,
20 such that there were too few employees on duty to handle the heavy workload, which included
21 certain daily tasks, and provide uninterrupted meal period coverage. Furthermore, Defendants
22 had a company-wide practice of failing to schedule meal periods, which further caused
23 Plaintiff and class members to not be relieved of their duties for compliant meal periods.
24 Thus, Plaintiff and class members suffered missed and/or interrupted meal periods, work for
25 which they were not paid. Finally, on information and belief, because Defendants frowned
26 upon employees accruing meal period penalties, Defendants adjusted employee time records
27 to reflect compliant meal periods, regardless of whether they had received a compliant meal
28 period or not, in order to strictly limit meal penalties that Defendants would otherwise owe.

1 Consequently, Plaintiff and class members performed work during meal periods for which
2 they were not paid.

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

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

16 **SECOND CAUSE OF ACTION**

17 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 18 **Minimum Wages** 19 **(Against all Defendants)**

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

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

1 71. As stated, as a result of Defendants' policy of limiting the amount of overtime
2 employees could accrue by discouraging and impeding Plaintiff and class members from
3 recording hours worked that were outside of their scheduled shifts, Plaintiff and class
4 members were forced to work off-the-clock before and after their scheduled shift start and end
5 times to complete their assigned job duties. Furthermore, Plaintiff and class members were
6 required to work off-the-clock undergoing security checks and performing other work-related
7 tasks, such as store resets and other closing shift duties after clocking out and responding to
8 work-related phone calls and text messages on their personal cellular phones. Defendants
9 systematically failed to pay Plaintiff and class members for actual hours worked, because
10 these hours were not always correctly recorded.

11 72. As also stated, due to Defendants' policy and/or practice of understaffing while
12 assigning heavy workloads, failure to schedule meal periods, and subsequent lack of meal
13 period coverage, Plaintiff and class members were forced to forego meal periods, have their
14 meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods.
15 In addition, as set forth above, Defendants adjusted employee time records to reflect
16 compliant meal periods regardless of whether they had received a compliant meal period or
17 not, in order to strictly limit meal penalties that Defendants would otherwise owe.
18 Consequently, Plaintiff and class members performed work during meal periods for which
19 they were not paid.

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THIRD CAUSE OF ACTION
Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period
Violations
(Against all Defendants)

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

76. At all relevant times herein set forth, California Labor Code section 512(a) provides that 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 a 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).

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

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

79. During the relevant time period, Defendants had, and continue to have, a company-wide policy and/or practice of understaffing locations due to labor budgeting and assignment of heavy workloads, which resulted in a lack of meal period coverage and prevented Plaintiff and class members from taking all timely, uninterrupted meal periods to which they were entitled. As also stated above, Defendants had a company-wide practice of

1 failing to schedule meal periods, which further caused Plaintiff and class members to not be
2 relieved of their duties for compliant meal periods. Furthermore, on information and belief,
3 because Defendants frowned upon employees accruing meal period penalties, Defendants'
4 management would adjust Plaintiff's and class members' time records to reflect compliant
5 meal periods, regardless of whether they had received a compliant meal period or not, in order
6 to strictly limit meal penalties that would need to be paid by Defendants.

7 80. Also, as stated, Defendants had, and continue to have, a loss prevention policy
8 requiring Plaintiff and class members to undergo security checks before leaving the store
9 premises for their meal periods. After clocking out at the start of their meal periods, Plaintiff
10 and class members were required to wait for a managerial employee to become available to
11 perform a security check before they could leave, which could take 2-5 minutes per instance.
12 Although Defendants' requirement that Plaintiff and class members undergo security checks
13 prior to exiting the store was mandatory, Defendants did not compensate them for the time it
14 took them to wait for a managerial employee to become available and to undergo these
15 security checks during their unpaid meal periods. Thus, Plaintiff and class members received
16 non-compliant meal periods which were cut short by Defendants' security checks.

17 81. Defendants' policies and/or practices, including labor budgeting, resultant
18 understaffing, and lack of adequate meal period coverage, prevented Plaintiff and class
19 members from taking all compliant meal periods to which they were entitled. As a result,
20 Plaintiff and class members would be forced to work in excess of five (5) hours before taking
21 a meal period and, at times, had their meal periods interrupted and/or had to forgo their meal
22 periods altogether. For example, Plaintiff missed his meal periods, due to a lack of coverage
23 resulting from understaffing and the heavy workload. As a further example, when Plaintiff
24 was able to take meal periods, he would be interrupted by his supervisors asking him to return
25 to the floor to assist other employees.

26 82. Additionally, Defendants did not provide Plaintiff and class members with
27 second 30-minute meal periods on days that they worked in excess of ten (10) hours in one
28 day. During his employment, Plaintiff worked shifts in excess of ten (10) or more hours per

1 day, but was not provided a second 30-minute meal period. Plaintiff and class members did
2 not sign valid meal period waivers on days that they were entitled to meal periods and were
3 not relieved of all duties.

4 83. At all times herein mentioned, Defendants knew or should have known that, as
5 a result of these policies, Plaintiff and class members were prevented from being relieved of
6 all duties and required to perform some of their assigned duties during meal periods.
7 Defendants further knew or should have known that Defendants did not pay Plaintiff and class
8 members meal period premium wages when meal periods were late, interrupted, shortened, or
9 missed.

10 84. Moreover, Defendants engaged in a company-wide practice and/or policy of
11 not paying all meal period premiums owed when compliant meal periods are not provided.
12 Because of Defendants' practices and/or policies, Plaintiff and class members have not
13 received premium pay for all missed, late, and interrupted meal periods. As a result,
14 Defendants failed to provide Plaintiff and class members compliant meal periods in violation
15 of California Labor Code sections 226.7, 512, and 516 and failed to pay the full meal period
16 premiums due.

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

21 **FOURTH CAUSE OF ACTION**

22 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 23 **(Against all Defendants)**

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

26 87. At all relevant times herein set forth, the applicable IWC Wage Order and
27 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and class
28 members' employment by Defendants.

1 88. At all relevant times, the applicable IWC Wage Order provides that “[e]very
2 employer shall authorize and permit all employees to take rest periods, which insofar as
3 practicable shall be in the middle of each work period” and that the “rest period time shall be
4 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
5 hours or major fraction thereof” unless the total daily work time is less than three and one-half
6 (3½) hours.

7 89. At all relevant times, California Labor Code section 226.7 provides that no
8 employer shall require an employee to work during any rest period mandated by an applicable
9 order of the California IWC. To comply with its obligation to authorize and permit rest
10 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
11 employer must “relinquish any control over how employees spend their break time, and
12 relieve their employees of all duties — including the obligation that an employee remain on
13 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
14 *Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and
15 California Labor Code section 226.7(c), Plaintiff and class members are entitled to recover
16 from Defendants one (1) additional hour of pay at their regular rates of pay for each work day
17 that a required rest period was not authorized and permitted.

18 90. During the relevant time period, Defendants regularly failed to authorize and
19 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
20 period worked or major fraction thereof. As with meal periods, Defendants’ company-wide
21 practices, including understaffing and assignment of heavy workloads, prevented Plaintiff and
22 class members from being relieved of all duty to take their rest periods. Additionally,
23 Defendants failed to schedule rest periods, which, coupled with Defendants’ failure to provide
24 adequate rest period coverage, further led to Plaintiff and class members not being authorized
25 and permitted to take compliant rest periods.

26 91. Furthermore, upon information and belief, Defendants maintained and
27 implemented a company-wide practice and/or policy effectively requiring that Plaintiff and
28 class members remain on Defendants’ premises during their rest periods. As stated, Plaintiff

1 and class members were subject to security searches, and thus were required to wait for a
2 managerial employee to perform a security check whenever they wished to leave the store
3 premises, resulting in rest periods that would be cut short by several minutes. Because
4 Plaintiff and class members were implicitly restricted from leaving Defendants' premises
5 during rest periods, they were denied the ability to use their rest periods freely for their own
6 purposes. Thus, Defendants effectively maintained control over Plaintiff and class members
7 during rest periods, and, as a result of this rest period policy, Defendants did not relinquish
8 control over Plaintiff and class members during rest periods.

9 92. As a result of Defendants' practices and policies, Plaintiff and class members
10 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
11 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
12 during his employment, Plaintiff missed his rest periods due to understaffing, heavy workload,
13 and the lack of coverage for rest periods. Plaintiff also had his rest periods interrupted or cut
14 short due to the security searches required before employees could leave the store premises.

15 93. Defendants have also engaged in a systematic, company-wide practice and/or
16 policy of not paying rest period premiums owed when rest periods are not authorized and
17 permitted. As a result, Defendants denied Plaintiff and class members rest periods and failed
18 to pay them rest period premium wages due, in violation of Labor Code section 226.7, 516,
19 and the applicable IWC Wage Order.

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

25 //

26 //

27 //

28 //

1 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

28 99. The wage statement deficiencies also include, without limitation, failing to list

1 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
2 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and
3 only the last four digits of his or her social security number or an employee identification
4 number other than a social security number; failing to list the name and address of the legal
5 entity that is the employer; failing to list the inclusive dates of the period for which class
6 members were paid; and/or failing to state all hours worked as a result of not recording or
7 stating hours worked off-the-clock.

8 100. California Labor Code section 1198 provides that the maximum hours of work
9 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
10 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
11 employment of any employees for longer hours than those fixed by the order or under
12 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
13 Wage Order, employers are required to keep accurate time records showing when the
14 employee begins and ends each work period and meal period. During the relevant time
15 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
16 and meal period start and stop times for Plaintiff and class members, in violation of section
17 1198. As stated, Defendants engaged in a company-wide practice and/or policy of falsifying
18 Plaintiff’s and Subclass members’ time records by recording that compliant meal periods were
19 taken regardless of if or when meal periods were actually taken, and thereby failed to keep
20 accurate records of meal start and end times for Plaintiff and Subclass members. Furthermore,
21 in light of Defendants’ failure to provide Plaintiff and Subclass members with second 30-
22 minute meal periods to which they were entitled, Defendants kept no records of meal start and
23 end times for second meal periods.

24 101. California Labor Code section 1174(d) provides that “[e]very person employing
25 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
26 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
27 plants or establishments at which employees are employed, payroll records showing the hours
28 worked daily by and the wages paid to, and the number of piece-rate units earned by and any

1 applicable piece rate paid to, employees employed at the respective plants or
2 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),
3 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
4 members showing the daily hours they worked and the wages paid thereto as a result of failing
5 to record the off-the-clock hours that they worked.

6 102. Plaintiff and Subclass members are entitled to recover from Defendants the
7 greater of their actual damages caused by Defendants’ failure to comply with California Labor
8 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
9 employee.

10 **SIXTH CAUSE OF ACTION**

11 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon** 12 **Termination** 13 **(Against all Defendants)**

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

16 104. This cause of action is dependent upon, and wholly derivative of, the overtime
17 wages, minimum wages, meal and rest period premium wages, and/or reporting time pay that
18 were not timely paid to Plaintiff and those class members no longer employed by Defendants
19 upon their termination.

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

27 106. Defendants willfully failed to pay Plaintiff and class members who are no
28 longer employed by Defendants the earned and unpaid wages set forth above, including but

1 not limited to, overtime wages, minimum wages, meal and rest period premium wages, and/or
2 reporting time pay either at the time of discharge, or within seventy-two (72) hours of their
3 leaving Defendants' employ.

4 107. Defendants' failure to pay Plaintiff and class members who are no longer
5 employed by Defendants their wages earned and unpaid at the time of discharge, or within
6 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
7 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
8 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
9 thirty (30) day maximum pursuant to California Labor Code section 203.

10 SEVENTH CAUSE OF ACTION

11 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During** 12 **Employment** 13 **(Against all Defendants)**

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

16 109. This cause of action is dependent upon, and wholly derivative of, the overtime
17 wages, minimum wages, meal and rest period premium wages, and/or reporting time pay that
18 were not timely paid to Plaintiff and class members by Defendants during their employment.

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

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

112. At all times relevant herein, Labor Code section 204 provides 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, at all times relevant herein, 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.

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

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

EIGHTH CAUSE OF ACTION

Violation of Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 5(A)—Failure to Provide Reporting Time Pay (Against all Defendants)

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

116. California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

117. The applicable IWC wage order, California Code of Regulations, Title 8, section 11070(5)(A), provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s

1 usual or scheduled day's work, the employee shall be paid for half the usual or scheduled
2 day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the
3 employee's regular rate of pay, which shall not be less than the minimum wage."

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

9 119. Defendants had a company-wide practice of sending Plaintiff and class
10 members home early from their shifts, including before they had worked at least half of their
11 regular shift, but would not pay Plaintiff and class members for half of their scheduled shift.
12 For example, Plaintiff would report to work, but would be sent home early by Defendants'
13 management when store traffic was slow. Although Plaintiff and class members would report
14 to work based on the schedule that Defendants provided to them, Defendants would send them
15 home before they had worked at least half of their scheduled shifts without giving them
16 reporting time pay.

17 120. Accordingly, Plaintiff and class members were not properly compensated with
18 reporting time pay in violation of California Labor Code section 1198.

19 **NINTH CAUSE OF ACTION**

20 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses** 21 **(Against all Defendants)**

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

24 122. At all times herein set forth, California Labor Code section 2802 provides that
25 an employer must reimburse employees for all necessary expenditures and losses incurred by
26 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
27 to prevent employers from passing off their cost of doing business and operating expenses on
28 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144

(2014). The applicable wage order, IWC Wage Order 7-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

123. During the relevant time period, Defendants had a company-wide policy of requiring Plaintiff and class members to utilize their own personal cellular phones and cellular data to carry out their job duties, but Defendants failed to reimburse them for the costs of their work-related cellular phone expenses. Plaintiff and class members were required to use their personal cellular phones to complete their work-related tasks, such as discussing requests from management and work assignments. Plaintiff’s supervisors would call or text him once or twice per week regarding lost product shipments. Although Defendants required Plaintiff and class members to utilize their personal cellular phones to carry out their work-related responsibilities, Defendants failed to fully reimburse them for this cost.

124. Additionally, during the relevant time period, Defendants, on a company-wide basis, expected Plaintiff and class members to report to work in clean and presentable uniforms, including a uniform shirt and pants emblazoned with Defendants’ logo, which forced Plaintiff and class members to wash their uniforms more frequently than they would otherwise do laundry, and incur expenses for doing so. For example, Plaintiff was only provided one uniform shirt and one pair of pants, but was scheduled to work five (5) days in a week, and thus incurred laundry expenses for the upkeep of his uniforms, as the nature of his work resulted in his uniform becoming sweaty and/or dirty.

125. Defendants could have provided Plaintiff and class members with the actual tools for use on the job, such as company phones to be used for fulfilling work-related tasks and an adequate number of uniforms, or Defendants could have reimbursed employees for the costs of their cellular phone and laundry expenses. Instead, Defendants passed these operating costs off onto Plaintiff and class members. At all relevant times, Plaintiff did not earn at least

1 two (2) times the minimum wage.

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

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

9 **TENTH CAUSE OF ACTION**

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

11 **(Against all Defendants)**

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

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

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

- 23 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
24 wage order for Defendants' failure to compensate Plaintiff and other
25 aggrieved employees with all required overtime pay, as alleged herein;
- 26 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198,
27 and the applicable IWC wage order for Defendants' failure to
28 compensate Plaintiff and other aggrieved employees with at least

- 1 minimum wages for all hours worked, as alleged herein;
- 2 (c) Violation of Labor Code sections 226.7, 512, 516, 1198, and the
- 3 applicable IWC wage order for Defendants' failure to provide Plaintiff
- 4 and other aggrieved employees with meal periods, as alleged herein;
- 5 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
- 6 IWC wage order for Defendants' failure to authorize and permit
- 7 Plaintiff and other aggrieved employees to take rest periods, as alleged
- 8 herein;
- 9 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
- 10 wage order for failure to provide accurate and complete wage statements
- 11 to Plaintiff and other aggrieved employees, as alleged herein;
- 12 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable
- 13 IWC wage order for failure to maintain payroll records as alleged
- 14 herein;
- 15 (g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
- 16 earned wages upon termination, as alleged herein;
- 17 (h) Violation of Labor Code section 204 for failure to pay all earned wages
- 18 during employment, as alleged herein;
- 19 (i) Violation of California Labor Code section 450 for Defendants'
- 20 compelling and/or coercing other aggrieved employees to patronize
- 21 Defendants' business, as set forth below;
- 22 (j) Violation of Labor Code section 1198 and the applicable IWC wage
- 23 order for failure to pay reporting time pay when Plaintiff and other
- 24 aggrieved employees were put to work for less than half of their regular
- 25 scheduled shifts, as alleged herein;
- 26 (k) Violation of Labor Code section 1198 for failing to provide suitable
- 27 seating to Plaintiff and other aggrieved employees, as set forth below;
- 28 and

1 (l) Violation of Labor Code section 2802 for failure to reimburse other
2 aggrieved employees for all business expenses necessarily incurred, as
3 set forth below.

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

9 132. Defendants had a company-wide policy of requiring employees to purchase
10 items directly from Defendants’ stores in order to meet sales goals. Defendants’ managers
11 pressured other aggrieved employees to “volunteer” to purchase items from Defendants to
12 ensure each store was meeting its daily sales goals.

13 133. Defendants’ conduct of compelling and/or coercing other aggrieved employees
14 to purchase goods from them is in violation of California Labor Code section 450. Other
15 aggrieved employees are entitled to recover civil penalties pursuant to Labor Code sections
16 2699(a), (f), and (g).

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

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

26 136. Plaintiff alleges that Defendants’ retail stores are generally similar in their
27 layout and design and there was, and continues to be, space behind each cash wrap to allow
28 for the presence and use of a seat or stool by Plaintiff and other aggrieved employees (with

1 reasonable or no modification to these work areas) during the performance of their work
2 duties. Defendants could have provided Plaintiff and other aggrieved employees with a
3 suitable seat or stool at the cash wraps, but instead denied them suitable seating and forced
4 Plaintiff and other aggrieved employees to stand throughout the day.

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

11 138. During the relevant time period, Defendants violated California Labor Code
12 section 1198 and California Code of Regulations, Title 8, section 11070(14)(A), because
13 Plaintiff and other aggrieved employees were not provided with suitable seats and, therefore,
14 effectively were not allowed to sit, even when it would not have interfered with the
15 performance of their duties. Plaintiff and other aggrieved employees were assigned cashier
16 duties, which were performed from and connected to a cash wrap, and could have been
17 performed from a seated position. Plaintiff and other aggrieved employees could have
18 handled transactions at the cash registers while seated, without interference to their ability to
19 complete these duties.

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

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

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

5 141. 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."

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

16 143. During the relevant time period, Defendants violated California Labor Code
17 section 1198 and California Code of Regulations, Title 8, section 11070(14)(B), because
18 Plaintiff and other aggrieved employees were not provided with suitable seats in reasonable
19 proximity to their work areas and, therefore, effectively not allowed to sit, even during lulls in
20 their work duties.

21 144. As stated, Plaintiff alleges that Defendants' California retail stores are
22 generally similar in their layout and design and there was, and continues to be, space near
23 their work areas (with reasonable or no modification to these work areas) to allow for the
24 presence and use of a seat or stool by Plaintiff and other aggrieved employees during lulls in
25 operation. Defendants could have provided Plaintiff and other aggrieved employees with a
26 seat or stool in their work areas, but instead denied Plaintiff and other aggrieved employees
27 suitable seating altogether and effectively forced Plaintiff and other aggrieved employees to
28 stand throughout the day.

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

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

ELEVENTH CAUSE OF ACTION

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

Unlawful Business Practices

(Against all Defendants)

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

148. Defendants are “persons” as defined by California Business & Professions Code sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

149. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has

1 suffered injury in fact and has lost money as a result of Defendants' unlawful business
2 practices. Plaintiff seeks to enforce important rights affecting the public interest within the
3 meaning of Code of Civil Procedure section 1021.5.

4 150. Defendants' activities, as alleged herein, are violations of California law, and
5 constitute unlawful business acts and practices in violation of California Business &
6 Professions Code sections 17200, *et seq.*

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

- 10 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
11 class members, to work overtime without paying them proper
12 compensation in violation of California Labor Code sections 510 and
13 1198 and the applicable IWC Order, as alleged herein;
- 14 (b) Failing to pay at least minimum wage to Plaintiff and class members in
15 violation of California Labor Code sections 1182.12, 1194, 1197,
16 1197.1, and 1198 and the applicable IWC Order, as alleged herein;
- 17 (c) Failing to provide uninterrupted meal periods to Plaintiff and class
18 members in violation of California Labor Code sections 226.7, 512(a),
19 516, 1198, and the applicable IWC Order, as alleged herein;
- 20 (d) Failing to authorize and permit Plaintiff and class members to take
21 uninterrupted rest periods in violation of California Labor Code sections
22 226.7, 516, 1198, and the applicable IWC Order, as alleged herein;
- 23 (e) Failing to provide Plaintiff and class members with accurate wage
24 statements and failing to maintain accurate payroll records in violation
25 of California Labor Code sections 226(a), 1174(d), 1198, and the
26 applicable IWC Order, as alleged herein;
- 27 (f) Failing timely to pay all earned wages to Plaintiff and class members in
28 violation of California Labor Code section 204 and the applicable IWC

Order, as alleged herein;

- (g) Failing to pay reporting time pay in violation of California Labor Code section 1198 and the applicable Industrial Welfare Commission Order, as alleged herein; and
- (h) Failing to reimburse Plaintiff and class members for all business expenses necessarily incurred in violation of California Labor Code sections 2802, as alleged herein.

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

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

TWELFTH CAUSE OF ACTION

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

Unfair Business Practices

(Against all Defendants)

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

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

156. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered

injury in fact and has lost money as a result of Defendants' unfair business practices. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

157. Defendants' activities, namely Defendants' company-wide practice and/or policy of not paying Plaintiff and class members all meal and rest period premium wages due to them under Labor Code section 226.7, deprived Plaintiff and class members of the compensation guarantee and enhanced enforcement implemented by section 226.7. The statutory remedy provided by section 226.7 is a "'dual-purpose' remedy intended primarily to compensate employees, and secondarily to shape employer conduct. *Safeway, Inc. v. Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to Plaintiff and class members as part of their employment with Defendants, and thus Defendants' practice and/or policy of denying these statutory benefits constitutes an unfair business practice in violation of California Business & Professions Code sections 17200, *et seq.* (Id.)

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

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

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

//

1 **PRAYER FOR RELIEF**

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

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

7 **Class Certification**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

As to the Third Cause of Action

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

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

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

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

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

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

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

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198 and applicable IWC Wage Orders by willfully failing to authorize and permit Plaintiff and class members to take all rest periods;

24. That the Court make an award to the Plaintiff and class members of one (1) hour

of pay at each employee's regular rate of pay for each workday that a rest period was not authorized and permitted;

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

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

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

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

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

As to the Fifth Cause of Action

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

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

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

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

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

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

As to the Sixth Cause of Action

36. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay owed at the time of termination of

1 the employment of Plaintiff and other terminated class members;

2 37. For all actual, consequential and incidental losses and damages, according to
3 proof;

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

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

8 40. For attorneys' fees pursuant to California Code of Civil Procedure section
9 1021.5, or as otherwise provided by law; and

10 41. For such other and further relief as the Court may deem equitable and
11 appropriate.

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

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

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

19 44. For statutory penalties according to proof pursuant to California Labor Code
20 section 210;

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

23 46. For attorneys' fees pursuant to California Code of Civil Procedure section
24 1021.5, or as otherwise provided by law; and

25 47. For such other and further relief as the Court may deem equitable and
26 appropriate.

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

28 48. That the Court declare, adjudge and decree that Defendants violated California

1 Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(5)(A) by
2 failing to provide Plaintiff and class members with reporting time pay;

3 49. For all actual, consequential and incidental losses and damages, according to
4 proof;

5 50. For pre-judgment interest on any unpaid wages from the date such amounts
6 were due, or as otherwise provided by law; and

7 51. For such other and further relief as the Court may deem equitable and
8 appropriate.

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

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

13 53. For unpaid business-related expenses and such general and special damages as
14 may be appropriate;

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

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

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

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

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

24 58. That the Court declare, adjudge and decree that Defendants violated the
25 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
26 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and
27 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516, and
28 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and

1 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
2 statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay
3 all earned wages upon termination); 204 (by failing timely to pay all earned wages during
4 employment); 450 (by compelling and/or coercing employees to patronize employer's
5 business); 1198 (by failing to provide reporting time pay); 1198 (by failing to provide suitable
6 seating); and 2802 (by failing to reimburse business expenses);

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

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

15 61. For pre-judgment and post-judgment interest as provided by law; and

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

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

19 63. That the Court declare, adjudge and decree that Defendants' conduct of failing
20 to provide Plaintiff and class members all overtime wages due to them, failing to provide
21 Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and
22 class members all meal periods, failing to authorize and permit Plaintiff and class members to
23 take all rest periods, failing to provide Plaintiff and class members accurate and complete
24 wage statements, failing to maintain accurate payroll records for Plaintiff and class members,
25 failing timely to pay Plaintiff and class members all earned wages during employment, failing
26 to pay Plaintiff and class members reporting time pay, and failing to reimburse Plaintiff and
27 class members for business-related expenses, constitutes an unlawful business practice in
28 violation of California Business and Professions Code sections 17200, *et seq.*;

1 64. For restitution of unpaid wages to Plaintiff and all class members and
2 prejudgment interest from the day such amounts were due and payable;

3 65. For the appointment of a receiver to receive, manage and distribute any and all
4 funds disgorged from Defendants and determined to have been wrongfully acquired by
5 Defendants as a result of violations of California Business & Professions Code sections 17200
6 *et seq.*;

7 66. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
8 California Code of Civil Procedure section 1021.5; and

9 67. For such other and further relief as the Court may deem equitable and
10 appropriate.

11 **As to the Twelfth Cause of Action**

12 68. That the Court declare, adjudge and decree that Defendants' conduct of denying
13 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
14 an unfair business practice in violation of California Business and Professions Code sections
15 17200, *et seq.*;

16 69. For restitution of the statutory benefits under section 226.7 unfairly withheld
17 from Plaintiff and class members and prejudgment interest from the day such amounts were
18 due and payable;

19 70. For the appointment of a receiver to receive, manage and distribute any and all
20 funds disgorged from Defendants and determined to have been wrongfully acquired by
21 Defendants as a result of violations of California Business & Professions Code sections 17200
22 *et seq.*;

23 71. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
24 California Code of Civil Procedure section 1021.5;

25 72. For pre-judgment and post-judgment interest as provided by law; and

26 //

27 //

28 //

1 73. For such other and further relief as the Court may deem equitable and
2 appropriate.

3
4 Dated: December 17, 2020

Respectfully submitted,

5 Capstone Law APC

6
7 By: 

8 Mark Ozzello
9 Brandon Brouillette
10 Joseph Hakakian

11 Attorneys for Plaintiff Jose Ruiz
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

MAO SHIOKURA
310.712.8030 Direct
Mao.Shiokura@capstonelawyers.com

August 7, 2020

VIA ONLINE SUBMISSION

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

Subject: *Jose Ruiz v. Disney Store USA, LLC, et al.*

Dear PAGA Administrator:

This office represents Jose Ruiz in connection with his claims under the California Labor Code. Mr. Ruiz was an employee of DISNEY STORE USA, LLC and/or DISNEY WORLDWIDE SERVICES, INC. For the purpose of this letter, Mr. Ruiz collectively refers to these entities as “DISNEY.”

The employers may be contacted directly at the addresses below:

DISNEY STORE USA, LLC
1101 FLOWER ST
GLENDALE CA 91201

DISNEY STORE USA, LLC
500 S BUENA VISTA ST
BURBANK CA 91521

DISNEY WORLDWIDE SERVICES, INC.
500 S BUENA VISTA ST
BURBANK CA 91521

Mr. Ruiz 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. Ruiz seeks relief on behalf of himself, the State of California, and other persons who are or were employed by DISNEY as a non-exempt, hourly paid employee in California and who received at least one wage statement (“aggrieved employees”). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

DISNEY employed Mr. Ruiz as an hourly paid, non-exempt employee from approximately November 2019 to March 2020. Mr. Ruiz worked for DISNEY as a Sales Associate at its retail store in Commerce, California. During his employment, Mr. Ruiz typically worked six (6) hours or more per day and five (5) days per week. At the time his employment ended, Mr. Ruiz was compensated approximately \$15.45 per hour. His job duties included, without limitation, receiving incoming

shipping and freight, unloading pallets, organizing and restocking product shelves, and occasionally performing customer service.

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

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

DISNEY STORE USA, LLC is a Delaware limited liability company, while DISNEY WORLDWIDE SERVICES, INC. is a Florida corporation. DISNEY operates a nationwide chain of specialty stores selling only Disney-branded items, with approximately 45 retail locations in California. Upon information and belief, DISNEY maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Glendale or Burbank, California, for all non-exempt, hourly paid employees working for DISNEY in California, including Mr. Ruiz and other aggrieved employees. At all relevant times, DISNEY issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Ruiz and other aggrieved employees, regardless of its location or position.

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

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

DISNEY willfully failed to pay all overtime wages owed to Mr. Ruiz and other aggrieved employees. During the relevant time period, Mr. Ruiz and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in 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, DISNEY had a policy and/or practice of discouraging and impeding Mr. Ruiz and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. On information and belief, this limitation on overtime accrual was based on a company-wide policy of staffing store locations strictly based on the labor hours or labor budget set by corporate. This policy of limiting overtime, coupled with DISNEY's understaffing policy, as well as the assignment of heavy workloads (*see infra*), led Mr. Ruiz and other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete their assigned tasks. As a result of this restriction on overtime accrual, DISNEY forced Mr. Ruiz and other aggrieved employees to perform work off-the-clock outside of their scheduled shifts, prior to clocking in and after clocking out. For example, DISNEY's managers expected that the store be reset for the following day; thus, before Mr. Ruiz and other aggrieved employees could leave at the end of their shifts, but after clocking out, Mr. Ruiz and other aggrieved employees were required to unload product, re-shelve product, clear boxes, sweep the floor, and take out trash, which could take a minimum of five (5) minutes and up to an hour each instance. Moreover, DISNEY had a company-wide policy and/or practice of requiring that Mr. Ruiz and other aggrieved employees respond to phone calls and text messages from supervisors and management on their personal cellular phones, even on their off-days. DISNEY failed to track this time spent working before and after scheduled shifts, and Mr. Ruiz and other aggrieved employees received no or incomplete compensation for this time.

Second, DISNEY had, and continues to have, a loss prevention policy requiring Mr. Ruiz and other aggrieved employees to undergo security checks at the end of their shifts before leaving the store premises at the end of their shifts or for their meal periods. After clocking out at the end of their shifts or at the start of their meal periods, Mr. Ruiz and other aggrieved employees were required to wait off-the-clock for a managerial employee to become available to perform a security check before they could leave, which could take 2-5 minutes per instance. Although DISNEY's requirement that Mr. Ruiz and other aggrieved employees undergo security checks prior to exiting the store was mandatory, DISNEY did not compensate them for the time it took them to wait for a managerial employee to become available and to undergo these security checks. Thus, Mr. Ruiz and other aggrieved employees were not compensated for the time spent undergoing security screenings while off-the-clock.

Third, as stated, DISNEY had, and continues to have, a company-wide policy and/or practice of staffing its store locations strictly based on a labor budget set by the corporate office. DISNEY's use of a labor budget resulted in chronic understaffing, such that there were too few employees on duty to handle the heavy workload, which included certain daily tasks, and provide uninterrupted meal period coverage. Moreover, on information and belief, DISNEY had, and continues to have, a policy and/or practice of requiring other aggrieved employees to wear a headset and carry a radio at all times in order to respond to communications from supervisors and management, even during unpaid meal periods. Furthermore, DISNEY had a company-wide practice of failing to schedule meal periods, which further caused Mr. Ruiz and other aggrieved employees to not be relieved of their duties for compliant meal periods. Thus, Mr. Ruiz and other aggrieved employees suffered missed and/or interrupted meal periods, work for which they were not paid.

Finally, on information and belief, because DISNEY frowned upon employees accruing meal period penalties, DISNEY adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that DISNEY would otherwise owe. Consequently, Mr. Ruiz and other aggrieved employees performed work during meal periods for which they were not paid.

DISNEY knew or should have known that, as a result of these company-wide practices and/or policies, Mr. Ruiz and other aggrieved employees were performing their assigned duties off-the-clock and during meal periods, and were suffered or permitted to perform work for which they were not paid. DISNEY also knew, or should have known, that it did not compensate Mr. Ruiz and other aggrieved employees applicable overtime rates of pay for overtime hours that they worked. Because Mr. Ruiz 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. Ruiz and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. DISNEY's failure to pay Mr. Ruiz and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

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

Mr. Ruiz and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 7 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11070(2)(G) (defining "Hours Worked").

As set forth above, as a result of DISNEY's policy of limiting the amount of overtime employees could accrue by discouraging and impeding Mr. Ruiz and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, Mr. Ruiz and other aggrieved employees were forced to work off-the-clock before and after their scheduled shift start and end times to complete their assigned job duties. Furthermore, Mr. Ruiz and other aggrieved employees were required to work off-the-clock undergoing security checks and performing other work-related tasks, such as store resets and other closing shift duties after clocking out and responding to work-related phone calls and text messages on their personal cellular phones. DISNEY systematically failed to

pay Mr. Ruiz and other aggrieved employees for actual hours worked, because these hours were not always correctly recorded.

Moreover, as also stated, due to DISNEY's policy and/or practice of understaffing while assigning heavy workloads, failure to schedule meal periods, and subsequent lack of meal period coverage, Mr. Ruiz and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods. Additionally, due to DISNEY's requirement that employees wear a headset and carry radios at all times, other aggrieved employees had their meal periods interrupted by work in order to respond to communications from supervisors or management. In addition, as set forth above, DISNEY adjusted employee time records to reflect compliant meal periods regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that DISNEY would otherwise owe. Consequently, Mr. Ruiz and other aggrieved employees performed work during meal periods for which they were not paid.

Thus, DISNEY 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, DISNEY did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1. Accordingly, DISNEY regularly failed to pay at least minimum wages to Mr. Ruiz 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. Ruiz and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal and rest 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 period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As stated, DISNEY had, and continues to have, a company-wide policy and/or practice of understaffing its locations due to labor budgeting and assignment of heavy workloads, which resulted in a lack of meal period coverage and prevented Mr. Ruiz and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As also stated above,

DISNEY had a company-wide practice of failing to schedule meal periods, which further caused Mr. Ruiz and other aggrieved employees to not be relieved of their duties for compliant meal periods. Furthermore, on information and belief, because DISNEY frowned upon employees accruing meal period penalties, DISNEY's management would adjust Mr. Ruiz's and other aggrieved employees' time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by DISNEY.

Also, as stated, DISNEY had, and continues to have, a loss prevention policy requiring Mr. Ruiz and other aggrieved employees to undergo security checks before leaving the store premises for their meal periods. After clocking out at the start of their meal periods, Mr. Ruiz and other aggrieved employees were required to wait for a managerial employee to become available to perform a security check before they could leave, which could take 2-5 minutes per instance. Although DISNEY's requirement that Mr. Ruiz and other aggrieved employees undergo security checks prior to exiting the store was mandatory, DISNEY did not compensate them for the time it took them to wait for a managerial employee to become available and to undergo these security checks during their unpaid meal periods. As also stated, DISNEY's requirement that employees wear headsets and carry radios at all times further prevented other aggrieved employees from taking compliant meal periods. Thus, Mr. Ruiz and other aggrieved employees received non-compliant meal periods which were cut short or interrupted by DISNEY's security checks and/or calls over radios. Consequently, Mr. Ruiz and other aggrieved employees suffered missed and/or interrupted meal periods, work for which they were not paid.

DISNEY's practices and policies prevented Mr. Ruiz and other aggrieved employees from taking all compliant meal periods to which they were entitled. As a result, Mr. Ruiz and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted and/or had to forgo their meal periods altogether. For example, Mr. Ruiz missed his meal periods, due to a lack of coverage resulting from understaffing and the heavy workload. As a further example, when Mr. Ruiz was able to take meal periods, he would be interrupted by his supervisors asking him to return to the floor to assist other employees.

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

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

Furthermore, DISNEY engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Ruiz and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that DISNEY did pay meal period premium wages to other aggrieved employees, it did so at the incorrect rates. Because DISNEY 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, DISNEY failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Ruiz and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, 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. 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, DISNEY regularly failed to authorize and permit Mr. Ruiz 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, DISNEY's company-wide practices, including assignment of heavy workloads and understaffing, prevented Mr. Ruiz and other aggrieved employees from being relieved of all duty to take their rest periods. Also, as with meal periods, DISNEY's requirement that employees wear headsets and carry radios at all times prevented other aggrieved employees from being relieved of all duty in order to take compliant rest periods. Furthermore, DISNEY failed to schedule rest periods, which, coupled with DISNEY's failure to provide adequate rest period coverage, further led to Mr. Ruiz and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Additionally, upon information and belief, DISNEY maintained and implemented a company-wide practice and/or policy effectively requiring that Mr. Ruiz and other aggrieved employees remain on DISNEY's premises during their rest periods. As stated, Mr. Ruiz and other aggrieved employees were subject to security searches, and thus were required to wait for a managerial employee to perform a security check whenever they wished to leave the store premises, resulting in rest periods that would be cut short by several minutes. Because Mr. Ruiz and other aggrieved employees were implicitly restricted from leaving DISNEY'S premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, DISNEY effectively maintained control over Mr. Ruiz and other aggrieved employees during rest periods, and, as a result of this rest

period policy, DISNEY did not relinquish control over Mr. Ruiz and other aggrieved employees during rest periods.

As a result of DISNEY's practices and policies, Mr. Ruiz and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, during his employment, Mr. Ruiz missed his rest periods due to understaffing, heavy workload, and the lack of coverage for rest periods. Mr. Ruiz also had his rest periods interrupted or cut short due to the security searches required before employees could leave the store premises.

DISNEY 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. Ruiz and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that DISNEY did pay rest period premium wages to other aggrieved employees, it did so at the incorrect rates. Because DISNEY 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, DISNEY failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Ruiz and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. DISNEY has not provided Mr. Ruiz 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, DISNEY has knowingly and intentionally provided Mr. Ruiz and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, DISNEY issued uniform wage statements to Mr. Ruiz and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the correct name of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, DISNEY violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

First, because DISNEY did not record the time Mr. Ruiz and other aggrieved employees spent working off-the-clock deducted time from their records for meal periods that were interrupted or missed (and therefore time for which they should have been paid), DISNEY did not list the correct amount of gross wages and net wages earned by Mr. Ruiz and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, DISNEY failed to accurately list the total number of hours worked by Mr. Ruiz 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 DISNEY did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, DISNEY 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). DISNEY also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for premium wages, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

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

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, DISNEY failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Ruiz and other aggrieved employees, in violation of section 1198. As stated, DISNEY engaged in a company-wide practice and/or policy of falsifying Mr. Ruiz's and other aggrieved employees' time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to

keep accurate records of meal start and end times for Mr. Ruiz and other aggrieved employees. Furthermore, in light of DISNEY's failure to provide Mr. Ruiz and other aggrieved employees with second 30-minute meal periods to which they were entitled, DISNEY kept no records of meal start and end times for second meal periods.

Because DISNEY failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Ruiz 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. Ruiz 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. Ruiz 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, DISNEY failed to pay Mr. Ruiz and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premium wages, and/or reporting time pay, within any time period specified by California Labor Code section 204.

Mr. Ruiz 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.

DISNEY willfully failed to pay Mr. Ruiz and other aggrieved employees who are no longer employed by DISNEY all their earned wages, including, but not limited to, overtime wages,

minimum wages, meal and rest period premium wages, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving DISNEY's employ in violation of California Labor Code sections 201, 202, and 203.

Mr. Ruiz and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code 450 – Compelling Patronization

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

DISNEY had a company-wide policy of requiring employees to purchase items directly from DISNEY's stores in order to meet sales goals. DISNEY's managers pressured other aggrieved employees to “volunteer” to purchase items from DISNEY to ensure each store was meeting its daily sales goals.

DISNEY's conduct of compelling and/or coercing other aggrieved employees to purchase goods from them is in violation of California Labor Code section 450. 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 § 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.*

DISNEY's California retail stores are generally similar in their layout and design and there was, and continues to be, space behind cash wraps to allow for the presence and use of a seat or stool by Mr. Ruiz and other aggrieved employees during the performance of their work duties. DISNEY could provide Mr. Ruiz and other aggrieved employees with a seat or stool at its cash wraps, with reasonable or no modification to these work areas, but instead denies employees seating and forces other aggrieved employees to stand throughout the day.

Mr. Ruiz and other aggrieved employees spent a portion of their day behind or at these cash wraps. The nature of the work of an employee performing cashier duties can reasonably be accomplished from a seated position. However, as set forth herein, DISNEY systematically, and on a company-wide basis, does not provide seats or stools at or near cash wraps, forcing Mr. Ruiz and other aggrieved employees to stand throughout their work shifts.

DISNEY violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because Mr. Ruiz and other aggrieved employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats. DISNEY's management did not inform Mr. Ruiz and other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of DISNEY's company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, Mr. Ruiz and other aggrieved employees were forced to stand during shifts and denied seats. DISNEY's failure to provide suitable seating to Mr. Ruiz and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 7-2001, Section 14(A).

Mr. Ruiz and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring DISNEY 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, DISNEY’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 Mr. Ruiz and other aggrieved employees during lulls in operation. DISNEY could provide Mr. Ruiz and other aggrieved employees with a seat or stool in its work areas, with reasonable or no modification to these work areas, but instead denies employees seating and forces Mr. Ruiz and other aggrieved employees to stand throughout the day.

DISNEY did not provide Mr. Ruiz and other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Mr. Ruiz and other aggrieved employees engaged in duties in which the nature of the work required standing, DISNEY denied them the use of seats nearby during lulls in their work duties. Moreover, DISNEY did not inform Mr. Ruiz and other aggrieved employees of their rights to a seat or stool under California law.

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

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

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11070(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012)

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

DISNEY had a company-wide practice of sending Mr. Ruiz and other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay Mr. Ruiz and other aggrieved employees for half of their scheduled shift. For example, Mr. Ruiz would report to work, but would be sent home early by DISNEY's management when store traffic was slow. Although Mr. Ruiz and other aggrieved employees would report to work based on the schedule that DISNEY provided to them, DISNEY would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay.

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

First, during the relevant time period, DISNEY had a company-wide policy of requiring Mr. Ruiz and other aggrieved employees to utilize their own personal cellular phones and cellular data to carry out their job duties, but DISNEY failed to fully reimburse them for the costs of their work-related cellular phone expenses. Mr. Ruiz and other aggrieved employees were required to use their personal cellular phones to complete their work-related tasks, such as discussing requests from management and work assignments. Mr. Ruiz's supervisors would call or text him once or twice per week regarding lost product shipments. Although DISNEY required Mr. Ruiz and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, DISNEY failed to fully reimburse them for this cost.

Second, during the relevant time period, DISNEY, on a company-wide basis, expected Mr. Ruiz and other aggrieved employees to report to work in clean and presentable uniforms, including a uniform shirt and pants emblazoned with DISNEY's logo, which forced Mr. Ruiz and other aggrieved employees to wash their uniforms more frequently than they would otherwise do laundry, and incur expenses for doing so. For example, Mr. Ruiz was only provided one uniform shirt and one pair of pants, but was scheduled to work five (5) days in a week, and thus incurred laundry expenses for the upkeep of his uniform, as the nature of his work resulted in his uniform becoming sweaty and/or dirty.

Third, during the relevant time period, DISNEY had a company-wide policy of requiring other aggrieved employees to utilize their own personal vehicles for work purposes, but failed to reimburse

them for all costs of travel, including mileage. Other aggrieved employees were required to use their own vehicles to transport inventory, supplies, or product between stores. For example, other aggrieved employees drove approximately 42 miles roundtrip from DISNEY's store in Commerce to DISNEY's store location in Santa Monica in order to transport product. Although DISNEY required other aggrieved employees to utilize their own vehicles and complete these tasks as part of their job duties, DISNEY did not reimburse them fully for all of their travel expenses.

Fourth, DISNEY, on a company-wide basis, required other aggrieved employees, such as store leads, to purchase basic office supplies that were necessary for completion of assigned tasks. Other aggrieved employees were required to buy paper, staples, tape, and printer ink for work purposes. DISNEY failed to provide basic supplies to other aggrieved employees, forcing them to procure their own, and failed to reimburse other aggrieved employees for the costs of these supplies.

DISNEY could have provided Mr. Ruiz and other aggrieved employees with the actual tools for use on the job, such as company phones and company vehicles to be used for fulfilling work-related tasks, an adequate number of uniforms or access to a cleaning service, and office supplies. Or, DISNEY could have reimbursed employees for their cellular phone, uniform laundering, travel, mileage, and office supply expenses. Instead, DISNEY passed these operating costs off onto Mr. Ruiz and other aggrieved employees. At all relevant times, Mr. Ruiz did not earn at least two (2) times the minimum wage.

Thus, DISNEY 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. Ruiz and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

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

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

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

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

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

Best Regards,

A handwritten signature in black ink, appearing to read "Mao Shiokura", with a stylized flourish at the end.

Mao Shiokura

Copy: DISNEY STORE USA, LLC (via U.S. Certified Mail); DISNEY WORLDWIDE SERVICES, INC. (via U.S. Certified Mail)

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

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

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

Stephen Berry (SBN 101576)
stephenberry@paulhastings.com
Blake R. Bertagna (SBN 273069)
blakebertagna@paulhastings.com
PAUL HASTINGS LLP
695 Town Center Drive, 17TH Floor
Costa Mesa, CA 92626
Telephone: (714) 668-6200

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

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

[] **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the offices of the addressee(s) named herein.

[] **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

Executed this **December 17, 2020**, at Los Angeles, California.

Signature