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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

MICHAEL DE GRADO and LA TASHA
SHAREEF, as aggrieved employees pursuant to
the Private Attorneys General Act (“PAGA”), on
behalf of the State of California and other non-
party Aggrieved Employees,

Plaintiffs,

vs.

TIFFANY AND COMPANY U.S. SALES,
LLC, a Delaware limited liability company;
TIFFANY AND COMPANY, a New York
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 20STCV44847

**JOINT STIPULATION OF PAGA
REPRESENTATIVE ACTION
SETTLEMENT AND RELEASE**

1 This Joint Stipulation of PAGA Representative Action Settlement and Release (hereinafter
2 “Settlement Agreement”) is made and entered into by and between the following parties: Plaintiffs
3 Michael De Grado and La Tasha Shareef (“Plaintiffs”), individually and as proxies of the State of
4 California and the California Labor and Workforce Development Agency (“LWDA”) on behalf of all
5 other allegedly aggrieved employees, and Defendants Tiffany and Company U.S. Sales, LLC
6 (“Tiffany”) and Tiffany and Company (together, “Defendants”) (collectively, the “Parties”), and their
7 respective counsel of record. This Settlement Agreement is subject to the terms and conditions set forth
8 below and to the approval of the Court. This Settlement Agreement accurately sets forth the Parties’
9 PAGA representative action settlement in the total amount of Six Hundred Seventeen Thousand Dollars
10 (\$617,000) to resolve all claims, as detailed below.

11 **I. DEFINITIONS**

12 1. “Action” means the action entitled “*Michael De Grado, et al. v. Tiffany and Company*
13 *U.S. Sales, LLC, et al.*,” Case No. 20STCV44847, filed in the Superior Court of California in and for the
14 County of Los Angeles (the “Action”).

15 2. “Approval Hearing” means the hearing on the Motion for Settlement Approval and
16 Judgment.

17 3. “Court” means the Superior Court of California in and for the County of Los Angeles,
18 which presides over the Action.

19 4. “Covered PAGA Pay Periods” means, as reflected on Tiffany’s internal records, pay
20 periods from September 17, 2019 to the Date of Court Approval in which a Representative Action
21 Member worked for Tiffany as a non-exempt employee in a Tiffany retail store location in California.

22 5. “Cy Pres Recipient” means Legal Aid at Work.

23 6. “Date of Court Approval” means the date the Court approves this Settlement
24 Agreement, and enters the Order Granting Settlement Approval and Judgment to that effect.

25 7. “Defendants” means Tiffany and Tiffany and Company.

26 8. “Defendants’ Counsel” means Morgan, Lewis & Bockius LLP.

27 9. “General Release Payments” means the payment of Eleven Thousand Five Hundred
28 Dollars (\$11,500) to Plaintiff Michael De Grado as consideration for a general release of all claims

1 against Defendants, including Plaintiff De Grado's alleged claim for unlawful deduction of wages
2 relating to Tiffany's garnishment of his wages and all claims deriving therefrom and the payment of One
3 Thousand Five Hundred Dollars (\$1,500) to Plaintiff La Tasha Shareef as consideration for a general
4 release of all claims against Defendants. The General Release Payments will be paid separate and apart
5 from the Maximum Settlement Amount.

6 10. "Individual Settlement Amount" means the final gross amount sent and paid to any
7 Representative Action Member under this Settlement Agreement.

8 11. "Individual Settlement Fund" means the twenty-five percent (25%) of the Net
9 Settlement Amount allocated for the Individual Settlement Amount payments to the Representative
10 Action Members.

11 12. "LWDA" means the California Labor and Workforce Development Agency.

12 13. "Maximum Settlement Amount" is the sum of Six Hundred Seventeen Thousand
13 Dollars (\$617,000), which represents the maximum amount payable in this Settlement by Defendants
14 other than the Plaintiffs' General Release Payments, and includes all attorneys' fees, litigation costs, the
15 Settlement Administration Expenses, the Service Enhancements to the Plaintiffs, and all settlement
16 payments to the LWDA and the Representative Action Members.

17 14. "Net Settlement Amount" equals the Maximum Settlement Amount less Representative
18 Counsel's attorneys' fees and actual litigation costs, Settlement Administration Expenses, and the
19 Service Enhancement to the Plaintiff.

20 15. "Order Granting Settlement Approval and Judgment" means the Order entered by the
21 Court in the Action, *inter alia*: (1) approving the terms and conditions of this Settlement Agreement,
22 including the payments and the release of claims as set forth herein; (2) approving the amount of
23 attorneys' fees and litigation costs to be awarded to Representative Counsel, the Settlement
24 Administration Expenses, and the Service Enhancement to be awarded from the Maximum Settlement
25 Amount; and (3) dismissing the Action with prejudice and entering judgment in the Action pursuant to
26 and consistent with the terms and conditions of this Settlement Agreement.

27 16. "PAGA" will mean the California Labor Code Private Attorneys General Act of 2004,
28 California Labor Code §§ 2698 et seq.

1 17. “Parties” means collectively Plaintiffs and Defendants, as defined herein.

2 18. “Plaintiffs” means Michael De Grado and La Tasha Shareef.

3 19. “Released Claims” means any and all claims, obligations, demands, rights, causes of
4 action, and liabilities against Tiffany Releasees (defined to be Tiffany and Company and Tiffany and
5 Company U.S. Sales, LLC; each of their respective current and former direct and indirect parents,
6 subsidiaries and affiliates; and each of their respective current and former officers, directors, employees,
7 assigns, attorneys, and agents), under PAGA that have been asserted or that could have been asserted in
8 the Complaint, the First Amended Complaint, the proposed Second Amended Complaint, and any
9 amendments thereto, based on the facts and/or allegations pled therein, including for failure to pay
10 minimum wage, failure to pay overtime or pay overtime at the correct rate of pay, failure to pay for all
11 hours worked (off-the-clock work), failure to provide meal periods, failure to provide rest periods, failure
12 to pay premiums at the correct rate of pay, failure to provide one days’ rest in seven, failure to provide
13 reporting time pay, failure to timely pay wages and final wages, failure to provide reimbursement for
14 necessary business-related expenditures, failure to pay costs of medical or physical examinations, failure
15 to maintain wage-related records and/or furnish accurate wage statements, and failure to provide suitable
16 seating under Section 14 of Industrial Welfare Commission Wage Order 7 as enforced by California
17 Labor Code sections 1198 and 2698, et seq., and includes all such claims for recovery of compensation,
18 and/or all penalties under the California Labor Code and California’s Wage Orders, from September 17,
19 2019 through the Date of Court Approval.

20 20. “Representative Action Member(s)” means all individuals employed by Tiffany as a
21 non-exempt employee in a Tiffany retail store location in California between September 17, 2019 and
22 the Date of Court Approval.

23 21. “Representative Counsel” or “Plaintiffs’ Counsel” means Capstone Law APC.

24 22. “Service Enhancements” means the incentive payments paid to Plaintiffs in an amount
25 not to exceed \$2,500 for Plaintiff De Grado and \$1,000 for Plaintiff Shareef, for their efforts and work in
26 prosecuting the Action.

27 23. “Settlement Administration Expenses” means all settlement administration fees and
28 costs, including those for the Settlement Administrator, in effectuating the Settlement and approved by

1 the Court in an amount not to exceed \$10,000.

2 24. "Settlement Administrator" means CPT Group, Inc., or any other third-party settlement
3 administrator that the Parties jointly select.

4 25. "Settlement Agreement" or "Settlement" will mean this Joint Stipulation of PAGA
5 Representative Action Settlement and Release.

6 26. "Settlement Effective Date" means, after the Order Granting Settlement Approval and
7 Judgment has been entered by the Court in the Action, the latter of the following dates: (a) if an appeal,
8 review, or writ is not sought from the Order Granting Settlement Approval and Judgment, the 61st day
9 after service of notice of entry of the Order Granting Settlement Approval and Judgment; or (b) if an
10 appeal, writ, or review is sought from the Order Granting Settlement Approval and Judgment, the day
11 after the Order Granting Settlement Approval and Judgment is affirmed or the appeal, review, or writ is
12 dismiss or denied, and the Order Granting Settlement Approval and Judgment is no longer subject to
13 further judicial review.

14 27. "Tiffany Releasees" means Tiffany and Company U.S. Sales, LLC and Tiffany and
15 Company; each of their respective current and former direct and indirect parents, subsidiaries and
16 affiliates; and each of their respective current and former officers, directors, employees, assigns,
17 attorneys, and agents.

18 **II. LITIGATION BACKGROUND**

19 28. On or about September 17, 2020, Plaintiff De Grado served the LWDA by mail with a
20 PAGA notice letter which stated that Plaintiff intended to seek civil penalties against Defendants for
21 alleged violations of the California Labor Code. On or about November 22, 2021, Plaintiff Shareef
22 served the LWDA by mail with a PAGA notice letter also stating her intent to seek civil penalties against
23 Defendants for alleged California Labor Code violations.

24 29. On November 23, 2020, Plaintiff De Grado filed a representative action under PAGA
25 against Defendants in the Superior Court of California for the County of Los Angeles. On April 1, 2021,
26 Plaintiff De Grado filed a First Amended Complaint.

27 30. Within 7 days of execution of this Settlement Agreement, the Parties will file a
28 stipulation with the Court requesting leave for Plaintiffs to file the proposed Second Amended

1 Complaint, as set forth in Section IV.C. In the proposed Second Amended Complaint, Plaintiffs allege
2 that Defendants violated the following Labor Code sections: §§ 510 and 1198 (failure to pay overtime
3 wages); §§ 1182.12, 1194, 1197, and 1198 (failure to pay minimum wages); §§ 226.7, 512(a), 516, and
4 1198 (failure to provide and record meal periods); §§ 226.7, 516, and 1198 (failure to authorize and
5 permit rest periods); §§ 226(a), 1174(d), and 1198 (failure to provide and maintain compliant wage
6 statements); § 204 (failure to pay wages during employment); §§ 201, 202, and 203 (failure to pay wages
7 upon termination); § 222.5 (failure to pay costs of medical or physical examinations); §§ 551 and 552
8 (failure to provide one day's rest in seven); § 1198 and California Code of Regulations, Title 8, §
9 11070(5)(A) (failure to pay reporting time pay); § 1198 and California Code of Regulations, Title 8, §
10 11070(14)(a)-(b) (failure to provide suitable seating); and § 2802 (failure to reimburse necessary
11 business expenses).

12 31. Defendants deny Plaintiffs' claims, and assert that they have complied with California's
13 labor laws and wage orders. Consequently, Defendants do not believe that any liability to Plaintiffs, the
14 State of California or the LWDA, or to any other Representative Action Member exists, or that Plaintiffs,
15 the State of California or the LWDA, or any other Representative Action Member are entitled to any
16 recovery in the Action.

17 32. On May 11, 2021, counsel for the Parties participated in a mediation with experienced
18 mediator Michael E. Dickstein, Esq. With Mr. Dickstein's assistance and issuance of a mediator's
19 proposal, the Parties continued to discuss settlement on an ongoing basis after the mediation, and
20 negotiated a complete settlement of Plaintiffs' claims. The terms of the settlement are now set forth in
21 complete and final form in this Settlement.

22 33. Neither this Settlement, nor any final judgment pursuant to this Settlement, will
23 constitute an admission of any form of wrongdoing or liability on the part of Defendants or the accuracy
24 of any allegation raised in the Action. This Settlement is entered into in compromise of disputed claims.
25 Plaintiffs and Defendants intend, by their actions pursuant to this Settlement, merely to avoid the
26 expense, delay, uncertainty, and burden of litigation. This Settlement and any related court documents or
27 orders may not be cited or otherwise admitted as evidence of liability. There has been no final
28 determination by any Court as to the merits of the Action.

1 34. It is the desire of the Parties to fully, finally, and forever settle, compromise, and
2 discharge all disputes and claims against the Tiffany Releasees arising from or related to the Action.

3 35. It is the intention of the Parties that this Settlement Agreement will constitute a full and
4 complete settlement and release of the claims averred in the Action by the Plaintiffs, both individually
5 and as a proxy of the State of California and the LWDA on behalf of all Representative Action Members
6 pursuant to PAGA. This release includes in its effect a release of all the Tiffany Releasees of the
7 Released Claims.

8 **III. JURISDICTION AND VENUE**

9 36. This Court has jurisdiction over the Parties and the subject matter of this Settlement.
10 This Court will have continuing jurisdiction over the terms and conditions of this Settlement Agreement,
11 until all payments and obligations provided for herein have been fully executed.

12 **IV. TERMS OF SETTLEMENT**

13 37. NOW, THEREFORE, in consideration of the mutual covenants, promises, and
14 undertakings set forth herein, the Parties agree, subject to the Court's approval, as follows:

15 **A. Non-Admission of Liability**

16 38. Nothing in this Settlement Agreement, or any communications, papers, or orders related
17 to this Settlement Agreement, will be construed to be or deemed an admission by the Tiffany Releasees
18 of any liability, culpability, negligence, or wrongdoing toward the Plaintiffs, the Representative Action
19 Members, or any other person, and the Tiffany Releasees specifically disclaim any liability, culpability,
20 negligence, or wrongdoing toward the Plaintiffs, the Representative Action Members, or any other
21 person. Defendants also maintain that, for any purpose other than settlement, the claims alleged in the
22 Action are not suitable or appropriate for representative action treatment pursuant to California Labor
23 Code § 2698 *et seq.*, nor are the claims alleged in the Action suitable or appropriate for class and/or
24 collective action treatment under California Code of Civil Procedure Section 382, the Fair Labor
25 Standards Act, or any other applicable laws or rule(s). Each of the Parties has entered into this
26 Settlement Agreement with the intention to avoid further disputes and litigation with the attendant
27 inconvenience, expenses, and contingencies, including in the Action. This Settlement Agreement and
28 any communications, papers, or orders related to the Settlement Agreement may not be cited or

otherwise admitted as evidence of liability, whether in the Action or elsewhere. There has been no final determination by any Court as to the merits of the claims asserted by Plaintiffs against Defendants.

39. Furthermore, nothing in this Settlement Agreement will be considered any form of waiver of any of the alternative dispute resolution provisions contained in Tiffany's Dispute Resolution Agreement or any other applicable alternative dispute resolution agreement with Defendants, and Defendants expressly do not waive any right to enforce arbitration agreements and class, collective, and representative action waivers in any other circumstance.

B. Non-Approval By The Court

40. In the event that this Settlement Agreement is not approved by the Court, fails to become effective, is reversed, withdrawn or modified by the Court:

40(a) The Settlement Agreement will have no force or effect, other than the confidentiality and non-disclosure provisions in Section XI, the non-admission provisions in Section IV.A, and the litigation restoration provisions in Paragraph 40(e) below and in Paragraph 75;

40(b) The Settlement Agreement will not be admissible in any judicial, administrative or arbitral proceeding for any purpose or with respect to any issue, substantive or procedural;

40(c) None of the parties to this Settlement Agreement will be deemed to have waived any claims, objections, defenses or arguments with respect to the merits of Plaintiffs' claims;

40(d) Defendants do not waive, and instead expressly reserve their rights to challenge the propriety of the Action proceeding as a representative action; and

40(e) The Action will be restored to its status quo ante as of September 7, 2021, and the Parties will cooperate to the fullest extent possible to restore the Action to its status quo ante.

C. Second Amended Complaint

41. Within 7 days of execution of this Settlement Agreement, the Parties will file a joint

1 stipulation with the Court requesting leave for Plaintiffs to file the proposed Second Amended Complaint
2 attached as Exhibit B.

3 **D. Settlement Payments**

4 42. Defendants agree to pay a Maximum Settlement Amount of Six Hundred Seventeen
5 Thousand Dollars (\$617,000), inclusive of (a) all PAGA penalty settlement payments to the LWDA and
6 Representative Action Members; (b) any award of attorneys' fees and out-of-pocket litigation costs and
7 expenses to Representative Counsel; (c) any award of Service Enhancements; and (d) Settlement
8 Administration Expenses. The Parties specifically agree, subject to Court approval, to the following
9 allocations to be paid from the Maximum Settlement Amount:

10 42(a) From the Maximum Settlement Amount, Representative Counsel may seek
11 from the Court attorneys' fees up to \$206,167 and actual litigation costs up
12 to \$35,000, including costs not otherwise provided by CCP 1033.5, for
13 serving as Representative Counsel. Defendants take no position on
14 Plaintiffs' request for fees and costs provided it does not exceed these
15 amounts and Plaintiffs and Representative Counsel are not in breach of the
16 Settlement Agreement.

17 42(b) From the Maximum Settlement Amount, Representative Counsel may seek
18 from the Court a Service Enhancement award to Plaintiff De Grado not to
19 exceed \$2,500, and to Plaintiff Shareef not to exceed \$1,000, which
20 Defendants will not oppose so long as Plaintiffs and Representative Counsel
21 are not in breach of the Settlement Agreement.

22 42(c) From the Maximum Settlement Amount, Settlement Administration
23 Expenses in a reasonable amount currently estimated at \$10,000.

24 42(d) From the Net Settlement Amount, settlement payments attributable to
25 PAGA penalties will be allocated and paid to the LWDA and the
26 Representative Action Members.

27 42(d)(i) Seventy-five percent (75%) of the Net Settlement Amount will
28 be paid to the LWDA as its share of the Settlement attributable

1 to PAGA penalties.

2 42(d)(ii) The remaining twenty-five percent (25%) of the Net Settlement
3 Amount will be the Individual Settlement Fund and will be
4 distributed as Individual Settlement Amounts to the
5 Representative Action Members based on their eligible
6 employee service time for Covered PAGA Pay Periods, as
7 reflected on Tiffany's internal records. Individual Settlement
8 Amounts will be calculated as follows: the numerator shall be
9 the number of the Representative Action Member's individual
10 Covered PAGA Pay Periods; the denominator shall be the total
11 Covered PAGA Pay Periods for all Representative Action
12 Members; this fraction shall be multiplied by the Individual
13 Settlement Fund.

14 42(e) If the Court approves a lesser amount of attorney's fees and litigation costs
15 and expenses, the Service Enhancements, and Settlement Administrator
16 Expenses, than those sought by Plaintiffs and Representative Counsel, any
17 amount disallowed by the Court will be added to the Individual Settlement
18 Fund to be distributed in pro rata shares to the Representative Action
19 Members or, if settlement checks have already been sent to Representative
20 Action Members, paid to the Cy Pres Recipient. The Parties agree that the
21 Settlement Agreement will remain binding with such modification(s) as
22 ordered by the Court, and its terms will be otherwise unchanged.

23 42(f) The Settlement Administrator will disburse monies from the Net Settlement
24 Amount as and when authorized in this Settlement Agreement and by order
25 of the Court, will file and issue any necessary tax reporting documents, and
26 will inform the Parties and the Court of its fulfillment of the duties imposed
27 by this Settlement Agreement.

28 42(g) The Settlement Administrator will issue settlement checks to the LWDA

and Representative Action Members under this Settlement Agreement, as well as the Service Enhancements to the Plaintiffs and attorneys' fees and expenses awarded to Representative Counsel, by sending such payments by mail, wire, or other reliable means to the respective recipients as specified below.

E. Released Claims

43. Upon the Settlement Effective Date, Plaintiffs individually, and the State of California, the LWDA, and all Representative Action Members, through Plaintiffs acting as proxies for the State of California and the LWDA and as Private Attorneys General acting on behalf of all other Representative Action Members, will be deemed to have fully, finally, and forever released the Tiffany Releasees from all Released Claims as set forth in Section VII.A. Plaintiffs, in conjunction with their execution of this Settlement Agreement and requesting their General Release Payment, also will enter into the General Release as set forth in Section VII.B.

F. Waiver of Appeal

44. The Parties expressly acknowledge and agree that approval of this Settlement Agreement, through the Order Granting Settlement Approval and Judgment, effectuates the Releases set forth in Section VII, extinguishes all Released Claims, and dismisses the Action with prejudice. Upon the Date of Court Approval, Plaintiffs, Defendants, and their counsel expressly agree to hereby waive and extinguish their right to appeal any order or judgment in the Action, and the judgment entered in the Action will be final, except however that Representative Counsel may appeal an order reducing their requested attorneys' fees and costs.

G. No Right to Exclusion or Objections by Representative Action Members

45. Because this Settlement resolves claims and actions brought pursuant to PAGA by Plaintiffs acting as proxies and as Private Attorneys General of and for the State of California and the LWDA, the Parties agree that no Representative Action Member has the right to exclude himself or herself from the Settlement. Representative Action Members will be bound by the terms of the Settlement Agreement, upon its approval by the Court, regardless of whether he or she cashes any Individual Settlement Amount payment received as a result of this Settlement. The Parties also agree that

no Representative Action Member, including Plaintiffs, have the right to object to the terms of the Settlement Agreement and Plaintiffs agree not to object to the Settlement.

V. SETTLEMENT ADMINISTRATION

A. Settlement Administrator Duties

46. Pursuant to the terms of this Settlement Agreement, the Settlement Administrator will be responsible for and the Settlement Administration Expenses will cover: (a) calculating and determining the LWDA's 75% share of the Net Settlement Amount, and preparing and mailing that payment to the LWDA; (b) preparing a list of all Representative Action Members, calculating the Individual Settlement Amounts due to each Representative Action Member from the Individual Settlement Fund, and issuing and mailing checks payable to said Representative Action Members, including taking appropriate steps to trace, update and locate any Representative Action Members whose address or contact information as provided to the Settlement Administrator is inaccurate or outdated; (c) issuing to Plaintiffs, Plaintiffs' Counsel, and Representative Action Members any tax forms as may be required by applicable law for all amounts paid pursuant to this Settlement Agreement; (d) forwarding all taxes and penalties to the appropriate government authorities; (e) maintaining the Maximum Settlement Amount account in an interest-bearing account at a federally insured banking institution, as discussed below; (f) preparing and mailing the amount of attorneys' fees and litigation costs awarded to Representative Counsel from the Maximum Settlement Amount; (g) preparing and mailing the Service Enhancements awarded to Plaintiffs from the Gross Settlement Amount; (h) reporting to Defendants' Counsel, Representative Counsel, and, if necessary, the Court regarding the completion of the tasks identified in this paragraph; and (i) carrying out other related tasks including the proper maintenance of undisbursed Individual Settlement Amounts or uncashed checks in an interest bearing account and reporting required for that account, in accordance with the terms of this Settlement Agreement.

47. All disputes relating to the Settlement Administrator's ability and need to perform its duties will be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Settlement Agreement, until all payments and obligations contemplated by the Settlement Agreement have been fully executed.

1 **B. Qualified Settlement Fund**

2 48. The Settlement Administrator will create a Qualified Settlement Fund (“QSF”), to be
3 funded by the Maximum Settlement Amount paid by Defendants and administered by the Settlement
4 Administrator. The Settlement Administrator shall have control over the distribution of funds from the
5 QSF, once funded. With respect to the QSF, the Settlement Administrator shall: (1) satisfy all federal,
6 state and local and income and other tax reporting, return, and filing requirements with respect to the
7 QSF and any interest or other income earned by the QSF; and (2) satisfy out of the QSF all fees,
8 expenses and costs incurred in connection with the opening and administration of the QSF and the
9 performance of its duties and functions as described in this Settlement Agreement. The aforementioned
10 fees, costs and expenses shall be treated as and included in the costs of administering the QSF and as
11 Settlement Administration Expenses. The Parties agree to cooperate with the Settlement Administrator
12 and one another to the extent reasonably necessary to carry out the provisions of this Section. If the
13 Court does not enter the Order Granting Settlement Approval and Judgment or if the Settlement
14 Effective Date does not occur, Defendants shall not be obligated to transmit the aforementioned funds.

15 **C. Calculating and Issuing Payments**

16 49. The Settlement Administrator shall calculate the Individual Settlement Amount
17 payments to Representative Action Members as described in Paragraph 42(d)(ii).

18 50. In addition to the payments to PAGA Members, Defendants, through the Settlement
19 Administrator, shall also make a payment to the California LWDA as consideration for the release of all
20 PAGA claims that are the subject of the Action on behalf of the State of California. Of the Net
21 Settlement Amount, seventy-five percent (75%) shall be paid to the LWDA.

22 51. Prior to mailing the Individual Settlement Amount payments to Representative Action
23 Members, the Settlement Administrator will update the addresses for the Representative Action
24 Members using the National Change of Address database and other available resources deemed suitable
25 by the Settlement Administrator. Any returned envelopes from the initial mailing with forwarding
26 addresses will be used by the Settlement Administrator to locate Representative Action Members and re-
27 mail the Individual Settlement Amount payments to the correct or updated address. The Settlement
28 Administrator will use appropriate tracing methods, including skip tracing, to ensure that the Individual

1 Settlement Amount payments are received by Representative Action Members. The Settlement
2 Administrator will also take reasonable steps, including skip tracing, to locate any Representative Action
3 Member whose Individual Settlement Amount payments are returned as undeliverable.

4 52. The Individual Settlement Amount payments mailed to each Representative Action
5 Member will include the notice letter attached to this Settlement Agreement as **Exhibit A** and will
6 provide a payment of each Representative Action Member's pro rata share from the Individual
7 Settlement Fund.

8 53. All settlement payments from the Maximum Settlement Amount, including any
9 payment to the LWDA, any Individual Settlement Amount payments, and any Service Enhancement
10 approved by the Court, will be treated as civil penalties under PAGA, and will be reported on an IRS
11 Form 1099 without withholdings. The General Release Payments to Plaintiffs will be treated as non-
12 wage liquidated damages, penalties, and interest, and will be reported on an IRS Form 1099 without
13 withholdings. The payments to Representative Counsel for attorneys' fees and litigation costs will be
14 treated as miscellaneous income and will be reported on an IRS Form 1099 without withholdings. The
15 Plaintiffs and Representative Action Members will be exclusively liable for any and all tax liability, if
16 any. All Parties represent that they have not received, and will not rely on, advice or representations from
17 other Parties or their agents or attorneys regarding the tax treatment of payments under federal, state, or
18 local law.

19 **D. Settlement Administration Expenses**

20 54. All Settlement Administration Expenses will come out of the Maximum Settlement
21 Amount. If the actual Settlement Administration Expenses are less than the amount approved by the
22 Court, those funds will be added to the Net Settlement Amount.

23 **VI. DISTRIBUTION OF NET SETTLEMENT AMOUNT**

24 **A. Process and Deadlines**

25 55. Within fourteen (14) days after the Settlement Effective Date, Tiffany will provide
26 information in an electronic format regarding all Representative Action Members, including name(s),
27 last known residence addresses, Social Security numbers, and all Covered PAGA Pay Periods worked,
28 to the Settlement Administrator only, contingent upon the Settlement Administrator's execution of a

1 confidentiality agreement. Representative Action Member data will only be used by the Settlement
2 Administrator for the purpose of calculating settlement shares and finding and paying Representative
3 Action Members their portion of the Individual Settlement Fund. Data for Representative Action
4 Members will be kept confidential by the Settlement Administrator, and will not be disclosed to
5 Plaintiffs, Plaintiffs' Counsel, the LWDA, or any other Representative Action Member without the
6 written consent of Defendants.

7 56. Within fourteen (14) days after the Settlement Effective Date, Defendants will provide
8 payment of the Maximum Settlement Amount to the Settlement Administrator to fund the QSF to be
9 created by the Settlement Administrator.

10 57. Within twenty-one (21) days after the Settlement Effective Date, the Settlement
11 Administrator will calculate the Net Settlement Amount and will make the calculation of payments from
12 the Net Settlement Amount to be distributed to the LWDA (representing its 75% share under PAGA of
13 the Net Settlement Amount) and to each of the Representative Action Members (representing, in the
14 aggregate, their 25% share under PAGA of the Net Settlement Amount). Upon completion of its
15 calculation of payments, and at least five (5) days prior to the distribution of payments to the LWDA and
16 Representative Action Members, the Settlement Administrator will provide Defendants' Counsel with a
17 report listing the amount of all payments to be made to the LWDA and to each Representative Action
18 Member from the Net Settlement Amount.

19 58. Within twenty-eight (28) days after the Settlement Effective Date, the Settlement
20 Administrator will distribute and pay Individual Settlement Amount checks to all Representative Action
21 Members, issue a Settlement check to the LWDA for its payment of PAGA penalties, pay Plaintiffs the
22 Service Enhancements and General Release Payments, and pay Representative Counsel any awarded
23 attorneys' fees and costs. The Settlement Administrator will then also issue a payment to itself in the
24 amount approved by the Court for services performed in administering this Settlement.

25 **B. Uncashed Settlement Checks**

26 59. Representative Action Members who are sent Individual Settlement Amount payments
27 will have 120 calendar days after mailing by the Settlement Administrator to cash their settlement checks
28 and will be so advised of such deadline. If Representative Action Members do not cash their checks

1 within that period, those checks will become void and the settlement payment amounts will be paid to
2 the Cy Pres Recipient designated by the Parties.

3 **VII. RELEASE OF CLAIMS**

4 **A. Release of Claims by Plaintiffs, the LWDA, and All Representative Action**
5 **Members**

6 60. Upon the Date of Court Approval, Plaintiffs, on behalf of themselves, the State of
7 California and the LWDA, and all Representative Action Members, fully and forever release and
8 discharge the Tiffany Releasees (as defined in Paragraph 27) from the Released Claims as defined in
9 Paragraph 19. The Parties agree that this Settlement Agreement is conditioned upon this release of all
10 Released Claims, both by Plaintiffs individually, and by the State of California, the LWDA, and all
11 Representative Action Members through Plaintiffs acting on behalf of, and as Private Attorneys General
12 for, the State of California, the LWDA, and all allegedly aggrieved current and former employees of
13 Tiffany. Upon the Settlement Effective Date, Plaintiff, the LWDA, and each and every Representative
14 Action Member will be bound by the terms of this Settlement Agreement and will have recourse
15 exclusively to the benefits, rights, and remedies provided hereunder.

16 61. The Parties further understand and agree that this Settlement Agreement, in conjunction
17 with the Order Granting Settlement Approval and Judgment, prohibits and enjoins any Representative
18 Action Member (including Plaintiffs), from bringing against the Tiffany Releasees any of the Released
19 Claims (including unknown Released Claims) through and including the Date of Court Approval. Upon
20 the Settlement Effective Date, Plaintiff, on behalf of themselves and on behalf of the LWDA and each
21 and every Representative Action Member, will be deemed to have, and by operation of the Order
22 Approving Settlement Agreement and Judgment entered by the Court will have fully, finally, and
23 forever released, relinquished, and discharged each and all of the Tiffany Releasees from any and all
24 Released Claims (including unknown Released Claims) through the Date of Court Approval.

25 62. With respect to the Released Claims only, the Parties stipulate and agree that, upon the
26 Settlement Effective Date, the LWDA and Representative Action Members will be deemed to have, and
27 by operation of the Order Approving Settlement Agreement and Judgment entered by the Court will
28 have waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits

1 of California Civil Code § 1542, which provides:

2 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
3 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
4 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
5 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
6 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
7 DEBTOR OR RELEASED PARTY.

8 Plaintiffs, the LWDA, and all Representative Action Members will be deemed to have acknowledged
9 that this Settlement Agreement is intended to include in its effect all Released Claims that they do not
10 know or suspect to exist in their favor up through the Date of Court Approval.

11 **B. General Release by Plaintiffs**

12 63. In exchange for their General Release Payments, which will be paid separate and apart
13 from the Maximum Settlement Amount, Plaintiffs will further make a general release (the “General
14 Release”) on behalf of themselves and their heirs, executors, administrators, representatives, successors
15 and assigns, of the Tiffany Releasees (as defined in Paragraph 27, to the full extent permitted by law, of
16 and from any and all claims, actions, causes of action, lawsuits, attorneys’ fees, costs, debts, dues, sums
17 of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, bonuses, controversies,
18 agreements, promises, claims, charges, complaints and demands whatsoever, whether in law or equity,
19 known and unknown, asserted and unasserted, which against the Tiffany Releasees, Plaintiffs (and their
20 heirs, executors, administrators, representatives, successors and assigns)) may now have or hereafter later
21 determines that they have or had upon or as of the Date of Court Approval. This includes all of
22 Plaintiffs’ claims against the Tiffany Releasees related to or arising out of Plaintiffs’ employment with
23 the Tiffany Releasees, and/or the cessation of employment or purported employment therefrom. These
24 claims expressly include, but are not limited to, claims arising under the Americans With Disabilities
25 Act, the National Labor Relations Act, the Fair Labor Standards Act, the Equal Pay Act, the Employee
26 Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., as amended, including, but not
27 limited to, breach of fiduciary duty and equitable claims arising under § 1132(a)(3) (“ERISA”), the
28 Worker Adjustment and Retraining Notification Act, as amended, Title VII of the Civil Rights Act of

1 1964, the Vocational Rehabilitation Act of 1973, The Age Discrimination in Employment Act of 1967,
2 as amended by the Older Workers Benefit Protection Act of 1990, the Civil Rights Acts of 1866, 1871
3 and 1991, including Section 1981 of the Civil Rights Act, the Family and Medical Leave Act (to the
4 extent permitted by law), the Fair Credit Reporting Act or other federal, state or local laws relating to
5 background checks, the Sarbanes-Oxley Act, the Dodd-Frank Wall Street and Consumer Protection Act,
6 the California Family Rights Act (“CFRA”), California Equal Pay Law, California Whistleblower
7 Protection Laws Cal. Bus. And Prof. Code § 17200 et seq. (“UCL”), the California Fair Employment
8 and Housing Act, and any and all claims related to the following: unlawful deduction of wages relating
9 to Tiffany’s garnishment of wages and all claims deriving therefrom; failure to pay overtime wages;
10 failure to pay minimum wages; failure to provide and record meal periods; failure to authorize and
11 permit rest periods; failure to provide and maintain compliant wage statements; failure to pay wages
12 during employment; failure to pay wages upon termination; failure to pay costs of medical or physical
13 examinations; failure to provide one day’s rest in seven; failure to pay reporting time pay; failure to
14 provide suitable seating; failure to reimburse necessary business expenses; any alleged violations of the
15 the California Labor Code and the Industrial Welfare Commission Wage Orders; any alleged violation
16 of and/or any remedy provided by the California Civil Code and/or the California Code of Civil
17 Procedure including, but not limited to, section 1021.5; any claims for penalties under the California
18 Labor Code and/or the California Private Attorneys General Act, California Labor Code section 2698 *et*
19 *seq.* (“PAGA”); and/or any other federal, state or local human rights, civil rights, wage-hour, pension or
20 labor law, rule, statute, regulation, constitution or ordinance and/or public policy, contract or tort law, or
21 any claim related to whistleblowers or retaliation under such laws, or any claim of breach of any contract
22 (whether express, oral, written or implied from any source), or any claim of intentional or negligent
23 infliction of emotional distress, tortious interference with contractual relations, wrongful or abusive or
24 constructive discharge, defamation, prima facie tort, fraud, negligence, loss of consortium, malpractice,
25 breach of duty of care, breach of fiduciary duty or any action similar thereto against Releasees, including
26 any claim for attorneys’ fees, expenses or costs based upon any conduct from the beginning of the world
27 up to and including the date of this General Release; provided, however, that Plaintiffs do not waive any
28 right to file an administrative charge with the Equal Employment Opportunity Commission (“EEOC”)

1 or the National Labor Relations Board (“NLRB”), subject to the confidentiality provisions of the
2 Settlement Agreement, and subject to the condition that Plaintiffs not seek, or in any way obtain or
3 accept, any monetary award, recovery or settlement therefrom and understand that such limitation does
4 not in any way restrict their ability to file and pursue such charge consistent with the confidentiality
5 obligations set forth in this Settlement Agreement; and further provided, however, that Plaintiffs do not
6 waive any rights with respect to, or release Releasees from, any claims for California Workers’
7 Compensation benefits, unemployment insurance or indemnification provided by state law (except that
8 Plaintiffs hereby release and waive any claims that their terminations were to avoid payment of such
9 benefits or payments or that, as a result of their terminations, they are entitled to additional benefits or
10 payments); and further provided, however, that Plaintiffs do not release any claim that cannot be released
11 by private contract or for breach of the terms of the Settlement Agreement, subject to the confidentiality
12 obligations in Section XI below. Plaintiffs’ General Release also includes the waiver of any right to
13 bring, maintain, or participate in a class, collective, or representative action against the Tiffany Releasees
14 to the maximum extent permitted by law.

15 64. Thus, for the purpose of implementing a full and complete release and discharge of the
16 Tiffany Releasees, Plaintiffs expressly acknowledge that this General Release is intended to include in its
17 effect, without limitation, all claims which Plaintiffs do not know or suspect to exist in Plaintiffs’ favor at
18 the time of execution hereof, and that this General Release contemplates the extinguishment of any such
19 claim or claims.

20 65. In connection with such waiver and relinquishment, Plaintiffs hereby acknowledge that
21 Plaintiffs or their attorneys may hereafter discover claims or facts in addition to, or different from, those
22 which they now know or believe to exist, but that they expressly agree to fully, finally and forever settle
23 and release any and all claims, known or unknown, suspected or unsuspected, which exist or may exist
24 on their behalf against the Tiffany Releasees at the time of execution of the Settlement Agreement,
25 including, but not limited to, any and all claims relating to or arising from Plaintiffs’ employment with
26 the Tiffany Releasees or the cessation of that employment. Plaintiffs and Defendants further
27 acknowledge, understand and agree that this representation and commitment is essential to each Party
28 and that this Settlement Agreement would not have been entered into were it not for this representation

1 and commitment.

2 66. It is further understood and agreed that as a condition of this General Release, and to
3 effect a full and complete general release as described above, Plaintiffs hereby expressly waive and
4 relinquish any and all claims, rights or benefits that they may have under California Civil Code Section
5 1542, which provides as follows:

6 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR
7 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR
8 HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF
9 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR
10 HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

11 Plaintiffs warrant that they have read this Settlement Agreement, including the waiver of California Civil
12 Code section 1542, and that they have consulted with or had the opportunity to consult with counsel of
13 their choosing and specifically about the waiver of section 1542, that they understand this Agreement
14 and the section 1542 waiver, and that they freely and knowingly enter into this Agreement, this general
15 release, and the section 1542 waiver.

16 67. Plaintiffs further agree that, unless required to do so by law, they will not testify, provide
17 documents, or otherwise participate, or request others to participate on their behalf, in any proceeding or
18 litigation that is related to any conduct by any Releasee as of the date of this Settlement Agreement.
19 Notwithstanding the foregoing, nothing in this General Release will prohibit or restrict Plaintiffs from: (i)
20 providing information to, or otherwise assisting in, an investigation by Congress, the Equal Employment
21 Opportunity Commission or the NLRB, the Securities and Exchange Commission ("SEC") or any other
22 federal regulatory or law enforcement agency or self-regulatory organization ("SRO"); (ii) testifying,
23 participating, or otherwise assisting in a proceeding relating to an alleged violation of any federal law
24 relating to fraud or any rule or regulation of the SEC or any SRO; or (iii) complying with a lawful
25 subpoena or other legal process, subject to the terms of the Settlement Agreement.

26 68. If any of the provisions, terms, clauses, waivers or releases of claims and rights
27 contained in this General Release are declared illegal, unenforceable, or ineffective in a legal forum of
28 competent jurisdiction, such provisions, terms, clauses, waivers or releases of claims or rights will be

1 modified, if possible, in order to achieve, to the extent possible, the intentions of the Parties and, if
2 necessary, such provisions, terms clauses, waivers and releases of claims and rights will be deemed
3 severable, such that all other provisions, terms, clauses and waivers and releases of claims and rights
4 contained in this General Release will remain valid and binding upon the Parties, provided, however,
5 that, notwithstanding any other provision of this General Release, if any portion of the waiver or release
6 of claims or rights is held to be unenforceable, Defendants may, at their option, seek modification or
7 severance of such portion, or terminate the Settlement Agreement pursuant to Section X.

8 69. Plaintiffs further covenant that they will not participate in any other legal actions against
9 the Tiffany Releasees, and will opt-out of those actions if they become aware of such actions. Plaintiffs
10 further agree that any other dispute relating to their employment with the Tiffany Releasees will be
11 subject to alternative dispute resolution under Tiffany's Dispute Resolution Agreement. Plaintiffs will
12 certify that they have returned all of Defendants' property in their attorney(s)' possession, custody or
13 control, including without limitation, proprietary or confidential information, equipment, telephones,
14 credit cards, keys, pagers, tangible proprietary information, documents, computers and computer discs,
15 personal data assistants, files and data, which they prepared or obtained during the course of their
16 employment.

17 **VIII. DUTIES OF THE PARTIES**

18 70. Plaintiffs' Counsel, subject to Defendants' approval, will submit this Settlement
19 Agreement to the Court and a proposed Order Granting Settlement Approval and Judgment.

20 71. Following entry of the Court's Order Granting Settlement Approval and Judgment, the
21 Parties will each act to assure its timely execution and the fulfillment of all provisions in that Order and
22 in this Settlement Agreement, including but not limited to the following:

- 23 71(a) Within fourteen (14) days after the Settlement Effective Date, Defendants
24 will provide to the Settlement Administrator: (1) payment of the Maximum
25 Settlement Amount to fund the QSF, and (2) the Representative Action
26 Member list and identification and contact information specified in
27 Paragraph 55 above. Defendants will submit this information in electronic
28 format as specified by the Settlement Administrator and will thereafter assist

1 the Settlement Administrator as necessary or as requested to use, correct, or
2 update this information in order to enable the Settlement Administrator to
3 locate and contact Representative Action Members, and to provide
4 information needed or requested by the Settlement Administrator in order to
5 make determinations on Representative Action Members' challenges.

6 71(b) Within fifteen (15) days after the Settlement Effective Date, Representative
7 Counsel will submit a copy of the Order Granting Settlement Approval and
8 Judgment to the LWDA pursuant to Labor Code § 2699(l)(3).

9 71(c) Upon entry of each of the Order Granting Settlement Approval and
10 Judgment, all Parties will waive their right to appeal the judgment and all
11 other court orders in the Action, except that Representative Counsel reserve
12 the right to appeal any reduction by the Court of the amounts requested for
13 their attorneys' fees and costs.

14 71(d) Representative Counsel and Defendants' Counsel will assist the Settlement
15 Administrator as needed or requested in the process of identifying and
16 locating Representative Action Members entitled to payments from the
17 Individual Settlement Fund and assuring delivery of such payments.

18 71(e) Representative Counsel and Defendants' Counsel will cooperate with each
19 other and assist the Settlement Administrator as needed or requested in
20 completing the distribution of any residual amount of the Individual
21 Settlement Fund for any uncashed checks to the Cy Pres Recipient.

22 **IX. SETTLEMENT APPROVAL PROCEDURES AND TIMELINE FOR COMPLETION**
23 **OF SETTLEMENT**

24 72. This Settlement Agreement will become final and effective only upon the occurrence of
25 all of the following events:

26 72(a) Execution of this Settlement Agreement by the Parties and their respective
27 counsel of record.

28 72(b) Submission of the Settlement Agreement to the Court for approval.

- 1 72(c) Plaintiffs' submission of the Settlement Agreement to the LWDA.
- 2 72(d) Entry by the Court of an Order Approving Settlement Approval and
- 3 Judgment, which, among other things, must:
- 4 72(d)(i) approve the Settlement and the release of claims set forth
- 5 herein, adjudging the terms thereof to be fair, adequate,
- 6 reasonable, and binding on Plaintiffs, the LWDA, and all
- 7 Representative Action Members through Plaintiffs acting on
- 8 behalf of, and as private attorneys general for, the State of
- 9 California, the LWDA, and all Representative Action Members,
- 10 and directing that its terms and provisions be carried out;
- 11 72(d)(ii) approve Plaintiffs as representatives for all Representative
- 12 Action Members and Representative Counsel as counsel for the
- 13 Representative Action Members;
- 14 72(d)(iii) approve settlement administration services to be provided by the
- 15 Settlement Administrator;
- 16 72(d)(iv) permanently enjoin and prohibit Plaintiffs, the LWDA, and all
- 17 other Representative Action Members from pursuing and/or
- 18 seeking to reopen claims that have been released by this
- 19 Agreement;
- 20 72(d)(v) provide that the Court will retain jurisdiction to oversee
- 21 administration and enforcement of the terms of the Settlement
- 22 and the Court's orders;
- 23 72(d)(vi) otherwise incorporate the terms of this Settlement Agreement;
- 24 and
- 25 72(d)(vii) Occurrence of the Settlement Effective Date.

26 73. The schedule for approval and payment procedures carrying out this Settlement is as

27 follows. The schedule may be modified depending on whether and when the Court grants necessary

28 approvals. In the event of such modification, the Parties will cooperate in order to complete the

settlement procedures as expeditiously as reasonably practicable.

Settlement Effective Date	Following entry of the Order Granting Settlement Approval and Judgment, the latter of the following dates: (a) if an appeal, review, or writ is not sought from the Order Granting Settlement Approval and Judgment, the 61st day after service of notice of entry of the Order Granting Settlement Approval and Judgment; or (b) if an appeal, writ, or review is sought from the Order Granting Settlement Approval and Judgment, the day after the Order Granting Settlement Approval and Judgment is affirmed or the appeal, review, or writ is dismiss or denied, and the Order Granting Settlement Approval and Judgment is no longer subject to further judicial review.
Within 14 days after the Settlement Effective Date	Defendants to (1) transfer the Maximum Settlement Amount to the Settlement Administrator to be deposited into the QSF; and (2) provide the Settlement Administrator the Representative Action Member information, including names, last known residence addresses, social security numbers, and the number of Covered PAGA Pay Periods.
Within 21 days after Settlement Effective Date	Settlement Administrator to complete any skip trace or other address searches for Representative Action Members, including updating any contact information. Settlement Administrator to make the calculation of payments from the Net Settlement Amount to be distributed to the LWDA and to the Representative Action Members and provide Defendants' Counsel with a report listing the amount of all payments to be made to the LWDA and to each Representative Action Member.
Within 28 days after the Settlement Effective Date	Settlement Administrator to distribute and pay Settlement checks to the LWDA and to all Representative Action Members from the Net Settlement Amount, pay the Plaintiffs their Service Enhancements, and pay Representative Counsel the attorney's fees and costs approved and awarded by the Court. Representative Counsel to submit a copy of the Order Granting Settlement Approval and Judgment to the LWDA.

120 days after distribution of settlement checks	Expiration of Representative Action Members' settlement checks.
Within 150 days after distribution	Settlement Administrator to calculate and pay any remaining amount from the Net Settlement Amount (due to expired settlement checks) to the Cy Pres Recipient.

X. VOIDING OR MODIFYING THE SETTLEMENT AGREEMENT

74. Defendants have the right to withdraw from the Settlement at any time prior to the Settlement Effective Date if: (a) the Court denies approval of the Settlement or any material terms thereof (excluding any downward adjustment of Representative Counsel's requests for attorneys' fees, litigation costs and expenses, and the Service Enhancements); or (b) the Settlement is construed by the Court in such a fashion that Defendants are required to pay more than the Maximum Settlement Amount; or (c) the Court does not order the release of claims of the Representative Action Members set forth in this Settlement Agreement, or otherwise makes an order inconsistent with any of the terms of this Settlement Agreement; or (d) Plaintiffs or their counsel breach this Settlement Agreement. In the event of Defendants' withdrawal, Defendants will pay the costs already incurred by the Settlement Administrator, unless the withdrawal is the result of Plaintiffs' or their counsel's breach of the Settlement Agreement.

75. If for any reason the Settlement Agreement is not approved, or the Court fails to enter the Order Granting Settlement Approval and Judgment, or Defendants or Plaintiffs withdraw from the Settlement, this Settlement Agreement and any related settlement documents (including the Parties' memorandum of understanding) will be null and void, other than the confidentiality and non-disclosure provisions in Section XI, the non-admission provisions in Section IV.A, and the litigation restoration provisions in this Paragraph and in Paragraph 40(e). In such an event, neither this Settlement Agreement, nor the parties' memorandum of understanding, nor the settlement documents, nor the negotiations leading to the Settlement, may be used as evidence for any purpose, and Defendants will retain the right to challenge all claims and allegations in the Action and to assert all applicable defenses on all applicable grounds. The Parties will further cooperate to restore the Action to the status quo ante as of September 7, 2021, just prior to the parties' agreeing to settle those actions, and litigation in the Action will revert to the status quo ante as of September 7, 2021.

76. Other than as specified above, this Settlement Agreement may not be changed, altered, or modified, except in writing and signed by counsel for the Parties hereto, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

XI. CONFIDENTIALITY AND PUBLICITY

77. Names of Representative Action Members and their allocation amounts will be kept strictly confidential by the Settlement Administrator, who will not release such information to Plaintiffs or Representative Counsel and will only file such information under seal if necessary. Representative Counsel agrees that any information they receive or have received in connection with this Settlement, may be used for the purposes of settling the Action only, and may not be used for any purpose or in any other action or proceeding.

78. Plaintiffs and Representative Counsel agree to keep this settlement confidential before the Settlement Agreement is filed with the Court, and after filing not to disclose the terms of this settlement, except in court papers, or if required by legal process, as necessary to effectuate and administer the terms of this Settlement, or for accounting or tax reporting purposes. Neither Plaintiffs nor Representative Counsel, directly or indirectly, will issue a press release, hold a press conference, publish information about the settlement on any website, or otherwise publicize the settlement, with the exception that Representative Counsel may put information about the Settlement available in the public record in a description of their experience or the like in order to describe their experience to a court. Plaintiffs and Representative Counsel agree not to respond to any press inquiries concerning the settlement except to refer reporters to the papers filed with the Court.

XII. PARTIES' AUTHORITY

79. The signatories hereby represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

XIII. MUTUAL FULL COOPERATION

80. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, executing such documents and taking such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties

1 to this Settlement Agreement will use their best efforts, including all efforts contemplated by this
2 Settlement Agreement and any other efforts that may become necessary by order of the Court or
3 otherwise to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable
4 after execution of this Settlement Agreement, Representative Counsel will, with the assistance and
5 cooperation of Defendants and their counsel, take all necessary steps to secure the Court's approval of
6 this Settlement Agreement. In the event that, for any reason, Court approval of the settlement is denied or
7 Defendants withdraw from the Settlement pursuant to Section X, the Parties agree to fully cooperate with
8 each other to restore the Action to the status quo ante as of September 7, 2021, the date of the Parties'
9 memorandum of understanding.

10 **XIV. NOTICES**

11 81. Unless otherwise specifically provided herein, all notices, demands or other
12 communications given hereunder will be in writing and will be deemed to have been duly given as of the
13 third business day after mailing by United States registered or certified mail, return receipt requested,
14 addressed as follows:

15 To Representative Counsel:
16 Raul Perez
CAPSTONE LAW APC
17 1875 Century Park East, Suite 1000
Los Angeles, California 90067
18 Telephone: (310) 556-4811
Facsimile: (310) 943-0396
19 raul.perez@capstonelawyers.com

20 To Defendants' Counsel:
21 Carrie Gonell
MORGAN, LEWIS & BOCKIUS LLP
22 600 Anton Boulevard, Suite 1800
Costa Mesa, CA 92626-7653
23 Telephone: (714) 830.0600
Facsimile: (714) 830.0700
24 carrie.gonell@morganlewis.com

25 If the identity of the persons to be notified for any Party changes, or their address changes, that Party will
26 notify all other Parties of said change in writing.
27
28

1 **XV. MISCELLANEOUS PROVISIONS**

2 **A. Captions and Titles**

3 82. Paragraph titles, headings, or captions contained herein are inserted as a matter of
4 convenience and for reference, and in no way define, limit, extend, or describe the scope of this
5 Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual
6 and not merely a recital.

7 **B. Drafting**

8 83. The Parties hereto agree that the terms and conditions of this Settlement Agreement are
9 the result of lengthy, intensive arms-length negotiations between the Parties. Neither Party will be
10 considered the “drafter” of the Settlement Agreement for purposes of having terms construed against that
11 Party, and this Settlement Agreement will not be construed in favor of or against any Party by reason of
12 the extent to which any Party or his, her or its counsel participated in the drafting of this Settlement
13 Agreement.

14 **C. Extensions of Time**

15 84. If a Party cannot reasonably comply with an obligation under this Settlement Agreement
16 by the deadline set forth herein applicable to that obligation, that Party may apply to the Court for a
17 reasonable extension of time to fulfill that obligation. Consent to such a request for an extension will not
18 be unreasonably withheld by the other Party.

19 **D. Governing Law**

20 85. The rights and obligations of the Parties hereunder will be construed and enforced in
21 accordance with, and will be governed by, the laws of the State of California, without regard to principles
22 of conflict of laws.

23 **E. No Impact on Benefit Plans**

24 86. Neither the Settlement Agreement nor any amounts paid under the Settlement
25 Agreement will modify any previously credited hours or service under any employee benefit plan,
26 policy, or bonus program sponsored by Tiffany. Such amounts will not form the basis for additional
27 contributions to, benefits under, or any other monetary entitlement under Tiffany’s sponsored benefit
28 plans, policies, or bonus programs. The payments made under the terms of this Settlement will not be

1 applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other form
2 of compensation for the purposes of Tiffany's benefit plan, policy, or bonus program. Tiffany retains the
3 right to modify the language of its benefit plans, policies and bonus programs to effect this intent, and to
4 make clear that any amounts paid pursuant to this Settlement Agreement are not for "hours worked,"
5 "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies
6 and bonus programs for purposes of eligibility, vesting, benefit accrual, or any other purpose, and that
7 additional contributions or benefits are not required by this Settlement Agreement.

8 **F. Integration**

9 87. This Settlement Agreement contains the entire agreement between the Parties relating to
10 the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements,
11 understandings, representations, and statements, whether oral or written and whether by a Party or such
12 Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

13 **G. No Prior Assignments**

14 88. This Settlement Agreement will be binding upon and inure to the benefit of the Parties
15 hereto and their respective heirs, trustees, executors, administrators and successors. The Parties hereto
16 represent, covenant, and warrant that they have not directly or indirectly assigned, transferred,
17 encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any
18 liability, claim, demand, action, cause of action or rights herein released and discharged except as set
19 forth herein.

20 **H. Counterparts**

21 89. This Settlement Agreement may be executed in counterparts with signatures transmitted
22 by facsimile or as an electronic image of the original signature. When each Party has signed and
23 delivered at least one such counterpart, each counterpart will be deemed an original, and, when taken
24 together with other signed counterparts, will constitute one Settlement Agreement, which will be binding
25 upon and effective as to all Parties. A facsimile signature or electronic image will have the same force
26 and effect as the original signature.

READ CAREFULLY BEFORE SIGNING

PLAINTIFFS

Dated: _____

Michael De Grado

Dated: 1/20/2022

DocuSigned by:



La Tasha Shareef

TIFFANY AND COMPANY U.S. SALES, LLC

Dated: _____

Name: _____

Title: _____

TIFFANY AND COMPANY

Dated: _____

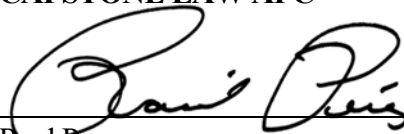
Name: _____

Title: _____

APPROVED AS TO FORM

CAPSTONE LAW APC

Dated: January 20, 2022



Raul Perez

Attorneys for Plaintiffs Michael De Grado
and La Tasha Shareef

MORGAN, LEWIS & BOCKIUS LLP

Dated: _____

Carrie A. Gonell

Attorneys for Defendants Tiffany and Company
U.S. Sales, LLC and Tiffany and Company

READ CAREFULLY BEFORE SIGNING

PLAINTIFFS

Dated: 1/26/2022

DocuSigned by:

Michael De Grado

Michael De Grado

Dated: _____

La Tasha Shareef

TIFFANY AND COMPANY U.S. SALES, LLC

Dated: _____

Name: _____

Title: _____

TIFFANY AND COMPANY

Dated: _____

Name: _____

Title: _____

APPROVED AS TO FORM

CAPSTONE LAW APC

Dated: January 20, 2022

Raul Perez

Raul Perez

Attorneys for Plaintiffs Michael De Grado
and La Tasha Shareef

MORGAN, LEWIS & BOCKIUS LLP

Dated: _____

Carrie A. Gonell

Attorneys for Defendants Tiffany and Company
U.S. Sales, LLC and Tiffany and Company

1 **READ CAREFULLY BEFORE SIGNING**

2 **PLAINTIFFS**

3
4 Dated: _____

Michael De Grado

5
6 Dated: _____

La Tasha Shareef

7
8 **TIFFANY AND COMPANY U.S. SALES, LLC**

9
10 Dated: January 25, 2022

Name: Catherine So
Title: General Counsel, SVP - Legal

11
12
13 **TIFFANY AND COMPANY**

14
15 Dated: January 25, 2022

Name: Catherine So
Title: General Counsel, SVP - Legal

16
17
18 **APPROVED AS TO FORM**

19 **CAPSTONE LAW APC**

20
21 Dated: _____

Raul Perez
Attorneys for Plaintiffs Michael De Grado
and La Tasha Shareef

22
23
24 **MORGAN, LEWIS & BOCKIUS LLP**

25
26 Dated: January 25, 2022

Carrie A. Gonell
Attorneys for Defendants Tiffany and Company
U.S. Sales, LLC and Tiffany and Company

Exhibit A

Notice of Settlement - Court-Approved Communication

Please Read Carefully

YOUR CHECK IS ENCLOSED

To: All individuals employed by Tiffany and Company U.S. Sales, LLC. ("Tiffany") as a non-exempt employee in a Tiffany retail store location in California between September 17, 2019 and [the Date of Court Approval] ("Representative Action Member(s)").

This notice is to inform you about the settlement of a lawsuit titled *Michael De Grado, et al. v. Tiffany and Company U.S. Sales, LLC, et al.*, Case No. 20STCV44847, pending in Los Angeles County Superior Court.

IMPORTANT: A check is enclosed for you with this letter. You must deposit or cash it no later than [120 days from mailing] or the check will become void.

Although you are not a party to this lawsuit, you are receiving this letter and check because you have been identified by Tiffany and Tiffany and Company (together, "Defendants") as a Representative Action Member. **Please read this notice carefully.**

1. The Lawsuit

In the lawsuit, Plaintiffs asserted representative claims against Defendants in their complaint under the California Private Attorneys General Act of 2004 ("PAGA"), Cal. Labor Code § 2698 *et seq.*, to recover civil penalties on behalf of the State of California and other similarly situated individuals who are Representative Action Members. Plaintiffs allege that Defendants violated California law, including by not paying Representative Action Members all minimum wages and overtime wages for all hours worked, failing to provide and record meal periods, failing to authorize and permit rest periods, failing to provide and maintain compliant wage statements, failing to timely pay wages and final wages, failing to pay costs of medical or physical examinations, failing to provide one day's rest in seven, failing to pay reporting time pay, failing to provide suitable seating, and failing to reimburse necessary business expenses.

Defendants dispute Plaintiffs' allegations and contend that their practices were at all times lawful, specifically that it properly paid all wages in a timely manner, provided compliant meal and rest breaks, paid costs of medical or physical examinations, provided one day's rest in seven, paid reporting time pay, provided suitable seating, and properly reimbursed Representative Action Members under California law.

The Court has not issued a ruling in this case in favor of Plaintiffs or in favor of Defendants. Both sides have agreed that this settlement is in their best interests because it will avoid the cost and risk and delays of a trial.

The Court has determined that the settlement of the representative PAGA claim for civil penalties is fair and reasonable, and has approved the settlement terms and authorized this notice and enclosed check.

2. The Terms of the PAGA Settlement

The settlement provides for the payment of \$617,000 (referred to here as the "Maximum Settlement Amount") for the benefit of the California Labor and Workforce Development Agency ("LWDA") and Representative Action Members. \$_____ of the Maximum Settlement Amount will be paid to the Representative Action Members to settle the claim for civil penalties ("Individual Settlement Fund"), \$_____ will be paid to the State of California, \$_____ will be paid to a settlement administrator for services administering this settlement, \$_____ will be paid to the named Plaintiffs for their services, and \$_____ will be paid to Plaintiffs' attorneys for their attorneys' fees and costs.

3. Who is Eligible to Receive Payments from the Settlement Fund?

To be eligible for a settlement payment, you must have been employed by Tiffany as a non-exempt employee in a Tiffany retail store location in California between September 17, 2019 and the Date of Court Approval.

4. What is the Estimated Amount of Your Settlement Payment?

The Individual Settlement Fund has been divided in pro rata shares among you and the other Representative Action Members based on eligible employee service time for Covered PAGA Pay Periods. The size of your share depends on how many Covered PAGA Pay Periods you worked for Tiffany as a non-exempt employee in a Tiffany retail store location in California between September 17, 2019 and the Date of Court Approval.

According to Tiffany's records, you worked ____ total Covered PAGA Pay Periods for Tiffany as a non-exempt employee in a Tiffany retail store location in California between September 17, 2019 and the Date of Court Approval. Under the terms of the settlement, you are therefore entitled to \$_____. That amount is reflected in the enclosed check.

5. Tax Requirements

The payment to you is classified as non-wage income and reportable on a form IRS 1099 to the extent required. You are responsible for paying any applicable taxes on all amounts received pursuant to this Settlement. You should contact your tax preparer if you have any questions, as neither Plaintiffs' lawyers nor Defendants is in a position to provide you with tax-related advice.

6. The Scope of the Release

The release in this case releases Tiffany and Company U.S. Sales, LLC and Tiffany and Company; each of their respective current and former direct and indirect parents, subsidiaries and affiliates; and each of their respective current and former officers, directors, employees, assigns, attorneys, and agents (referred to individually and collectively as "Tiffany Releasees"), to the full extent permitted by law, of and from any and all claims, obligations, demands, rights, causes of action, and liabilities against Tiffany Releasees, under PAGA that have been asserted or that could have been asserted in the Complaint, the First Amended Complaint, the proposed Second Amended Complaint, and any amendments thereto, based on the facts and/or allegations pled therein, including for failure to pay minimum wage, failure to pay overtime or pay overtime at the correct rate of pay, failure to pay for all hours worked (off-the-clock work), failure to provide meal

periods, failure to provide rest periods, failure to pay premiums at the correct rate of pay, failure to provide one days' rest in seven, failure to provide reporting time pay, failure to timely pay wages and final wages, failure to provide reimbursement for necessary business-related expenditures, failure to pay costs of medical or physical examinations, failure to maintain wage-related records and/or furnish accurate wage statements, and failure to provide suitable seating under Section 14 of Industrial Welfare Commission Wage Order 7 as enforced by California Labor Code sections 1198 and 2698, et seq., and includes all such claims for recovery of compensation, and/or all penalties under the California Labor Code and California's Wage Orders, from September 17, 2019 through the Date of Court Approval ("Released Claims"). The Parties agree that this Settlement Agreement is conditioned upon this release of all Released Claims, both by Plaintiffs individually, and by the State of California, the LWDA, and all Representative Action Members through Plaintiffs acting on behalf of, and as Private Attorneys General for, the State of California, the LWDA, and all allegedly aggrieved current and former employees of Tiffany. Upon the Settlement Effective Date, Plaintiff, the LWDA, and each and every Representative Action Member will be bound by the terms of this Settlement Agreement and will have recourse exclusively to the benefits, rights, and remedies provided hereunder. To the extent an alleged PAGA violation arises directly from the Released Claims and implicates the same primary rights and defenses being settled here, those claims are settled and released to the fullest extent permitted under applicable law. Non-PAGA claims are not released in this settlement.

Note: You will be bound by the above release whether or not you cash your settlement check.

7. Who are the attorneys representing the named Plaintiffs?

Capstone Law APC represents the named Plaintiffs and has negotiated the settlement terms for the PAGA Members.

Raul Perez
CAPSTONE LAW APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067
Phone: *Insert Case-Specific Phone-Number*
Email: *Insert Case-Specific Email*

8. Who are the attorneys representing Defendants?

Carrie A. Gonell
Morgan, Lewis & Bockius LLP
600 Anton Boulevard, Suite 1800
Costa Mesa, CA 92626
Tel: (714) 830.0600
Fax: (714) 830.0700
carrie.gonell@morganlewis.com

9. Getting More Information

This notice summarizes the terms of the settlement. The full details are set forth in the written Joint Stipulation of PAGA Representative Action Settlement and Release (the "Settlement

Agreement"). You can get a copy of that Settlement Agreement by writing to the Settlement Administrator, _____ at _____.

You may also contact the Settlement Administrator for more information about the settlement. Their contact information is:

[INSERT]

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

Exhibit B

1 Robert Drexler (SBN 119119)
Robert.Drexler@CapstoneLawyers.com
2 Molly DeSario (SBN 230763)
Molly.DeSario@CapstoneLawyers.com
3 Jonathan Lee (SBN 267146)
Jonathan.Lee@CapstoneLawyers.com
4 Capstone Law APC
1875 Century Park East, Suite 1000
5 Los Angeles, California 90067
Telephone: (310) 556-4811
6 Facsimile: (310) 943-0396

7 Attorneys for Plaintiffs Michael De Grado
and La Tasha Shareef
8
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES
12

13 MICHAEL DE GRADO and LA TASHA
SHAREEF, as aggrieved employees
14 pursuant to the Private Attorneys General
Act ("PAGA"), on behalf of the State of
15 California and other non-party Aggrieved
Employees,

16 Plaintiffs,
17

18 vs.

19 TIFFANY AND COMPANY U.S. SALES,
LLC, a Delaware limited liability company;
20 TIFFANY AND COMPANY, a New York
corporation; and DOES 1 through 10,
21 inclusive,
22

23 Defendants.
24
25
26
27
28

Case No.: 20STCV44847

**SECOND AMENDED COMPLAINT –
PAGA ENFORCEMENT ACTION**

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

Jury Trial Demanded

1 Plaintiffs Michael De Grado and La Tasha Shareef, as aggrieved employees and on
2 behalf of the State of California and all other non-party Aggrieved Employees, allege as
3 follows:

4 JURISDICTION AND VENUE

5 1. This is an enforcement action under the Labor Code Private Attorneys General
6 Act of 2004, California Labor Code sections 2698 *et seq.* (“PAGA”) to recover civil penalties
7 and any other available relief on behalf of Plaintiffs, the State of California, and other current
8 and former employees who worked for Defendants in California as a non-exempt, hourly paid
9 employee and received at least one wage statement and against whom one or more violations
10 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
11 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
12 Order were committed, as set forth in this complaint, at any time between one year prior to the
13 filing of the pre-filing written notice to the Labor and Workforce Development Agency
14 (“LWDA”) in this case on September 17, 2020, until judgment (“non-party Aggrieved
15 Employees”). Plaintiffs’ share of civil penalties sought in this action does not exceed
16 \$75,000.

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

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

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

3 4. Venue is proper in this Court, because Defendants filed a Statement of
4 Information form with the California Secretary of State designating a principal place of
5 business in Beverly Hills, County of Los Angeles, in accordance with California Corporations
6 Code section 2105(a)(3). Cal. Code Civ. P. § 395.5. Venue is also proper in this Court,
7 because Defendants employ persons in this county, and thus a substantial portion of the
8 transactions and occurrences related to this action occurred in this county.

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

13 THE PARTIES

14 6. Plaintiff Michael De Grado worked for Defendants as an hourly paid, non-
15 exempt Sales Professional from approximately June 22, 2018 to October 5, 2019, at their
16 Tiffany & Co. store in Carmel-by-the Sea, California. During his employment, Plaintiff De
17 Grado typically worked four (4) to seven (7) hours or more per day, three (3) or more days per
18 week, and 28 to 30 hours per week. By the end of his employment, Plaintiff De Grado earned
19 approximately \$19.52 per hour plus commissions. His job duties included, without limitation,
20 providing customer service, presenting jewelry to customers, cleaning jewelry displays and
21 display cases, ringing up customers, processing returns and exchanges, preparing sales and
22 client reports, and stocking displays.

23 7. Plaintiff La Tasha Shareef worked for Defendants as an hourly paid, non-
24 exempt Seasonal Ambassador from approximately December 2, 2020, to December 24, 2020,
25 at their Tiffany & Co. store in Costa Mesa, California. During her employment, Plaintiff
26 Shareef typically worked eight (8) hours or more per day, and five (5) days or more per week.
27 By the end of her employment, Plaintiff Shareef earned approximately \$18.00 per hour. Her
28 job duties included, without limitation, greeting customers, introducing customers to a

1 representative in sales or customer service, retrieving pre-orders from the dedicated order
2 room, and confirming whether items were in-stock.

3 8. On information and belief, Defendants required some employees, including
4 Plaintiff De Grado, to execute a dispute resolution policy and/or arbitration agreement at the
5 time of their hire or during their employment. On further information and belief, Defendants'
6 dispute resolution policy and/or arbitration agreement was and is both procedurally and
7 substantively unconscionable. Specifically, Defendants presented new hires with a Dispute
8 Resolution Agreement ("Arbitration Agreement") during the onboarding process, which had
9 to be reviewed and acknowledged immediately. Moreover, Defendants deemed the
10 Arbitration Agreement to be accepted even if employees did not sign it ("[R]egardless of
11 whether you submit the acknowledgement, continuing your employment for fourteen (14)
12 days after you are provided with this Agreement constitutes mutual acceptance of the terms of
13 this Agreement by you and the Company."). Also, employees did not have a meaningful
14 opportunity to negotiate the terms of the Arbitration Agreement. Rather, it was provided to
15 Defendants' employees for them to sign on a take-it or leave-it basis at the time they were
16 hired, along with other on-boarding documents. Further, Defendants did not set forth in the
17 agreement or otherwise provide employees with the rules which will govern the arbitration,
18 instead forcing employees to seek this information out on their own ("[D]isputes covered by
19 this Agreement shall be resolved by binding arbitration in accordance with the Employment
20 Arbitration Rules of the American Arbitration Association ('AAA Rules') then in effect, and
21 not by court or jury trial. The AAA Rules may be found on the Human Resource Division
22 page of the Company's intranet, by asking your local Human Resource representative for a
23 copy of the rules, or online at www.adr.org/employment").

24 9. TIFFANY AND COMPANY U.S. SALES, LLC was and is, upon information
25 and belief, a Delaware limited liability company, and at all times hereinafter mentioned, an
26 employer whose employees are engaged throughout this county and the State of California.

27 10. TIFFANY AND COMPANY was and is, upon information and belief, a New
28 York corporation, and at all times hereinafter mentioned, an employer whose employees are

1 engaged throughout this county and the State of California.

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

6 12. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10
7 were the partners, agents, owners, or managers of TIFFANY AND COMPANY U.S. SALES,
8 LLC and TIFFANY AND COMPANY at all relevant times.

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

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

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

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

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

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

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

28 18. Plaintiffs are informed and believe, and thereon allege, that at all relevant times

1 there has existed a unity of interest and ownership between Defendants such that any
2 individuality and separateness between the entities has ceased.

3 19. TIFFANY AND COMPANY U.S. SALES, LLC; TIFFANY AND
4 COMPANY; and DOES 1 through 10 are therefore alter egos of each other.

5 20. Adherence to the fiction of the separate existence of Defendants would permit
6 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
7 from liability for the wrongful acts committed by them under the name TIFFANY.

8 21. Plaintiffs further allege, upon information and belief, that Defendants
9 TIFFANY AND COMPANY U.S. SALES, LLC and TIFFANY AND COMPANY are alter
10 egos of each other for the following reasons:

- 11 (a) On the California Secretary of State’s website
12 (<https://businesssearch.sos.ca.gov/>), TIFFANY AND COMPANY U.S.
13 SALES, LLC and TIFFANY AND COMPANY share the same entity
14 mailing address, “15 SYLVAN WAY, PARSIPPANY, NJ 07054;”
- 15 (b) According to Tiffany & Co.’s SEC 10-K filing for 2019, TIFFANY
16 AND COMPANY U.S. SALES, LLC is a subsidiary of TIFFANY AND
17 COMPANY, INC.;¹
- 18 (c) According to the most recent “Statement of Information” forms filed
19 with the California Secretary of State, TIFFANY AND COMPANY
20 U.S. SALES, LLC and TIFFANY AND COMPANY share the same
21 officers and/or directors, including, but not limited to, Leigh M. Harlan
22 and Mark J. Erceg, who serve as Secretary and Chief Financial Officer
23 of TIFFANY AND COMPANY, respectively, and as managers of
24 TIFFANY AND COMPANY U.S. SALES, LLC;
- 25 (d) On information and belief, TIFFANY AND COMPANY U.S. SALES,
26 LLC and TIFFANY AND COMPANY share the same agent for service
27

28 ¹ 10-K Annual Report 3/20/2020, “Tiffany & Co. – Investor Relations,”
<https://investor.tiffany.com/financial-information/sec-filings> (last accessed Nov. 16, 2020).

of process, “C T CORPORATION SYSTEM (C0168406);” and

(e) On information and belief, TIFFANY AND COMPANY U.S. SALES, LLC and TIFFANY AND COMPANY utilize the same standardized employment forms and issue the same employment policies.

PAGA REPRESENTATIVE ALLEGATIONS

22. Defendants own and operate a chain of luxury jewelry retail stores throughout the world. Defendants operate approximately 94 retail stores in the United States, including 18 retail stores in California. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their corporate headquarters in New York, New York, 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.

23. In particular, Plaintiffs and other non-party Aggrieved Employees, 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.

24. Upon information and belief, Defendants maintain a centralized Payroll department at their corporate headquarters in New York, New York, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations and jobsites in California, including Plaintiffs and other non-party Aggrieved Employees. 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.

1 25. Defendants continue to employ non-exempt or hourly paid employees in
2 California.

3 26. Plaintiffs are informed and believe, and thereon allege, that at all times herein
4 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
5 and advisors knowledgeable about California labor and wage law, employment and personnel
6 practices, and about the requirements of California law.

7 27. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and other
8 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
9 were not recorded.

10 28. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
11 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
12 receive certain wages for overtime compensation and that they were not receiving certain
13 wages for overtime compensation.

14 29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
15 should have known that other non-party Aggrieved Employees were entitled to be paid at a
16 regular rate of pay, and corresponding overtime rates of pay, that included as eligible income
17 all income derived from commissions, incentive pay, nondiscretionary bonuses, and/or other
18 forms of compensation, but failed to include all forms of remuneration in calculating the
19 regular rate of pay for other non-party Aggrieved Employees.

20 30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
21 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
22 receive at least minimum wages for compensation and that they were not receiving at least
23 minimum wages for work that was required to be done off-the-clock. In violation of the
24 California Labor Code, Plaintiffs and other non-party Aggrieved Employees were not paid at
25 least minimum wages for work done off-the-clock.

26 31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
27 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
28 meal periods in accordance with the California Labor Code and applicable IWC Wage Order

1 or payment of one (1) additional hour of pay at their regular rates of pay when they were not
2 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiffs and
3 other non-party Aggrieved Employees were not provided with all meal periods or payment of
4 one (1) additional hour of pay at their regular rates of pay when they did not receive a timely,
5 uninterrupted, thirty (30) minute meal period.

6 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
7 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
8 rest periods in accordance with the California Labor Code and applicable IWC Wage Order or
9 payment of one (1) additional hour of pay at their regular rates of pay when they were not
10 authorized and permitted to take a compliant rest period. In violation of the California Labor
11 Code, Plaintiffs and other non-party Aggrieved Employees were not authorized and permitted
12 to take compliant rest periods, nor did Defendants provide Plaintiffs and other non-party
13 Aggrieved Employees with payment of one (1) additional hour of pay at their regular rates of
14 pay when they were not authorized and permitted to take a compliant rest period.

15 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
16 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
17 receive complete and accurate wage statements in accordance with California law. In
18 violation of the California Labor Code, Plaintiffs and other non-party Aggrieved Employees
19 were not provided complete and accurate wage statements.

20 34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
21 should have known that they had a duty to maintain accurate and complete payroll records in
22 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
23 knowingly, and intentionally failed to do so.

24 35. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
25 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
26 timely payment of all wages earned upon termination of employment. In violation of the
27 California Labor Code, Plaintiffs and other non-party Aggrieved Employees did not receive
28 payment of all wages due, including, but not limited to, overtime wages, minimum wages,

1 and/or meal and rest period premiums, within permissible time periods.

2 36. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
3 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
4 timely payment of wages during their employment. In violation of the California Labor Code,
5 Plaintiffs and other non-party Aggrieved Employees did not receive payment of all wages,
6 including, but not limited to, overtime wages, minimum wages, and/or meal and rest period
7 premiums, within permissible time periods.

8 37. Plaintiffs are informed and believe, and thereon allege, that at all time herein
9 mentioned, Defendants knew or should have known that they had a duty to cover the costs and
10 expenses Plaintiff Shareef and other non-party Aggrieved Employees incurred obtaining
11 mandatory examinations and/or drug tests, but failed to do so.

12 38. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
13 should have known that other non-party Aggrieved Employees were entitled to one day's rest
14 when they worked more than six consecutive days. In violation of the California Labor Code,
15 and other non-party Aggrieved Employees were not provided one day's rest when they
16 worked more than six consecutive days.

17 39. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
18 should have known that other non-party Aggrieved Employees were entitled to be paid
19 reporting time pay when they reported to work for their scheduled shift but were put to work
20 for less than half of the regular schedule. In violation of the California Labor Code and
21 applicable IWC Wage Order, Defendants did not pay other non-party Aggrieved Employees
22 all reporting time pay due.

23 40. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
24 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
25 suitable seating and/or were entitled to sit when it did not interfere with the performance of
26 their duties and also have seats nearby to use during a lull in tasks that do require moving
27 about or standing. In violation of the California Labor Code and applicable IWC Wage Order,
28 Defendants failed to provide Plaintiffs and other non-party Aggrieved Employees suitable

1 seating.

2 41. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
3 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
4 receive reimbursement for all business-related expenses and costs they incurred during the
5 course and scope of their employment and that they did not receive reimbursement of
6 applicable business-related expenses and costs incurred.

7 42. Plaintiffs are informed and believe, and thereon allege, that at all times herein
8 mentioned, Defendants knew or should have known that they had a duty to compensate
9 Plaintiffs and other non-party Aggrieved Employees for all hours worked, and that Defendants
10 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
11 failed to do so, and falsely represented to Plaintiffs and other non-party Aggrieved Employees
12 that they were properly denied wages, all in order to increase Defendants' profits.

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

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

22 45. Plaintiffs and other current and former employees of Defendants are "aggrieved
23 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
24 or former employees and one or more of the alleged violations were committed against them.

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

28 (a) The aggrieved employee shall give written notice by online filing

(hereinafter “Employee’s Notice”) to the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

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

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

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

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

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

1 (c) The employer may cure the alleged violation within thirty-three (33)
2 calendar days of the postmark date of the notice. The employer shall
3 give written notice by certified mail within that period of time to the
4 aggrieved employee or representative and the agency if the alleged
5 violation is cured, including a description of actions taken, and no civil
6 action pursuant to Section 2699 may commence. If the alleged violation
7 is not cured within the 33-day period, the employee may commence a
8 civil action pursuant to Section 2699.

9 48. On September 17, 2020, Plaintiff De Grado provided written notice by online
10 filing to the LWDA and by certified mail to Defendants of the specific provisions of the
11 California Labor Code alleged to have been violated, including facts and theories to support
12 the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff De
13 Grado's written notice was accompanied with the applicable filing fee of seventy-five dollars
14 (\$75). The LWDA PAGA Administrator has confirmed receipt of Plaintiff De Grado's
15 written notice and assigned Plaintiff De Grado PAGA Case Number LWDA-CM-806658-20.
16 On November 23, 2020, Plaintiff De Grado sent an amended written notice by online filing to
17 the LWDA and by certified mail to Defendants of the specific provisions of the California
18 Labor Code alleged to have been violated, supplementing and clarifying the facts and theories
19 to support the alleged violations set forth in his original LWDA notice, in accordance with
20 California Labor Code section 2699.3. True and correct copies of Plaintiff De Grado's written
21 notices to the LWDA and Defendants dated September 17, 2020, and November 23, 2020, are
22 attached hereto as "Exhibit 1."

23 49. On November 22, 2021, Plaintiff Shareef provided written notice by online
24 filing to the LWDA and by certified mail to Defendants of the specific provisions of the
25 California Labor Code alleged to have been violated, including facts and theories to support
26 the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff
27 Shareef's written notice was accompanied with the applicable filing fee of seventy-five dollars
28 (\$75). The LWDA PAGA Administrator has confirmed receipt of Plaintiff Shareef's written

1 notice and assigned Plaintiff Shareef PAGA Case Number LWDA-CM-854023-21. A true
2 and correct copy of Plaintiff Shareef's written notice to the LWDA and Defendants dated
3 November 22, 2021, is attached hereto as "Exhibit 2."

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

7 51. Thus, Plaintiffs have satisfied the administrative prerequisites under California
8 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
9 violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510,
10 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

11 52. Labor Code section 558(a) provides "[a]ny employer or other person acting on
12 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
13 provision regulating hours and days of work in any order of the Industrial Welfare
14 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
15 dollars (\$50) for each underpaid employee for each pay period for which the employee was
16 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
17 underpaid employee for each pay period for which the employee was underpaid. . . ." Labor
18 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
19 to any other civil or criminal penalty provided by law." Plaintiffs, acting in the public interest
20 as a private attorneys general, seek assessment and collection of civil penalties under Labor
21 Code section 558 for themselves, all other non-party Aggrieved Employees, and the State of
22 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198,
23 and the applicable IWC Wage Order. Plaintiffs, acting in the public interest as private
24 attorneys general, do not seek the recovery of unpaid wages under Labor Code section 558
25 from Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the
26 applicable IWC Wage Order.

27 53. Defendants, at all times relevant to this complaint, were employers or persons
28 acting on behalf of an employer(s) who violated Plaintiffs' and other non-party Aggrieved

1 Employees' rights by violating various sections of the California Labor Code as set forth
2 above.

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

6 55. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
7 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiffs, acting in the public interest as
8 private attorneys general, seek assessment and collection of civil penalties for themselves, all
9 other non-party Aggrieved Employees, and the State of California against Defendants for
10 violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510,
11 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

12 **FIRST CAUSE OF ACTION**

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

14 **(Against all Defendants)**

15 56. Plaintiffs incorporates by reference and re-allege as if fully stated herein each
16 and every allegation set forth above.

17 57. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiffs to recover
18 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
19 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 222.5,
20 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section
21 2699.3(c) permits aggrieved employees, including Plaintiffs, to recover civil penalties for
22 violations of those Labor Code sections not found in section 2699.5, including sections 516
23 and 1182.12.

24 58. Defendants' conduct, as alleged herein, violates numerous sections of the
25 California Labor Code, including, but not limited to, the following:

- 26 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
27 Wage Order for Defendants' failure to compensate Plaintiffs and other
28 non-party Aggrieved Employees with all required overtime pay and

1 failure to properly calculate the overtime rates paid to other non-party
2 Aggrieved Employees, as set forth below;

3 (b) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and
4 the applicable IWC Wage Order for Defendants' failure to compensate
5 Plaintiffs and other non-party Aggrieved Employees with at least
6 minimum wages for all hours worked, as set forth below;

7 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
8 applicable IWC Wage Order for Defendants' failure to provide
9 Plaintiffs and other non-party Aggrieved Employees with meal periods,
10 as set forth below;

11 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the
12 applicable IWC Wage Order for Defendants' failure to authorize and
13 permit Plaintiffs and other non-party Aggrieved Employees to take rest
14 periods, as set forth below;

15 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
16 IWC Wage Order for failure to provide accurate and complete wage
17 statements to Plaintiffs and other non-party Aggrieved Employees, as
18 set forth below;

19 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable
20 IWC Wage Order for failure to maintain payroll records, as set forth
21 below;

22 (g) Violation of Labor Code section 204 for failure to pay all earned wages
23 during employment, as set forth below;

24 (h) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
25 earned wages upon termination, as set forth below;

26 (i) Violation of Labor Code section 222.5 for failure to compensate
27 Plaintiff Shareef and other non-party Aggrieved Employees for
28 mandatory physical examinations and/or drug testing, as set forth

below;

- (j) Violation of Labor Code sections 551 and 552 for failure to provide one day's rest in seven to other non-party Aggrieved Employees, as set forth below;
- (k) Violation of Labor Code section 1198 for failing to provide reporting time pay when other non-party Aggrieved Employees were put to work for less than half of their regular scheduled shifts, as set forth below;
- (l) Violation of Labor Code section 1198 for failing to provide suitable seating to Plaintiffs and other non-party Aggrieved Employees, as set forth below; and
- (m) Violation of Labor Code section 2802 for failure to reimburse Plaintiffs and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below.

FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

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

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

61. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiffs and other non-party Aggrieved Employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty

1 (40) hours in a workweek.

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

8 63. California Labor Code section 510 codifies the right to overtime compensation
9 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
10 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
11 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
12 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
13 in a day on the seventh (7th) day of work.

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

20 65. First, Defendants had, and continue to have, a company-wide policy and/or
21 practice of failing to accurately record hours worked by their employees. For example, after
22 reporting to work on time, Plaintiff Shareef and other non-party Aggrieved Employees were
23 forced to wait up to sixty (60) minutes to enter the store and clock in because there was no one
24 available to open the doors for them. As a result, Plaintiff Shareef and other non-party
25 Aggrieved Employees were forced to work off-the- clock, but were not provided a means by
26 Defendants to account for this time. Thus, Defendants failed to track this time spent working
27 off-the-clock before their scheduled shifts, and Plaintiff Shareef and other non-party
28 Aggrieved Employees received no compensation for this time they remained under

1 Defendants' control.

2 66. Second, on information and belief, Defendants required Plaintiff Shareef and
3 other non-party Aggrieved Employees to complete online training modules from home, on
4 their off-days, or during their unpaid meal periods, but did not compensate them for this time.
5 For example, Plaintiff Shareef was required to watch online training modules from home and
6 spent four (4) hours completing the required training, but was not compensated for her time.
7 In addition, during the relevant period, Defendants had a company-wide practice and/or policy
8 of requiring Plaintiff De Grado and other non-party Aggrieved Employees to perform work-
9 related tasks while off-the-clock, such as promoting Defendants' business before and after
10 their shifts and/or on their days off. For example, Plaintiff De Grado was directed to post
11 about store promotions on company social media accounts. However, due to Defendants'
12 policy of understaffing and assigning heavy workloads (*see infra*), Plaintiff De Grado was too
13 busy to post about store promotions on social media websites during his shifts, and was
14 required to spend 2-4 hours per week posting before and after his shifts and/or on his days off.
15 Thus, Defendants failed to track this time that Plaintiffs and other non-party Aggrieved
16 Employees spent working off-the-clock, and Plaintiffs and other non-party Aggrieved
17 Employees received no compensation for this time.

18 67. Third, Defendants had a company-wide loss prevention policy requiring
19 employees to undergo mandatory security checks by a managerial employee before leaving
20 the store premises. As a result of Defendants' policy, Plaintiff De Grado and other non-party
21 Aggrieved Employees were required to undergo security screenings after clocking out at the
22 end of a shift prior to leaving the store premises. For example, after clocking out at the end of
23 their shifts, Plaintiff De Grado and other non-party Aggrieved Employees were required to
24 wait up to 2-5 minutes for a security guard to check their belongings. Although Defendants'
25 requirement that Plaintiff De Grado and other non-party Aggrieved Employees undergo
26 security checks was mandatory, Defendants did not compensate them for the time it took them
27 to wait in line and undergo these checks. Furthermore, Defendants also had a company-wide
28 security policy requiring employees to leave the store premises in pairs. After clocking out at

1 the end of their shifts, Plaintiff De Grado and other non-party Aggrieved Employees were
2 required to wait for the manager on duty to complete his or her closing duties before they
3 could leave Defendants' premises. For example, Plaintiff De Grado and other non-party
4 Aggrieved Employees would clock out at the end of their shifts and wait for up to 15 minutes
5 off-the-clock for their managers to finish inputting the store's daily log sheets, before he was
6 permitted to exit the store. As a result of these loss-prevention and security policies and/or
7 practices, Plaintiff De Grado and other non-party Aggrieved Employees were subject to
8 Defendants' control after they had completed their shifts, but were not compensated for this
9 time.

10 68. Moreover, during the relevant period, Defendants had, and continue to have, a
11 company-wide policy staffing their locations strictly based on the labor hours or labor budget
12 set by the corporate office. Defendants' use of a labor budget resulted in chronic
13 understaffing such that there were too few employees on duty to handle the heavy workload,
14 which included quarterly and individual targets or quotas for selling merchandise. Because
15 Defendants did not employ or staff an adequate number of employees to meet their
16 productivity expectations and failed to provide employees with adequate meal period
17 coverage, Plaintiffs and other non-party Aggrieved Employees were assigned heavy
18 workloads, which Defendants knew or should have known could only be met by working
19 additional hours. Plaintiffs and other non-party Aggrieved Employees missed meal periods
20 and/or had meal periods cut short or interrupted in order to handle their workloads and address
21 customer and client demand.

22 69. Furthermore, Defendants have, on a company-wide basis, failed to schedule
23 meal periods. This company-wide practice, coupled with the heavy workload and pressure
24 from Defendants to reach productivity expectations, impeded Plaintiffs and other non-party
25 Aggrieved Employees from taking timely, compliant meal periods. Additionally, Plaintiff De
26 Grado and other non-party Aggrieved Employees would be required to respond to text
27 messages and/or calls on their personal cellular phones from supervisors and management
28 during unpaid meal periods to discuss work-related matters or to assist certain clients. As a

1 result, Plaintiffs and other non-party Aggrieved Employees were not afforded timely,
2 uninterrupted thirty (30) minute meal periods during shifts in which they were entitled to
3 receive meal periods. Further, on information and belief, because Defendants frowned upon
4 employees accruing meal period penalties, when Plaintiffs and other non-party Aggrieved
5 Employees failed to clock themselves out at designated meal period start times, they were
6 subject to Defendants altering their time records and deducting time for meal periods that
7 were not taken. Consequently, Plaintiffs and other non-party Aggrieved Employees
8 performed work during meal periods for which they were not paid.

9 70. Defendants knew or should have known that, as a result of these company-wide
10 practices and/or policies, Plaintiffs and other non-party Aggrieved Employees were
11 performing their assigned duties during their meal periods and performing work off-the-clock
12 before or after their shifts, and were suffered or permitted to perform work for which they
13 were not paid. Defendants also knew, or should have known, that they did not compensate
14 Plaintiffs and other non-party Aggrieved Employees applicable overtime rates of pay for
15 overtime hours that they worked.

16 71. Because Plaintiffs and other non-party Aggrieved Employees worked shifts of
17 eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock
18 work qualified for overtime premium pay. Therefore, Plaintiffs and other non-party
19 Aggrieved Employees were not paid overtime wages for all of the overtime hours they
20 actually worked.

21 72. Furthermore, Defendants did not pay other non-party Aggrieved Employees the
22 correct overtime rate for the recorded overtime hours that they generated. In addition to an
23 hourly wage, Defendants paid other non-party Aggrieved Employees commissions, incentive
24 pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of
25 the California Labor Code, Defendants failed to incorporate all compensation, including but
26 not limited to, all commissions, incentive pay, nondiscretionary bonuses, and/or other forms
27 of remuneration, into the calculation of the regular rate of pay for purposes of calculating the
28 overtime wage rate. Therefore, during times when other non-party Aggrieved Employees

1 worked overtime and received these other forms of pay, Defendants failed to pay all overtime
2 wages by paying a lower overtime rate than required.

3 73. Defendants' failure to pay Plaintiffs and other non-party Aggrieved Employees
4 the balance of overtime compensation as required by California law, violates the provisions of
5 California Labor Code sections 510 and 1198. Plaintiffs and other non-party Aggrieved
6 Employees are entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
7 2699(a), (f), and (g).

8 **FAILURE TO PAY MINIMUM WAGES**

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

10 74. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
11 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
12 to be paid to employees, and the payment of a wage less than the minimum so fixed is
13 unlawful. Compensable work time is defined by the applicable wage order as "the time
14 during which an employee is subject to the control of an employer, and includes all the time
15 the employee is suffered or permitted to work, whether or not required to do so." Cal. Code.
16 Regs. tit. 8, § 11070(2)(G) (defining "Hours Worked").

17 75. As set forth above, during the relevant time period, due to Defendants'
18 company-wide policies and/or practices of not permitting employees to record all their hours
19 worked, Defendants failed to record all hours worked by Plaintiff Shareef and other non-party
20 Aggrieved Employees that were outside of their scheduled shifts, such as waiting for entry
21 into the store. As also stated, Defendants required that Plaintiffs and other non-party
22 Aggrieved Employees perform work off-the-clock before and after their scheduled shifts,
23 including submitting to off-the-clock security checks, waiting for managers to complete
24 closing duties to leave the store premises in pairs, completing online training modules from
25 home, and/or posting on social media accounts about store promotions. In addition, due to
26 Defendants' uniform practice of utilizing labor budgets, resultant understaffing, assignment of
27 heavy workloads/quotas, failure to schedule meal periods, requirement that employees answer
28 their personal cellular phones at all times, and subsequent lack of meal period coverage,

1 Plaintiffs and other non-party Aggrieved Employees were forced to forego meal periods
2 and/or had their meal periods interrupted by work. Also, on information and belief, in order
3 to prevent employees from accruing meal period penalties, Defendants' management adjusted
4 Plaintiffs' and other non-party Aggrieved Employees' time records to reflect compliant meal
5 periods, time for which they were not paid.

6 76. Moreover, Defendants implemented, on a company-wide basis, an employer-
7 imposed requirement that Plaintiff Shareef other non-party Aggrieved Employees undergo a
8 mandatory drug test and/or physical examination. At all times, Defendants were in control of
9 scheduling the date and time for the testing and/or examinations, selecting the
10 provider/facility where the testing and/or examinations were to take place, and determining
11 the scope of the testing and/or examinations. Defendants gave Plaintiff Shareef and other
12 non-party Aggrieved Employees strict instructions to obtain drug testing and/or physical
13 examinations, and other non-party Aggrieved Employees underwent the testing and/or
14 examinations for the sole benefit of Defendants. Plaintiff Shareef and other non-party
15 Aggrieved Employees were required to travel in their own personal vehicles or obtain
16 alternate transportation and spend time undergoing Defendants' mandatory drug testing and/or
17 physical examinations. For example, Plaintiff Shareef followed Defendants' instructions,
18 traveled approximately 20 miles roundtrip (for approximately 20 minutes total), in her
19 personal vehicle to and from a designated clinic in Anaheim, and spent 20 minutes waiting
20 and undergoing the requisite testing. However, Defendants did not compensate Plaintiff
21 Shareef and other non-party Aggrieved Employees for the time they spent traveling to and
22 from the medical facilities and for the time they spent undergoing the drug testing and/or
23 physical examinations.

24 77. Thus, Defendants did not pay minimum wages for all hours worked by
25 Plaintiffs and other non-party Aggrieved Employees. To the extent that these off-the-clock
26 hours did not qualify for overtime premium payment, Defendants did not pay at least
27 minimum wages for those hours worked off-the-clock in violation of California Labor Code
28 sections 1182.12, 1194, 1197, and 1198.

1 78. Defendants' failure to pay Plaintiffs and other non-party Aggrieved Employees
2 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
3 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
4 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

5 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**
6 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

7 79. At all relevant times herein set forth, the applicable IWC Wage Order and
8 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiffs' and
9 other non-party Aggrieved Employees' employment by Defendants.

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

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

20 82. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), and
21 1198, and the applicable IWC Wage Order also require employers to provide a second meal
22 period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or
23 to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if
24 the total hours worked is no more than twelve (12) hours, the second meal period may be
25 waived by mutual consent of the employer and the employee only if the first meal period was
26 not waived.

27 83. As stated, Defendants have, and continue to have, a company-wide policy
28 and/or practice of understaffing pursuant to their labor budget practices, while simultaneously

1 assigning heavy workloads, which resulted in a lack of meal period coverage and prevented
2 Plaintiffs and other non-party Aggrieved Employees from taking all timely, uninterrupted
3 meal periods to which they were entitled. In addition, Defendants failed to schedule meal
4 periods, resulting in Plaintiffs and other non-party Aggrieved Employees having their meal
5 periods interrupted to return to work or waiting extended periods of time before taking meal
6 periods, due to the workload and pressure to meet quotas. Also, Plaintiff De Grado and other
7 non-party Aggrieved Employees were required to respond to calls on their personal cellular
8 phones from supervisors and management during unpaid meal periods. Further, because
9 Defendants frowned upon employees accruing meal period penalties, Defendants'
10 management would adjust Plaintiffs' and other non-party Aggrieved Employees' time records
11 to reflect compliant meal periods, regardless of whether they had received a compliant meal
12 period or not, in order to strictly limit meal penalties that would need to be paid by
13 Defendants.

14 84. As a result of Defendants' practices and/or policies, Plaintiffs and other non-
15 party Aggrieved Employees had to work through part or all of their meal periods, have their
16 meal periods interrupted, and/or wait extended periods of time before taking meal periods.
17 For example, on several occasions, Plaintiffs took their meal periods after the end of their fifth
18 hour of work due to the lack of meal period coverage and failure to schedule meal periods.
19 Moreover, Plaintiff De Grado's meal periods were interrupted or shortened in order to respond
20 to questions from Defendants' managers or supervisors, or to assist customers.

21 85. Moreover, Defendants did not provide Plaintiff De Grado and other non-party
22 Aggrieved Employees with second 30-minute meal periods on days that they worked in excess
23 of ten (10) hours in one day. Plaintiff De Grado and other non-party Aggrieved Employees
24 worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute
25 meal period. Plaintiffs and other non-party Aggrieved Employees did not sign valid meal
26 period waivers on days that they were entitled to meal periods and were not relieved of all
27 duties.

28 86. Defendants knew or should have known that as a result of their policies,

1 Plaintiffs and other non-party Aggrieved Employees were not actually relieved of all duties to
2 take timely, uninterrupted meal periods. Defendants further knew or should have known that
3 they did not pay Plaintiffs and other non-party Aggrieved Employees meal period premium
4 wages when meal periods were missed, late, short, and/or interrupted.

5 87. Defendants also have engaged in a company-wide practice and/or policy of not
6 paying meal period premiums owed when compliant meal periods are not provided. Because
7 of this practice and/or policy, Plaintiffs and other non-party Aggrieved Employees have not
8 received premium pay for missed, late, and interrupted meal periods. Alternatively, to the
9 extent that Defendants did pay other non-party Aggrieved Employees for missed, late, and
10 interrupted meal periods, Defendants did not pay other non-party Aggrieved Employees at the
11 correct rate of pay for premium wages because Defendants systematically failed to include all
12 forms of compensation, such as commissions, incentive pay, nondiscretionary bonuses, and/or
13 other forms of remuneration, in the regular rate of pay.

14 88. Thus, Defendants failed to provide Plaintiffs and other non-party Aggrieved
15 Employees compliant meal periods and failed to pay the full meal period premiums due.
16 Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
17 sections 226.7, 512(a), 516, and 1198. Plaintiffs and other non-party Aggrieved Employees
18 are entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f),
19 and (g).

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

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

22 89. At all relevant times herein set forth, the applicable IWC Wage Order and
23 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiffs' and other
24 non-party Aggrieved Employees' employment by Defendants.

25 90. At all relevant times, the applicable IWC Wage Order provides that "[e]very
26 employer shall authorize and permit all employees to take rest periods, which insofar as
27 practicable shall be in the middle of each work period" and that the "rest period time shall be
28 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)

1 hours or major fraction thereof” unless the total daily work time is less than three and one-half
2 (3 ½) hours.

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

11 92. Pursuant to the applicable IWC Wage Order and California Labor Code section
12 226.7(c), Plaintiffs and other non-party Aggrieved Employees are entitled to recover from
13 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
14 required rest period was not authorized and permitted.

15 93. During the relevant time period, Defendants regularly failed to authorize and
16 permit Plaintiffs and other non-party Aggrieved Employees to take a ten (10) minute rest
17 period per each four (4) hour period worked or major fraction thereof. As with meal periods,
18 Defendants’ company-wide policy and practice of understaffing and assigning heavy
19 workloads/quotas, prevented Plaintiffs and other non-party Aggrieved Employees from being
20 relieved of all duty to take their rest periods. Defendants also failed to schedule rest periods,
21 which, coupled with Defendants’ failure to provide adequate rest period coverage, further led
22 to Plaintiffs and other non-party Aggrieved Employees not being authorized and permitted to
23 take compliant rest periods. Moreover, Plaintiff De Grado and other non-party Aggrieved
24 Employees were expected to answer calls and text messages from their supervisors or
25 managers on their personal cellular phones while clocked in for their shifts, including during
26 rest periods.

27 94. Furthermore, on information and belief, Defendants maintained and
28 implemented a company-wide on-premises rest period policy, which mandated that Plaintiffs

1 and other non-party Aggrieved Employees remain on the work premises during their rest
2 periods. Upon information and belief, Defendants' company-wide on-premises rest period
3 policy prevented Plaintiffs and other non-party Aggrieved Employees from being relieved of
4 all duties for rest periods and caused them to perform work during rest periods.

5 95. As a result of Defendants' practices and policies, Plaintiffs and other non-party
6 Aggrieved Employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
7 excess of 10 hours without receiving all ten (10) minute rest periods to which they were
8 entitled. For example, during their employment, Plaintiffs missed their rest periods due to the
9 heavy workload and the lack of coverage for rest periods.

10 96. Defendants also have engaged in a company-wide practice and/or policy of not
11 paying all rest period premiums owed when compliant rest periods are not authorized or
12 permitted. Because of this practice and/or policy, Plaintiffs and other non-party Aggrieved
13 Employees have not received premium pay for all missed rest periods. Alternatively, to the
14 extent that Defendants did pay other non-party Aggrieved Employees one (1) additional hour
15 of premium pay for missed rest periods, Defendants did not pay other non-party Aggrieved
16 Employees at the correct rate of pay for premium wages because Defendants failed to include
17 all forms of compensation, such as commissions, incentive pay, nondiscretionary bonuses,
18 and/or other forms of remuneration, in the regular rate of pay. As a result, Defendants denied
19 Plaintiffs and other non-party Aggrieved Employees rest periods and failed to pay them all
20 rest period premiums due, in violation of California Labor Code sections 226.7 and 516, and
21 the applicable IWC Wage Order.

22 97. Defendants' conduct violates the applicable IWC Wage Order and California
23 Labor Code sections 226.7, 516, and 1198. Plaintiffs and other non-party Aggrieved
24 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
25 558 and/or 2699(a), (f), and (g).

26 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
27 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

28 98. At all relevant times herein, California Labor Code section 226(a) provides that

1 every employer shall furnish each of his or her employees an accurate and complete itemized
2 wage statement in writing, including, but not limited to, the name and address of the legal
3 entity that is the employer, the inclusive dates of the pay period, total hours worked, and all
4 applicable rates of pay.

5 99. During the relevant time period, Defendants have knowingly and intentionally
6 provided Plaintiffs and other non-party Aggrieved Employees with uniform, incomplete, and
7 inaccurate wage statements. For example, Defendants issued uniform wage statements to
8 Plaintiffs and other non-party Aggrieved Employees that fail to correctly list: gross wages
9 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
10 the pay period, including rates of pay for overtime wages and/or meal and rest period
11 premiums, and the corresponding number of hours worked at each hourly rate. Specifically,
12 Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

13 100. Because Defendants did not record the time Plaintiffs and other non-party
14 Aggrieved Employees spent working off-the-clock and deducted time from their records for
15 meal periods that were interrupted and/or missed (and therefore time for which they should
16 have been paid), Defendants did not list the correct amount of gross wages and net wages
17 earned by Plaintiffs and other non-party Aggrieved Employees in compliance with section
18 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to accurately list the total
19 number of hours worked by Plaintiffs and other non-party Aggrieved Employees in violation
20 of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the
21 pay period and corresponding accurate number of work hours worked at each hourly rate in
22 violation of section 226(a)(9).

23 101. Also, because Defendants did not calculate other non-party Aggrieved
24 Employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal
25 and rest period premiums, Defendants did not list the correct amount of gross wages earned by
26 other non-party Aggrieved Employees in compliance with section 226(a)(1) and did not list
27 the correct amount of net wages earned by other non-party Aggrieved Employees in violation
28 of section 226(a)(5). Defendants also failed to correctly list all applicable hourly rates in

1 effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and
2 rest period premiums, in violation of section 226(a)(9).

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

11 103. California Labor Code section 1198 provides that the maximum hours of work
12 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
13 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
14 employment of any employees for longer hours than those fixed by the order or under
15 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
16 Wage Order, employers are required to keep accurate time records showing when the
17 employee begins and ends each work period and meal period. During the relevant time
18 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
19 and meal period start and stop times for Plaintiffs and other non-party Aggrieved Employees,
20 in violation of section 1198. As stated, Defendants engaged in a company-wide practice
21 and/or policy of falsifying Plaintiffs’ and other non-party Aggrieved Employees’ time records
22 by recording that compliant meal periods were taken regardless of if or when meal periods
23 were actually taken, and thereby failed to keep accurate records of meal start and end times for
24 Plaintiffs’ and other non-party Aggrieved Employees. Furthermore, in light of Defendants’
25 failure to provide Plaintiff De Grado and other non-party Aggrieved Employees with second
26 30-minute meal periods to which they were entitled, Defendants kept no records of meal start
27 and end times for second meal periods.

28 104. 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. . . .” At all relevant times, and in violation of Labor Code section 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiffs and other non-party 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.

105. Defendants’ conduct violates California Labor Code sections 226(a), 1174(d), and 1198. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

FAILURE TO PAY WAGES DURING EMPLOYMENT

VIOLATION OF LABOR CODE SECTION 204

106. At all relevant times herein set forth, 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. Labor Code section 204 further provides 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.

107. At all relevant times herein, 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, at all relevant times 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

1 more than seven (7) calendar days following the close of the payroll period.

2 108. During the relevant time period, Defendants failed to pay Plaintiffs and other
3 non-party Aggrieved Employees all wages due to them including, but not limited to, overtime
4 wages, minimum wages, and/or meal and rest period premium wages, within any time period
5 specified by California Labor Code section 204.

6 109. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to
7 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

8 **FAILURE TO PAY WAGES UPON TERMINATION**

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

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

17 111. On information and belief, Defendants have a company-wide practice or policy
18 of paying departing employees their final wages on the next regular pay cycle, instead of
19 adhering to the time requirements set forth in Labor Code sections 201 and 202. For example,
20 Plaintiff De Grado was terminated on or about October 5, 2019. However, Defendants did not
21 provide him with his commissions paycheck for sales completed in September 2019 until
22 October 18, 2019. Thus, Defendants failed to pay Plaintiff De Grado his final wages
23 immediately, in violation of Labor Code section 201.

24 112. Additionally, Defendants willfully failed to pay Plaintiffs and other non-party
25 Aggrieved Employees who are no longer employed by Defendants the earned and unpaid
26 wages set forth above, including but not limited to, overtime wages, minimum wages, and/or
27 meal and rest period premium wages, either at the time of discharge, or within seventy-two
28 (72) hours of their leaving Defendants' employ.

113. Defendants' failure to pay Plaintiffs and those non-party Aggrieved Employees who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201 and 202. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or 2699(a), (f), and (g).

FAILURE TO PAY COSTS OF MEDICAL OR PHYSICAL EXAMINATIONS
VIOLATION OF LABOR CODE SECTION 222.5

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

115. During the relevant time period, Defendants implemented, on a company-wide basis, an employer-imposed requirement that Plaintiff Shareef and other non-party Aggrieved Employees undergo mandatory drug testing and/or physical examinations, but required them to do so at their own expense. As stated, Defendants had a company-wide policy requiring that Plaintiff Shareef and other non-party Aggrieved Employees travel to a specified medical facility on their own time and use their own means of transportation to undergo drug testing and/or physical examinations. At all times, Defendants were in control of scheduling the date and time for the testing and/or examinations, selecting the provider/facility where the testing and/or examinations were to take place, and determining the scope of the testing and/or examinations. Defendants gave Plaintiff Shareef and other non-party Aggrieved Employees strict instructions to obtain drug testing and/or physical examinations, and Plaintiff Shareef and other non-party Aggrieved Employees underwent the testing and/or examinations for the sole benefit of Defendants. Plaintiff Shareef and other non-party Aggrieved Employees were required to travel in their own personal vehicles or obtain alternate transportation and spend time undergoing Defendants' mandatory drug testing and/or physical examinations. For example, Plaintiff Shareef followed Defendants' instructions, traveled approximately 20 miles roundtrip (for approximately 20 minutes total), in her personal vehicle to and from a

1 designated clinic in Anaheim, and spent 20 minutes waiting and undergoing the requisite
2 testing. However, Defendants did not compensate Plaintiff Shareef and other non-party
3 Aggrieved Employees for the time they spent traveling to and from the medical facilities, for
4 the time they spent undergoing the drug testing and/or physical examinations, or reimburse
5 them for the travel expenses they incurred getting to and from the medical facilities.
6 Defendants' policy and/or practice of not paying for all costs Plaintiff Shareef and other non-
7 party Aggrieved Employees incurred obtaining mandatory drug testing and/or physical
8 examinations is in violation of California Labor Code section 222.5.

9 116. Plaintiff Shareef and other non-party Aggrieved Employees are therefore
10 entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

11 **FAILURE TO PROVIDE ONE DAY'S REST IN SEVEN**

12 **VIOLATION OF LABOR CODE SECTIONS 551 AND 552**

13 117. At all relevant times herein, California Labor Code section 551 provides that
14 every person employed in any occupation of labor is entitled to one day's rest in seven.
15 Additionally, California Labor Code section 552 prohibits employers from requiring
16 employees to work more than six consecutive days without a day of rest.

17 118. Further, at all times relevant herein set forth, California Labor Code section 556
18 exempts an employer from the day-of-rest requirement when the total hours worked by an
19 employee do not exceed 30 hours in any week or six hours in any one day thereof.

20 119. During the relevant period, Defendants required other non-party Aggrieved
21 Employees to work eight (8) or more hours per day and seven (7) consecutive days in a
22 workweek. Because other non-party Aggrieved Employees worked over thirty (30) hours per
23 week and over six (6) hours per day in a workweek, they were not exempt from the day-of-rest
24 requirement. To the extent that other non-party Aggrieved Employees signed purported
25 waivers of their right to a day's rest in seven, such waivers are invalid.

26 120. Thus, during the relevant time period, and in violation of Labor Code sections
27 551 and 552, Defendants willfully caused other non-party Aggrieved Employees to work more
28 than six days in seven. Other non-party Aggrieved Employees are therefore entitled to

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

2 **FAILURE TO PAY REPORTING TIME PAY**

3 **VIOLATION OF LABOR CODE SECTION 1198**

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

9 122. California Code of Regulations, Title 8, section 11160(5)(A) provides that
10 “[e]ach workday an employee is required to report for work and does report, but is not put to
11 work or is furnished less than half said employee’s usual or scheduled day’s work, the
12 employee shall be paid for half the usual or scheduled day’s work, but in no event for less
13 than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which
14 shall not be less than the minimum wage.” The “primary purpose of the reporting time
15 regulation” is “to guarantee at least partial compensation for employees who report to work
16 expecting to work a specified number of hours, and who are deprived of that amount because
17 of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch*
18 *Cellular*, 209 Cal. App. 4th 556 (2012).

19 123. Defendants violated California Labor Code section 1198 and California Code
20 of Regulations, Title 8, section 11160(5), because Defendants failed to pay other non-party
21 Aggrieved Employees reporting time pay when they reported to work for their scheduled shift
22 but were put to work for less than half of the regular schedule.

23 124. Defendants had a company-wide practice of sending other non-party Aggrieved
24 Employees home early from their shifts, including before they had worked at least half of their
25 regular shift, but would not pay other non-party Aggrieved Employees for half of their
26 scheduled shift. Although other non-party Aggrieved Employees would report to work based
27 on the schedule that Defendants provided to them, Defendants would send them home before
28 they had worked at least half of their scheduled shifts without giving them reporting time pay.

1 Accordingly, other non-party Aggrieved Employees were not properly compensated with
2 reporting time pay in violation of California Labor Code section 1198 and California Code of
3 Regulations, Title 8, section 11170(5)(A).

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

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

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

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

18 128. Plaintiffs allege that Defendants’ retail stores are generally similar in their
19 layout and design and there was, and continues to be, space behind cash wrap/jewelry counter
20 to allow for the presence and use of a seat or stool by Plaintiffs and other non-party Aggrieved
21 Employees (with reasonable or no modification to these work areas) during the performance
22 of their work duties. Defendants could have provided Plaintiffs and other non-party
23 Aggrieved Employees with a suitable seat or stool at the cash wraps/jewelry counters, but
24 instead denied them seating and forced Plaintiffs and other non-party Aggrieved Employees to
25 stand throughout the day.

26 129. Plaintiffs and other non-party Aggrieved Employees spent a substantial portion
27 of their day behind or at these cash wraps/jewelry counters. The nature of the work of an
28 employee performing cashier/sales duties can reasonably be accomplished from a seated

1 position. However, Defendants systematically, and on a company-wide basis, did not provide
2 seats or stools at or near the cash wraps/jewelry counters, forcing Plaintiffs and other non-
3 party Aggrieved Employees to stand throughout their work shifts.

4 130. During the relevant time period, Defendants violated California Labor Code
5 section 1198 and California Code of Regulations, Title 8, section 11070(14)(A), because
6 Plaintiffs and other non-party Aggrieved Employees were not allowed to sit, even when it
7 would not have interfered with the performance of their duties, nor were they provided with
8 suitable seats. Plaintiffs and other non-party Aggrieved Employees were assigned
9 cashier/sales duties, which were performed from and connected to a cash wrap/jewelry
10 counter, and could have been performed from a seated position. Plaintiffs and other non-party
11 Aggrieved Employees could have handled transactions at the cash wraps/jewelry counters and
12 provided customer service while seated, without interference to their ability to complete these
13 duties.

14 131. Defendants could have placed seats or stools at each cash wrap/jewelry counter
15 for use by Plaintiffs and other non-party Aggrieved Employees with reasonable or no
16 modification to these work areas. However, on a company-wide basis, Defendants did not
17 provide seats or stools at cash wraps/jewelry counters. Defendants' management did not
18 inform Plaintiffs and other non-party Aggrieved Employees that they were allowed to sit
19 down, provide any means for them to sit down, and/or mention any policy regarding sitting.

20 132. As a result of Defendants' company-wide policy and/or practice of prohibiting
21 employees from sitting during their shifts and company-wide failure to provide suitable
22 seating, Plaintiffs and other non-party Aggrieved Employees were forced to stand during
23 shifts and denied seats. Defendants' failure to provide suitable seating to Plaintiffs and other
24 non-party Aggrieved Employees violated and continues to violate California Labor Code
25 section 1198 and IWC Wage Order No. 7-2001, subdivision 14(A).

26 133. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to
27 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g)

28 **FAILURE TO PROVIDE SUITABLE SEATING**

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

134. At all relevant times herein, 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.”

135. 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.”

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

137. As stated, Plaintiffs allege that Defendants’ California retail stores are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Plaintiffs and other non-party Aggrieved Employees during lulls in operation. Defendants could have provided Plaintiffs and other non-party Aggrieved Employees with a seat or stool in their work areas, but instead denied Plaintiffs and other non-party Aggrieved Employees suitable seating altogether and effectively forced Plaintiffs and other non-party Aggrieved Employees to stand throughout the day.

138. Defendants did not provide Plaintiffs and other non-party Aggrieved Employees with seats or stools in reasonable proximity to their work areas to allow them to

1 use seats when it would not interfere with the performance of their duties for times when they
2 were not engaged in active duties that require standing. In other words, to the extent Plaintiffs
3 and other non-party Aggrieved Employees engaged in duties in which the nature of the work
4 required standing, Defendants denied them the use of seats nearby during lulls in their work
5 duties. Moreover, Defendants did not inform Plaintiffs and other non-party Aggrieved
6 Employees of their rights to a seat or stool under California law.

7 139. As a result of Defendants' company-wide policy and/or practice prohibiting
8 employees from sitting at any time, even when they were not engaged in active duties
9 requiring standing, and company-wide failure to provide seats in reasonable proximity to their
10 work areas, Plaintiffs and other non-party Aggrieved Employees were forced to stand during
11 shifts and denied seats. Defendants' failure to provide suitable seating to Plaintiffs and other
12 non-party Aggrieved Employees violated and continues to violate California Labor Code
13 section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

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

16 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

17 **VIOLATION OF LABOR CODE SECTION 2802**

18 141. At all times herein set forth, California Labor Code section 2802 provides that
19 an employer must reimburse employees for all necessary expenditures and losses incurred by
20 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
21 to prevent employers from passing off their cost of doing business and operating expenses on
22 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
23 (2014). The applicable wage order, IWC Wage Order No. 7-2001, provides that: "[w]hen
24 tools or equipment are required by the employer or are necessary to the performance of a job,
25 such tools and equipment shall be provided and maintained by the employer, except that an
26 employee whose wages are at least two (2) times the minimum wage may provide and
27 maintain hand tools and equipment customarily required by the particular trade or craft."

28 142. During the relevant time period, Defendants had a company-wide policy of

1 requiring Plaintiffs and other non-party Aggrieved Employees to utilize their own personal
2 cellular phones and cellular data to carry out their job duties, but Defendants failed to fully
3 reimburse them for the costs of their work-related cellular phone expenses. Plaintiffs and
4 other non-party Aggrieved Employees were required to use their personal cellular phones to
5 complete their work-related tasks, such as communicating with colleagues at other store
6 locations about workload and inventory, and/or communicating with managers about clients,
7 store events, or customer orders. Plaintiff De Grado and other non-party Aggrieved
8 Employees were also required to use their personal cellular phones to post about store
9 promotions on their social media accounts. Although Defendants required Plaintiffs and other
10 non-party Aggrieved Employees to utilize their personal cellular phones to carry out their
11 work-related responsibilities, Defendants failed to fully reimburse them for this cost.

12 143. Additionally, as stated, Defendants had a company-wide policy of requiring
13 Plaintiff Shareef and other non-party Aggrieved Employees to travel to medical facilities on
14 their own time and using their personal vehicles or alternate transportation to obtain
15 mandatory drug testing and/or physical examinations, but did not reimburse them for their
16 travel expenses, including mileage. At all times, Defendants were in control of scheduling the
17 date and time for the testing and/or physical examinations, selecting the provider or facility
18 where the testing and/or physical examinations were to take place, and determining the scope
19 of the testing and/or physical examinations. Defendants gave Plaintiff Shareef and other non-
20 party Aggrieved Employees strict instructions to obtain drug testing and/or physical
21 examinations, and Plaintiff Shareef and other non-party Aggrieved Employees underwent the
22 examinations and/or testing for the sole benefit of Defendants. Although Defendants required
23 Plaintiff Shareef and other non-party Aggrieved Employees to use their own vehicles or obtain
24 alternate transportation to undergo drug testing and/or physical examinations, Defendants
25 never reimbursed them for their travel expenses.

26 144. Defendants could have provided Plaintiffs and other non-party Aggrieved
27 Employees with the actual tools for use on the job, such as company phones and company
28 vehicles. Or, Defendants could have reimbursed employees for their cellular phone expenses,

1 travel expenses, and mileage. Instead, Defendants passed these operating costs off onto
2 Plaintiffs and other non-party Aggrieved Employees.

3 145. Defendants' company-wide policy and/or practice of passing on their operating
4 costs to Plaintiffs and other non-party Aggrieved Employees violates California Labor Code
5 section 2802. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to
6 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

7 **REQUEST FOR JURY TRIAL**

8 Plaintiffs request a trial by jury.

9 **PRAYER FOR RELIEF**

10 Plaintiffs, on behalf of all other non-party Aggrieved Employees, pray for relief and
11 judgment against Defendants, jointly and severally, as follows:

12 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
13 (\$25,000). Plaintiffs reserve the right to amend their prayer for relief to seek a different
14 amount.

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

16 2. That the Court declare, adjudge and decree that Defendants violated the
17 following California Labor Code provisions as to Plaintiffs and/or other non-party Aggrieved
18 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
19 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516,
20 and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize
21 and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
22 statements and maintain accurate payroll records); 201, 202, and 203 (by failing to timely pay
23 all earned wages upon termination); 204 (by failing to timely pay all earned wages during
24 employment); 222.5 (by failing to pay for costs of mandatory physical examinations and/or
25 drug testing); 1198 (by failing to provide suitable seating); and 2802 (by failing to reimburse
26 business expenses).

27 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
28 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202,

203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802;

4. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802;

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

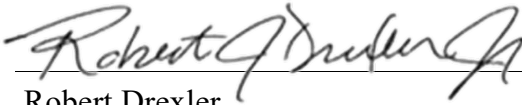
6. For such other and further relief as the Court may deem equitable and appropriate.

Dated: March 22, 2022

Respectfully submitted,

Capstone Law APC

By:



Robert Drexler
Molly DeSario
Jonathan Lee

Attorneys for Plaintiffs Michael De Grado and
La Tasha Shareef

Exhibit 1

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

September 17, 2020

VIA ONLINE SUBMISSION

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

Subject: *Michael De Grado v. Tiffany and Company U.S. Sales, LLC, et al.*

Dear PAGA Administrator:

This office represents Michael De Grado in connection with his claims under the California Labor Code. Mr. De Grado was an employee of TIFFANY AND COMPANY U.S. SALES, LLC and/or TIFFANY AND COMPANY. For the purpose of this letter, Mr. De Grado collectively refers to these entities as “TIFFANY.”

The employers may be contacted directly at the addresses below:

TIFFANY AND COMPANY U.S. SALES, LLC
200 FIFTH AVENUE
NEW YORK NY 10010

TIFFANY AND COMPANY
727 FIFTH AVENUE
NEW YORK NY 10022

TIFFANY AND COMPANY U.S. SALES, LLC
15 SYLVAN WAY
PARSIPPANY NJ 07054

TIFFANY AND COMPANY
15 SYLVAN WAY
PARSIPPANY NJ 07054

Mr. De Grado 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. De Grado seeks relief on behalf of himself, the State of California, and other persons who are or were employed by TIFFANY 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.

TIFFANY employed Mr. De Grado as an hourly paid, non-exempt employee from approximately June 22, 2018 to October 5, 2019. Mr. De Grado worked for TIFFANY as a Sales Professional at the Tiffany & Co. store in Carmel-by-the Sea, California. During his employment, Mr. De Grado typically worked four (4) to seven (7) hours or more per day, three (3) or more days per week, and 28 to 30 hours per week. At the time his employment ended, Mr. De Grado was compensated

approximately \$19.52 per hour plus commissions. His job duties included, without limitation, providing customer service, presenting jewelry to customers, cleaning jewelry displays and display cases, ringing up customers, processing returns and exchanges, preparing sales and client reports, and stocking displays.

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

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

TIFFANY AND COMPANY U.S. SALES, LLC and TIFFANY AND COMPANY are a Delaware limited liability company and a New York corporation, respectively, that own and operate a chain of luxury jewelry retail stores throughout the world. TIFFANY operates approximately 94 retail stores in the United States, including 18 retail locations in California. Upon information and belief, TIFFANY maintains a single, centralized Human Resources (HR) department at its corporate headquarters in New York, New York, for all non-exempt, hourly paid employees working for TIFFANY in California, including Mr. De Grado and other aggrieved employees. At all relevant times, TIFFANY issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. De Grado and other aggrieved employees, regardless of its location or position.

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

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

for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

TIFFANY willfully failed to pay all overtime wages owed to Mr. De Grado and other aggrieved employees. During the relevant time period, Mr. De Grado 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, TIFFANY had a company-wide loss prevention policy requiring employees to undergo mandatory security checks by a managerial employee before leaving the store premises. As a result of TIFFANY's policy, Mr. De Grado and other aggrieved employees were required to undergo security screenings after clocking out at the end of a shift prior to leaving the store premises. For example, after clocking out at the end of their shifts, Mr. De Grado and other aggrieved employees were required to wait up to two (2) or five (5) minutes for a manager to check their belongings. Although TIFFANY's requirement that Mr. De Grado and other aggrieved employees undergo security checks was mandatory, TIFFANY did not compensate them for the time it took them to wait in line and undergo these checks. Thus, Mr. De Grado and other aggrieved employees were not compensated for the time spent waiting for and undergoing security screenings while off-the-clock.

Second, during the relevant period, TIFFANY had a company-wide practice and/or policy of requiring Mr. De Grado and other aggrieved employees to perform work-related tasks while off-the-clock, such as promoting TIFFANY's business before and after their shifts and/or on their days off. For example, Mr. De Grado and other aggrieved employees were directed to post about store promotions on company social media accounts. However, due to TIFFANY's policy of understaffing and assigning heavy workloads (*see infra*), Mr. De Grado was too busy to post about store promotions on social media websites during his shifts, and was required to spend 2-4 hours per week posting before and after his shifts and/or on his days off. TIFFANY failed to track this time Mr. De Grado and other aggrieved employees spent working off-the-clock, and Mr. De Grado and other aggrieved employees received no compensation for this time.

Third, during the relevant period, TIFFANY had, and continues to have, a company-wide policy staffing its locations strictly based on the labor hours or labor budget set by the corporate office. TIFFANY'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 quarterly and individual targets or quotas for selling merchandise. Because TIFFANY did not employ or staff an adequate number of employees to meet their productivity expectations and failed to provide employees with adequate meal period coverage, Mr. De Grado and other aggrieved employees were assigned heavy workloads, which TIFFANY knew or should have known could only be met by working additional hours. Mr. De Grado and other aggrieved employees missed meal periods and/or had meal periods cut short or interrupted in order to handle their workloads and address customer and client demand.

Moreover, TIFFANY has, on a company-wide basis, failed to schedule meal periods. This company-wide practice, coupled with the heavy workload and pressure from TIFFANY to reach productivity expectations, impeded Mr. De Grado and other aggrieved employees from taking timely, compliant meal periods. Additionally, Mr. De Grado and other aggrieved employees would be required to respond to text messages and/or calls on their personal cellular phones from supervisors and management during unpaid meal periods to discuss work matters or to assist certain clients. As a

result, Mr. De Grado and other aggrieved employees were not afforded timely, uninterrupted thirty (30) minute meal periods during shifts in which they were entitled to receive meal periods.

Furthermore, TIFFANY did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, TIFFANY paid other aggrieved employees commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, TIFFANY failed to incorporate all compensation, including commissions, 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, TIFFANY failed to pay all overtime wages by paying a lower overtime rate than required.

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

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

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

As set forth above, during the relevant time period, TIFFANY required that Mr. De Grado and other aggrieved employees perform work off-the-clock before and after their scheduled shifts, including submitting to off-the-clock security checks and posting on social media accounts about store promotions. In addition, due to TIFFANY's uniform practice of utilizing labor budgets, resultant understaffing, assignment of heavy workloads/quotas, failure to schedule meal periods, requirement that employees answer their personal cellular phones at all times, and subsequent lack of meal period coverage, Mr. De Grado and other aggrieved employees were forced to forego meal periods and/or had their meal periods interrupted by work.

Moreover, TIFFANY implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo a mandatory drug test and/or physical examination. At all times, TIFFANY was in control of scheduling the date and time for the testing and/or examinations, selecting the provider/facility where the testing and/or examinations were to take place, and determining the scope of the testing and/or examinations. TIFFANY gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or examinations for the sole benefit of TIFFANY. Other aggrieved employees were required to travel in their own personal vehicles or obtain alternate transportation and spend time undergoing TIFFANY's mandatory drug testing and/or physical examinations. However, TIFFANY did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities and for the time they spent undergoing the drug testing and/or physical examinations.

Thus, TIFFANY 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, TIFFANY 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, TIFFANY regularly failed to pay at least minimum wages to Mr. De Grado 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. De Grado 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 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, TIFFANY has, and continues to have, a uniform policy and/or practice of company-wide policy and/or practice of understaffing pursuant to its labor budget practices, while simultaneously assigning heavy workloads, which resulted in a lack of meal period coverage and prevented Mr. De Grado and/or other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. In addition, TIFFANY failed to schedule meal periods, resulting in Mr. De Grado and other aggrieved employees having their meal periods interrupted to return to work or waiting extended periods of time before taking meal periods, due to the workload and pressure to meet quotas. Also, Mr. De Grado and other aggrieved employees were required to respond to calls on their personal cellular phones from supervisors and management during unpaid meal periods. As a result of TIFFANY's practices and/or policies, Mr. De Grado and/or other aggrieved employees had to work through part or all of their meal periods, have their meal periods interrupted, and/or wait extended periods of time before taking meal periods. For example, on several occasions, Mr. De Grado took meal periods after the end of his fifth hour of work due to the lack of meal period coverage and failure to schedule meal periods. Moreover, Mr. De Grado's meal periods were interrupted or shortened in order to respond to questions from TIFFANY's managers or supervisors, or to assist customers.

Moreover, TIFFANY did not provide Mr. De Grado and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. De Grado and other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. Mr. De Grado 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.

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

Furthermore, TIFFANY 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, other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that TIFFANY did pay meal period premium wages to other aggrieved employees, it did so at the incorrect rates. Because TIFFANY did not properly calculate other aggrieved employees' regular rates of pay by including all remunerations, such as commissions, 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, TIFFANY failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. De Grado 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 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, TIFFANY regularly failed to authorize and permit Mr. De Grado 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, TIFFANY's company-wide policy and practice of understaffing and assigning heavy workloads/quotas, prevented Mr. De Grado and other aggrieved employees from being relieved of all duty to take their rest periods. TIFFANY also failed to schedule rest periods, which, coupled with TIFFANY's failure to provide adequate rest period coverage, further led to Mr. De Grado and other aggrieved employees not being authorized and permitted to take compliant rest periods. Moreover, Mr. De Grado and other aggrieved employees were expected to answer calls and text messages from their supervisors or managers on their personal cellular phones while clocked in for their shifts, including during rest periods.

Additionally, upon information and belief, during the relevant time period, TIFFANY maintained implemented a company-wide on-premises rest period policy, which mandated that Mr. De Grado and other aggrieved employees remain on the work premises during their rest periods. Upon information and belief, TIFFANY's company-wide on-premises rest period policy prevented Mr. De Grado and other aggrieved employees from being relieved of all duties for rest periods and caused them to perform work during rest periods.

As a result of TIFFANY's practices and policies, Mr. De Grado 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. De Grado missed his rest periods due to the heavy workload and the lack of coverage for rest periods.

TIFFANY 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. De Grado and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that TIFFANY did pay rest period premium wages to other aggrieved employees, it did so at the incorrect rates. Because TIFFANY did not properly calculate other aggrieved employees' regular rates of pay by including all forms of compensation, such as commissions, 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, TIFFANY failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. De Grado 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. TIFFANY has not provided Mr. De Grado 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, TIFFANY has knowingly and intentionally provided Mr. De Grado and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, TIFFANY issued uniform wage statements to Mr. De Grado and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the 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, TIFFANY violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because TIFFANY did not record the time Mr. De Grado and other aggrieved employees spent working off-the-clock, TIFFANY did not list the correct amount of gross wages and net wages earned by Mr. De Grado and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, TIFFANY failed to accurately list the total number of hours worked by Mr. De Grado 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 TIFFANY did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, TIFFANY 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). TIFFANY 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).

Third, and separate from these violations, TIFFANY issued uniform wage statements to Mr. De Grado and other aggrieved employees that failed to correctly list the name of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. Mr. De Grado's and other aggrieved employees' wage statements incorrectly list the employer as "Tiffany and Company, US Sales," but, according to the California Secretary of State's website, there is no such entity by that name. However, a similarly named entity, "TIFFANY AND COMPANY U.S. SALES, LLC," is listed on the California Secretary of State's website with the same address. *See example paystub below.*

Tiffany and Company, US Sales 15 Sylvan Way Parsippany NJ 07054 973/254-8187		Pay Group: TRL-TRL/TRC - Biweekly Lag Process Begin Date: 09/15/2019 Process End Date: 09/28/2019		Business Unit: NAREG Check #: [REDACTED] Check Date: 10/05/2019	
Michael De Grado [REDACTED] [REDACTED]		EmpID: [REDACTED] Dept: 01124412-Carmel Retail Location: Carmel Retail Regular Base Rate: \$19.52 Hourly		TAX DATA: Federal CA State Marital Status: [REDACTED] [REDACTED] Allowances: [REDACTED] [REDACTED] Addl. Pot.: [REDACTED] Addl. Amt.: [REDACTED]	

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 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 “[keep, 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), TIFFANY willfully failed to maintain accurate payroll records for Mr. De Grado 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, TIFFANY failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. De Grado and other aggrieved employees, in violation of section 1198. Furthermore, in light of TIFFANY’s failure to provide Mr. De Grado and other aggrieved employees with second 30-minute meal periods to which they were entitled, TIFFANY kept no records of meal start and end times for second meal periods.

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

Mr. De Grado and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

On information and belief, TIFFANY has a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Mr. De Grado was terminated on or about October 5, 2019. However, TIFFANY did not provide him with his commissions paycheck for sales completed in September 2019 until October 18, 2019. Thus, TIFFANY failed to pay Mr. De Grado his final wages immediately, in violation of Labor Code section 201.

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

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

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

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

During the relevant time period, TIFFANY implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo mandatory drug testing and/or physical examinations, but required them to do so at their own expense. As stated, TIFFANY had a company-wide policy requiring that other aggrieved employees travel to a specified medical facility on their own time and use their own means of transportation to undergo drug testing and/or physical examinations. At all times, TIFFANY was in control of scheduling the date and time for the testing and/or examinations, selecting the provider/facility where the testing and/or examinations were to take place, and determining the scope of the testing and/or examinations. However, TIFFANY did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities, for the time they spent undergoing the drug testing and/or physical examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. TIFFANY's policy and/or practice of not paying for all costs other aggrieved employees incurred obtaining mandatory drug testing and/or physical examinations is in violation of California Labor Code section 222.5.

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

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14(A) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful." California Code of Regulations, Title 8, section 11070(14)(A) provides that "[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats."

"The 'nature of the work' refers to an employee's tasks performed at a given location for which a right to a suitable seat is claimed, rather than a 'holistic' consideration of the entire range of an employee's duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for." *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). "Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer's business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee's characteristics." *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is "infeasible because no suitable seating exists." *See id.*

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

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

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

Mr. De Grado and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring TIFFANY 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, TIFFANY's California retail stores are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Mr. De Grado and other

aggrieved employees during lulls in operation. TIFFANY could provide Mr. De Grado and other aggrieved employees with a seat or stool in its work areas, but instead denies employees seating and forces Mr. De Grado and other aggrieved employees to stand throughout the day.

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

As a result of TIFFANY's company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, and Mr. De Grado and other aggrieved employees were forced to stand during shifts and denied seats. TIFFANY's failure to provide suitable seating to Mr. De Grado and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 7-2001, Section 14(B).

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

During the relevant time period, TIFFANY had a company-wide policy of requiring Mr. De Grado and other aggrieved employees to utilize their own personal cellular phones and cellular data to carry out their job duties, but TIFFANY failed to fully reimburse them for the costs of their work-related cellular phone expenses. Mr. De Grado and other aggrieved employees were required to use their personal cellular phones to complete their work-related tasks, such as communicating with managers about clients, store events, or customer orders. Mr. De Grado and other aggrieved employees were also required to use their personal cellular phones to post about store promotions on their social media accounts. Although TIFFANY required Mr. De Grado and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, TIFFANY failed to fully reimburse them for this cost.

Additionally, as stated, TIFFANY had a company-wide policy of requiring other aggrieved employees to travel to medical facilities on their own time and using their personal vehicles or

alternate transportation to obtain mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. At all times, TIFFANY was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. TIFFANY gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the examinations and/or testing for the sole benefit of TIFFANY. Although TIFFANY required other aggrieved employees to use their own vehicles or obtain alternate transportation to undergo drug testing and/or physical examinations, TIFFANY never reimbursed them for their travel expenses.

TIFFANY could have provided Mr. De Grado and other aggrieved employees with the actual tools for use on the job, such as company phones and company vehicles, or could have reimbursed employees for their cellular phone, mileage, and travel expenses. Instead, TIFFANY passed these operating costs off onto Mr. De Grado and other aggrieved employees.

Thus, TIFFANY 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. De Grado 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.” TIFFANY, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. De Grado’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. De Grado 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. De Grado, 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 TIFFANY for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 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. De Grado seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

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

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

1. TIFFANY shall pay Mr. De Grado and all other aggrieved employees employed by TIFFANY at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. TIFFANY shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked and provided lawful meal and rest periods.
3. TIFFANY shall conduct a survey or interview all current and former aggrieved employees in California who worked for TIFFANY in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for cellular phone expenses, mandatory medical examinations, travel, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. TIFFANY shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512, 516, and 1198. TIFFANY also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. TIFFANY shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for TIFFANY's benefit, including, but not limited to, cellular phone expenses, mandatory medical examinations, and travel expenses, as required by Labor Code sections 222.5 and 2802.
6. TIFFANY shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. TIFFANY shall provide Mr. De Grado and all aggrieved employees employed by TIFFANY at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. TIFFANY shall implement and provide suitable seating to all aggrieved employees.

9. TIFFANY shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
10. TIFFANY shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, 1199, and 2699, and Wage Order No. 7-2001, section 20.

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

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

Best Regards,



Anthony Castillo

Copy: TIFFANY AND COMPANY U.S. SALES, LLC (via U.S. Certified Mail); TIFFANY AND COMPANY (via U.S. Certified Mail)

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TIFFANY AND COMPANY U.S. SALES, LLC
200 FIFTH AVENUE
NEW YORK NY 10010



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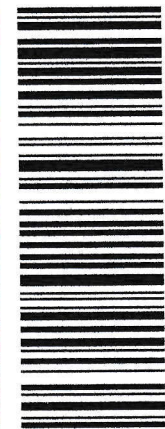
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s, CA 90067

TIFFANY AND COMPANY U.S. SALES, LLC
15 SYLVAN WAY
PARSIPPANY NJ 07054



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PARSIPPANY NJ 07054



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TIFFANY AND COMPANY
727 FIFTH AVENUE
NEW YORK NY 10022



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TIFFANY AND COMPANY
15 SYLVAN WAY
PARSIPPANY NJ 07054



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PARSIPPANY NJ 07054



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2. Article Number (Transfer from service label)

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☐ Agent

☐ Addressee

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200 FIFTH AVENUE
NEW YORK NY 10010



9590 9402 4882 9032 7425 22

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COMPLETE THIS SECTION ON DELIVERY**A. Signature**

X *R. W.*

- ☒ Agent
☐ Addressee

B. Received by (Printed Name)

R. W.

C. Date of Delivery

9/1/10

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PARSIPPANY NJ 07054



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2. Article Number (Transfer from service label)

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☐ Agent

☐ Addressee

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COVID19

C. Date of Delivery

9/12/20

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15 SYLVAN WAY
PARSIPPANY NJ 07054



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A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

COVID19

C. Date of Delivery

9/12/20

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

3. Service Type

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

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

November 23, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/268>)

Subject: *Michael De Grado v. Tiffany and Company U.S. Sales, LLC, et al.*
LWDA-CM-806658-20 – AMENDED NOTICE

Dear PAGA Administrator:

This office represents Michael De Grado in connection with his claims under the California Labor Code. Mr. De Grado was an employee of TIFFANY AND COMPANY U.S. SALES, LLC and/or TIFFANY AND COMPANY. For the purpose of this letter, Mr. De Grado collectively refers to these entities as “TIFFANY.” We previously provided notice of Mr. De Grado’s claims to the California Labor and Workforce Development Agency (“LWDA”) on September 17, 2020, and submitted the applicable filing fee pursuant to Labor Code section 2699.3(a)(1)(B). This amended notice supplements Mr. De Grado’s prior LWDA notice and is intended to clarify the facts and theories supporting his claims.

The employers may be contacted directly at the addresses below:

TIFFANY AND COMPANY U.S. SALES, LLC
200 FIFTH AVENUE
NEW YORK NY 10010

TIFFANY AND COMPANY
727 FIFTH AVENUE
NEW YORK NY 10022

TIFFANY AND COMPANY U.S. SALES, LLC
15 SYLVAN WAY
PARSIPPANY NJ 07054

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Mr. De Grado 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. De Grado seeks relief on behalf of himself, the State of California, and other persons who are or were employed by TIFFANY 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.

TIFFANY employed Mr. De Grado as an hourly paid, non-exempt employee from approximately June 22, 2018 to October 5, 2019. Mr. De Grado worked for TIFFANY as a Sales Professional at the Tiffany & Co. store in Carmel-by-the Sea, California. During his employment, Mr. De Grado typically worked four (4) to seven (7) hours or more per day, three (3) or more days per week, and 28 to 30 hours per week. At the time his employment ended, Mr. De Grado was compensated approximately \$19.52 per hour plus commissions. His job duties included, without limitation, providing customer service, presenting jewelry to customers, cleaning jewelry displays and display cases, ringing up customers, processing returns and exchanges, preparing sales and client reports, and stocking displays.

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

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

TIFFANY AND COMPANY U.S. SALES, LLC and TIFFANY AND COMPANY are a Delaware limited liability company and a New York corporation, respectively, that own and operate a chain of luxury jewelry retail stores throughout the world. TIFFANY operates approximately 94 retail stores in the United States, including 18 retail locations in California. Upon information and belief, TIFFANY maintains a single, centralized Human Resources (HR) department at its corporate headquarters in New York, New York, for all non-exempt, hourly paid employees working for TIFFANY in California, including Mr. De Grado and other aggrieved employees. At all relevant times, TIFFANY issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. De Grado and other aggrieved employees, regardless of its location or position.

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

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

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.

TIFFANY willfully failed to pay all overtime wages owed to Mr. De Grado and other aggrieved employees. During the relevant time period, Mr. De Grado 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, TIFFANY had a company-wide loss prevention policy requiring employees to undergo mandatory security checks by a managerial employee before leaving the store premises. As a result of TIFFANY's policy, Mr. De Grado and other aggrieved employees were required to undergo security screenings after clocking out at the end of a shift prior to leaving the store premises. For example, after clocking out at the end of their shifts, Mr. De Grado and other aggrieved employees were required to wait up to 2-5 minutes for a security guard to check their belongings. Although TIFFANY's requirement that Mr. De Grado and other aggrieved employees undergo security checks was mandatory, TIFFANY did not compensate them for the time it took them to wait in line and undergo these checks. Furthermore, TIFFANY also had a company-wide security policy requiring employees to leave the store premises in pairs. After clocking out at the end of their shifts, Mr. De Grado and other aggrieved employees were required to wait for the manager on duty to complete his or her closing duties before they could leave TIFFANY's premises. For example, Mr. De Grado would clock out at the end of his shift and wait for up to 15 minutes off-the-clock for his manager to finish inputting the store's daily log sheets, before he was permitted to exit the store. As a result of these loss prevention and security policies and/or practices, Mr. De Grado and other aggrieved employees were subject to TIFFANY's control after they had completed their shifts, but were not compensated for this time.

Second, during the relevant period, TIFFANY had a company-wide practice and/or policy of requiring Mr. De Grado and other aggrieved employees to perform work-related tasks while off-the-clock, such as promoting TIFFANY's business before and after their shifts and/or on their days off. For example, Mr. De Grado and other aggrieved employees were directed to post about store promotions on company social media accounts. However, due to TIFFANY's policy of understaffing and assigning heavy workloads (*see infra*), Mr. De Grado was too busy to post about store promotions on social media websites during his shifts, and was required to spend 2-4 hours per week posting before and after his shifts and/or on his days off. TIFFANY failed to track this time Mr. De Grado and other aggrieved employees spent working off-the-clock, and Mr. De Grado and other aggrieved employees received no compensation for this time.

Third, during the relevant period, TIFFANY had, and continues to have, a company-wide policy staffing its locations strictly based on the labor hours or labor budget set by the corporate office. TIFFANY'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 quarterly and individual targets or quotas for selling merchandise. Because TIFFANY did not employ or staff an adequate number of employees to meet their productivity expectations and failed to provide employees with adequate meal period coverage, Mr. De Grado and other aggrieved employees were assigned heavy workloads,

which TIFFANY knew or should have known could only be met by working additional hours. Mr. De Grado and other aggrieved employees missed meal periods and/or had meal periods cut short or interrupted in order to handle their workloads and address customer and client demand.

Moreover, TIFFANY has, on a company-wide basis, failed to schedule meal periods. This company-wide practice, coupled with the heavy workload and pressure from TIFFANY to reach productivity expectations, impeded Mr. De Grado and other aggrieved employees from taking timely, compliant meal periods. Additionally, Mr. De Grado and other aggrieved employees would be required to respond to text messages and/or calls on their personal cellular phones from supervisors and management during unpaid meal periods to discuss work-related matters or to assist certain clients. As a result, Mr. De Grado and other aggrieved employees were not afforded timely, uninterrupted thirty (30) minute meal periods during shifts in which they were entitled to receive meal periods. Further, on information and belief, because TIFFANY frowned upon employees accruing meal period penalties, when Mr. De Grado and other aggrieved employees failed to clock themselves out at designated meal period start times, they were subject to TIFFANY altering their time records and deducting time for meal periods that were not taken. Consequently, Mr. De Grado and other aggrieved employees performed work during meal periods for which they were not paid.

Furthermore, TIFFANY did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, TIFFANY paid other aggrieved employees commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, TIFFANY failed to incorporate all compensation, including commissions, 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, TIFFANY failed to pay all overtime wages by paying a lower overtime rate than required.

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

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

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

As set forth above, during the relevant time period, TIFFANY required that Mr. De Grado and other aggrieved employees perform work off-the-clock before and after their scheduled shifts, including submitting to off-the-clock security checks, waiting for managers to complete closing duties to leave the store premises in pairs, and posting on social media accounts about store promotions. In addition, due to TIFFANY's uniform practice of utilizing labor budgets, resultant understaffing, assignment of heavy workloads/quotas, failure to schedule meal periods, requirement that employees answer their personal cellular phones at all times, and subsequent lack of meal period coverage, Mr. De Grado and other aggrieved employees were forced to forego meal periods and/or had their meal periods

interrupted by work. Also, on information and belief, in order to prevent employees from accruing meal period penalties, TIFFANY's management adjusted Mr. De Grado's and other aggrieved employees' time records to reflect compliant meal periods, time for which they were not paid.

Moreover, TIFFANY implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo a mandatory drug test and/or physical examination. At all times, TIFFANY was in control of scheduling the date and time for the testing and/or examinations, selecting the provider/facility where the testing and/or examinations were to take place, and determining the scope of the testing and/or examinations. TIFFANY gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or examinations for the sole benefit of TIFFANY. Other aggrieved employees were required to travel in their own personal vehicles or obtain alternate transportation and spend time undergoing TIFFANY's mandatory drug testing and/or physical examinations. However, TIFFANY did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities and for the time they spent undergoing the drug testing and/or physical examinations.

Thus, TIFFANY 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, TIFFANY 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, TIFFANY regularly failed to pay at least minimum wages to Mr. De Grado 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. De Grado 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 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, TIFFANY has, and continues to have, a company-wide policy and/or practice of understaffing pursuant to its labor budget practices, while simultaneously assigning heavy workloads, which resulted in a lack of meal period coverage and prevented Mr. De Grado and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. In addition, TIFFANY failed to schedule meal periods, resulting in Mr. De Grado and other aggrieved employees having their meal periods interrupted to return to work or waiting extended periods of time before taking meal periods, due to the workload and pressure to meet quotas. Also, Mr. De Grado and other aggrieved employees were required to respond to calls on their personal cellular phones from supervisors and management during unpaid meal periods. Further, because TIFFANY frowned upon employees accruing meal period penalties, TIFFANY's management would adjust Mr. De Grado'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 TIFFANY.

As a result of TIFFANY's practices and/or policies, Mr. De Grado and other aggrieved employees had to work through part or all of their meal periods, have their meal periods interrupted, and/or wait extended periods of time before taking meal periods. For example, on several occasions, Mr. De Grado took meal periods after the end of his fifth hour of work due to the lack of meal period coverage and failure to schedule meal periods. Moreover, Mr. De Grado's meal periods were interrupted or shortened in order to respond to questions from TIFFANY's managers or supervisors, or to assist customers.

Moreover, TIFFANY did not provide Mr. De Grado and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. De Grado and other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. Mr. De Grado 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.

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

Furthermore, TIFFANY 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. De Grado and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that TIFFANY did pay other aggrieved employees for missed, late, and interrupted meal periods, TIFFANY did not pay other aggrieved employees at the correct rate of pay for premium wages because TIFFANY systematically failed to include all forms of compensation, such as commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, TIFFANY failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. De Grado 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 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, TIFFANY regularly failed to authorize and permit Mr. De Grado 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, TIFFANY's company-wide policy and practice of understaffing and assigning heavy workloads/quotas, prevented Mr. De Grado and other aggrieved employees from being relieved of all duty to take their rest periods. TIFFANY also failed to schedule rest periods, which, coupled with TIFFANY's failure to provide adequate rest period coverage, further led to Mr. De Grado and other aggrieved employees not being authorized and permitted to take compliant rest periods. Moreover, Mr. De Grado and other aggrieved employees were expected to answer calls and text messages from their supervisors or managers on their personal cellular phones while clocked in for their shifts, including during rest periods.

Additionally, upon information and belief, during the relevant time period, TIFFANY maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. De Grado and other aggrieved employees remain on the work premises during their rest periods. Upon information and belief, TIFFANY's company-wide on-premises rest period policy prevented Mr. De Grado and other aggrieved employees from being relieved of all duties for rest periods and caused them to perform work during rest periods.

As a result of TIFFANY's practices and policies, Mr. De Grado 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. De Grado missed his rest periods due to the heavy workload and the lack of coverage for rest periods.

TIFFANY 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. De Grado and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that TIFFANY did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, TIFFANY did not pay

other aggrieved employees at the correct rate of pay for premium wages because TIFFANY failed to include all forms of compensation, such as commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, TIFFANY failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. De Grado 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. TIFFANY has not provided Mr. De Grado 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, TIFFANY has knowingly and intentionally provided Mr. De Grado and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, TIFFANY issued uniform wage statements to Mr. De Grado and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the 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, TIFFANY violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

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

Third, and separate from these violations, TIFFANY issued uniform wage statements to Mr. De Grado and other aggrieved employees that failed to correctly list the name of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. Mr. De Grado's and other aggrieved employees' wage statements incorrectly list the employer as "Tiffany and Company, US Sales," but, according to the California Secretary of State's website, there is no such entity by that name. However, a similarly named entity, "TIFFANY AND COMPANY U.S. SALES, LLC," is listed on the California Secretary of State's website with the same address. *See example paystub below.*

Tiffany and Company, US Sales 15 Sylvan Way Paramus NY 07054 973/254-8187		Pay Group: TRL-TRL/TRC - Biweekly Lag Process Begin Date: 09/15/2019 Process End Date: 09/28/2019		Business Unit: NAREG Check #: [REDACTED] Check Date: 10/05/2019	
Michael De Grado [REDACTED] [REDACTED]		EmpID: [REDACTED] Dept: 01124412-Carmel Retail Location: Carmel Retail Regular Base Rate: \$19.52 Hourly		TAX DATA: Federal CA State Marital Status: [REDACTED] [REDACTED] Allowances: [REDACTED] [REDACTED] Addl. Pct.: [REDACTED] Addl. Amt.: [REDACTED]	

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 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), TIFFANY willfully failed to maintain accurate payroll records for Mr. De Grado 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, TIFFANY failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. De Grado and other aggrieved employees, in violation of section 1198. As stated, TIFFANY engaged in a company-wide practice and/or policy of falsifying Mr. De Grado'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. De Grado and other aggrieved employees. Furthermore, in light of TIFFANY's failure to provide Mr. De Grado and other aggrieved employees with second 30-minute meal periods to which they were entitled, TIFFANY kept no records of meal start and end times for second meal periods.

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

Mr. De Grado and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due

and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

On information and belief, TIFFANY has a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Mr. De Grado was terminated on or about October 5, 2019. However, TIFFANY did not provide him with his commissions paycheck for sales completed in September 2019 until October 18, 2019. Thus, TIFFANY failed to pay Mr. De Grado his final wages immediately, in violation of Labor Code section 201.

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

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

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

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

During the relevant time period, TIFFANY implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo mandatory drug testing and/or physical examinations, but required them to do so at their own expense. As stated, TIFFANY had a company-wide policy requiring that other aggrieved employees travel to a specified medical facility on their own time and use their own means of transportation to undergo drug testing and/or physical examinations. At all times, TIFFANY was in control of scheduling the date and time for the testing and/or examinations, selecting the provider/facility where the testing and/or examinations were to take place, and determining the scope of the testing and/or examinations. However, TIFFANY did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities, for the time they spent undergoing the drug testing and/or physical examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. TIFFANY's policy and/or practice of not paying for all costs other aggrieved employees incurred obtaining mandatory drug testing and/or physical examinations is in violation of California Labor Code section 222.5.

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

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14(A) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11070(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

“The ‘nature of the work’ refers to an employee’s tasks performed at a given location for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the entire range of an employee’s duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for.” *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). “Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer’s business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee’s characteristics.” *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is “infeasible because no suitable seating exists.” *See id.*

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

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

TIFFANY violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because Mr. De Grado 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. TIFFANY’s management did not inform Mr. De Grado 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 TIFFANY’s company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, Mr. De Grado and other aggrieved employees were forced to stand during shifts and denied seats. TIFFANY’s failure

to provide suitable seating to Mr. De Grado and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 7-2001, Section 14(A).

Mr. De Grado and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring TIFFANY 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, TIFFANY's California retail stores are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Mr. De Grado and other aggrieved employees during lulls in operation. TIFFANY could provide Mr. De Grado and other aggrieved employees with a seat or stool in its work areas, but instead denies employees seating and forces Mr. De Grado and other aggrieved employees to stand throughout the day.

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

As a result of TIFFANY's company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, and Mr. De Grado and other aggrieved employees were forced to stand during shifts and denied seats. TIFFANY's

failure to provide suitable seating to Mr. De Grado and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 7-2001, Section 14(B).

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

During the relevant time period, TIFFANY had a company-wide policy of requiring Mr. De Grado and other aggrieved employees to utilize their own personal cellular phones and cellular data to carry out their job duties, but TIFFANY failed to fully reimburse them for the costs of their work-related cellular phone expenses. Mr. De Grado and other aggrieved employees were required to use their personal cellular phones to complete their work-related tasks, such as communicating with managers about clients, store events, or customer orders. Mr. De Grado and other aggrieved employees were also required to use their personal cellular phones to post about store promotions on their social media accounts. Although TIFFANY required Mr. De Grado and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, TIFFANY failed to fully reimburse them for this cost.

Additionally, as stated, TIFFANY had a company-wide policy of requiring other aggrieved employees to travel to medical facilities on their own time and using their personal vehicles or alternate transportation to obtain mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. At all times, TIFFANY was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. TIFFANY gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the examinations and/or testing for the sole benefit of TIFFANY. Although TIFFANY required other aggrieved employees to use their own vehicles or obtain alternate transportation to undergo drug testing and/or physical examinations, TIFFANY never reimbursed them for their travel expenses.

TIFFANY could have provided Mr. De Grado and other aggrieved employees with the actual tools for use on the job, such as company phones and company vehicles, or could have reimbursed employees for their cellular phone, mileage, and travel expenses. Instead, TIFFANY passed these operating costs off onto Mr. De Grado and other aggrieved employees.

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

Accordingly, Mr. De Grado 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. De Grado, 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 TIFFANY for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 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. De Grado 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:

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

Best Regards,


Anthony Castillo

Copy: TIFFANY AND COMPANY U.S. SALES, LLC (via U.S. Certified Mail); TIFFANY AND COMPANY (via U.S. Certified Mail)

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7020 1290 0000 3958 7184

tone

LAW APC

ury Park East, Ste 1000
s, CA 90067

TIFFANY AND COMPANY U.S. SALES, LLC
200 FIFTH AVENUE
NEW YORK NY 10010



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NEW YORK NY 10010



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☒ Return Receipt (hardcopy)	\$ 2.80
☐ Return Receipt (electronic)	\$
☐ Certified Mail Restricted Delivery	\$
☐ Adult Signature Required	\$
☐ Adult Signature Restricted Delivery	\$
Postage	\$ 1.63
Total Postage and Fees	\$ 7.93

Postmark
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De Grado v. Tiffany
and Company US
Sales, LLC

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Street and Apt. No., or PO Box No.	200 FIFTH AVENUE
City, State, ZIP+4®	NEW YORK NY 10010

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TIFFANY AND COMPANY
727 FIFTH AVENUE
NEW YORK NY 10022



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- ☐ Adult Signature Restricted Delivery \$

Postage

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Total Postage and Fees

\$ 7.43

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727 FIFTH AVENUE

City, State, ZIP+4®

NEW YORK NY 10022

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HereDeGrado v. Tiffany
and Company

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ury Park East, Ste 1000
s, CA 90067

CERTIFIED MAIL



7020 1290 0000 3958 7160

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LAW APC
ry Park East, Ste 1000
s, CA 90067

TIFFANY AND COMPANY U.S. SALES, LLC
15 SYLVAN WAY
PARSIPPANY NJ 07054



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TIFFANY AND COMPANY U.S. SALES, LLC
15 SYLVAN WAY
PARSIPPANY NJ 07054



9590 9402 5816 0034 8460 90

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A. Signature

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☐ Addressee

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C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
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3. Service Type

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- ☐ Adult Signature Restricted Delivery \$

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De Grado v. Tiffany
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Sales, LLC

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tone
LAW APC
ury Park East, Ste 1000
es, CA 90067



7020 1290 0000 3958 7153

TIFFANY AND COMPANY
15 SYLVAN WAY
PARSIPPANY NJ 07054



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15 SYLVAN WAY
PARSIPPANY NJ 07054



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Total Postage and Fees

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De Grado V. Tiffany
and Company

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**TIFFANY AND COMPANY
727 FIFTH AVENUE
NEW YORK NY 10022**



9590 9402 5816 0034 8460 83

2. Article Number (Transfer from service label)

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X C. TC

☐ Agent

☐ Addressee

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C. Date of Delivery

10/30

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- ☐ Registered Mail
- ☐ Registered Mail Restricted Delivery
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- ☐ Signature Required
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TIFFANY AND COMPANY U.S. SALES, LLC
200 FIFTH AVENUE
NEW YORK NY 10010



9590 9402 5816 0034 8460 76

2. Article Number (Transfer from service label)

7020 1290 0000 3958 7184

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
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3. Service Type

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TIFFANY AND COMPANY U.S. SALES, LLC
15 SYLVAN WAY
PARSIPPANY NJ 07054



9590 9402 5816 0034 8460 90

2. Article Number (Transfer from service label)

7020 1290 0000 3958 7160

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A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

CAV 019

C. Date of Delivery

12-2-00

D. Is delivery address different from item 1? ☐ Yes
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3. Service Type

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- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
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Exhibit 2



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

MOLLY DESARIO
310.556.4167 Direct
Molly.DeSario@capstonelawyers.com

November 22, 2021

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *La Tasha Shareef v. v. Tiffany and Company U.S. Sales, LLC, et al.*

Dear PAGA Administrator:

This office represents La Tasha Shareef in connection with her claims under the California Labor Code. Ms. Shareef was an employee of TIFFANY AND COMPANY U.S. SALES, LLC and/or TIFFANY AND COMPANY. For the purpose of this letter, Ms. Shareef collectively refers to these entities as “TIFFANY.”

The employers may be contacted directly at the address below:

TIFFANY AND COMPANY U.S. SALES, LLC
200 FIFTH AVENUE
NEW YORK NY 10010

TIFFANY AND COMPANY
727 FIFTH AVENUE
NEW YORK NY 10022

TIFFANY AND COMPANY U.S. SALES, LLC
15 SYLVAN WAY
PARSIPPANY NJ 07054

TIFFANY AND COMPANY
15 SYLVAN WAY
PARSIPPANY NJ 07054

Ms. Shareef intends to seek civil penalties, attorney’s fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”). Ms. Shareef seeks relief on behalf of herself, the State of California, and other persons who are or were employed by TIFFANY 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.

TIFFANY employed Ms. Shareef as an hourly paid, non-exempt employee from approximately December 2, 2020 to December 24, 2020. Ms. Shareef worked as a Seasonal Ambassador for TIFFANY at the Tiffany & Co. store in Costa Mesa, California. During her employment, Ms. Shareef typically worked eight (8) hours or more per day, and five (5) or more days per week. At the time her employment ended, Ms. Shareef was compensated approximately \$18.00 per hour. Her job

duties included, without limitation, greeting customers, introducing customers to a representative in sales or customer service, retrieving pre-orders from the dedicated order room, and confirming whether items were in-stock.

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

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

TIFFANY AND COMPANY U.S. SALES, LLC and TIFFANY AND COMPANY are a Delaware limited liability company and a New York corporation, respectively, that own and operate a chain of luxury jewelry retail stores throughout the world. TIFFANY operates approximately 94 retail stores in the United States, including 18 retail locations in California. Upon information and belief, TIFFANY maintains a single, centralized Human Resources (HR) department at its company headquarters in New York, New York, for all non-exempt, hourly paid employees working for TIFFANY in California, including Ms. Shareef and other aggrieved employees. At all relevant times, TIFFANY issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Shareef and other aggrieved employees, regardless of their location or position.

Upon information and belief, TIFFANY maintains a centralized Payroll department at its company headquarters in New York, New York, which processes payroll for all non-exempt, hourly paid employees working for TIFFANY in California, including Ms. Shareef and other aggrieved employees. Further, TIFFANY issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Ms. Shareef and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, TIFFANY utilized the same methods and formulas when calculating wages due to Ms. Shareef 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 (1 ½) 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 Ms. Shareef’s experience and counsel’s review of those records currently available relating to Ms. Shareef’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Ms. Shareef reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

TIFFANY willfully failed to pay all overtime wages owed to Ms. Shareef and other aggrieved employees. During the relevant time period, Ms. Shareef 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 time period, TIFFANY had, and continues to have, a company-wide policy and/or practice of failing to accurately record hours worked by its employees. For example, after reporting to work on time, Ms. Shareef and other aggrieved employees were forced to wait up to sixty (60) minutes to enter the store and clock in because there was no one available to open the doors for them. As a result, Ms. Shareef and other aggrieved employees were forced to work off-the-clock, but were not provided a means by TIFFANY to account for this time. Thus, TIFFANY failed to track this time spent working off-the-clock before their scheduled shifts, and Ms. Shareef and other aggrieved employees received no compensation for this time they remained under TIFFANY's control.

Second, on information and belief, TIFFANY required Ms. Shareef and other aggrieved employees to complete online training modules from home, on their off-days, or during their unpaid meal periods, but did not compensate them for this time. For example, Ms. Shareef was required to watch online training modules from home and spent four (4) hours completing the required training, but was not compensated for her time. In addition, during the relevant period, TIFFANY had a company-wide practice and/or policy of requiring other aggrieved employees to perform work-related tasks while off-the-clock, such as promoting TIFFANY's business before and after their shifts and/or on their days off. For example, other aggrieved employees were directed to post about store promotions on company social media accounts. However, due to TIFFANY's policy of understaffing and assigning heavy workloads (*see infra*), other aggrieved employees were too busy to post about store promotions on social media websites during their shifts, and were required to spend 2-4 hours per week posting before and after their shifts and/or on their days off. Thus, TIFFANY failed to track this time Ms. Shareef and other aggrieved employees spent working off-the-clock, and Ms. Shareef and other aggrieved employees received no compensation for this time.

Third, TIFFANY had a company-wide loss prevention policy requiring employees to undergo mandatory security checks by a managerial employee before leaving the store premises. As a result of TIFFANY's policy, other aggrieved employees were required to undergo security screenings after clocking out at the end of a shift prior to leaving the store premises. For example, after clocking out at the end of their shifts, other aggrieved employees were required to wait up to 2-5 minutes for a security guard to check their belongings. Although TIFFANY's requirement that other aggrieved employees undergo security checks was mandatory, TIFFANY did not compensate them for the time it took them to wait in line and undergo these checks. Furthermore, TIFFANY also had a company-wide security policy requiring employees to leave the store premises in pairs. After clocking out at the end of their shifts, other aggrieved employees were required to wait for the manager on duty to complete his or her closing duties before they could leave TIFFANY's premises. For example, other aggrieved employees would clock out at the end of their shifts and wait for up to 15 minutes off-the-clock for their managers to finish inputting the store's daily log sheets, before they were permitted to exit the store. As a result of these loss prevention and security policies and/or practices, other aggrieved employees were subject to TIFFANY's control after they had completed their shifts, but were not compensated for this time.

Fourth, during the relevant period, TIFFANY had, and continues to have, a company-wide policy staffing its locations strictly based on the labor hours or labor budget set by the corporate office. TIFFANY'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 quarterly and individual targets or quotas for selling merchandise. Because TIFFANY did not employ or staff an adequate number of employees to meet their productivity expectations and failed to provide employees with adequate meal period coverage, Ms. Shareef and other aggrieved employees were assigned heavy workloads, which TIFFANY knew or should have known could only be met by working additional hours. Ms. Shareef and other aggrieved employees missed meal periods and/or had meal periods cut short or interrupted in order to handle their workloads and address customer and client demand.

Moreover, TIFFANY has, on a company-wide basis, failed to schedule meal periods. This company-wide practice, coupled with the heavy workload and pressure from TIFFANY to reach productivity expectations, impeded Ms. Shareef and other aggrieved employees from taking timely, compliant meal periods. Additionally, other aggrieved employees would be required to respond to text messages and/or calls on their personal cellular phones from supervisors and management during unpaid meal periods to discuss work-related matters or to assist certain clients. As a result, Ms. Shareef and other aggrieved employees were not afforded timely, uninterrupted thirty (30) minute meal periods during shifts in which they were entitled to receive meal periods. Further, on information and belief, because TIFFANY frowned upon employees accruing meal period penalties, when Ms. Shareef and other aggrieved employees failed to clock themselves out at designated meal period start times, they were subject to TIFFANY altering their time records and deducting time for meal periods that were not taken. Consequently, Ms. Shareef and other aggrieved employees performed work during meal periods for which they were not paid.

TIFFANY knew or should have known that as a result of these company-wide practices and/or policies, Ms. Shareef and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. Shareef and other aggrieved employees sometimes worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Ms. Shareef and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

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

Accordingly, Ms. Shareef and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked, in violation of California Labor Code sections 510 and 1198. Ms. Shareef 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. 7-2001 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 stated, due to TIFFANY’s company-wide policies and/or practices of not permitting employees to record all their hours worked, TIFFANY failed to record all hours worked by Ms. Shareef and other aggrieved employees that were outside of their scheduled shifts, such as waiting for entry into the store. In addition, as set forth above, during the relevant time period, TIFFANY required that Ms. Shareef and/or other aggrieved employees perform work off-the-clock before and after their scheduled shifts, including completing online training modules from home, submitting to off-the-clock security checks, waiting for managers to complete closing duties to leave the store premises in pairs, and posting on social media accounts about store promotions. Further, due to TIFFANY’s uniform practice of utilizing labor budgets, resultant understaffing, assignment of heavy workloads/quotas, failure to schedule meal periods, requirement that employees answer their personal cellular phones at all times, and subsequent lack of meal period coverage, Ms. Shareef and/or other aggrieved employees were forced to forego meal periods and/or had their meal periods interrupted by work. Also, on information and belief, in order to prevent employees from accruing meal period penalties, TIFFANY’s management adjusted Ms. Shareef’s and other aggrieved employees’ time records to reflect compliant meal periods, time for which they were not paid.

Moreover, TIFFANY implemented, on a company-wide basis, an employer-imposed requirement that Ms. Shareef and other aggrieved employees undergo a mandatory drug test and/or physical examination. At all times, TIFFANY was in control of scheduling the date and time for the testing and/or examinations, selecting the provider/facility where the testing and/or examinations were to take place, and determining the scope of the testing and/or examinations. TIFFANY gave Ms. Shareef and other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and Ms. Shareef and other aggrieved employees underwent the testing and/or examinations for the sole benefit of TIFFANY. Ms. Shareef and other aggrieved employees were required to travel in their own personal vehicles or obtain alternate transportation and spend time undergoing TIFFANY’s mandatory drug testing and/or physical examinations. For example, Ms. Shareef followed TIFFANY’s instructions, traveled approximately 20 miles roundtrip (for approximately 20 minutes total), in her personal vehicle to and from a designated clinic in Anaheim, and spent 20 minutes waiting and undergoing the requisite testing. However, TIFFANY did not compensate Ms. Shareef and other aggrieved employees for the time they spent traveling to and from the medical facilities and for the time they spent undergoing the drug testing and/or physical examinations.

Thus, TIFFANY did not pay at least minimum wages for all hours worked by Ms. Shareef and other aggrieved employees. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, TIFFANY 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, TIFFANY regularly failed to pay at least minimum wages to Ms. Shareef and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Ms. Shareef and other aggrieved employees are 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 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 (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, TIFFANY has, and continues to have, a company-wide policy and/or practice of understaffing pursuant to its labor budget practices, while simultaneously assigning heavy workloads, which resulted in a lack of meal period coverage and prevented Ms. Shareef and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. In addition, TIFFANY failed to schedule meal periods, resulting in Ms. Shareef and other aggrieved employees having their meal periods interrupted to return to work or waiting extended periods of time before taking meal periods, due to the workload and pressure to meet quotas. Also, other aggrieved employees were required to respond to calls on their personal cellular phones from supervisors and management during unpaid meal periods. Further, because TIFFANY frowned upon employees accruing meal period penalties, TIFFANY's management would adjust Ms. Shareef'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 TIFFANY.

As a result of TIFFANY's practices and/or policies, Ms. Shareef and/or other aggrieved employees had to work through part or all of their meal periods, have their meal periods interrupted, and/or wait extended periods of time before taking meal periods. For example, on several occasions, Ms. Shareef took meal periods after the end of her fifth hour of work due to the heavy workload, lack of meal period coverage, and failure to schedule meal periods. Moreover, other aggrieved employees' meal periods were interrupted or shortened in order to respond to questions from TIFFANY's managers or supervisors, or to assist customers.

Moreover, TIFFANY did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Other aggrieved employees

worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. Other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, TIFFANY knew or should have known that, as a result of these policies, Ms. Shareef and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. TIFFANY further knew or should have known that it did not pay Ms. Shareef and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, or missed.

Moreover, TIFFANY 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 TIFFANY's practices and/or policies, Ms. Shareef and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that TIFFANY did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, TIFFANY did not pay other aggrieved employees at the correct rate of pay for premiums because TIFFANY systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, TIFFANY failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Shareef 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 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 (3 ½) 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, TIFFANY regularly failed to authorize and permit Ms. Shareef 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, TIFFANY's company-wide policy and practice of understaffing and assigning heavy workloads/quotas, prevented Ms. Shareef and other aggrieved employees from being relieved of all duty to take their rest periods. TIFFANY also failed to

schedule rest periods, which, coupled with TIFFANY's failure to provide adequate rest period coverage, further led to Ms. Shareef and other aggrieved employees not being authorized and permitted to take compliant rest periods. Moreover, other aggrieved employees were expected to answer calls and text messages from their supervisors or managers on their personal cellular phones while clocked in for their shifts, including during rest periods.

Additionally, upon information and belief, during the relevant time period, TIFFANY maintained and implemented a company-wide on-premises rest period policy, which mandated that Ms. Shareef and/or other aggrieved employees remain on the work premises during their rest periods. Upon information and belief, TIFFANY's company-wide on-premises rest period policy prevented Ms. Shareef and other aggrieved employees from being relieved of all duties for rest periods and caused them to perform work during rest periods.

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

TIFFANY also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. Shareef and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that TIFFANY did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, TIFFANY did not pay other aggrieved employees at the correct rate of pay for premiums because TIFFANY failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, TIFFANY failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Shareef 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. TIFFANY has not provided Ms. Shareef 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 wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 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, TIFFANY has knowingly and intentionally provided Ms. Shareef and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, TIFFANY issued uniform wage statements to Ms. Shareef and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the 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, TIFFANY violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

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

Third, and separate from these violations, TIFFANY issued uniform wage statements to Ms. Shareef and other aggrieved employees that failed to correctly list the name of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. Ms. Shareef's and other aggrieved employees' wage statements incorrectly list the employer as "Tiffany and Company, US Sales," but, according to the California Secretary of State's website, there is no such entity by that name. However, a similarly named entity, "TIFFANY AND COMPANY U.S. SALES, LLC," is listed on the California Secretary of State's website with the same address. *See example paystub below.*

Tiffany and Company, US Sales

15 Sylvan Way
Parsippany, NJ 07054
973/254-8187

Pay Group:	TRL-TRL/TRC - Biweekly Lag	Business Unit:	NAREG
Process Begin Date:	11/29/2020	Advice #:	[REDACTED]
Process End Date:	12/12/2020	Advice Date:	12/18/2020

La Tasha Shareef [REDACTED]	EmplID:	[REDACTED]	TAX DATA:	Federal	CA State
	Dept:	00084412-South Coast Retail	Marital Status:	[REDACTED]	
	Location:	Costa Mesa Retail	Allowances:	[REDACTED]	
	Regular Base Rate:	\$18.00 Hourly	Addl. Pct.:		
			Addl. Amt.:		
HOURS AND EARNINGS			TAXES		

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 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), TIFFANY willfully failed to maintain accurate payroll records for Ms. Shareef 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, TIFFANY failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Ms. Shareef and other aggrieved employees, in violation of section 1198. As stated, TIFFANY engaged in a company-wide practice and/or policy of falsifying Ms. Shareef’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 Ms. Shareef and other aggrieved employees. Furthermore, in light of TIFFANY’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, TIFFANY kept no records of meal start and end times for second meal periods.

Because TIFFANY failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Shareef and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Ms. Shareef and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

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

Ms. Shareef and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

On information and belief, TIFFANY has a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. Additionally, TIFFANY willfully failed to pay Ms. Shareef and other aggrieved employees who are no longer employed by TIFFANY all their earned wages, including, but not limited to, overtime wages, minimum wages, and meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving TIFFANY's employ in violation of California Labor Code sections 201, 202, and 203.

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

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

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

During the relevant time period, TIFFANY implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo mandatory drug testing and/or physical examinations, but required them to do so at their own expense. As stated, TIFFANY had a company-wide policy requiring that other aggrieved employees travel to a specified medical facility on their own time and use their own means of transportation to undergo drug testing and/or physical examinations. At all times, TIFFANY was in control of scheduling the date and time for the testing

and/or examinations, selecting the provider/facility where the testing and/or examinations were to take place, and determining the scope of the testing and/or examinations.

TIFFANY gave Ms. Shareef and other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and Ms. Shareef and other aggrieved employees underwent the testing and/or examinations for the sole benefit of TIFFANY. Ms. Shareef and other aggrieved employees were required to travel in their own personal vehicles or obtain alternate transportation and spend time undergoing TIFFANY's mandatory drug testing and/or physical examinations. For example, Ms. Shareef followed TIFFANY's instructions, traveled approximately 20 miles roundtrip (for approximately 20 minutes total), in her personal vehicle to and from a designated clinic in Anaheim, and spent 20 minutes waiting and undergoing the requisite testing.

However, TIFFANY did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities, for the time they spent undergoing the drug testing and/or physical examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. TIFFANY's policy and/or practice of not paying for all costs other aggrieved employees incurred obtaining mandatory drug testing and/or physical examinations is in violation of California Labor Code section 222.5.

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

Violation of California Labor Code § 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.*

TIFFANY's California retail stores are generally similar in their layout and design and there was, and continues to be, space at the store entrances and/or behind cash wraps/jewelry counters to allow for the presence and use of a seat or stool by Ms. Shareef and other aggrieved employees (with

reasonable or no modification to these work areas) during the performance of their work duties. TIFFANY could provide Ms. Shareef and other aggrieved employees with a seat or stool at its store entrances and/or cash wraps/jewelry counters, but instead denies employees seating and forces Ms. Shareef and other aggrieved employees to stand throughout the day.

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

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

Ms. Shareef and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring TIFFANY 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(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.*

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

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

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

Ms. Shareef and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring TIFFANY 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, TIFFANY’s California retail stores are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Ms. Shareef and other aggrieved employees during lulls in operation. TIFFANY could provide Ms. Shareef and other aggrieved employees with a seat or stool in its work areas, but instead denies employees seating and forces Ms. Shareef and other aggrieved employees to stand throughout the day.

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

As a result of TIFFANY’s company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, and Ms. Shareef and other aggrieved employees were forced to stand during shifts and denied seats. TIFFANY’s failure to provide suitable seating to Ms. Shareef and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 7-2001, Section 14(B).

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

During the relevant time period, TIFFANY had a company-wide policy of requiring Ms. Shareef and other aggrieved employees to utilize their own personal cellular phones and cellular data to carry out their job duties, but TIFFANY failed to fully reimburse them for the costs of their work-related cellular phone expenses. Ms. Shareef and other aggrieved employees were required to use their personal cellular phones to complete their work-related tasks, such as communicating with colleagues at other store locations about workload and inventory or communicating with managers about clients, store events, or customer orders. Other aggrieved employees were also required to use their personal cellular phones to post about store promotions on their social media accounts. Although TIFFANY required Ms. Shareef and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, TIFFANY failed to fully reimburse them for this cost.

Additionally, as stated, TIFFANY had a company-wide policy of requiring Ms. Shareef and other aggrieved employees to travel to medical facilities on their own time and using their personal vehicles or alternate transportation to obtain mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. At all times, TIFFANY was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. Although TIFFANY required Ms. Shareef and other aggrieved employees to use their own vehicles or obtain alternate transportation to undergo drug testing and/or physical examinations, TIFFANY never reimbursed them for their travel expenses.

TIFFANY could have provided Ms. Shareef 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. Or, TIFFANY could have fully reimbursed employees for the costs of their cellular phone usage, mileage, and travel expenses. Instead, TIFFANY passed these operating costs off onto Ms. Shareef and other aggrieved employees. At all relevant times, Ms. Shareef did not earn at least two (2) times the minimum wage.

Thus, TIFFANY had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. Shareef and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

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.” TIFFANY, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Shareef’s and other aggrieved employees’ rights by violating various sections of the

California Labor Code.

Accordingly, Ms. Shareef seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Shareef, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against TIFFANY for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Ms. Shareef 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:

Molly DeSario
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4167

Best Regards,


Molly DeSario

Copy: TIFFANY AND COMPANY U.S. SALES, LLC (via U.S. Certified Mail); TIFFANY AND COMPANY (via U.S. Certified Mail); [CC opposing counsel]

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

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15 SYLVAN WAY
PARSIPPANY NJ 07054



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| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
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Century Park East, Suite 1000
Los Angeles, CA. 90067



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TIFFANY AND COMPANY U.S. SALES, LLC
200 FIFTH AVENUE
NEW YORK NY 10010

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200 FIFTH AVE
NEW YORK, NY 10010



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

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TIFFANY AND COMPANY
15 SYLVAN WAY
PARSIPPANY NJ 07054



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PARIS, FRANCE, NJ 07654



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☐ Addressee

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TIFFANY & CO. U.S. JAMES
15 SYLVAN WAY
PARLIPPANY, NJ 07054



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7021 1970 0000 2660 0771

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

CWIDIG

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D. Is delivery address different from item 1? ☐ Yes
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