

Electronically FILED by Superior Court of California, County of Los Angeles on 12/28/2020 08:50 PM Sherri R. Carter, Executive Officer/Clerk of Court, by M. Barel, Deputy Clerk

Mark A. Ozzello (SBN 116595)
 Mark.Ozzello@capstonelawyers.com
 Brandon K. Brouillette (SBN 273156)
 Brandon.Brouillette@capstonelawyers.com
 Joseph Hakakian (SBN 323011)
 Joseph.Hakakian@capstonelawyers.com
 Capstone Law APC
 1875 Century Park East, Suite 1000
 Los Angeles, California 90067
 Telephone: (310) 556-4811
 Facsimile: (310) 943-0396

Attorneys for Plaintiffs Liliana Guardado
 and Raul Torres

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

LILIANA GUARDADO and RAUL
 TORRES, as aggrieved employees pursuant
 to the Private Attorneys General Act
 ("PAGA"), on behalf of the State of
 California and other aggrieved employees,

Plaintiffs,

vs.

IMOBILE OF CA LLC, a California limited
 liability company; IMOBILE USA LLC, a
 New York limited liability company;
 IMOBILE LLC, a New York limited
 liability company; IMOBILE EVOLUTION
 LLC, a New York limited liability company;
 IMOBILE OF ANTELOPE VALLEY
 MALL CA, LLC, a California limited
 liability company; IMOBILE OF INLAND
 CENTER CA, LLC, a California limited
 liability company; IMOBILE OF
 LAKEWOOD MALL CA, LLC, a
 California limited liability company;
 IMOBILE OF LOMPOC CA, LLC, a
 California limited liability company;
 IMOBILE OF MISSION VALLEY MALL
 CA, LLC, a California limited liability
 company; IMOBILE OF MONTCLAIR
 PLAZA CA, LLC, a California limited
 liability company; IMOBILE OF
 MONTEBELLO MALL CA, LLC, a
 California limited liability company;
 IMOBILE OF MORENO VALLEY MALL

Case No.: **20STCV49426**

**COMPLAINT – PAGA ENFORCEMENT
 ACTION**

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

Jury Trial Demanded

CA, LLC, a California limited liability company; IMOBILE OF ONTARIO MILLS CA 2, LLC, a California limited liability company; IMOBILE OF PANORAMA CA, LLC, a California limited liability company; IMOBILE OF PUENTE HILLS CA, LLC, a California limited liability company; IMOBILE OF TEMECULA MALL CA, LLC, a California limited liability company; IMOBILE OF VICTOR VALLEY CA, LLC, a California limited liability company; IMOBILE OF CA BALBOA, INC., a California corporation; IMOBILE OF CA CHINO INC., a California corporation; IMOBILE OF CA CHINO 2, INC., a California corporation; IMOBILE OF CA HEMET INC., a California corporation; IMOBILE OF CA LA CANADA INC., a California corporation; IMOBILE OF CA LANCASTER INC., a California corporation; IMOBILE OF CA MAYWOOD, INC., a California corporation; IMOBILE OF CA MELROSE L.A. INC., a California corporation; IMOBILE OF CA MERCADO, INC., a California corporation; IMOBILE OF CA MT. VERNON, INC., a California corporation; IMOBILE OF CA NATIONAL CITY, INC., a California corporation; IMOBILE OF CA POMONA, INC., a California corporation; IMOBILE OF CA SAN DIMAS INC., a California corporation; IMOBILE OF CA SANTA MARIA INC., a California corporation; IMOBILE OF CA SUNSET L.A. INC., a California corporation; IMOBILE OF CA TRACY INC., a California corporation; IMOBILE OF CA VALLEY PLAZA, INC., a California corporation; IMOBILE OF CA WEST COVINA, INC., a California corporation; IMOBILE OF CA WESTMINSTER INC., a California corporation; and DOES 1 through 10, inclusive,

Defendants.

1 Plaintiffs Liliana Guardado and Raul Torres, as aggrieved employees and on behalf of
2 the State of California and all other aggrieved employees, allege as follows:

3 **JURISDICTION AND VENUE**

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698 *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiffs, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations
9 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notices to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on October 22, 2020, until judgment (“non-party Aggrieved
14 Employees”). Plaintiffs’ respective individual share of civil penalties sought in this action
15 does not exceed \$75,000.

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

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

1 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

2 4. Venue is proper in this Court, because Defendants employ persons in this
3 county, and employed Plaintiff Guardado in this county, and thus a substantial portion of the
4 transactions and occurrences related to this action occurred in this county.

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

9 **THE PARTIES**

10 6. Plaintiff LILIANA GUARDADO is a resident of Reseda, in Los Angeles
11 County, California. Defendants employed Plaintiff Guardado as an hourly paid, non-exempt
12 Salesperson/Customer Service Representative from approximately February, 2020 to April,
13 2020. Plaintiff Guardado worked for Defendants at their then-Sprint retail store in
14 Northridge, California, located at 9301 Tampa Avenue. During her employment, Plaintiff
15 Guardado typically worked six (6) hours or more per day and five (5) days or more per week.
16 At the time Plaintiff Guardado’s employment with Defendants ended, she earned
17 approximately \$14.25 per hour, plus commissions and bonuses. Her job duties included,
18 without limitation, communicating with clients and conducting sales, taking inventory, and
19 maintaining the store/kiosk premises.

20 7. Plaintiff RAUL TORRES is a resident of Santa Maria, in Santa Barbara
21 County, California. Defendants employed Plaintiff Torres as an hourly paid, non-exempt
22 Customer Service Representative from approximately November, 2016 to November, 2019.
23 Plaintiff worked for Defendants at their Sprint retail store in Santa Maria, California, located
24 at 2210 S. Bradley Road. During his employment, Plaintiff typically worked eight (8) hours
25 or more per day and five (5) to six (6) days per week. At the time Plaintiff Torres’s
26 employment with Defendants ended, he earned approximately \$12.75 per hour, plus
27 commissions and bonuses. His job duties included, without limitation, communicating with
28 clients and conducting sales, preparing sales reports, and maintaining the store premises.

1 8. On information and belief, Defendants required some employees, including
2 Plaintiffs, to execute a dispute resolution policy and/or arbitration agreement at the time of
3 their hire or during their employment. On further information and belief, Defendants' dispute
4 resolution policy and/or arbitration agreement was and is both procedurally and substantively
5 unconscionable. Specifically, Defendants presented new hires with an Arbitration Agreement
6 during the onboarding process, which had to be reviewed and signed immediately. In fact,
7 upon information and belief, the Arbitration Agreement was one of several documents
8 presented to new employees for signature during the orientation process, including Social
9 Networking Policy, iMobile Internet and IT Equipment Policy, and Employee Handbook,
10 among other documents. Also, employees did not have a meaningful opportunity to negotiate
11 the terms of the Arbitration Agreement. Rather, it was provided to Defendants' employees for
12 them to sign on a take-it or leave-it basis at the time they were hired, along with other on-
13 boarding documents. Further, Defendants did not set forth in the agreement or otherwise
14 provide employees with the rules which will govern the arbitration, instead forcing employees
15 to seek this information out on their own.

16 9. IMOBILE OF CA LLC was and is, upon information and belief, a California
17 limited liability company, and at all times hereinafter mentioned, an employer whose
18 employees are engaged throughout this county, the State of California, or the various states of
19 the United States of America.

20 10. IMOBILE USA LLC was and is, upon information and belief, a New York
21 limited liability company, and at all times hereinafter mentioned, an employer whose
22 employees are engaged throughout this county, the State of California, or the various states of
23 the United States of America.

24 11. IMOBILE LLC was and is, upon information and belief, a New York limited
25 liability company, and at all times hereinafter mentioned, an employer whose employees are
26 engaged throughout this county, the State of California, or the various states of the United
27 States of America.

28 12. IMOBILE EVOLUTION LLC was and is, upon information and belief, a New

York limited liability company, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California, or the various states of the United States of America.

13. IMOBILE OF ANTELOPE VALLEY MALL CA, LLC was and is, upon information and belief, a California limited liability company, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California, or the various states of the United States of America.

14. IMOBILE OF INLAND CENTER CA, LLC was and is, upon information and belief, a California limited liability company, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California, or the various states of the United States of America.

15. IMOBILE OF LAKEWOOD MALL CA, LLC was and is, upon information and belief, a California limited liability company, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California, or the various states of the United States of America.

16. IMOBILE OF LOMPOC CA, LLC was and is, upon information and belief, a California limited liability company, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California, or the various states of the United States of America.

17. IMOBILE OF MISSION VALLEY MALL CA, LLC was and is, upon information and belief, a California limited liability company, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California, or the various states of the United States of America.

18. IMOBILE OF MONTCLAIR PLAZA CA, LLC was and is, upon information and belief, a California limited liability company, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California, or the various states of the United States of America.

19. IMOBILE OF MONTEBELLO MALL CA, LLC was and is, upon information

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

4 20. IMOBILE OF MORENO VALLEY MALL CA, LLC was and is, upon
5 information and belief, a California limited liability company, and at all times hereinafter
6 mentioned, an employer whose employees are engaged throughout this county, the State of
7 California, or the various states of the United States of America.

8 21. IMOBILE OF ONTARIO MILLS CA 2, LLC was and is, upon information and
9 belief, a California limited liability company, and at all times hereinafter mentioned, an
10 employer whose employees are engaged throughout this county, the State of California, or the
11 various states of the United States of America.

12 22. IMOBILE OF PANORAMA CA, LLC was and is, upon information and belief,
13 a California limited liability company, and at all times hereinafter mentioned, an employer
14 whose employees are engaged throughout this county, the State of California, or the various
15 states of the United States of America.

16 23. IMOBILE OF PUENTE HILLS CA, LLC was and is, upon information and
17 belief, a California limited liability company, and at all times hereinafter mentioned, an
18 employer whose employees are engaged throughout this county, the State of California, or the
19 various states of the United States of America.

20 24. IMOBILE OF TEMECULA MALL CA, LLC was and is, upon information and
21 belief, a California limited liability company, and at all times hereinafter mentioned, an
22 employer whose employees are engaged throughout this county, the State of California, or the
23 various states of the United States of America.

24 25. IMOBILE OF VICTOR VALLEY CA, LLC was and is, upon information and
25 belief, a California limited liability company, and at all times hereinafter mentioned, an
26 employer whose employees are engaged throughout this county, the State of California, or the
27 various states of the United States of America.

28 26. IMOBILE OF CA BALBOA, INC. was and is, upon information and belief, a

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

4 27. IMOBILE OF CA CHINO INC. was and is, upon information and belief, a
5 California corporation, and at all times hereinafter mentioned, an employer whose employees
6 are engaged throughout this county, the State of California, or the various states of the United
7 States of America.

8 28. IMOBILE OF CA CHINO 2, INC. was and is, upon information and belief, a
9 California corporation, and at all times hereinafter mentioned, an employer whose employees
10 are engaged throughout this county, the State of California, or the various states of the United
11 States of America.

12 29. IMOBILE OF CA HEMET INC. was and is, upon information and belief, a
13 California corporation, and at all times hereinafter mentioned, an employer whose employees
14 are engaged throughout this county, the State of California, or the various states of the United
15 States of America.

16 30. IMOBILE OF CA LA CANADA INC. was and is, upon information and belief,
17 a California corporation, and at all times hereinafter mentioned, an employer whose
18 employees are engaged throughout this county, the State of California, or the various states of
19 the United States of America.

20 31. IMOBILE OF CA LANCASTER INC. was and is, upon information and belief,
21 a California corporation, and at all times hereinafter mentioned, an employer whose
22 employees are engaged throughout this county, the State of California, or the various states of
23 the United States of America.

24 32. IMOBILE OF CA MAYWOOD, INC. was and is, upon information and belief,
25 a California corporation, and at all times hereinafter mentioned, an employer whose
26 employees are engaged throughout this county, the State of California, or the various states of
27 the United States of America.

28 33. IMOBILE OF CA MELROSE L.A. INC. was and is, upon information and

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

4 34. IMOBILE OF CA MERCADO, INC. was and is, upon information and belief, a
5 California corporation, and at all times hereinafter mentioned, an employer whose employees
6 are engaged throughout this county, the State of California, or the various states of the United
7 States of America.

8 35. IMOBILE OF CA MT. VERNON, INC. was and is, upon information and
9 belief, a California corporation, and at all times hereinafter mentioned, an employer whose
10 employees are engaged throughout this county, the State of California, or the various states of
11 the United States of America.

12 36. IMOBILE OF CA NATIONAL CITY, INC. was and is, upon information and
13 belief, a California corporation, and at all times hereinafter mentioned, an employer whose
14 employees are engaged throughout this county, the State of California, or the various states of
15 the United States of America.

16 37. IMOBILE OF CA POMONA, INC. was and is, upon information and belief, a
17 California corporation, and at all times hereinafter mentioned, an employer whose employees
18 are engaged throughout this county, the State of California, or the various states of the United
19 States of America.

20 38. IMOBILE OF CA SAN DIMAS INC INC. was and is, upon information and
21 belief, a California corporation, and at all times hereinafter mentioned, an employer whose
22 employees are engaged throughout this county, the State of California, or the various states of
23 the United States of America.

24 39. IMOBILE OF CA SANTA MARIA INC. was and is, upon information and
25 belief, a California corporation, and at all times hereinafter mentioned, an employer whose
26 employees are engaged throughout this county, the State of California, or the various states of
27 the United States of America.

28 40. IMOBILE OF CA SUNSET L.A. INC. was and is, upon information and belief,

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

4 41. IMOBILE OF CA TRACY INC. was and is, upon information and belief, a
5 California corporation, and at all times hereinafter mentioned, an employer whose employees
6 are engaged throughout this county, the State of California, or the various states of the United
7 States of America.

8 42. IMOBILE OF CA VALLEY PLAZA, INC. was and is, upon information and
9 belief, a California corporation, and at all times hereinafter mentioned, an employer whose
10 employees are engaged throughout this county, the State of California, or the various states of
11 the United States of America.

12 43. IMOBILE OF CA WEST COVINA, INC. was and is, upon information and
13 belief, a California corporation, and at all times hereinafter mentioned, an employer whose
14 employees are engaged throughout this county, the State of California, or the various states of
15 the United States of America.

16 44. IMOBILE OF CA WESTMINSTER INC. was and is, upon information and
17 belief, a California corporation, and at all times hereinafter mentioned, an employer whose
18 employees are engaged throughout this county, the State of California, or the various states of
19 the United States of America.

20 45. Plaintiffs are unaware of the true names or capacities of the Defendants sued
21 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
22 amend the complaint and serve such fictitiously named Defendants once their names and
23 capacities become known.

24 46. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10
25 were the partners, agents, owners, or managers of IMOBILE OF CA LLC; IMOBILE USA
26 LLC; IMOBILE LLC; IMOBILE EVOLUTION LLC; IMOBILE OF ANTELOPE VALLEY
27 MALL CA, LLC; IMOBILE OF INLAND CENTER CA, LLC; IMOBILE OF LAKEWOOD
28 MALL CA, LLC; IMOBILE OF LOMPOC CA, LLC; IMOBILE OF MISSION VALLEY

1 MALL CA, LLC; IMOBILE OF MONTCLAIR PLAZA CA, LLC; IMOBILE OF
2 MONTEBELLO MALL CA, LLC; IMOBILE OF MORENO VALLEY MALL CA, LLC;
3 IMOBILE OF ONTARIO MILLS CA 2, LLC; IMOBILE OF PANORAMA CA, LLC;
4 IMOBILE OF PUENTE HILLS CA, LLC; IMOBILE OF TEMECULA MALL CA, LLC;
5 IMOBILE OF VICTOR VALLEY CA, LLC; IMOBILE OF CA BALBOA, INC.; IMOBILE
6 OF CA CHINO INC.; IMOBILE OF CA CHINO 2, INC.; IMOBILE OF CA HEMET INC.;
7 IMOBILE OF CA LA CANADA INC.; IMOBILE OF CA LANCASTER INC.; IMOBILE OF
8 CA MAYWOOD, INC.; IMOBILE OF CA MELROSE L.A. INC.; IMOBILE OF CA
9 MERCADO, INC.; IMOBILE OF CA MT. VERNON, INC.; IMOBILE OF CA NATIONAL
10 CITY, INC.; IMOBILE OF CA POMONA, INC.; IMOBILE OF CA SAN DIMAS INC.;
11 IMOBILE OF CA SANTA MARIA INC.; IMOBILE OF CA SUNSET L.A. INC.; IMOBILE
12 OF CA TRACY INC.; IMOBILE OF CA VALLEY PLAZA, INC.; IMOBILE OF CA WEST
13 COVINA, INC.; and/or IMOBILE OF CA WESTMINSTER INC. (collectively, “Defendants”
14 or “IMOBILE”) at all relevant times.

15 47. Plaintiffs are informed and believe, and thereon allege, that each and all of the
16 acts and omissions alleged herein was performed by, or is attributable to, IMOBILE OF CA
17 LLC; IMOBILE USA LLC; IMOBILE LLC; IMOBILE EVOLUTION LLC; IMOBILE OF
18 ANTELOPE VALLEY MALL CA, LLC; IMOBILE OF INLAND CENTER CA, LLC;
19 IMOBILE OF LAKEWOOD MALL CA, LLC; IMOBILE OF LOMPOC CA, LLC;
20 IMOBILE OF MISSION VALLEY MALL CA, LLC; IMOBILE OF MONTCLAIR PLAZA
21 CA, LLC; IMOBILE OF MONTEBELLO MALL CA, LLC; IMOBILE OF MORENO
22 VALLEY MALL CA, LLC; IMOBILE OF ONTARIO MILLS CA 2, LLC; IMOBILE OF
23 PANORAMA CA, LLC; IMOBILE OF PUENTE HILLS CA, LLC; IMOBILE OF
24 TEMECULA MALL CA, LLC; IMOBILE OF VICTOR VALLEY CA, LLC; IMOBILE OF
25 CA BALBOA, INC.; IMOBILE OF CA CHINO INC.; IMOBILE OF CA CHINO 2, INC.;
26 IMOBILE OF CA HEMET INC.; IMOBILE OF CA LA CANADA INC.; IMOBILE OF CA
27 LANCASTER INC.; IMOBILE OF CA MAYWOOD, INC.; IMOBILE OF CA MELROSE
28 L.A. INC.; IMOBILE OF CA MERCADO, INC.; IMOBILE OF CA MT. VERNON, INC.;

1 IMOBILE OF CA NATIONAL CITY, INC.; IMOBILE OF CA POMONA, INC.; IMOBILE
2 OF CA SAN DIMAS INC.; IMOBILE OF CA SANTA MARIA INC.; IMOBILE OF CA
3 SUNSET L.A. INC.; IMOBILE OF CA TRACY INC.; IMOBILE OF CA VALLEY PLAZA,
4 INC.; IMOBILE OF CA WEST COVINA, INC.; IMOBILE OF CA WESTMINSTER INC.;
5 and/or DOES 1 through 10, each acting as the agent, employee, alter ego, and/or joint venturer
6 of, or working in concert with, each of the other co-Defendants and was acting within the
7 course and scope of such agency, employment, joint venture, or concerted activity with legal
8 authority to act on the others' behalf. The acts of any and all Defendants were in accordance
9 with, and represent, the official policy of Defendants.

10 48. At all relevant times, Defendants, and each of them, ratified each and every act
11 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
12 and abetted the acts and omissions of each and all the other Defendants in proximately causing
13 the damages herein alleged.

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

17 50. Under California law, Defendants are jointly and severally liable as employers
18 for the violations alleged herein because they have each exercised sufficient control over the
19 wages, hours, working conditions, and employment status of Plaintiffs and other non-party
20 Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiffs and other
21 non-party Aggrieved Employees, supervised and controlled their work schedule and/or
22 conditions of employment, determined their rate of pay, and maintained their employment
23 records. Defendants suffered or permitted Plaintiffs and other non-party Aggrieved
24 Employees to work and/or "engaged" Plaintiffs and other non-party Aggrieved Employees so
25 as to create a common-law employment relationship. As joint employers of Plaintiffs and
26 other non-party Aggrieved Employees, Defendants are jointly and severally liable for the civil
27 penalties available to Plaintiffs and other non-party Aggrieved Employees under the law.

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

1 times, Defendants, and each of them, have acted as joint employers with respect to Plaintiffs
2 and other non-party Aggrieved Employees because Defendants have:

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

21 52. Plaintiffs are informed and believe, and thereon allege, that at all relevant times
22 there has existed a unity of interest and ownership between Defendants such that any
23 individuality and separateness between the entities has ceased.

24 53. IMOBILE OF CA LLC; IMOBILE USA LLC; IMOBILE LLC; IMOBILE
25 EVOLUTION LLC; IMOBILE OF ANTELOPE VALLEY MALL CA, LLC; IMOBILE OF
26 INLAND CENTER CA, LLC; IMOBILE OF LAKEWOOD MALL CA, LLC; IMOBILE OF
27 LOMPOC CA, LLC; IMOBILE OF MISSION VALLEY MALL CA, LLC; IMOBILE OF
28 MONTCLAIR PLAZA CA, LLC; IMOBILE OF MONTEBELLO MALL CA, LLC;

1 IMOBILE OF MORENO VALLEY MALL CA, LLC; IMOBILE OF ONTARIO MILLS CA
2 2, LLC; IMOBILE OF PANORAMA CA, LLC; IMOBILE OF PUENTE HILLS CA, LLC;
3 IMOBILE OF TEMECULA MALL CA, LLC; IMOBILE OF VICTOR VALLEY CA, LLC;
4 IMOBILE OF CA BALBOA, INC.; IMOBILE OF CA CHINO INC.; IMOBILE OF CA
5 CHINO 2, INC.; IMOBILE OF CA HEMET INC.; IMOBILE OF CA LA CANADA INC.;
6 IMOBILE OF CA LANCASTER INC.; IMOBILE OF CA MAYWOOD, INC.; IMOBILE OF
7 CA MELROSE L.A. INC.; IMOBILE OF CA MERCADO, INC.; IMOBILE OF CA MT.
8 VERNON, INC.; IMOBILE OF CA NATIONAL CITY, INC.; IMOBILE OF CA POMONA,
9 INC.; IMOBILE OF CA SAN DIMAS INC.; IMOBILE OF CA SANTA MARIA INC.;
10 IMOBILE OF CA SUNSET L.A. INC.; IMOBILE OF CA TRACY INC.; IMOBILE OF CA
11 VALLEY PLAZA, INC.; IMOBILE OF CA WEST COVINA, INC.; IMOBILE OF CA
12 WESTMINSTER INC.; and DOES 1 through 10 are therefore alter egos of each other.

13 54. Adherence to the fiction of the separate existence of Defendants would permit
14 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
15 from liability for the wrongful acts committed by them under the name IMOBILE.

16 55. Plaintiffs further allege, upon information and belief, that Defendants
17 IMOBILE OF CA LLC; IMOBILE USA LLC; IMOBILE LLC; IMOBILE EVOLUTION
18 LLC; IMOBILE OF ANTELOPE VALLEY MALL CA, LLC; IMOBILE OF INLAND
19 CENTER CA, LLC; IMOBILE OF LAKEWOOD MALL CA, LLC; IMOBILE OF LOMPOC
20 CA, LLC; IMOBILE OF MISSION VALLEY MALL CA, LLC; IMOBILE OF
21 MONTCLAIR PLAZA CA, LLC; IMOBILE OF MONTEBELLO MALL CA, LLC;
22 IMOBILE OF MORENO VALLEY MALL CA, LLC; IMOBILE OF ONTARIO MILLS CA
23 2, LLC; IMOBILE OF PANORAMA CA, LLC; IMOBILE OF PUENTE HILLS CA, LLC;
24 IMOBILE OF TEMECULA MALL CA, LLC; IMOBILE OF VICTOR VALLEY CA, LLC;
25 IMOBILE OF CA BALBOA, INC.; IMOBILE OF CA CHINO INC.; IMOBILE OF CA
26 CHINO 2, INC.; IMOBILE OF CA HEMET INC.; IMOBILE OF CA LA CANADA INC.;
27 IMOBILE OF CA LANCASTER INC.; IMOBILE OF CA MAYWOOD, INC.; IMOBILE OF
28 CA MELROSE L.A. INC.; IMOBILE OF CA MERCADO, INC.; IMOBILE OF CA MT.

1 VERNON, INC.; IMOBILE OF CA NATIONAL CITY, INC.; IMOBILE OF CA POMONA,
2 INC.; IMOBILE OF CA SAN DIMAS INC.; IMOBILE OF CA SANTA MARIA INC.;
3 IMOBILE OF CA SUNSET L.A. INC.; IMOBILE OF CA TRACY INC.; IMOBILE OF CA
4 VALLEY PLAZA, INC.; IMOBILE OF CA WEST COVINA, INC.; and IMOBILE OF CA
5 WESTMINSTER INC. are alter egos of each other for the following reasons:

6 (a) On the California Secretary of State's website
7 (<https://businesssearch.sos.ca.gov/>), IMOBILE OF CA LLC; IMOBILE
8 OF CA BALBOA, INC.; IMOBILE OF CA CHINO INC.; IMOBILE
9 OF CA HEMET INC.; IMOBILE OF CA LANCASTER INC.;
10 IMOBILE OF CA MAYWOOD, INC.; IMOBILE OF CA MELROSE
11 L.A. INC.; IMOBILE OF CA MERCADO, INC.; IMOBILE OF CA
12 MT. VERNON, INC.; IMOBILE OF CA NATIONAL CITY, INC.;
13 IMOBILE OF CA POMONA, INC.; IMOBILE OF CA SAN DIMAS
14 INC.; IMOBILE OF CA SANTA MARIA INC.; IMOBILE OF CA
15 SUNSET L.A. INC.; IMOBILE OF CA TRACY INC.; IMOBILE OF
16 CA VALLEY PLAZA, INC.; IMOBILE OF CA WEST COVINA,
17 INC.; and IMOBILE OF CA WESTMINSTER INC. have the same
18 mailing address, which is "575 Underhill Blvd. Ste 205, Syosset, New
19 York 11791";

20 (b) On California Secretary of State's website and the New York Secretary
21 of State's website
22 ([https://appext20.dos.ny.gov/corp_public/corptest.entity_search_entr](https://appext20.dos.ny.gov/corp_public/corptest.entity_search_entry)
23 [y](https://appext20.dos.ny.gov/corp_public/corptest.entity_search_entry)), IMOBILE USA LLC; IMOBILE EVOLUTION LLC; IMOBILE OF
24 ANTELOPE VALLEY MALL CA, LLC; IMOBILE OF INLAND
25 CENTER CA, LLC; IMOBILE OF LAKEWOOD MALL CA, LLC;
26 IMOBILE OF LOMPOC CA, LLC; IMOBILE OF MISSION VALLEY
27 MALL CA, LLC; IMOBILE OF MONTCLAIR PLAZA CA, LLC;
28 IMOBILE OF MONTEBELLO MALL CA, LLC; IMOBILE OF

1 MORENO VALLEY MALL CA, LLC; IMOBILE OF ONTARIO
2 MILLS CA 2, LLC; IMOBILE OF PANORAMA CA, LLC; IMOBILE
3 OF PUENTE HILLS CA, LLC; IMOBILE OF TEMECULA MALL
4 CA, LLC; and IMOBILE OF VICTOR VALLEY CA, LLC; have the
5 same mailing address, which is “206 Terminal Drive, Plainview, New
6 York 11803”;

7 (c) On the California Secretary of State’s website and the New York
8 Secretary of State’s website, IMOBILE LLC; IMOBILE OF CA
9 CHINO 2, INC.; and IMOBILE OF CA LA CANADA INC. have the
10 same mailing address and/or entity address, which is “207 Terminal
11 Drive, Plainview, New York 11803”;

12 (d) According to their most recent “Statement of Information” forms filed
13 with the California Secretary of State, IMOBILE OF CA LLC;
14 IMOBILE OF CA BALBOA, INC.; IMOBILE OF CA CHINO INC.;
15 IMOBILE OF CA CHINO 2, INC.; IMOBILE OF CA HEMET INC.;
16 IMOBILE OF CA LA CANADA INC.; IMOBILE OF CA
17 LANCASTER INC.; IMOBILE OF CA MAYWOOD, INC.; IMOBILE
18 OF CA MELROSE L.A. INC.; IMOBILE OF CA MERCADO, INC.;
19 IMOBILE OF CA MT. VERNON, INC.; IMOBILE OF CA
20 NATIONAL CITY, INC.; IMOBILE OF CA POMONA, INC.;
21 IMOBILE OF CA SAN DIMAS INC.; IMOBILE OF CA SANTA
22 MARIA INC.; IMOBILE OF CA SUNSET L.A. INC.; IMOBILE OF
23 CA TRACY INC.; IMOBILE OF CA VALLEY PLAZA, INC.;
24 IMOBILE OF CA WEST COVINA, INC.; and IMOBILE OF CA
25 WESTMINSTER INC. share the same officers and/or managers,
26 including, but not limited to, Sarabjit Lamba and Chaitanya Krishna;

27 (e) According to their most recent “Statement of Information” forms filed
28 with the California Secretary of State, IMOBILE OF ANTELOPE

1 VALLEY MALL CA, LLC; IMOBILE OF INLAND CENTER CA,
2 LLC; IMOBILE OF LAKEWOOD MALL CA, LLC; IMOBILE OF
3 LOMPOC CA, LLC; IMOBILE OF MISSION VALLEY MALL CA,
4 LLC; IMOBILE OF MONTCLAIR PLAZA CA, LLC; IMOBILE OF
5 MONTEBELLO MALL CA, LLC; IMOBILE OF MORENO VALLEY
6 MALL CA, LLC; IMOBILE OF ONTARIO MILLS CA 2, LLC;
7 IMOBILE OF PANORAMA CA, LLC; IMOBILE OF PUENTE HILLS
8 CA, LLC; IMOBILE OF TEMECULA MALL CA, LLC; and IMOBILE
9 OF VICTOR VALLEY CA, LLC share the same managers, including,
10 but not limited to, IMOBILE EVOLUTION LLC and Chaitanya
11 Krishna;

12 (f) On information and belief, IMOBILE OF CA LLC; IMOBILE USA
13 LLC; IMOBILE LLC; IMOBILE EVOLUTION LLC; IMOBILE OF
14 CA BALBOA, INC.; IMOBILE OF CA CHINO INC.; IMOBILE OF
15 CA HEMET INC.; IMOBILE OF CA LANCASTER INC.; IMOBILE
16 OF CA MELROSE L.A. INC.; IMOBILE OF CA MERCADO, INC.;
17 IMOBILE OF CA MT. VERNON, INC.; IMOBILE OF CA
18 NATIONAL CITY, INC.; IMOBILE OF CA SAN DIMAS INC.;
19 IMOBILE OF CA SANTA MARIA INC.; IMOBILE OF CA SUNSET
20 L.A. INC.; IMOBILE OF CA TRACY INC.; IMOBILE OF CA
21 VALLEY PLAZA, INC.; and IMOBILE OF CA WESTMINSTER INC.
22 share the same agent for service of process, Sarabjit Lamba;

23 (g) On information and belief, IMOBILE OF ANTELOPE VALLEY
24 MALL CA, LLC; IMOBILE OF INLAND CENTER CA, LLC;
25 IMOBILE OF LAKEWOOD MALL CA, LLC; IMOBILE OF
26 LOMPOC CA, LLC; IMOBILE OF MISSION VALLEY MALL CA,
27 LLC; IMOBILE OF MONTCLAIR PLAZA CA, LLC; IMOBILE OF
28 MONTEBELLO MALL CA, LLC; IMOBILE OF MORENO VALLEY

1 MALL CA, LLC; IMOBILE OF ONTARIO MILLS CA 2, LLC;
2 IMOBILE OF PANORAMA CA, LLC; IMOBILE OF PUENTE HILLS
3 CA, LLC; IMOBILE OF TEMECULA MALL CA, LLC; IMOBILE OF
4 VICTOR VALLEY CA, LLC; IMOBILE OF CA CHINO 2, INC.;
5 IMOBILE OF CA LA CANADA INC.; IMOBILE OF CA
6 MAYWOOD, INC.; IMOBILE OF CA POMONA, INC.; and IMOBILE
7 OF CA WEST COVINA, INC.; share the same agent for service of
8 process, INCORPORATING SERVICES, LTD. (C2892002); and

9 (h) On information and belief, IMOBILE OF CA LLC; IMOBILE USA
10 LLC; IMOBILE LLC; IMOBILE EVOLUTION LLC; IMOBILE OF
11 ANTELOPE VALLEY MALL CA, LLC; IMOBILE OF INLAND
12 CENTER CA, LLC; IMOBILE OF LAKEWOOD MALL CA, LLC;
13 IMOBILE OF LOMPOC CA, LLC; IMOBILE OF MISSION VALLEY
14 MALL CA, LLC; IMOBILE OF MONTCLAIR PLAZA CA, LLC;
15 IMOBILE OF MONTEBELLO MALL CA, LLC; IMOBILE OF
16 MORENO VALLEY MALL CA, LLC; IMOBILE OF ONTARIO
17 MILLS CA 2, LLC; IMOBILE OF PANORAMA CA, LLC; IMOBILE
18 OF PUENTE HILLS CA, LLC; IMOBILE OF TEMECULA MALL
19 CA, LLC; IMOBILE OF VICTOR VALLEY CA, LLC; IMOBILE OF
20 CA BALBOA, INC.; IMOBILE OF CA CHINO INC.; IMOBILE OF
21 CA CHINO 2, INC.; IMOBILE OF CA HEMET INC.; IMOBILE OF
22 CA LA CANADA INC.; IMOBILE OF CA LANCASTER INC.;
23 IMOBILE OF CA MAYWOOD, INC.; IMOBILE OF CA MELROSE
24 L.A. INC.; IMOBILE OF CA MERCADO, INC.; IMOBILE OF CA
25 MT. VERNON, INC.; IMOBILE OF CA NATIONAL CITY, INC.;
26 IMOBILE OF CA POMONA, INC.; IMOBILE OF CA SAN DIMAS
27 INC.; IMOBILE OF CA SANTA MARIA INC.; IMOBILE OF CA
28 SUNSET L.A. INC.; IMOBILE OF CA TRACY INC.; IMOBILE OF

1 CA VALLEY PLAZA, INC.; IMOBILE OF CA WEST COVINA,
2 INC.; and IMOBILE OF CA WESTMINSTER INC. utilize the same
3 standardized employment forms and issue the same employment
4 policies.

5 **PAGA REPRESENTATIVE ALLEGATIONS**

6 56. Defendants are one of the largest authorized retailers of mobile devices and
7 cellular phone plans under the T-Mobile (formerly Sprint) brand. Defendants operate more
8 than 200 retail locations nationwide, including at least 33 retail locations in California. Upon
9 information and belief, Defendants maintain a single, centralized Human Resources (“HR”)
10 department at their corporate headquarters in Los Angeles, California; Plainview, New York;
11 or Syosset, New York, which is responsible for the recruiting and hiring of new employees,
12 and communicating and implementing Defendants’ company-wide policies, including
13 timekeeping policies and meal and rest period policies, to employees throughout California.

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

21 58. Upon information and belief, Defendants maintain a centralized Payroll
22 department at their corporate headquarters in Los Angeles, California; Plainview, New York;
23 or Syosset, New York, which processes payroll for all non-exempt, hourly paid employees
24 working for Defendants at their various locations and jobsites in California, including
25 Plaintiffs and other non-party Aggrieved Employees. Based upon information and belief,
26 Defendants issue the same formatted wage statements to all non-exempt, hourly paid
27 employees in California, irrespective of their work locations. Upon information and belief,
28 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.

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

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

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

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

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

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

65. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to meal periods in accordance with the Labor Code or payment of one (1) additional hour of pay

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

6 66. 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 Labor Code and applicable IWC Wage Order or payment
9 of one (1) additional hour of pay at their regular rates of compensation 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 compensation when they were not authorized and permitted to take a compliant rest period.

15 67. 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 68. 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 Labor Code and applicable IWC Wage Order, but willfully, knowingly,
23 and intentionally failed to do so.

24 69. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
25 should have known that they were required to comply with requests from Plaintiffs and other
26 non-party Aggrieved Employees to inspect or receive a copy of their wage records within 21
27 days in accordance with the Labor Code and applicable IWC Wage Order, but willfully,
28 knowingly, and intentionally failed to do so.

1 70. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
2 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
3 receive copies of instruments that they signed upon request. In violation of the California
4 Labor Code, Defendants denied Plaintiffs and other non-party Aggrieved Employees their
5 right to obtain copies of instruments that they signed.

6 71. 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 receive copies of their personnel records no later than 30 days from the date Defendants
9 receive a written request. In violation of the California Labor Code, Defendants denied
10 Plaintiffs and other non-party Aggrieved Employees their right to obtain copies of their
11 personnel records within the statutory time limits.

12 72. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
13 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
14 timely payment of all wages earned upon termination of employment. In violation of the
15 California Labor Code, Plaintiffs and other non-party Aggrieved Employees did not receive
16 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
17 meal and rest period premiums, and/or reporting time pay within permissible time periods.

18 73. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
19 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
20 timely payment of wages during their employment. In violation of the California Labor Code,
21 Plaintiffs and other non-party Aggrieved Employees did not receive payment of all wages,
22 including, but not limited to, overtime wages, minimum wages, meal and rest period
23 premiums, and/or reporting time pay within permissible time periods.

24 74. 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 receive itemized wage statements or separate written statements showing the amount of paid
27 sick leave available, or paid time off provided in lieu of sick leave. In violation of the
28 California Labor Code, Defendants failed to provide Plaintiffs and other non-party Aggrieved

1 Employees with written itemized wage statements or separate written statements showing this
2 information.

3 75. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
4 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
5 suitable seating and/or were entitled to sit when it did not interfere with the performance of
6 their duties and also have seats nearby to use during a lull in tasks that do require moving
7 about or standing.

8 76. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
9 should have known that Plaintiff Guardado and other non-party Aggrieved Employees were
10 entitled to be paid reporting time pay when they reported to work for their scheduled shift but
11 were put to work for less than half of the regular schedule. In violation of the California
12 Labor Code, Defendants did not pay Plaintiff Guardado and other non-party Aggrieved
13 Employees all reporting time pay due.

14 77. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
15 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
16 receive reimbursement for all business-related expenses and costs they incurred during the
17 course and scope of their employment and that they did not receive reimbursement of
18 applicable business-related expenses and costs incurred.

19 78. Plaintiffs are informed and believe, and thereon allege, that at all times herein
20 mentioned, Defendants knew or should have known that Defendants had a duty to provide
21 Plaintiffs and other non-party Aggrieved Employees with written notice of the material terms
22 of their employment with Defendants as required by the California Wage Theft Prevention
23 Act, but willfully, knowingly, and intentionally failed to do so.

24 79. Plaintiffs are informed and believe, and thereon allege, that at all times herein
25 mentioned, Defendants knew or should have known that they had a duty to compensate
26 Plaintiffs and other non-party Aggrieved Employees for all hours worked, and that Defendants
27 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
28 failed to do so, and falsely represented to Plaintiffs and other non-party Aggrieved Employees

1 that they were properly denied wages, all in order to increase Defendants' profits.

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

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

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

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

- 17 (a) The aggrieved employee shall give written notice by online filing
18 (hereinafter "Employee's Notice") to the LWDA and by certified mail
19 to the employer of the specific provisions of the California Labor Code
20 alleged to have been violated, including the facts and theories to support
21 the alleged violations.
- 22 (b) An aggrieved employee's notice filed with the LWDA pursuant to
23 2699.3(a) and any employer response to that notice shall be
24 accompanied by a filing fee of seventy-five dollars (\$75).
- 25 (c) The LWDA shall provide notice (hereinafter "LWDA Notice") to the
26 employer and the aggrieved employee by certified mail that it does not
27 intend to investigate the alleged violation within sixty (60) calendar
28 days of the postmark date of the Employee's Notice. Upon receipt of

1 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
2 five (65) calendar days of the postmark date of the Employee's Notice,
3 the aggrieved employee may commence a civil action pursuant to
4 California Labor Code section 2699 to recover civil penalties in addition
5 to any other penalties to which the employee may be entitled.

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

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

26 85. On October 22, 2020, Plaintiff Guardado provided written notice by online
27 filing to the LWDA and by certified mail to Defendants of the specific provisions of the
28 California Labor Code alleged to have been violated, including facts and theories to support

1 the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff
2 Guardado's written notice was accompanied with the applicable filing fee of seventy-five
3 dollars (\$75). The LWDA PAGA Administrator has confirmed receipt of Plaintiff
4 Guardado's written notice and assigned Plaintiff Guardado PAGA Case Number LWDA-CM-
5 810454-20. A true and correct copy of Plaintiff Guardado's written notice to the LWDA and
6 Defendants dated October 22, 2020, is attached hereto as "Exhibit 1."

7 86. On October 22, 2020, Plaintiff Torres provided written notice by online filing
8 to the LWDA and by certified mail to Defendants of the specific provisions of the California
9 Labor Code alleged to have been violated, including facts and theories to support the alleged
10 violations, in accordance with California Labor Code section 2699.3. Plaintiff Torres's
11 written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75).
12 The LWDA PAGA Administrator has confirmed receipt of Plaintiff Torres's written notice
13 and assigned Plaintiff Torres PAGA Case Number LWDA-CM-810452-20. A true and
14 correct copy of Plaintiff Torres's written notice to the LWDA and Defendants dated October
15 22, 2020, is attached hereto as "Exhibit 2."

16 87. As of the filing date of this complaint, over 65 days have passed since Plaintiffs
17 sent their initial LWDA Notices described above, and the LWDA has not responded that it
18 intends to investigate Plaintiffs' claims, and Defendants have not cured the violations.

19 88. Thus, Plaintiffs have satisfied the administrative prerequisites under California
20 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
21 violations of California Labor Code sections 201, 202, 203, 204, 226(a)-(c), 226.7, 246, 432,
22 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 1198.5, 2802, and 2810.5.

23 89. Labor Code section 558(a) provides "[a]ny employer or other person acting on
24 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
25 provision regulating hours and days of work in any order of the Industrial Welfare
26 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
27 dollars (\$50) for each underpaid employee for each pay period for which the employee was
28 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each

1 underpaid employee for each pay period for which the employee was underpaid. . . .” Labor
2 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
3 to any other civil or criminal penalty provided by law.” Plaintiffs, acting in the public interest
4 as private attorneys general, seek assessment and collection of civil penalties under Labor
5 Code section 558 for themselves, all other non-party Aggrieved Employees, and the State of
6 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198,
7 and the applicable IWC wage order. Plaintiffs, acting in the public interest as private
8 attorneys general, do not seek the recovery of unpaid wages under Labor Code section 558
9 from Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the
10 applicable IWC wage order.

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

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

18 92. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
19 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiffs, acting in the public interest as
20 private attorneys general, seek assessment and collection of civil penalties for themselves, all
21 other non-party Aggrieved Employees, and the State of California against Defendants for
22 violations of California Labor Code sections 201, 202, 203, 204, 226(a)-(c), 226.7, 246, 432,
23 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 1198.5, 2802, and 2810.5.

24 **FIRST CAUSE OF ACTION**

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

26 **(Against all Defendants)**

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

1 94. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiffs to recover
2 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
3 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 226(a),
4 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c)
5 permits aggrieved employees, including Plaintiffs, to recover civil penalties for violations of
6 those Labor Code sections not found in section 2699.5, including sections 226(b)-(c), 246,
7 432, 516, 1182.12, 1198.5, and 2810.5.

8 95. Defendants’ conduct, as alleged herein, violates numerous sections of the
9 California Labor Code, including, but not limited to, the following:

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

1 to Plaintiffs and other non-party Aggrieved Employees, as set forth
2 below;

3 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable
4 IWC wage order for failure to maintain payroll records as set forth
5 below;

6 (g) Violations of Labor Code sections 226(b)-(c), 432, 1198.5, and the
7 applicable IWC wage order for failure to produce copies or allow
8 inspection of Plaintiffs' and other non-party Aggrieved Employees' own
9 personnel and other employment records upon written request within the
10 statutory time limits, as set forth below;

11 (h) Violation of Labor Code section 204 for failure to pay all earned wages
12 during employment as set forth below;

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

15 (j) Violation of Labor Code section 246 for failure to provide written notice
16 of paid sick leave available, or paid time off, as set forth below;

17 (k) Violation of Labor Code section 1198 for failing to provide suitable
18 seating to Plaintiffs and other non-party Aggrieved Employees, as set
19 forth below;

20 (l) Violation of Labor Code section 1198 and the applicable IWC wage
21 order for failure to pay reporting time pay when Plaintiff Guardado and
22 other non-party Aggrieved Employees were put to work for less than
23 half of their regular scheduled shifts, as set forth below;

24 (m) Violation of Labor Code section 2802 for failure to reimburse Plaintiffs
25 and other non-party Aggrieved Employees for all business expenses
26 necessarily incurred, as set forth below; and

27 (n) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
28 provide written notice of information material to Plaintiffs' and other

1 non-party Aggrieved Employees' employment with Defendants, as set
2 forth below.

3 **FAILURE TO PAY OVERTIME**

4 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

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

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

14 98. Specifically, the applicable IWC Wage Order provides that Defendants are and
15 were required to pay Plaintiffs and other non-party Aggrieved Employees working more than
16 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
17 one-half (1½) for all hours worked in excess of eight (8) hours in a day or more than forty (40)
18 hours in a workweek.

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

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

1 in a day on the seventh (7th) day of work.

2 101. During the relevant time period, Defendants willfully failed to pay all overtime
3 wages owed to Plaintiffs and other non-party Aggrieved Employees. During the relevant time
4 period, Plaintiffs and other non-party Aggrieved Employees were not paid overtime premiums
5 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
6 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
7 not recorded.

8 102. First, during the relevant period, Defendants had a policy and/or practice of
9 discouraging and impeding Plaintiffs and other non-party Aggrieved Employees from
10 recording hours worked that were outside of their scheduled shifts in order to limit the amount
11 of overtime employees could accrue. On information and belief, this limitation on overtime
12 accrual was based on a company-wide policy of staffing store locations strictly based on the
13 labor hours or labor budget set by corporate. This policy of limiting overtime, coupled with
14 Defendants' policy and/or practice of assigning heavy workloads and sales quotas (*see infra*),
15 led Plaintiffs and other non-party Aggrieved Employees to work off-the-clock before and after
16 their scheduled shift times in order to complete their assigned tasks, such as conducting and
17 finalizing sales. Defendants discouraged and impeded Plaintiff Guardado and other non-party
18 Aggrieved Employees from recording hours worked that were outside of their scheduled
19 shifts, upon threat of discipline for incurring unapproved overtime hours. Thus, Defendants
20 failed to track this time spent working before and after scheduled shifts, and Plaintiff
21 Guardado and other non-party Aggrieved Employees received no or incomplete compensation
22 for this time. Alternatively, on information and belief, Defendants had a policy of improperly
23 adjusting Plaintiffs' and other non-party Aggrieved Employees' clock-in and clock-out
24 duration times in their timekeeping system. Defendants' policies resulted in the failure to
25 compensate Plaintiffs and other non-party Aggrieved Employees fully for all hours worked,
26 causing Plaintiffs and other non-party Aggrieved Employees to not be paid overtime wages
27 for all of the overtime hours they actually worked. Thus, Defendants failed to track this time
28 spent working before and after scheduled shifts, and Plaintiffs and other non-party Aggrieved

1 Employees received no or incomplete compensation for this time.

2 103. Moreover, in conjunction with their policy of limiting overtime accrual,
3 Defendants had, and continue to have, a company-wide policy and/or practice of requiring
4 employees to complete work-related tasks while off-the-clock. Defendants required Plaintiff
5 Guardado and other non-party Aggrieved Employees to perform work outside of their
6 scheduled shifts, such as completing online training modules from home, but did not
7 compensate them for all of this time. Also, as stated, Defendants required Plaintiff Guardado
8 and other non-party Aggrieved Employees report to work prior to their scheduled shifts, but
9 prevented them from clocking in until their scheduled shift start time; instead, Plaintiff
10 Guardado and other non-party Aggrieved Employees were required to walk around the store
11 area and solicit customers in order to conduct more sales. Additionally, as stated, Plaintiff
12 Guardado and other non-party Aggrieved Employees were instructed by Defendants'
13 management to finalize sales and clean the store premises after clocking out for their
14 scheduled shifts, but were not paid for this time.

15 104. Second, Defendants, on a company-wide basis, had, and continue to have, a
16 security policy requiring all employees to leave the store premises in pairs. Thus, after
17 clocking out at the end of their shifts, Plaintiff Torres and other non-party Aggrieved
18 Employees were required to wait for another employee to become available before they could
19 leave Defendants' premises. For example, once per week, Plaintiff Torres would clock out at
20 the end of his shift and wait for 45-60 minutes off-the-clock for his fellow employee to
21 finalize a sale, before he was permitted to exit the store. Furthermore, Defendants also
22 required other non-party Aggrieved Employees to undergo security checks at the end of their
23 shifts before leaving the store premises. At the end of their shifts, other non-party Aggrieved
24 Employees were required to wait off-the-clock for several minutes in order to undergo a
25 security check conducted by a managerial employee, before they could leave. As a result of
26 these security and loss prevention policies and/or practices, Plaintiff Torres and other non-
27 party Aggrieved Employees were subject to Defendants' control after they had completed
28 their shifts, but were not compensated for this time.

1 105. Third, other non-party Aggrieved Employees were required to work off-the-
2 clock traveling to attend mandatory training or meetings. For example, other non-party
3 Aggrieved Employees were required to drive in their personal vehicles for over four (4) hours
4 round trip to and from mandatory customer service training in Bakersfield, California.
5 Although Defendants required other non-party Aggrieved Employees to travel to and attend
6 off-site training or meetings, other non-party Aggrieved Employees were not paid for the time
7 they spent traveling to and from this training and/or meetings.

8 106. Fourth, during the relevant period, Defendants had a company-wide “on-call”
9 policy, whereby they scheduled Plaintiff Guardado and other non-party Aggrieved Employees
10 to work “on-call,” or on standby. These “on-call” shifts worked to Defendants’ benefit and to
11 the detriment of Plaintiff Guardado and other non-party Aggrieved Employees. By utilizing
12 “on-call” shifts, Defendants received the benefit of being able to maximize revenue by having
13 a standby workforce they could choose to utilize or not, depending on store traffic and sales
14 metrics, without incurring the cost of compensating employees who show up to work and
15 work a full or partial scheduled day’s work. When scheduled for a “on-call” or standby shift,
16 Plaintiff Guardado and other non-party Aggrieved Employees were required to wait for their
17 store location to call them two (2) hours before their scheduled standby shift to see if they
18 were required to come in and work. Plaintiff Guardado and other non-party Aggrieved
19 Employees were engaged to wait and could not engage in personal activities as they had to be
20 ready to travel to their respective store locations on short notice and work their standby shift.
21 When scheduled to be on-call for a standby shift, Plaintiff Guardado and other non-party
22 Aggrieved Employees were controlled by Defendants because they were forced to put their
23 lives on hold and could not use that time freely for their own purposes. For example, Plaintiff
24 Guardado refrained from making plans altogether while “on-call” for a standby shift because
25 she knew that she had to drop whatever she was doing at a moment’s notice if she was
26 instructed to work her standby shift. Defendants did not pay Plaintiff Guardado and other
27 non-party Aggrieved Employees for the time they spent waiting to hear whether they needed
28 to report to their store for work on days they ultimately were not called in.

107. Fifth, on information and belief, Defendants had, and continue to have, a company-wide policy and/or practice of strictly staffing their locations based on the labor hours allocated by corporate while assigning heavy workloads and sales quotas, which has resulted in, and continues to result in, chronic understaffing and a lack of adequate meal period coverage. As a result of this lack of meal period coverage, Plaintiffs and other non-party Aggrieved Employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Plaintiff Guardado was often only scheduled to work with one (1) other employee and was forced to forego her meal periods due to the lack of coverage resulting from Defendants' understaffing practices. As another example, Plaintiff Torres was forced to forego his meal periods 3-4 times per month in order to meet the individual and store sales quotas Defendants imposed on him. In addition, Defendants' management interrupted Plaintiff Torres's meal periods and instructed him to return early from meal periods once per week to assist customers, time for which he was not paid. Also, Defendants, on a company-wide basis, failed to schedule meal periods, which further exacerbated this lack of meal period coverage.

108. Furthermore, on information and belief, because Defendants frowned upon employees accruing meal period penalties, Defendants pressured Plaintiffs other non-party Aggrieved Employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that Defendants would otherwise owe. Thus, Plaintiffs and other non-party Aggrieved Employees performed work during meal periods for which they were not paid. Additionally, due to the lack of meal period coverage, Defendants required Plaintiff Guardado and other non-party Aggrieved Employees to remain on the premises for their meal periods. Because Plaintiff Guardado and other non-party Aggrieved Employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes. Thus, Defendants effectively maintained control over Plaintiff Guardado and other non-party Aggrieved Employees during meal periods.

109. Sixth, Defendants had, and continue to have, a company-wide policy and/or practice of requiring employees to use their personal cellular phones to check for promotions and communicate with supervisors and/or customers at all times, including during unpaid meal periods, before and after shifts, and on days off. Defendants expected that Plaintiffs and other non-party Aggrieved Employees promptly respond to calls, text messages, and emails on their cellular phones at all times, to discuss work-related matters or conduct sales. For example, Plaintiff Guardado spent time off-the-clock responding to questions from customers, in order to meet her individual and store sales quotas, or handling customer service inquiries. Similarly, Plaintiff Torres spent approximately 15-20 minutes per week off-the-clock responding to work-related communications from store managers, and 1-2 hours off-the-clock responding to questions from customers regarding store inventory, in order to meet his individual and store sales quotas. However, Defendants did not compensate Plaintiffs and other non-party Aggrieved Employees for the time they spent communicating with supervisors and customers while off-the-clock.

110. Defendants knew or should have known that as a result of these company-wide practices and/or policies, Plaintiffs and other non-party Aggrieved Employees were working before and after their shifts and/or during their meal periods, and were suffered or permitted to perform work for which they were not paid.

111. Because Plaintiffs and other non-party 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, Plaintiffs and other non-party Aggrieved Employees were not paid overtime wages for all of the overtime hours they actually worked.

112. Furthermore, Defendants did not pay Plaintiff Torres and other non-party Aggrieved Employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, Defendants paid Plaintiff Torres and other non-party Aggrieved Employees commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, Defendants

1 failed to incorporate all compensation, including commissions, incentive pay,
2 nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the
3 regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during
4 times when Plaintiff Torres and other non-party Aggrieved Employees worked overtime and
5 received these other forms of pay, Defendants failed to pay all overtime wages by paying a
6 lower overtime rate than required.

7 113. For example, Defendants paid Plaintiff Torres and other non-party Aggrieved
8 Employees commissions, as well as nondiscretionary bonuses or incentive pay for reaching
9 certain volume-based goals, such as product sales, on a monthly or quarterly basis. On
10 information and belief, these commissions, nondiscretionary bonuses and/or incentive pay
11 were listed on Plaintiff Torres's and other non-party Aggrieved Employees' wage statements
12 as "Commission" and "Spiff" (sales performance incentive fund). During pay periods that
13 Plaintiff Torres and other non-party Aggrieved Employees were paid overtime wages,
14 Defendants failed to incorporate the commissions, nondiscretionary bonus, and/or incentive
15 pay into Plaintiff Torres's and other non-party Aggrieved Employees' regular rate of pay and,
16 as a result, paid them at incorrect and lower rates of pay for overtime hours worked.
17 Specifically, Defendants paid Plaintiff Torres and other non-party Aggrieved Employees 1.5
18 times their hourly rate of pay instead of 1.5 times their regular rate of pay. Defendants'
19 failure to properly calculate the overtime rates of pay based on all remuneration paid has
20 resulted in an underpayment of overtime wages to Plaintiff Torres and other non-party
21 Aggrieved Employees on a company-wide basis.

22 114. Defendants' failure to pay Plaintiffs and other non-party Aggrieved Employees
23 the balance of overtime compensation as required by California law, violates the provisions of
24 California Labor Code sections 510 and 1198. Plaintiffs and other non-party Aggrieved
25 Employees are entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
26 2699(a), (f), and (g).

27 //

28 //

1 **FAILURE TO PAY MINIMUM WAGES**

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

3 115. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
4 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
5 to be paid to employees, and the payment of a wage less than the minimum so fixed is
6 unlawful. Compensable work time is defined by the applicable wage order as “the time
7 during which an employee is subject to the control of an employer, and includes all the time
8 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code.
9 Regs. tit. 8, § 11070(2)(G) (defining “Hours Worked”).

10 116. As set forth above, as a result of Defendants’ policy of limiting the amount of
11 overtime employees could accrue by discouraging and impeding Plaintiffs and other non-party
12 Aggrieved Employees from recording hours worked that were outside of their scheduled
13 shifts, Plaintiffs and other non-party Aggrieved Employees were forced to work off-the-clock
14 before and after their scheduled shift start and end times to complete their assigned job duties.
15 Furthermore, Plaintiffs and other non-party Aggrieved Employees were required to work off-
16 the-clock completing online training, answering phone calls from Defendants’ management
17 and/or customers, waiting for fellow employees to become available to leave the store
18 premises in pairs, undergoing security checks, and/or traveling to and from mandatory training
19 and/or meetings.

20 117. In addition, as stated above, Defendants had a company-wide “on-call” policy,
21 whereby they required Plaintiff Guardado and other non-party Aggrieved Employees to wait
22 to be called two (2) hours before their scheduled standby shifts. When this occurred, Plaintiff
23 Guardado and other non-party Aggrieved Employees had to put their lives on hold and were
24 restricted from using that time freely for their own purposes. Yet, Defendants did not pay
25 Plaintiff Guardado and other non-party Aggrieved Employees at least minimum wages for the
26 time they spent waiting to see if they were needed at the store.

27 118. Moreover, as also stated, due to Defendants’ policy and/or practice of utilizing
28 labor budgets, understaffing while assigning heavy workloads and sales quotas, failing to

1 schedule meal periods, and requiring employees to stay on Defendants' premises during meal
2 periods, Plaintiffs and other non-party Aggrieved Employees were impeded from taking all
3 uninterrupted meal periods to which they were entitled and were required to work off-the-
4 clock. Furthermore, as stated above, on information and belief, in order to limit meal
5 penalties that Defendants would otherwise owe, Defendants pressured Plaintiffs and other
6 non-party Aggrieved Employees to clock out for meal periods and/or adjusted employee time
7 records to reflect compliant meal periods.

8 119. Thus, Defendants did not pay at least minimum wages for off-the-clock hours
9 that qualified for overtime premium payment. Also, to the extent that these off-the-clock
10 hours did not qualify for overtime premium payment, Defendants did not pay at least
11 minimum wages for those hours worked off-the-clock in violation of California Labor Code
12 sections 1182.12, 1194, 1197, and 1197.1.

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

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

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

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

2012).

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

124. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198 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 of compensation, 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.

125. As stated above, Defendants had, and continue to have, a policy and/or practice of utilizing labor budgets, understaffing while assigning heavy workloads and sales quotas, and failing to schedule meal periods, which has impeded Plaintiffs and other non-party Aggrieved Employees from taking all timely, uninterrupted meal periods to which they were entitled. In addition, because Defendants frowned upon employees accruing meal period penalties, Defendants' management would adjust Plaintiffs' and other non-party Aggrieved Employees' time records and/or pressured employees to clock out for meal periods to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that would need to be paid by Defendants.

126. Moreover, as stated, Defendants had, and continue to have, a company-wide policy and/or practice of requiring that Plaintiffs and other non-party Aggrieved Employees check for promotions and communicate with supervisors and/or customers at all times on their personal cellular phones, in order to meet their individual and store sales quotas, even during unpaid meal periods. Furthermore, as stated above, in conjunction with these policies and/or practices, Defendants required Plaintiff Guardado and other non-party Aggrieved Employees to remain on the premises for their meal periods. Because Plaintiff Guardado and other non-party Aggrieved Employees were restricted from leaving the premises during meal periods,

1 they were denied the ability to use their meal periods freely for their own purposes. Thus,
2 Defendants effectively maintained control over Plaintiff Guardado and other non-party
3 Aggrieved Employees during meal periods. Consequently, Plaintiffs and other non-party
4 Aggrieved Employees suffered missed and/or interrupted meal periods.

5 127. Defendants' practices and policies prevented Plaintiffs and other non-party
6 Aggrieved Employees from taking all compliant meal periods to which they were entitled. As
7 a result, Plaintiffs and other non-party Aggrieved Employees would be forced to work in
8 excess of five (5) hours before taking a meal period and, at times, had their meal periods
9 interrupted and/or had to forgo their meal periods altogether. For example, Plaintiff Guardado
10 was often only scheduled to work with one (1) other employee and was forced to forego her
11 meal periods due to the lack of coverage resulting from Defendants' understaffing practices.
12 As another example, Plaintiff Torres was forced to forego his meal periods 3-4 times per
13 month in order to meet the individual and store sales quotas Defendants imposed on him. In
14 addition, Plaintiff Torres would be forced to take his meal periods between his fifth and sixth
15 hour of work 1-2 times per week due to the influx of customers he was required to assist.

16 128. Additionally, Defendants did not provide other non-party Aggrieved
17 Employees with second 30-minute meal periods on days that they worked in excess of ten (10)
18 hours in one day. Other non-party Aggrieved Employees worked shifts in excess of ten (10)
19 hours or more per day, but were not provided a second 30-minute meal period. Plaintiffs and
20 other non-party Aggrieved Employees did not sign valid meal period waivers on days that
21 they were entitled to meal periods and were not relieved of all duties.

22 129. Defendants knew or should have known that as a result of their company-wide
23 policies and/or practices, that Plaintiffs and other non-party Aggrieved Employees were not
24 actually relieved of all duties to take timely, uninterrupted meal periods. Defendants further
25 knew or should have known that they did not pay Plaintiffs and other non-party Aggrieved
26 Employees meal period premium wages when meal periods were missed, late, short, and/or
27 interrupted.

28 130. Furthermore, Defendants engaged in a company-wide practice and/or policy of

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

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

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

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

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

21 133. At all relevant times, the applicable IWC Wage Order provides that "[e]very
22 employer shall authorize and permit all employees to take rest periods, which insofar as
23 practicable shall be in the middle of each work period" and that the "rest period time shall be
24 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
25 hours or major fraction thereof" unless the total daily work time is less than three and one-half
26 (3½) hours.

27 134. At all relevant times, California Labor Code section 226.7 provides that no
28 employer shall require an employee to work during any rest period mandated by an applicable

1 order of the California IWC. To comply with its obligation to authorize and permit rest
2 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
3 employer must “relinquish any control over how employees spend their break time, and
4 relieve their employees of all duties—including the obligation that an employee remain on
5 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
6 *Inc.*, 2 Cal. 5th 257, 269-270 (2016).

7 135. Pursuant to the applicable IWC Wage Order and California Labor Code section
8 226.7(c), Plaintiffs and other non-party Aggrieved Employees are entitled to recover from
9 Defendants one (1) additional hour of pay at their regular rates of compensation for each work
10 day that a required rest period was not authorized and permitted.

11 136. During the relevant time period, Defendants regularly failed to authorize and
12 permit Plaintiffs and other non-party Aggrieved Employees to take a ten (10) minute rest
13 period per each four (4) hour period worked or major fraction thereof. As with meal periods,
14 Defendants’ company-wide policies and/or practices, including utilizing labor budgets and
15 understaffing while assigning heavy workloads and sales quotas, prevented Plaintiffs and
16 other non-party Aggrieved Employees from being relieved of all duty to take compliant rest
17 periods. Defendants also failed to schedule rest periods, which, coupled with Defendants’
18 failure to provide adequate rest period coverage, further led to Plaintiffs and other non-party
19 Aggrieved Employees not being authorized and permitted to take rest periods. Moreover,
20 Plaintiffs and other non-party Aggrieved Employees were expected to respond to questions
21 from Defendants’ management at all times, including during rest periods.

22 137. Furthermore, upon information and belief, Defendants maintained a company-
23 wide on-premises rest period policy, which mandated that Plaintiffs and/or other non-party
24 Aggrieved Employees remain on Defendants’ premises during their rest periods. Because
25 Plaintiffs and/or other non-party Aggrieved Employees were restricted from leaving the
26 premises during rest periods, they were denied the ability to use their rest periods freely for
27 their own purposes. Thus, Defendants effectively maintained control over Plaintiffs and/or
28 other non-party Aggrieved Employees during rest periods.

1 138. As a result of Defendants' practices and policies, Plaintiffs and other non-party
2 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
3 excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they
4 were entitled. For example, during their employment, Plaintiff Guardado missed all of her
5 rest periods, while Plaintiff Torres missed his rest periods 4-5 times per week, due to the lack
6 of coverage, heavy workload, and sales quotas Defendants assigned to them. The one or two
7 times per week Plaintiff Torres was afforded a rest period, he was interrupted by Defendants'
8 management and asked when he would be returning to continue performing work-related
9 duties. Additionally, on information and belief, other non-party Aggrieved Employees did not
10 receive a third rest period when working shifts in excess of 10 hours.

11 139. Defendants also has engaged in a company-wide practice and/or policy of not
12 paying all rest period premiums owed when compliant rest periods are not authorized and
13 permitted. Because of this practice and/or policy, Plaintiffs and other non-party Aggrieved
14 Employees have not received premium pay for all missed rest periods. Alternatively, to the
15 extent that Defendants did pay Plaintiff Torres and other non-party Aggrieved Employees one
16 (1) additional hour of premium pay for missed rest periods, Defendants did not pay Plaintiff
17 Torres and other non-party Aggrieved Employees at the correct rate of pay for premium wages
18 because Defendants failed to include all forms of compensation, such as commissions,
19 incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular
20 rate of compensation.

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

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

27 141. At all relevant times herein, California Labor Code section 226(a) provides that
28 every employer shall furnish each of his or her employees an accurate and complete itemized

1 wage statement in writing, including, but not limited to, the name and address of the legal
2 entity that is the employer, the inclusive dates of the pay period, total hours worked, and all
3 applicable rates of pay.

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

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

22 144. Second, because Defendants did not calculate Plaintiff Torres's and other non-
23 party Aggrieved Employees' regular rate of pay correctly for purposes of paying overtime
24 wages, Defendants did not list the correct amount of gross wages earned by Plaintiff Torres
25 and other non-party Aggrieved Employees in compliance with section 226(a)(1) and did not
26 list the correct amount of net wages earned by Plaintiff Torres and other non-party Aggrieved
27 Employees in violation of section 226(a)(5). Defendants also failed to correctly list all
28 applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay

1 and correct rates of pay for premium wages, in violation of section 226(a)(9).

2 145. Third, and separate from these violations, Defendants issued uniform wage
3 statements to Plaintiffs and other non-party Aggrieved Employees that fail to list the correct
4 address of the legal entity of the actual employer in violation of Labor Code section 226(a)(8).
5 The purpose of section 226(a)(8) is to provide California employees with transparency as to
6 the true identity of their employer, to allow the employee to contact their employer during
7 employment in the future for various reasons, including filing an administrative claim, judicial
8 claim, or other action to seek relief against their employer, obtain unemployment benefits, etc.
9 Plaintiffs' wage statements list the entity "IMOBILE OF CA LLC" at the address "206
10 TERMINAL DRIVE PLAINVIEW, NY 11803," but, according to the California Secretary of
11 State's website, there is no such entity by that name at that address. Instead, the entity
12 "IMOBILE OF CA LLC" is listed on the California Secretary of State's website with a
13 different address, 10435 SANTA MONICA BLVD LOS ANGELES, CA 90025.

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

22 147. California Labor Code section 1198 provides that the maximum hours of work
23 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
24 set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he
25 employment of any employees for longer hours than those fixed by the order or under
26 conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC
27 Wage Order, employers are required to keep accurate time records showing when the
28 employee begins and ends each work period and meal period. During the relevant time

1 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
2 and meal period start and stop times for Plaintiffs and other non-party Aggrieved Employees,
3 in violation of section 1198. As stated, Defendants engaged in a company-wide practice
4 and/or policy of falsifying Plaintiffs' and other non-party Aggrieved Employees' time records
5 by recording that compliant meal periods were taken regardless of if or when meal periods
6 were actually taken, and thereby failed to keep accurate records of meal start and end times for
7 Plaintiffs and other non-party Aggrieved Employees. Furthermore, in light of Defendants'
8 failure to provide other non-party Aggrieved Employees with second 30-minute meal periods
9 to which they were entitled, Defendants kept no records of meal start and end times for second
10 meal periods.

11 148. California Labor Code section 1174(d) provides that "[e]very person employing
12 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
13 employed and the ages of all minors" and "[k]eep, at a central location in the state or at the
14 plants or establishments at which employees are employed, payroll records showing the hours
15 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
16 applicable piece rate paid to, employees employed at the respective plants or
17 establishments. . . ." Labor Code section 1174.5 provides that employers are subject to a \$500
18 civil penalty if they fail to maintain accurate and complete records as required by section
19 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
20 Defendants willfully failed to maintain accurate payroll records for Plaintiffs and other non-
21 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto
22 as a result of failing to record the off-the-clock hours that they worked.

23 149. Because Defendants' violations of 226(a) and 1174(d) were committed against
24 Plaintiffs and other non-party Aggrieved Employees, Plaintiffs and other non-party Aggrieved
25 Employees are entitled to recover civil penalties pursuant to Labor Code sections 226.3,
26 1174.5, and/or 2699(a), (f), and (g).

27 //

28 //

**FAILURE TO PRODUCE AND/OR PERMIT INSPECTION OF RECORDS AND
INSTRUMENTS SIGNED**

VIOLATION OF LABOR CODE SECTIONS 226(b)-(c), 1174(d), AND 1198

150. At all relevant times herein, California Labor Code section 226(b) provides that every employer shall furnish current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer. Labor Code Section 226(c) provides that an employer must comply with a request made pursuant to Labor Code section 226(b) no later than 21 calendar days from the date of the employee's request.

151. At all times relevant herein, California Labor Code section 432 states, "[i]f an employee or applicant signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request." California Labor Code section 433 states, "[a]ny person violating this article is guilty of a misdemeanor."

152. At all times relevant herein, California Labor Code section 1198.5 requires that an employer provide a copy of an employee's personnel record no later than 30 days from the date the employer receives a written request.

153. At all times relevant herein, the applicable IWC Wage Order No. 7-2001, section 7(A), provides that "[e]very employer shall keep accurate information with respect to each employee including the following: (1) Full name, home address, occupation and social security number. (2) Birth date, if under 18 years, and designation as a minor. (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded. (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee. (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request." IWC Wage Order No. 7-2001, section 7(C), also provides, "[a]ll required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of

1 employment or at a central location within the State of California. An employee's records
2 shall be available for inspection by the employee upon reasonable request."

3 154. During the relevant time period, Plaintiffs and other non-party Aggrieved
4 Employees sent Defendants reasonable written requests for documents and records relating to
5 their employment with Defendants, and Defendants failed and/or refused to produce for
6 inspection and copying or otherwise permit inspection and copying of documents and records
7 relating to Plaintiffs' and other non-party Aggrieved Employees' employment. For example,
8 on June 23, 2020, Plaintiff Torres sent a written request to Defendants via FedEx overnight
9 mail. On June 24, 2020, FedEx confirmed Defendants received Plaintiff Torres's written
10 request for records. Then, on August 25, 2020, Plaintiff Torres sent a second written request
11 to Defendants via FedEx overnight mail. On August 26, 2020, FedEx again confirmed
12 Defendants received Plaintiff Torres's second written request for records. To date,
13 Defendants have failed to respond to either of Plaintiff Torres's written request for his
14 records. As another example, on August 25, 2020, Plaintiff Guardado sent a written request to
15 Defendants via FedEx overnight mail. On August 26, 2020, FedEx confirmed Defendants
16 received Plaintiff Guardado's written request for records. However, Defendants did not send
17 Plaintiff Guardado's records until November 12, 2020, approximately 78 days after receipt of
18 her initial request.

19 155. Thus, over 21 days passed from the dates that Plaintiffs sent Defendants
20 reasonable written requests for documents and records relating to their employment, and
21 Defendants failed to comply with the requests in violation of Labor Code section 226(b) and
22 the applicable IWC Wage Order. On information and belief, Defendants have similarly failed
23 to provide other non-party Aggrieved Employees with copies of their personnel files upon
24 written request within the statutory time limits. Defendants' failure and/or refusal to produce
25 Plaintiffs' and other non-party Aggrieved Employees' personnel files within the statutory
26 limits violates Labor Code sections 226(b), 432, 1198.5, and the applicable IWC Wage Order.

27 156. Because Defendants' violations of 226(f) and 1198.5 were committed against
28 Plaintiffs and other non-party Aggrieved Employees, Plaintiffs and other non-party Aggrieved

1 Employees are entitled to recover civil penalties pursuant to Labor Code sections 226(f),
2 1198.5(k), and/or 2699(a), (f), and (g).

3 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

4 **VIOLATION OF LABOR CODE SECTION 204**

5 157. At all relevant times herein set forth, California Labor Code section 204
6 requires that all wages earned by any person in any employment between the 1st and the 15th
7 days, inclusive, of any calendar month, other than those wages due upon termination of an
8 employee, are due and payable between the 16th and the 26th day of the month during which
9 the labor was performed. Labor Code section 204 further provides that all wages earned by
10 any person in any employment between the 16th and the last day, inclusive, of any calendar
11 month, other than those wages due upon termination of an employee, are due and payable
12 between the 1st and the 10th day of the following month.

13 158. At all relevant times herein, California Labor Code section 204 also requires
14 that all wages earned for labor in excess of the normal work period shall be paid no later than
15 the payday for the next regular payroll period. Alternatively, at all relevant times herein,
16 Labor Code section 204 provides that the requirements of this section are deemed satisfied by
17 the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
18 more than seven (7) calendar days following the close of the payroll period.

19 159. During the relevant time period, Defendants willfully failed to pay Plaintiffs
20 and other non-party Aggrieved Employees all wages due to them within any time period
21 specified by California Labor Code section 204 including, but not limited to, overtime wages,
22 minimum wages, meal and rest period premium wages, and/or reporting time pay.

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

25 **FAILURE TO PAY WAGES UPON TERMINATION**

26 **VIOLATION OF LABOR CODE SECTIONS 201 AND 202**

27 161. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
28 that if an employer discharges an employee, the wages earned and unpaid at the time of

1 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
2 her employment, his or her wages shall become due and payable not later than seventy-two
3 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
4 his or her intention to quit, in which case the employee is entitled to his or her wages at the
5 time of quitting.

6 162. On information and belief, Defendants have a company-wide practice or policy
7 of not paying departing employees their final wages on the next regular pay cycle, instead of
8 adhering to the time requirements set forth in Labor Code sections 201 and 202. For example,
9 Plaintiff Guardado was terminated in person on or about April 14, 2020, but did not receive
10 her final wages nearly a month after her termination. Moreover, Plaintiff Torres was
11 terminated in person on or about November 1, 2019. However, that same day, Defendants
12 only provided him with a paycheck that included the wages due to him from his previous pay
13 cycle, from October 13 to October 26, 2019, and not for any hours worked between October
14 27 through November 1, 2019. To date, Plaintiff Torres has not been paid his final wages for
15 the time worked between October 27 through November 1, 2019.

16 163. Furthermore, upon information and belief, Defendants have, and continue to
17 have, a policy and/or practice of withholding final commissions and/or bonus payments owed
18 to former employees of Defendants for approximately six (6) months after their final day of
19 employment. To date, Plaintiffs have not received all of their earned commissions, bonus
20 payments, and/or their final wages, which were due and payable immediately on their last day
21 of work. Thus, Defendants failed to pay Plaintiffs their final wages immediately, in violation
22 of Labor Code section 201.

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

28 165. Defendants' failure to pay Plaintiffs and those non-party Aggrieved Employees

1 who are no longer employed by Defendants their wages earned and unpaid at the time of
2 discharge, or within seventy-two (72) hours of their leaving Defendant's employ, violates
3 Labor Code sections 201 and 202. Plaintiffs and other non-party Aggrieved Employees are
4 therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or
5 2699(a), (f), and (g).

6 **FAILURE TO PROVIDE WRITTEN NOTICE OF PAID SICK LEAVE BENEFITS**

7 **VIOLATION OF LABOR CODE SECTION 246**

8 166. California's Healthy Workplaces, Healthy Families Act of 2014 was enacted to
9 provide employees who have worked in California for 30 or more days from the
10 commencement of employment with paid sick days, to be accrued at least one hour for every
11 30 hours worked. Pursuant to California Labor Code section 246(b)(4), employers must
12 provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or
13 paid time off) in each year of the employee's employment. Codified at California Labor Code
14 sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249, section 246(i) provides that an
15 employer must provide an employee with written notice that sets forth the amount of paid sick
16 leave available, or paid time off that an employer provides in lieu of sick leave, for use on
17 either the employee's itemized wage statement or in a separate written statement provided on
18 the designated pay date with the employee's wages. The penalties described in this article for
19 a violation of this subdivision shall be in lieu of the penalties for a violation of Section 226.

20 167. During the relevant time period, Defendants failed, on a company-wide basis,
21 to provide Plaintiffs and other non-party Aggrieved Employees written notice on wage
22 statements and/or other separate written statements that listed the requisite information set
23 forth in Labor Code section 246(i). Defendants' ongoing and systematic failure to provide
24 written notice of sick leave benefits to Plaintiffs and other non-party Aggrieved Employees
25 violates California Labor Code section 246(i).

26 168. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to
27 recover civil penalties pursuant to Labor Code sections 248.5 and/or 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)(A)

169. 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.”

170. 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.”

171. Plaintiffs allege that Defendants’ retail stores are generally similar in their layout and design and there was, and continues to be, space behind sales counters to allow for the presence and use of a seat or stool by Plaintiffs and other non-party Aggrieved Employees (with reasonable or no modification to these work areas) during the performance of their work duties. Defendants could have provided Plaintiffs and other non-party Aggrieved Employees with a seat or stool at sales counters, but instead denied them seating and forced Plaintiffs and other non-party Aggrieved Employees to stand throughout the day.

172. Plaintiffs and other non-party Aggrieved Employees spent a substantial portion of their day behind these or at these sales counters. The nature of the work of an employee performing cashiering and sales duties can reasonably be accomplished from a seated position. However, Defendants systematically, and on a company-wide basis, did not provide seats or stools at or near sales counters, forcing Plaintiffs and other non-party Aggrieved Employees to stand throughout their work shifts.

173. During the relevant time period, Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A), because Plaintiffs and other non-party Aggrieved Employees were not provided with suitable seats

1 and, therefore effectively were not allowed to sit, even when it would not have interfered with
2 the performance of their duties. Plaintiffs and other non-party Aggrieved Employees were
3 assigned cashiering and sales duties, which were performed from the sales counters, and could
4 have been performed from a seated position. Plaintiffs and other non-party Aggrieved
5 Employees could have provided customer service at the host stand while seated without
6 interference to their ability to complete these duties.

7 174. Defendants could have placed seats or stools at each host stand for use by
8 Plaintiffs and other non-party Aggrieved Employees with reasonable or no modification to
9 these work areas. However, on a company-wide basis, Defendants did not provide suitable
10 seats or stools at or near sales counters. Defendants' management did not inform Plaintiffs
11 and other non-party Aggrieved Employees that they were allowed to sit down, provide any
12 means for them to sit down, or mention any policy regarding sitting.

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

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

21 **FAILURE TO PROVIDE SUITABLE SEATING**

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

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

1 unlawful.”

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

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

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

20 181. Defendants did not provide Plaintiffs and other non-party Aggrieved
21 Employees with seats or stools in reasonable proximity to their work areas to allow them to
22 use seats when it would not interfere with the performance of their duties for times when they
23 were not engaged in active duties that require standing. In other words, to the extent Plaintiffs
24 and other non-party Aggrieved Employees engaged in duties in which the nature of the work
25 required standing, Defendants denied them the use of suitable seats nearby during lulls in their
26 work duties. Moreover, Defendants did not inform Plaintiffs and other non-party Aggrieved
27 Employees of their rights to a seat or stool under California law.

28 182. As a result of Defendants’ company-wide policy and/or practice prohibiting

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

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

9 **FAILURE TO PAY REPORTING TIME PAY**

10 **VIOLATION OF LABOR CODE SECTION 1198**

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

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

26 186. Upon information and belief, Defendants violated California Labor Code
27 section 1198 and California Code of Regulations, Title 8, section 11070(5), because
28 Defendants failed to pay Plaintiff Guardado and other non-party Aggrieved Employees

1 reporting time pay when they reported to work for their scheduled shift but were put to work
2 for less than half of the regular schedule.

3 187. First, as described above, Defendants had a company-wide “on-call” policy,
4 whereby they scheduled Plaintiff Guardado and other non-party Aggrieved Employees to
5 work “on-call,” or on standby. When scheduled for an “on-call” or standby shift, Plaintiff
6 Guardado and other non-party Aggrieved Employees regularly presented themselves as ready
7 for work by waiting for the store to call them two (2) hours prior to their scheduled standby
8 shift and would await instructions on whether to report to the store for a shift, but were
9 ultimately not told to come in. When this occurred, Defendants did not pay Plaintiff
10 Guardado and other non-party Aggrieved Employees for at least half of their scheduled day’s
11 work or the minimum reporting time pay when they were subject to Defendants’ “on-call”
12 policy and were ultimately not called.

13 188. Second, on information and belief, Defendants had a company-wide practice of
14 sending other non-party Aggrieved Employees home early from their shifts, including before
15 they had worked at least half of their regular shifts, but would not pay other non-party
16 Aggrieved Employees for half of their scheduled shifts due to Defendants’ labor budget.
17 Although other non-party Aggrieved Employees would report to work based on the schedule
18 that Defendants provided to them, Defendants would send them home before they had worked
19 at least half of their scheduled shifts without giving them reporting time pay. For example,
20 other non-party Aggrieved Employees would occasionally report to work and would be told to
21 go home because business was slow, yet they were never paid for any of this time.
22 Accordingly, other non-party Aggrieved Employees were not properly compensated with
23 reporting time pay in violation of California Labor Code section 1198.

24 189. Plaintiff Guardado and other non-party Aggrieved Employees are therefore
25 entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

26 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

27 **VIOLATION OF LABOR CODE SECTION 2802**

28 190. At all times herein set forth, California Labor Code section 2802 provides that

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

10 191. First, during the relevant time period, Defendants had a company-wide policy
11 of requiring Plaintiffs and other non-party Aggrieved Employees to utilize their own personal
12 cellular phones and cellular data to carry out their job duties, but Defendants failed to fully
13 reimburse them for the costs of their work-related cellular phone expenses. Plaintiffs and
14 other non-party Aggrieved Employees were required to use their personal cellular phones to
15 complete their work-related tasks, such as communicating with Defendants' management to
16 discuss upcoming sales goals, or with customers about store events and inventory arrivals.
17 Plaintiffs and other non-party Aggrieved Employees were also required to use their personal
18 cellular phones to post about store promotions on their social media accounts, in order to meet
19 their individual and store sales quotas. For example, Plaintiff Guardado would spend
20 approximately five (5) hours per day using her personal cellular phone, and Plaintiff Torres
21 would spend approximately 1-2 hours per day using his personal cellular phone, to complete
22 these tasks. Although Defendants required Plaintiffs and other non-party Aggrieved
23 Employees to utilize their personal cellular phones to carry out their work-related
24 responsibilities, Defendants failed to fully reimburse them for this cost.

25 192. Second, as stated, Defendants had and continue to have, a company-wide policy
26 of requiring Plaintiff Guardado and other non-party Aggrieved Employees to travel in their
27 own personal vehicles or obtain alternate transportation to carry out company business, attend
28 requisite trainings, and drive to other work locations, but failed to reimburse them for all costs

1 of travel, including mileage. For example, Plaintiff Guardado was instructed to drive her own
2 vehicle to other Defendants' store locations during her shifts to retrieve additional inventory
3 for her store or to cover shifts at other Defendants' stores. As a further example, other non-
4 party Aggrieved Employees were required to travel to attend mandatory customer service
5 training sessions in Bakersfield, California. Although Defendants required Plaintiff Guardado
6 and other non-party Aggrieved Employees to utilize their own personal vehicles or obtain
7 alternate transportation to complete these work-related duties, Defendants never reimbursed
8 them for all of their travel expenses.

9 193. Third, Defendants, on a company-wide basis, required Plaintiff Torres and
10 other non-party Aggrieved Employees to purchase basic store supplies that were necessary for
11 the completion of assigned tasks. For example, Plaintiff Torres spent \$30.00 per year on pens
12 and pocketknives used to unbox inventory. Defendants failed to provide these basic store
13 supplies to Plaintiff Torres and other non-party Aggrieved Employees, forcing them to
14 procure their own, and failed to reimburse Plaintiff Torres and other non-party Aggrieved
15 Employees for the costs of these supplies.

16 194. Fourth, Defendants, on a company-wide basis, required Plaintiffs and other
17 non-party Aggrieved Employees to report to work wearing clean and presentable uniforms,
18 which forced Plaintiff Guardado and other non-party Aggrieved Employees to clean their
19 uniforms frequently and incur expenses for doing so. In addition, Defendants failed to
20 provide Plaintiff Guardado and other non-party Aggrieved Employees with an adequate
21 number of uniforms, which further caused employees to incur regular laundering expenses.
22 For example, Plaintiff Guardado was given only two (2) uniform shirts when scheduled to
23 work five (5) or more days per week, and was therefore required to wash these uniforms at
24 least three (3) times per week to ensure that they were clean prior to each shift.

25 195. Defendants could have provided Plaintiffs and other non-party Aggrieved
26 Employees with the actual tools for use on the job, such as company phones and company
27 vehicles to be used for fulfilling work-related tasks, basic store supplies, and an adequate
28 number of uniforms and/or access to laundering services. Or, Defendants could have

1 reimbursed employees for their cellular phones, mileage, travel, basic store supplies, and
2 laundering costs. Instead, Defendants passed these operating costs off onto Plaintiffs and
3 other non-party Aggrieved Employees. At all relevant times, Plaintiffs did not earn at least
4 two (2) times the minimum wage. Thus, Defendants had, and continue to have, a company-
5 wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in
6 violation of California Labor Code section 2802.

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

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

11 197. California's Wage Theft Prevention Act was enacted to ensure that employers
12 provide employees with basic information material to their employment relationship at the
13 time of hiring, and to ensure that employees are given written and timely notice of any
14 changes to basic information material to their employment. Codified at California Labor
15 Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an
16 employer must provide written notice to employees containing basic and material payroll
17 information, including, among other things, the rate(s) of pay and basis thereof, whether paid
18 by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for
19 overtime, the regular payday designated by the employer, and any allowances claims as part
20 of the minimum wage, including meal or lodging allowances. Labor Code section
21 2810.5(a)(1)(A)-(C).

22 198. Defendants failed to provide Plaintiffs and other non-party Aggrieved
23 Employees written notice that lists all the requisite information set forth in Labor Code section
24 2810.5(a)(1)(A)-(C). Defendants' failure to provide Plaintiffs and other non-party Aggrieved
25 Employees with written notice of basic information regarding their employment with
26 Defendants is in violation of Labor Code section 2810.5.

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

1 **REQUEST FOR JURY TRIAL**

2 Plaintiffs request a trial by jury.

3 **PRAYER FOR RELIEF**

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

6 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
7 (\$25,000). Plaintiffs reserve the right to amend their prayer for relief to seek a different
8 amount.

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

10 2. That the Court declare, adjudge and decree that Defendants violated the
11 following California Labor Code provisions as to Plaintiffs and/or other non-party Aggrieved
12 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
13 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516,
14 and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize
15 and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
16 statements and maintain accurate payroll records); 226(b)-(c), 432, and 1198.5 (by failing to
17 produce copies or allow inspection of records and instruments signed); 201, 202, and 203 (by
18 failing timely to pay all earned wages upon termination); 204 (by failing timely to pay all
19 earned wages during employment); 246 (by failing to provide written notice of paid sick leave
20 or paid time off available); 1198 (by failing to provide suitable seating); 1198 (by failing to
21 provide reporting time pay); 2802 (by failing to reimburse business expenses); and 2810.5 (by
22 failing to provide written notice of information material to employment).

23 3. For civil penalties, pursuant to California Labor Code sections 210, 226(f),
24 226.3, 248.5, 256, 558, 1174.5, 1198.5(k), and 2699 (a), (f), and (g), for violations of
25 California Labor Code sections 201, 202, 203, 204, 226(a)-(c), 226.7, 246, 432, 510, 512(a),
26 516, 1174(d), 1182.12, 1194, 1197, 1198, 1198.5, 2802, and 2810.5;

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

1 Labor Code sections 201, 202, 203, 204, 226(a)-(c), 226.7, 246, 432, 510, 512(a), 516,
2 1174(d), 1182.12, 1194, 1197, 1198, 1198.5, 2802, and 2810.5;

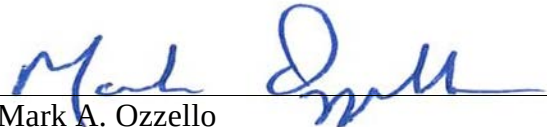
3 5. For pre-judgment and post-judgment interest as provided by law; and

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

6
7 Dated: December 28, 2020

Respectfully submitted,

8 Capstone Law APC

9
10 By: 

11 Mark A. Ozzello
12 Brandon K. Brouillette
13 Joseph Hakakian

14 Attorneys for Plaintiffs Liliana Guardado and
15 Raul Torres
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1



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

JULIAN.QUATTLEBAUM
310.712.8154 Direct
Julian.Quattlebaum@capstonelawyers.com

October 22, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/295>)

Subject: *Liliana Guardado v. iMobile of CA, LLC, et al.*

Dear PAGA Administrator:

This office represents Liliana Guardado in connection with her claims under the California Labor Code. Ms. Guardado was an employee of IMOBILE OF CA LLC; IMOBILE USA LLC; IMOBILE LLC; IMOBILE EVOLUTION LLC; IMOBILE OF ANTELOPE VALLEY MALL CA, LLC; IMOBILE OF GLENDALE GALLERIA CA, LLC; IMOBILE OF INLAND CENTER CA, LLC; IMOBILE OF LAKEWOOD MALL CA, LLC; IMOBILE OF LOMPOC CA, LLC; IMOBILE OF MISSION VALLEY MALL CA, LLC; IMOBILE OF MONTCLAIR PLAZA CA, LLC; IMOBILE OF MONTEBELLO MALL CA, LLC; IMOBILE OF MORENO VALLEY MALL CA, LLC; IMOBILE OF NORTHRIDGE MALL CA, LLC; IMOBILE OF ONTARIO MILLS CA 1, LLC; IMOBILE OF ONTARIO MILLS CA 2, LLC; IMOBILE OF PANORAMA CA, LLC; IMOBILE OF PARKWAY PLAZA CA, LLC; IMOBILE OF PLAZA BONITA MALL CA, LLC; IMOBILE OF PUENTE HILLS CA, LLC; IMOBILE OF STONEWOOD MALL CA, LLC; IMOBILE OF TEMECULA MALL CA, LLC; IMOBILE OF VICTOR VALLEY CA, LLC; IMOBILE OF WEST COVINA CA, LLC; IMOBILE OF CA BALBOA, INC.; IMOBILE OF CA CHINO INC.; IMOBILE OF CA CHINO 2, INC.; IMOBILE OF CA HEMET INC.; IMOBILE OF CA LA CANADA INC.; IMOBILE OF CA LANCASTER INC.; IMOBILE OF CA MAYWOOD, INC.; IMOBILE OF CA MELROSE L.A. INC.; IMOBILE OF CA MERCADO, INC.; IMOBILE OF CA MT. VERNON, INC.; IMOBILE OF CA NATIONAL CITY, INC.; IMOBILE OF CA POMONA, INC.; IMOBILE OF CA SAN DIMAS INC.; IMOBILE OF CA SANTA MARIA INC.; IMOBILE OF CA SUNSET L.A. INC.; IMOBILE OF CA TRACY INC.; IMOBILE OF CA VALENCIA INC.; IMOBILE OF CA VALLEY PLAZA, INC.; IMOBILE OF CA WEST COVINA, INC.; IMOBILE OF CA WESTMINSTER INC.; and/or IMOBILE OF GLENDORA CA, INC. For the purpose of this letter, Ms. Guardado collectively refers to these entities as “IMOBILE”.

The employers may be contacted directly at the addresses below:

IMOBILE OF CA LLC
575 UNDERHILL BLVD STE 205
SYOSSET, NY 11791

IMOBILE OF CA LLC
10435 SANTA MONICA BLVD
LOS ANGELES, CA 90025

IMOBILE OF CA LLC
206 TERMINAL DR.
PLAINVIEW, NY 11803

IMOBILE LLC
207 TERMINAL DR
PLAINVIEW, NY 11803

IMOBILE OF ANTELOPE VALLEY MALL CA, LLC
1233 RANCHO VISTA BLVD, SPACE 345
PALMDALE, CA 93551

IMOBILE OF INLAND CENTER CA, LLC
500 INLAND CENTER DRIVE, SPACE K01
SAN BERNARDINO, CA 92408

IMOBILE OF LOMPOC CA, LLC
206 TERMINAL DRIVE
PLAINVIEW, NY 118039

IMOBILE OF MONTCLAIR PLAZA CA, LLC
5060 MONTCLAIR PLAZA LANE, SPACE 2101
MONTCLAIR, CA 91763

IMOBILE OF MORENO VALLEY MALL CA, LLC
22500 TOWNE CIRCLE, SPACE 1180
MORENO VALLEY, CA 92553

IMOBILE OF ONTARIO MILLS CA 1, LLC
ONE MILLS CIRCLE, SPACE 23
ONTARIO, CA 91764

IMOBILE OF PANORAMA CA, LLC
8401 VAN NUYS BLVD, SPACE K105
PANORAMA CITY, CA 91402

IMOBILE OF PLAZA BONITA MALL CA, LLC
3030 PLAZA BONITA ROAD, SPACE 9112
NATIONAL CITY, CA 91950

IMOBILE OF STONEWOOD MALL CA, LLC
251 STONEWOOD STREET, SPACE MMA-3
DOWNEY, CA 90241

IMOBILE OF VICTOR VALLEY CA, LLC
14400 BEAR VALLEY RD - SPACE K04
VICTORVILLE, CA 92392

IMOBILE OF CA BALBOA, INC.
207 TERMINAL DRIVE
PLAINVIEW, NY 11803

IMOBILE OF CA CHINO 2, INC.
207 TERMINAL DRIVE
PLAINVIEW, NY 11803

IMOBILE USA LLC
206 TERMINAL DR
PLAINVIEW, NY 11803

IMOBILE EVOLUTION LLC
206 TERMINAL DR
PLAINVIEW, NY 11803

IMOBILE OF GLENDALE GALLERIA CA, LLC
2148 GLENDALE GALLERIA, SPACE 01008A
GLENDALE, CA 91210

IMOBILE OF LAKEWOOD MALL CA, LLC
350 TENTH AVE, SUITE 1000
SAN DIEGO, CA 92101

IMOBILE OF MISSION VALLEY MALL CA, LLC
1640 CAMINO DEL RIO NORTH, SPACE 154
SAN DIEGO, CA 92108

IMOBILE OF MONTEBELLO MALL CA, LLC
2134 MONTEBELLO TOWN CENTER, SPACE 14
MONTEBELLO, CA 90640

IMOBILE OF NORTHRIDGE MALL CA, LLC
9301 TAMPA AVENUE, SPACE 5537
NORTHRIDGE, CA 91324

IMOBILE OF ONTARIO MILLS CA 2, LLC
ONE MILLS CIRCLE, SPACE 110
ONTARIO, CA 91764

IMOBILE OF PARKWAY PLAZA CA, LLC
415 PARKWAY PLAZA, SPACE 9006
EL CAJON, CA 92020

IMOBILE OF PUENTE HILLS CA, LLC
1600 AZUSA AVE, SPACE 241
CITY OF INDUSTRY, CA 91748

IMOBILE OF TEMECULA MALL CA, LLC
40820 WINCHESTER RD, SPACE K01
TEMECULA, CA 92591

IMOBILE OF WEST COVINA CA, LLC
112 PLAZA DRIVE, SPACE 9032
WEST COVINA CA 91790

IMOBILE OF CA CHINO INC.
4005 GRAND AVE STE C
CHINO, CA 91710

IMOBILE OF CA HEMET INC.
4005 GRAND AVE STE C
CHINO, CA 91710

IMOBILE OF CA LA CANADA INC.
207 TERMINAL DRIVE
PLAINVIEW, NY 11803

IMOBILE OF CA MAYWOOD, INC.
206 TERMINAL DRIVE
PLAINVIEW, NY 11803

IMOBILE OF CA MERCADO, INC.
207 TERMINAL DRIVE
PLAINVIEW, NY 11803

IMOBILE OF CA NATIONAL CITY, INC.
207 TERMINAL DRIVE
PLAINVIEW, NY 11803

IMOBILE OF CA SAN DIMAS INC.
2210 SOUTH BRADLEY RD
SANTA MARIA, CA 93455

IMOBILE OF CA SUNSET L.A. INC.
4005 GRAND AVE STE C
CHINO, CA 91710

IMOBILE OF CA VALENCIA INC.
400 GRAND AVENUE, STE C
CHINO, CA 91710

IMOBILE OF CA WEST COVINA, INC.
206 TERMINAL DRIVE
PLAINVIEW, NY 11803

IMOBILE OF GLENDORA CA, INC.
206 TERMINAL DRIVE
PLAINVIEW NY 11803

IMOBILE OF CA LANCASTER INC.
4005 GRAND AVE STE C
CHINO, CA 91710

IMOBILE OF CA MELROSE L.A. INC.
2210 S BRADLEY RD
SANTA MARIA, CA 93455

IMOBILE OF CA MT. VERNON, INC.
8735 BELLANCA AVENUE, STE B
LOS ANGELES, CA 90045

IMOBILE OF CA POMONA, INC.
206 TERMINAL DRIVE
PLAINVIEW NY 11803

IMOBILE OF CA SANTA MARIA INC.
4005 GRAND AVE STE C
CHINO, CA 91710

IMOBILE OF CA TRACY INC.
4005 GRAND AVE STE C
CHINO, CA 91710

IMOBILE OF CA VALLEY PLAZA, INC.
8735 BELLANCA AVENUE, STE B
LOS ANGELES, CA 90045

IMOBILE OF CA WESTMINSTER INC.
4005 GRAND AVE STE C
CHINO, CA 91710

Ms. Guardado 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. Guardado seeks relief on behalf of herself, the State of California, and other persons who are or were employed by IMOBILE 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.

IMOBILE employed Ms. Guardado as an hourly paid, non-exempt employee from approximately February 2020 to April 2020. Ms. Guardado worked for IMOBILE as a Salesperson/Customer Service Representative at the then Sprint retail store in Northridge, California, located at 9301 Tampa Avenue. During her employment, Ms. Guardado typically worked six (6) hours or more per day and five (5) days or more per week. At the time her employment ended, Ms. Guardado was compensated approximately \$14.25 per hour, plus commissions and bonuses. Her job duties included, without limitation, communicating with clients and conducting sales, taking inventory, and maintaining the store/kiosk premises.

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

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

IMOBILE OF CA LLC; IMOBILE OF ANTELOPE VALLEY MALL CA, LLC; IMOBILE OF GLENDALE GALLERIA CA, LLC; IMOBILE OF INLAND CENTER CA, LLC; IMOBILE OF LAKEWOOD MALL CA, LLC; IMOBILE OF LOMPOC CA, LLC; IMOBILE OF MISSION VALLEY MALL CA, LLC; IMOBILE OF MONTCLAIR PLAZA CA, LLC; IMOBILE OF MONTEBELLO MALL CA, LLC; IMOBILE OF MORENO VALLEY MALL CA, LLC; IMOBILE OF NORTHRIDGE MALL CA, LLC; IMOBILE OF ONTARIO MILLS CA 1, LLC; IMOBILE OF ONTARIO MILLS CA 2, LLC; IMOBILE OF PANORAMA CA, LLC; IMOBILE OF PARKWAY PLAZA CA, LLC; IMOBILE OF PLAZA BONITA MALL CA, LLC; IMOBILE OF PUENTE HILLS CA, LLC; IMOBILE OF STONEWOOD MALL CA, LLC; IMOBILE OF TEMECULA MALL CA, LLC; IMOBILE OF VICTOR VALLEY CA, LLC; and IMOBILE OF WEST COVINA CA, LLC are California limited liability companies. IMOBILE OF CA BALBOA, INC.; IMOBILE OF CA CHINO INC.; IMOBILE OF CA CHINO 2, INC.; IMOBILE OF CA HEMET INC.; IMOBILE OF CA LA CANADA INC.; IMOBILE OF CA LANCASTER INC.; IMOBILE OF CA MAYWOOD, INC.; IMOBILE OF CA MELROSE L.A. INC.; IMOBILE OF CA MERCADO, INC.; IMOBILE OF CA MT. VERNON, INC.; IMOBILE OF CA NATIONAL CITY, INC.; IMOBILE OF CA POMONA, INC.; IMOBILE OF CA SAN DIMAS INC.; IMOBILE OF CA SANTA MARIA INC.; IMOBILE OF CA SUNSET L.A. INC.; IMOBILE OF CA TRACY INC.; IMOBILE OF CA VALENCIA INC.; IMOBILE OF CA VALLEY PLAZA, INC.; IMOBILE OF CA WEST COVINA, INC.; IMOBILE OF CA WESTMINSTER INC.; and IMOBILE OF GLENDORA CA, INC. are California corporations. Finally, IMOBILE USA LLC; IMOBILE LLC; and IMOBILE EVOLUTION LLC are New York limited liability companies. Together, they are one of the largest authorized retailers of mobile devices and cellular phone plans under the T-Mobile (formerly Sprint) brand. IMOBILE operates more than 200 retail locations nationwide, including at least 33 retail locations in California. Upon information and belief, IMOBILE maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Los Angeles, California; Plainview, New York; or Syosset, New York, for all non-exempt, hourly paid employees working for IMOBILE in California, including Ms. Guardado and other aggrieved employees. At all relevant times, IMOBILE issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Guardado and other aggrieved employees, regardless of its location or position.

Upon information and belief, IMOBILE maintains a centralized Payroll department at its corporate headquarters in Los Angeles, California; Plainview, New York; or Syosset, New York, which processes payroll for all non-exempt, hourly paid employees working for IMOBILE in California, including Ms. Guardado and other aggrieved employees. Further, IMOBILE issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Ms. Guardado and other aggrieved employees, irrespective of their location, position, or manner in which

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

each employee's employment ended. In other words, IMOBILE utilized the same methods and formulas when calculating wages due to Ms. Guardado and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

IMOBILE willfully failed to pay all overtime wages owed to Ms. Guardado and other aggrieved employees. During the relevant time period, Ms. Guardado and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, IMOBILE had a policy and/or practice of discouraging and impeding Ms. Guardado and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. On information and belief, this limitation on overtime accrual was based on a company-wide policy of staffing store locations strictly based on the labor hours or labor budget set by corporate. This policy of limiting overtime, coupled with IMOBILE's policy and/or practice of assigning heavy workloads and sales quotas (*see infra*), led Ms. Guardado and other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete their assigned tasks, such as conducting and finalizing sales. IMOBILE discouraged and impeded Ms. Guardado and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, upon threat of discipline for incurring unapproved overtime hours. Thus, IMOBILE failed to track this time spent working before and after scheduled shifts, and Ms. Guardado and other aggrieved employees received no or incomplete compensation for this time. Alternatively, on information and belief, IMOBILE had a policy of improperly adjusting Ms. Guardado's and other aggrieved employees' clock-in and clock-out duration times in its timekeeping system. IMOBILE's policies resulted in the failure to compensate Ms. Guardado and other aggrieved employees fully for all hours worked, causing Ms. Guardado and other aggrieved employees to not be paid overtime wages for all of the overtime hours they actually worked. Thus, IMOBILE failed to track this time spent working before and after scheduled shifts, and Ms. Guardado and other aggrieved employees received no or incomplete compensation for this time.

Moreover, in conjunction with its policy of limiting overtime accrual, IMOBILE had, and continues to have, a company-wide policy and/or practice of requiring employees to complete work-related tasks while off-the-clock. IMOBILE required Ms. Guardado and other aggrieved employees to perform work outside of their scheduled shifts, such as completing online training modules from home, but did not compensate them for all of this time. Also, as stated, IMOBILE required Ms. Guardado and other aggrieved employees report to work prior to their scheduled shifts, but prevented them from clocking in until their scheduled shift start time; instead, Ms. Guardado and other aggrieved employees were required to walk around the store area and solicit customers in order to conduct more sales. Additionally, as stated, Ms. Guardado and other aggrieved employees were instructed by IMOBILE's management to finalize sales and clean the store premises after clocking out for their scheduled shifts, but were not paid for this time.

Second, IMOBILE, on a company-wide basis, had, and continues to have, a security policy requiring all employees to leave the store premises in pairs. Thus, after clocking out at the end of their shifts, other aggrieved employees were required to wait for another employee to become available before they could leave IMOBILE's premises. For example, once per week, other aggrieved employees would clock out at the end of their shifts and wait for 45-60 minutes off-the-clock for their fellow employee to finalize a sale, before they were permitted to exit the store. Furthermore, IMOBILE also required other aggrieved employees to undergo security checks at the end of their shifts before leaving the store premises. At the end of their shifts, other aggrieved employees were required to wait off-the-clock for several minutes in order to undergo a security check conducted by a managerial employee, before they could leave. As a result of these security and loss prevention policies and/or practices, other aggrieved employees were subject to IMOBILE's control after they had completed their shifts, but were not compensated for this time.

Third, other aggrieved employees were required to work off-the-clock traveling to attend mandatory training or meetings. For example, other aggrieved employees were required to drive in their personal vehicles for over four (4) hours round trip to and from mandatory customer service training in Bakersfield, California. Although IMOBILE required other aggrieved employees to travel to and attend off-site training or meetings, other aggrieved employees were not paid for the time they spent traveling to and from this training and/or meetings.

Fourth, during the relevant period, IMOBILE had a company-wide "on-call" policy, whereby it scheduled Ms. Guardado and other aggrieved employees to work "on-call," or on standby. These "on-call" shifts worked to IMOBILE's benefit and to the detriment Ms. Guardado and other aggrieved employees. By utilizing "on-call" shifts, IMOBILE received the benefit of being able to maximize revenue by having a standby workforce they could choose to utilize or not, depending on store traffic and sales metrics, without incurring the cost of compensating employees who show up to work and work a full or partial scheduled day's work. When scheduled for a "on-call" or standby shift, Ms. Guardado and other aggrieved employees were required to wait for their store location to call them two (2) hours before their scheduled standby shift to see if they were required to come in and work. Ms. Guardado and other aggrieved employees were engaged to wait and could not engage in personal activities as they had to be ready to travel to their respective store locations on short notice and work their standby shift. When scheduled to be on-call for a standby shift, Ms. Guardado and other aggrieved employees were controlled by IMOBILE because they were forced to put their lives on hold and could not use that time freely for their own purposes. For example, Ms. Guardado refrained from making plans altogether while "on-call" for a standby shift because she knew that she had to drop whatever she was doing at a moment's notice if she was instructed to work her standby shift. IMOBILE did not pay Ms. Guardado and other aggrieved employees for the time they spent waiting to hear whether they needed to report to their store for work on days they ultimately were not called in.

Fifth, on information and belief, IMOBILE had, and continues to have, a company-wide policy and/or practice of strictly staffing its locations based on the labor hours allocated by corporate while assigning heavy workloads and sales quotas, which has resulted in, and continues to result in, chronic understaffing and a lack of adequate meal period coverage. As a result of this lack of meal period coverage, Ms. Guardado and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Ms. Guardado was often only scheduled to work with one (1) other employee and was forced to forego her meal periods due to the lack of coverage resulting from IMOBILE's understaffing practices. Also, IMOBILE, on a company-wide basis, failed to schedule meal periods, which further exacerbated this lack of meal period coverage.

Furthermore, on information and belief, because IMOBILE frowned upon employees accruing meal period penalties, IMOBILE pressured Ms. Guardado and other aggrieved employees to clock out for meal

periods and/or adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that IMOBILE would otherwise owe. Thus, Ms. Guardado and other aggrieved employees performed work during meal periods for which they were not paid. Additionally, due to the lack of meal period coverage, IMOBILE required Ms. Guardado and other aggrieved employees to remain on the premises for their meal periods. Because Ms. Guardado and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes. Thus, IMOBILE effectively maintained control over Ms. Guardado and other aggrieved employees during meal periods.

Sixth, IMOBILE had, and continues to have, a company-wide policy and/or practice of requiring employees to use their personal cellular phones to check for promotions and communicate with supervisors and/or customers at all times, including during unpaid meal periods, before and after shifts, and on days off. IMOBILE expected that Ms. Guardado and other aggrieved employees promptly respond to calls, text messages, and emails on their cellular phones at all times, to discuss work-related matters and/or conduct sales. For example, Ms. Guardado spent time off-the-clock responding to questions from customers, in order to meet her individual and store sales quotas, or handling customer service inquiries. However, IMOBILE did not compensate Ms. Guardado and other aggrieved employees for the time they spent communicating with supervisors and/or customers while off-the-clock.

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

Because Ms. Guardado and other aggrieved employees regularly worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Ms. Guardado and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. IMOBILE's failure to pay Ms. Guardado and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

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

Specifically, IMOBILE paid Ms. Guardado and other aggrieved employees commissions, as well as nondiscretionary bonuses or incentive pay for reaching certain volume-based goals, such as product sales, on a monthly or quarterly basis. On information and belief, these commissions, nondiscretionary bonuses and/or incentive pay were listed on Ms. Guardado's and other aggrieved employees' wage statements as "Commission" and "Spiff" (sales performance incentive fund). During pay periods that Ms. Guardado and other aggrieved employees were paid overtime wages, IMOBILE failed to incorporate the commissions, nondiscretionary bonus, and/or incentive pay into Ms. Guardado's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime

hours worked. Specifically, IMOBILE paid Ms. Guardado and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. IMOBILE's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Ms. Guardado and other aggrieved employees on a company-wide basis.

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

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

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

As set forth above, as a result of IMOBILE's policy of limiting the amount of overtime employees could accrue by discouraging and impeding Ms. Guardado and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, Ms. Guardado and other aggrieved employees were forced to work off-the-clock before and after their scheduled shift start and end times to complete their assigned job duties. Furthermore, Ms. Guardado and/or other aggrieved employees were required to work off-the-clock completing online training, answering phone calls from IMOBILE's management and/or customers, waiting for fellow employees to become available to leave the store premises in pairs, undergoing security checks, and traveling to and from mandatory training and/or meetings. In addition, as stated above, IMOBILE had a company-wide "on-call" policy, whereby it required Ms. Guardado and other aggrieved employees to wait to be called two (2) hours before their scheduled standby shifts. When this occurred, Ms. Guardado and other aggrieved employees had to put their lives on hold and were restricted from using that time freely for their own purposes. Yet, IMOBILE did not pay Ms. Guardado and other aggrieved employees at least minimum wages for the time they spent waiting to see if they were needed at the store.

Moreover, as also stated, due to IMOBILE's policy and/or practice of utilizing labor budgets, understaffing while assigning heavy workloads and sales quotas, failing to schedule meal periods, and requiring employees to stay on IMOBILE's premises during meal periods, Ms. Guardado and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. Furthermore, as stated above, on information and belief, in order to limit meal penalties that IMOBILE would otherwise owe, IMOBILE pressured Ms. Guardado and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods.

Thus, IMOBILE 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, IMOBILE 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, IMOBILE regularly failed to pay at least minimum wages to Ms. Guardado 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. Guardado and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal and rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As stated above, IMOBILE had, and continues to have, a policy and/or practice of utilizing labor budgets, understaffing while assigning heavy workloads and sales quotas, and failing to schedule meal periods, which has impeded Ms. Guardado and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. In addition, because IMOBILE frowned upon employees accruing meal period penalties, IMOBILE's management would adjust Ms. Guardado's and other aggrieved employees' time records and/or pressured employees to clock out for meal periods to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that would need to be paid by IMOBILE.

Moreover, as stated, IMOBILE had, and continues to have, a company-wide policy and/or practice of requiring that Ms. Guardado and other aggrieved employees check for promotions and communicate with supervisors and/or customers at all times on their personal cellular phones, in order to meet their individual and store sales quotas, even during unpaid meal periods. Furthermore, as stated above, in conjunction with these policies and/or practices, IMOBILE required Ms. Guardado and other aggrieved employees to remain on the premises for their meal periods. Because Ms. Guardado and other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes. Thus, IMOBILE effectively maintained control over Ms. Guardado and other aggrieved employees during meal periods. Consequently, Ms. Guardado and other aggrieved employees suffered missed and/or interrupted meal periods.

IMOBILE's practices and policies prevented Ms. Guardado and other aggrieved employees from taking all compliant meal periods to which they were entitled. As a result, Ms. Guardado and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted and/or had to forgo their meal periods altogether. For example, Ms. Guardado was often only scheduled to work with one (1) other employee and was forced to forego her meal periods due to the lack of coverage resulting from IMOBILE's understaffing practices.

Additionally, IMOBILE 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 or more per day, but were not provided a second 30-minute meal period. Ms. Guardado 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.

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

Furthermore, IMOBILE 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, Ms. Guardado and other aggrieved employees have not received premium pay for all missed, interrupted, or late meal periods. Alternatively, to the extent that IMOBILE did pay Ms. Guardado and other aggrieved employees for missed, late, and interrupted meal periods, IMOBILE did not pay Ms. Guardado and other aggrieved employees at the correct rate of pay for premium wages because IMOBILE 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, IMOBILE failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Guardado 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 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, IMOBILE regularly failed to authorize and permit Ms. Guardado 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, IMOBILE's company-wide policies and/or practices, including utilizing labor budgets and understaffing while assigning heavy workloads and sales quotas, prevented Ms. Guardado and other aggrieved employees from being relieved of all duty to take compliant rest periods. IMOBILE also failed to schedule rest periods, which, coupled with IMOBILE's failure to provide adequate rest period coverage, further led to Ms. Guardado and other aggrieved employees not being authorized and permitted to take rest periods. Moreover, Ms. Guardado and other aggrieved employees were expected to respond to questions from IMOBILE's management at all times, including during rest periods.

Furthermore, upon information and belief, IMOBILE maintained a company-wide on-premises rest period policy, which mandated that Ms. Guardado and/or other aggrieved employees remain on IMOBILE's premises during their rest periods. Because Ms. Guardado and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, IMOBILE effectively maintained control over Ms. Guardado and/or other aggrieved employees during rest periods.

As a result of IMOBILE's practices and policies, Ms. Guardado 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. Guardado missed all of her rest periods due to the lack of coverage, heavy workload, and sales quotas IMOBILE assigned to her. Additionally, other aggrieved employees did not receive a third rest period when working shifts in excess of 10 hours.

IMOBILE 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. Guardado and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that IMOBILE did pay Ms. Guardado and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, IMOBILE did not pay Ms. Guardado and other aggrieved employees at the correct rate of pay for premium wages because IMOBILE 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, IMOBILE failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Guardado 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, 432, and 1198.5 – Failure to Produce and/or Permit Inspection of Records and Instruments Signed

California Labor Code section 226(b) provides that every employer shall furnish current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer. Labor Code Section 226(c) provides that an employer must comply with a request made pursuant to Labor Code section 226(b) no later than 21 calendar days from the date of the employee's request. California Labor Code section 226(f) states "[a] failure by an employer to permit a current or former employee to inspect or copy records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer." California Labor Code section 226(h) states "[a]n employee may also bring an action for injunctive relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's fees."

California Labor Code section 432 states "[i]f an employee or applicant signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request." California Labor Code section 433 states "[a]ny person violating this article is guilty of a misdemeanor."

California Labor Code section 1198.5 requires that an employer provide a copy of an employee's personnel record no later than 30 days from the date the employer receives a written request. If an employer fails to satisfy this written request, the former employee may recover a penalty of \$750.00 from

the employer. Cal. Lab. Code § 1198.5(k). The former employee may also bring an action for injunctive relief and may recover costs and reasonable attorney's fees. Cal. Lab. Code § 1198.5(l).

The applicable IWC Wage Order No. 7-2001, section 7(A), provides "[e]very employer shall keep accurate information with respect to each employee including the following: (1) Full name, home address, occupation and social security number. (2) Birth date, if under 18 years, and designation as a minor. (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded. (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee. (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request." IWC Wage Order No. 7-2001, section 7(C), also provides "[a]ll required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request."

During the relevant time period, Ms. Guardado sent IMOBILE reasonable written requests for documents and records relating to her employment with IMOBILE. During the relevant time period, IMOBILE failed to produce for inspection and copying or otherwise permit inspection and copying of documents and records relating to Ms. Guardado's employment. For example, on August 25, 2020, Ms. Guardado sent a written request to IMOBILE via FedEx overnight mail. On August 26, 2020, FedEx confirmed IMOBILE received Ms. Guardado's written request for records. Over 21 days have passed from the date that Ms. Guardado sent IMOBILE a reasonable written request for documents and records relating to her employment, and IMOBILE has failed to comply with the requests in violation of Labor Code section 226(b) and the applicable IWC Wage Order.

Ms. Guardado and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226(f) and (h), 1198.5(k)-(l), 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. IMOBILE has not provided Ms. Guardado 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, IMOBILE has knowingly and intentionally provided Ms. Guardado and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, IMOBILE issued uniform wage statements to Ms. Guardado and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the correct address 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, IMOBILE violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because IMOBILE did not record the time Ms. Guardado 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), IMOBILE did not list the correct amount of gross wages and net wages earned by Ms. Guardado and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, IMOBILE failed to accurately list the total number of hours worked by Ms. Guardado 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 IMOBILE did not calculate Ms. Guardado's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, IMOBILE did not list the correct amount of gross wages earned by Ms. Guardado and other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by Ms. Guardado and other aggrieved employees in violation of section 226(a)(5). IMOBILE 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, IMOBILE issued uniform wage statements to Ms. Guardado and other aggrieved employees that fail to list the correct address of the legal entity of the actual employer in violation of Labor Code section 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, obtain unemployment benefits, etc. Ms. Guardado's wage statements list the entity "IMOBILE OF CA LLC" at the address "206 TERMINAL DRIVE PLAINVIEW, NY 11803," but, according to the California Secretary of State's website, there is no such entity by that name at that address. Instead, the entity "IMOBILE OF CA LLC" is listed on the California Secretary of State's website with a different address, 10435 SANTA MONICA BLVD LOS ANGELES, CA 90025. *See example wage statement below.*

The image shows a sample 'Earnings Statement' from IMOBILE OF CA LLC. The employer's name is at the top left, with a red box highlighting the address: '206 TERMINAL DR. PLAINVIEW, NY 11803'. To the right, the title 'Earnings Statement' is printed. Below it, the 'Period Beginning' is 02/02/2020, 'Period Ending' is 02/15/2020, and 'Pay Date' is 02/21/2020. At the bottom left, there are fields for 'Filing Status', 'Exemptions', and 'Federal', all of which are redacted with black boxes. At the bottom right, the employee's name 'LILIANA SHEILA GUARDADO' is printed, with a redacted area below it.

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social

security number or an employee identification number other than a social security number; failing to list the name 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), IMOBILE willfully failed to maintain accurate payroll records for Ms. Guardado 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, IMOBILE failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Ms. Guardado and other aggrieved employees, in violation of section 1198. As stated, IMOBILE engaged in a company-wide practice and/or policy of falsifying Ms. Guardado’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. Guardado and other aggrieved employees. Furthermore, in light of IMOBILE’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, IMOBILE kept no records of meal start and end times for second meal periods.

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

Ms. Guardado 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, IMOBILE has a company-wide practice or policy of not 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, Ms. Guardado was terminated in person on or about April 14, 2020. However, she was not provided her final wages until a month after her termination. Furthermore, upon information and belief, IMOBILE has, and continues to have, a policy and/or practice of withholding final commissions and/or bonus payments owed to former employees of IMOBILE for approximately six (6) months after their final day of employment. To date, Ms. Guardado has not received all of her earned commissions, bonus payments, and/or her final wages, which were due and payable immediately on her last day of work. Thus, IMOBILE failed to pay Ms. Guardado her final wages immediately, in violation of Labor Code section 201.

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

Ms. Guardado 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 § 246 – Failure to Provide Written Notice of Paid Sick Leave Benefits

California's Healthy Workplaces, Healthy Families Act of 2014 was enacted to provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Codified at California Labor Code sections 245.5, 246, 246.5, 247, 247.5,

248.5, and 249, section 246(i) provides that an employer must provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off that an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement or in a separate written statement provided on the designated pay date with the employee's wages. The penalties described in this article for a violation of this subdivision shall be in lieu of the penalties for a violation of Section 226.

During the relevant time period, IMOBILE has failed to provide Ms. Guardado and other aggrieved employees written notice on wage statements and/or other separate written statements that list the requisite information set forth in Labor Code section 246(i). IMOBILE's ongoing and systematic failure to provide written notice of sick leave benefits to Ms. Guardado and other aggrieved employees violates California Labor Code section 246(i).

Ms. Guardado and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(a), (f)-(g).

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

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

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

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

First, as described above, IMOBILE had a company-wide "on-call" policy, whereby it scheduled Ms. Guardado and other aggrieved employees to work "on-call," or on standby. When scheduled for an "on-call" or standby shift, Ms. Guardado and other aggrieved employees regularly presented themselves as ready for work by waiting for the store to call them two (2) hours prior to their scheduled standby shift and would await instructions on whether to report to the store for a shift, but were ultimately not told to come in. When this occurred, IMOBILE did not pay Ms. Guardado and other aggrieved employees for at least half of their scheduled day's work or the minimum reporting time pay when they were subject to IMOBILE's "on-call" policy and were ultimately not called.

Second, on information and belief, IMOBILE had a company-wide practice of sending other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay other aggrieved employees for half of their scheduled shift due to IMOBILE's

labor budget. Although other aggrieved employees would report to work based on the schedule that IMOBILE provided to them, IMOBILE would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. For example, other aggrieved employees would occasionally report to work and would be told to go home because business was slow, yet they were never paid for any of this time. Accordingly, other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198.

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

Violation of California Labor Code § 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.*

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

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

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

Ms. Guardado and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring IMOBILE 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, IMOBILE'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. Guardado and other aggrieved employees during lulls in operation. IMOBILE could provide Ms. Guardado and other aggrieved employees with a seat or stool in its work areas, but instead denies employees seating and forced Ms. Guardado and other aggrieved employees to stand throughout the day.

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

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

Ms. Guardado and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring IMOBILE 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."

First, during the relevant time period, IMOBILE had a company-wide policy of requiring Ms. Guardado and other aggrieved employees to utilize their own personal cellular phones and cellular data to carry out their job duties, but IMOBILE failed to fully reimburse them for the costs of their work-related cellular phone expenses. Ms. Guardado and other aggrieved employees were required to use their personal cellular phones to complete their work-related tasks, such as communicating with IMOBILE's management to discuss upcoming sales goals and/or with customers about store events and inventory arrivals. For example, Ms. Guardado would spend approximately five (5) hours per day using her personal cellular phone to complete these tasks. Other aggrieved employees were also required to use their personal cellular phones to post about store promotions on their social media accounts, in order to meet their individual and store sales quotas. Although IMOBILE required Ms. Guardado and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, IMOBILE failed to fully reimburse them for this cost.

Second, as stated, IMOBILE had and continues to have, a company-wide policy of requiring Ms. Guardado and other aggrieved employees to travel in their own personal vehicles or obtain alternate transportation to carry out company business, attend requisite trainings, and/or drive to other work locations to pick up inventory or cover shifts at other IMOBILE stores, but failed to reimburse them for all costs of travel, including mileage. For example, Ms. Guardado was instructed to drive her own vehicle to other IMOBILE store locations during her shifts to retrieve additional inventory for her store. As a further example, other aggrieved employees were required to travel to attend mandatory customer service training sessions in Bakersfield, California. Although IMOBILE required Ms. Guardado and other aggrieved employees to utilize their own personal vehicles or obtain alternate transportation to complete these work-related duties, IMOBILE never reimbursed them for all of their travel expenses.

Third, IMOBILE, on a company-wide basis, required other aggrieved employees to purchase basic store supplies that were necessary for the completion of assigned tasks. For example, other aggrieved employees spent \$30.00 per year on pens and pocketknives used to unbox inventory. IMOBILE failed to provide these basic store supplies to other aggrieved employees, forcing them to procure their own, and failed to reimburse other aggrieved employees for the costs of these supplies.

Fourth, IMOBILE, on a company-wide basis, required Ms. Guardado and other aggrieved employees to report to work wearing clean and presentable uniforms, which forced Ms. Guardado and other aggrieved employees to clean their uniforms frequently and incur expenses for doing so. In addition, IMOBILE failed to provide Ms. Guardado and other aggrieved employees with an adequate number of uniforms, which further caused employees to incur regular laundering expenses. For example, Ms. Guardado was given only two (2) uniform shirts when scheduled to work five (5) or more days per week, and was therefore required to wash these uniforms at least three (3) times per week to ensure that they were clean prior to each shift.

IMOBILE could have provided Ms. Guardado 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, basic store supplies, and an adequate number of uniforms and/or access to laundering services. Or, IMOBILE could have reimbursed employees for their cellular phones, mileage, travel, basic store supplies, and laundering costs. Instead, IMOBILE passed these operating costs off onto Ms. Guardado and other aggrieved employees. At all relevant times, Ms. Guardado did not earn at least two (2) times the minimum wage.

Thus, IMOBILE 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. Guardado 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).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

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

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

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

Accordingly, Ms. Guardado 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 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Guardado, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for herself, all other aggrieved employees, and the State of California against IMOBILE for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226(f), 226.7, 246, 432, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2802, and 2810.5.

Pre-Litigation Demand

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

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

1. IMOBILE shall pay Ms. Guardado and all other aggrieved employees employed by IMOBILE at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. IMOBILE 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, provided lawful meal and rest periods, and paid reporting time pay.
3. IMOBILE shall conduct a survey or interview all current and former aggrieved employees in California who worked for IMOBILE 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, store supply, travel, and uniform expenses, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. IMOBILE 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. IMOBILE 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. IMOBILE shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for IMOBILE's benefit, including, but not limited to, costs of cellular phone expenses, mileage and travel expenses, basic store supply expenses, and uniform maintenance expenses as required by Labor Code section 2802.
6. IMOBILE shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. IMOBILE shall provide Ms. Guardado and all aggrieved employees employed by IMOBILE 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. IMOBILE shall timely provide Ms. Guardado and those aggrieved employees who request to inspect or copy records pertaining to their employment, with a copy of their personnel record, signed instruments, and documents and records related to their employment, as required by Labor Code sections 226(b), 432, and 1198.5.
9. IMOBILE shall provide all aggrieved employees written notice of sick leave benefits, as set forth in Labor Code section 246(i).
10. IMOBILE shall implement and provide suitable seating to all aggrieved employees.
11. IMOBILE shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
12. IMOBILE 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.
13. IMOBILE 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, 226.3, 248.5, 256, 558, 1174.5, 1194.5, 1197.1, 1198.5, and 2699, and Wage Order No. 7-2001, section 20.

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

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

Best Regards,



Julian Quattlebaum

Copy: IMOBILE OF CA LLC (via U.S. Certified Mail); IMOBILE USA LLC (via U.S. Certified Mail); IMOBILE LLC (via U.S. Certified Mail); IMOBILE EVOLUTION LLC (via U.S. Certified Mail); IMOBILE OF ANTELOPE VALLEY MALL CA, LLC (via U.S. Certified Mail); IMOBILE OF GLENDALE GALLERIA CA, LLC (via U.S. Certified Mail); IMOBILE OF INLAND CENTER CA, LLC (via U.S. Certified Mail); IMOBILE OF LAKEWOOD MALL CA, LLC (via U.S. Certified Mail); IMOBILE OF LOMPOC CA, LLC (via U.S. Certified Mail); IMOBILE OF MISSION VALLEY MALL CA, LLC (via U.S. Certified Mail); IMOBILE OF MONTCLAIR PLAZA CA, LLC (via U.S. Certified Mail); IMOBILE OF MONTEBELLO MALL CA, LLC (via U.S. Certified Mail); IMOBILE OF MORENO VALLEY MALL CA, LLC (via U.S. Certified Mail); IMOBILE OF NORTHRIDGE MALL CA, LLC (via U.S. Certified Mail); IMOBILE OF ONTARIO MILLS CA 1, LLC (via U.S. Certified Mail); IMOBILE OF ONTARIO MILLS CA 2, LLC (via U.S. Certified Mail); IMOBILE OF PANORAMA CA, LLC (via U.S. Certified Mail); IMOBILE OF PARKWAY PLAZA CA, LLC (via U.S. Certified Mail); IMOBILE OF PLAZA BONITA MALL CA, LLC (via U.S. Certified Mail); IMOBILE OF PUENTE HILLS CA, LLC (via U.S. Certified Mail); IMOBILE OF STONEWOOD MALL CA, LLC (via U.S. Certified Mail); IMOBILE OF TEMECULA MALL CA, LLC (via U.S. Certified Mail); IMOBILE OF VICTOR VALLEY CA, (via U.S. Certified Mail); IMOBILE OF WEST COVINA CA, LLC (via U.S. Certified Mail); IMOBILE OF CA BALBOA, INC. (via U.S. Certified Mail); IMOBILE OF CA CHINO INC. (via U.S. Certified Mail); IMOBILE OF CA CHINO 2, INC. (via U.S. Certified Mail); IMOBILE OF CA HEMET INC. (via U.S. Certified Mail); IMOBILE OF CA LA CANADA INC. (via U.S. Certified Mail); IMOBILE OF CA LANCASTER INC. (via U.S. Certified Mail); IMOBILE OF CA MAYWOOD, INC. (via U.S. Certified Mail); IMOBILE OF CA MELROSE L.A. INC. (via U.S. Certified Mail); IMOBILE OF CA MERCADO, INC. (via U.S. Certified Mail); IMOBILE OF CA MT. VERNON, INC. (via U.S. Certified Mail); IMOBILE OF CA NATIONAL CITY, INC. (via U.S. Certified Mail); IMOBILE OF CA POMONA, INC. (via U.S. Certified Mail); IMOBILE OF CA SAN DIMAS INC. (via U.S. Certified Mail); IMOBILE OF CA SANTA MARIA INC. (via U.S. Certified Mail); IMOBILE OF CA SUNSET L.A. INC. (via U.S. Certified Mail); IMOBILE OF CA TRACY INC. (via U.S. Certified Mail); IMOBILE OF CA VALENCIA INC. (via U.S. Certified Mail); IMOBILE OF CA VALLEY PLAZA, INC. (via U.S. Certified Mail); IMOBILE OF CA WEST COVINA, INC. (via U.S. Certified Mail); IMOBILE OF CA WESTMINSTER INC. (via U.S. Certified Mail); IMOBILE OF GLENDORA CA, INC. (via U.S. Certified Mail)

EXHIBIT 2



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

JULIAN.QUATTLEBAUM
310.712.8154 Direct
Julian.Quattlebaum@capstonelawyers.com

October 22, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/295>)

Subject: *Raul Torres v. iMobile of CA, LLC, et al.*

Dear PAGA Administrator:

This office represents Raul Torres in connection with his claims under the California Labor Code. Mr. Torres was an employee of IMOBILE OF CA LLC; IMOBILE USA LLC; IMOBILE LLC; IMOBILE EVOLUTION LLC; IMOBILE OF ANTELOPE VALLEY MALL CA, LLC; IMOBILE OF GLENDALE GALLERIA CA, LLC; IMOBILE OF INLAND CENTER CA, LLC; IMOBILE OF LAKEWOOD MALL CA, LLC; IMOBILE OF LOMPOC CA, LLC; IMOBILE OF MISSION VALLEY MALL CA, LLC; IMOBILE OF MONTCLAIR PLAZA CA, LLC; IMOBILE OF MONTEBELLO MALL CA, LLC; IMOBILE OF MORENO VALLEY MALL CA, LLC; IMOBILE OF NORTHRIDGE MALL CA, LLC; IMOBILE OF ONTARIO MILLS CA 1, LLC; IMOBILE OF ONTARIO MILLS CA 2, LLC; IMOBILE OF PANORAMA CA, LLC; IMOBILE OF PARKWAY PLAZA CA, LLC; IMOBILE OF PLAZA BONITA MALL CA, LLC; IMOBILE OF PUENTE HILLS CA, LLC; IMOBILE OF STONEWOOD MALL CA, LLC; IMOBILE OF TEMECULA MALL CA, LLC; IMOBILE OF VICTOR VALLEY CA, LLC; IMOBILE OF WEST COVINA CA, LLC; IMOBILE OF CA BALBOA, INC.; IMOBILE OF CA CHINO INC.; IMOBILE OF CA CHINO 2, INC.; IMOBILE OF CA HEMET INC.; IMOBILE OF CA LA CANADA INC.; IMOBILE OF CA LANCASTER INC.; IMOBILE OF CA MAYWOOD, INC.; IMOBILE OF CA MELROSE L.A. INC.; IMOBILE OF CA MERCADO, INC.; IMOBILE OF CA MT. VERNON, INC.; IMOBILE OF CA NATIONAL CITY, INC.; IMOBILE OF CA POMONA, INC.; IMOBILE OF CA SAN DIMAS INC.; IMOBILE OF CA SANTA MARIA INC.; IMOBILE OF CA SUNSET L.A. INC.; IMOBILE OF CA TRACY INC.; IMOBILE OF CA VALENCIA INC.; IMOBILE OF CA VALLEY PLAZA, INC.; IMOBILE OF CA WEST COVINA, INC.; IMOBILE OF CA WESTMINSTER INC.; and/or IMOBILE OF GLENDORA CA, INC. For the purpose of this letter, Mr. Torres collectively refers to these entities as "IMOBILE".

The employers may be contacted directly at the addresses below:

IMOBILE OF CA LLC
575 UNDERHILL BLVD STE 205
SYOSSET, NY 11791

IMOBILE OF CA LLC
10435 SANTA MONICA BLVD
LOS ANGELES, CA 90025

IMOBILE OF CA LLC
206 TERMINAL DR.
PLAINVIEW, NY 11803

IMOBILE LLC
207 TERMINAL DR
PLAINVIEW, NY 11803

IMOBILE OF ANTELOPE VALLEY MALL CA, LLC
1233 RANCHO VISTA BLVD, SPACE 345
PALMDALE, CA 93551

IMOBILE OF INLAND CENTER CA, LLC
500 INLAND CENTER DRIVE, SPACE K01
SAN BERNARDINO, CA 92408

IMOBILE OF LOMPOC CA, LLC
206 TERMINAL DRIVE
PLAINVIEW, NY 118039

IMOBILE OF MONTCLAIR PLAZA CA, LLC
5060 MONTCLAIR PLAZA LANE, SPACE 2101
MONTCLAIR, CA 91763

IMOBILE OF MORENO VALLEY MALL CA, LLC
22500 TOWNE CIRCLE, SPACE 1180
MORENO VALLEY, CA 92553

IMOBILE OF ONTARIO MILLS CA 1, LLC
ONE MILLS CIRCLE, SPACE 23
ONTARIO, CA 91764

IMOBILE OF PANORAMA CA, LLC
8401 VAN NUYS BLVD, SPACE K105
PANORAMA CITY, CA 91402

IMOBILE OF PLAZA BONITA MALL CA, LLC
3030 PLAZA BONITA ROAD, SPACE 9112
NATIONAL CITY, CA 91950

IMOBILE OF STONEWOOD MALL CA, LLC
251 STONEWOOD STREET, SPACE MMA-3
DOWNEY, CA 90241

IMOBILE OF VICTOR VALLEY CA, LLC
14400 BEAR VALLEY RD - SPACE K04
VICTORVILLE, CA 92392

IMOBILE OF CA BALBOA, INC.
207 TERMINAL DRIVE
PLAINVIEW, NY 11803

IMOBILE OF CA CHINO 2, INC.
207 TERMINAL DRIVE
PLAINVIEW, NY 11803

IMOBILE USA LLC
206 TERMINAL DR
PLAINVIEW, NY 11803

IMOBILE EVOLUTION LLC
206 TERMINAL DR
PLAINVIEW, NY 11803

IMOBILE OF GLENDALE GALLERIA CA, LLC
2148 GLENDALE GALLERIA, SPACE 01008A
GLENDALE, CA 91210

IMOBILE OF LAKEWOOD MALL CA, LLC
350 TENTH AVE, SUITE 1000
SAN DIEGO, CA 92101

IMOBILE OF MISSION VALLEY MALL CA, LLC
1640 CAMINO DEL RIO NORTH, SPACE 154
SAN DIEGO, CA 92108

IMOBILE OF MONTEBELLO MALL CA, LLC
2134 MONTEBELLO TOWN CENTER, SPACE 14
MONTEBELLO, CA 90640

IMOBILE OF NORTHRIDGE MALL CA, LLC
9301 TAMPA AVENUE, SPACE 5537
NORTHRIDGE, CA 91324

IMOBILE OF ONTARIO MILLS CA 2, LLC
ONE MILLS CIRCLE, SPACE 110
ONTARIO, CA 91764

IMOBILE OF PARKWAY PLAZA CA, LLC
415 PARKWAY PLAZA, SPACE 9006
EL CAJON, CA 92020

IMOBILE OF PUENTE HILLS CA, LLC
1600 AZUSA AVE, SPACE 241
CITY OF INDUSTRY, CA 91748

IMOBILE OF TEMECULA MALL CA, LLC
40820 WINCHESTER RD, SPACE K01
TEMECULA, CA 92591

IMOBILE OF WEST COVINA CA, LLC
112 PLAZA DRIVE, SPACE 9032
WEST COVINA CA 91790

IMOBILE OF CA CHINO INC.
4005 GRAND AVE STE C
CHINO, CA 91710

IMOBILE OF CA HEMET INC.
4005 GRAND AVE STE C
CHINO, CA 91710

IMOBILE OF CA LA CANADA INC.
207 TERMINAL DRIVE
PLAINVIEW, NY 11803

IMOBILE OF CA MAYWOOD, INC.
206 TERMINAL DRIVE
PLAINVIEW, NY 11803

IMOBILE OF CA MERCADO, INC.
207 TERMINAL DRIVE
PLAINVIEW, NY 11803

IMOBILE OF CA NATIONAL CITY, INC.
207 TERMINAL DRIVE
PLAINVIEW, NY 11803

IMOBILE OF CA SAN DIMAS INC.
2210 SOUTH BRADLEY RD
SANTA MARIA, CA 93455

IMOBILE OF CA SUNSET L.A. INC.
4005 GRAND AVE STE C
CHINO, CA 91710

IMOBILE OF CA VALENCIA INC.
400 GRAND AVENUE, STE C
CHINO, CA 91710

IMOBILE OF CA WEST COVINA, INC.
206 TERMINAL DRIVE
PLAINVIEW, NY 11803

IMOBILE OF GLENDORA CA, INC.
206 TERMINAL DRIVE
PLAINVIEW NY 11803

IMOBILE OF CA LANCASTER INC.
4005 GRAND AVE STE C
CHINO, CA 91710

IMOBILE OF CA MELROSE L.A. INC.
2210 S BRADLEY RD
SANTA MARIA, CA 93455

IMOBILE OF CA MT. VERNON, INC.
8735 BELLANCA AVENUE, STE B
LOS ANGELES, CA 90045

IMOBILE OF CA POMONA, INC.
206 TERMINAL DRIVE
PLAINVIEW NY 11803

IMOBILE OF CA SANTA MARIA INC.
4005 GRAND AVE STE C
CHINO, CA 91710

IMOBILE OF CA TRACY INC.
4005 GRAND AVE STE C
CHINO, CA 91710

IMOBILE OF CA VALLEY PLAZA, INC.
8735 BELLANCA AVENUE, STE B
LOS ANGELES, CA 90045

IMOBILE OF CA WESTMINSTER INC.
4005 GRAND AVE STE C
CHINO, CA 91710

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

IMOBILE employed Mr. Torres as an hourly paid, non-exempt employee from approximately November 2016 to November 2019. Mr. Torres worked for IMOBILE as a Customer Service Representative at the then Sprint retail store in Santa Maria, California, located at 2210 S. Bradley Road. During his employment, Mr. Torres typically worked eight (8) hours or more per day and five (5) to six (6) days per week. At the time his employment ended, Mr. Torres was compensated approximately \$12.75 per hour, plus commissions and bonuses. His job duties included, without limitation, communicating with clients and conducting sales, preparing sales reports, and maintaining the store premises.

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

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

IMOBILE OF CA LLC; IMOBILE OF ANTELOPE VALLEY MALL CA, LLC; IMOBILE OF GLENDALE GALLERIA CA, LLC; IMOBILE OF INLAND CENTER CA, LLC; IMOBILE OF LAKEWOOD MALL CA, LLC; IMOBILE OF LOMPOC CA, LLC; IMOBILE OF MISSION VALLEY MALL CA, LLC; IMOBILE OF MONTCLAIR PLAZA CA, LLC; IMOBILE OF MONTEBELLO MALL CA, LLC; IMOBILE OF MORENO VALLEY MALL CA, LLC; IMOBILE OF NORTHRIDGE MALL CA, LLC; IMOBILE OF ONTARIO MILLS CA 1, LLC; IMOBILE OF ONTARIO MILLS CA 2, LLC; IMOBILE OF PANORAMA CA, LLC; IMOBILE OF PARKWAY PLAZA CA, LLC; IMOBILE OF PLAZA BONITA MALL CA, LLC; IMOBILE OF PUENTE HILLS CA, LLC; IMOBILE OF STONEWOOD MALL CA, LLC; IMOBILE OF TEMECULA MALL CA, LLC; IMOBILE OF VICTOR VALLEY CA, LLC; and IMOBILE OF WEST COVINA CA, LLC are California limited liability companies. IMOBILE OF CA BALBOA, INC.; IMOBILE OF CA CHINO INC.; IMOBILE OF CA CHINO 2, INC.; IMOBILE OF CA HEMET INC.; IMOBILE OF CA LA CANADA INC.; IMOBILE OF CA LANCASTER INC.; IMOBILE OF CA MAYWOOD, INC.; IMOBILE OF CA MELROSE L.A. INC.; IMOBILE OF CA MERCADO, INC.; IMOBILE OF CA MT. VERNON, INC.; IMOBILE OF CA NATIONAL CITY, INC.; IMOBILE OF CA POMONA, INC.; IMOBILE OF CA SAN DIMAS INC.; IMOBILE OF CA SANTA MARIA INC.; IMOBILE OF CA SUNSET L.A. INC.; IMOBILE OF CA TRACY INC.; IMOBILE OF CA VALENCIA INC.; IMOBILE OF CA VALLEY PLAZA, INC.; IMOBILE OF CA WEST COVINA, INC.; IMOBILE OF CA WESTMINSTER INC.; and IMOBILE OF GLENDORA CA, INC. are California corporations. Finally, IMOBILE USA LLC; IMOBILE LLC; and IMOBILE EVOLUTION LLC are New York limited liability companies. Together, they are one of the largest authorized retailers of mobile devices and cellular phone plans under the T-Mobile (formerly Sprint) brand. IMOBILE operates more than 200 retail locations nationwide, including at least 33 retail locations in California. Upon information and belief, IMOBILE maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Los Angeles, California; Plainview, New York; or Syosset, New York, for all non-exempt, hourly paid employees working for IMOBILE in California, including Mr. Torres and other aggrieved employees. At all relevant times, IMOBILE issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Torres and other aggrieved employees, regardless of its location or position.

Upon information and belief, IMOBILE maintains a centralized Payroll department at its corporate headquarters in Los Angeles, California; Plainview, New York; or Syosset, New York, which processes payroll for all non-exempt, hourly paid employees working for IMOBILE in California, including Mr. Torres and other aggrieved employees. Further, IMOBILE issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Torres and other aggrieved employees, irrespective of their location, position, or manner in which each

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

employee's employment ended. In other words, IMOBILE utilized the same methods and formulas when calculating wages due to Mr. Torres and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

IMOBILE willfully failed to pay all overtime wages owed to Mr. Torres and other aggrieved employees. During the relevant time period, Mr. Torres and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, IMOBILE had a policy and/or practice of discouraging and impeding Mr. Torres and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. On information and belief, this limitation on overtime accrual was based on a company-wide policy of staffing store locations strictly based on the labor hours or labor budget set by corporate. This policy of limiting overtime, coupled with IMOBILE's policy and/or practice of assigning heavy workloads and sales quotas (*see infra*), led Mr. Torres and other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete their assigned tasks, such as conducting and finalizing sales. IMOBILE discouraged and impeded other aggrieved employees from recording hours worked that were outside of their scheduled shifts, upon threat of discipline for incurring unapproved overtime hours. Thus, IMOBILE failed to track this time spent working before and after scheduled shifts, and Mr. Torres and/or other aggrieved employees received no or incomplete compensation for this time. Alternatively, on information and belief, IMOBILE had a policy of improperly adjusting Mr. Torres's and other aggrieved employees' clock-in and clock-out duration times in its timekeeping system. IMOBILE's policies resulted in the failure to compensate Mr. Torres and other aggrieved employees fully for all hours worked, causing Mr. Torres and other aggrieved employees to not be paid overtime wages for all of the overtime hours they actually worked. Thus, IMOBILE failed to track this time spent working before and after scheduled shifts, and Mr. Torres and other aggrieved employees received no or incomplete compensation for this time.

Moreover, in conjunction with its policy of limiting overtime accrual, IMOBILE had, and continues to have, a company-wide policy and/or practice of requiring employees to complete work-related tasks while off-the-clock. IMOBILE required other aggrieved employees to perform work outside of their scheduled shifts, such as completing online training modules from home, but did not compensate them for all of this time. Also, as stated, IMOBILE required other aggrieved employees report to work prior to their scheduled shifts, but prevented them from clocking in until their scheduled shift start time; instead, other aggrieved employees were required to walk around the store area and solicit customers in order to conduct more sales. Additionally, as stated, other aggrieved employees were instructed by IMOBILE's management to finalize sales and clean the store premises after clocking out for their scheduled shifts, but were not paid for this time.

Second, IMOBILE, on a company-wide basis, had, and continues to have, a security policy requiring all employees to leave the store premises in pairs. Thus, after clocking out at the end of their shifts, Mr. Torres and other aggrieved employees were required to wait for another employee to become available before they could leave IMOBILE's premises. For example, once per week, Mr. Torres would clock out at the end of his shift and wait for 45-60 minutes off-the-clock for his fellow employee to finalize a sale, before he was permitted to exit the store. Furthermore, IMOBILE also required other aggrieved employees to undergo security checks at the end of their shifts before leaving the store premises. At the end of their shifts, other aggrieved employees were required to wait off-the-clock for several minutes in order to undergo a security check conducted by a managerial employee, before they could leave. As a result of these security and loss prevention policies and/or practices, Mr. Torres and other aggrieved employees were subject to IMOBILE's control after they had completed their shifts, but were not compensated for this time.

Third, other aggrieved employees were required to work off-the-clock traveling to attend mandatory training or meetings. For example, other aggrieved employees were required to drive in their personal vehicles for over four (4) hours round trip to and from mandatory customer service training in Bakersfield, California. Although IMOBILE required other aggrieved employees to travel to and attend off-site training or meetings, other aggrieved employees were not paid for the time they spent traveling to and from this training and/or meetings.

Fourth, during the relevant period, IMOBILE had a company-wide "on-call" policy, whereby it scheduled other aggrieved employees to work "on-call," or on standby. These "on-call" shifts worked to IMOBILE's benefit and to the detriment other aggrieved employees. By utilizing "on-call" shifts, IMOBILE received the benefit of being able to maximize revenue by having a standby workforce they could choose to utilize or not, depending on store traffic and sales metrics, without incurring the cost of compensating employees who show up to work and work a full or partial scheduled day's work. When scheduled for a "on-call" or standby shift, other aggrieved employees were required to wait for their store location to call them two (2) hours before their scheduled standby shift to see if they were required to come in and work. Other aggrieved employees were engaged to wait and could not engage in personal activities as they had to be ready to travel to their respective store locations on short notice and work their standby shift. When scheduled to be on-call for a standby shift, other aggrieved employees were controlled by IMOBILE because they were forced to put their lives on hold and could not use that time freely for their own purposes. For example, other aggrieved employees refrained from making plans altogether while "on-call" for a standby shift because they knew that they had to drop whatever they were doing at a moment's notice if they were instructed to work their standby shift. IMOBILE did not pay other aggrieved employees for the time they spent waiting to hear whether they needed to report to their store for work on days they ultimately were not called in.

Fifth, on information and belief, IMOBILE had, and continues to have, a company-wide policy and/or practice of strictly staffing its locations based on the labor hours allocated by corporate while assigning heavy workloads and sales quotas, which has resulted in, and continues to result in, chronic understaffing and a lack of adequate meal period coverage. As a result of this lack of meal period coverage, Mr. Torres and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Mr. Torres was forced to forego his meal periods 3-4 times per month in order to meet the individual and store sales quotas IMOBILE imposed on him. In addition, IMOBILE's management interrupted Mr. Torres's meal periods and instructed him to return early from meal periods once per week to assist customers, time for which he was not paid. Also, IMOBILE, on a company-wide basis, failed to schedule meal periods, which further exacerbated this lack of meal period coverage.

Furthermore, on information and belief, because IMOBILE frowned upon employees accruing meal period penalties, IMOBILE pressured Mr. Torres and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that IMOBILE would otherwise owe. Thus, Mr. Torres and other aggrieved employees performed work during meal periods for which they were not paid. Additionally, due to the lack of meal period coverage, IMOBILE required other aggrieved employees to remain on the premises for their meal periods. Because other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes. Thus, IMOBILE effectively maintained control over other aggrieved employees during meal periods.

Sixth, IMOBILE had, and continues to have, a company-wide policy and/or practice of requiring employees to use their personal cellular phones to check for promotions and communicate with supervisors and/or customers at all times, including during unpaid meal periods, before and after shifts, and on days off. IMOBILE expected that Mr. Torres and other aggrieved employees promptly respond to calls, text messages, and emails on their cellular phones at all times, to discuss work-related matters or conduct sales. For example, Mr. Torres spent approximately 15-20 minutes per week off-the-clock responding to work-related communications from store managers, and 1-2 hours off-the-clock responding to questions from customers regarding store inventory, in order to meet his individual and store sales quotas. However, IMOBILE did not compensate Mr. Torres and other aggrieved employees for the time they spent communicating with supervisors and customers while off-the-clock.

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

Because Mr. Torres and other aggrieved employees regularly worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Torres and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. IMOBILE's failure to pay Mr. Torres and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

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

Specifically, IMOBILE paid Mr. Torres and other aggrieved employees commissions, as well as nondiscretionary bonuses or incentive pay for reaching certain volume-based goals, such as product sales, on a monthly or quarterly basis. On information and belief, these commissions, nondiscretionary bonuses and/or incentive pay were listed on Mr. Torres's and other aggrieved employees' wage statements as "Commission" and "Spiff" (sales performance incentive fund). *See example wage statement below.*

[REDACTED]

IMOBILE OF CA LLC
206 TERMINAL DRIVE
PLAINVIEW, NY 11803
COMPANY PH# : 516-813-9500

Taxable Marital Status: [REDACTED]
Exemptions/Allowances:
Federal: [REDACTED]
CA: [REDACTED]

Social Security Number: [REDACTED]

Earnings Statement

Period Beginning: 10/13/2019
Period Ending: 10/26/2019
Pay Date: 11/01/2019

RAUL TORRES

[REDACTED]

Earnings	rate	hours	this period	year to date
Regular	12.2500	61.63	754.97	19,259.89
Overtime	18.3750	.33	6.06	1,225.73
Commission			118.92	16,066.88
Spiff			150.00	3,554.50
Sick				196.00
Gross Pay			\$1,029.95	40,986.88

Your federal taxable wages this period
[REDACTED]

Important Notes
BASIS OF PAY: HOURLY

During pay periods that Mr. Torres and other aggrieved employees were paid overtime wages, IMOBILE failed to incorporate the commissions, nondiscretionary bonus, and/or incentive pay into Mr. Torres's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, IMOBILE paid Mr. Torres and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. IMOBILE's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Mr. Torres and other aggrieved employees on a company-wide basis.

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

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

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

As set forth above, as a result of IMOBILE's policy of limiting the amount of overtime employees could accrue by discouraging and impeding Mr. Torres and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, Mr. Torres and other aggrieved employees were forced to work off-the-clock before and after their scheduled shift start and end times to complete their assigned job duties. Furthermore, Mr. Torres and other aggrieved employees were required to work off-the-clock completing online training, answering phone calls from IMOBILE's management and/or customers, waiting for fellow employees to become available to leave the store premises in pairs, undergoing security checks, and traveling to and from mandatory training and/or meetings. In addition, as stated above, IMOBILE had a company-wide "on-call" policy, whereby it required other aggrieved employees to wait to be called two (2) hours before their scheduled standby shifts. When this occurred, other aggrieved employees had to put their lives on hold and were restricted from using that time freely for their own purposes. Yet, IMOBILE did not pay other aggrieved employees at least minimum wages for the time they spent waiting to see if they were needed at the store.

Moreover, as also stated, due to IMOBILE's policy and/or practice of utilizing labor budgets, understaffing while assigning heavy workloads and sales quotas, failing to schedule meal periods, and requiring employees to stay on IMOBILE's premises during meal periods, Mr. Torres and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. Furthermore, as stated above, on information and belief, in order to limit meal penalties that IMOBILE would otherwise owe, IMOBILE pressured Mr. Torres and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods.

Thus, IMOBILE 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, IMOBILE 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, IMOBILE regularly failed to pay at least minimum wages to Mr. Torres 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. Torres and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal and rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As stated above, IMOBILE had, and continues to have, a policy and/or practice of utilizing labor budgets, understaffing while assigning heavy workloads and sales quotas, and failing to schedule meal periods, which has impeded Mr. Torres and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. In addition, because IMOBILE frowned upon employees accruing meal period penalties, IMOBILE's management would adjust Mr. Torres's and other aggrieved employees' time records and/or pressured employees to clock out for meal periods to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that would need to be paid by IMOBILE.

Moreover, as stated, IMOBILE had, and continues to have, a company-wide policy and/or practice of requiring that Mr. Torres and other aggrieved employees check for promotions and communicate with supervisors and/or customers at all times on their personal cellular phones, in order to meet their individual and store sales quotas, even during unpaid meal periods. Furthermore, as stated above, in

conjunction with these policies and/or practices, IMOBILE required other aggrieved employees to remain on the premises for their meal periods. Because other aggrieved employees were restricted from leaving the premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes. Thus, IMOBILE effectively maintained control over other aggrieved employees during meal periods. Consequently, Mr. Torres and other aggrieved employees suffered missed and/or interrupted meal periods.

IMOBILE's practices and policies prevented Mr. Torres and other aggrieved employees from taking all compliant meal periods to which they were entitled. As a result, Mr. Torres and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted and/or had to forgo their meal periods altogether. For example, Mr. Torres was forced to forego his meal periods 3-4 times per month in order to meet the individual and store sales quotas IMOBILE imposed on him. In addition, Mr. Torres would be forced to take his meal periods between his fifth and sixth hour of work 1-2 times per week due to the influx of customers he was required to assist.

Additionally, IMOBILE 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 or more per day, but were not provided a second 30-minute meal period. Mr. Torres 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.

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

Furthermore, IMOBILE 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. Torres and other aggrieved employees have not received premium pay for all missed, interrupted, or late meal periods. Alternatively, to the extent that IMOBILE did pay Mr. Torres and other aggrieved employees for missed, late, and interrupted meal periods, IMOBILE did not pay Mr. Torres other aggrieved employees at the correct rate of pay for premium wages because IMOBILE 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, IMOBILE failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Torres 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 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, IMOBILE regularly failed to authorize and permit Mr. Torres 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, IMOBILE’s company-wide policies and/or practices, including utilizing labor budgets and understaffing while assigning heavy workloads and sales quotas, prevented Mr. Torres and other aggrieved employees from being relieved of all duty to take compliant rest periods. IMOBILE also failed to schedule rest periods, which, coupled with IMOBILE’s failure to provide adequate rest period coverage, further led to Mr. Torres and other aggrieved employees not being authorized and permitted to take rest periods. Moreover, Mr. Torres and other aggrieved employees were expected to respond to questions from IMOBILE’s management at all times, including during rest periods.

Furthermore, upon information and belief, IMOBILE maintained a company-wide on-premises rest period policy, which mandated that Mr. Torres and/or other aggrieved employees remain on IMOBILE’s premises during their rest periods. Because Mr. Torres and/or other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, IMOBILE effectively maintained control over Mr. Torres and/or other aggrieved employees during rest periods.

As a result of IMOBILE’s practices and policies, Mr. Torres 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. Torres missed his rest periods 4-5 times per week due to the heavy workload and sales quotas IMOBILE assigned to him. The one or two times per week Mr. Torres was afforded a rest period, he was interrupted by IMOBILE’s management and asked when he would be returning to continue performing work-related duties. Additionally, other aggrieved employees did not receive a third rest period when working shifts in excess of 10 hours.

IMOBILE 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. Torres and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that IMOBILE did pay Mr. Torres and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, IMOBILE did not pay Mr. Torres another aggrieved employees at the correct rate of pay for premium wages because IMOBILE 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, IMOBILE failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Torres 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, 432, and 1198.5 – Failure to Produce and/or Permit Inspection of Records and Instruments Signed

California Labor Code section 226(b) provides that every employer shall furnish current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer. Labor Code Section 226(c) provides that an employer must comply with a request made pursuant to Labor Code section 226(b) no later than 21 calendar days from the date of the employee's request. California Labor Code section 226(f) states "[a] failure by an employer to permit a current or former employee to inspect or copy records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer." California Labor Code section 226(h) states "[a]n employee may also bring an action for injunctive relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's fees."

California Labor Code section 432 states "[i]f an employee or applicant signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request." California Labor Code section 433 states "[a]ny person violating this article is guilty of a misdemeanor."

California Labor Code section 1198.5 requires that an employer provide a copy of an employee's personnel record no later than 30 days from the date the employer receives a written request. If an employer fails to satisfy this written request, the former employee may recover a penalty of \$750.00 from the employer. Cal. Lab. Code § 1198.5(k). The former employee may also bring an action for injunctive relief and may recover costs and reasonable attorney's fees. Cal. Lab. Code § 1198.5(l).

The applicable IWC Wage Order No. 7-2001, section 7(A), provides "[e]very employer shall keep accurate information with respect to each employee including the following: (1) Full name, home address, occupation and social security number. (2) Birth date, if under 18 years, and designation as a minor. (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded. (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee. (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request." IWC Wage Order No. 7-2001, section 7(C), also provides "[a]ll required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request."

During the relevant time period, Mr. Torres sent IMOBILE reasonable written requests for documents and records relating to his employment with IMOBILE. During the relevant time period, IMOBILE failed to produce for inspection and copying or otherwise permit inspection and copying of documents and records relating to Mr. Torres's employment. For example, on June 23, 2020, Mr. Torres sent a written request to IMOBILE via FedEx overnight mail. On June 24, 2020, FedEx confirmed IMOBILE received Mr. Torres's written request for records. Then, on August 25, 2020, Mr. Torres sent a second written request to IMOBILE via FedEx overnight mail. On August 26, 2020, FedEx again confirmed IMOBILE received Mr. Torres's second written request for records. To date, IMOBILE has failed to respond to either of Mr. Torres's written request for his records. Thus, over 21 days have passed from the dates that Mr. Torres sent IMOBILE a reasonable written requests for documents and records relating to his employment, and IMOBILE has failed to comply with the requests in violation of Labor Code section 226(b) and the applicable IWC Wage Order.

Mr. Torres and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226(f) and (h), 1198.5(k)-(l), 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. IMOBILE has not provided Mr. Torres 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, IMOBILE has knowingly and intentionally provided Mr. Torres and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, IMOBILE issued uniform wage statements to Mr. Torres and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the correct address 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, IMOBILE violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because IMOBILE did not record the time Mr. Torres 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), IMOBILE did not list the correct amount of gross wages and net wages earned by Mr. Torres and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, IMOBILE failed to accurately list the total number of hours worked by Mr. Torres 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 IMOBILE did not calculate Mr. Torres's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, IMOBILE did not list the correct amount of gross wages earned by Mr. Torres and other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by Mr. Torres and other aggrieved employees in violation of section 226(a)(5). IMOBILE 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, IMOBILE issued uniform wage statements to Mr. Torres and other aggrieved employees that fail to list the correct address of the legal entity of the actual employer in violation of Labor Code section 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, obtain unemployment benefits, etc. Mr. Torres's wage statements list the entity "IMOBILE OF CA LLC" at the address "206 TERMINAL DRIVE PLAINVIEW, NY 11803," but, according to the California Secretary of State's website, there is no such entity by that name at that address. Instead, the entity "IMOBILE OF CA LLC"

is listed on the California Secretary of State's website with a different address, 10435 SANTA MONICA BLVD LOS ANGELES, CA 90025. *See example wage statement below.*

		Earnings Statement	
IMOBILE OF CA LLC		Period Beginning:	09/29/2019
206 TERMINAL DRIVE		Period Ending:	10/12/2019
PLAINVIEW, NY 11803		Pay Date:	10/18/2019
COMPANY PH# : 516-813-9500			
Taxable Marital Status: 		RAUL TORRES	
Exemptions/Allowances:			
Federal: 			
CA: 			

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name 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), IMOBILE willfully failed to maintain accurate payroll records for Mr. Torres 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, IMOBILE failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Torres and other aggrieved employees, in violation of section 1198. As stated, IMOBILE engaged in a company-wide practice and/or policy of falsifying Mr. Torres’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. Torres and other aggrieved employees. Furthermore, in light of IMOBILE’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, IMOBILE kept no records of meal start and end times for second meal periods.

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

Mr. Torres 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, IMOBILE has a company-wide practice or policy of not 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. Other aggrieved employees received their final wages nearly a month after their termination, in violation of Labor Code sections 201 and 202. Moreover, Mr. Torres was terminated in person on or about November 1, 2019. However, that same day, IMOBILE only provided him with a paycheck that included the wages due to him from his previous pay cycle, from October 13 to October 26, 2019, and not for any hours worked between October 27 through November 1, 2019. To date, Mr. Torres has not been paid his final wages for the time worked between October 27 through November 1, 2019. Furthermore, upon information and belief, IMOBILE has, and continues to have, a policy and/or practice of withholding final commissions and/or bonus payments owed to former employees of IMOBILE for approximately six (6) months after their final day of employment. To date,

Mr. Torres has not received all of his earned commissions and/or bonus payments, or his final wages, which were due and payable immediately on his last day of work. Thus, IMOBILE failed to pay Mr. Torres his final wages immediately, in violation of Labor Code section 201.

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

Mr. Torres 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 § 246 – Failure to Provide Written Notice of Paid Sick Leave Benefits

California's Healthy Workplaces, Healthy Families Act of 2014 was enacted to provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Codified at California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249, section 246(i) provides that an employer must provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off that an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement or in a separate written statement provided on the designated pay date with the employee's wages. The penalties described in this article for a violation of this subdivision shall be in lieu of the penalties for a violation of Section 226.

During the relevant time period, IMOBILE has failed to provide Mr. Torres and other aggrieved employees written notice on wage statements and/or other separate written statements that list the requisite information set forth in Labor Code section 246(i). IMOBILE's ongoing and systematic failure to provide written notice of sick leave benefits to Mr. Torres and other aggrieved employees violates California Labor Code section 246(i).

Mr. Torres and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(a), (f)-(g).

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

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

California Code of Regulations, Title 8, section 11070(5)(A) provides that "[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage." The "primary purpose of the reporting time regulation" is "to guarantee at least partial compensation for employees who report to work

expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012)

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

First, as described above, IMOBILE had a company-wide “on-call” policy, whereby it scheduled other aggrieved employees to work “on-call,” or on standby. When scheduled for an “on-call” or standby shift, other aggrieved employees regularly presented themselves as ready for work by waiting for the store to call them two (2) hours prior to their scheduled standby shift and would await instructions on whether to report to the store for a shift, but were ultimately not told to come in. When this occurred, IMOBILE did not pay other aggrieved employees for at least half of their scheduled day’s work or the minimum reporting time pay when they were subject to IMOBILE’s “on-call” policy and were ultimately not called.

Second, on information and belief, IMOBILE had a company-wide practice of sending other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay other aggrieved employees for half of their scheduled shift due to IMOBILE’s labor budget. Although other aggrieved employees would report to work based on the schedule that IMOBILE provided to them, IMOBILE would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. For example, other aggrieved employees would occasionally report to work and would be told to go home because business was slow, yet they were never paid for any of this time. Accordingly, other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198.

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.*

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

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

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

Mr. Torres and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring IMOBILE 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, IMOBILE’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. Torres and other aggrieved employees during lulls in operation. IMOBILE could provide Mr. Torres and other aggrieved employees with a seat or stool in its work areas, but instead denies employees seating and forced Mr. Torres and other aggrieved employees to stand throughout the day.

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

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

Mr. Torres and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring IMOBILE 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.”

First, during the relevant time period, IMOBILE had a company-wide policy of requiring Mr. Torres and other aggrieved employees to utilize their own personal cellular phones and cellular data to carry out their job duties, but IMOBILE failed to fully reimburse them for the costs of their work-related cellular phone expenses. Mr. Torres and other aggrieved employees were required to use their personal cellular phones to complete their work-related tasks, such as communicating with IMOBILE’s management to discuss upcoming sales goals, or with customers about store events and inventory arrivals. Mr. Torres and other aggrieved employees were also required to use their personal cellular phones to post about store promotions on their social media accounts, in order to meet their individual and store sales quotas. For example, Mr. Torres would spend approximately 1-2 hours per day using his personal cellular phone to complete these tasks. Although IMOBILE required Mr. Torres and other aggrieved employees to utilize

their personal cellular phones to carry out their work-related responsibilities, IMOBILE failed to fully reimburse them for this cost.

Second, as stated, IMOBILE had and continues to have, a company-wide policy of requiring other aggrieved employees to travel in their own personal vehicles or obtain alternate transportation to carry out company business, attend requisite trainings, and drive to other work locations, but failed to reimburse them for all costs of travel, including mileage. For example, other aggrieved employees were instructed to drive their own vehicles to other IMOBILE store locations during their shifts to retrieve additional inventory for their store or to cover shifts at other IMOBILE stores. As a further example, other aggrieved employees were required to travel to attend mandatory customer service training sessions in Bakersfield, California. Although IMOBILE required other aggrieved employees to utilize their own personal vehicles or obtain alternate transportation to complete these work-related duties, IMOBILE never reimbursed them for all of their travel expenses.

Third, IMOBILE, on a company-wide basis, required Mr. Torres and other aggrieved employees to purchase basic store supplies that were necessary for the completion of assigned tasks. For example, Mr. Torres spent \$30.00 per year on pens and pocketknives used to unbox inventory. IMOBILE failed to provide these basic store supplies to Mr. Torres and other aggrieved employees, forcing them to procure their own, and failed to reimburse Mr. Torres and other aggrieved employees for the costs of these supplies.

Fourth, IMOBILE, on a company-wide basis, required Mr. Torres and other aggrieved employees to report to work wearing clean and presentable uniforms, which forced other aggrieved employees to clean their uniforms frequently and incur expenses for doing so. In addition, IMOBILE failed to provide other aggrieved employees with an adequate number of uniforms, which further caused employees to incur regular laundering expenses. For example, other aggrieved employees were given only two (2) uniform shirts when scheduled to work five (5) or more days per week, and were therefore required to wash these uniforms at least three (3) times per week to ensure that they were clean prior to each shift.

IMOBILE could have provided Mr. Torres 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, basic store supplies, and an adequate number of uniforms and/or access to laundering services. Or, IMOBILE could have reimbursed employees for their cellular phones, mileage, travel, basic store supplies, and laundering costs. Instead, IMOBILE passed these operating costs off onto Mr. Torres and other aggrieved employees. At all relevant times, Mr. Torres did not earn at least two (2) times the minimum wage.

Thus, IMOBILE 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. Torres 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).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

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

of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

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

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

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

Accordingly, Mr. Torres 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. Torres, 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 IMOBILE for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226(f), 226.7, 246, 432, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2802, and 2810.5.

Pre-Litigation Demand

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

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

1. IMOBILE shall pay Mr. Torres and all other aggrieved employees employed by IMOBILE at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.

2. IMOBILE 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, provided lawful meal and rest periods, and paid reporting time pay.
3. IMOBILE shall conduct a survey or interview all current and former aggrieved employees in California who worked for IMOBILE 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, store supply, travel, and uniform expenses, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. IMOBILE 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. IMOBILE 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. IMOBILE shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for IMOBILE's benefit, including, but not limited to, costs of cellular phone expenses, mileage and travel expenses, basic store supply expenses, and uniform maintenance expenses as required by Labor Code section 2802.
6. IMOBILE shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. IMOBILE shall provide Mr. Torres and all aggrieved employees employed by IMOBILE 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. IMOBILE shall timely provide Mr. Torres and those aggrieved employees who request to inspect or copy records pertaining to their employment, with a copy of their personnel record, signed instruments, and documents and records related to their employment, as required by Labor Code sections 226(b), 432, and 1198.5.
9. IMOBILE shall provide all aggrieved employees written notice of sick leave benefits, as set forth in Labor Code section 246(i).
10. IMOBILE shall implement and provide suitable seating to all aggrieved employees.
11. IMOBILE shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
12. IMOBILE 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.
13. IMOBILE 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, 226.3, 248.5, 256,

558, 1174.5, 1194.5, 1197.1, 1198.5, and 2699, and Wage Order No. 7-2001, section 20.

Therefore, on behalf of all aggrieved employees, Mr. Torres 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:

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

Best Regards,



Julian Quattlebaum

Copy: IMOBILE OF CA LLC (via U.S. Certified Mail); IMOBILE USA LLC (via U.S. Certified Mail); IMOBILE LLC (via U.S. Certified Mail); IMOBILE EVOLUTION LLC (via U.S. Certified Mail); IMOBILE OF ANTELOPE VALLEY MALL CA, LLC (via U.S. Certified Mail); IMOBILE OF GLENDALE GALLERIA CA, LLC (via U.S. Certified Mail); IMOBILE OF INLAND CENTER CA, LLC (via U.S. Certified Mail); IMOBILE OF LAKEWOOD MALL CA, LLC (via U.S. Certified Mail); IMOBILE OF LOMPOC CA, LLC (via U.S. Certified Mail); IMOBILE OF MISSION VALLEY MALL CA, LLC (via U.S. Certified Mail); IMOBILE OF MONTCLAIR PLAZA CA, LLC (via U.S. Certified Mail); IMOBILE OF MONTEBELLO MALL CA, LLC (via U.S. Certified Mail); IMOBILE OF MORENO VALLEY MALL CA, LLC (via U.S. Certified Mail); IMOBILE OF NORTHRIDGE MALL CA, LLC (via U.S. Certified Mail); IMOBILE OF ONTARIO MILLS CA 1, LLC (via U.S. Certified Mail); IMOBILE OF ONTARIO MILLS CA 2, LLC (via U.S. Certified Mail); IMOBILE OF PANORAMA CA, LLC (via U.S. Certified Mail); IMOBILE OF PARKWAY PLAZA CA, LLC (via U.S. Certified Mail); IMOBILE OF PLAZA BONITA MALL CA, LLC (via U.S. Certified Mail); IMOBILE OF PUENTE HILLS CA, LLC (via U.S. Certified Mail); IMOBILE OF STONEWOOD MALL CA, LLC (via U.S. Certified Mail); IMOBILE OF TEMECULA MALL CA, LLC (via U.S. Certified Mail); IMOBILE OF VICTOR VALLEY CA, (via U.S. Certified Mail); IMOBILE OF WEST COVINA CA, LLC (via U.S. Certified Mail); IMOBILE OF CA BALBOA, INC. (via U.S. Certified Mail); IMOBILE OF CA CHINO INC. (via U.S. Certified Mail); IMOBILE OF CA CHINO 2, INC. (via U.S. Certified Mail); IMOBILE OF CA HEMET INC. (via U.S. Certified Mail); IMOBILE OF CA LA CANADA INC. (via U.S. Certified Mail); IMOBILE OF CA LANCASTER INC. (via U.S. Certified Mail); IMOBILE OF CA MAYWOOD, INC. (via U.S. Certified Mail); IMOBILE OF CA MELROSE L.A. INC. (via U.S. Certified Mail); IMOBILE OF CA MERCADO, INC. (via U.S. Certified Mail); IMOBILE OF CA MT. VERNON, INC. (via U.S. Certified Mail); IMOBILE OF CA NATIONAL CITY, INC. (via U.S. Certified Mail); IMOBILE OF CA POMONA, INC. (via U.S. Certified Mail); IMOBILE OF CA SAN DIMAS INC. (via U.S. Certified Mail); IMOBILE OF CA SANTA MARIA INC. (via U.S. Certified Mail); IMOBILE OF CA SUNSET L.A. INC. (via U.S. Certified Mail); IMOBILE OF CA TRACY INC. (via U.S. Certified Mail); IMOBILE OF CA VALENCIA INC. (via U.S. Certified Mail); IMOBILE OF CA VALLEY PLAZA, INC. (via U.S. Certified Mail); IMOBILE OF CA WEST COVINA, INC. (via U.S. Certified Mail); IMOBILE OF CA WESTMINSTER INC. (via U.S. Certified Mail); IMOBILE OF GLENDORA CA, INC. (via U.S. Certified Mail)