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

MARIA GAMEZ-MARTINEZ, an
aggrieved employee pursuant to the Private
Attorneys General Act,

Plaintiff,

vs.

BG RETAIL, LLC, a Delaware limited
liability company; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: **CIV SB 2028631**

ENFORCEMENT ACTION UNDER THE
PRIVATE ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698 *ET*
SEQ.

**COMPLAINT FOR CIVIL PENALTIES
FOR VIOLATIONS OF CALIFORNIA
LABOR CODE, PURSUANT TO PAGA, §§
2698, ET SEQ.**

Jury Trial Demanded

LAW OFFICES OF
MARK YABLONOVICH
BEVERLY HILLS

COPY

1 Plaintiff Maria Gamez-Martinez¹ (“Plaintiff”), as an aggrieved employee and on behalf
2 of all other non-party aggrieved employees and the State of California, alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This is a law enforcement action under the Labor Code Private Attorneys
5 General Act of 2004, California Labor Code sections 2698 *et seq.* (“PAGA”) to recover civil
6 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
7 current and former employees who worked for Defendant BG Retail, LLC dba Famous
8 Footwear, a Delaware limited liability company; and DOES 1 through 10, inclusive
9 (collectively “Defendants”) in California as non-exempt, hourly-paid employees and against
10 whom one or more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code
11 or any provision regulating hours and days of work in the applicable Industrial Welfare
12 Commission (“IWC”) Wage Order were committed, as set forth in this complaint (“Aggrieved
13 Employees”), at any time between one year before Plaintiff’s submission of the LWDA Notice
14 (defined below) in advance of Plaintiff’s filing of this complaint (in addition to all days the
15 period was stayed or tolled) until judgment. Plaintiff’s share of civil penalties sought in this
16 action does not exceed \$75,000.

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

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

27
28 ¹ During Plaintiff’s employment with Defendant BG Retail, LLC, she went by her
maiden name – Maria Victoria Gamez.

1 when the real party in interest is a state, it cannot be a “citizen” for purposes of diversity
2 jurisdiction). *Urbino* also holds that civil penalties cannot be aggregated to satisfy the amount in
3 controversy requirement for federal diversity jurisdiction in this action. *Id.* at 1122.

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

7 5. PAGA authorizes aggrieved employees to sue as private attorneys general their
8 current or former employers for various civil penalties for violations of various provisions in the
9 California Labor Code.

10 **THE PARTIES**

11 6. Plaintiff is a resident of San Bernardino County, California. Defendants
12 employed Plaintiff from approximately January 8, 2017 to approximately December 5, 2019, as
13 a non-exempt, hourly-paid assistant manager at Defendants’ California Famous Footwear stores
14 located in Hesperia, Victorville, and Whittier. Plaintiff typically worked approximately seven to
15 eight hours or more per day, five days per week, and thirty-eight to forty hours or more per
16 week. At the time Plaintiff’s employment with Defendants ended, she earned approximately \$17
17 per hour. Plaintiff’s job duties included, but were not limited to, opening and closing the stores,
18 cleaning the stores, setting up displays for new merchandise, loss prevention, providing customer
19 support, and handling deliveries and inventory.

20 7. Plaintiff is informed and believes, and thereon alleges, that Defendant BG Retail,
21 LLC, a Delaware limited liability company, is doing business in California under the name
22 Famous Footwear, and at all times hereinafter mentioned, an employer whose employees are
23 engaged throughout this county, the State of California, and the various states of the United
24 States of America.

25 8. Plaintiff is unaware of the true names or capacities of the Defendants sued herein
26 under the fictitious names DOES 1 through 10, and will seek leave of this Court to amend the
27 complaint and serve such fictitiously named defendants once their names and capacities become
28 known. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 are the

1 partners, agents, owners, shareholders, managers, or employees of the other named Defendants,
2 and that each and all of the acts and omissions alleged herein were performed by, or is
3 attributable to, Defendants each acting as the agent, employee, alter ego, joint employer, and/or
4 joint venturer of, or working in concert with, each of the other co-Defendants and was acting
5 within the course and scope of such agency, employment, joint venture, or concerted activity
6 with legal authority to act on the others' behalf. The acts of any and all Defendants were in
7 accordance with, and represent, the official policy of Defendants.

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

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

15 **PAGA REPRESENTATIVE ALLEGATIONS**

16 11. Plaintiff is informed and believes that Defendants are limited liability companies
17 and/or corporations engaged in services across California. Upon information and belief,
18 Defendants maintain a centralized Human Resources department for all non-exempt, hourly-
19 paid employees working for Defendants in California, including Plaintiff and other Aggrieved
20 Employees. At all relevant times, Defendants issued and maintained uniform, standardized
21 practices and procedures for all non-exempt, hourly-paid employees in California, including
22 Plaintiff and other Aggrieved Employees, regardless of their location or position.

23 12. Upon information and belief, Defendants process payroll for all non-exempt,
24 hourly-paid employees working for Defendants in California, including Plaintiff and other
25 Aggrieved Employees. Further, Defendants issue the same uniform and formatted wage
26 statements to all non-exempt, hourly-paid employees in California, irrespective of their work
27 location, position, or manner in which each employee's employment ended. Defendants' payroll
28 department processed payroll for non-exempt, hourly-paid employees in the same manner

1 throughout California. In other words, Defendants utilized the same methods and formulas when
2 calculating wages and any other remunerations due to Plaintiff and other Aggrieved Employees
3 in California.

4 13. Defendants continue to employ non-exempt, hourly-paid employees in
5 California.

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

10 15. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
11 Aggrieved Employees were not fully compensated because, among other reasons, all hours
12 worked may not have been recorded and because Defendants did not always pay for all hours
13 worked.

14 16. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and other Aggrieved Employees were entitled to receive
16 certain wages for overtime compensation and that they were not receiving overtime wages at the
17 correct overtime rate and/or for work that was required to be performed.

18 17. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and other Aggrieved Employees were entitled to receive at
20 least minimum wages for all hours worked. In violation of the California Labor Code, Plaintiff
21 and other Aggrieved Employees were not paid at least minimum wages for all work performed.

22 18. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and other Aggrieved Employees were entitled to meal periods
24 in accordance with the Labor Code; that Plaintiff and other Aggrieved Employees were entitled
25 to payment of one additional hour of pay at their regular rates of compensation when they were
26 not provided with timely, uninterrupted, thirty-minute meal periods; and that Plaintiff and other
27 Aggrieved Employees were not provided with all meal periods nor payment of one additional
28 hour of pay at their regular rates of compensation when they did not receive a timely,

uninterrupted, thirty-minute meal period.

19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other Aggrieved Employees were entitled to rest periods in accordance with the Labor Code and applicable IWC Wage Order, that Defendants knew or should have known that Plaintiff and other Aggrieved Employees were entitled to payment of one additional hour of pay at their regular rates of compensation when they were not provided with a compliant rest period, and that Plaintiff and other Aggrieved Employees were not provided compliant rest periods nor payment of one additional hour of pay at their regular rates of compensation when they were not provided a compliant rest period.

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

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

22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that they had a duty to maintain accurate and complete time records in accordance with the Labor Code and applicable IWC Wage Order, but failed to do so.

23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other Aggrieved Employees were entitled to timely payment of wages during their employment. In violation of the California Labor Code, Plaintiff and other Aggrieved Employees did not receive payment of all wages, including, but not limited to, overtime wages, minimum wages, meal period and rest period premium wages, and split shift pay, within permissible time periods.

24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other Aggrieved Employees were entitled to timely

1 payment of all wages earned upon termination of employment. In violation of the California
2 Labor Code, Plaintiff and other Aggrieved Employees did not receive payment of all wages due,
3 including, but not limited to, overtime wages, minimum wages, meal period and rest period
4 premium wages, and split shift pay, within permissible time periods.

5 25. Plaintiff is informed and believes, and thereon alleges, that at all times herein
6 mentioned, Defendants knew or should have known that Plaintiff and other Aggrieved
7 Employees were entitled to reimbursement for all business-related expenditures and/or losses
8 they incurred during the course and scope of their employment, and that Plaintiff and other
9 Aggrieved Employees did not receive reimbursement of applicable business-related
10 expenditures and/or losses they incurred.

11 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and other Aggrieved Employees were entitled to payment of
13 one additional hour of pay at minimum wage for working split shifts, and that Plaintiff and other
14 Aggrieved Employees were not provided payment of one additional hour of pay at minimum
15 wage when they worked a split shift.

16 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and other Aggrieved Employees were entitled to suitable seating
18 and/or were entitled to sit when it did not interfere with the performance of their duties.

19 28. Plaintiff is informed and believes, and thereon alleges, that at all times herein
20 mentioned, Defendants knew or should have known that they had a duty to provide Plaintiff and
21 other Aggrieved Employees with written notice of the material terms of their employment with
22 Defendants as required by the California Wage Theft Prevention Act, but failed to do so

23 29. Plaintiff is informed and believes, and thereon alleges, that at all times herein
24 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff
25 and other Aggrieved Employees for all hours worked, and that Defendants had the financial
26 ability to pay such compensation, but failed to do so, and falsely represented to Plaintiff and
27 other Aggrieved Employees that they were properly denied wages, all in order to increase
28 Defendants' profits.

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

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

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

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

- 16 (a) The aggrieved employee or representative shall give written notice by
17 online filing with the LWDA and by certified mail to the employer of the
18 specific provisions of the California Labor Code alleged to have been
19 violated, including the facts and theories to support the alleged violation.
20 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
21 2699.3(a) and any employer response to that notice shall be accompanied
22 by a filing fee of seventy-five dollars (\$75).
23 (c) The LWDA shall notify the employer and the aggrieved employee or
24 representative by certified mail that it does not intend to investigate the
25 alleged violation (“LWDA Notice”) within sixty (60) calendar days of the
26 postmark date of the aggrieved employee’s notice. Upon receipt of the
27 LWDA Notice, or if no LWDA Notice is provided within sixty-five (65)
28 calendar days of the postmark date of the aggrieved employee’s notice,

the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties.

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

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

35. On October 13, 2020, Plaintiff provided written notice by online filing with the LWDA along with the applicable filing fee of seventy-five dollars (\$75), and provided notice by Certified Mail to Defendants, of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, A true and correct copy of Plaintiff's written notice to the LWDA and Defendants dated October 13, 2020, is attached as Exhibit 1.

37. Thus, Plaintiff has satisfied the administrative prerequisites under California Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants, in addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1198, 2800, 2802, and 2810.5 as well as all applicable IWC Wage Orders.

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

FIRST CAUSE OF ACTION

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

(Against all Defendants)

42. California Labor Code sections 2698, *et seq.* permit Plaintiff to recover various civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section

2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 1182.12 and 2810.5.

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

- (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and Aggrieved Employees with all required overtime pay, as set forth below;
- (b) Violations of Labor Code sections 223, 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order for Defendant's failure to compensate Plaintiff and Aggrieved Employees with at least minimum wages for all hours worked, as set forth below;
- (c) Violation of Labor Code sections 226.7, 512(a), and 1198, and the applicable IWC Wage Order for Defendants' failure to provide Plaintiff and Aggrieved Employees with meal periods, as set forth below;
- (d) Violation of Labor Code sections 226.7 and 1198, and the applicable IWC Wage Order for Defendants' failure to provide Plaintiff and Aggrieved Employees with rest periods, as set forth below;
- (e) Violation of Labor Code sections 226(a) and 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiff and Aggrieved Employees, as set forth below;
- (f) Violations of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain accurate payroll records, as set forth below;
- (g) Violations of Labor Code section 1198 and the applicable IWC Wage Order for failure to maintain accurate time records, as set forth below;
- (h) Violation of Labor Code section 204 for failure to timely pay all earned

wages during employment, as set forth below;

- (i) Violation of Labor Code sections 201, 202, and 203 for failure to timely pay all earned wages upon termination, as set forth below;
- (j) Violations of Labor Code sections 2800 and 2802 for failure to reimburse Plaintiff and Aggrieved Employees for all business expenditures and/or losses necessarily incurred, as set forth below;
- (k) Violations of Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(4)(C) for failure to pay shift premiums to Plaintiff and Aggrieved Employees who worked split shifts, as set forth below;
- (l) Violation of Labor Code section 1198 and section (14) of the applicable IWC Wage Order for failing to provide suitable seating to Plaintiff and Aggrieved Employees, as set forth below; and
- (m) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to provide written notice of information material to Plaintiff's and Aggrieved Employees' employment with Defendants, as set forth below.

FAILURE TO PAY OVERTIME WAGES IN

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

44. 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."

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

46. Specifically, the applicable IWC Wage Order provides that Defendants are and

1 were required to pay Plaintiff and other Aggrieved Employees working more than eight hours in
2 a day or more than forty hours in a workweek, at the rate of time and one-half for all hours
3 worked in excess of eight hours in a day or more than forty hours in a workweek.

4 47. The applicable IWC Wage Order further provides that Defendants are and were
5 required to pay Plaintiff and other Aggrieved Employees working more than twelve hours in a
6 day, overtime compensation at a rate of two times their regular rate of pay, and required to pay
7 Plaintiff and other Aggrieved Employees at a rate of two times their regular rate of pay for hours
8 worked in excess of eight hours on the seventh consecutive day of a work in a workweek.

9 48. An employee's regular rate of pay includes all remuneration for employment
10 paid to, or on behalf of, the employee, including non-discretionary bonuses and incentive pay.

11 49. California Labor Code section 510 codifies the right to overtime compensation at
12 one and one-half times the regular rate of pay for hours worked in excess of eight hours in a day
13 or forty hours in a week or for the first eight hours worked on the seventh day of work, and to
14 overtime compensation at twice the employee's regular rate of pay for hours worked in excess
15 of twelve hours in a day or in excess of eight hours in a day on the seventh day of work.

16 50. At all relevant times, Defendants failed to pay all overtime wages owed to
17 Plaintiff and other Aggrieved Employees. During the relevant time period, Plaintiff and other
18 Aggrieved Employees were not paid overtime wages for all of the hours they worked in excess
19 of eight hours a day, in excess of twelve hours in a day, in excess of forty hours in a week,
20 and/or for the seventh consecutive day of work, sometimes because all hours that they worked
21 were not recorded, and other times because they were simply not paid for the hours that were
22 recorded and/or worked.

23 51. Upon information and belief, Defendants have a company-wide policy and/or
24 practice of staffing its stores based on a labor budget set by the corporate office, which resulted in
25 chronic understaffing such that there were too few employees on duty to handle the workload and
26 provide uninterrupted meal periods. As a result of Defendants' systemic utilization of labor budgets
27 and preference for profitability over compliance with labor laws, Plaintiff and other Aggrieved
28 Employees were not provided adequate meal period coverage to allow them to be relieved of their

1 duties for compliant meal periods and/or were required to perform pre-shift and/or post-shift work
2 while off-the-clock.

3 52. Additionally, upon information and belief, Defendants have a company-wide policy
4 and/or practice of communicating with employees regarding work-related matters during the
5 employees' meal periods and when those employees are otherwise clocked out. As a result of this
6 policy and/or practice, Plaintiff and other Aggrieved Employees would have to continue with their
7 job duties, such as performing sales transactions, monitoring shoplifters, and accepting deliveries,
8 before clocking in for the start of their shifts, after clocking out for meal periods, and after clocking
9 out at the end of their shifts. This would result in Plaintiff and other Aggrieved Employees working
10 while off-the-clock before and/or after their scheduled shifts or while on meal periods for as much as
11 thirty minutes or longer on a regular basis. Moreover, Defendants would not always permit Plaintiff
12 and other Aggrieved Employees to adjust their punch-in or punch-out times so that they could
13 account for and be compensated for this off-the-clock work

14 53. Defendants also have a company-wide policy and/or practice of subjecting their
15 employees to security inspections before allowing them to leave the store premises. After clocking
16 out for a meal period or at the end of their shift, Plaintiff and other Aggrieved Employees had to
17 wait for management to complete tasks and then undergo the security inspection before being
18 allowed to leave the premises. Plaintiff typically waited six to seven minutes for the inspections to
19 be completed, but sometimes had to wait over ten minutes. These security inspections took place
20 off-the-clock, and Defendants did not compensate Plaintiff and other Aggrieved Employees for the
21 time they spent waiting to undergo security inspections.

22 54. Furthermore, Defendants did not pay Plaintiff and other Aggrieved Employees
23 the correct overtime rate for the recorded overtime hours that they generated. Based on
24 information and belief, in addition to an hourly wage, Defendants paid Plaintiff and other
25 Aggrieved Employees incentive pay and/or nondiscretionary compensation. However, in
26 violation of the California Labor Code, Defendants failed to incorporate all remunerations,
27 including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate
28 of pay for purposes of calculating the overtime wage rate. Therefore, during times when

1 Plaintiff and other Aggrieved Employees worked overtime and received incentive pay and/or
2 nondiscretionary bonuses, Defendants failed to pay all overtime wages by paying a lower
3 overtime rate than required.

4 55. Defendants knew or should have known that, as a result of its policies, practices
5 and/or procedures, Plaintiff and other Aggrieved Employees were at times performing their assigned
6 duties off-the-clock, were subject to control of Defendants, and/or were suffered or permitted to
7 work for which they were not paid. Defendants also knew, or should have known, that it did not
8 compensate Plaintiff and other Aggrieved Employees for off-the-clock work or all hours worked.
9 Because Plaintiff and other Aggrieved Employees sometimes worked shifts longer than eight hours
10 a day, more than forty hours a week, and/or seven consecutive days, some of the off-the-clock work
11 qualified for overtime premium pay. At other times, Defendants simply did not pay for all the hours
12 that were recorded. Therefore, Plaintiff and other Aggrieved Employees were not paid overtime
13 wages for all of the overtime hours they actually worked.

14 56. Defendants' failure to pay Plaintiff and other Aggrieved Employees all overtime
15 compensation owed, as required by California law, violates the provisions of California Labor
16 Code sections 510 and 1198 and the applicable IWC Wage Order. Plaintiff and other Aggrieved
17 Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest pursuant to
18 Labor Code sections 558, 1194 and/or 2699(a), (f), and (g).

19 **FAILURE TO PAY MINIMUM WAGES**

20 **VIOLATION OF LABOR CODE SECTIONS 223, 1182.12, 1194, 1197, AND 1198**

21 57. At all relevant times, California Labor Code sections 223, 1182.12, 1194, 1197,
22 and 1198 provided that the minimum wage for employees fixed by the IWC is the minimum
23 wage to be paid to employees, and the payment of a wage less than the minimum so fixed is
24 unlawful. Compensable work time is defined in Wage Order No. 7 as "the time during which an
25 employee is subject to the control of an employer, and includes all the time the employee is
26 suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11070,
27 subd. 2(G) (defining "Hours worked").

28 58. As set forth above, on information and belief, Defendants' policy and/or practice

1 of staffing their locations based on a labor budget set by the corporate office resulted in chronic
2 understaffing, causing a lack of meal period coverage and leading employees to perform off-the-
3 clock work. Moreover, Defendants' policy and/or practice of communicating with employees
4 regarding work-related matters during meal periods and/or when they were otherwise clocked
5 out as well as mandatory security inspections before leaving the premises resulted in unpaid
6 work pre-shift, post-shift and/or during their meal periods. Defendants did not pay minimum
7 wages for these off-the-clock hours that Plaintiff and other Aggrieved Employees worked,
8 including but not limited to before and after shifts as well as during meal periods.

9 59. To the extent that these unpaid hours did not qualify for overtime premium
10 payment, Defendants did not pay at least minimum wages for those hours worked in violation of
11 California Labor Code sections 223, 1182.12, 1194, 1197, and 1198. Accordingly, Plaintiff and
12 other Aggrieved Employees are entitled to recover from Defendants civil penalties, attorneys'
13 fees, costs, and interest thereon, pursuant to Labor Code sections 1194, 1197.1, and/or 2699(a),
14 (f), and (g).

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

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

17 60. At all relevant times herein set forth, California Labor Code sections 226.7,
18 512(a), and 1198, and the applicable IWC Wage Order were applicable to Plaintiff's and other
19 Aggrieved Employees' employment by Defendants.

20 61. At all relevant times herein set forth, California Labor Code section 512(a)
21 provided that an employer may not require, cause, or permit an employee to work for a period of
22 more than five hours per day without providing the employee with a meal period of not less than
23 thirty minutes, except that if the total work period per day of the employee is not more than six
24 hours, the meal period may be waived by mutual consent of both the employer and the
25 employee. Under California law, first meal periods must start after no more than five hours.
26 *Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1041-1042 (2012).

27 62. At all relevant times herein set forth, California Labor Code sections 226.7,
28 512(a), and 1198 provided that no employer shall require an employee to work during any meal

1 period mandated by an applicable order of the IWC. The wage order's meal period requirement
2 is satisfied if "the employee (1) has at least 30 minutes uninterrupted, (2) is free to leave the
3 premises, and (3) is relieved of all duty for the entire period." *Brinker Rest. Corp.*, 53 Cal. 4th at
4 1036.

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

12 64. As stated above, upon information and belief, at all relevant times Defendants
13 had, and continue to have, a company-wide policy and/or practice of understaffing their
14 establishments, which resulted in a lack of break coverage and prevented Plaintiff and
15 Aggrieved Employees from taking all timely, uninterrupted meal periods to which they were
16 entitled. Plaintiff and Aggrieved Employees had to work through many of their meal periods,
17 have their meal periods interrupted to return to work, and/or wait until after they had already
18 worked five hours before taking meal periods in order to adhere to this labor budget and/or
19 understaffed schedules.

20 65. Defendants have also systematically discouraged or impeded Plaintiff and other
21 Aggrieved Employees from taking meal periods including by failing to schedule meal periods
22 and interrupting them, even though they were aware and knows that employees are entitled to
23 such meal periods. Additionally, although store deliveries were scheduled before the stores
24 opened, sometimes deliveries were delayed. If the deliveries arrived late, oftentimes Plaintiff
25 and other Aggrieved Employees were required to receive the shipments immediately regardless
26 of whether it would interrupt their meal period or cause them to take a late meal period.

27 66. Defendants also systematically, and on a company-wide basis, failed to schedule
28 second meal periods and had no policy for permitting and authorizing Plaintiff and other

1 Aggrieved Employees to take a second 30-minute meal period on days they worked more than
2 ten hours in one day. During the relevant time period, Plaintiff and other Aggrieved Employees
3 sometimes worked shifts longer than 10 hours and did not receive an uninterrupted second 30-
4 minute meal period. As a result of these policies and/or practices on days Plaintiff and other
5 Aggrieved Employees worked more than ten hours, they were not provided with second 30-
6 minute meal periods. Plaintiff and other Aggrieved Employees had to work through all or part
7 of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of
8 time before taking meal periods.

9 67. To the extent Defendants required their employees to sign written “on-duty”
10 meal period agreements, such agreements were invalid as the nature of the work performed by
11 Plaintiff and other Aggrieved Employees did not necessitate an “on-duty” meal period under
12 California law. Defendants could have provided break coverage for their employees or staffed
13 more than one employee in different areas, but chose not to do so.

14 68. At all times herein mentioned, Defendants knew or should have known that, as a
15 result of their practices and policies, Plaintiff and other Aggrieved Employees have been
16 required to perform some of their assigned duties during meal periods and that Defendants did
17 not pay Plaintiff and other Aggrieved Employees meal period premium wages when meal
18 periods were late, interrupted, and/or missed. As a result, Plaintiff and other Aggrieved
19 Employees had to work through some or all of their meal periods, had their meal periods
20 interrupted to return to work, and/or waited extended periods of time before taking meal
21 periods. Plaintiff and other Aggrieved Employees were made to work over five hours before
22 Defendants permitted and authorized them to take their meal periods, and their meal periods
23 were cut short so that Plaintiff and other Aggrieved Employees could attend to their assigned
24 tasks.

25 69. Moreover, upon information and belief, Defendants engaged in a systematic,
26 company-wide practice and/or policy of not paying meal period premiums for Plaintiff and other
27 Aggrieved Employees, regardless of whether they were able to take a compliant meal period, in
28 violation of Labor Code sections 226.7 and 512(a), and the applicable IWC Wage Order. As a

1 result, Defendants failed to provide Plaintiff and other Aggrieved Employees with compliant
2 meal periods in violation of California Labor Code sections 226.7 and 512(a) and failed to pay
3 the full meal period premiums due. Alternatively, to the extent that Defendants did pay meal
4 period premium wages to Plaintiff and other Aggrieved Employees, such payments were
5 admissions of Defendants' failure to provide meal periods. Additionally, Defendants paid meal
6 period premiums at incorrect rates because Defendants failed to properly calculate Plaintiff's
7 and other Aggrieved Employees' regular rates of compensation because they failed to include
8 all remunerations, such as nondiscretionary bonuses and incentive pay, any premiums paid for
9 meal period violations were also paid at an incorrect rate, resulting in an underpayment of meal
10 period premium wages.

11 70. Defendants also engaged in a systematic, company-wide policy and/or practice of
12 not properly training Plaintiff and other Aggrieved Employees on their entitlement to meal
13 period and rest period premium payments resulting from meal period and rest period violations.
14 Plaintiff and other Aggrieved Employees were unaware of when meal and/or rest period
15 premiums were owed to them. Based upon information and belief, Plaintiff and other Aggrieved
16 Employees did not receive all meal period and/or rest period premium wages owed when
17 compliant meal periods and rest periods were not provided.

18 71. Defendants' conduct violates California Labor Code sections 226.7, 512(a), and
19 1198, and the applicable IWC Wage Order. Plaintiff and other Aggrieved Employees are
20 therefore entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, as well as
21 unpaid wages, pursuant to Sections 558 and/or 2699(a), (f), and (g).

22 **FAILURE TO PROVIDE REST PERIODS IN**
23 **VIOLATION OF LABOR CODE SECTIONS 226.7 AND 1198**

24 72. At all relevant times herein set forth, California Labor Code sections 226.7 and
25 1198, and the applicable IWC Wage Order were applicable to Plaintiff and other Aggrieved
26 Employees' employment by Defendants.

27 73. At all relevant times, the applicable IWC Wage Order provided that "[e]very
28 employer shall authorize and permit all employees to take rest periods, which insofar as

1 practicable shall be in the middle of each work period” and that the “rest period time shall be
2 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
3 hours or major fraction thereof” unless the total daily work time is less than three and one - half
4 hours.

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

16 75. Upon information and belief, during the relevant time period, Defendants’
17 company-wide policy and practice of understaffing their establishments resulted in a lack of
18 break coverage, which prevented Plaintiff and other Aggrieved Employees from being relieved
19 of all duty in order to take compliant rest periods.

20 76. Moreover, upon information and belief, Defendants have also engaged in a
21 systematic, company-wide practice and/or policy of not paying rest period premiums owed
22 when rest periods are not provided. Additionally, Defendants paid rest period premiums at the
23 incorrect rates because Defendants did not properly calculate Plaintiff’s and other Aggrieved
24 Employees’ regular rates of compensation because they did not include all remunerations, such
25 as nondiscretionary bonuses and incentive pay, which resulted in an underpayment of rest
26 period premium wages. Thus, Defendants denied Plaintiff and other Aggrieved Employees rest
27 periods and failed to pay them rest period premium wages due, in violation of Labor Code
28 section 226.7 and the applicable IWC Wage Order.

1 77. To the extent that Defendants did pay rest period premium wages to Plaintiff and
2 other Aggrieved Employees, such payments are admissions of Defendants' failure to provide
3 rest periods.

4 78. Defendants' conduct violates California Labor Code sections 226.7 and 1198 and
5 the applicable IWC Wage Order. Plaintiff and Aggrieved Employees are therefore entitled to
6 recover civil penalties, attorneys' fees, costs, and interest, pursuant to Sections 2699(a), (f), and
7 (g).

8 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS IN**
9 **VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 226(a) AND 1198**

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

15 80. Defendants have not provided Plaintiff and other Aggrieved Employees with
16 properly itemized wage statements. Moreover, an aggrieved employee may seek civil penalties
17 under Labor Code section 2699 for violations of wage statement requirements without the need
18 to establish injury.

19 81. Further, Labor Code section 226.3 provides that any employer who violates
20 section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per
21 violation in an initial citation and \$1,000 per employee for each violation in a subsequent
22 citation for which the employer fails to provide the employee a wage statement or fails to keep
23 the required records pursuant to Section 226(a).

24 82. Defendants have provided Plaintiff and other Aggrieved Employees with
25 incomplete and inaccurate wage statements. Defendants failed to provide accurate wage
26 statements for Plaintiff and other Aggrieved Employees showing, among other things, gross
27 wages earned, total hours worked, net wages earned, the name and address of the legal entity, and all
28 applicable hourly rates in effect during the pay period and the corresponding number of hours

1 worked at each hourly rate, and/or failing to state all hours worked as a result of not recording or
2 stating all the hours that Plaintiff and other Aggrieved Employees worked off-the-clock.

3 83. Because Defendants failed to provide, among other things, the accurate number
4 of total hours worked, as well as gross wages earned and net wages earned on wage statements,
5 Plaintiff and other Aggrieved Employees have been prevented from verifying, solely from
6 information on the wage statements themselves, that they were paid correctly and in full.
7 Instead, Plaintiff and other Aggrieved Employees have had to look to sources outside of the
8 wage statements themselves and reconstruct time records to determine whether in fact they were
9 paid correctly and the extent of underpayment, thereby causing them injury.

10 84. Plaintiff and other Aggrieved Employees are therefore entitled to recover
11 penalties, attorneys' fees, costs, and interest pursuant to Labor Code sections 226.3 and/or
12 2699(a), (f), and (g).

13 **FAILURE TO MAINTAIN ACCURATE PAYROLL RECORDS IN**
14 **VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 1174(d) AND 1198 AND**
15 **CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 11070 SUBD. 7**

16 85. At all times relevant herein set forth, California Labor Code section 1174(d)
17 provided that "[e]very person employing labor in this state shall ... [k]eep a record showing the
18 names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a
19 central location in the state or at the plants or establishments at which employees are employed,
20 payroll records showing the hours worked daily by and the wages paid to, and the number of
21 piece-rate units earned by and any applicable piece rate paid to, employees employed at the
22 respective plants or establishments..." Labor Code section 1174.5 provides that employers are
23 subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required
24 by section 1174(d).

25 86. During the relevant time period, and in violation of Labor Code section 1174(d),
26 Defendants failed to maintain accurate payroll records for Plaintiff and other Aggrieved
27 Employees showing the accurate daily hours worked and the wages paid as well as failing to
28 correctly list the gross wages and net wages earned by them.

87. Defendants' conduct violates California Labor Code sections 1174(d) and 1198 and the applicable IWC Wage Order. Plaintiff and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Sections 1174.5 and 2699(a), (f), and (g).

**FAILURE TO MAINTAIN ACCURATE TIME RECORDS IN
VIOLATION OF CALIFORNIA LABOR CODE SECTION 1198 AND CALIFORNIA
CODE OF REGULATIONS TITLE 8, SECTION 11070 SUBDIVISION 7**

88. At all times relevant herein set forth, California Labor Code section 1198 provided 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. Cal. Code Regs. tit. 8, § 11070, subd. 7(A).

89. During the relevant time period, Defendants failed, on a company-wide basis, to keep accurate records of hours worked for Plaintiff and other Aggrieved Employees, in violation of section 1198 and the applicable IWC Wage Order.

90. Plaintiff and other Aggrieved Employees are therefore entitled to recover penalties, attorneys' fees, costs, and interest pursuant to Labor Code sections 2699(a), (f), and (g).

**FAILURE TO PAY WAGES DURING EMPLOYMENT IN
VIOLATION OF LABOR CODE SECTION 204**

91. At all times relevant herein set forth, California Labor Code section 204 provided that all wages earned by any person in any employment between the first and the fifteenth days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the sixteenth and the twenty-sixth day of the month during which the labor was performed.

1 92. At all times relevant herein, Labor Code section 204 provided that all wages
2 earned by any person in any employment between the sixteenth and the last day, inclusive, of
3 any calendar month, other than those wages due upon termination of an employee, are due and
4 payable between the first and the tenth day of the following month.

5 93. At all times relevant herein, Labor Code section 204 provided that all wages
6 earned for labor in excess of the normal work period shall be paid no later than the payday for
7 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
8 204 provides that the requirements of this section are deemed satisfied by the payment of wages
9 for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven
10 calendar days following the close of the payroll period.

11 94. At all relevant times herein, Defendants failed to pay Plaintiff and other
12 Aggrieved Employees all wages due including, but not limited to, overtime wages, minimum
13 wages, and reporting time pay, within the time periods specified by Labor Code section 204.

14 95. Plaintiff and other Aggrieved Employees are therefore entitled to recover civil
15 penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections 210 and 2699(a),
16 (f), and (g).

17 **FAILURE TO PAY WAGES UPON TERMINATION IN**
18 **VIOLATION OF CALIFORNIA LABOR CODE SECTIONS 201, 202 AND 203**

19 96. At all times relevant herein set forth, Labor Code sections 201, 202, and 203
20 provided that if an employer discharges an employee, the wages earned and unpaid at the time
21 of discharge are due and payable immediately, and that if an employee voluntarily leaves his or
22 her employment, his or her wages shall become due and payable not later than seventy-two
23 hours thereafter, unless the employee has given seventy-two hours previous notice of his or her
24 intention to quit, in which case the employee is entitled to his or her wages at the time of
25 quitting.

26 97. During the relevant time period, on information and belief, Defendants failed to
27 pay Plaintiff and other Aggrieved Employees who are no longer employed by Defendants all
28 their earned wages at the time of discharge or within seventy-two hours of their leaving

Defendants' employ, including but not limited to, overtime wages, minimum wages, and reporting time pay, either at the time of discharge or within seventy-two hours of their leaving Defendants' employment.

98. Defendants' failure to pay Plaintiff and other Aggrieved Employees who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two hours of their leaving Defendants' employment, violates Labor Code sections 201, 202, and 203. Plaintiff and Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest, pursuant to Labor Code sections and 2699(a), (f), and (g).

FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES

VIOLATION OF LABOR CODE SECTIONS 1198, 2800 AND 2802

99. At all times herein set forth, California Labor Code sections 2800 and 2802 required 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). Wage Order No. 7, 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." Cal. Code Regs. tit. 8 § 11070, subd. 9(B).

100. During the relevant time period, Defendants, on a company-wide basis, required that Plaintiff and other Aggrieved Employees utilize their personal vehicle for work-related duties and tasks. For example, Plaintiff was required to drive to and from the bank to make cash deposits and/or get change for the store. Although Defendants may have had a reimbursement policy in place, it did not reimburse their employees for all business expenses that they incurred.

101. Additionally, Plaintiff and other Aggrieved Employees were required to regularly

1 utilize their own personal cellular phones to carry out their job duties, but Defendants failed to
2 reimburse them for the costs of their cellular phone plans and data charges. Defendants could
3 have provided Plaintiff and other Aggrieved Employees with the actual tools and materials
4 required for use on the job, including properly functioning company phones and Internet at the
5 stores, but instead, Defendants passed this operating cost off onto their employees.

6 102. Defendants' policy, practice, and/or procedure of passing their operating costs on
7 to Plaintiff and other Aggrieved Employees by requiring that they drive their personal vehicles
8 and use their own personal cellular phones for work is in violation of California Labor Code
9 sections 2800 and 2802. Plaintiff and other Aggrieved Employees are entitled to recover
10 penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a),
11 (f), and (g).

12 **FAILURE TO PAY SPLIT SHIFT PREMIUMS**
13 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
14 **REGULATIONS TITLE 8, SECTION 11070(4)(C)**

15 103. California Labor Code section 1198 provides that no employer may employ an
16 employee under conditions of labor that are prohibited by the applicable IWC Wage Order.
17 California Labor Code section 1198 further requires that ". . . the standard conditions of labor
18 fixed by the commission shall be the . . . standard conditions of labor for employees. The
19 employment of any employee . . . under conditions of labor prohibited by the order is unlawful."

20 104. California Code of Regulations, Title 8, section 11070(4)(C) provides that
21 "[w]hen an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid
22 in addition to the minimum wage for that workday, except when the employee resides at the
23 place of employment." It defines a split shift as "a work schedule, which is interrupted by non-
24 paid non-working periods established by the employer, other than bona fide rest or meal
25 periods." Cal. Code Regs. tit. 8 § 11070, subd. 2(M).

26 105. Defendants violated California Labor Code section 1198 and California Code of
27 Regulations, Title 8, section 11070(4)(C), because they failed to pay Plaintiff and other
28 Aggrieved Employees a split-shift premium when they returned to work for an additional shift

1 in the same day, after having been clocked out for more than thirty minutes (or a period other
2 than bona fide meal or rest periods).

3 106. Defendants sometimes scheduled Plaintiff to work double-shifts that were
4 separated by more than one hour of time, but failed to pay her one hour's pay at the minimum
5 wage in addition to the minimum wage for that workday. Other times, when Plaintiff did not feel
6 well during a shift, her manager would tell her to rest for two or more hours and then come back to
7 the store to close. However, Plaintiff was not paid a split shift premium for that workday. Upon
8 information and belief, other Aggrieved Employees also worked double shifts separated by more
9 than one hour of time without receiving one additional hour at minimum wage from Defendants for
10 working a split-shift. Accordingly, Defendants required Plaintiff and other Aggrieved Employees
11 to work split shifts but failed to pay them an additional hour at minimum wage in violation of
12 California Labor Code section 1198.

13 107. Defendants' failure to provide Plaintiff and other Aggrieved Employees with
14 split-shift pay when they returned to work for an additional shift in the same day, after having
15 been clocked out for more than an hour, violates California Labor Code section 1198 and
16 California Code of Regulations Title 8, section 11070(4)(C). Plaintiff and other Aggrieved
17 Employees are entitled to recover penalties, attorneys' fees, costs, and interest thereon, pursuant
18 to Labor Code sections 2699(a), (f), and (g).

19 **FAILURE TO PROVIDE SEATING**

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

22 108. California Labor Code section 1198 provides that no employer may employ an
23 employee under conditions of labor that are prohibited by the applicable IWC Wage Order.
24 California Labor Code section 1198 further requires that “. . . the standard conditions of labor
25 fixed by the commission shall be the . . . standard conditions of labor for employees. The
26 employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

27 109. Wage Order No. 7 provides that “All working employees shall be provided with
28 suitable seats when the nature of the work reasonably permits the use of seats. When 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.” Cal. Code Regs. tit. 8 § 11070, subd. 14.

110. Although Plaintiff and other Aggrieved Employees work at cash registers and in backrooms and perform tasks that reasonably permit the use of seats, such as performing sales register transactions, paperwork, balancing the till in the registers, and the handling of online orders, Defendants refused to provide seats in violation of Labor Code section 1198 and Wage Order No. 7.

111. Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14) because Aggrieved Employees were not permitted to sit, even if they were not engaged in active duties. They were not permitted to sit, even when it would not interfere with the performance of their duties, nor were they provided with suitable seats.

112. Defendants’ failure to provide Plaintiff and other Aggrieved Employees with suitable seating violates California Labor Code section 1198 and California Code of Regulations Title 8, section 11070(14). Plaintiff and other Aggrieved Employees are entitled to recover penalties, attorneys’ fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f), and (g).

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

113. 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 containing basic and material payroll information, including, among other things, 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.

114. 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.

115. During the relevant time period, Defendants failed to provide written notice to Plaintiff and other Aggrieved Employees that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C) on a company-wide basis.

116. Defendants' failure to provide Plaintiff and other Aggrieved Employees with written notice of basic information regarding their employment with Defendants is in violation of Labor Code section 2810.5. Plaintiff and Aggrieved Employees are entitled to recover penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f), and (g).

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

Plaintiff, on behalf of the State of California and all Aggrieved Employees, prays for relief and judgment against Defendants, jointly and severally, as follows:

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

As to the First Cause of Action

2. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or Aggrieved Employees: 510 and 1198 (by failing to pay all overtime compensation); 223, 1182.12, 1194, 1197, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), and 1198 (by

failing to provide all meal periods); 226.7 and 1198 (by failing to provide all rest periods); 226(a) and 1198 (by failing to provide accurate wage statements); 1174(d), 1198 and California Code of Regulations, Title 8, section 11070(7) (by failing to maintain accurate and complete payroll records); 1198 and California Code of Regulations, Title 8, section 11070(7) (by failing to maintain accurate and complete time records); 204 (by failing timely to pay all earned wages during employment); 201, 202, and 203 (by failing timely to pay all earned wages upon termination); 2800 and 2802 (by failing to reimburse employees for business expenses necessarily incurred); 1198 and California Code of Regulations Title 8, section 11070(4)(C) (by failing to pay split shift premiums and failing to provide suitable seating); and 1198 and California Code of Regulations, Title 8, section 11070(5) (by failing to pay reporting time pay);

3. For civil penalties pursuant to California Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, 2699(a) and/or 2699(f) and (g), for violations of California Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1198, 2800, 2802, and 2810.5 as well as all applicable IWC Wage Orders;

4. For attorneys' fees and costs pursuant to California Labor Code sections 1194(a), 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 204, 223, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198;

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

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

Dated: December 17, 2020

Respectfully submitted,

LAW OFFICES OF MARK YABLONOVICH

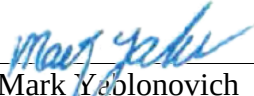
By: 
Mark Yablonoich
Attorneys for Plaintiff Maria Gamez-Martinez

EXHIBIT 1

LAW OFFICES OF
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October 13, 2020

VIA ONLINE SUBMISSION

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

Subject: *Maria Gamez-Martinez v. BG Retail, LLC dba Famous Footwear*

Dear PAGA Administrator:

This law firm represents Maria Gamez-Martinez¹ (“Ms. Martinez”) in connection with her claims under the California Labor Code against her former employer BG Retail, LLC dba Famous Footwear (“Famous Footwear”).

The employer may be contacted directly:

BG RETAIL, LLC
P.O. BOX 360 CORP. TAX DEPT.
ST. LOUIS, MO 63166

BG RETAIL, LLC
8300 MARYLAND AVE.
ST. LOUIS, MO 63105

Ms. Martinez intends to seek civil penalties, attorneys’ fees, costs, and all other available relief for Famous Footwear’s 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. Martinez seeks relief on behalf of herself, the State of California, and other persons who are or were employed by Famous Footwear in California as non-exempt, hourly-paid employees and who received or should have 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.

Famous Footwear employed Ms. Martinez from approximately January 8, 2017 to approximately December 5, 2019, as an hourly-paid Assistant Store Manager at Famous Footwear’s California stores located in Whittier, Victorville, and Hesperia. Ms. Martinez typically worked

¹ During Ms. Martinez’s employment with BG Retail, LLC, she went by her maiden name - Maria Victoria Gamez.

Re: *Maria Gamez-Martinez v. BG Retail, LLC*

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approximately 7-8 hours or more per day, 5 days per week, and 38-40 hours or more per week. Her job duties included opening the store, closing the store, setting up displays for new merchandise, cleaning, providing customer support, loss prevention, and handling deliveries and inventory.

Famous Footwear committed one or more of the following Labor Code violations against Ms. Martinez and/or the Aggrieved Employees, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):²

Famous Footwear’s Company-Wide and Uniform Payroll and Human Resources Practices

Famous Footwear is a Delaware limited liability company that owns and operates numerous stores nationwide, including in California. Upon information and belief, Famous Footwear maintains a centralized Human Resources department for all non-exempt, hourly-paid employees working for Famous Footwear, including Ms. Martinez and other Aggrieved Employees. At all relevant times, Famous Footwear issued and maintained uniform, standardized policies, practices and/or procedures for all non-exempt, hourly-paid employees in California, including Ms. Martinez and other Aggrieved Employees, regardless of their location or position.

Upon information and belief, Famous Footwear maintains a centralized payroll department which processes payroll for all non-exempt, hourly-paid employees working for Famous Footwear in California, including Ms. Martinez and other Aggrieved Employees. Further, Famous Footwear issues the same uniform and formatted wage statements to all non-exempt, hourly-paid employees in California, irrespective of their location, position, or manner in which each employee’s employment ended. Famous Footwear’s centralized payroll department processes payroll for all non-exempt, hourly-paid employees in the same manner throughout California. In other words, Famous Footwear utilized the same methods and formulas when calculating wages and any other remunerations owed to Ms. Martinez and other Aggrieved Employees in California.

Violation of California Labor Code Sections 510 and 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 3

California Labor Code sections 510 and 1198 and California Code of Regulations, Title 8,

² These facts, theories, and claims are based on Ms. Martinez’s experience and counsel’s review of those records currently available relating to Ms. Martinez’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, typically because the aggrieved employee was not aware of the law’s requirements and/or the employer’s obligations, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations. Thus, Ms. Martinez 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.

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section 11070 (“Wage Order No. 7”), require employers to pay employees working more than eight hours in a day, more than forty hours in a workweek, or for the first eight hours on the seventh consecutive day of work at the rate of time-and-one-half times the regular rate of pay for all hours worked in excess of eight hours in a day, in excess of forty hours in a workweek, and during the first eight hours on the seventh consecutive day of work. Wage Order No. 7 further provides that employers are required to pay employees working more than twelve hours in a day or in excess of eight hours on the seventh consecutive day overtime compensation at a rate of two 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 non-discretionary bonuses and incentive pay.

Famous Footwear failed to pay all overtime wages owed to Ms. Martinez and other Aggrieved Employees. During the relevant time period, Ms. Martinez and other Aggrieved Employees were not paid overtime premiums for all of the hours they worked in excess of eight hours in a day, in excess of twelve hours in a day, in excess of forty hours in a week, and/or for the seventh consecutive day of work, sometimes because all hours that they worked were not recorded, and other times because they were simply not paid for all hours that were recorded and/or worked. As a result, Ms. Martinez believes the hours she and other Aggrieved Employees worked may not have been properly recorded and/or paid, and therefore, Ms. Martinez and other Aggrieved Employees may not have been properly compensated for all hours that were recorded and/or worked.

On information and belief, Famous Footwear has a company-wide policy and/or practice of staffing its stores based on a labor budget set by the corporate office. Famous Footwear’s use of labor budgets resulted in chronic understaffing, such that there were too few employees on duty to handle the workload and provide uninterrupted meal periods. As a result of Famous Footwear’s systemic utilization of labor budgets and preference for profitability over compliance with labor laws, Ms. Martinez and other Aggrieved Employees were not provided adequate meal period coverage to allow them to be relieved of their duties for compliant meal periods and/or were required to perform pre-shift and/or post-shift work while off-the-clock. Additionally, on information and belief, Famous Footwear has a company-wide policy and/or practice of communicating with employees regarding work-related matters during the employees’ meal periods and when those employees are otherwise clocked out. As a result of this policy and/or practice, Ms. Martinez and other Aggrieved Employees would have to continue with their job duties, such as performing sales transactions, monitoring shoplifters, and accepting deliveries, before clocking in for the start of their shifts, after clocking out for meal periods, and after clocking out at the end of their shifts. This would result in Ms. Martinez and other Aggrieved Employees working while off-the-clock before and/or after their scheduled shifts or while on meal periods for as much as thirty minutes or longer, on a regular basis. Famous Footwear would not always permit Ms. Martinez and other Aggrieved Employees to adjust their punch-in or punch-out times so that they could account for and be compensated for this off-the-clock work.

Famous Footwear also has a company-wide policy and/or practice of subjecting its employees to

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security inspections before allowing them to leave the store premises. After clocking out for a meal period or at the end of their shift, Ms. Martinez and other Aggrieved Employees had to wait for management to complete tasks and then undergo the security inspection before being allowed to leave the premises. These security inspections took place off-the-clock, and Famous Footwear did not compensate Ms. Martinez and other Aggrieved Employees for the time they spent waiting to undergo security inspections.

Famous Footwear knew or should have known that, as a result of its policies, practices and/or procedures, Ms. Martinez and other Aggrieved Employees were at times performing their assigned duties off-the-clock, were subject to control of Famous Footwear, and/or were suffered or permitted to work for which they were not paid. Famous Footwear also knew, or should have known, that it did not compensate Ms. Martinez and other Aggrieved Employees for off-the-clock work or all hours worked. Because Ms. Martinez and other Aggrieved Employees sometimes worked shifts longer than eight hours a day, more than forty hours a week, and/or seven consecutive days, some of the off-the-clock work qualified for overtime premium pay. At other times, Famous Footwear simply did not pay for all the hours that were recorded. Therefore, Ms. Martinez and other Aggrieved Employees were not paid overtime wages for all of the overtime hours they actually worked. Famous Footwear's failure to pay Ms. Martinez 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 and Wage Order No. 7.

Furthermore, Famous Footwear's regular rate of pay for calculating overtime wages did not include all required remunerations, including non-discretionary bonuses and incentive pay, or the correct calculation. Therefore, during times when Ms. Martinez and other Aggrieved Employees worked overtime and received non-discretionary bonuses and/or incentive pay, Famous Footwear did not pay all overtime wages by paying a lower overtime rate than required by California law.

Based on the foregoing, Ms. Martinez and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon for violations of Labor Code sections 510 and 1198 and Wage Order No. 7, pursuant to Labor Code sections 558, 1194, and/or 2699(a), (f), and (g).

Violation of California Labor Code Sections 223, 1182.12, 1194, 1197, 1197.1, and 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 4

Labor Code sections 223, 1182.12, 1194, 1197, 1197.1, and 1198 and Wage Order No. 7 require employers to pay employees the minimum wage fixed by the Industrial Welfare Commission ("IWC"). The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined by 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, subd. 2(K) (defining "Hours Worked").

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As set forth above, on information and belief, Famous Footwear's policy and/or practice of staffing their locations based on a labor budget set by the corporate office resulted in chronic understaffing, causing a lack of meal period coverage and leading employees to perform off-the-clock work. Moreover, Famous Footwear's policy and/or practice of communicating with employees regarding work-related matters during meal periods and/or when they were otherwise clocked out as well as mandatory security inspections before leaving the premises resulted in unpaid work pre-shift, post-shift and/or during their meal periods. Famous Footwear did not pay minimum wages for these off-the-clock hours that Ms. Martinez and other Aggrieved Employees worked, including but not limited to before and after shifts as well as during meal periods.

To the extent that the off-the-clock work and/or recorded hours did not qualify for overtime premium payment, Famous Footwear did not pay at least minimum wages for those hours worked off-the-clock or that were recorded but not paid in violation of Labor Code sections 223, 1182.12, 1194, 1197, 1197.1, and 1198 and Wage Order No. 7. Ms. Martinez and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (g).

Violation of California Labor Code Sections 226.7, 512(a), and 1198 and California Code of Regulations Title 8, Section 11070 Subdivisions 11 and 12

Labor Code sections 226.7, 512(a) and 1198 and Wage Order No. 7 require employers to provide meal periods and rest periods and to pay employees one additional hour of pay at the employee's regular rate for each workday that a meal period or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and Wage Order No. 7, an employer may not require, cause or permit an employee to work for a period of more than five hours per day without providing the employee with an uninterrupted meal period of not less than thirty minutes, except that if the total work period per day of the employee is not more than six 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. *See Brinker Rest. Corp. v. Super. Ct.*, 53 Cal. 4th 1004, 1041-1042 (2012); *see also* Cal. Code Regs. tit. 8, § 11070, subd. 11. Labor Code sections 226.7 and 512(a) also require employers to provide a second meal period of not less than thirty minutes if an employee works over ten hours per day, except that if the total hours worked is no more than twelve 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. Moreover, an employer cannot evade meal period requirements via the use of "on-duty" meal agreements because it understaffs its locations. *Abdullah v. U.S. Sec. Assocs.*, No. 2:09-cv-09554, 2011 U.S. Dist. LEXIS 156685, at *11-*12 (C.D. Cal. Jan. 11, 2011).

Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable IWC Wage Order. Wage Order No. 7 provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as

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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. Cal. Code Regs. tit. 8, § 11070, subd. 12. To comply with its obligation to provide rest periods under California Labor Code section 226.7 and Wage Order No. 7, 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).

On information and belief, Famous Footwear has a company-wide policy and/or practice of understaffing its stores which resulted in a lack of break coverage and prevented Ms. Martinez and other Aggrieved Employees from taking all timely, uninterrupted meal periods, including second meal periods, to which they were entitled. Additionally, although store deliveries were scheduled before the stores opened, sometimes deliveries were delayed. If the deliveries arrived late, oftentimes Ms. Martinez and other Aggrieved Employees were required to receive the shipments immediately regardless of whether it would interrupt their meal period or cause them to take a late meal period.

In addition, Famous Footwear also systematically, and on a company-wide basis, did not schedule second meal periods and had no policy for permitting Ms. Martinez and other Aggrieved Employees to take uninterrupted second 30-minute meal periods on days that they worked in excess of ten hours in one day. As a result of these policies and/or practices on days that Ms. Martinez and other Aggrieved Employees worked more than ten hours, they were not provided with second 30-minute meal periods. For example, during Ms. Martinez’s employment, she would work shifts that were more than ten hours, including twelve to fourteen hour shifts, and yet was not permitted to take a second meal period on those days.

Famous Footwear knew or should have known that as a result of these policies and/or practices, Ms. Martinez and other Aggrieved Employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods and that they did not receive timely meal periods. As a result, Ms. Martinez and other Aggrieved Employees had to work through all or part of their meal periods, have their meal periods interrupted, and/or wait extended periods of time before taking meal periods.

As with meal periods, Famous Footwear’s company-wide staffing policy and/or practice prevented Ms. Martinez and other Aggrieved Employees from being relieved of all duties to take compliant rest periods. As a result, Ms. Martinez and other Aggrieved Employees would frequently work shifts in excess of three and one-half hours, in excess of six hours, and/or in excess of ten hours without receiving all uninterrupted ten-minute rest periods to which they were entitled. Ms. Martinez was not able to take rest periods due to the pressure Famous Footwear placed on her to meet workload demands, as well as a lack of break coverage.

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Famous Footwear also engaged in a systematic, company-wide policy and/or practice of not properly training Ms. Martinez and other Aggrieved Employees on their entitlement to meal period and rest period premium payments resulting from meal period and rest period violations. Ms. Martinez and other Aggrieved Employees were unaware of when meal and/or rest period premiums were owed to them. Based upon information and belief, Ms. Martinez and other Aggrieved Employees did not receive all meal period and/or rest period premium wages owed when compliant meal periods and rest periods were not provided. To the extent that Famous Footwear did pay meal period and/or rest period premium wages to Ms. Martinez and other Aggrieved Employees, such payments were admissions of its failure to provide compliant meal periods and rest periods. Furthermore, based upon information and belief, to the extent employees were paid non-discretionary bonuses and/or incentive pay, those remuneration were not included in Famous Footwear's regular rate of compensation for calculating meal period and/or rest period premiums and resulted in an underpayment of meal period and/or rest period premium wages.

Accordingly, Famous Footwear failed to provide all meal periods and rest periods and/or pay all meal period and rest period premiums in violation of Labor Code sections 226.7, 512, and 1198 and Wage Order No. 7. Ms. Martinez and other Aggrieved Employees are therefore entitled to penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 558 and 2699(a), (f), and (g).

Violation of California Labor Code Section 226(a)

Labor Code section 226(a) requires employers to make, keep and furnish true, accurate, and complete employment records. Famous Footwear has not provided Ms. Martinez and other Aggrieved Employees with properly itemized wage statements. Moreover, an aggrieved employee may seek civil penalties under Labor Code section 2699 for violations of wage statement requirements without the need to establish injury. *Lopez v. Friant & Associates, LLC*, 15 Cal.App.5th 773, 788 (2017). ("a plaintiff seeking civil penalties under PAGA for a violation of section 226(a) does not have to satisfy the 'injury' and 'knowing and intentional' requirements of section 226(e)(1).") Rather, 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).

Famous Footwear has provided Ms. Martinez and other Aggrieved Employees with incomplete and inaccurate wage statements. Specifically, based on information and belief, Famous Footwear violated, among others, Sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(6), 226(a)(8), and 226(a)(9). Because Famous Footwear did not record all the hours Ms. Martinez and other Aggrieved Employees worked while off-the-clock and did not pay all hours recorded, Famous Footwear did not list the correct amount of gross wages and net wages earned by Ms. Martinez and other Aggrieved Employees in violation of Sections 226(a)(1) and (5), respectively. Famous

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Footwear also did not accurately list the total hours worked by Ms. Martinez and other Aggrieved Employees for work performed while off-the-clock in violation of Section 226(a)(2) and the applicable hourly rates in effect during the pay period and the corresponding number of hours worked in violation of Section 226(a)(9). Additionally, because Famous Footwear did not calculate Ms. Martinez's and other Aggrieved Employees' regular rate of pay correctly for purposes of paying overtime and/or premium wages, it did not list the correct amount of gross wages and net wages earned by Ms. Martinez and other Aggrieved Employees in compliance with Sections 226(a)(1) and (5). Famous Footwear 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 meal and rest premium wages, in violation of Section 226(a)(9). Furthermore, because Famous Footwear failed to pay all meal period and rest period premiums to Ms. Martinez and other Aggrieved Employees, Famous Footwear did not list the correct amount of gross wages and net wages earned by Ms. Martinez and other Aggrieved Employees in compliance with Section 226(a)(1) and (5).

Because Famous Footwear did not furnish complaint wage statements as set forth above, Ms. Martinez 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 and were given confusing and/or incomplete information about their employer. Instead, Ms. Martinez 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. Martinez and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest thereon for violations of Labor Code section 226(a), pursuant to Labor Code sections 226.3 and 2699(a), (f), and (g).

Violation of California Labor Code Sections 1174(d) and 1198, and California Code of Regulations Title 8, Section 11070 Subdivision 7

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, Famous Footwear willfully failed to maintain accurate payroll records for Ms. Martinez and other Aggrieved Employees showing the daily hours they worked and the wages paid as a result of failing to record all hours worked and/or failing to correctly list the gross wages and/or net wages earned by them in violation of Labor Code section 1174(d).

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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 Wage Order No. 7, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. Cal. Code Regs. tit. 8, § 11070, subd. 7. During the relevant time period, Famous Footwear failed, on a company-wide basis, to keep accurate records of shift and meal period start and stop times for Ms. Martinez and other Aggrieved Employees, in violation of Labor Code sections 1174(d) and Wage Order No. 7.

Due to Famous Footwear’s failure to maintain accurate payroll and time records, Ms. Martinez and other Aggrieved Employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, pursuant to Labor Code sections 1174.5 and/or 2699(a), (f), and (g).

Violation of California Labor Code Section 204

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. 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, 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 calendar days following the close of the payroll period.

During the relevant time period, Famous Footwear failed to pay Ms. Martinez and other Aggrieved Employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages, within any time period specified by Labor Code section 204.

Ms. Martinez and other Aggrieved Employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

Violation of California Labor Code Sections 201, 202, and 203

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California Labor Code sections 201-202³ 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 their employment, their wages shall become due and payable not later than seventy-two hours thereafter, unless the employee has given seventy-two hours previous notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

Famous Footwear did not pay Ms. Martinez and other Aggrieved Employees who are no longer employed by Famous Footwear all their earned wages, at the time of discharge, or within seventy-two hours of their leaving Famous Footwear's employ including, but not limited to, overtime wages, minimum wages, and/or meal period and rest period premium wages.

As a result of Famous Footwear's violations of Labor Code sections 201-203, Ms. Martinez and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 201-203 and/or 2699(a), (f), and (g).

Violation of California Labor Code Sections 1198, 2800 and 2802 and California Code of Regulations Title 8, Section 11070 Subdivision 9

Labor Code sections 2800 and 2802 require employers to pay for all necessary expenditures and losses incurred by the employee in the performance of their job. The purpose of Labor Code sections 2800 and 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 Serv., Inc.*, 228 Cal.App.4th 1137, 1144 (2014). Wage Order No. 7 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." Cal. Code Regs. tit. 8 § 11070, subd. 9(B).

During the relevant time period, Ms. Martinez and other Aggrieved Employees incurred necessary business-related expenses that were not fully reimbursed by Famous Footwear, including but not limited to gas and/or mileage when using personal vehicles for work-related tasks during their shifts. For example, Ms. Martinez was required to drive to and from the bank to make cash deposits and/or get change for the store. Although Famous Footwear may have had a reimbursement policy in place, it did not reimburse Ms. Martinez and other Aggrieved Employees for all business expenses that they incurred.

Additionally, during the relevant time period, Ms. Martinez and other Aggrieved Employees were required to utilize their own personal cell phones to carry out their job duties as a result of

³ Ms. Martinez also asserts Section 203, which is enumerated in Section 2699.5, to the extent applicable.

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the unreliable internet service at Famous Footwear's stores that sometimes remained out of service for two to four hours. For example, whenever the internet went out at her stores, Ms. Martinez was required to use her personal cellular phone to carry out her duties, including communicating with management regarding work-related matters, perform stock location of items, and help customers sign into Famous Footwear's rewards program for their purchases. Although Famous Footwear required Ms. Martinez and other Aggrieved Employees to regularly utilize their personal cellular phones to carry out work-related responsibilities, Famous Footwear did not reimburse its employees for this expense. Famous Footwear could have provided Ms. Martinez and other Aggrieved Employees with the actual tools and materials required for use on the job, including adequate internet and company phones, but instead, Famous Footwear passed this operating cost off onto Ms. Martinez and other Aggrieved Employees.

Famous Footwear's policy, practice and/or procedure of passing its operating costs on to Ms. Martinez and other Aggrieved Employees violates Labor Code sections 2800 and 2802. Ms. Martinez and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f), and (g).

Violation of California Labor Code Section 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 4(C)

Wage Order No. 7 provides that "[w]hen an employee works a split shift, one (1) hour's pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment." Cal. Code Regs. tit. 8 § 11070, subd. 4(C). A split shift is defined as "a work schedule, which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods." Cal. Code Regs. tit. 8 § 11070, subd. 2(M).

Famous Footwear violated California Labor Code section 1198 and Wage Order No. 7 by failing to pay Ms. Martinez and other Aggrieved Employees a split-shift premium when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour. Famous Footwear sometimes scheduled Ms. Martinez to work double-shifts that were separated by more than one hour of time, but failed to pay her one-hour's pay at the minimum wage in addition to the minimum wage for that workday. Other times, when Ms. Martinez did not feel well during a shift, her manager would tell her to rest for two or more hours and then come back to the store to close. However, Ms. Martinez was not paid a split shift premium for that workday. Upon information and belief, other Aggrieved Employees also worked double shifts separated by more than one hour of time without receiving one additional hour at minimum wage from Famous Footwear for working a split-shift.

Famous Footwear's failure to provide Ms. Martinez and other Aggrieved Employees with split-shift pay when they returned to work for an additional shift in the same day, after having been clocked out for more than an hour, violates California Labor Code section 1198 and Wage Order No.7. Ms. Martinez and other Aggrieved Employees are therefore entitled to recover civil

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penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 1194 and/or 2699(a), (f), and (g).

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Violation of California Labor Code Section 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14

Labor Code section 1198 provides that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. 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.”

Wage Order No. 7 provide that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats. [] When 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.” Cal. Code Regs. tit. 8 § 11070, subd. 14.

Although Ms. Martinez and other Aggrieved Employees work at cash registers and in backrooms and perform tasks that reasonably permit the use of seats, such as performing sales register transactions, paperwork, balancing the till in the registers, and the handling of online orders, Famous Footwear refuses to provide seats in violation of Labor Code section 1198 and Wage Order No. 7. Accordingly, Ms. Martinez and other Aggrieved Employees are entitled to recover penalties, attorneys’ fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f), and (g).

Violation of California Labor Code Sections 1198 and 2810.5(a)(1)

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 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, among other things, 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; any allowances claimed as part of the minimum wage, including meal or lodging allowances the regular payday designated by the employer; and the name of the employer, including any “doing business as” names used by the employer as well as the employer’s physical and mailing address(es) and telephone number. 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.

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On information and belief, Famous Footwear did not provide Ms. Martinez and other Aggrieved Employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1). On February 12, 2020, Famous Footwear produced Ms. Martinez's employment records and personnel file pursuant to Labor Code sections 226(c) and 1198.5. Absent from Ms. Martinez's employment records and personnel file was a Section 2810.5 notice. Famous Footwear's failure to provide Ms. Martinez and other Aggrieved Employees with written notice of basic information regarding their employment with Famous Footwear is in violation of Labor Code section 2810.5. Ms. Martinez and other Aggrieved Employees are therefore entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f), and (g).

California Labor Code Section 558(a)

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 in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages."⁴ 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." Famous Footwear, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Martinez's and other Aggrieved Employees' rights by violating various sections of the California Labor Code as set forth herein.

* * *

Accordingly, Ms. Martinez seeks the remedies set forth above for herself, the State of California, and all other Aggrieved Employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), and 2699.5, Ms. Martinez, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other Aggrieved Employees, and the State of California against Famous Footwear for violations of California Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2800, 2802, and 2810.5 and Wage Order No. 7.

Therefore, on behalf of all Aggrieved Employees, Ms. Martinez seeks all applicable civil

⁴ Ms. Martinez does not seek to recover any unpaid wages that are provided for in Section 558(a). She only seeks civil penalties allowed by PAGA. See *ZB, NA v. Super. Ct. (Lawson)*, 8 Cal. 5th 175 (2019).

Re: *Maria Gamez-Martinez v. BG Retail, LLC*

October 13, 2020

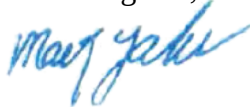
Page 15 of 15

penalties and other available relief 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:

Mark Yablonovich
LAW OFFICES OF MARK YABLONOVICH
9595 Wilshire Boulevard, Suite 900
Beverly Hills, California 90212
(310) 286-0246

Best Regards,



Mark Yablonovich

Copy to: BG RETAIL, LLC (via U.S. Certified Mail)
P.O. BOX 360 CORP. TAX DEPT.
ST. LOUIS, MO 63166

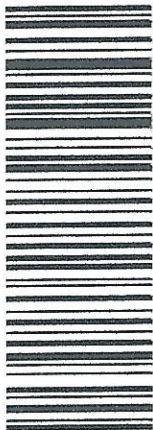
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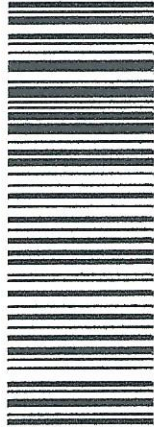
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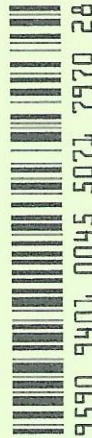
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