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Electronically Filed
2/11/2021 12:14 PM
Superior Court of California
County of Stanislaus
Clerk of the Court
By: Mouang Saechao, Deputy

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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF STANISLAUS**

9 ANGELINA VASQUEZ, on behalf of
herself and all others similarly situated,

10 Plaintiff,

11 v.

12 CP RETAIL, LLC, a California limited
liability company; WINMARK
13 CORPORATION, a Minnesota corporation;
14 and DOES 1 through 100, inclusive,

15 Defendants.
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CASE NO. CV-21-000723

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages and Overtime Compensation for all Hours Worked (Labor Code §§ 510, 1194, 1194.2, 1197, 1197.1, 1198 and Wage Order 7-2001);
2. Failure to Provide Meal Breaks (Labor Code §§ 226.7, 512, and Wage Order 7-2001);
3. Failure to Authorize and Permit Rest Breaks (Labor Code § 226.7 and Wage Order No. 7-2001);
4. Failure to Pay Vested Vacation Time Upon Termination (Labor Code § 227.3);
5. Failure to Provide Suitable Seating (Labor Code § 1198 and Wage Order 7-2001);
6. Failure to Reimburse Business Expenses (Labor Code § 2802);
7. Failure to Maintain and Provide Accurate Itemized Wage Statements (Labor Code §§ 226, 226.3, and 1174);
8. Failure to Pay all Wages Owed Timely and Upon Separation of Employment (Labor Code §§ 201, 202, 203, 204, and 210);
9. Unfair Competition (Bus. & Prof. Code § 17200, *et seq.*); and
10. Penalties per the Private Attorneys General Act of 2004 (Labor Code § 2698, *et seq.*)

DEMAND FOR JURY TRIAL

CLASS AND REPRESENTATIVE ACTION COMPLAINT

1 Plaintiff ANGELINA VASQUEZ, an individual, (“Plaintiff”), on behalf of herself, the
2 State of California, and all others similarly situated, alleges and complains of CP RETAIL, LLC, a
3 California limited liability company, WINMARK CORPORATION, a Minnesota corporation,
4 and DOES 1 to 100 (collectively, “Defendants”), and each of them, as follows:

5 **I. INTRODUCTION**

6 1. This is a class action, pursuant to California Code of Civil Procedure section 382,
7 on behalf of Plaintiff and the following class: *All current and former hourly-paid, non-exempt*
8 *employees working at Plato’s Closet® store locations in California that are owned by CP*
9 *RETAIL, LLC and/or operated pursuant to a franchise agreement with WINMARK*
10 *CORPORATION, from four years prior to the filing of the Complaint and continuing to the*
11 *present* (the “Class” or “Class Members”).

12 2. Throughout the time period involved in this case, Defendants willfully maintained
13 a consistent policy of: failing to pay at least the minimum wage for all hours worked; failing to
14 pay all overtime wages owed and/or for failing to pay for all overtime hours worked; failing to
15 provide timely duty-free meal periods and/or paying the required premiums; failing to authorize
16 and permit duty-free rest breaks and/or paying the required premiums; failing to pay accrued
17 vacation time upon separation; failing to provide suitable seating when the nature of the work
18 reasonably permits; failing to reimburse for business expenses incurred; failing to maintain and
19 provide accurate itemized wage statements; failing to pay all wages owed timely and upon
20 separation of employment; and Defendants’ illegal conduct has also given rise to derivative claims
21 for unfair business practices and violation of the Private Attorneys General Act of 2004
22 (“PAGA”).

23 3. Plaintiff, on behalf of herself and all other similarly situated employees, pursuant to
24 California Business and Professions Code sections 17200 through 17208, also seeks all monies
25 owed but withheld and retained by Defendants to which Plaintiff and Class Members are entitled.
26 Plaintiff seeks an order by the Court awarding restitution, injunctive relief, and all other legal and
27 equitable relief allowed, plus interest, attorneys’ fees and costs.

28 4. Plaintiff, on behalf of herself and all other similarly situated aggrieved employees,

1 also brings this representative action against Defendants to recover wages and penalties owed
2 pursuant to Labor Code section 2699 (the “Aggrieved Employees”). Plaintiff was compelled to
3 retain the services of counsel to file this action to protect her interests and those of Aggrieved
4 Employees and has thereby incurred attorneys’ fees and costs, which she is likewise entitled to
5 recover under Labor Code section 2699.

6 5. For purposes of the allegations set forth herein, Class Members, along with those
7 similarly situated Aggrieved Employees comprising the PAGA representative action are
8 collectively referred to as “Employees” except as otherwise specified.

9 **II. JURISDICTION AND VENUE**

10 6. This Court has subject matter jurisdiction over all causes of action asserted herein
11 pursuant to Article VI, section 10 of the California Constitution and California Code of Civil
12 Procedure section 410.10 by virtue of the fact that this is a civil action in which the matter in
13 controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted
14 arises under the laws of the State of California or is subject to adjudication in the courts of the
15 State of California.

16 7. Further, the aggregate amount in controversy for the proposed class action,
17 including monetary damages, restitution, penalties, injunctive relief, and attorneys’ fees, is less
18 than five million dollars (\$5,000,000), exclusive of interest and costs. Plaintiff reserves the right to
19 seek a larger amount based upon new and different information resulting from investigation and
20 discovery.

21 8. This Court has personal jurisdiction over Defendants because each has caused
22 injuries in Stanislaus County and the State of California through their acts, and by their violation
23 of the California Labor Code, California state common law, and California Business &
24 Professions Code sections 17200, *et seq.* Defendants also transact business throughout California
25 and have obtained the benefits of the laws of the United States and the State of California and are
26 therefore subject to the personal jurisdiction of this Court.

27 9. Venue as to each defendant is proper in this judicial district pursuant to Code of
28 Civil Procedure section 395. Defendants operate within California and do business within

1 Stanislaus County. The unlawful acts alleged herein have a direct effect on Plaintiff and
2 Employees within the State of California and Stanislaus County.

3 10. This case should be classified as complex according to California Rules of Court,
4 Rule 3.400 and assigned to a complex litigation judge and department, as it is a class action, will
5 involve substantial documentary evidence, a large number of witnesses, and is likely to involve
6 extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
7 and would require substantial post judgment judicial supervision.

8 **III. PARTIES**

9 11. Plaintiff Angelina Vasquez is a resident of Ceres, California. At all relevant times
10 herein, Defendants employed Plaintiff as an hourly non-exempt employee, and subjected her to the
11 same employment policies and practices that affected Employees.

12 12. Plaintiff is informed and believes, and based thereon alleges, that Defendant CP
13 Retail, LLC (“CP Retail”) is, and at all times relevant hereto was, a limited liability company
14 organized and existing under and by virtue of the laws of the State of California and doing
15 business in California and, at all times hereinafter mentioned, was and is an employer as defined in
16 and subject to the Labor Code and Industrial Welfare Commission (“IWC”) Wage Orders, whose
17 employees are engaged throughout this county and the State of California. During the relevant
18 time period, Defendant CP Retail, LLC employed Plaintiff and Employees within the State of
19 California.

20 13. Plaintiff is informed and believes, and based thereon alleges, that Defendant
21 Winmark Corporation (“Winmark”) is, and at all times relevant hereto was, a publicly-traded
22 Minnesota corporation and existing under and by virtue of the laws of the State of Minnesota, with
23 its principal place of business in Minnesota. At all times herein, Defendant Winmark Corporation
24 was authorized to conduct business, and actually conducted business, in numerous counties
25 throughout the State of California. Winmark Corporation has registered the Commissioner of the
26 Department of Business Oversight, State of California, 320 West 4th Street, Suite 750, Los
27 Angeles, California 90013 as its agent for service of process. Further, at all times hereinafter
28 mentioned, Winmark Corporation was and is an employer as defined in and subject to the Labor

1 Code and Industrial Welfare Commission (“IWC”) Wage Orders, whose employees are engaged
2 throughout this county and the State of California. During the relevant time period, Defendant
3 Winmark Corporation employed Plaintiff and Employees within the State of California.

4 14. The true names and capacities, whether individual, corporate, associate, or
5 otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to
6 Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure
7 section 474. Plaintiff is informed and believes and based thereon alleges that each of the
8 defendants designated herein as DOE is legally responsible in some manner for the unlawful acts
9 referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true
10 names and capacities of the defendants designated hereinafter as DOES when such identities
11 become known.

12 15. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall
13 include DOES 1 through 100 identified herein.

14 16. Upon information and belief, Defendant CP Retail, LLC is a limited liability
15 company that formerly was named “Capital Partners Plato’s Closet, LLC” and operates multiple
16 Plato’s® Closet retail resale stores in California pursuant to franchise agreement(s) with
17 Defendant Winmark, including but not limited to the store located at 3520 Dale Road, H1,
18 Modesto, California 95356.

19 17. Upon information and belief, Defendant Winmark Corporation is and has been a
20 franchisor of Plato’s Closet® stores since 1999. With a core target customer base of females ages
21 12-24, “Plato’s Closet stores buy and sell gently used clothing and accessories geared toward the
22 teenage and young adult market. Customers have the opportunity to sell their used items to Plato’s
23 Closet stores and to purchase quality used clothing and accessories at prices lower than new
24 merchandise.” *See*, Winmark Corporation, Form 10-K, dated March 10, 2020, p. 1. In 2019,
25 Winmark Corporation’s estimated revenues attributed to Plato’s Closet was \$516 million. *Id.* In
26 the State of California alone, there are approximately eighteen (18) franchise stores in: Corona, El
27 Cajon, Escondido, Fresno, Huntington Beach, Long Beach, Modesto, Monterey, Pacifica, Palm
28 Desert, Pleasanton, San Diego, San Jose, San Mateo, Santa Rosa, South Coast, Temecula, and

1 Vacaville. See, <https://www.platoscloset.com/locations?country=US&page=1&state=CA>

2 **IV. FRANCHISOR AS EMPLOYER**

3 18. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
4 acted in all respects pertinent to this action, as the agent of the other Defendants, carried out a joint
5 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
6 legally attributable to the other Defendants. Plaintiff is further informed and believes and based
7 thereon alleges that Defendants are joint employers in that they employed Plaintiff and
8 Employees, at the same time and were operating as a joint enterprise and single entity at all
9 relevant time periods.

10 19. California courts have recognized that the definition of “employer” for purposes of
11 enforcement of the California Labor Code goes beyond the concept of traditional employment to
12 reach irregular working arrangements for the purpose of preventing evasion and subterfuge of
13 California’s labor laws. *Martinez v. Combs* (2010) 49 Cal. 4th 35, 65. As such, anyone who
14 directly or indirectly, or through an agent or any other person, engages, suffers, or permits any
15 person to work or exercises control over the wages, hours, or working conditions of any person,
16 may be liable for violations of the California Labor Code as to that person. Here, Winmark and CP
17 Retail have suffered and permitted, see, *Martinez, supra*, 49 Cal.4th at 69, Plaintiff and Employees
18 to work.

19 20. Defendant Winmark operates, franchises, and services a system of five retail store
20 concepts that buy, sell and trade gently used merchandise. Winmark’s franchise operations
21 include, among other things, certain rights in: trademarks; marketing and advertising; proprietary
22 software; site selection, opening, design, equipment and furniture selection; equipment lease
23 offers; access to its distinct operational and management Business System; training seminars; and
24 operational information designed to promote uniformity of operations.

25 21. According to a publicly filed document, Defendant Winmark describes itself as
26 follows:

27 We use franchising as a business method of distributing goods and services through
28 our retail brands to consumers. We, as franchisor, own a retail business brand,

1 represented by a service mark or similar right, and an operating system for the
2 franchised business. We then enter into franchise agreements with franchisees and
3 grant the franchisee the right to use our business brand, service marks and
operating system to manage a retail business.

4 See, Winmark Corporation, Form 10-K, dated March 10, 2020.

5 22. Plaintiff is informed and believes, and thereon alleges, that Defendant Winmark has
6 a standardized fixed-term franchise agreement with Defendant CP Retail, along with the other
7 franchisees that comprise the approximately eighteen (18) Plato's Closet® store locations in
8 California.

9 23. Plaintiff is informed and believes, and thereon alleges, that Winmark has a
10 franchise agreement with CP Retail that requires it to strictly adhere to the Plato's Closet®
11 Business System, including, *inter alia*, by complying with all standards, business policies,
12 practices and procedures prescribed by Winmark; using methods and policies relating to
13 management, store operations, sales and marketing, employee management, buying and selling
14 merchandise, inventory control, and accounting that are set forth in detailed manuals developed
15 and provided by Winmark; using corporate supplied point-of-sale ("POS") system; submitting to
16 mandatory trainings and audits; using Winmark designated website protocol; obtaining site lease
17 or sublease approval by Winmark; and paying franchise fees and royalties to Winmark.

18 24. Through its franchise agreement, governing policies, guidelines, associated
19 contracts, technological and operational infrastructure, and its actual practices, Winmark exercises
20 significant control over Plato's Closet® store operations - including those operated by CP Retail –
21 as pertains to working conditions, personnel training, finances, and authority and actual control
22 over each stores' functioning, including practices and policies affecting hourly, non-exempt
23 employees' labor conditions.

24 25. Upon information and belief, for example, Winmark's franchise agreement states,
25 "Standardization. Franchisee will require its employees to wear such uniforms as Franchisor may
26 designate and will comply with such programs of standardization as Franchisor may periodically
27 develop to promote the common business image and to protect the goodwill associated with Marks
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1 and Business System. Franchisee will participate in the Plato's Closet® approved licensed music
2 program." Thus, dress codes, uniforms, and store music are governed at the franchisor level.

3 26. Further, upon information and belief, Winmark also sets the Hours of Operations
4 and hosts training seminars and courses that the franchisee and/or its employees are required to
5 attend.

6 27. The POS that Plaintiff and Employees interface with on a daily basis also belongs
7 to Winmark as its franchise agreement(s) state, "Point-of-Sale ("POS") System. You must use in
8 your Store the point-of-sale ("POS" System") which Winmark has selected for your Business
9 System, and you must enter into a Computer Software License Agreement with Winmark for use
10 of Winmark's proprietary software program (the "Proprietary Software")...You will generally
11 purchase the POS System and the Proprietary Software immediately before you attend Winmark's
12 second week of training."

13 28. Store operations are also standardized across proprietary manuals as Defendant
14 Winmark's 2020 Form 10-K states, "***Franchisees are required to operate their retail businesses***
15 ***according to the systems, specifications, standards, and formats, we develop for business brand.***
16 ***We train the franchisees how to operate the franchise business.***" See, Winmark Corporation,
17 Form 10-K, dated March 10, 2020. Purchase of the Plato's Closet® franchise also permits "access
18 to the distinctive operational and ***management attributes*** of the Plato's Closet® Business System,
19 including confidential manuals describing ***complete guidelines for the operation of a Store*** (the
20 'Manuals'). See, e.g., Plato's Closet® Franchise Disclosure Document dated 2020.

21 29. Moreover, aside from contractual rights, in practice, Employees were subject to
22 oversight by Defendant Winmark *vis-à-vis* employee handbooks, acknowledgements of receipt,
23 performance evaluation, corrective action, and termination forms, annually issued booklets and
24 operations manuals, policies and practices related to buying and selling merchandise, dress codes,
25 POS technology and related policies, and training materials and videos (including quizzes required
26 for hiring/promotion to certain job duties). Such communications to Employees were standardized
27 and represented as sourced from Plato's Closet® and Defendant Winmark Corporation.

1 30. On a practical day-to-day level, some Employees report having more contact with
2 the franchisor instead of the franchisee. One General Manager anonymously posted on Simply
3 Hired that, “Winmark was a decent franchise company to work with. The biggest issue working as
4 a manager at Plato’s Closet was interacting with an absentee owner that was disconnected from
5 the business. The pay was subpar and the hours were horrendous.”¹

6 31. In addition, POS technology was maintained and strictly controlled by Winmark
7 such that, for example, merchandise returns or double charges required Employees working the
8 registers to call third-party banking and financial institutions and provide a Winmark - not CP
9 Retail - specific code. Plaintiff can attest to the fact that she was required to input her unique ID
10 and passcode into the POS system on a regular basis as she used the store register(s).

11 32. Further, Plaintiff is aware that Defendant Winmark held multiple annual
12 conferences hosted to be attended by every Plato’s Closet® franchisee and Employees, including
13 those from her store location.

14 33. Plaintiff is informed and believes, and thereon alleges, that Winmark has jointly
15 exercised control with CP Retail over the employment of Plaintiff and Employees. Much of
16 Plaintiff and Employees’ work has been and is performed at the direction of CP Retail’s
17 supervisors based on specific guidelines, procedures, and protocols mandated and overseen by
18 Defendant Winmark.

19 34. Winmark has, along with CP Retail, jointly controlled and directed all material
20 terms and conditions of employment of Plaintiff and Employees, including but not limited to: a)
21 dictating specific tasks to be performed and the manner in which they are to be completed (*e.g.*,
22 buying and selling of merchandise and interactions with customers); b) enforcing detailed standard
23 operating procedures and standardized branding policies that govern Employees’ work; c)
24 devising and requiring pre-employment screening and standardized training that must be
25 completed by Employees for hiring and/or promotion (*e.g.*, videos and quizzes that must be passed
26 in order to secure certain job positions); d) overseeing directly and indirectly through on-site

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28 ¹ <https://www.simplyhired.com/company/Plato's%20Closet/?q=General+Manager>

1 supervision, POS technology, computer monitoring, and periodic audits the day-to-day
2 performance of Plaintiff and Employees; e) developing standardized evaluations for performance
3 reviews, corrective notice, and termination related to the Employee conduct, work performance,
4 and discharge; and f) setting the operation hours and minimal supervisory staffing levels for store
5 locations.

6 35. For the reasons set forth herein, Defendants Winmark and CP Retail, directly or
7 indirectly, or through any other person have employed or exercised control over the wages, hours,
8 or working conditions of Plaintiff and Employees.

9 36. As an independent basis for Defendants' treatment as an employer of Plaintiff and
10 Employees, on January 14, 2021, the California Supreme Court at the request of the Ninth Circuit
11 Court of Appeals issued its decision in *Vasquez v. Jan-Pro Franchising International, Inc.*
12 (January 14, 2021) Case No. S258191, affirming the application of the "ABC test" set forth in
13 *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903, codified in Assembly Bill
14 5, and held to apply retroactively. The ABC test is the litmus for application of California's Wage
15 Orders to individuals as employees distinct from common law agency or joint liability theories.

16 37. Defendants will not be able to avoid application of California law based on the
17 ABC test. Upon information and belief, Employees were subject, as a matter of contractual right
18 and actual practice, to the type of degree and control by Defendants typical of an employment
19 relationship.

20 38. Defendant Winmark Corporation's business model relies on unit franchisees
21 continuously performing retail resale services of brand clothing and accessories, especially in the
22 market for brand name teen and young adults. Plaintiff and Employees are working in the usual
23 course of Defendants' businesses.

24 39. As the Ninth Circuit recognized in *Vasquez et al. v. Jan-Pro Franchising*
25 *International, Inc.* (9th Cir. Amended February 02, 2021) Case No. 17-16096, "[F]ranchising is not
26 in itself a business, rather a company is in business of selling goods or services and uses the
27 franchise model as a means of distributing the goods or services to the final end user without
28 acquiring significant distribution costs." *Id.* at p. 44 (quoting *Dynamex's* citation to *Awuah v.*

1 *Coverall North America, Inc.* 707 F. Supp.2d 80, 84). Finally, Plaintiff and Employees are
2 workers without independent business operations who work in their individual capacities.

3 40. California law also permits and recognizes the piercing of a corporate veil between
4 sister companies under the single enterprise rule. *Hasso v. Hapke* (2014) 227 Cal. App. 4th 107,
5 155; *Greenspan v. LADT, LLC* (2010) 191 Cal. App. 4th 486, 512. The single enterprise rule
6 applies where “there are two or more personalities, there is but one enterprise; and that this
7 enterprise has been so handled that it should respond, as a whole, for the debts of certain
8 component elements of it.” *Hasso, supra*, 227 Cal. App. 4th at 155; *Greenspan, supra*, 191 Cal.
9 App. 4th at 512.

10 41. Here, Plaintiff and Employees were issued admittedly inaccurate wage statements
11 that misidentified “Capital Partners Platos Closet” as the employer. (Defendant CP Retail, LLC re-
12 issued the wage statements pursuant to PAGA’s cure notice mechanism in reply to Plaintiff’s
13 October 13, 2020 letter to the California Labor and Workforce Development Agency as further
14 described *infra*). The result is that Plaintiff and Employees reasonably believed that the franchisor
15 of Plato’s Closet® likewise was and is their employer.

16 42. Accordingly, all Defendants engaged, suffered, and permitted Plaintiff and
17 Employees to perform services from which they benefitted. Moreover, the aforementioned entities
18 had the right to exercise control over the wages, hours, and/or working conditions of Plaintiff and
19 Employees at all relevant times herein, so as to be considered independent and joint employers.

20 43. At all times throughout their employment, Plaintiff and Employees were regularly
21 and consistently subject to the common policies and practices utilized by Defendants.

22 **V. FACTUAL BACKGROUND**

23 **Defendants Systematically Violated State Wage and Hour Laws**

24 44. Until her separation on June 23, 2020, Plaintiff Angelina Vasquez worked for
25 Defendants as a an hourly-paid, non-exempt employee in the Plato’s Closet® Modesto, California
26 store location. During the relevant time period, Plaintiff worked as a retail sales associate and/or
27 key holder.

28 45. Plaintiff and Employees are non-exempt employees pursuant to the applicable IWC

1 Wage Orders. This action seeks recovery for wages and compensation due and owing to Plaintiff
2 and the Employees under California laws for the maximum period allowed to the present, as set
3 out below.

4 **Minimum Wages And Overtime Due To Off-The-Clock Hours Work**

5 46. Plaintiff alleges that Defendants did not fully compensate Plaintiff and Employees
6 who worked in non-exempt and hourly-paid positions because they were regularly required to
7 perform activities that were off-the-clock, as well as during meal periods. For example, Plaintiff
8 and Employees were subject to bag checks and searches when leaving from work at the end of
9 their shift and subsequent to clocking out. Plaintiff and Employees had to open their bags and wait
10 for a manager to visually inspect its content. Through these policies and/or practices, Defendants
11 artificially reduced the actual hours worked and ultimately disadvantaged Plaintiff and Employees.

12 47. Because Defendants' bag searches are required as a practical matter, occur at the
13 workplace, involve a significant degree of control, are imposed primarily for Defendants' benefit,
14 Plaintiff and Employees must be paid for that time as hours worked. *See, Frlekin v. Apple, Inc.*
15 (Cal. 2020) 457 P. 3d 526, 529.

16 Apple employees who bring an item subject to search under the bag-search policy
17 are: ***confined to the premises until they submit*** to the search procedure; required to
18 locate a ***manager*** or security guard and ***wait for that individual to become***
19 ***available***; and ***compelled to take specific actions and movements during the***
20 ***search***, including opening their bags, unzipping internal compartments, removing
21 their personal Apple technology devices and technology cards, and proving
ownership of such items. Because Apple's business interests and level of control
are greater in the context of an onsite search, the mandatory/voluntary distinction
applied in *Morillion* is not dispositive. *Id.* [emphasis added]

22 Thus, the time spent undergoing bag searches when off-the-clock for their shifts are hours for
23 which Plaintiff and Employees were not compensated.

24 48. Labor Code section 1197 states the California requirement that employees must be
25 paid at least the minimum wage fixed by the Commission, and any payment of less than the
26 minimum wage is unlawful. Labor Code section 1194 entitles "any employee receiving less than
27 the legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this
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1 minimum wage.” IWC Wage Order 7-2001² subdivision 4 also obligates employers to pay each
2 employee minimum wages for all hours worked.

3 49. Throughout the applicable time period, Defendants did not pay and continue to not
4 pay Plaintiff and the Employees at least the California minimum wage for all hours worked,
5 thereby violating Labor Code section 1194. Pursuant to Labor Code section 1194.2, Plaintiff and
6 the Employees are entitled to recover liquidated damages (double damages) for Defendants’
7 failure to pay minimum wages. Likewise, Plaintiff also seeks penalties on behalf of herself and
8 Employees under Labor Code section 1199.

9 50. Here, Defendants’ hourly, non-exempt employees were not paid wages for all hours
10 worked. Defendants failed to pay Plaintiff and Employees for pre-shift and/or post-shift off-the-
11 clock work. Additionally, to the extent Defendants interrupted Employees’ meal periods by
12 requiring or pressuring Employees to perform work during or before completing their thirty (30)
13 minute meal periods, some of the unpaid meal period time constitutes off-the-clock hours resulting
14 in unpaid minimum wages (along with unpaid overtime wages) owed to Plaintiff and Employees.
15 Due to Defendants’ assignment of workloads and their failure to schedule adequate staffing,
16 Plaintiff and Employees were compelled to perform work off-the-clock, resulting in
17 uncompensated minimum wages.

18 51. During the relevant period, Defendants have had a consistent policy of failing to
19 pay overtime wages at the proper amounts and/or failing to pay for all overtime hours worked to
20 Plaintiff and the Employees as a result of the unaccounted for off-the-clock hours.

21 52. Specifically, the work times of Plaintiff and Employees have been, and continue to
22 be, greater than eight (8) hours per day and/or forty (40) hours per week. Yet, because Defendants
23 wanted to keep labor costs down while demanding high sales production from their workforce,
24 Defendants failed to pay all overtime wages owed to Plaintiff and Employees. Thus, Defendants
25 retained the benefits of their hard-working hourly workforce without assuming the legally-

26
27 ² Upon information and belief, Plaintiff alleges that IWC Wage Order No. 7-2001 is applicable. However,
28 Plaintiff reserves the right to amend and/or allege any other applicable IWC Wage Order(s) that may be
gleaned relevant after discovery.

1 mandated costs of labor. Since Defendants owe Plaintiff and Employees the legally required
2 wages for unpaid hours that were worked off-the-clock, as discussed herein and alleged *supra*,
3 Plaintiff and Employees suffered damages in the amounts attributable to those overtime hours as
4 well.

5 53. Labor Code section 510 requires an employer to compensate an employee who
6 works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first
7 eight (8) hours worked on the seventh consecutive day no less than one and one-half times the
8 regular rate of pay for an employee. Further, Labor Code section 510 obligates employers to
9 compensate employees at no less than twice the regular rate of pay when an employee works more
10 than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of
11 work.

12 54. By their common policy and/or practice of requiring Plaintiff and Employees to
13 work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without
14 compensating them at the applicable overtime rate of pay, Defendants willfully violated the
15 provisions of Labor Code sections 510 and 1198, as well as IWC Wage Order No. 7-2001.

16 **Failure To Provide Meal Periods And/Or Pay Premiums Owed Thereon**

17 55. Defendants regularly failed to provide Plaintiff and Employees with timely duty-
18 free uninterrupted meal periods. Labor Code sections 226.7, 512, and IWC Wage Order No. 7-
19 2001 require employers to provide employees with a thirty (30) minute uninterrupted and duty-
20 free meal period within the first five (5) hours of work. *See also, Brinker Rest. Corp. v. Superior*
21 *Court* (2012) 53 Cal. 4th 1004, 1042 (“Accordingly, first meal periods must start after no more
22 than five hours.”). Moreover, an employee who works more than ten (10) hours per day is entitled
23 to receive a second thirty (30) minute uninterrupted and duty-free meal period.

24 56. Defendants regularly denied Plaintiff and Employees meal periods that comply
25 with Labor Code sections 226.7, 512, and IWC Wage Order No. 7-2001. The demands of the job
26 duties of Plaintiff and Employees were such that they were prevented from taking timely,
27 uninterrupted meal periods. For example, Plaintiff took meal periods after her fifth hour of work
28 that were in violation of Labor Code sections 226.7, 512, and IWC Wage Order No. 7-2001.

1 Plaintiff also experienced interrupted and shortened meal periods when, for example, co-workers
2 needed a password for the computer system and/or a dissatisfied customer needed attention and
3 Plaintiff was called back from her lunch. Plaintiff and Employees frequently worked off-the-clock
4 and during their meal periods without receiving proper compensation and without entering into a
5 lawful on-duty meal period agreement.

6 57. Moreover, to the extent Plaintiff and Employees were not provided second meal
7 periods for shifts worked in excess of ten (10) hours, such conduct is in violation of Labor Code
8 sections 226.7, 512, and IWC Wage Order No. 7-2001. Having been subjected to late, short,
9 interrupted, and/or missed meal periods, Plaintiff and Employees did not receive their statutorily
10 mandated meal periods.

11 58. In addition to failing to authorize and permit compliant meal periods, Plaintiff and
12 Employees were not compensated with one (1) hour's worth of pay at their regular rate of
13 compensation when they were not provided with a compliant meal period in accordance with
14 Labor Code section 226.7(b).

15 **Failure To Provide Rest Breaks And/Or Pay Premiums Owed Thereon**

16 59. The same late, short, interrupted, and missed breaks also occur in connection with
17 what are supposed to be Plaintiff's and Employees' timely, duty-free rest breaks. Defendants were
18 obligated but failed to provide Plaintiff and the Employees with net ten (10) minute rest breaks for
19 work shifts exceeding four (4) hours or a major fraction thereof worked as required by Labor Code
20 section 226.7 and IWC Wage Order No. 7-2001. Since Plaintiff and Employees frequently worked
21 shifts that were longer than three and one-half (3.5) or six (6) hours in duration, Defendants were
22 required but regularly failed to provide Plaintiff and Employees with all the timely duty-free rest
23 breaks.

24 60. Further, Plaintiff and Employees were subject to policies and practices that did not
25 provide second rest breaks whenever they worked over six (6) hours in a day. Prior to January
26 2020, Defendants did not authorize or permit second rest breaks to Employees even if they were
27 so entitled. Instead, Employees were pressured to perform their duties in a way that omitted breaks
28 through scheduling that made taking breaks difficult, maintaining an informal anti-rest break

1 policy enforced through ridicule or reprimand, and exerting coercion against the taking of,
2 creating incentives to forego, or otherwise encouraging the skipping of legally protected breaks.

3 61. As a companywide practice, Defendants did not offer Plaintiff and Employees the
4 opportunity to receive a compliant off-duty rest break and, thus, “the court may not conclude
5 employees voluntarily chose to skip...breaks.” *Alberts v. Aurora Behavioral Health Care* (2015)
6 241 Cal. App. 388, 410 (“[i]f an employer fails to provide legally compliant meal or rest breaks,
7 the court may not conclude employees voluntarily chose to skip those breaks.”) *accord, Brinker*
8 *Rest. Corp. v. Sup. Ct.* (2012) 53 Cal. 4th 1004, 1033 (“***no issue of waiver ever arises for a rest***
9 ***break that was required by law but never authorized; if a break is not authorized, an employee***
10 ***has not opportunity to decline to take it.***”) [emphasis added]

11 62. Upon information and belief, after Employees complained about their entitlement
12 to second rest breaks, starting in January 2020, Defendants reduced the duration of shift hours to
13 five hours and fifty minutes so as to avoid the obligation of providing second rest breaks to
14 employees.

15 63. In addition to failing to authorize and permit compliant rest breaks, Plaintiff and
16 Employees were not compensated with one (1) hour’s worth of pay at their regular rate of
17 compensation when they were not provided with a compliant rest break in accordance with Labor
18 Code section 226.7(b).

19 **Failure To Pay Vested Vacation Upon Termination**

20 64. Defendants maintain a paid time off policy and practice that provides Employees,
21 among other things, paid vacation time. Under their policy, Plaintiff accrued forty-eight (48) hours
22 of vacation per year – which she almost never used except for a one-week annual vacation that she
23 took unpaid. Despite her accrued and unused vacation time, Plaintiff was not paid out the
24 equivalent of her vacation time wages on her last paycheck upon separation.

25 65. Here, the vacation policy of Plato’s Closet was subject to Labor Code section 227.3
26 such that, accrued but unused vacation time constitutes “wages” that must be paid to the employee
27 at the employee’s regular rate of pay at the time of termination. *See*, Labor Code § 227.3; *Boothby*
28 *v. Atlas Mechanical, Inc.* (1992) 6 Cal. App. 4th 1595, 1602 (stating that “the right to a paid

1 vacation, when offered in an employer's policy or contract of employment, constitutes deferred
2 wages for services rendered.")

3 66. An employer may not adopt policies that require forfeiture of vested vacation time
4 without compensation. The failure to pay Plaintiff and Employees all their earned and unused paid
5 vacation upon the termination of their employment violates Labor Code section 227.3 and *Suastez*
6 *v. Plastic Dress-Up Co.* (1982) 31 Cal. 3d 774.

7 67. Further, after the employment of Plaintiff and Employees, Defendants never paid
8 them all wages due because by failing to pay accrued vacation time upon Plaintiff's and
9 Employees' termination of employment, Defendants violated Labor Code sections 201, 202, 203,
10 and 227.3.

11 **Failure To Provide Suitable Seating When The Nature Of The Work Permitted**

12 68. Defendants failed to provide suitable seating to Plaintiff and Employees as required
13 by Labor Code section 1198 and Section 14 of Wage Order 7-2001. For example, section 14 of
14 Wage Order No. 7, which covers businesses in the "mercantile industry" such as Plato's Closet,
15 states "[a]ll working employees shall be provided with suitable seats when the nature of the work
16 reasonably permits the use of seats." Further, that same section provides that,

17 When employees are not engaged in the active duties of their employment and the
18 nature of the work requires standing, an adequate number of suitable seats shall be
19 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.

20 If the tasks being performed at given location reasonably permit sitting, and provision of a seat
21 would not interfere with performance of any other tasks that may require standing, a seat is called
22 for. *Kilby v. CVS Pharmacy, Inc.* (2016) 63 Cal. 4th 1, 8.

23 69. Plaintiff and Employees were required to work at cash registers without suitable
24 seating even though the provision of such seats would not interfere with the performance of other
25 tasks requiring standing. Labor Code section 1198 provides the IWC with the authority to set the
26 standard conditions of labor for California employees and specifies that "the employment of any
27 employee under conditions of labor prohibited by the order is unlawful." Here, Defendants
28 violated Labor Code section 1198 by failing to provide suitable seating under IWC Wage Order

1 No. 7-2001, along with violation under the PAGA.

2 **Failure to Reimburse for Necessary Business Expenses**

3 70. Plaintiff and Employees were required to use their personal vehicles to run errands,
4 including but not limited, all key holders engaged in travel trips to and from their store and the
5 local bank branch and mileage incurred for those trips was not reimbursed. Further, Plaintiff and
6 Employees used their personal cell phones for a variety of work activities, including
7 communicating with co-workers and supervisors. Specifically, Plaintiff and Employees were
8 required to download and participate in a GroupMe app on their cell phones to participate in work-
9 related communications.

10 71. Defendants thus violated Labor Code section 2802 by failing to pay and indemnify
11 Plaintiff and the Employees for their necessary expenditures and losses incurred (*i.e.*, vehicle
12 mileage for business related travel trips and the cost and use of personal cell phones to participate
13 in work-related communications) in direct consequence of the discharge of their duties.

14 **Inaccurate Itemized Wage Statements**

15 72. Due to their failure to pay Plaintiff and Employees for all hours worked, failure to
16 properly pay overtime wages, failure to provide lawful meal and rest breaks (and pay missed break
17 premiums thereon), failure to pay all vacation wages accrued upon termination, and failure to
18 reimburse for business expenses, the wage statements maintained and issued by Defendants are
19 inaccurate.

20 73. Plaintiff and Employees were not furnished with accurate itemized wage statements
21 that accurately showed the correct gross wages earned, correct total hours worked, correct net
22 wages earned, premium payments for meal and rest breaks, all applicable hourly rates and/or
23 corresponding number of hours worked at each hourly rate in effect during their pay periods, in
24 violation of Labor Code section 226(a)(1), (2), (5), and (9).

25 74. In addition to the derivative aspect of Plaintiff's wage statement claim, there also
26 existed a standalone violation for Defendants' lack of compliance with Labor Code section
27 226(a)(8): "the name and address of the legal entity that is the employer." The wage statements
28 originally provided to Plaintiff showed an employer identification for "Capital Partners Platos

1 Closet.” On November 12, 2020, Defendant CP Retail, LLC submitted a purported cure notice
2 under Labor Code § 2699.3 indicating that Plaintiff was “only employed by one entity, CP Retail,
3 LLC, an entity that was formerly named Capital Partners Plato’s Closet LLC” and re-issued wage
4 statements from October 13, 2017 to Plaintiff and Employees with the correction “CP Retail,
5 LLC” as the identified employer.³ No money was paid to Plaintiff or Employees as part of this
6 purported cure and no further alterations to the wage statements made.

7 75. Despite the purported cure of the Labor Code 226(a)(8) violation – and
8 notwithstanding the failure to identify Defendant Winmark as a joint employer thereon - the
9 itemized wage statements provided to Plaintiff and Employees are still defective with respect to
10 the remaining 226(a) subpart deficiencies identified *supra*.

11 76. As a result of failing to provide accurate itemized wage statements setting forth the
12 information required by Labor Code section 226(a), Defendants have incurred liability that entitles
13 Plaintiff and Aggrieved Employees to damages under Labor Code section 226(e) and/or penalties
14 including those pursuant to Labor Code section 226.3 and the PAGA.

15 77. During the relevant time period, Defendants have knowingly and intentionally
16 failed to provide Plaintiff and Employees with the above-described writing through actions alleged
17 herein in violation of Labor Code section 226. Plaintiff and Employees have been injured by
18 Defendants’ intentional violation of Labor Code section 226(a) because they were denied both
19 their legal right to receive, and their protected interest in receiving, accurate itemized wage
20 statements.

21 78. In addition, because Defendants failed to provide the accurate and mandated
22 information on the itemized wage statements, Plaintiff and Employees have been prevented by
23 Defendants from determining, *inter alia*, if all hours worked were paid, along with premiums on
24

25 ³ Plaintiff remains baffled by the following conundrum: On the one hand, Defendant CP Retail LLC
26 describes itself as “an entity that was formerly named Capital Partners Plato’s Closet LLC” but for three
27 years preceding October 13, 2020 deems itself the properly identified employer. While on the other hand,
28 Capital Partners Plato’s Closet took a \$126,246 Paycheck Protection loan on May 01, 2020 supported by an
eligibility profile of \$605,981 in payroll expenses in 2019. *C.f.*, <https://www.federalpay.org/paycheck-protection-program>. Seems like a lot of payroll expenses for employees that no longer exist.

1 non-compliant breaks and the extent of the underpayment. Plaintiff has had to file this lawsuit and
2 will be required to conduct discovery and perform computations in order to analyze whether, and
3 to what extent, Plaintiff and Employees suffered underpayment, thereby causing Plaintiff to incur
4 expenses and time lost. Thus, Plaintiff and Employees are owed the amounts provided for in Labor
5 Code section 226(e).

6 79. Further, for the violations described above, Plaintiff and Aggrieved Employees
7 may also recover civil penalties through Labor Code section 226.3 and PAGA for Defendants'
8 violations of Labor Code section 226(a).

9 80. Additionally, Plaintiff and Employees have been denied their legal right and
10 protected interest in having available at a central location at the plant or establishment where they
11 are employed, accurate and complete payroll records showing the hours worked daily by, and the
12 wages paid to, employees at those respective locations pursuant to Labor Code section 1174.
13 Through Labor Code section 1174.5 and PAGA, Plaintiff and Aggrieved Employees may also
14 recover civil penalties for violations of Labor Code section 1174(d).

15 **Failure To Pay All Wages Owed Timely Upon Separation**

16 81. Labor Code section 203 provides "if an employer willfully fails to pay...any wages
17 of an employee who is discharged or who quits, the wages of the employee shall continue as a
18 penalty..." for up to 30 days. Labor Code § 203; *Mamika v. Barca* (1998) 68 Cal. App. 4th 487,
19 492.

20 82. Due to Defendants' non-compliant policies and/or practices described herein,
21 Plaintiff and Employees whose employment with Defendants concluded were deprived of full
22 compensation for all straight-time and overtime hours worked, for all meal and rest break
23 premiums owed, and for reimbursement of business expenses incurred. Thus, Defendants have
24 failed to pay Plaintiff and Employees all wages owed, whose sums were certain, at the time of
25 termination or within seventy-two (72) hours of their resignation and have failed to pay those
26 sums for thirty (30) days thereafter in violation of Labor Code section 203.

27 83. Labor Code section 204 expressly requires that "[a]ll wages...earned by any person
28 in any employment are due and payable twice during each calendar month, on days designated in

1 advance by the employer as the regular paydays.” Pursuant to Labor Code section 204(d), these
2 requirements are “deemed satisfied by the payment of wages for weekly, biweekly or semimonthly
3 payroll if the wages are paid not more than seven (7) calendar days following the close of the
4 payroll period.” Due to Defendants’ failure to pay Plaintiff and Employees for, *inter alia*, all
5 straight-time and overtime hours worked, Defendants failed to timely pay Plaintiff and Employees
6 within seven (7) days of the close of the payroll period in accordance with Labor Code section 204
7 on a regular and consistent basis.

8 84. Through Labor Code section 210 and PAGA, and to the extent permitted by law,
9 Plaintiff and Aggrieved Employees are entitled to recover civil penalties for violations of Labor
10 Code section 204.

11 85. Based on the foregoing, Defendants have also engaged in unlawful and unfair
12 business practices in violation of California’s Business and Professions Code sections 17200, *et*
13 *seq.*, thereby entitling Plaintiff and Class Members to restitution, disgorgement of profits, and/or
14 other equitable remedies.

15 VI. CLASS ACTION ALLEGATIONS

16 86. Plaintiff brings this action on behalf of herself and all others similarly situated, as a
17 class action pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a
18 proposed class composed of and defined as follows:

19 *All current and former hourly-paid, non-exempt employees working at Plato’s*
20 *Closet® store locations in California owned by CP RETAIL, LLC and/or operated*
21 *pursuant to a franchise agreement with WINMARK CORPORATION, from four*
years prior to the filing of the Complaint and continuing to the present (again, the
“Class” or “Class Members”).

22 87. Plaintiff reserves the right under California Rule of Court, Rule 3.765(b), to amend
23 or modify the class description identified herein with greater specificity or further division into
24 subclasses or limitation to particular issues.

25 88. This action has been brought and may properly be maintained as a class action
26 under the provisions of Code of Civil Procedure section 382 because there is a well-defined
27 community of interest in the litigation and the Class is easily ascertainable.

1 **A. Numerosity**

2 89. The potential members of the Class as defined are so numerous that joinder of all
3 the members of the Class is impracticable. While the precise number of Class Members has not
4 been determined at this time, Plaintiff is informed and believes that there are over seventy-five
5 (75) Class Members employed by Defendants within the State of California at any given time.
6 Accounting for employee turnover during the relevant time periods necessarily increases this
7 number substantially.

8 90. Plaintiff alleges Defendants' employment records would provide information as to
9 the number and location of all Class Members.

10 **B. Commonality**

11 91. There are questions of law and fact common to the Class that predominate over any
12 questions affecting only individual Class Members. These common questions of law and fact
13 include, without limitation:

14 i. Whether Defendants violated Labor Code sections 1194, 1194.2, 1197, 1197.1,
15 and/or IWC Wage Order 7-2001 by not compensating Plaintiff and Class Members minimum
16 wages for all hours worked;

17 ii. Whether Defendants violated Labor Code sections 510, 1198, and/or IWC Wage
18 Order No. 7-2001 by not compensating Plaintiff and Class Members with proper overtime wages;

19 iii. Whether Defendants violated Labor Code section 226.7, 512, and/or IWC Wage
20 Order No. 7-2001 by not providing Plaintiff and Class Members with compliant duty-free meal
21 and/or rest breaks and failing to pay premiums owed thereon;

22 iv. Whether Defendants violated Labor Code section 227.3 by failing to pay accrued
23 vacation time upon Plaintiff and Class Members' termination of employment;

24 v. Whether Defendants provide suitable seating as required by Labor Code section
25 1198 and Section 14 of Wage Order 7-2001 when the nature of the work reasonably permits the
26 use of seats;

27 vi. Whether Defendants failed to reimburse Plaintiff and Class Members for all
28 necessary business expenses incurred in violation of Labor Code section 2802;

1 vii. Whether Defendants violated Labor Code section 226(a) by not furnishing Plaintiff
2 and Class Members with accurate itemized wage statements;

3 viii. Whether Defendants are liable to Plaintiff and Class Members for damages under
4 Labor Code section 226(e) and/or penalties under Labor Code section 226.3;

5 ix. Whether Defendants failed to maintain in a central location at the respective plants
6 or establishment accurate payroll records in violation of Labor Code section 1174(d);

7 x. Whether Defendants violated Labor Code sections 201 and 202 by failing to pay
8 Plaintiff and Class Members upon termination and/or resignation all wages earned;

9 xi. Whether Defendants are liable to Plaintiff and Class Members for waiting time
10 penalties under Labor Code section 203;

11 xii. Whether Defendants violated Labor Code sections 204 and 210 by not paying
12 Plaintiff and Class Members all their wages owed within seven (7) days of the close of payroll;

13 xiii. Whether Defendants engaged in unfair business practices in violation of the Unfair
14 Competition Law, Business and Professions Code sections 17200, *et seq.*;

15 xiv. Whether Plaintiff and Class Members are entitled to costs and attorneys' fees;

16 xv. Whether Plaintiff and Class Members are entitled to interest; and

17 xvi. The proper formula(s) for calculating damages, restitution, and interest owed to
18 Plaintiff and Class Members.

19 **C. Typicality**

20 92. The claims of Plaintiff are typical of the claims of the Class. Plaintiff and Class
21 Members sustained injuries and damages arising out of and caused by Defendants' common
22 course of conduct in violation of laws and regulations that have the force and effect of law and
23 statutes, as alleged herein.

24 **D. Adequacy of Representation**

25 93. Plaintiff will fairly and adequately represent and protect the interests of the Class.
26 Counsel who represent Plaintiff and Class Members are competent and experienced in litigating
27 wage and hour class actions and have the financial resources to litigate the claims at issue.

28 **E. Superiority of Class Action**

94. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each member of the Class has been damaged and is entitled to recovery by reason of Defendants' illegal policy and/or practice of failing to properly pay minimum wages and overtime, failing to provide timely duty-free meal periods, failing to authorize and permit duty-free rest breaks, failing to pay all accrued vacation upon termination; failing to provide suitable seating; failing to reimburse all necessary business expenditures; failing to maintain and provide accurate itemized wage statements, failing to pay all wages owed in a timely manner, failing to pay all wages due upon separation, and engaging in unfair business practices.

95. Class action treatment will allow those similarly situated persons to litigate their claims in a manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

FIRST CAUSE OF ACTION
FAILURE TO PAY MINIMUM AND OVERTIME WAGES
Cal. Labor Code §§ 510, 1194, 1194.2, 1197, 1197.1, 1198, and IWC Wage Order No. 7-2001
[On Behalf of Plaintiff and the Class Against All Defendants]

96. Plaintiff, on behalf of herself and the Class, re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully alleged herein.

COUNT I: UNPAID MINIMUM WAGES

97. At all times relevant herein, Defendants did not pay, and continue to not pay, Plaintiff and Class Members the legal minimum wage for all time worked. Among other things, Plaintiff and Class Members were regularly required to perform pre-shift and post-shift activities that were off-the-clock, as well as during meal periods. For example, Plaintiff and Class Members were subject to bag checks and searches when leaving from work at the end of their shift and subsequent to clocking out. Plaintiff and Class Members had to open their bags and wait for a

1 manager to visually inspect its content. Through these policies and/or practices, Defendants
2 artificially reduced the actual hours worked and ultimately disadvantaged Plaintiff and Class
3 Members.

4 98. Because Defendants' bag searches are required as a practical matter, occur at the
5 workplace, involve a significant degree of control, are imposed primarily for Defendants' benefit,
6 Plaintiff and Class Members must be paid for that time as hours worked. *See, Frlekin v. Apple,*
7 *Inc.* (Cal. 2020) 457 P. 3d 526, 529. Thus, the time spent undergoing bag searches when off-the-
8 clock for their shifts are hours for which Plaintiff and Class Members were not compensated.

9 99. Additionally, to the extent Defendants interrupted meal periods by requiring or
10 pressuring Plaintiff and Class Members to perform work during or before completing their thirty
11 (30) minute meal periods, some of the unpaid meal period time constitutes off-the-clock hours
12 resulting in unpaid minimum (along with potentially unpaid overtime) wages owed.

13 100. Due to Defendants' failure to supply and schedule adequate staffing, Plaintiff and
14 the Class were compelled to perform work off-the-clock, resulting in uncompensated hours.

15 101. Labor Code section 1197 states the California requirement that employees must be
16 paid at least the minimum wage fixed by the Commission, and any payment of less than the
17 minimum wage is unlawful. Labor Code section 1194 entitles "any employee receiving less than
18 the legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this
19 minimum wage." IWC Wage Order 7-2001 subdivision 4 also obligates employers to pay each
20 employee minimum wages for all hours worked.

21 102. Defendants' failure to pay Plaintiff and Class Members the minimum wage as
22 required is unlawful and violates Labor Code sections 1194, 1194.2, 1197, and 1197.1. As a
23 result, Plaintiff and Class Members are entitled to recover the unpaid balance of their minimum
24 wage compensation, as well as interest, costs, attorneys' fees, and liquidated damages in an
25 amount equal to the wages unlawfully unpaid and interest thereon.

26 **COUNT II: UNPAID OVERTIME WAGES**

27 103. Labor Code section 510 codifies the right to overtime compensation at one-and-
28 one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or

1 forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and
2 to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve
3 (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

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

8 105. Specifically, subdivision 3 of IWC Wage Order No. 7-2001 provides that an
9 employee shall not be employed more than eight (8) hours in any workday and/or more than forty
10 (40) hours in any workweek unless the employee receives one and one-half (1 ½) times such
11 employee's regular rate of pay for all hours worked over eight (8) hours in any workday and/or
12 more than forty (40) hours in any workweek. Further, an employer must compensate employees at
13 no less than twice the regular rate of pay when an employee works more than twelve (12) hours in
14 a workday or more than eight (8) hours on the seventh consecutive day of work.

15 106. At all times relevant herein, to the extent Plaintiff and the Class worked shifts that
16 consisted of more than eight (8) hours in a workday and/or more than forty (40) hours in a
17 workweek, they were not paid proper overtime wages for all overtime hours worked as a result of,
18 but not limited to, Defendants' systematic pressure on Plaintiff and Class Members to perform
19 work off-the-clock, including during bag checks and meal periods, that resulted in unaccounted
20 work hours. Because Defendants owe Plaintiff and Class Members the legally required wages for
21 unpaid hours that were worked off-the-clock, as described in the above minimum wage cause of
22 action, Plaintiff and Class Members suffered damages in the amounts attributable to those
23 overtime hours as well.

24 107. During the relevant time period, Defendants intentionally and willfully failed to
25 pay overtime wages owed to Plaintiff and Class Members.

26 108. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of
27 overtime compensation, as required by California laws, violates the provisions of Labor Code
28 sections 510 and 1198, and is therefore unlawful.

1 109. Pursuant to Labor Code section 1194, Plaintiff and Class Members are entitled to
2 recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

3 **SECOND CAUSE OF ACTION**
4 **FAILURE TO PROVIDE MEAL PERIODS**
5 **Cal. Labor Code §§ 226.7, 512, and IWC Wage Order No. 7-2001**
6 **[On behalf of Plaintiff and the Class Against All Defendants]**

7 110. Plaintiff, on behalf of herself and the Class, re-alleges and incorporates by
8 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
9 fully alleged herein.

10 111. Defendants regularly denied Plaintiff and Class Members meal periods that comply
11 with Labor Code sections 226.7, 512, and IWC Wage Order No. 7-2001. The demands of the job
12 duties of Plaintiff and the Class were such that they were prevented from taking compliant meal
13 periods. Plaintiff and Class Members received untimely meal periods and worked off-the-clock
14 and during their meal periods without receiving proper compensation and without entering into a
15 lawful on-duty meal period agreement. their meal periods without receiving proper compensation.

16 112. Labor Code section 226.7 provides "an employer shall not require an employee to
17 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
18 applicable regulation, standard, or order of the Industrial Welfare Commission ("IWC")." Labor
19 Code section 512 and IWC Wage Order No. 7-2001 require employers to provide employees with
20 thirty (30) minute uninterrupted and duty-free meal periods within the first five (5) hours of work.
21 *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1042 ("Accordingly, first meal
22 periods must start after no more than five hours.") Moreover, an employee who works more than
23 ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free
24 meal period.

25 113. Plaintiff took untimely meal periods after her fifth hour of work and had meal
26 periods interrupted in violation of Labor Code sections 226.7, 512, and IWC Wage Order No. 7-
27 2001. For example, Plaintiff experienced interrupted and shortened meal periods when, for
28 example, co-workers needed a password for the computer system and/or a dissatisfied customer
needed attention and Plaintiff was called back from her lunch.

1 114. Moreover, to the extent Plaintiff and Class Members were not provided second
2 meal periods for shifts worked in excess of ten (10) hours, such conduct is in violation of Labor
3 Code sections 226.7, 512, and IWC Wage Order No. 7-2001.

4 115. Having been subjected to late, short, interrupted, and missed meal periods, Plaintiff
5 and Class Members thus did not receive their statutorily mandated meal periods.

6 116. Under Labor Code section 226.7 and IWC Wage Order No. 7-2001, Plaintiff and
7 each Class Member is entitled to be paid one (1) hour of additional wages for each day he or she
8 was not provided with all required meal periods. Defendants regularly failed to pay Plaintiff and
9 Class Members the additional wages to which they were entitled for non-compliant meal periods.

10 117. As a result, Defendants are liable to Plaintiff and each Class Member for one (1)
11 hour of additional wages for each workday a compliant meal period was not provided.

12 **THIRD CAUSE OF ACTION**
13 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**
14 **Cal. Labor Code § 226.7 and IWC Wage Order No. 7-2001**
15 **[On behalf of Plaintiff and the Class Against All Defendants]**

16 118. Plaintiff, on behalf of herself and the Class, re-alleges and incorporates by
17 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
18 fully alleged herein.

19 119. Under IWC Wage Order No. 7-2001, subdivision 12, an employer must authorize
20 and permit all employees to take ten (10) minute duty free rest periods for every major fraction of
21 four (4) hours worked. Labor Code section 226.7 provides “an employer shall not require an
22 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
23 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission.”

24 120. Defendants are required by California law to authorize and permit breaks of ten
25 (10) uninterrupted minutes for each four (4) hours of work or major fraction thereof (i.e., more
26 than two hours). That is, the required number of rest breaks is equal to the number of work hours
27 divided by four, and if the work time is not evenly divisible by four, any remainder of two hours
28 or less is rounded down and that which exceeds two hours is rounded up. For example, if a Class
Member’s work time is six hours and ten minutes, he or she is entitled to two rest breaks. If the

1 work time is nine hours, the employee is still entitled to only two rest breaks. (There is an
2 exception: if the shift is under three and one-half hours, no rest break is required.) Each failure to
3 authorize rest breaks as so required is itself a violation of California's rest break laws.

4 121. Despite these legal requirements, Defendants failed to authorize Plaintiff and Class
5 Members to take timely, duty-free rest breaks regardless of whether they worked over four (4)
6 hours or over six (6) hours in a workday.

7 122. Prior to January 2020, Defendants did not authorize or permit second rest breaks to
8 Plaintiff and Class Members even if they were so entitled. Instead, Plaintiff and Class Members
9 were pressured to perform their duties in a way that omitted breaks through scheduling that made
10 taking breaks difficult, maintaining an informal anti-rest break policy enforced through ridicule or
11 reprimand, and exerting coercion against the taking of, creating incentives to forego, or otherwise
12 encouraging the skipping of legally protected breaks.

13 123. Under Labor Code section 226.7 and IWC Wage Order No. 7-2001, Plaintiff and
14 each Class Member is entitled to be paid one (1) hour of wages for each day he or she was not
15 provided with all required rest breaks. Defendants regularly failed to pay Plaintiff and Class
16 Members the additional wages to which they were entitled for rest breaks that Defendants failed to
17 authorize and permit.

18 124. As a result, Defendants are liable to Plaintiff and each Class Member for one (1)
19 hour of additional wages for each workday they did not receive a compliant rest break.

20 **FOURTH CAUSE OF ACTION**
21 **FAILURE TO PAY VESTED VACATION**
22 **Cal. Labor Code § 227.3**

23 **[On Behalf of Plaintiff and the Class Against All Defendants]**

24 125. Plaintiff, on behalf of herself and the Class, re-alleges and incorporates by
25 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
26 fully alleged herein.

27 126. Once an employee accrues vacation time, that time is treated as compensation and
28 cannot be forfeited without compensation. Pursuant to Labor Code § 227.3, accrued but unused
vacation time constitutes "wages" that must be paid to the employee at the employee's regular rate

1 of pay at the time of termination. An employer may not adopt policies that require forfeiture of
2 vested vacation time without compensation.

3 127. Defendants' paid time off and vacation policies constituted a vacation time policy
4 subject to Labor Code section 227.3.

5 128. Plaintiff and Class Members accrued but had unused vacation time upon their
6 termination from employment with Defendants, but Defendants refused to pay Plaintiff and Class
7 Members the value of that time upon termination. Accordingly, Defendants violated California
8 Labor Code provisions including, but not limited to, §§ 201, 202, 203, and 227.3.

9 129. Plaintiff and Class Members are thus entitled to recover unpaid wages for all
10 unused vacation time.

11 **FIFTH CAUSE OF ACTION**
12 **FAILURE TO PROVIDE SUITABLE SEATING**
13 **Cal. Labor Code § 1198 and Wage Order 7-2001**
[On Behalf of Plaintiff and the Class Against All Defendants]

14 130. Plaintiff, on behalf of herself and the Class, re-alleges and incorporates by
15 reference all of the allegations contained in the preceding paragraphs as though fully set forth
16 herein.

17 131. California Labor Code section 1198 makes it illegal to employ an employee under
18 conditions of labor that are prohibited by the applicable IWC Wage Order. Section 1198 requires
19 that "...the standard conditions of labor fixed by the commission shall be the...standard conditions
20 of labor for employees. The employment of any employee...under conditions of labor prohibited
21 by the order is unlawful."

22 132. Section 14 of Wage Order 7-2001 provides, subpart (A) states that "[a]ll working
23 employees shall be provided with suitable seats when the nature of the work reasonably
24 permits the use of seats."

25 133. Further, Section 14 of Wage Order 7-2001, subpart (B) states that "[w]hen
26 employees are not engaged in the active duties of their employment and the nature of the work
27 requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to
28 the work area and employees shall be permitted to use such seats when it does not interfere with

1 the performance of their duties.”

2 134. Defendants violated Labor Code section 1198 and Wage Order 7-2001 because
3 Plaintiff and Class Members were not permitted to sit, even if they were not engaged in active
4 duties. They were also not permitted to sit – *i.e.*, at cash registers - even when it would not
5 interfere with the performance of their duties, nor were they provided with suitable seats.

6 135. Plaintiff and Class Members are entitled to recover all remedies available for
7 violations of Labor Code section 1198 and IWC Wage Order No. 7-2001, section 14.

8 **SIXTH CAUSE OF ACTION**
9 **FAILURE TO REIMBURSE BUSINESS EXPENSES**
10 **Cal. Business & Professions Code § 2802**
11 **[On Behalf of Plaintiff and the Class Against All Defendants]**

12 136. Plaintiff, on behalf of herself and the Class, re-alleges and incorporates by
13 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
14 fully alleged herein.

15 137. Labor Code section 2802 provides that “[a]n employer shall indemnify his or her
16 employee for all necessary expenditures or losses incurred by the employee in direct consequence
17 of the discharge of his or her duties.” “Necessary” business expenses is defined to include all
18 “reasonable expenses.” *See*, Labor Code § 2802(c).

19 138. Plaintiff and Class Members incurred necessary business expenses (*i.e.* vehicle
20 mileage for business related travel such as key holder trips between the store and local bank and
21 cost and use of personal cell phones required for business communications and mandated group
22 chats) in discharging their work-related duties for Defendants. However, Defendants did not pay
23 fully, or at all, for these necessary business expenses incurred by Plaintiff and Class Members.

24 139. Defendants’ failure to pay for or reimburse the work-related business expenses of
25 Plaintiff and Class Members violated non-waivable rights secured to Plaintiff and Class Members
26 by Labor Code section 2802.

27 140. Plaintiff and Class Members are entitled to reimbursement for these necessary
28 expenditures, plus interest pursuant to Labor Code section 2802(b) and attorneys’ fees and costs
under Labor Code section 2802(c).

SEVENTH CAUSE OF ACTION
FAILURE TO MAINTIAN AND PROVIDE ACCURATE WAGE STATEMENTS
Cal. Labor Code §§ 226 and 1174
[On Behalf of Plaintiff and the Class Against All Defendants]

141. Plaintiff, on behalf of herself and the Class, re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth herein.

142. Labor Code section 226(a) requires employers, semi-monthly or at the time or each payment of wages, to furnish employees an accurate itemized statement in writing showing:

- (1) gross wages earned;
- (2) total hours worked by the employee;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) net wages earned;
- (6) the inclusive dates of the period for which the employee is paid;
- (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) the name and address of the legal entity that is the employer...; and
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

143. During the relevant time period, due to Defendants' failure to, *inter alia*, pay Plaintiff and Class Members for all hours worked, failure to properly pay overtime wages, failure to provide lawful meal and rest breaks (and pay missed break premiums thereon), failure to pay all vacation wages accrued upon termination, and failure to reimburse for business expenses, the wage statements maintained and issued by Defendants are inaccurate. Specifically, Plaintiff and Class Members were not furnished with accurate itemized wage statements that accurately showed the correct gross wages earned, correct total hours worked, correct net wages earned, premium

1 payments for meal and rest breaks, all applicable hourly rates and/or corresponding number of
2 hours worked at each hourly rate in effect during their pay periods, in violation of Labor Code
3 section 226(a)(1), (2), (5), and (9).

4 144. Further, despite the purported cure of a Labor Code 226(a)(8) violation by re-
5 issuing about three years of wage statements to Plaintiff and Class Members with a revised
6 employer name identified, no money was paid to Plaintiff or Class Members and no further
7 alterations to the wage statements made. Thus, the itemized wage statements provided to Plaintiff
8 and Class Members remain defective with respect to the remaining 226(a) subpart deficiencies
9 identified *supra*.

10 145. An employee suffering injury as a result of a knowing and intentional failure by an
11 employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual
12 damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurs and one
13 hundred dollars (\$100.00) per employee for each violation in a subsequent pay period, not
14 exceeding an aggregate penalty of four thousand dollars (\$4,000.00), and is entitled to an award of
15 costs and reasonable attorneys' fees.

16 146. The absence of accurate information on their wage statements has delayed timely
17 challenge to Defendants' unlawful pay practices, requires discovery and mathematical
18 computations to determine the amount of wages owed, causes difficulty and expense in attempting
19 to reconstruct time and pay records, and led to submission of inaccurate information about wages
20 and amounts deducted from wages to state and federal governmental agencies. Plaintiff would not
21 have had to engage in these efforts and incur these costs had Defendants provided accurate wage
22 statements. This also delayed Plaintiff's ability to demand and recover the underpayment of wages
23 from Defendants.

24 147. Thus, Plaintiff and Class Members have been injured by Defendants' intentional
25 violation of Labor Code section 226(a) because they were denied both their legal right to receive,
26 and their protected interest in receiving, accurate itemized wage statements.

27 148. Plaintiff and Class Members are thus entitled to recover from Defendants the
28 greater of their actual damages caused by Defendants' failure to comply with Labor Code section

1 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000.00) per employee
2 pursuant to Labor Code section 226(e), and/or any other allowable penalties including those
3 pursuant to Labor Code section 226.3.

4 149. Pursuant to Labor Code section 1174(d), an employer shall keep at a central
5 location in the state or at the plants or establishments at which employees are employed, payroll
6 records showing the hours worked daily by, and wages paid to, employees employed at the
7 respective plants or establishments. These records shall be kept in accordance with rules
8 established for this purpose by the commission, but in any case shall be kept on file for not less
9 than three (3) years.

10 150. Defendants have intentionally and willfully failed to keep accurate and complete
11 records showing the hours worked daily and wages paid to Plaintiff and Class Members. Thus,
12 Plaintiff and Class Members have been denied their legal right and protected interest in having
13 available at a central location at the plant or establishment where they are employed, accurate and
14 complete payroll records showing the hours worked daily by, and the wages paid to, employees at
15 those respective locations pursuant to Labor Code section 1174.

16 **EIGHTH CAUSE OF ACTION**
17 **FAILURE TO PAY ALL WAGES WITHIN A TIMELY MANNER**
18 **AND UPON SEPARATION OF EMPLOYMENT**
19 **Cal. Labor Code §§ 201, 202, 203, 204, and 210**
20 **[On behalf of Plaintiff and the Class Against All Defendants]**

21 151. Plaintiff, on behalf of herself and the Class, re-alleges and incorporates by
22 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
23 fully alleged herein.

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

153. Labor Code section 203 provides that if an employer willfully fails to pay

1 compensation promptly upon discharge or resignation, as required by sections 201 and 202, then
2 the employer is liable for penalties in the form of continued compensation up to thirty (30) work
3 days.

4 154. As alleged herein and above, Defendants' failure to pay wages was willful in that
5 Defendants knew wages (including minimum, overtime, and accrued vacation wages and meal/rest
6 break premiums) and unreimbursed business expenses were owed to Plaintiff and Class Members,
7 but failed to pay said wages and expenses, at the time of termination, or within 72 hours of
8 resignation, thus entitling Plaintiff and Class Members to penalties under Labor Code section 203,
9 which provides that an employee's wages shall continue as a penalty until paid for a period of up
10 to thirty (30) days from the time they were due.

11 155. Labor Code section 204 requires that all wages earned by any person in any
12 employment between the 1st and 15th day, inclusive, of any calendar month, other than those
13 wages due upon termination of an employee, are due and payable between the 16th and the 26th
14 day of the month during which the labor was performed, and that all wages earned by any person
15 in any employment between the 16th and the last day, inclusive, of any calendar month, other than
16 those wages due upon termination of an employee, are due and payable between the 1st and 10th
17 day of the following month. Labor Code section 204 also requires that all wages earned for labor
18 in excess of the normal work period shall be paid no later than the payday for the next regular
19 payroll period.

20 156. The requirements of Labor Code section 204 shall be deemed satisfied by the
21 payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more
22 than seven (7) calendar days following the close of the payroll period when the wages were
23 earned.

24 157. During the relevant time period, Defendants failed to pay Plaintiff and Class
25 Members all wages due to them within any time period specified by Labor Code section 204
26 including, but not limited to, unpaid minimum and overtime wages, along with unpaid meal and
27 rest break premiums.

28 158. Labor Code section 210 imposes upon Defendants a penalty of \$100.00 for each

1 violation of failing to pay the wages of each employee. Furthermore, Labor Code section 210
2 imposes upon Defendants for each subsequent violation, or any willful or intentional violation, of
3 failure to pay the wages of each employee a penalty of \$200.00, plus 25 percent of the amount
4 unlawfully withheld.

5 159. Pursuant to Labor Code sections 218.5 and 218.6, along with California Civil Code
6 sections 3287(b) and 3289, Plaintiff requests that the Court award reasonable attorneys' fees and
7 costs incurred by her in this action, along with pre-judgment interest on all amounts recovered
8 herein, as well as any statutory penalties Defendants may owe under the California Labor Code
9 and/or any other statute.

10 **NINTH CAUSE OF ACTION**
11 **UNFAIR COMPETITION LAW VIOLATIONS**
12 **Cal. Business & Professions Code §§ 17200, *et seq.***
[On Behalf of Plaintiff and the Class Against All Defendants]

13 160. Plaintiff, on behalf of herself and the Class, re-alleges and incorporates by
14 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
15 fully set forth herein.

16 161. The Unfair Competition Law ("UCL"), California Business & Professions Code
17 sections 17200, *et seq.*, prohibits any unlawful, unfair, or fraudulent business practices. Business
18 & Professions Code section 17204 allows "any person who has suffered injury in fact and has lost
19 money or property" to prosecute a civil action for violation of the UCL. Such a person may bring
20 such an action on behalf of himself or herself and others similarly situated who are affected by the
21 unlawful, unfair, or fraudulent business practice.

22 162. The statute of limitations for a claim under the UCL is four (4) years. Accordingly,
23 the actionable period for this cause of action is four (4) years prior to the filing of this Complaint
24 through the present, and on-going until the violations are corrected, and/or the Class is certified.

25 163. Labor Code section 90.5(a) states that it is the public policy of California to enforce
26 vigorously minimum labor standards in order to ensure employees are not required to work under
27 substandard and unlawful conditions, and to protect employers who comply with the law from
28 those who attempt to gain competitive advantage at the expense of their workers by failing to

1 comply with minimum labor standards.

2 164. A violation of Business and Professions Code sections 17200, *et seq.* may be
3 predicated upon the violation of any state or federal law. Defendants' policies and/or practices
4 have violated state law in at least the following respects:

- 5 (a) Requiring Plaintiff and Class Members to work without paying them
6 minimum wage for all hours worked in violation of Labor Code sections
7 1194, 1194.2, 1197, and IWC Wage Order No. 7-2001;
- 8 (b) Requiring Plaintiff and Class Members to work overtime without paying
9 them proper compensation in violation of Labor Code sections 510, 1198,
10 and IWC Wage Order No. 7-2001;
- 11 (c) Failing to provide timely duty-free meal periods and failing to authorize and
12 permit duty-free rest breaks to Plaintiff and Class Members in violation of
13 Labor Code sections 226.7, 512, and IWC Wage Order No. 7-2001;
- 14 (d) Failing to pay all accrued and vested vacation time owed upon termination
15 in violation of Labor Code section 227.3;
- 16 (e) Failing to provide suitable seating when the nature of the work reasonably
17 permits in violation of Labor Code section 1198 and IWC Wage Order No.
18 7-2001;
- 19 (f) Failing to reimburse Plaintiff and Class Members for necessary business
20 expenses incurred in violation of Labor Code section 2802;
- 21 (g) Failing to maintain and provide Plaintiff and Class Members with accurate
22 itemized wage statements in violation of Labor Code sections 226 and
23 1174; and
- 24 (h) Failing to timely pay all wages to Plaintiff and Class Members during their
25 employment and upon separation of employment in violation of Labor Code
26 sections 201, 202, 203, 204, and 210.

27 Thus, Defendants engaged in unlawful competition in violation of sections 17200, *et seq.* of the
28 California Business & Professions Code by violating sections 201, 202, 203, 204, 210, 226, 226.7,

1 227.3, 510, 512, 1174, 1194, 1194.2, 1197, 1198, and 2802 of the Labor Code and IWC Wage
2 Order No. 7-2001.

3 165. As a direct and proximate result of Defendants' unlawful business practices,
4 Plaintiff and Class Members have suffered economic injuries because Defendants' conduct has
5 damaged Plaintiff and Class Members by wrongfully denying them all straight-time and overtime
6 wages owed for all hours worked, failing to pay all meal and rest breaks premiums owed, failing
7 to pay out all accrued vacation, and failing to reimburse business expenses, while supplying them
8 inaccurate and misleading wage statements, and failing to pay all wages owed in a timely manner
9 and upon separation. Such conduct is substantially injurious to Plaintiff and Class Members.

10 166. Additionally, Defendants intentionally avoided paying Plaintiff and Class
11 Members' wages and monies, thereby creating for Defendants an artificially lower cost of doing
12 business in order to undercut their competitors and establish a greater foothold in the marketplace.
13 Through their actions alleged herein, Defendants have engaged in unfair competition within the
14 meaning of section 17200 of the California Business & Professions Code.

15 167. Defendants have profited from their unlawful, unfair, and/or fraudulent acts and
16 practices. Plaintiff and Class Members are entitled to monetary relief pursuant to Business &
17 Professions Code sections 17203 and 17208 for all unpaid wages, including underpaid overtime
18 compensation, from at least four (4) years prior to the filing of this Complaint through the date of
19 such restitution, at rates specified by law. Defendants should be required to disgorge all the profits
20 and gains they have reaped and restore such profits and gains to Plaintiff and Class Members,
21 from whom they were unlawfully taken.

22 168. Defendants' course of conduct, acts and practices in violation of the California laws
23 mentioned above constitute independent violations of sections 17200, *et seq.* of the California
24 Business & Professions Code.

25 169. Plaintiff and Class Members are entitled to enforce all applicable penalty
26 provisions of the Labor Code pursuant to Business & Professions Code section 17202.

27 170. Plaintiff has assumed the responsibility of enforcement of the laws and public
28 policies specified herein by suing on behalf of herself and Class Members previously or presently

1 employed by Defendants in California. Plaintiff's success in this action will enforce important
2 rights affecting the public interest. Plaintiff will incur a financial burden in pursuing this action in
3 the public interest. Therefore, an award of reasonable attorneys' fees to Plaintiff is appropriate
4 pursuant to Code of Civil Procedure section 1021.5.

5 **TENTH CAUSE OF ACTION**
6 **PENALTIES PURSUANT TO PRIVATE ATTORNEYS' GENERAL ACT OF 2004**
7 **Cal. Labor Code §§ 2698, *et seq.***
8 **[On Behalf of Plaintiff and Aggrieved Employees Against All Defendants]**

9 171. Plaintiff, on behalf of herself and Aggrieved Employees, re-alleges and
10 incorporates by reference all of the allegations contained in the previous paragraphs of this
11 Complaint as though fully set forth herein.

12 172. Plaintiff, on behalf of herself and Aggrieved Employees, brings this representative
13 action against Defendants to recover wages and penalties pursuant to the Private Attorneys
14 General Act of 2004 ("PAGA"), Labor Code section 2698, *et seq.*

15 173. Based on the above allegations incorporated by reference, Defendants have violated
16 Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1194,
17 1194.2, 1197, 1197.1, 1198, and 2802, as well as IWC Wage Order No. 7-2001.

18 174. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code
19 section 2699 because of Defendants' violations of Labor Code sections 201, 202, 203, 204, 210,
20 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 2802, as well as
21 IWC Wage Order No. 7-2001.

22 175. Under Labor Code sections 2699(a), (f), and 2699.5, for each such violation,
23 Plaintiff and Aggrieved Employees are entitled to penalties in an amount to be shown at the time
24 of trial subject to the following formula:

25 \$100.00 for the initial violation per employee per pay period; and

26 \$200.00 for each subsequent violation per employee per pay period.

27 These penalties shall be allocated seventy-five percent (75%) to the Labor and Workforce
28 Development Agency ("LWDA") and twenty-five percent (25%) to the affected employees. These

1 penalties may be stacked separately for each of Defendants' violations of the California Labor
2 Code.

3 176. Defendants failed to provide Plaintiff and Aggrieved Employees with accurate
4 itemized wage statements in compliance with Labor Code section 226(a). Plaintiff seeks separate
5 PAGA penalties for Defendants' violations of Labor Code section 226(a) and (e). *Lopez v. Friant*
6 & Assocs., LLC (2017) 15 Cal. App. 5th 773, 788; *Bell v. Home Depot U.S.A.* (E.D. Cal. Dec. 11,
7 2017) No. 2:12-cv-02499 JAM-CKD, 2017 U.S. Dist. LEXIS 204493, at *5 [finding after *Friant*
8 that "[t]o the extent the Court's Order [granting summary judgment to *Home Depot*] was
9 ambiguous, the Court now clarifies that it granted summary judgment on Plaintiffs' derivative
10 claim for [PAGA] penalties under section 226(e)...the Court's Order should not be read to grant
11 summary judgment on Plaintiffs' claim for PAGA penalties based on violation of section
12 226(a)."]]. For violations of Labor Code section 226(a), Plaintiff seeks the default penalty
13 provided by Labor Code section 226.3. Labor Code section 226.3 provides that "[a]ny employer
14 who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two
15 hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand
16 dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer
17 fails to provide the employee a wage deduction statement or fails to keep the required records in
18 subdivision (a) of Section 226." Accordingly, through PAGA and to the extent permitted by law
19 Plaintiff and Aggrieved Employees are entitled to recover penalties for violations of Labor Code
20 section 226.3 and seek default PAGA penalties for each of Defendants' numerous violations of
21 Labor Code section 226(a).

22 177. Labor Code section 210 provides that "[i]n addition to, an entirely independent and
23 apart from, any other penalty provided in this article, every person who fails to pay the wages of
24 each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1)
25 [f]or any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2)
26 [f]or each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
27 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld." As a
28

1 result of the faulty compensation policies and/or practices, Plaintiff and Aggrieved Employees are
2 also entitled to recover penalties under Labor Code section 210 through PAGA.

3 178. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and
4 liquidated damages, in the amount of: “(1) [f]or any initial violation that is intentionally
5 committed, one hundred dollars (\$100) for each underpaid employee for each pay period for
6 which the employee is underpaid...[and] (2) [f]or each subsequent violation for the same specific
7 offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for
8 which the employee is underpaid regardless of whether the initial violation is intentionally
9 committed.” Accordingly, through PAGA and to the extent permitted by law, Plaintiff and
10 Aggrieved Employees are entitled to recover pursuant to Labor Code section 1197.1.

11 179. Plaintiff has fully and completely exhausted her administrative remedies under
12 PAGA prior to proceeding with the PAGA claim. On October 13, 2020, Plaintiff gave written
13 notice to the LWDA and by certified mail to Defendants of the specific code provisions alleged to
14 have been violated and paid the required filing fee.

15 180. The LWDA has not provided notice of its intent to investigate the alleged
16 violations within 65 calendar days of the postmark date of the aforesaid letter. By operation of the
17 law, Plaintiff is entitled to commence this cause of action in the California Superior Court as a
18 representative action under PAGA.

19 181. On November 12, 2020, Defendant CP Retail, LLC provided a cure notice under
20 the PAGA Labor Code section 2699.3 mechanism by re-issuing wage statements since October
21 13, 2017 to Plaintiff and Employees with itself listed as the purported corrected employer
22 identification. While Plaintiff does not challenge the cure as it pertains to Defendant CP Retail,
23 LLC and a Labor Code section 226(a)(8) violation, Plaintiff disputes that the cure efforts extend
24 any more broadly. In other words, Defendants have neither cured the other violations of Labor
25 Code 226(a) that were listed, nor any of the other alleged PAGA violations set forth in Plaintiff’s
26 11-page single spaced letter outlining the allegations of wrongdoing that are described herein.

182. Plaintiff, as a personal representative of the general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the one (1) year period before Plaintiff filed Notice with the LWDA of her intent to bring an action, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least 75 percent of the penalties recovered being reimbursed to the State of California and the LWDA.

183. Plaintiff was compelled to retain the services of counsel to file this action to protect her interests and those of Aggrieved Employees, and to assess and collect the wages and penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which he is entitled to recover under Labor Code section 2699(g)(1).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wage and overtime compensation for work performed by Plaintiff and Employees, as may be proven;
3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, as may be proven;
4. For compensatory damages in the amount of the hourly wage made by Plaintiff and Employees for each noncompliant meal period for which premium pay was not paid, as may be proven;
5. For compensatory damages in the amount of the hourly wage made by Plaintiff and Employees for each day of noncompliant rest breaks for which premium pay was not paid, as may be proven;
6. For unpaid accrued paid-time off and/or vacation time that is or was owed to Plaintiff and Employees upon termination;
7. For actual damages and/or penalties pursuant to Labor Code section 226(e) for Plaintiff and Employees, as may be proven;

1 8. For penalties pursuant to Labor Code section 203 for Plaintiff and Employees who
2 quit or were fired in an amount equal to their daily wage multiplied by thirty (30) days, as may be
3 proven;

4 9. For reimbursement of business expenditures, as may be proven;

5 10. For restitution for unfair competition pursuant to Business & Professions Code
6 sections 17200, *et seq.*, including disgorgement of profits, as may be proven;

7 11. For a civil penalty in the amount of \$100 for the initial violation and \$200 for each
8 subsequent violation as specified in section 2699(f)(2) of the Labor Code in the representative
9 action brought on behalf of Plaintiff and Aggrieved Employees pursuant the Private Attorneys
10 General Act of 2004;

11 12. For all civil penalties available under section 210 of the Labor Code and the Private
12 Attorneys General Act of 2004;

13 13. For all civil penalties available under section 226.3 of the Labor Code and the
14 Private Attorneys General Act of 2004;

15 14. For all civil penalties available under section 1174.5 of the Labor Code and the
16 Private Attorneys General Act of 2004;

17 15. For all civil penalties available under section 1197.1 of the Labor Code and the
18 Private Attorneys General Act of 2004;

19 16. For an order enjoining Defendants and their agents, servants, and employees, and
20 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
21 duties adumbrated in this complaint;

22 17. For an award of pre-judgment and post-judgment interest;

23 18. For an award providing for the payment of the costs of this suit;

24 19. For an award of attorneys' fees, to the extent provided by law; and

25 20. For such other and further relief as the Court may deem proper and just.

1
2 Dated: February 10, 2021

Respectfully submitted,
COUNSELONE, P.C.

3
4 By: Jennifer L Connor
Anthony J. Orshansky
Jennifer L. Connor
Attorneys for Plaintiff

5
6
7 **DEMAND FOR JURY TRIAL**

8 Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.
9

10
11 Dated: February 10, 2021

Respectfully submitted,
COUNSELONE, P.C.

12
13 By: Jennifer L Connor
14 Anthony J. Orshansky,
Jennifer L. Connor
15 Attorneys for Plaintiff
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