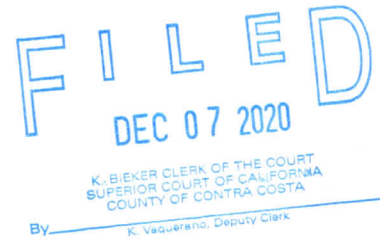


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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF CONTRA COSTA

11
12 NORA CHAVEZ, individually, and on
13 behalf of other members of the general
14 public similarly situated,

15 Plaintiff,

16 vs.

17 GAWFCO ENTERPRISES,
18 INCORPORATED, a California
19 corporation; CALIFORNIA FUEL
20 SUPPLY, INC., a California corporation;
21 PETROMART RETAIL GROUP, INC., a
22 California corporation; and DOES 1
23 through 10, inclusive,

24 Defendants.

Case No.: C20-01963

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

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, et seq.;

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- (9) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

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

4 JURISDICTION AND VENUE

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

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

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

4 3. Venue is proper in this Court, because Defendants filed a Statement of
5 Information with the California Secretary of State designating a principal place of business in
6 Walnut Creek or Lafayette, County of Contra Costa, in accordance with California
7 Corporations Code section 2105(a)(3). Venue is also proper in this Court because Defendants
8 employ persons in this county, and thus a substantial portion of the transactions and
9 occurrences related to this action occurred in this county.

10 **THE PARTIES**

11 4. Plaintiff Nora Chavez is a resident of Patterson, in Stanislaus County,
12 California. Defendants employed Plaintiff as an hourly paid, non-exempt Cashier and Deli
13 Associate from approximately January 2019 to May 2020. Plaintiff worked for Defendants at
14 their retail mini-mart store location in Westley, California. During her employment, Plaintiff
15 typically worked seven (7) to eight (8) hours or more per day and five (5) days per week.
16 Plaintiff's primary job duties included, without limitation, operating the cash register, cooking
17 deli food, cleaning the inside and outside of the store, and stocking products.

18 5. GAWFCO ENTERPRISES, INCORPORATED was and is, upon information
19 and belief, a California corporation, and at all times hereinafter mentioned, an employer
20 whose employees are engaged throughout this county, the State of California, or the various
21 states of the United States of America.

22 6. CALIFORNIA FUEL SUPPLY, INC. was and is, upon information and belief,
23 a California corporation, and at all times hereinafter mentioned, an employer whose
24 employees are engaged throughout this county, the State of California, or the various states of
25 the United States of America.

26 7. PETROMART RETAIL GROUP, INC. was and is, upon information and
27 belief, a California corporation, and at all times hereinafter mentioned, an employer whose
28 employees are engaged throughout this county, the State of California, or the various states of

1 the United States of America.

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

6 9. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
7 were the partners, agents, owners, or managers of GAWFCO ENTERPRISES,
8 INCORPORATED; CALIFORNIA FUEL SUPPLY, INC.; and PETROMART RETAIL
9 GROUP, INC. at all relevant times.

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

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

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

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

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

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

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

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

1 16. GAWFCO ENTERPRISES, INCORPORATED; CALIFORNIA FUEL
2 SUPPLY, INC.; PETROMART RETAIL GROUP, INC.; and DOES 1 through 10 are
3 therefore alter egos of each other.

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

7 18. Plaintiff further alleges, upon information and belief, that Defendants
8 GAWFCO ENTERPRISES, INCORPORATED; CALIFORNIA FUEL SUPPLY, INC.; and
9 PETROMART RETAIL GROUP, INC. are alter egos of each other for the following reasons:

10 (a) On the California Secretary of State’s website
11 (<https://businesssearch.sos.ca.gov/>), CALIFORNIA FUEL SUPPLY,
12 INC. and PETROMART RETAIL GROUP, INC. share the same
13 mailing address, “3669 MOUNT DIABLO BLVD., LAFAYETTE, CA
14 94549;”

15 (b) On GAWFCO ENTERPRISES, INCORPORATED’s website,
16 CALIFORNIA FUEL SUPPLY, INC. and PETROMART RETAIL
17 GROUP, INC. are listed as affiliates¹ and their store locations are
18 included on the “Locations” page²;

19 (c) According to their most recent “Statement of Information” forms filed
20 with the California Secretary of State, GAWFCO ENTERPRISES,
21 INCORPORATED; CALIFORNIA FUEL SUPPLY, INC.; and
22 PETROMART RETAIL GROUP, INC. share the same officers and
23 directors, including, but not limited to:

24 (1) Mohammed Nasser Ahmadi, who serves as chief executive
25 officer of all three entities and as secretary and director of
26

27 ¹ See “About Us,” Gawfco Enterprises, Inc., <https://gawfco.com/about-us/> (last
28 accessed Sept. 28, 2020).

² See “Locations,” Gawfco Enterprises, Inc., <https://gawfco.com/locations/> (last
 accessed Sept. 28, 2020).

1 GAWFCO ENTERPRISES, INCORPORATED;

2 (2) Nader Ahmadi, who serves as director of GAWFCO
3 ENTERPRISES, INCORPORATED; secretary of CALIFORNIA
4 FUEL SUPPLY, INC.; and chief financial officer and director of
5 PETROMART RETAIL GROUP, INC.;

6 (3) Nazem Ahmadi, who serves as chief financial officer and
7 director of GAWFCO ENTERPRISES, INCORPORATED;
8 chief financial officer of CALIFORNIA FUEL SUPPLY, INC.;
9 and secretary of PETROMART RETAIL GROUP, INC.;

10 (d) On information and belief, GAWFCO ENTERPRISES,
11 INCORPORATED and CALIFORNIA FUEL SUPPLY, INC. share the
12 same agent for service of process, "MOHAMMED N[ASSER]
13 AHMADI;" and

14 (e) On information and belief, GAWFCO ENTERPRISES,
15 INCORPORATED; CALIFORNIA FUEL SUPPLY, INC.; and
16 PETROMART RETAIL GROUP, INC. utilize the same standardized
17 employment forms and issue the same employment policies.

18 **GENERAL ALLEGATIONS**

19 19. Defendants own and operate a chain of mini-mart stores at gas stations, offering
20 fuels, convenience stores, lubricants, and car wash and detail services to a wide range of
21 clients throughout the Western United States. Upon information and belief, Defendants
22 maintain a single, centralized Human Resources ("HR") department at their company
23 headquarters in Walnut Creek or Lafayette, California, which is responsible for the recruiting
24 and hiring of new employees, and communicating and implementing Defendants' company-
25 wide policies, including timekeeping policies and meal and rest period policies, to employees
26 throughout California.

27 20. In particular, Plaintiff and class members, on information and belief, received
28 the same standardized documents and/or written policies. Upon information and belief, the

1 usage of standardized documents and/or written policies, including new-hire documents,
2 indicate that Defendants dictated policies at the corporate level and implemented them
3 company-wide, regardless of their employees' assigned locations or positions. Upon
4 information and belief, Defendants set forth uniform policies and procedures in several
5 documents provided at an employee's time of hire.

6 21. Upon information and belief, Defendants maintain a centralized Payroll
7 department at their company headquarters in Walnut Creek or Lafayette, California, which
8 processes payroll for all non-exempt, hourly paid employees working for Defendants at their
9 various locations and jobsites in California, including Plaintiff and class members. Based
10 upon information and belief, Defendants issue the same formatted wage statements to all non-
11 exempt, hourly paid employees in California, irrespective of their work locations. Upon
12 information and belief, Defendants process payroll for departing employees in the same
13 manner throughout the State of California, regardless of the manner in which each employee's
14 employment ends.

15 22. Defendants continue to employ non-exempt or hourly paid employees in
16 California.

17 23. Plaintiff is informed and believes, and thereon alleges, that at all times herein
18 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
19 and advisors knowledgeable about California labor and wage law, employment and personnel
20 practices, and about the requirements of California law.

21 24. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
22 members were not paid for all hours worked because all hours worked were not recorded.

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

27 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and class members were entitled to receive at least minimum

1 wages for compensation and that they were not receiving at least minimum wages for work
2 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
3 and class members were not paid at least minimum wages for work done off-the-clock.

4 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and class members were entitled to meal periods in
6 accordance with the Labor Code or payment of one (1) additional hour of pay at their regular
7 rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal
8 periods and that Plaintiff and class members were not provided with all meal periods or
9 payment of one (1) additional hour of pay at their regular rates of pay when they did not
10 receive a timely, uninterrupted, thirty (30) minute meal period.

11 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and class members were entitled to rest periods in
13 accordance with the Labor Code and applicable IWC Wage Order or payment of one (1)
14 additional hour of pay at their regular rates of pay when they were not authorized and
15 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff
16 and class members were not authorized and permitted to take compliant rest periods, nor did
17 Defendants provide Plaintiff and class members with payment of one (1) additional hour of
18 pay at their regular rates of pay when they were not authorized and permitted to take a
19 compliant rest period.

20 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and class members were entitled to receive complete and
22 accurate wage statements in accordance with California law. In violation of the California
23 Labor Code, Plaintiff and class members were not provided complete and accurate wage
24 statements.

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

1 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and class members were entitled to timely payment of all
3 wages earned upon termination of employment. In violation of the California Labor Code,
4 Plaintiff and class members did not receive payment of all wages due, including, but not
5 limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within
6 permissible time periods.

7 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and class members were entitled to timely payment of wages
9 during their employment. In violation of the California Labor Code, Plaintiff and class
10 members did not receive payment of all wages, including, but not limited to, overtime wages,
11 minimum wages, and/or meal and rest period premiums, within permissible time periods.

12 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and class members were entitled to suitable resting facilities
14 that employees may use to cease work and recover during meal or rest periods.

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

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

24 36. Plaintiff is informed and believes, and thereon alleges, that at all times herein
25 mentioned, Defendants knew or should have known that they had a duty to compensate
26 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
27 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
28 falsely represented to Plaintiff and class members that they were properly denied wages, all in

1 order to increase Defendants' profits.

2 **PAGA REPRESENTATIVE ALLEGATIONS**

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

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

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

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

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

23 (b) An aggrieved employee's notice filed with the LWDA pursuant to
24 2699.3(a) and any employer response to that notice shall be
25 accompanied by a filing fee of seventy-five dollars (\$75).

26 (c) The LWDA shall notify the employer and the aggrieved employee or
27 representative by certified mail that it does not intend to investigate the
28 alleged violation ("LWDA's Notice") within sixty (60) calendar days of

1 the postmark date of the aggrieved employee's notice. Upon receipt of
2 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
3 (65) calendar days of the postmark date of the aggrieved employee's
4 notice, the aggrieved employee may commence a civil action pursuant
5 to California Labor Code section 2699 to recover civil penalties.

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

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

27 42. On October 2, 2020, Plaintiff provided written notice by online filing to the
28 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor

1 Code alleged to have been violated, including facts and theories to support the alleged
2 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
3 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
4 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
5 Plaintiff PAGA Case Number LWDA-CM-808532-20. A true and correct copy of Plaintiff's
6 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

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

10 44. Thus, Plaintiff has satisfied the administrative prerequisites under California
11 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
12 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a),
13 516, 558(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2810.5.

14 45. Labor Code section 558(a) provides "[a]ny employer or other person acting on
15 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
16 provision regulating hours and days of work in any order of the Industrial Welfare
17 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
18 dollars (\$50) for each underpaid employee for each pay period for which the employee was
19 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
20 underpaid employee for each pay period for which the employee was underpaid. . . ." Labor
21 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
22 to any other civil or criminal penalty provided by law."

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

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

48. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 558(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2810.5.

CLASS ACTION ALLEGATIONS

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

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

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

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

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

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

53. Members of the Class and Subclass are referred to herein as “class members.”

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

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

(a) Whether Defendants required Plaintiff and class members to work over eight (8) hours per day, over twelve (12) hours per day, or over forty (40) hours per week and failed to pay all legally required overtime

- 1 compensation to Plaintiff and class members;
- 2 (b) Whether Defendants failed to pay Plaintiff and class members at least
- 3 minimum wages for all hours worked;
- 4 (c) Whether Defendants failed to provide Plaintiff and class members with
- 5 meal periods;
- 6 (d) Whether Defendants failed to authorize and permit Plaintiff and class
- 7 members to take rest periods;
- 8 (e) Whether Defendants provided Plaintiff and class members with
- 9 complete and accurate wage statements as required by California Labor
- 10 Code section 226(a);
- 11 (f) Whether Defendants maintained accurate payroll records as required by
- 12 California Labor Code section 1174(d);
- 13 (g) Whether Defendants failed to pay earned overtime wages, minimum
- 14 wages, and meal and rest period premiums due to Plaintiff and class
- 15 members upon their discharge;
- 16 (h) Whether Defendants failed timely to pay overtime wages, minimum
- 17 wages, and meal and rest period premiums to Plaintiff and class
- 18 members during their employment;
- 19 (i) Whether Defendants failed to provide Plaintiff and class members with
- 20 suitable resting facilities;
- 21 (j) Whether Defendants failed to provide Plaintiff and class members with
- 22 suitable seating;
- 23 (k) Whether Defendants failed to provide written notice of information
- 24 material to Plaintiff's and class members' employment with Defendants;
- 25 (l) Whether Defendants engaged in unlawful and unfair business practices
- 26 in violation of California Business & Professions Code sections 17200,
- 27 *et seq.*; and
- 28 (m) The appropriate amount of damages, restitution, or monetary penalties

1 resulting from Defendants' violations of California law.

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

- 4 (a) Numerosity: The class members are so numerous that joinder of all
5 members would be unfeasible and impractical. The membership of the
6 entire class is unknown to Plaintiff at this time; however, the class is
7 estimated to be greater than one hundred (100) individuals and the
8 identity of such membership is readily ascertainable by inspection of
9 Defendants' employment records.
- 10 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
11 protect the interests of each class member with whom she has a well-
12 defined community of interest, and Plaintiff's claims (or defenses, if
13 any) are typical of all class members as demonstrated herein.
- 14 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately
15 protect the interests of each class member with whom she has a well-
16 defined community of interest and typicality of claims, as demonstrated
17 herein. Plaintiff acknowledges that she has an obligation to make
18 known to the Court any relationship, conflicts or differences with any
19 class member. Plaintiff's attorneys, the proposed class counsel, are
20 versed in the rules governing class action discovery, certification, and
21 settlement. Plaintiff has incurred, and throughout the duration of this
22 action, will continue to incur costs and attorneys' fees that have been,
23 are, and will be necessarily expended for the prosecution of this action
24 for the substantial benefit of each class member.
- 25 (d) Superiority: The nature of this action makes the use of class action
26 adjudication superior to other methods. A class action will achieve
27 economies of time, effort, and expense as compared with separate
28 lawsuits, and will avoid inconsistent outcomes because the same issues

1 can be adjudicated in the same manner and at the same time for the
2 entire class.

3 (e) Public Policy Considerations: Employers in the State of California
4 violate employment and labor laws every day. Current employees are
5 often afraid to assert their rights out of fear of direct or indirect
6 retaliation. Former employees are fearful of bringing actions because
7 they believe their former employers might damage their future
8 endeavors through negative references and/or other means. Class
9 actions provide the class members who are not named in the complaint
10 with a type of anonymity that allows for the vindication of their rights
11 while simultaneously protecting their privacy.

12 **FIRST CAUSE OF ACTION**

13 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime** 14 **(Against all Defendants)**

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

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

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

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

1 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
2 workweek.

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

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

14 63. During the relevant time period, Defendants willfully failed to pay all overtime
15 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
16 class members were not paid overtime premiums for all of the hours they worked in excess of
17 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
18 hours in a week, because all hours worked were not recorded.

19 64. First, during the relevant period, Defendants had a company-wide policy and/or
20 practice of improperly rounding employees' clock-in and clock-out times in their timekeeping
21 system to the nearest quarter (0.25) of an hour. Defendants' rounding policy resulted in the
22 failure to compensate Plaintiff and class members fully for all hours worked, causing Plaintiff
23 and class members to not be paid overtime wages for all of the overtime hours they actually
24 worked. Defendants' policy of rounding is unfair and has, over time, resulted in the
25 underpayment of wages to Plaintiff and class members. To the extent Defendants' rounding
26 policy has taken away time worked that was eligible for overtime, Plaintiff and class members
27 were denied overtime pay for all hours worked.

28 65. Second, on information and belief, Defendants had, and continue to have, a

1 company-wide policy and/or practice of staffing their store locations strictly based on a labor
2 budget set by the corporate office. Defendants' practice of labor budgeting resulted in chronic
3 understaffing, such that there were too few employees on duty to meet store demands and
4 provide uninterrupted meal period coverage. Furthermore, Defendants had a company-wide
5 practice of failing to schedule meal periods, which further caused Plaintiff and class members
6 to not be relieved of their duties for compliant meal periods. Thus, Plaintiff and class
7 members suffered from meal periods that were missed, interrupted, and/or cut short, work for
8 which they were not paid.

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

16 67. Defendants' failure to pay Plaintiff and class members the balance of overtime
17 compensation as required by California law, violates the provisions of California Labor Code
18 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
19 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,
20 and attorneys' fees.

21 **SECOND CAUSE OF ACTION**

22 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 23 **Minimum Wages** 24 **(Against all Defendants)**

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

27 69. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
28 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the

1 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
2 fixed is unlawful. Compensable work time is defined in Wage Order No. 7 as “the time
3 during which an employee is subject to the control of an employer, and includes all the time
4 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code.
5 Regs. tit. 8, § 11070(2)(G) (defining “Hours Worked”).

6 70. As stated, Defendants had a company-wide policy and/or practice of rounding
7 Plaintiff’s and class members’ hourly clock-in and clock-out times in their timekeeping
8 system to the nearest quarter of an hour, resulting in the failure to compensate them for all
9 hours worked. Additionally, as also stated, due to Defendants’ policy and/or practice of
10 understaffing, failure to schedule meal periods, and subsequent lack of meal period coverage,
11 Plaintiff and class members were forced to forego meal periods, have their meal periods
12 interrupted or cut short, and/or were otherwise not relieved of all duties during meal periods.
13 Consequently, Plaintiff and class members performed work during meal periods for which
14 they were not paid.

15 71. Defendants did not pay minimum wages for off-the-clock hours that Plaintiff
16 and class members worked through that qualified for overtime premium payment. To the
17 extent that these off-the-clock hours did not qualify for overtime premium payment,
18 Defendants did not pay at least minimum wages for those hours worked off-the-clock in
19 violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

20 72. Defendants’ failure to pay Plaintiff and class members minimum wages violates
21 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
22 California Labor Code section 1194.2, Plaintiff and class members are entitled to recover
23 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

24 **THIRD CAUSE OF ACTION**

25 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period**

26 **Violations**

27 **(Against all Defendants)**

28 73. Plaintiff incorporates by reference and re-alleges as if fully stated herein each

1 and every allegation set forth above.

2 74. At all relevant times herein set forth, California Labor Code section 512(a)
3 provides that an employer may not require, cause, or permit an employee to work for a period
4 of more than five (5) hours per day without providing the employee with a meal period of not
5 less than thirty (30) minutes, except that if the total work period per day of the employee is
6 not more than six (6) hours, the meal period may be waived by mutual consent of both the
7 employer and the employee. Under California law, first meal periods must start after no more
8 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
9 2012).

10 75. At all relevant times herein set forth, California Labor Code sections 226.7,
11 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
12 meal period mandated by an applicable order of the IWC.

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

19 77. During the relevant time period, as stated, Defendants had, and continue to
20 have, a company-wide policy and/or practice of understaffing locations due to labor
21 budgeting, which resulted in a lack of meal period coverage and prevented Plaintiff and class
22 members from taking all timely, uninterrupted meal periods to which they were entitled. As
23 also stated, Defendants had a company-wide practice of failing to schedule meal periods,
24 which further caused Plaintiff and class members to not be relieved of their duties for
25 compliant meal periods.

26 78. Defendants' policies and/or practices, including labor budgeting, resultant
27 understaffing, and lack of adequate meal period coverage, prevented Plaintiff and class
28 members from taking all compliant meal periods to which they were entitled. As a result,

1 Plaintiff and class members would be forced to work in excess of five (5) hours before taking
2 a meal period and, at times, had their meal periods interrupted and/or had to forgo their meal
3 periods altogether. For example, Plaintiff's time records show that she received late meal
4 periods, i.e., after more than five (5) hours of work, on October 1, 2019 (after 6 hours and 53
5 minutes); October 2, 2019 (after 5 hours and 11 minutes); October 3, 2019 (after 5 hours and
6 26 minutes); October 7, 2019 (after 6 hours and 6 minutes); October 8, 2019 (after 7 hours and
7 12 minutes); and October 9, 2019 (after 6 hours and 18 minutes). Plaintiff also had her meal
8 periods cut short, due to a lack of coverage resulting from understaffing and customer
9 demand.

10 79. Additionally, Defendants did not provide Plaintiff and class members with
11 second 30-minute meal periods on days that they worked in excess of ten (10) hours in one
12 day. During her employment, Plaintiff worked shifts in excess of ten (10) or more hours per
13 day, but was not provided a second 30-minute meal period. For example, on October 4, 2019,
14 Plaintiff was not provided a first or second meal period while working for 10 hours and 9
15 minutes. Plaintiff and class members did not sign valid meal period waivers on days that they
16 were entitled to meal periods and were not relieved of all duties.

17 80. At all times herein mentioned, Defendants knew or should have known that, as
18 a result of these policies, Plaintiff and class members were prevented from being relieved of
19 all duties and required to perform some of their assigned duties during meal periods.
20 Defendants further knew or should have known that Defendants did not pay Plaintiff and class
21 members meal period premium wages when meal periods were late, interrupted, shortened, or
22 missed. On information and belief, regardless of whether Plaintiff and class members had
23 received a compliant meal period or not, Defendants failed to pay meal period premium wages
24 at all. For example, as stated, Plaintiff's time records show that she had missed, late, and
25 interrupted/cut short meal periods, but was not paid a meal period premium at all on those
26 days.

27 81. Moreover, Defendants engaged in a company-wide practice and/or policy of
28 not paying all meal period premiums owed when compliant meal periods are not provided.

1 Because of Defendants’ practices and/or policies, Plaintiff and class members have not
2 received premium pay for all missed, late, and interrupted meal periods. As a result,
3 Defendants failed to provide Plaintiff and class members compliant meal periods in violation
4 of California Labor Code sections 226.7, 512, and 516 and failed to pay them meal period
5 premiums due.

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

10 **FOURTH CAUSE OF ACTION**

11 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 12 **(Against all Defendants)**

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

15 84. At all relevant times herein set forth, the applicable IWC Wage Order and
16 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and class
17 members’ employment by Defendants.

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

24 86. At all relevant times, California Labor Code section 226.7 provides that no
25 employer shall require an employee to work during any rest period mandated by an applicable
26 order of the California IWC. To comply with its obligation to authorize and permit rest
27 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
28 employer must “relinquish any control over how employees spend their break time, and

1 relieve their employees of all duties — including the obligation that an employee remain on
2 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
3 *Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and
4 California Labor Code section 226.7(c), Plaintiff and class members are entitled to recover
5 from Defendants one (1) additional hour of pay at their regular rates of pay for each work day
6 that a required rest period was not authorized and permitted.

7 87. During the relevant time period, Defendants regularly failed to authorize and
8 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
9 period worked or major fraction thereof. As with meal periods, Defendants’ company-wide
10 practices, including understaffing, prevented Plaintiff and class members from being relieved
11 of all duty to take their rest periods. Additionally, Defendants failed to schedule rest periods,
12 which, coupled with Defendants’ failure to provide adequate rest period coverage, further led
13 to Plaintiff and class members not being authorized and permitted to take compliant rest
14 periods.

15 88. Furthermore, upon information and belief, Defendants maintained and
16 implemented a company-wide practice and/or policy effectively requiring that Plaintiff and
17 class members remain on Defendants’ premises during their rest periods. Defendants failed to
18 schedule Plaintiff and class members for rest periods at all, and thus, they were implicitly
19 restricted from leaving Defendants’ premises during rest periods and were denied the ability to
20 use their rest periods freely for their own purposes. Thus, Defendants effectively maintained
21 control over Plaintiff and class members during rest periods, and, as a result of this rest period
22 policy, Defendants did not relinquish control over Plaintiff and class members during rest
23 periods.

24 89. As a result of Defendants’ practices and policies, Plaintiff and class members
25 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
26 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
27 during her employment, Plaintiff missed her rest periods due to understaffing, lack of
28 coverage, and failure to schedule rest periods.

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

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

FIFTH CAUSE OF ACTION

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

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

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

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

1 95. Because Defendants did not record the time Plaintiff and Subclass members
2 spent working off the clock and improperly rounded their total hours worked, Defendants did
3 not list the correct amount of gross wages and net wages earned by Plaintiff and Subclass
4 members in compliance with section 226(a)(1) and 226(a)(5). For the same reason,
5 Defendants failed to accurately list the total number of hours worked by Plaintiff and Subclass
6 members in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay
7 in effect during the pay period and corresponding accurate number of work hours worked at
8 each hourly rate in violation of section 226(a)(9).

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

17 97. California Labor Code section 1198 provides that the maximum hours of work
18 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
19 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
20 employment of any employees for longer hours than those fixed by the order or under
21 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
22 Wage Order, employers are required to keep accurate time records showing when the
23 employee begins and ends each work period and meal period. During the relevant time
24 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
25 and meal period start and stop times for Plaintiff and class members, in violation of section
26 1198. Furthermore, in light of Defendants’ failure to provide Plaintiff and Subclass members
27 with second 30-minute meal periods to which they were entitled, Defendants kept no records
28 of meal start and end times for second meal periods.

98. California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass members showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked and improperly rounding Plaintiff’s and Subclass members’ total hours worked.

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

SIXTH CAUSE OF ACTION

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

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

101. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, and/or meal and rest period premium wages that were not timely paid to Plaintiff and those class members no longer employed by Defendants upon their discharge.

102. At all times relevant herein set forth, Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two

(72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

103. Defendants willfully failed to pay Plaintiff and class members who are no longer employed by Defendants the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

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

SEVENTH CAUSE OF ACTION

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

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

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

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

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

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

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

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

19 **EIGHTH CAUSE OF ACTION**

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

21 **(Against all Defendants)**

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

24 113. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
25 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
26 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 226(a),
27 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, and 1198. Labor Code section 2699.3(c)
28 permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of

1 those Labor Code sections not found in section 2699.5, including sections 516, 1182.12, and
2 2810.5.

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

- 5 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
6 wage order for Defendants' failure to compensate Plaintiff and other
7 aggrieved employees with all required overtime pay, as alleged herein;
- 8 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198,
9 and the applicable IWC wage order for Defendants' failure to
10 compensate Plaintiff and other aggrieved employees with at least
11 minimum wages for all hours worked, as alleged herein;
- 12 (c) Violation of Labor Code sections 226.7, 512, 516, 1198, and the
13 applicable IWC wage order for Defendants' failure to provide Plaintiff
14 and other aggrieved employees with meal periods, as alleged herein;
- 15 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
16 IWC wage order for Defendants' failure to authorize and permit
17 Plaintiff and other aggrieved employees to take rest periods, as alleged
18 herein;
- 19 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
20 wage order for failure to provide accurate and complete wage statements
21 to Plaintiff and other aggrieved employees, as alleged herein;
- 22 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable
23 IWC wage order for failure to maintain payroll records as alleged
24 herein;
- 25 (g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
26 earned wages upon termination, as alleged herein;
- 27 (h) Violation of Labor Code section 204 for failure to pay all earned wages
28 during employment, as alleged herein;

- 1 (i) Violation of Labor Code section 1198 for failing to provide suitable
2 resting facilities to Plaintiff and other aggrieved employees, as set forth
3 below;
- 4 (j) Violation of Labor Code section 1198 for failing to provide suitable
5 seating to Plaintiff and other aggrieved employees, as set forth below;
6 and
- 7 (k) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
8 provide written notice of information material to Plaintiff's and other
9 aggrieved employees' employment with Defendants, as set forth below.

10 115. At all relevant times herein, California Labor Code section 1198 makes it
11 illegal to employ an employee under conditions of labor that are prohibited by the applicable
12 wage order. California Labor Code section 1198 requires that ". . . the standard conditions of
13 labor fixed by the commission shall be the . . . standard conditions of labor for employees.
14 The employment of any employee . . . under conditions of labor prohibited by the order is
15 unlawful." California Code of Regulations, Title 8, section 11070(13)(B) provides that
16 "[s]uitable resting facilities shall be provided in an area separate from the toilet rooms and
17 shall be available to employees during work hours."

18 116. Defendants' California retail stores are generally similar in their layout and
19 design and there was, and continues to be, space that allows for a resting facility that
20 employees may use to cease work and recover during meal or rest periods. Defendants could
21 have provided Plaintiff and other aggrieved employees with a resting facility within their
22 stores, with reasonable or no modification, but instead denied, and continue to deny,
23 employees suitable areas to rest (e.g., a breakroom). As a result, Plaintiff and other aggrieved
24 employees were forced to adjust to areas not conducive to resting, such as sitting on empty
25 boxes or crates in makeshift areas in the store, or search for facilities outside of the store
26 which are not designated or reserved for their rest.

27 117. Defendants did not provide Plaintiff and other aggrieved employees with
28 suitable resting facilities during their work hours, particularly during meal or rest periods. In

1 other words, during the times when Plaintiff and other aggrieved employees are legally
2 allowed to forgo assigned tasks, as in during a meal or rest period, Defendants denied them
3 any area within their stores to cease work and recover. For example, Plaintiff and other
4 aggrieved employees were not allowed to sit in the store at all during working hours.
5 Moreover, Defendants did not inform Plaintiff and other aggrieved employees of their rights
6 to suitable resting facilities under California law.

7 118. As a result of Defendants' company-wide policy and/or practice of denying
8 employees any area to rest within their stores and company-wide failure to provide resting
9 facilities in their stores, Plaintiff and other aggrieved employees were forced to adjust to areas
10 not conducive to resting or search for facilities outside their stores to cease work and recover.
11 Defendants' failure to provide suitable resting facilities to Plaintiff and other aggrieved
12 employees violated and continues to violate California Labor Code section 1198 and IWC
13 Wage Order 7-2001, Section 13(B). Plaintiff and other aggrieved employees are therefore
14 entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

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

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

24 121. Plaintiff alleges that Defendants' retail stores are generally similar in their
25 layout and design and there was, and continues to be, space behind each cash wrap to allow
26 for the presence and use of a seat or stool by Plaintiff and other aggrieved employees (with
27 reasonable or no modification to these work areas) during the performance of their work
28 duties. Defendants could have provided Plaintiff and other aggrieved employees with a

1 suitable seat or stool at their cash wraps, but instead denied them seating and forced Plaintiff
2 and other aggrieved employees to stand throughout the day.

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

9 123. During the relevant time period, Defendants violated California Labor Code
10 section 1198 and California Code of Regulations, Title 8, section 11070(14)(A), because
11 Plaintiff and other aggrieved employees were not allowed to sit, even when it would not have
12 interfered with the performance of their duties, nor were they provided with suitable seats.
13 Plaintiff and other aggrieved employees were assigned cashier duties, which were performed
14 from and connected to a cash wrap, and could have been performed from a seated position.
15 Plaintiff and other aggrieved employees could have handled transactions at the cash registers
16 while seated, without interference to their ability to complete these duties.

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

23 125. As a result of Defendants' company-wide policy and/or practice of prohibiting
24 employees from sitting during their shifts and company-wide failure to provide suitable
25 seating, Plaintiff and other aggrieved employees were forced to stand during shifts and denied
26 seats. Defendants' failure to provide suitable seating to Plaintiff and other aggrieved
27 employees violated and continues to violate California Labor Code section 1198 and IWC
28 Wage Order 7-2001, Section 14(A). Plaintiff and other aggrieved employees are therefore

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

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

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

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

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

26 130. Defendants did not provide Plaintiff and other aggrieved employees with
27 suitable seats or stools in reasonable proximity to their work areas to allow them to use seats
28 when it would not interfere with the performance of their duties for times when they were not

1 engaged in active duties that require standing. In other words, to the extent Plaintiff and other
2 aggrieved employees engaged in duties in which the nature of the work required standing,
3 Defendants denied them the use of suitable seats nearby during lulls in their work duties.
4 Moreover, Defendants did not inform Plaintiff and other aggrieved employees of their rights
5 to a seat or stool under California law.

6 131. As a result of Defendants' company-wide policy and/or practice effectively
7 prohibiting employees from sitting at any time, even when they were not engaged in active
8 duties requiring standing, and company-wide failure to provide suitable seats in reasonable
9 proximity to their work areas, Plaintiff and other aggrieved employees were forced to stand
10 during shifts and denied seats. Defendants' failure to provide suitable seating to Plaintiff and
11 other aggrieved employees violated and continues to violate California Labor Code section
12 1198 and IWC Wage Order 7-2001, Section 14(B). Plaintiff and other aggrieved employees
13 are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f),
14 and (g).

15 132. California's Wage Theft Prevention Act was enacted to ensure that employers
16 provide employees with basic information material to their employment relationship at the
17 time of hiring, and to ensure that employees are given written and timely notice of any
18 changes to basic information material to their employment. Codified at California Labor
19 Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an
20 employer must provide written notice to employees containing basic and material payroll
21 information, including, among other things, the rate(s) of pay and basis thereof, whether paid
22 by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for
23 overtime, the regular payday designated by the employer, and any allowances claims as part
24 of the minimum wage, including meal or lodging allowances. Labor Code section
25 2810.5(a)(1)(A)-(C).

26 133. During the relevant time period, Defendants failed to provide Plaintiff and
27 other aggrieved employees with written notice that lists all the requisite information set forth
28 in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure to provide Plaintiff and other

1 aggrieved employees with written notice of basic information regarding their employment
2 with Defendants is in violation of Labor Code section 2810.5. Plaintiff and other aggrieved
3 employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
4 2699(a), (f), and (g).

5 **NINTH CAUSE OF ACTION**

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

7 **Unlawful Business Practices**

8 **(Against all Defendants)**

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

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

14 136. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
15 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
16 suffered injury in fact and has lost money as a result of Defendants’ unlawful business
17 practices. Plaintiff seeks to enforce important rights affecting the public interest within the
18 meaning of Code of Civil Procedure section 1021.5.

19 137. Defendants’ activities, as alleged herein, are violations of California law, and
20 constitute unlawful business acts and practices in violation of California Business &
21 Professions Code sections 17200, *et seq.*

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

- 25 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
26 class members, to work overtime without paying them proper
27 compensation in violation of California Labor Code sections 510 and
28 1198 and the applicable IWC Order, as alleged herein;

- 1 (b) Failing to pay at least minimum wage to Plaintiff and class members in
2 violation of California Labor Code sections 1182.12, 1194, 1197,
3 1197.1, and 1198 and the applicable IWC Order, as alleged herein;
- 4 (c) Failing to provide uninterrupted meal periods to Plaintiff and class
5 members in violation of California Labor Code sections 226.7, 512(a),
6 516, 1198, and the applicable IWC Order, as alleged herein;
- 7 (d) Failing to authorize and permit Plaintiff and class members to take
8 uninterrupted rest periods in violation of California Labor Code sections
9 226.7, 516, 1198, and the applicable IWC Order, as alleged herein;
- 10 (e) Failing to provide Plaintiff and class members with accurate wage
11 statements and failing to maintain accurate payroll records in violation
12 of California Labor Code sections 226(a), 1174(d), 1198, and the
13 applicable IWC Order, as alleged herein;
- 14 (f) Failing timely to pay all earned wages to Plaintiff and class members in
15 violation of California Labor Code section 204 and the applicable IWC
16 Order, as alleged herein; and
- 17 (g) Failing to provide written notice of information material to Plaintiff's
18 and class members' employment with Defendants in violation of Labor
19 Code section 2810.5(a)(1)(A)-(C), as set forth below.

20 139. At all relevant times herein, California's Wage Theft Prevention Act was
21 enacted to ensure that employers provide employees with basic information material to their
22 employment relationship at the time of hiring, and to ensure that employees are given written
23 and timely notice of any changes to basic information material to their employment. Codified
24 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
25 time of hiring, an employer must provide written notice to employees containing basic and
26 material payroll information, including, among other things, the rate(s) of pay and basis
27 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,
28 including any rates for overtime, the regular payday designated by the employer, and any

allowances claims as part of the minimum wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-(C).

140. At all relevant times, on information and belief, Defendants failed, on a company-wide basis, to provide written notice to Plaintiff and class members that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure to provide Plaintiff and class members with written notice of basic information regarding their employment with Defendants is in violation of Labor Code section 2810.5.

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

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

TENTH CAUSE OF ACTION

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

Unfair Business Practices

(Against all Defendants)

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

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

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

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

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

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

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

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

//

1 **PRAYER FOR RELIEF**

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

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

7 **Class Certification**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

As to the Third Cause of Action

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

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

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

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

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

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

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

As to the Fourth Cause of Action

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

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

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

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

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

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

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

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

As to the Fifth Cause of Action

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

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

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

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

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

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

As to the Sixth Cause of Action

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

1 Plaintiff and other terminated class members;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
2 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and
3 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516, and
4 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
5 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
6 statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay
7 all earned wages upon termination); 204 (by failing timely to pay all earned wages during
8 employment); 1198 (by failing to provide suitable resting facilities); 1198 (by failing to
9 provide suitable seating); and 2810.5 (by failing to provide written notice of information
10 material to employment);

11 49. For civil penalties pursuant to California Labor Code sections 210, 226.3, 256,
12 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code
13 sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197,
14 1197.1, 1198, and 2810.5;

15 50. For attorneys' fees and costs pursuant to California Labor Code section
16 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California
17 Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12,
18 1194, 1197, 1197.1, 1198, and 2810.5;

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

20 52. For such other and further relief as the Court may deem equitable and
21 appropriate.

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

23 53. That the Court declare, adjudge and decree that Defendants' conduct of failing
24 to provide Plaintiff and class members all overtime wages due to them, failing to provide
25 Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and
26 class members all meal periods, failing to authorize and permit Plaintiff and class members to
27 take all rest periods, failing to provide Plaintiff and class members accurate and complete
28 wage statements, failing to maintain accurate payroll records for Plaintiff and class members,

1 failing timely to pay Plaintiff and class members all earned wages during employment, and
2 failing to provide written notice of information material to employment, constitutes an
3 unlawful business practice in violation of California Business and Professions Code sections
4 17200, *et seq.*;

5 54. For restitution of unpaid wages to Plaintiff and all class members and
6 prejudgment interest from the day such amounts were due and payable;

7 55. For the appointment of a receiver to receive, manage and distribute any and all
8 funds disgorged from Defendants and determined to have been wrongfully acquired by
9 Defendants as a result of violations of California Business & Professions Code sections 17200
10 *et seq.*;

11 56. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
12 California Code of Civil Procedure section 1021.5; and

13 57. For such other and further relief as the Court may deem equitable and
14 appropriate.

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

16 58. That the Court declare, adjudge and decree that Defendants' conduct of denying
17 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
18 an unfair business practice in violation of California Business and Professions Code sections
19 17200, *et seq.*;

20 59. For restitution of the statutory benefits under section 226.7 unfairly withheld
21 from Plaintiff and class members and prejudgment interest from the day such amounts were
22 due and payable;

23 60. For the appointment of a receiver to receive, manage and distribute any and all
24 funds disgorged from Defendants and determined to have been wrongfully acquired by
25 Defendants as a result of violations of California Business & Professions Code sections 17200
26 *et seq.*;

27 61. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
28 California Code of Civil Procedure section 1021.5;

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

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

Dated: December 7, 2020

Respectfully submitted,

Capstone Law APC

By:



Mark Ozzello
Brandon Brouillette
Joseph Hakakian

Attorneys for Plaintiff Nora Chavez

EXHIBIT 1

MAO SHIOKURA
310.712.8030 Direct
Mao.Shiokura@capstonelawyers.com

October 2, 2020

VIA ONLINE SUBMISSION

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

Subject: *Nora Chavez v. Gawfco Enterprises, Inc., et al.*

Dear PAGA Administrator:

This office represents Nora Chavez in connection with her claims under the California Labor Code. Ms. Chavez was an employee of GAWFCO ENTERPRISES, INCORPORATED; CALIFORNIA FUEL SUPPLY, INC.; and/or PETROMART RETAIL GROUP, INC. For the purpose of this letter, Ms. Chavez collectively refers to these entities as “GAWFCO.”

The employers may be contacted directly at the addresses below:

GAWFCO ENTERPRISES, INCORPORATED	CALIFORNIA FUEL SUPPLY, INC.
587 YGNACIO VALLEY RD	3669 MOUNT DIABLO BLVD.
WALNUT CREEK CA 94596	LAFAYETTE CA 94549

PETROMART RETAIL GROUP, INC.
3669 MT DIABLO BLVD
LAFAYETTE CA 94549

Ms. Chavez intends to seek civil penalties, attorney’s fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”). Ms. Chavez seeks relief on behalf of herself, the State of California, and other persons who are or were employed by GAWFCO as a non-exempt, hourly paid employee in California and who received at least one wage statement (“aggrieved employees”). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

GAWFCO employed Ms. Chavez as an hourly paid, non-exempt employee from approximately January 2019 to May 2020. Ms. Chavez worked for GAWFCO as a Cashier and Deli Associate at its retail mini-mart store location in Westley, California. During her employment, Ms. Chavez typically worked seven (7) to eight (8) hours or more per day and five (5) days per week. At the time her employment ended, Ms. Chavez was compensated approximately \$13.50 per hour. Her job duties

included, without limitation, operating the cash register, cooking deli food, cleaning the inside and outside of the store, and stocking products.

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

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

GAWFCO ENTERPRISES, INCORPORATED; CALIFORNIA FUEL SUPPLY, INC.; and PETROMART RETAIL GROUP, INC. are California corporations. GAWFCO owns and operates mini-marts at gas stations, selling fuels, convenience stores, lubricants, and car wash & detail services to a wide range of clients throughout the Western United States, with approximately 30-40 locations in California. Upon information and belief, GAWFCO maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Walnut Creek or Lafayette, California, for all non-exempt, hourly paid employees working for GAWFCO in California, including Ms. Chavez and other aggrieved employees. At all relevant times, GAWFCO issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Chavez and other aggrieved employees, regardless of its location or position.

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

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

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

¹ These facts, theories, and claims are based on Ms. Chavez’s experience and counsel’s review of those records currently available relating to Ms. Chavez’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Ms. Chavez reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

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

First, during the relevant period, GAWFCO had a policy and/or practice of improperly rounding employees' clock-in and clock-out times in their timekeeping system to the nearest quarter (0.25) of an hour. GAWFCO's rounding policy resulted in the failure to compensate Ms. Chavez and other aggrieved employees fully for all hours worked, causing Ms. Chavez and other aggrieved employees to not be paid overtime wages for all of the overtime hours they actually worked. GAWFCO's policy of rounding is unfair and has, over time, resulted in the underpayment of wages to Ms. Chavez and other aggrieved employees. To the extent GAWFCO's rounding policy has taken away time worked that was eligible for overtime, Ms. Chavez and other aggrieved employees were denied overtime pay for all hours worked.

Second, on information and belief, GAWFCO had, and continues to have, a company-wide policy and/or practice of staffing its store locations strictly based on a labor budget set by the corporate office. GAWFCO's use of a labor budget resulted in chronic understaffing, such that there were too few employees on duty to meet store demands and provide uninterrupted meal period coverage. Furthermore, GAWFCO had a company-wide practice of failing to schedule meal periods, which further caused Ms. Chavez and other aggrieved employees to not be relieved of their duties for compliant meal periods. Thus, Ms. Chavez and other aggrieved employees suffered from meal periods that were missed, interrupted, and/or cut short, work for which they were not paid.

GAWFCO knew or should have known that, as a result of these company-wide practices and/or policies, Ms. Chavez and other aggrieved employees were performing their assigned duties off-the-clock and during meal periods, and were suffered or permitted to perform work for which they were not paid. GAWFCO also knew, or should have known, that it did not compensate Ms. Chavez and other aggrieved employees applicable overtime rates of pay for overtime hours that they worked. Because Ms. Chavez and other aggrieved employees regularly worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Ms. Chavez and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. GAWFCO's failure to pay Ms. Chavez and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

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

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

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

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

As set forth above, GAWFCO had a company-wide policy and/or practice of rounding Ms. Chavez’s and other aggrieved employees’ hourly clock-in and clock-out times in its timekeeping system to the nearest quarter of an hour, resulting in the failure to compensate them for all hours worked. Moreover, as also stated, due to GAWFCO’s policy and/or practice of understaffing, failure to schedule meal periods, and subsequent lack of meal period coverage, Ms. Chavez and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods. Consequently, Ms. Chavez and other aggrieved employees performed work during meal periods for which they were not paid.

Thus, GAWFCO did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, GAWFCO did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1. Accordingly, GAWFCO regularly failed to pay at least minimum wages to Ms. Chavez and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198.

Ms. Chavez and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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

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

As stated, GAWFCO had, and continues to have, a company-wide policy and/or practice of understaffing its locations due to labor budgeting, which resulted in a lack of meal period coverage and prevented Ms. Chavez and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As also stated above, GAWFCO had a company-wide practice of failing to schedule meal periods, which further caused Ms. Chavez and other aggrieved employees to not be relieved of their duties for compliant meal periods.

GAWFCO's practices and policies, including labor budgeting, resultant understaffing, and lack of adequate meal period coverage, prevented Ms. Chavez and other aggrieved employees from taking all compliant meal periods to which they were entitled. As a result, Ms. Chavez and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted and/or had to forgo their meal periods altogether. For example, Ms. Chavez's time records show that she received late meal periods, i.e., after more than five (5) hours of work, on October 1, 2019 (after 6 hours and 53 minutes); October 2, 2019 (after 5 hours and 11 minutes); October 3, 2019 (after 5 hours and 26 minutes); October 7, 2019 (after 6 hours and 6 minutes); October 8, 2019 (after 7 hours and 12 minutes); and October 9, 2019 (after 6 hours and 18 minutes). Ms. Chavez also had her meal periods cut short, due to a lack of coverage resulting from understaffing and customer demand.

Moreover, GAWFCO did not provide Ms. Chavez and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During her employment, Ms. Chavez worked shifts in excess of ten (10) hours or more per day, but was not provided a second 30-minute meal period. For example, on October 4, 2019, Ms. Chavez was not provided a first or second meal period while working for 10 hours and 9 minutes. Ms. Chavez and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

GAWFCO knew or should have known that as a result of its company-wide policies and/or practices, that Ms. Chavez and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. GAWFCO further knew or should have known that it did not pay Ms. Chavez and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted. On information and belief, regardless of whether Ms. Chavez and other aggrieved employees had received a compliant meal period or not, GAWFCO failed to pay meal period premium wages at all. For example, as stated, Ms. Chavez's time records show that she had missed, late, and interrupted/cut short meal periods, but was not paid a meal period penalty at all on those days.

Furthermore, GAWFCO engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Chavez and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that GAWFCO did pay meal period premium wages to other aggrieved employees, it did so at the incorrect rates. Because GAWFCO did not properly calculate other aggrieved employees' regular rates of pay by including all remunerations, such as incentive pay and/or nondiscretionary bonuses, any premiums paid for meal period violations were also paid at an incorrect rate and resulted in an underpayment of meal period premium wages.

Accordingly, GAWFCO failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Chavez and other aggrieved employees are entitled to

civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide meal and rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

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

During the relevant time period, GAWFCO regularly failed to authorize and permit Ms. Chavez and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, GAWFCO's company-wide practices, including understaffing, prevented Ms. Chavez and other aggrieved employees from being relieved of all duty to take their rest periods. Furthermore, GAWFCO failed to schedule rest periods, which, coupled with GAWFCO's failure to provide adequate rest period coverage, further led to Ms. Chavez and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Additionally, upon information and belief, GAWFCO maintained and implemented a company-wide practice and/or policy effectively requiring that Ms. Chavez and other aggrieved employees remain on GAWFCO's premises during their rest periods. GAWFCO failed to schedule Ms. Chavez and other aggrieved employees for rest periods at all, and were thus implicitly restricted from leaving GAWFCO's premises during rest periods and were denied the ability to use their rest periods freely for their own purposes. Thus, GAWFCO effectively maintained control over Ms. Chavez and other aggrieved employees during rest periods, and, as a result of this rest period policy, GAWFCO did not relinquish control over Ms. Chavez and other aggrieved employees during rest periods.

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

GAWFCO also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. Chavez and other aggrieved employees have not received premium pay

for all missed rest periods. Alternatively, to the extent that GAWFCO did pay rest period premium wages to other aggrieved employees, it did so at the incorrect rates. Because GAWFCO did not properly calculate other aggrieved employees' regular rates of pay by including all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, any premiums paid for rest period violations were also paid at an incorrect rate and resulted in an underpayment of rest period premium wages.

Accordingly, GAWFCO failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Chavez and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. GAWFCO has not provided Ms. Chavez and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, GAWFCO has knowingly and intentionally provided Ms. Chavez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, GAWFCO issued uniform wage statements to Ms. Chavez and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the name of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, GAWFCO violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because GAWFCO did not record the time Ms. Chavez and other aggrieved employees spent working off-the-clock and improperly rounded their total hours worked, GAWFCO did not list the correct amount of gross wages and net wages earned by Ms. Chavez and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, GAWFCO failed to accurately list the total number of hours worked by Ms. Chavez and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Second, because GAWFCO did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, GAWFCO did not list the correct amount of gross wages earned by other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by other aggrieved employees in violation of section 226(a)(5). GAWFCO also failed to correctly list all applicable hourly rates in effect during the pay period,

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

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

CO FILE DEPT CLOCK YCHB NO 1
197-0001
GAWFCO ENTERPRISES INC
587 YGNACIO VALLEY RD
WALNUT CREEK CA 94596

Earnings Statement



Period Beginning: 01/27/2020
Period Ending: 02/09/2020
Pay Date: 02/14/2020

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

NORA CHAVEZ
[REDACTED]

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

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

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable

IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, GAWFCO failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Ms. Chavez and other aggrieved employees, in violation of section 1198. Furthermore, in light of GAWFCO’s failure to provide Ms. Chavez and other aggrieved employees with second 30-minute meal periods to which they were entitled, GAWFCO kept no records of meal start and end times for second meal periods.

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

Ms. Chavez and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, GAWFCO failed to pay Ms. Chavez and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages, within any time period specified by California Labor Code section 204.

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

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

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

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

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

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

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 13(B) – Failure to Provide Suitable Resting Facilities

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful." California Code of Regulations, Title 8, section 11070(13)(B) provides that "[s]uitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours."

GAWFCO's California retail stores are generally similar in their layout and design and there was, and continues to be, space that allows for a resting facility that employees may use to cease work and recover during meal or rest periods. GAWFCO could have provided Ms. Chavez and other aggrieved employees with a resting facility within its stores, with reasonable or no modification, but instead denied, and continues to deny, employees suitable areas to rest (e.g., a breakroom). As a result, Ms. Chavez and other aggrieved employees were forced to adjust to areas not conducive to resting, such as sitting on empty boxes or crates in makeshift areas in the store, or search for facilities outside of the store which are not designated or reserved for their rest.

GAWFCO did not provide Ms. Chavez and other aggrieved employees with suitable resting facilities during their work hours, particularly during rest or meal periods. In other words, during the times when Ms. Chavez and other aggrieved employees are legally allowed to forgo assigned tasks, as in during a meal or rest period, GAWFCO denied them any area within their stores to cease work and recover. For example, Ms. Chavez and other aggrieved employees were not allowed to sit in the store at all during working hours. Moreover, GAWFCO did not inform Ms. Chavez and other aggrieved employees of their rights to suitable resting facilities under California law.

As a result of GAWFCO's company-wide policy and/or practice of denying employees any area to rest within their stores and company-wide failure to provide resting facilities in their stores, Ms. Chavez and other aggrieved employees were forced to adjust to areas not conducive to resting or search for facilities outside their stores to cease work and recover. GAWFCO's failure to provide suitable resting facilities to Ms. Chavez and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 7-2001, Section 13(B).

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

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

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

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

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

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

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

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

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

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

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11070(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

The IWC states that section 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under section 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under section 14(B) during “lulls in operation.” *Id.*

As stated, GAWFCO's California retail stores are generally similar in their layout and design and there was, and continues to be, space near their work areas to allow for the presence and use of a seat or stool by other aggrieved employees during lulls in operation. GAWFCO could provide other aggrieved employees with a seat or stool in its work areas, with reasonable or no modification to these work areas, but instead denies employees seating and forces other aggrieved employees to stand throughout the day.

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

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

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

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

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

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

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

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

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." GAWFCO, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Chavez's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Ms. Chavez seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in

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

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

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

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

Best Regards,

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

Mao Shiokura

Copy: GAWFCO ENTERPRISES, INCORPORATED (via U.S. Certified Mail); CALIFORNIA FUEL SUPPLY, INC. (via U.S. Certified Mail); and PETROMART RETAIL GROUP, INC. (via U.S. Certified Mail)

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the State of California, County of Los Angeles. I am over the age of
4 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000,
Los Angeles, California 90067. My electronic address is matthew.krout@capstonelawyers.com.

5 On **December 7, 2020**, I served the document(s) described as:

6 **FIRST AMENDED COMPLAINT**

on the interested parties in this action by sending [] the original [or] [✓] a true copy thereof []
to interested parties as follows [or] [✓] as stated on the attached service list:

7 Mohammed Nasser Ahmadi
8 Agent for Service of Process
California Fuel Supply, Inc.
587 Ygnacio Valley Rd
9 Walnut Creek, CA 94596

10 Mohammed Nasser Ahmadi
11 Agent for Service of Process
GAWFCO Enterprises, Incorporated
587 Ygnacio Valley Rd
12 Walnut Creek, CA 94596

13 Hussein Saffouri
14 Agent for Service of Process
Petromart Retail Group, Inc.
3736 Mt. Diablo Road
15 Lafayette, CA 94549

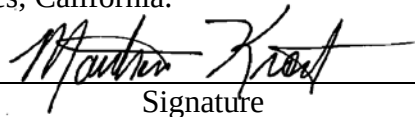
16
17 [X] **BY PERSONAL SERVICE:** I caused delivery of the document(s), enclosed in a
18 sealed envelope, by hand via ProLegal Network to the offices of the addressee(s)
named herein.

19 I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

20 Executed this **December 7, 2020**, at Los Angeles, California.

21 Matthew Krout

22 Type or Print Name


Signature