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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

MARIA BENAVIDEZ HERRERA,
Individually, and On Behalf of All Others
Similarly Situated,

Plaintiff,

V.

PLS CHECK CASHERS OF CALIFORNIA, INC., a California Corporation; and DOES 1 through 100, Inclusive,

Defendants.

Case No. 20STCV46093

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. **Failure to Provide Meal Breaks [Lab. Code §§ 226.7 and 512];**
2. **Failure to Authorize and Permit Rest Breaks [Lab. Code § 226.7];**
3. **Failure to Furnish Complete and Accurate Wage Statements [Lab. Code § 226(a)]**
4. **Failure To Timely Pay Wages Upon Termination Or Resignation [Lab. Code §§ 201, 202, And 203];**
5. **Failure to provide suitable seating [Lab. Code § 1198]**
6. **Unfair Business Practices [Bus. & Prof. Code § 17200, *Et Seq.*]**
7. **Violation of Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *Et seq.***

DEMAND FOR JURY TRIAL

1 Plaintiff MARIA BENAVIDEZ HERRERA ("Plaintiff"), an individual, on behalf of herself
2 and all others similarly situated, hereby alleges the following facts and claims against PLS CHECK
3 CASHERS OF CALIFORNIA, INC, a California Corporation ("PLS"); and DOES 1 through 100,
4 Inclusive ("Defendants") and respectfully requests a trial by jury of all issues and causes of action
5 so triable:

6 **I. INTRODUCTION**

7 1. This class action and representative action complaint challenges Defendants' past
8 and ongoing unlawful employment practices and policies on behalf of Plaintiff and similarly
9 situated current and former non-exempt employees of Defendants in California, whose rights
10 Defendants violated and continues to violate under California laws.

11 2. Specifically, with regard to Plaintiff and similarly situated current and former non-
12 exempt employees, Defendants have uniformly and systematically:

- 13 a. Failed and continue to fail to provide meal periods in violation of Labor Code
14 sections 226.7 and 512 and Section 11 of the IWC Wage Order(s);
- 15 b. Failed and continue to fail to authorize and permit all paid rest periods in
16 violation of Labor Code sections 226.7 and Section 12 of the IWC Wage
17 Order(s);
- 18 c. Failed and continue to fail to furnish complete and accurate itemized wage
19 statements in violation of Labor Code section 226, subdivision (a);
- 20 d. With regard to former non-exempt employees only, willfully failed and
21 continue to fail to pay, without abatement or reduction, all final wages owed in
22 accordance with Labor Code sections 201 and 202, in violation of Labor Code
23 section 203;
- 24 e. Failed to provide suitable seating In violation of Labor Code section 1198 and
25 Wage Order 7-2001, section 14g; and
- 26 f. Committed and continue to commit unfair business practices in violation of
27 California Business & Professions Code section 17200, *et seq.*;

28 3. Plaintiff also brings this representative civil enforcement action on behalf of the

1 State of California's Labor and Workforce Development Agency ("LWDA") against Defendants
2 for civil penalties pursuant to the Private Attorneys General Act of 2004, Labor Code section
3 2698, *et seq.* ("PAGA"), for Defendants' wage and hour violations under the California Labor
4 Code and the IWC Wage Orders. PAGA permits an alleged aggrieved employee to bring a lawsuit
5 on behalf of the LWDA for current and former nonexempt employees of an employer to recover
6 civil penalties for an employer's violation of the California Labor Code.

7 4. The acts complained of herein occurred, occur and will occur, at least in part,
8 within the time period from four (4) years preceding the filing of the original Complaint herein, up
9 to and through the time of trial for this matter, although this should not automatically be
10 considered the statute of limitations for any cause of action herein. As a result of the foregoing,
11 Plaintiff seeks monetary damages, civil penalties, injunctive relief, restitution, reasonable
12 attorneys' fees, costs, and interest.

13 II. PARTIES

14 5. Plaintiff MARIA BENAVIDEZ HERRERA is an individual over the age of eighteen
15 (18), and is now and/or at all times mentioned in this Complaint a California citizen residing in Los
16 Angeles County, California. Plaintiff worked for Defendants as an hourly paid, non-exempt Shift
17 Supervisor in California at its store located at 5201 Whittier Blvd, Los Angeles, California, within
18 Los Angeles County. Plaintiff was employed by Defendants as an hourly-paid, non-exempt employee
19 from approximately February 2018 through the date of termination of employment on November 13,
20 2020. At all times herein, Plaintiff was an "employee" as that term is used in the Labor Code and
21 IWC Wage Orders regulating wages, hours, and working conditions.

22 6. Plaintiff seeks the recovery alleged herein from Defendants because, at all times
23 while working for Defendants in her capacity as a non-exempt employee, Defendants:

- 24 a. Failed to provide meal periods in violation of Labor Code sections 226.7 and
- 25 512 and Section 11 of the IWC Wage Order(s);
- 26 b. Failed to authorize and permit all paid rest periods in violation of Labor Code
- 27 sections 226.7 and Section 12 of the IWC Wage Order(s);
- 28 c. Failed to furnish complete and accurate itemized wage statements in violation

1 of Labor Code section 226, subdivision (a), and Section 7 of IWC Wage
2 Order(s);

3 d. Violated Labor Code section 203 by willfully failing to pay, without abatement
4 or reduction, all final wages owed in accordance with Labor Code sections 201
5 and 202;

6 e. Failed to provide suitable seating in violation of Labor Code section 1198 and
7 the conditions of labor specified in Wage Order 7-2001, section 14; and

8 f. Conducted unfair business practices in violation of Business & Professions
9 Code section 17200, *et seq.*

10 7. Defendant PLS CHECK CASHERS OF CALIFORNIA, INC. ("PLS") is and at all
11 relevant times herein has conducted business within California, and is the owner and operator of
12 an industry, business and/or facility licensed to do business and actually doing business in the
13 State of California as a check casher and payday lender. Defendant operates multiple store
14 locations throughout the State of California, including numerous store locations within Los
15 Angeles County. Defendant PLS CHECK CASHERS OF CALIFORNIA, INC. is an "employer"
16 as the term is used in the Labor Code and IWC Wage Orders.

17 8. The Defendants sued by the fictitious names DOES 1 through 100, inclusive, are on
18 information and belief now, and/or at all times mentioned in this Complaint were licensed to do
19 business and/or actually doing business in California, including Los Angeles County, and each of
20 the fictitiously named Defendants is responsible for the conduct alleged in this Complaint.
21 Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of
22 DOES 1 through 100, inclusive and for that reason, DOES 1 through 100 are sued under such
23 fictitious names pursuant to California Code of Civil Procedure ("Code of Civil Procedure")
24 section 474. Plaintiff will seek leave of court to amend this Complaint to allege such names and
25 capacities as soon as they are ascertained.

26 9. Defendants, and each of them, are now and/or at all times mentioned in this
27 Complaint were in some manner legally responsible for the events, happenings and circumstances
28 alleged in this Complaint.

10. Defendants, and each of them, proximately subjected Plaintiff to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

11. Defendants, and each of them, are now and/or at all times mentioned herein were the agents, servants and/or employees of some or all other Defendants, or vice-versa, and in doing the things alleged in this Complaint, Defendants are now and/or at all times mentioned in this Complaint were acting within the course and scope of that agency, servitude and/or employment.

12. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint venture, partnership and common enterprise, and were acting within the course and scope of, and in pursuance of said joint venture, partnership and common enterprise.

13. Defendants, and each of them, at all times mentioned in this Complaint concurred and contributed to the various acts and omissions of each and every one of the other Defendants in proximately causing the complaints, injuries and/or damages alleged in this Complaint.

14. Defendants, and each of them, at all times mentioned in this Complaint approved of, condoned and/or otherwise ratified each and every one of the acts and/or omissions alleged in this Complaint.

15. Defendants, and each of them, at all times mentioned in this Complaint aided and abetted the acts and omissions of each and every one of the other Defendants thereby proximately causing the damages alleged in this Complaint.

III. JURISDICTION AND VENUE

16. The California Superior Court has jurisdiction in this matter pursuant to California Constitution Article VI, Section 10, which grants the Superior Court "original jurisdiction in all causes except those given by statute to other trial courts." The statutes under which this action is brought do not specify any other specific basis for jurisdiction.

17. The California Superior Court also has jurisdiction in this matter because both the individual and aggregate monetary damages and restitution sought herein exceed the minimal jurisdictional limits of the Superior Court and will be established at trial, according to proof.

18. The California Superior Court also has jurisdiction over Defendants because they are

1 corporations and/or entities and/or persons with sufficient minimum contacts in California, are
2 citizens of California, or otherwise intentionally availed themselves of the California market so as to
3 render the exercise of jurisdiction over them by the California courts consistent with traditional
4 notions of fair play and substantial justice.

5 19. Venue is proper in the Superior Court of California, County of Los Angeles pursuant
6 to Code of Civil Procedure section 395(a) and Code of Civil Procedure section 395.5 in that
7 liability arose there because at least some of the acts and omissions that are the subject matter of this
8 Complaint occurred therein and/or each Defendant either is found, maintains offices, transacts
9 business, exists, and/or has an agent therein.

10 **IV. GENERAL ALLEGATIONS**

11 20. Plaintiff and the class members are current and former non-exempt, hourly paid
12 employees of Defendants and thus have performed work for Defendants, and/or on Defendants'
13 behalf, in the State of California.

14 21. Plaintiff alleges that Defendants adopted and maintained uniform policies, practices
15 and procedures governing the working conditions of, and payment of wages to, Plaintiff and the
16 class members. As alleged below, Defendants' uniform policies, practices and procedures
17 violated California's labor laws and constituted unfair, fraudulent or illegal business practices
18 under Business & Professions Code section 17200 *et seq.*

19 22. During the relevant statutory period, Defendants failed to provide its non-exempt
20 hourly employees with a meal period within five (5) hours of commencing work and a second
21 meal period within ten (10) hours of commencing work, as required by California law.

22 23. During the relevant statutory period, in the rare instances that Defendants paid meal
23 period premiums for incompliant meal periods, Defendants failed to pay its non-exempt hourly
24 employees with a meal period premiums at their regular rate of pay as a result of Defendants'
25 failure to account for all remuneration of paid to non-exempt hourly employees.

26 24. During the relevant statutory period, Plaintiff is informed and believes and thereon
27 alleges that Defendant failed to relinquish control over its non-exempt employees to provide them
28 with legally-compliant ten (10) minute off-duty rest periods for every four (4) hours of work or

1 major fraction thereof, as required by California law.

2 25. During the relevant statutory period, Plaintiff is informed and believes and thereon
3 alleges that Defendant failed to provide its non-exempt hourly employees itemized wage
4 statements accurately showing the gross wages earned, the total number of hours worked, the net
5 wages earned, and all applicable hourly rates in effect and the corresponding number of hours
6 worked at each hourly rate.

7 26. During the relevant statutory period, Defendant failed to pay its former non-exempt
8 hourly employees all wages owed at the time of separation of employment.

9 27. During the relevant statutory period, Defendant failed to provide its non-exempt
10 hourly employees with suitable seating, as required by California law.

11 28. Plaintiff is informed and believes, and based thereon alleges, that each and every
12 one of the acts and omissions alleged herein was performed by, and/or attributable to, Defendants
13 PLS CHECK CASHERS OF CALIFORNIA, INC. and/or DOES 1-100 acting as agents and/or
14 employees, and/or under the direction and control of Defendant, and that said acts and failure to
15 act were within the course and scope of said agency, employment, and/or direction and control,
16 and were committed willfully.

17 29. As a direct and proximate result of Defendant's unlawful actions, Plaintiff and the
18 class members have suffered and continue to suffer from loss of earnings in amounts as yet to be
19 ascertained, but subject to proof at trial in amounts in excess of the minimum jurisdiction of this
20 Court.

21 **V. CLASS ACTION ALLEGATIONS**

22 30. Plaintiff brings this class action complaint against Defendants, individually, and on
23 behalf of all others similarly situated pursuant to Code of Civil Procedure section 382. This action
24 may be brought and properly maintained as a class action because as set forth herein Plaintiff
25 satisfies the numerosity, adequacy, typicality, and commonality pre-requisites for suing as
26 representative parties pursuant to Code of Civil Procedure section 382.

27 31. Description of the Classes: The classes Plaintiff will seek to certify are currently
28 composed of and defined as follows:

- 1 a. All persons employed by Defendants as hourly non-exempt employees in the
2 state of California who, at any time from December 2, 2016 through the
3 conclusion of this action, were subject to Defendants' policies and practices
4 regarding meal periods (hereinafter, the "Meal Period Class");
- 5 b. All persons employed by Defendants as hourly non-exempt employees in the
6 state of California who, at any time from December 2, 2016 through the
7 conclusion of this action, were subject to Defendants' policies and practices
8 regarding rest periods (hereinafter, the "Rest Period Class");
- 9 c. All persons employed by Defendants as hourly non-exempt employees in the
10 state of California, who at any time from December 2, 2016 through the
11 conclusion of this action, were subject to Defendants' policies and practices
12 regarding wage statements (hereinafter, the "Wage Statement Class");
- 13 d. All persons, including seasonal employees, formerly employed by Defendants
14 as non-exempt employees at Defendants' retail locations in the State of
15 California who, at any time from December 2, 2017 through the conclusion of
16 this action, were subject to Defendants' policies and practices regarding final
17 payment of wages (hereinafter, the "Final Pay Class");
- 18 e. All persons employed by Defendants as non-exempt employees in the State of
19 California who, at any time from December 2, 2016 through the conclusion of
20 this action, were subject to Defendants' policies and practices regarding
21 suitable seating (hereinafter, the "Suitable Seating Class");
- 22 32. Each of the aforementioned classes are referred to collectively herein as "the
23 Classes."
- 24 33. As a consequence of obtaining information and documents through discovery in
25 this litigation, Plaintiff may find it appropriate and/or necessary to amend the definition of the
26 Class(es) and/or add additional classes and/or subclasses. Plaintiff will formally define and
27 designate a class definition(s) at such time when Plaintiff seeks to certify the Classes alleged
28 herein.

1 34. Numerosity: The potential number of members of each Class alleged herein is so
2 numerous that joinder of all members is unfeasible and impractical. The exact quantity of
3 members in each Class and the identity of all members is readily ascertainable via inspection of
4 Defendant's records.

5 35. Well-defined Community of Interest: Plaintiff also meets the established standards
6 for class certification, as follows:

- 7 a. Typicality: The claims of Plaintiff are typical of the claims of all members of
8 each Class she seeks to represent because all members of each Class sustained
9 injuries and damages arising out of Defendant's common course of conduct in
10 violation of law and the injuries and damages of all members of each Class were
11 caused by Defendants' wrongful conduct in violation of law, as alleged herein.
- 12 b. Adequacy: Plaintiff is an adequate representative of each Class she seeks to
13 represent and will fairly protect the interests of the members of each Class.
14 Plaintiff has no interest antagonistic to each Class and will vigorously pursue
15 favorable resolution of this suit on behalf of herself and members of each Class
16 via attorneys who are competent, skilled and experienced in litigating class
17 actions.
- 18 c. Predominant Common Questions of Law and/or Fact: There are common
19 questions of law and/or fact as to each Class that predominate over questions
20 affecting only individual members of each Class, including, without limitation:
- 21 i) Whether Defendants failed and continue to fail to provide all meal
22 periods in violation of Labor Code sections 226.7 and 512 and the
23 IWC Wage Order(s);
- 24 ii) Whether Defendants failed and continue to fail to authorize and
25 permit all paid rest periods in violation of Labor Code sections
26 226.7 and the IWC Wage Order(s);
- 27 iii) Whether Defendants failed and continue to fail to provide
28 complete and accurate itemized wage statements in violation of

Labor Code section 226, subdivision (a);

- iv) With regard to Defendants' former non-exempt employees, whether Defendants have violated Labor Code section 203 by willfully failing to pay, without abatement or reduction, all final wages owed in accordance with Labor Code sections 201, 201.3, 201.5, 202, and 205.5;
- v) Whether Defendants failed and continue to fail to provide suitable seating in violation of Labor Code section 1198 and Wage Order 7-2001, Section 14;
- vi) Whether Defendants' conduct constitutes unfair competition within the meaning of Business & Professions Code section 17200, *et seq.*;
- vii) Whether members of the Classes are entitled to compensatory damages, and if so, the means of measuring such damages;
- viii) Whether members of the Classes are entitled to injunctive relief;
- ix) Whether members of the Classes are entitled to restitution; and
- x) Whether Defendants are liable for attorneys' fees and costs.

36. Superiority: The nature of this action and the nature of the laws available to Plaintiff and members of the Classes is such that a class action is not only superior to other methods, but also particularly efficient and appropriate to afford relief to Plaintiff and members of the Classes for the wrongs alleged herein, as follows:

- a. By allowing a method whereby claims of many individuals can be resolved at the same time, the class action device eliminates the possibility of repetitious litigation, inconsistent rulings, and provides small claimants with the opportunity to redress for claims which would otherwise be too small to justify the filing of individual actions;
- b. This case involves a large corporate Defendant and a large number of individuals with many relatively small claims and common issues of law and

fact;

- c. If each individual member of the Classes was required to file an individual lawsuit, the large corporate Defendant would necessarily gain an unconscionable advantage because Defendant would be able to exploit and overwhelm the limited resources of each individual member of the Classes with Defendant's vastly superior financial and legal resources;
- d. Requiring each individual member of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by individual members of the Classes who would be disinclined to pursue an action against Defendant because of an appreciable and justifiable fear of retaliation and permanent damage to their lives, careers and wellbeing;
- e. Proof of a common business practice or factual pattern, of which members of the Classes experienced, is representative of the Classes herein and will establish the right of each member of the Classes to recover on the causes of action alleged herein.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(By Plaintiff, individually, and on behalf of the Meal Break Class against Defendant PLS and DOES 1 to 100, inclusive)

37. Plaintiff incorporates by reference and realleges foregoing paragraphs 1–36 of this Complaint as if fully set forth herein.

38. Labor Code section 226.7, subdivision (b), provides that “An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.”

39. Labor Code section 512 provides that “An employer may not employ an employee

1 for a work period of more than five hours per day without providing the employee with a meal
2 period of not less than 30 minutes, except that if the total work period per day of the employee is
3 no more than six hours, the meal period may be waived by mutual consent of both the employer
4 and employee. An employer may not employ an employee for a work period of more than 10
5 hours per day without providing the employee with a second meal period of not less than 30
6 minutes, except that if the total hours worked is no more than 12 hours, the second meal period
7 may be waived by mutual consent of the employer and the employee only if the first meal period
8 was not waived.”

9 40. Labor Code section 516 provides that the Industrial Welfare Commission “may
10 adopt or amend working condition orders with respect to break periods, meal periods, and days of
11 rest for any workers in California consistent with the health and welfare of those workers.”

12 41. Section 11(A) of the IWC Wage Order(s) provides that “Unless the employee is
13 relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on
14 duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only
15 when the nature of the work prevents an employee from being relieved of all duty and when by
16 written agreement between the parties an on-the-job paid meal period is agreed to. The written
17 agreement shall state that the employee may, in writing, revoke the agreement at any time.”

18 42. Section 11(B) of the IWC Wage Order(s) provides that “If an employer fails to
19 provide an employee a meal period in accordance with the applicable provisions of this order, the
20 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
21 compensation for each workday that the meal period is not provided.”

22 43. On one or more occasions, Plaintiff and members of the Meal Break Class worked
23 over five (5) hours per shift and therefore were entitled to a meal period of not less than thirty (30)
24 minutes prior to exceeding five (5) hours of employment.

25 44. On information and belief, Plaintiff and members of the Meal Break Class did not
26 validly or legally waive their meal periods, by mutual consent with Defendants or otherwise.

27 45. On information and belief, Plaintiff and members of the Meal Break Class did not
28 enter into any written agreement with Defendants agreeing to an on-the-job paid meal period.

1 46. As a matter of Defendants' established company policy implemented, Defendants
2 failed to comply with the meal period requirements established by Labor Code sections 226.7,
3 512, and 516, and Section 11 of the IWC Wage(s) by failing to provide Plaintiff and members of
4 the Meal Break Class with a first and a second legally compliant meal period.

5 47. Section 11(B) of the IWC Wage Order(s) and Labor Code section 226.7,
6 subdivision (c), provides that "If an employer fails to provide an employee a meal or rest or
7 recovery period in accordance with a state law, including, but not limited to, an applicable statute
8 or applicable regulation, standard, or order of the Industrial Welfare Commission, the
9 Occupational Safety and Health Standards Board, or the Division of Occupational Safety and
10 Health, the employer shall pay the employee one additional hour of pay at the employee's regular
11 rate of compensation for each workday that the meal or rest or recovery period is not provided."

12 48. As a matter of Defendants' established company policy, Defendants failed to
13 comply with the requirements of Section 11(B) of the IWC Wage Order(s) and Labor Code
14 section 226.7, subdivision (c), by failing to pay Plaintiff and members of the Meal Break Class
15 one additional hour of pay at each employee's regular rate of compensation for each workday that
16 a compliant meal period was not provided.

17 49. As a matter of Defendants' established company policy, in the rare instances that
18 Defendants paid meal period premiums for incompliant meal periods, Defendants failed to pay its
19 non-exempt hourly employees with a meal period premiums at their regular rate of pay as a result
20 of Defendants' failure to account for all remuneration of paid to non-exempt hourly employees.

21 50. Therefore, Plaintiff and members of the Meal Break Class are entitled to damages
22 in an amount equal to one (1) additional hour of pay at each employee's regular rate of
23 compensation for each work day that a compliant meal period was not provided, in a sum to be
24 proven at trial.

25 51. Pursuant to Labor Code section 218.6 and Civil Code section 3287, Plaintiff,
26 individually, and on behalf of members of the Meal Break Class, seeks recovery of pre-judgment
27 interest on all amounts recovered herein.

28 52. Pursuant to Labor Code section 218.5, Plaintiff, individually, and on behalf of

1 members of the Meal Break Class, requests that the Court award reasonable attorneys' fees and
2 costs incurred in this action.

3 **SECOND CAUSE OF ACTION**

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

5 (By Plaintiff, individually, and on behalf of the Rest Break Class against
6 Defendant PLS and DOES 1 to 100, inclusive)

7 53. Plaintiff incorporates by reference and realleges foregoing paragraphs 1-36 of this
8 Complaint as if fully set forth herein.

9 54. Labor Code section 226.7, subdivision (b), provides that "An employer shall not
10 require an employee to work during a meal or rest or recovery period mandated pursuant to an
11 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
12 Commission, the Occupational Safety and Health Standards Board, or the Division of
13 Occupational Safety and Health."

14 55. Labor Code section 516 provides that the Industrial Welfare Commission "may
15 adopt or amend working condition orders with respect to break periods, meal periods, and days of
16 rest for any workers in California consistent with the health and welfare of those workers."

17 56. Section 12(A) of the IWC Wage Order(s) provides that "Every employer shall
18 authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
19 middle of each work period. The authorized rest period time shall be based on the total hours
20 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
21 thereof. However, a rest period need not be authorized for employees whose total daily work time
22 is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours
23 worked for which there shall be no deduction from wages."

24 57. Section 12(B) of the IWC Wage Order(s) provides that "If an employer fails to
25 provide an employee a rest period in accordance with the applicable provisions of this order, the
26 employer shall pay the employee one (1) hour of pay at the employee's regular rate of
27 compensation for each workday that the rest period is not provided."

28 58. Plaintiff and members of the Rest Break Class often worked over three and one-

1 half (3 1/2) hours per shift and therefore were entitled to a rest period of not less than ten (10)
2 minutes prior to exceeding four (4) hours of employment, and additional rest periods of not less
3 than ten (10) minutes per four (4) hours worked or major fraction thereof. Upon information and
4 belief, Defendants' policies and practices failed and fail to provide Plaintiff and class members
5 with off-duty net rest periods of at least ten minutes for each four hours worked, or major fraction
6 thereof, and failed and fail to pay them a premium wage at their regular rates of pay on workdays
7 Defendants failed to provide them with an opportunity to take rest periods. For example, Plaintiff
8 often worked shifts from 7:00 A.M. to 4:00 P.M., wherein she was entitled to two ten minutes rest
9 periods, but she was not provided the opportunity to take all rest periods for every four hours or a
10 major fraction thereof per shift.

11 59. As a matter of Defendants' established company policy, Defendants failed to
12 authorize and permit required off-duty rest periods established by Labor Code sections 226.7 and
13 516 and Section 12 of the IWC Wage Order(s). Pursuant to *Augustus v. ABM Security Services,*
14 *Inc.*, (2017) 2 Cal.5th 257, 260, "[d]uring required rest periods, employers must relieve their
15 employees of all duties and relinquish any control over how employees spend their break time."

16 60. Section 12 of the IWC Wage Order(s) and Labor Code section 226.7, subdivision
17 (b), provides that "If an employer fails to provide an employee a meal or rest or recovery period in
18 accordance with a state law, including, but not limited to, an applicable statute or applicable
19 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and
20 Health Standards Board, or the Division of Occupational Safety and Health, the employer shall
21 pay the employee one additional hour of pay at the employee's regular rate of compensation for
22 each workday that the meal or rest or recovery period is not provided."

23 61. As a matter of Defendants' policies and procedures, Defendants failed to comply
24 with the requirements of Section 12(B) of the IWC Wage Order(s) and Labor Code section 226.7,
25 subdivision (c), by failing to pay Plaintiff and members of the Rest Break Class one additional
26 hour of pay at each employee's regular rate of compensation for each workday that an off-duty
27 rest period was not provided.

28 62. Therefore, pursuant to Section 12 of the IWC Wage Order(s) and Labor Code

1 section 226.7, Plaintiff and members of the Rest Break are entitled to damages in an amount equal
2 to one (1) additional hour of pay at each employee's regular rate of compensation for each work
3 day that a legally compliant rest period was not so provided.

4 63. Pursuant to Labor Code section 218.6 and Civil Code section 3287, Plaintiff,
5 individually, and on behalf of the Rest Break, seeks recovery of pre-judgment interest on all
6 amounts recovered herein.

7 64. Pursuant to Labor Code section 218.5, Plaintiff, individually, and on behalf of the
8 Rest Break Class, requests that the Court award reasonable attorneys' fees and costs incurred in
9 this action.

10 **THIRD CAUSE OF ACTION**

11 **FAILURE TO TIMELY FURNISH COMPLETE AND ACCURATE**
12 **ITEMIZED WAGE STATEMENTS**

13 (By Plaintiff, individually, and on behalf of the Wage Statement Class against
14 Defendant and DOES 1 to 100, inclusive)

15 65. Plaintiff incorporates by reference and realleges foregoing paragraphs 1-36 of this
16 Complaint as if fully set forth herein.

17 66. Labor Code section 226(a) states in pertinent part: "Every employer shall,
18 semimonthly or at the time of each payment of wages, furnish each of his or her employees, either
19 as a detachable part of the check, draft, or voucher paying the employee's wages, or separately
20 when wages are paid by personal check or cash, an accurate itemized statement in writing showing
21 (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions... (5) net
22 wages earned, (6) the inclusive dates of the period for which the employee is paid... (8) the name
23 and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect
24 during each the pay period and the corresponding number of hours worked at each hourly rate by
25 the employee...."

26 67. As a pattern and practice, in violation of Labor Code section 226(a), Defendants
27 did not and still do not furnish each of the members of the Wage Statement Class with an accurate
28 itemized statement in writing correctly showing: (1) gross wages earned, (2) total hours worked by

1 the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and
2 any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided
3 that all deductions made on written orders of the employee may be aggregated and shown as one
4 item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7)
5 the name of the employee and only the last four digits of his or her social security number or an
6 employee identification number other than a social security number, (8) the name and address of
7 the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in
8 subdivision (b) of Section 1682, the name and address of the legal entity that secured the services
9 of the employer, and (9) all applicable hourly rates in effect during the pay period and the
10 corresponding number of hours worked at each hourly rate by the employee.

11 68. As a pattern and practice, in violation of Labor Code section 226(a) and Section 7,
12 subdivision (A), of the IWC Wage Order(s), Defendants did not and do not maintain accurate
13 records pertaining to the total hours worked for Defendants by Plaintiff and members of the Wage
14 Statement Class, including but not limited to, gross wages earned, total hours worked by the
15 employee, all deductions, net wages earned.

16 69. As of January 1, 2013, SB 1255 amended Labor Code section 226 to clarify that an
17 employee suffers injury if the employer fails to provide accurate and complete information as
18 required by any one or more items listed in Labor Code section 226(a)(1)-(9) and the employee
19 cannot promptly and easily ascertain requisite information without reference to other documents or
20 information.

21 70. Here, Plaintiff and members of the Wage Statement Class suffered injury because
22 Defendants failed to provide accurate and complete information as required by one or more items
23 listed in Labor Code section 226(a)(1)-(9) as set forth herein and Plaintiff and members of the
24 Wage Statement Class could not and cannot promptly and easily ascertain requisite
25 information without reference to other documents or information.

26 71. In addition, Plaintiff and members of the Wage Statement Class have suffered
27 injury as a result of Defendant's failure to maintain accurate records in that Plaintiff and members
28 of the Wage Statement Class were not provided written accurate itemized statements showing all

1 requisite information as set forth herein in violation of Labor Code section 226 and Section 7,
2 subdivision (A), of the IWC Wage Order(s), such that Plaintiff and members of the Wage
3 Statement Class were misled by Defendants as to the correct information regarding the various
4 items, including but not limited to, the total hours worked by the employee, gross wages earned,
5 net wages earned, all deductions, all applicable hourly rates in effect during the pay period and the
6 corresponding number of hours worked at each hourly rate, and the address of the legal entity that
7 is the employer.

8 72. The actual injuries suffered by Plaintiff and members of the Wage Statement Class
9 as a result of Defendants' knowing and intentional failure to maintain accurate records include but
10 are not limited to:

- 11 a. Confusion over whether they received all wages owed them by Defendant;
- 12 b. The difficulty and expense of attempting to reconstruct time and pay records;
- 13 c. Being forced to engage in mathematical computations to analyze whether
- 14 Defendant's wages in fact compensated for all hours worked;
- 15 d. The inability to accurately calculate wage rates complicated by the fact that
- 16 wage statement information required by Labor Code section 226 is missing;
- 17 e. That such practice prevents Plaintiff and members of the Hourly Employee
- 18 Class from being able to effectively challenge information on their wage
- 19 statements; and/or
- 20 f. The difficulty and expense of filing and maintaining this lawsuit, and the
- 21 discovery required to collect and analyze the very information that California
- 22 law requires.

23 73. Pursuant to Labor Code section 226, subdivision (e), Plaintiff and members of the
24 Wage Statement Class are entitled to fifty dollars (\$50.00) per individual employee for the initial
25 pay period in which a violation hereunder occurred and one hundred dollars (\$100.00) per
26 individual employee for each violation in a subsequent pay period, not exceeding an aggregate
27 penalty of four thousand dollars (\$4,000.00) per individual employee.

28 74. Pursuant to Labor Code section 226, subdivision (g), currently-employed members

1 of the Hourly Employee Class are entitled to injunctive relief to ensure Defendants' compliance
2 with Labor Code section 226.

3 75. Pursuant to Labor Code section 226, subdivisions (e) and/or (g), Plaintiff and
4 members of the Wage Statement Class are also entitled to an award of costs and reasonable
5 attorneys' fees.

6 **FOURTH CAUSE OF ACTION**

7 **VIOLATIONS OF LABOR CODE §§ 201, 202, 203**

8 (By Plaintiff, individually, and on behalf of the Final Pay Class against
9 Defendant PLS and DOES 1 to 100, inclusive)

10 76. Plaintiff incorporates by reference and realleges foregoing paragraphs 1–36 of this
11 Complaint as if fully set forth herein.

12 77. Labor Code section 203 provides that if an employer willfully fails to pay, without
13 abatement or reduction, in accordance with Labor Code sections 201 and 202, any wages of an
14 employee who is discharged or who quits, the wages of the employee shall continue at the same
15 rate, for up to thirty (30) days from the due date thereof, until paid or until an action therefore is
16 commenced.

17 78. Defendants have a consistent and uniform policy, practice and procedure of
18 willfully failing to pay the earned wages of Defendants' former employees according to
19 amendment or proof.

20 79. Defendants willfully failed to pay Plaintiff and members of the Final Pay Class that
21 are former employees their entire wages due and owing at the time of their termination or within
22 seventy-two (72) hours of their resignation, and failed to pay those sums for up to thirty (30) days
23 thereafter.

24 80. Defendants' willful failure to pay wages to Plaintiff and members of the Final Pay
25 Class that are former employees violates Labor Code section 203 because Defendants knew or
26 should have known such wages were due, but Defendants failed to pay them.

27 81. Thus, Plaintiff and members of the Final Pay Class are entitled to recovery
28 pursuant to Labor Code section 203.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE SUITABLE SEATING

(By Plaintiff, individually, and on behalf of the Suitable Seating Class against
Defendant PLS and DOES 1 to 100, inclusive)

82. Plaintiff incorporates by reference and realleges foregoing paragraphs 1–36 of this Complaint as if fully set forth herein.

83. California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order.

84. 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.”

85. Section 14 of the applicable Wage Order provides that: (A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats. (B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

86. At all relevant times, Defendants have failed to provide such suitable seating to Plaintiff and Suitable Seating Class Members, including when Plaintiff and Suitable Seating Class Members are not engaged in the active duties of their employment. For example, Plaintiff and Class Members were not provided with seating during shifts from the first to the seventh day of every month in which they worked in a Shift Supervisor or Customer Service Representative position, or such other position that would reasonably permit the use of seating. Upon information and belief, the work performed by persons in these positions includes but is not limited to providing customer service, transaction processing, maintenance of cash drawers, cash handling, and other common tasks that could be performed while seated and the location of the tasks to be performed made it feasible to do so while seated.

87. Plaintiff and Class Members are entitled to recover all remedies available for

1 violations of California Labor Code section 1198.

2 **SIXTH CAUSE OF ACTION**

3 **UNFAIR BUSINESS PRACTICES**

4 (By Plaintiff, individually, and on behalf of the Classes against
5 Defendant and DOES 1 to 100, inclusive)

6 88. Plaintiff incorporates by reference and realleges foregoing paragraphs 1–35 of this
7 Complaint as if fully set forth herein.

8 89. Business & Professions Code section 17200 provides in pertinent part “unfair
9 competition shall mean and include any unlawful, unfair or fraudulent business act or practice.”

10 90. Defendants are a “person” as defined under Business & Professions Code section
11 17201.

12 91. Business & Professions Code section 17204 provides that an action for any relief
13 from unfair competition may be prosecuted by any person who has suffered injury in fact and has
14 lost money or property as a result of such unfair competition.

15 92. Business & Professions Code section 17205 provides that unless otherwise
16 expressly provided, the remedies or penalties provided for unfair competition “are cumulative to
17 each other and to the remedies or penalties available under all other laws of this state.”

18 93. Defendants have engaged in unlawful, unfair and fraudulent business acts or
19 practices prohibited by Business & Professions Code section 17200, including those set forth in
20 the preceding and foregoing paragraphs of the complaint, thereby depriving Plaintiff and members
21 of the Classes of the minimum working standards and conditions due to them under the Labor
22 Code and/or the IWC_Wage Orders, as specifically described herein.

23 94. Defendants have engaged in unfair business practices in California by practicing,
24 employing and utilizing the employment practices outlined in the preceding paragraphs,
25 specifically, by requiring employees to perform the labor services complained of herein without
26 the requisite compensation.

27 95. Defendants’ use of such practices constitutes an unfair business practice, unfair
28 competition and provides an unfair advantage over Defendants’ competitors.

1 96. Plaintiff and members of the Classes have suffered injury in fact and have lost
2 money or property as a result of such unfair competition.

3 97. Plaintiff, individually, and on behalf of members of the Classes, seeks full
4 restitution from Defendants, as necessary and according to proof, to restore any and all monies
5 withheld, acquired and/or converted by Defendants by means of the unfair practices complained of
6 herein.

7 98. Further, if Defendants are not enjoined from the conduct set forth above,
8 Defendants will continue to practice, employ and utilize the employment practices outlined in the
9 preceding paragraphs.

10 99. Therefore, Plaintiff requests that the Court issue a preliminary and permanent
11 injunction prohibiting Defendants from engaging in the foregoing conduct.

12 100. Plaintiff seeks the appointment of a receiver, as necessary, to establish the total
13 monetary relief sought from Defendant.

14 **SEVENTH CAUSE OF ACTION**

15 **VIOLATIONS OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 ("PAGA")**

16 (By Plaintiff, on behalf of all other aggrieved employees, against Defendants)

17 101. Plaintiff incorporates by reference and realleges foregoing paragraphs 1–29 of this
18 Complaint as if fully set forth herein.

19 102. Pursuant to Labor Code section 2698, *et seq.*, Plaintiff seeks to recover all
20 applicable civil penalties, reasonable attorneys' fees and costs, and all other available relief
21 permitted under the PAGA through a representative action on behalf of the State of California's
22 LWDA for all aggrieved employees, including herself, that work or worked for Defendants during
23 the relevant time period.

24 103. In accordance with *Arias v. Superior Court*, (2009) 46 Cal.4th 969, a representative
25 action is not subject to the formalities required of a class action and class certification of PAGA
26 claims is not required.

27 104. Plaintiff is an "aggrieved employee" of Defendants within the meaning of Labor
28 Code section 2699(c) because she was employed by Defendants during the applicable statutory

1 period and suffered one or more of the Labor Code violations, as alleged herein.

2 105. Pursuant to Labor Code section 2699(i), seventy-five percent (75%) of civil
3 penalties recovered by aggrieved employees shall be distributed to the LWDA for enforcement of
4 labor laws and education of employers and employees about their rights and responsibilities under
5 the Labor Code, and twenty-five percent (25%) shall be distributed to the aggrieved employees.

6 106. Plaintiff's representative action alleges violations of certain Labor Code sections
7 that are listed within Labor Code section 2699.5. Accordingly, Labor Code section 2699.3(a)
8 applies to this action, and Labor Code section 2699.3(b)-(c) do not apply.

9 107. On November 18, 2020, Plaintiff complied with Labor Code section 2699.3(a) by
10 electronically filing written notice with the LWDA and serving written notice, via certified mail,
11 upon Defendants regarding the specific provisions of the Labor Code alleged to have been violated
12 by Defendants and Plaintiff's intent to pursue civil penalties against Defendants on behalf of
13 herself and all other aggrieved employees pursuant to PAGA. Attached hereto as **Exhibit A** is a
14 true and correct copy of Plaintiff's notice letter. Plaintiff also paid the filing fee to the LWDA.

15 108. Labor Code section 2699.3(a) provides in pertinent part that: "The agency shall
16 notify the employer and the aggrieved employee or representative by certified mail that it does not
17 intend to investigate the alleged violation within 60 calendar days of the postmark date of the
18 notice received... [u]pon receipt of that notice or if no notice is provided within 65 calendar days
19 of the postmark date of the notice given... the aggrieved employee may commence a civil action
20 pursuant to Section 2699." Sixty-five calendar days have passed since Plaintiff served notice upon
21 the LWDA and Defendants, and the LWDA did not provide notice of its intent to investigate
22 Plaintiff's claims. Accordingly, Plaintiff exhausted her obligation to provide administrative notice
23 and is authorized to commence this representative action seeking civil penalties on behalf of all
24 aggrieved employees of Defendants.

25 109. Pursuant to Labor Code section 2699(a), any provision of the Labor Code that
26 provides for a civil penalty to be assessed and collected by the LWDA or any of its departments,
27 divisions, commissions, boards, agencies or employees for violation of the code may, as an
28 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of

1 herself and other current or former employees pursuant to the procedures specified in Labor Code
2 section 2699.3.

3 110. Pursuant to Labor Code section 2699(f)(2), for all provisions of the Labor Code for
4 which a civil penalty is not specifically provided, there is established a civil penalty that imposes a
5 penalty of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
6 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
7 subsequent violation.

8 111. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff, on behalf of the State of
9 California's LWDA for all aggrieved employees of Defendants, including herself, seeks applicable
10 civil penalties for violations of Labor Codes 201, 202, 203, 226, 226.7, 256, 512, 558, 1197, 1198,
11 and 1199 during the statutory period, as set forth below:

12 a. For violations of Labor Code sections 201, 202, 203, 226.7, 512, 1197,
13 1198, and 1199, Labor Code section 2699(f)(2) imposes a civil penalty of one hundred dollars
14 (\$100) for each aggrieved employee per pay period for each initial violation and two hundred
15 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

16 b. For violations of Labor Code section 226(a), Labor Code section 226.3
17 imposes a civil penalty, in addition to any other penalty provided by law, of two hundred fifty
18 dollars (\$250) per aggrieved employee for the first violation, and one thousand dollars (\$1,000)
19 per aggrieved employee for each subsequent violation.

20 112. California Labor Code section 1198 makes it illegal to employ an employee under
21 conditions of labor that are prohibited by the applicable wage order. Defendants have violated
22 Labor Code sections 1198 and section 14 of the applicable Wage Order, by failing to provide
23 Plaintiff and other aggrieved employees with seats. Thus, pursuant to Labor Code section
24 2699(f)(2), Defendants are subject to a civil penalty of one hundred dollars (\$100) for each
25 aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for
26 each aggrieved employee per pay period for each subsequent violation.

27 113. Defendants violated Labor Code sections 1197, 1198, and 1199 by not paying
28 Plaintiff and aggrieved employees all wages owed for all hours worked for each pay period as a

1 result of Defendants' policy or practice of failing to compensate employees for all time in which
2 meal and rest breaks should be taken, as alleged herein. Thus, pursuant to Labor Code section
3 2699(f)(2), Defendants are subject to a civil penalty of one hundred dollars (\$100) for each
4 aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for
5 each aggrieved employee per pay period for each subsequent violation.

6 114. Defendants violated Labor Code sections 226.7 and 512 by denying Plaintiff and
7 all other aggrieved employees of Defendants an opportunity to take timely off-duty and
8 uninterrupted thirty minute meal periods for every five hours worked, including timely off-duty
9 and uninterrupted thirty minute long meal periods before the end of the fifth hour of work, and by
10 failing to pay a premium wage equivalent to an additional hour of pay at the regular rate of pay for
11 each day a compliant meal period was not provided. Thus, pursuant to Labor Code section
12 2699(f)(2), Defendants are subject to a civil penalty of one hundred dollars (\$100) for each
13 aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for
14 each aggrieved employee per pay period for each subsequent violation.

15 115. Defendants violated Labor Code section 226.7 by denying Plaintiff and all other
16 aggrieved employees of Defendants a ten minute off-duty rest period for every four hours worked,
17 or major fraction thereof, and by failing to provide a premium wage equivalent to an additional
18 hour of pay at the regular rate of pay for each workday that a compliant rest period was not
19 provided. Thus, pursuant to Labor Code section 2699(f)(2), Defendants are subject to a civil
20 penalty of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
21 violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each
22 subsequent violation.

23 116. Defendants violated Labor Code section 226(a) by failing to provide Plaintiff and
24 all other aggrieved employees of Defendants with accurate itemized wage statements correctly
25 identifying, among other things all hourly rates of pay in effect during applicable pay periods,
26 including but not limited to the rate of pay for overtime and "Overtime Prem" compensation, the
27 correct amount of gross wages earned, the correct amount of net wages earned, and the correct
28 amount of deductions that were paid or should have been paid. Thus, pursuant to Labor Code

1 sections 226.3 and 2699(a), Defendants, in addition to, and entirely independent and apart from
2 any other penalty, are subject to a civil penalty for violation Labor Code section 226(a) in the
3 amount of two hundred and fifty dollars (\$250) per aggrieved employee per violation in an initial
4 citation and one thousand dollars (\$1,000) per aggrieved employee for each violation in a
5 subsequent citation.

6 117. At all material times, Defendants were Plaintiff and all other aggrieved employees'
7 employers, or persons acting on their behalf, within the meaning of Labor Code section 558, who
8 violated or caused to be violated, a section of Part 2, Chapter 1 of the Labor Code or any provision
9 regulating hours and days of work in the applicable IWC Wage Order and, as such, are subject to
10 civil penalties for each underpaid employee as set forth in Labor Code section 558. The civil
11 penalties provided for under Labor Code section 558 are in addition to any other civil penalty
12 provided by law.

13 118. Pursuant to Labor Code sections 558 and 2699(a), Defendants are subject to a civil
14 penalty of fifty dollars (\$50) for each initial violation and one hundred dollars (\$100) for each
15 subsequent violation of Labor Code section 226.7 for each pay period for which Plaintiff and all
16 other aggrieved employees of Defendants were not provided with a compliant timely off-duty and
17 uninterrupted thirty minute meal period and/or ten minute long rest periods for every four hours
18 worked, or major fraction thereof, as alleged herein.

19 119. Defendants violated Labor Code section 1198 by failing to comply with the
20 maximum hours of work and the standards conditions of labor fixed by the IWC under the "Meal
21 Period", the "Rest Period" and "Record" sections of the applicable IWC Wage Order, by failing to
22 provide compliant meal periods, failing to pay meal periods premium wages, failing to provide
23 compliant rest periods, failing to pay rest period premium wages, failing to keep and provide
24 accurate records, and failing to timely pay owed wages upon separation of employment, as alleged
25 herein. Thus pursuant to Labor Code section 2699(f)(2), Defendants are subject to a civil penalty
26 in the amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the
27 initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for
28 each subsequent violation.

120. Defendants violated Labor Code section 1198 by failing to comply with the section 14 of the applicable IWC Wage Order, by failing to provide suitable seating to Plaintiff and aggrieved employees. Thus pursuant to Labor Code section 2699(f)(2), Defendants are subject to a civil penalty in the amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays:

That the Court issue an Order certifying the Classes herein, appointing Plaintiff as representative of all others similarly situated, and appointing the law firm representing Plaintiff as counsel for the members of the Classes;

As to the First Cause of Action for Failure to Provide Meal Periods:

1. For one (1) hour of pay at the regular rate of compensation for each member of the Hourly Employee Class for each workday that a full meal period was not provided;

2. For pre-judgment interest as authorized by Labor Code section 218.6 and Civil Code section 3287;

3. For an award of reasonable attorneys' fees and costs pursuant to Labor Code section 218.5.

As to the Second Cause of Action for Failure to Provide Rest Periods:

4. For one (1) hour of pay at the regular rate of compensation for each member of the Hourly Employee Class for each workday that a full rest period was not provided;

5. For pre-judgment interest as authorized by Labor Code section 218.6 and Civil Code section 3287;

6. For an award of reasonable attorneys' fees and costs pursuant to Labor Code section 218.5.

As to the Third Cause of Action for Failure to Provide Complete and Accurate Itemized Wage Statements:

7. For recovery as authorized by Labor Code section 226(e);

8. For an award of costs and reasonable attorneys' fees pursuant to Labor Code section 226, subdivision (e) and/or subdivision (g);

As to the Fourth Cause of Action for Violations of Labor Code section 203:

9. For recovery as authorized by Labor Code section 203;

As to the Fifth Cause of Action for Failure to Provide Suitable Seating:

10. For recovery as authorized by Labor Code section 1198;

11. For an award of costs and reasonable attorneys' fees pursuant to Labor Code section 226, subdivision (e) and/or subdivision (g);

As to the Sixth Cause of Action for Unfair Business Practices:

12. For an accounting, under administration of Plaintiff and/or the receiver and subject to Court review, to determine the amount to be returned by Defendant, and the amounts to be refunded to members of the Classes who are owed monies by Defendant;

13. For an Order requiring Defendant to identify each of the members Classes by name, home address, and home telephone number;

14. For an Order requiring Defendant to make full restitution and payment pursuant to California law;

15. For the creation of an administrative process wherein each injured member of the Classes may submit a claim in order to receive his/her money;

16. For all other appropriate injunctive, declaratory and equitable relief;

17. For interest to the extent permitted by law;

18. For an award of attorneys' fees and costs incurred in the investigation, filing and prosecution of this action pursuant to Code of Civil Procedure section 1021.5, Business & Professions Code section 17200, *et seq.*, Labor Code section 1194 and/or any other applicable provision of law.

As to the Ninth Cause of Action for Violation of PAGA:

19. For all civil penalties authorized by Labor Code section 2698, *et seq.*;

20. For civil penalties under Labor Code section 226.3 in the amount two hundred fifty dollars (\$250) per aggrieved employee for the first violation, and one thousand dollars (\$1,000)

1 per aggrieved employee for each subsequent violation;

2 21. For civil penalties under Labor Code section 210 in the amount of one hundred
3 dollars (\$100.00) for each aggrieved employee for each initial violation that was neither willful
4 nor intentional, and two hundred dollars (\$200.00) for each aggrieved employee, plus twenty-five
5 percent (25%) of the amount unlawfully withheld from each aggrieved employee, for each
6 subsequent violation, regardless of whether the subsequent violation was willful or intentional;

7 22. For civil penalties under Labor Code section 2699(f), for Labor Code violations
8 without a specific civil penalty, in the amount of one hundred dollars (\$100.00) for each aggrieved
9 employee per pay period for each initial violation and two hundred dollars (\$200.00) for each
10 aggrieved employee per pay period for each subsequent violation;

11 23. For civil penalties per Labor Code section 256 in the amount of one day of pay, at
12 the same rate, for each day that an aggrieved employee was paid late, at the time of termination,
13 until payment was/is made, up to a maximum of thirty (30) days;

14 24. For civil penalties under Labor Code section 558, as follows: (1) for an initial
15 violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the
16 employee was underpaid; and (2) for each subsequent violation, one hundred dollars (\$100) for
17 each underpaid employee for each pay period for which the employee was underpaid;

18 26. For an award of reasonable attorneys' fees and costs pursuant to Labor Code
19 section 2699(g)(1), or other applicable laws, and pre-judgment and post-judgment interest as
20 provided by law;

21 As to All Causes of Action:

22 27. For such relief as this Court may deem just and proper, including reasonable
23 attorneys' fees and costs incurred.

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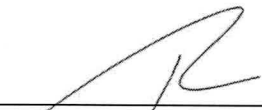
28 ///

BOUCHER LLP
21600 Oxnard Street, Suite 600
Woodland Hills, California 91367

1 DATED: January 26, 2021

BOUCHER LLP

2
3 By:


4 RAYMOND P. BOUCHER
5 ALEXANDER GAMEZ
6 MALLORY WHITE LAW

7 *Attorneys for Plaintiff Maria Benavidez Herrera*
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BOUCHER LLP
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Woodland Hills, California 91367

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all claims alleged in Plaintiff's Complaint to the fullest extent authorized by law.

DATED: January 26, 2021

Respectfully submitted,

BOUCHER LLP

By: 

RAYMOND P. BOUCHER
ALEXANDER GAMEZ
MALLORY WHITELOW

Attorneys for Plaintiff Maria Benavidez Herrera

EXHIBIT A

EXHIBIT A

BOUCHERLLP

21600 Oxnard Street, Suite 600
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November 18, 2020

ELECTRONICALLY FILED

Attn: PAGA Administrator
Labor and Workforce Development Agency
1515 Clay Street, Suite 801
Oakland, California 94612
PAGAfilings@dir.ca.gov

VIA CERTIFIED MAIL

PLS Check Cashers of California, Inc.
c/o Agent for Service of Process
Attn: Erin Upchurch
Cogency Global Inc.
1325 J Street., Suite 1550
Sacramento, California 95814

Re: *Maria Benavidez Herrera v. PLS Check Cashers of California, Inc., et al.*
Notice Regarding Private Attorneys General Act of 2004 Claim

To Whom It May Concern:

Pursuant to section 2699.3 of the California Labor Code Private Attorneys General Act of 2004 ("PAGA" or "the Act") (Lab. Code § 2698 *et seq.*), this letter shall serve as written notice of claims for civil penalties that will be pursued by Ms. Maria Benavidez Herrera as proxy for the Labor and Workforce Development Agency on behalf of all non-exempt aggrieved employees employed by PLS Check Cashers of California, Inc. ("PLS") in California during the statutory period, against PLS.

PLS is a check casher and payday lender with branches across California. PLS employed Ms. Benavidez Herrera as a Shift Supervisor in California at its store located at 5201 Whittier Blvd, Los Angeles, California from approximately February 2018 through the date of her termination on November 13, 2020. Pursuant to California law, PLS was at all relevant times Ms. Benavidez Herrera's employer during the statutory period.

In her representative action, Ms. Benavidez Herrera will seek civil penalties pursuant to PAGA as a result of PLS' failure to: (1) provide proper meal periods and/or premium pay for non-compliant meal periods (Lab. Code §§ 226.7, 512, 558, 1198, 1199); (2) provide proper rest

periods and/or premium pay for non-compliant rest periods (Lab. Code §§ 226.7, 558, 1197, 1198, 1199); (3) provide suitable seating (Lab. Code section 1198 and Wage Order 4-2001, section 14); (4) furnish complete and accurate itemized wage statements (Lab. Code § 226(a); and (5) timely pay all wages due within the time permitted upon separation of employment (Lab. Code §§ 201-203).

FAILURE TO PROVIDE MEAL PERIODS

(Labor Code §§ 226.7, 512(a), 558, 1198, 2699, and the "Meal Periods" Section of the Applicable Wage Order)

Labor Code section 226.7(b) states, in pertinent part, "An employer shall not require an employee to work during meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission"

Labor Code section 226.7(c), provides that if an employer fails to provide an employee a meal period in accordance with statute or an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided.

Labor Code section 512(a) states, in pertinent part, "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes... [a]n employer may not employ an employee for a work period of more than ten hours per day without providing the employee with a second meal period of not less than thirty minutes, except that if the total hours worked is no more than twelve hours, the second meal period may be waived by mutual consent of the employer and employee only if the first meal period was not waived."

Labor Code section 1198 states, in pertinent part, "The employment of any employee... under conditions of labor prohibited by the [Wage Order] is unlawful."

In relevant part, Section 2 of the applicable Wage Order states that, "Hours worked means 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."

Section 11 of the applicable Wage Order provides that:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on-duty" meal period and counted as time worked. An "on-duty"

meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employer's regular rate of compensation for each workday that the meal period is not provided.

Upon information and belief, PLS failed and fail to provide Ms. Benavidez Herrera and aggrieved employees with compliant thirty minute off-duty meal periods for work periods of more than five hours and failed to pay them premium wages at their regular rates of pay on workdays they failed to provide them with required meal periods. If Ms. Benavidez Herrera was paid a meal period premium it was paid at the base rate rather than at her regular rate of pay as a result of PLS' failure to account for all remuneration paid to her.

Accordingly, Ms. Benavidez Herrera, on behalf of herself and aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

FAILURE TO PROVIDE REST PERIODS

(Labor Code §§ 226.7, 1198, 2699, and the "Rest Periods" Section of the Applicable Wage Order)

Labor Code section 1198 states, in pertinent part, "The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

Labor Code section 226.7(b) states, in pertinent part, "An employer shall not require an employee to work during meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission."

Pursuant to *Augustus v. ABM Security Services, Inc.*, (2017) 2 Cal.5th 257, 260, "[d]uring required rest periods, employers must relieve their employees of all duties and relinquish any control over how employees spend their break time."

Labor Code section 226.7(c), provides that if an employer fails to provide an employee a rest period in accordance with statute or an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

Section 12 of the applicable Wage Order provides that:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle each work period. The authorized rest period 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.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensations for each workday that the rest period is not provided.

Upon information and belief, PLS' policies and practices failed and fail to provide Ms. Benavidez Herrera and aggrieved employees with off-duty net rest periods of at least ten minutes for each four hours worked, or major fraction thereof, and failed and fail to pay them a premium wage at their regular rates of pay on workdays PLS failed to provide them with an opportunity to take rest periods. For example, Ms. Benavidez Herrera often worked shifts from 7:00 a.m. to 4:00 p.m. wherein she was entitled to two ten minutes rest periods. However, she was not provided the opportunity to take all rest periods for every four hours or a major fraction thereof per shift.

Accordingly, Ms. Benavidez Herrera, on behalf of herself and aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

FAILURE TO PROVIDE SUITABLE SEATING

(Lab. Code section 1198 and Wage Order 7-2001, section 14))

Labor Code section 1198 states, in pertinent part, "The employment of any employee... under conditions of labor prohibited by the [Wage Order] is unlawful."

Section 14 of the applicable Wage Order provides that:

- (A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.
- (B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

Upon information and belief, at all relevant times, PLS failed to provide Ms. Benavidez Herrera and aggrieved employees with suitable seating during their employment as required by section 14 of the applicable Wage Order. For example, Ms. Benavidez Herrera

and other aggrieved employees were not provided with seating during shifts from the first to the seventh day of every month in which they worked in a Shift Supervisor or Customer Service Representative or other position which would reasonably permit the use of seating. Upon information and belief, the work performed by a Shift Supervisor and/or Customer Service Representative includes, but is not limited to, providing customer service, transaction processing, maintenance of cash drawers, cash handling, and other common tasks which could be performed while seated and the location of the tasks to be performed made it feasible to do so while seated.

Accordingly, Ms. Benavidez Herrera, on behalf of herself and aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226, 226.3, and 2699)

Labor Code section 226(a) requires an employer to provide an employee with an accurate itemized wage statement that shows: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece-rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is pay; (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each rate by the employee.

For violations of Labor Code section 226(a), Labor Code section 226.3 imposes a civil penalty on any employer that violates section 226(a) in the amount of \$250.00 per employee per violation in an initial citation and \$1,000.00 per employee for each subsequent violation. The civil penalties provided for in Labor Code section 226.3 are in addition to any other penalty provided by law.

As a result of alleged violations discussed above, PLS furnished wage statements that failed to correctly show, among other items: (1) gross wages earned, (2) all deductions, and (3) net wages earned. Further, Ms. Benavidez Herrera and aggrieved employees' were provided incompliant wage statements by PLS because For example, PLS furnished upon Ms. Benavidez Herrera wage statements failed to accurately identify all hourly rates of pay in effect during applicable pay periods, including but not limited to the rate of pay for overtime and "Overtime Prem" compensation.

Accordingly, Ms. Benavidez Herrera on behalf of herself and other aggrieved employees, will seek to recover available civil penalties for violations of Labor Code 226(a).

FAILURE TO TIMELY PAY WAGES UPON SEPARATION OF EMPLOYMENT

(Labor Code §§ 201, 202, 203, 256, and 2699)

Labor Code section 201 states, in pertinent part, "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

Labor Code section 202 states, in pertinent part, "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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."

Labor Code section 203 provides that an employee's wages shall continue as a penalty from when they first become due at the same rate until paid for up to 30 days when an employer willfully fails to timely pay all earned and unpaid wages in accordance with Labor Code section 201 or 202.

Labor Code section 256, in pertinent part, provides that a civil penalty shall be imposed in an amount not exceeding 30 days pay as waiting time under the terms of Section 203.

PLS willfully failed and fails to provide Ms. Benavidez Herrera, and, upon information and belief, aggrieved employees all wages due and owed upon separation of employment. By furnishing Ms. Benavidez Herrera and aggrieved employees with a final check that failed to include all earned and owed wages including all meal period premiums and rest period premiums – as described above, PLS violated Labor Code sections 201 or 202.

Accordingly, Ms. Benavidez Herrera, on behalf of herself and aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND IWC**WAGE ORDERS**

(Labor Code § 558)

Labor Code section 558 subjects any employer or other person acting on behalf of an employer who violates Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558), or any provision regulating the hours and days in any IWC Wage Order, to a civil penalty in the amount of \$50 for any initial violation for each pay period in which an employee is underpaid, and \$100 for each subsequent violation.

As set forth above, PLS failed to provide Ms. Benavidez Herrera and aggrieved employees compliant meal periods and rest periods, and failed to pay premium wages owed as a result of its policies and practices that prevented Ms. Benavidez Herrera and aggrieved employees from taking

compliant meal and rest periods. Accordingly, Ms. Benavidez Herrera, on behalf of aggrieved employees, will seek to recover civil penalties under Labor Code section 558.

CONCLUSION

The allegations set forth herein are supported by, among other things, records and documents from Ms. Benavidez Herrera's employment with PLS, including wage statements, and Ms. Benavidez Herrera's confirmation of PLS' unlawful practices and policies. As a result of the foregoing violations, Ms. Benavidez Herrera is entitled to file a Complaint and invoke the protections of PAGA. Ms. Benavidez Herrera has placed PLS on notice by mailing a certified copy of this notice to its corporate headquarters and/or authorized agents.

Very truly yours,

BOUCHER LLP

By: _____

Alexander Gamez, Esq.