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9

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY LOS ANGELES
13

14 TATIANA PAEZ and LESLIE
15 BENNINGHOFF, as aggrieved employees
16 pursuant to the Private Attorneys General
Act ("PAGA"), on behalf of the State of
California and other aggrieved employees,

17 Plaintiffs,

18 vs.

19 BEVERAGES & MORE, INC., a Delaware
20 corporation; BEVMO HOLDINGS, LLC, a
21 Delaware limited liability company; and
DOES 1 through 10, inclusive,

22 Defendants.
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FILED
Superior Court of California
County of Los Angeles
04/07/2021
Sherri R. Carter, Executive Officer / Clerk of Court
By: M. Quinteros Deputy

Case No.: 19STCV30950

**SECOND AMENDED COMPLAINT –
PAGA ENFORCEMENT ACTION**

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

Jury Trial Demanded

1 Plaintiffs Tatiana Paez and Leslie Benninghoff, as aggrieved employees and on behalf
2 of the State of California and all other aggrieved employees, allege as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698 *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiffs, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations
9 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on June 25, 2019, until judgment (“non-party Aggrieved Employees”).
14 Plaintiffs’ share of civil penalties sought in this action does not exceed \$75,000.

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

18 3. This Court has jurisdiction over all Defendants because, on information and
19 belief, Defendants are either citizens of California, have sufficient minimum contacts in
20 California, or otherwise intentionally avail themselves of the California market so as to render
21 the exercise of jurisdiction over them by the California courts consistent with traditional
22 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
23 in this action given that the State of California, as the real party in interest in this action, is not
24 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
25 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
26 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
27 in this action, and that diversity jurisdiction cannot be established when Plaintiffs’ share of the
28 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

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

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

THE PARTIES

6. Plaintiff Tatiana Paez is a resident of Panorama City, in Los Angeles County, California. Defendants employed Plaintiff Paez as an hourly paid, non-exempt Sales Associate and Head Clerk from approximately October 2014 to April 2019. Plaintiff Paez worked for Defendants at their locations in Van Nuys, Encino, and Studio City, California. During her employment, Plaintiff Paez typically worked seven (7) to eight (8) hours per day and five (5) days per week. At the time Plaintiff Paez's employment with Defendants ended, she earned approximately \$14.50 per hour. Her job duties included, without limitation, organizing and stocking merchandise, providing customer service, operating the cash registers, training staff, and balancing registers.

7. Plaintiff Leslie Benninghoff is a resident of El Cajon, in San Diego County, California. Defendants employed Plaintiff Benninghoff as an hourly paid, non-exempt Seasonal Sales Associate/ BevMologist from November 2017 to January 2018, and then as a Sales Associate/ BevMologist from October 2019 to March 2020. Plaintiff Benninghoff worked for Defendants at their locations in Mira Loma and Santee, California. During her employment, Plaintiff Benninghoff typically worked four (4) hours or more per day and two (2) to three (3) days per week. At the time Plaintiff Benninghoff's employment with Defendants ended, she earned approximately \$13.00 per hour. Her job duties included, without limitation, providing customer service, operating the cash registers, and organizing and stocking merchandise.

8. On information and belief, Defendants required some employees, including

1 Plaintiffs, to execute a dispute resolution policy and/or arbitration agreement at the time of
2 their hire or during their employment. On further information and belief, Defendants' dispute
3 resolution policy and/or arbitration agreement was and is both procedurally and substantively
4 unconscionable. Specifically, Defendants presented new hires with an "Arbitration
5 Agreement" during the onboarding process, which had to be reviewed and signed
6 immediately. In fact, upon information and belief, the Arbitration Agreement was one of
7 several documents presented to new employees for signature during the orientation process,
8 including an Acknowledgement of Having Read and Understood Handbook, a Department of
9 Alcoholic Beverage Control Clerk's Affidavit, and a Security Awareness and Acceptable Use
10 Policy, among other documents. Also, employees did not have a meaningful opportunity to
11 negotiate the terms of the Arbitration Agreement. Rather, it was provided to Defendants'
12 employees for them to sign on a take-it or leave-it basis at the time they were hired, along
13 with all of the other on-boarding documents. Further, Defendants did not set forth in the
14 agreement or otherwise provide employees with the rules which will govern the arbitration,
15 instead forcing employees to seek this information out on their own ("The Judicial Arbitration
16 & Mediation Services ('JAMS') Employment Arbitration Rules & Procedures ('JAMS Rules')
17 shall apply to the proceedings, and can be found at [www.jamsadr.com/rules-employment-](http://www.jamsadr.com/rules-employment-arbitration)
18 [arbitration.](http://www.jamsadr.com/rules-employment-arbitration)").

19 9. BEVERAGES & MORE, INC. was and is, upon information and belief, a
20 Delaware corporation, and at all times hereinafter mentioned, an employer whose employees
21 are engaged throughout this county, the State of California, or the various states of the United
22 States of America.

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

27 11. Plaintiffs are unaware of the true names or capacities of the Defendants sued
28 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to

1 amend the complaint and serve such fictitiously named Defendants once their names and
2 capacities become known.

3 12. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10
4 were the partners, agents, owners, or managers of BEVERAGES & MORE, INC. at all
5 relevant times.

6 13. Plaintiffs are informed and believe, and thereon allege, that each and all of the
7 acts and omissions alleged herein was performed by, or is attributable to, BEVERAGES &
8 MORE, INC.; BEVMO HOLDINGS, LLC; and/or DOES 1 through 10 (collectively,
9 “Defendants” or “BEVMO!”), each acting as the agent, employee, alter ego, and/or joint
10 venturer of, or working in concert with, each of the other co-Defendants and was acting within
11 the course and scope of such agency, employment, joint venture, or concerted activity with
12 legal authority to act on the others’ behalf. The acts of any and all Defendants were in
13 accordance with, and represent, the official policy of Defendants.

14 14. At all relevant times, Defendants, and each of them, ratified each and every act
15 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
16 and abetted the acts and omissions of each and all the other Defendants in proximately causing
17 the damages herein alleged.

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

21 16. Under California law, Defendants are jointly and severally liable as employers
22 for the violations alleged herein because they have each exercised sufficient control over the
23 wages, hours, working conditions, and employment status of Plaintiffs and other non-party
24 Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiffs and other
25 non-party Aggrieved Employees, supervised and controlled their work schedule and/or
26 conditions of employment, determined their rate of pay, and maintained their employment
27 records. Defendants suffered or permitted Plaintiffs and other non-party Aggrieved
28 Employees to work and/or “engaged” Plaintiffs and other non-party Aggrieved Employees so

1 as to create a common-law employment relationship. As joint employers of Plaintiffs and
2 other non-party Aggrieved Employees, Defendants are jointly and severally liable for the civil
3 penalties available to Plaintiffs and other non-party Aggrieved Employees under the law.

4 17. Plaintiffs are informed and believe, and thereon allege, that at all relevant
5 times, Defendants, and each of them, have acted as joint employers with respect to Plaintiffs
6 and other non-party Aggrieved Employees because Defendants have:

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

25 18. Plaintiffs are informed and believe, and thereon allege, that at all relevant times
26 there has existed a unity of interest and ownership between Defendants such that any
27 individuality and separateness between the entities has ceased.

28 19. BEVERAGES & MORE, INC.; BEVMO HOLDINGS, LLC; and DOES 1

1 through 10 are therefore alter egos of each other.

2 20. Adherence to the fiction of the separate existence of Defendants would permit
3 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
4 from liability for the wrongful acts committed by them under the name BEVMO!.

5 21. Plaintiffs further allege, upon information and belief, that Defendants
6 BEVERAGES & MORE, INC. and BEVMO HOLDINGS, LLC are alter egos of each other
7 for the following reasons:

- 8 (a) On the California Secretary of State’s website
9 (<https://businesssearch.sos.ca.gov/>), BEVERAGES & MORE, INC. and
10 BEVMO HOLDINGS, LLC have the same entity address and/or mailing
11 address, which is “1401 Willow Pass Rd. Suite 900, Concord, CA
12 94520”;
- 13 (b) According to their most recent “Statement of Information” forms filed
14 with the California Secretary of State, BEVERAGES & MORE, INC.
15 and BEVMO HOLDINGS, LLC share the same Chief Executive
16 Officer—Dimitri Haloulos;
- 17 (c) On information and belief, BEVERAGES & MORE, INC. and BEVMO
18 HOLDINGS, LLC utilize the same standardized employment forms and
19 issue the same employment policies; and
- 20 (d) BEVERAGES & MORE, INC. and BEVMO HOLDINGS, LLC share
21 the same agent for service of process, Douglas Christman.

22 **PAGA REPRESENTATIVE ALLEGATIONS**

23 22. Defendants are the leading alcoholic beverage specialty retailer in the western
24 United States, with nearly 170 stores located throughout California, Arizona, and Washington.
25 Upon information and belief, Defendants maintain a single, centralized Human Resources
26 (“HR”) department at their corporate headquarters in Concord, California, which is
27 responsible for recruiting and hiring of new employees, and communicating and implementing
28 Defendants’ company-wide policies, including timekeeping policies and meal and rest period

1 policies, to employees throughout California.

2 23. In particular, Plaintiffs and other non-party Aggrieved Employees, on
3 information and belief, received the same standardized documents and/or written policies.
4 Upon information and belief, the usage of standardized documents and/or written policies,
5 including new-hire documents, indicate that Defendants dictated policies at the corporate level
6 and implemented them company-wide, regardless of their employees' assigned locations or
7 positions. Upon information and belief, Defendants set forth uniform policies and procedures
8 in several documents provided at an employee's time of hire.

9 24. Upon information and belief, Defendants maintain a centralized Payroll
10 department at their corporate headquarters in Concord, California, which processes payroll for
11 all non-exempt, hourly paid employees working for Defendants at their various locations and
12 jobsites in California, including Plaintiffs and other non-party Aggrieved Employees. Based
13 upon information and belief, Defendants issue the same formatted wage statements to all non-
14 exempt, hourly paid employees in California, irrespective of their work locations. Upon
15 information and belief, Defendants process payroll for departing employees in the same
16 manner throughout the State of California, regardless of the manner in which each employee's
17 employment ends.

18 25. Defendants continue to employ non-exempt or hourly paid employees in
19 California.

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

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

27 28. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
28 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to

1 receive certain wages for overtime compensation and that they were not receiving certain
2 wages for overtime compensation.

3 29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
4 should have known that other non-party Aggrieved Employees were entitled to be paid at a
5 regular rate of pay, and corresponding overtime rates of pay, that included as eligible income
6 all income derived from incentive pay, nondiscretionary bonuses, and/or other forms of
7 compensation.

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

14 31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
15 should have known that other non-party Aggrieved Employees were entitled to meal periods
16 in accordance with the Labor Code or payment of one (1) additional hour of pay at their
17 regular rates of pay when they were not provided with timely, uninterrupted, thirty (30)
18 minute meal periods and that other non-party Aggrieved Employees were not provided with
19 all meal periods or payment of one (1) additional hour of pay at their regular rates of pay
20 when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

21 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
22 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
23 rest periods in accordance with the Labor Code and applicable IWC Wage Order or payment
24 of one (1) additional hour of pay at their regular rates of pay when they were not authorized
25 and permitted to take a compliant rest period. In violation of the California Labor Code,
26 Plaintiffs and other non-party Aggrieved Employees were not authorized and permitted to take
27 compliant rest periods, nor did Defendants provide Plaintiffs and other non-party Aggrieved
28 Employees with payment of one (1) additional hour of pay at their regular rates of pay when

1 they were not authorized and permitted to take a compliant rest period.

2 33. Plaintiffs are informed and believe, and thereon alleges, that Defendants knew
3 or should have known that Plaintiffs and other non-party Aggrieved Employees were entitled
4 to receive complete and accurate wage statements in accordance with California law. In
5 violation of the California Labor Code, Plaintiffs and other non-party Aggrieved Employees
6 were not provided complete and accurate wage statements.

7 34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
8 should have known that they had a duty to maintain accurate and complete payroll records in
9 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
10 and intentionally failed to do so.

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

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

23 37. Plaintiffs are informed and believe, and thereon allege, that at all times herein
24 mentioned, that Defendants knew or should have known that they had a duty to cover the costs
25 and expenses other non-party Aggrieved Employees incurred obtaining mandatory physical
26 examinations and/or drug tests, but willfully, knowingly, and intentionally failed to do so.

27 38. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
28 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to

1 suitable seating and/or were entitled to sit when it did not interfere with the performance of
2 their duties and also have seats nearby to use during a lull in tasks that do require moving
3 about or standing.

4 39. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
5 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
6 receive reimbursement for all business-related expenses and costs they incurred during the
7 course and scope of their employment and that they did not receive reimbursement of
8 applicable business-related expenses and costs incurred.

9 40. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
10 should have known that they had a duty to provide Plaintiff Benninghoff and other non-party
11 Aggrieved Employees with safety devices and safeguards, such as personal protective
12 equipment, to protect their life, safety, and health in the workplace, but willfully, knowingly,
13 and intentionally failed to do so.

14 41. Plaintiffs are informed and believe, and thereon allege, that at all times herein
15 mentioned, Defendants knew or should have known that they had a duty to compensate
16 Plaintiffs and other non-party Aggrieved Employees for all hours worked, and that Defendants
17 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
18 failed to do so, and falsely represented to Plaintiffs and other non-party Aggrieved Employees
19 that they were properly denied wages, all in order to increase Defendants' profits.

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

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

1 44. Plaintiffs and other current and former employees of Defendants are “aggrieved
2 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
3 or former employees and one or more of the alleged violations were committed against them.

4 45. Pursuant to California Labor Code sections 2699.3 and 2699.5, aggrieved
5 employees, including Plaintiffs, may pursue a civil action arising under PAGA after the
6 following requirements have been met:

- 7 (a) The aggrieved employee shall give written notice by online filing
8 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail
9 to the employer of the specific provisions of the California Labor Code
10 alleged to have been violated, including the facts and theories to support
11 the alleged violations.
- 12 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
13 2699.3(a) and any employer response to that notice shall be
14 accompanied by a filing fee of seventy-five dollars (\$75).
- 15 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
16 employer and the aggrieved employee by certified mail that it does not
17 intend to investigate the alleged violation within sixty (60) calendar
18 days of the postmark date of the Employee’s Notice. Upon receipt of
19 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
20 five (65) calendar days of the postmark date of the Employee’s Notice,
21 the aggrieved employee may commence a civil action pursuant to
22 California Labor Code section 2699 to recover civil penalties in addition
23 to any other penalties to which the employee may be entitled.

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

- 28 (a) The aggrieved employee or representative shall give written notice by

1 online filing to the LWDA and by certified mail to the employer of the
2 specific provisions of the California Labor Code alleged to have been
3 violated (other than those listed in Section 2699.5), including the facts
4 and theories to support the alleged violation.

5 (b) An aggrieved employee's notice filed with the LWDA pursuant to
6 2699.3(c) and any employer response to that notice shall be
7 accompanied by a filing fee of seventy-five dollars (\$75).

8 (c) The employer may cure the alleged violation within thirty-three (33)
9 calendar days of the postmark date of the notice. The employer shall
10 give written notice by certified mail within that period of time to the
11 aggrieved employee or representative and the agency if the alleged
12 violation is cured, including a description of actions taken, and no civil
13 action pursuant to Section 2699 may commence. If the alleged violation
14 is not cured within the 33-day period, the employee may commence a
15 civil action pursuant to Section 2699.

16 47. On June 25, 2019, Plaintiff Paez provided written notice by online filing to the
17 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
18 Code alleged to have been violated, including facts and theories to support the alleged
19 violations, in accordance with California Labor Code section 2699.3. Plaintiff Paez's written
20 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
21 LWDA PAGA Administrator confirmed receipt of Plaintiff Paez's written notice and assigned
22 Plaintiff Paez PAGA Case Number LWDA-CM-710744-19. On August 2, 2019, Plaintiff
23 Paez sent an amended written notice by online filing to the LWDA and by certified mail to
24 Defendants of the specific provisions of the California Labor Code alleged to have been
25 violated, supplementing and clarifying the facts and theories to support the alleged violations
26 set forth in her original LWDA notice, in accordance with California Labor Code section
27 2699.3. True and correct copies of Plaintiff Paez's written notices to the LWDA and
28 Defendants dated June 25, 2019, and August 2, 2019, are attached hereto as "Exhibit 1."

1 48. On November 17, 2020, Plaintiff Benninghoff provided written notice by
2 online filing to the LWDA and by certified mail to Defendants of the specific provisions of
3 the California Labor Code alleged to have been violated, including facts and theories to
4 support the alleged violations, in accordance with California Labor Code section 2699.3.
5 Plaintiff Benninghoff's written notice was accompanied with the applicable filing fee of
6 seventy-five dollars (\$75). The LWDA PAGA Administrator confirmed receipt of Plaintiff
7 Benninghoff's written notice and assigned Plaintiff Benninghoff PAGA Case Number
8 LWDA-CM- 812754-20. A true and correct copy of Plaintiff Benninghoff's written notice to
9 the LWDA and Defendants dated November 17, 2020, is attached hereto as "Exhibit 2."

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

13 50. Thus, Plaintiffs have satisfied the administrative prerequisites under California
14 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
15 violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510,
16 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, 6401, and 6403.

17 51. Labor Code section 558(a) provides "[a]ny employer or other person acting on
18 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
19 provision regulating hours and days of work in any order of the Industrial Welfare
20 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
21 dollars (\$50) for each underpaid employee for each pay period for which the employee was
22 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
23 underpaid employee for each pay period for which the employee was underpaid. . . ." Labor
24 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
25 to any other civil or criminal penalty provided by law." Plaintiffs, acting in the public interest
26 as private attorneys general, seek assessment and collection of civil penalties under Labor
27 Code section 558 for themselves, all other non-party Aggrieved Employees, and the State of
28 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198,

1 and the applicable IWC wage order. Plaintiffs, acting in the public interest as private
2 attorneys general, do not seek the recovery of unpaid wages under Labor Code section 558
3 from Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the
4 applicable IWC wage order.

5 52. Defendants, at all times relevant to this complaint, were employers or persons
6 acting on behalf of an employer(s) who violated Plaintiffs' and other non-party Aggrieved
7 Employees' rights by violating various sections of the California Labor Code as set forth
8 above.

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

12 54. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
13 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiffs, acting in the public interest as
14 private attorneys general, seek assessment and collection of civil penalties for themselves, all
15 other non-party Aggrieved Employees, and the State of California against Defendants for
16 violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510,
17 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, 6401, and 6403.

18 **FIRST CAUSE OF ACTION**

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

20 **(Against all Defendants)**

21 55. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
22 and every allegation set forth above.

23 56. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiffs to recover
24 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
25 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 222.5,
26 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section
27 2699.3(c) permits aggrieved employees, including Plaintiffs, to recover civil penalties for
28 violations of those Labor Code sections not found in section 2699.5, including sections 516,

1 1182.12, 6401, and 6403.

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

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

1 earned wages upon termination, as set forth below;

2 (i) Violation of Labor Code section 222.5 for failing to compensate other
3 non-party Aggrieved Employees for mandatory physical examinations
4 and/or drug testing, as set forth below;

5 (j) Violation of Labor Code section 1198 for failing to provide suitable
6 seating to Plaintiffs and other non-party Aggrieved Employees, as set
7 forth below;

8 (k) Violation of Labor Code section 2802 for failure to reimburse Plaintiffs
9 and other non-party Aggrieved Employees for all business expenses
10 necessarily incurred, as set forth below; and

11 (l) Violation of Labor Code sections 6401 and 6403 for failure to provide
12 safety devices and safeguards, such as personal protective equipment, to
13 Plaintiff Benninghoff and other non-party Aggrieved Employees, as set
14 forth below.

15 **FAILURE TO PAY OVERTIME**

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

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 Plaintiffs and other non-party Aggrieved Employees working more than
28 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and

1 one-half (1½) for all hours worked in excess of eight (8) hours in a day or more than forty (40)
2 hours in a workweek.

3 61. The applicable IWC Wage Order further provides that Defendants are and were
4 required to pay Plaintiffs and other non-party Aggrieved Employees working more than
5 twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate
6 of pay. An employee's regular rate of pay includes all remuneration for employment paid to,
7 or on behalf of, the 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 Plaintiffs and other non-party Aggrieved Employees. During the relevant time
16 period, Plaintiffs and other non-party Aggrieved Employees were not paid overtime premiums
17 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
18 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
19 not recorded.

20 64. First, during the relevant time period, Defendants had a company-wide policy
21 and/or practice of discouraging and impeding Plaintiff Paez and other non-party Aggrieved
22 Employees from recording hours worked that were outside of their scheduled shifts in order to
23 limit the amount of overtime employees could accrue. Plaintiff Paez and other non-party
24 Aggrieved Employees were forced to work off-the-clock performing tasks after their
25 scheduled shift times, but were not provided a means by Defendants to account for this time.
26 For example, when Plaintiff Paez and other managerial employees worked closing shifts, they
27 were required to set an alarm upon exiting the store. Approximately 1-2 times per week,
28 Plaintiff Paez encountered problems with the alarm system, which required her to double-

1 check the alarm status and/or call the alarm company for assistance, which could take up to
2 10-15 minutes to resolve. It was not possible for Plaintiff Paez and other non-party Aggrieved
3 Employees to complete these tasks on the clock because they were required to punch out
4 before exiting the store, so they would work off-the-clock to set the store alarm. Thus,
5 Defendants failed to track this time spent working after clocking out, and Plaintiff Paez and
6 other non-party Aggrieved Employees received no compensation for this time.

7 65. Second, Defendants had, and continue to have, a loss prevention policy
8 requiring Plaintiffs and/or other non-party Aggrieved Employees to undergo security checks at
9 the end of their shifts before leaving the store premises. After clocking out at the end of their
10 shifts, Plaintiffs and/or other non-party Aggrieved Employees were required to wait off-the-
11 clock for another employee to become available to perform a security check before they could
12 leave. Per Defendants' company policy, "BevMo requires you, as an employee, to show a
13 supervisor or manager on duty the inside of any bag, purse, packaging, back packs[,] or bulky
14 attire or accessories of a concealing nature on your person before you leave the store. This
15 includes leaving at the end of your shift, for break, lunch[,] or anytime during your working
16 day." As a result, Plaintiffs and/or other non-party Aggrieved Employees were subject to
17 Defendants' control until being released by an employee performing the security check, but
18 were not compensated for this time.

19 66. Third, Defendants had a company-wide policy that required at least two
20 employees be present in the store at all times. This policy necessarily required that employees
21 leave together at the end of their shifts when closing the store. Combined with the labor
22 budget limitations (*see infra*) and practice of clocking out at the end of one's scheduled shift,
23 this policy resulted in other non-party Aggrieved Employees working off the clock at the end
24 of their shifts and/or having to wait for the manager on duty to wrap up closing procedures
25 before they could leave. At all times, other non-party Aggrieved Employees remained under
26 the control of Defendants. This off-the-clock work and idle waiting time could have been
27 recorded by Defendants, but they refused to do so to avoid payment of additional wages to
28 other non-party Aggrieved Employees.

1 67. Fourth, Plaintiff Paez and other non-party Aggrieved Employees were required
2 to travel to and from mandatory training while off the clock. For example, Plaintiff Paez
3 drove to or took public transportation to Glendale, California, and Burbank, California, to
4 complete mandatory training, which could take up to one (1) hour each way. Defendants, on a
5 company-wide basis, failed to compensate Plaintiff Paez and other non-party Aggrieved
6 Employees for the time they spent traveling to and from mandatory training.

7 68. Fifth, Defendants had a company-wide practice and/or policy of requiring
8 Plaintiff Paez and other non-party Aggrieved Employees to use their personal cellular phones
9 to communicate with Defendants management on their days off. For example, Plaintiff Paez
10 used her personal cellular phone to communicate via text message with store managers
11 regarding work-related matters, but was not compensated for this time.

12 69. Sixth, Defendants had, and continue to have, a company-wide policy and/or
13 practice of staffing their store locations strictly based on a labor budget set by the corporate
14 office. Defendants' use of a labor budget resulted in chronic understaffing, such that there
15 were too few employees on duty to handle the workload and provide uninterrupted meal
16 period coverage. Further, Defendants' company-wide timekeeping system locked employees
17 out once they clocked out for a meal period and would not permit them to clock back in before
18 their scheduled meal period end time. Defendants' timekeeping system further prevented
19 other non-party Aggrieved Employees from recording all hours worked when their meal
20 periods were shortened or interrupted. Thus, other non-party Aggrieved Employees were not
21 provided adequate meal period coverage to allow them to be relieved of their duties for
22 compliant meal periods. As a result, other non-party Aggrieved Employees missed meal
23 periods and/or had their meal periods interrupted, but were not compensated for this time.

24 70. Defendants knew or should have known that, as a result of these company-wide
25 practices and/or policies, Plaintiffs and other non-party Aggrieved Employees were
26 performing their assigned duties off-the-clock, and were suffered or permitted to perform
27 work for which they were not paid. Defendants also knew, or should have known, that they
28 did not compensate Plaintiffs and other non-party Aggrieved Employees applicable overtime

1 rates of pay for overtime hours that they worked.

2 71. Because Plaintiffs and other non-party Aggrieved Employees worked shifts of
3 eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock
4 work qualified for overtime premium pay. Therefore, Plaintiffs and other non-party
5 Aggrieved Employees were not paid overtime wages for all of the overtime hours they
6 actually worked.

7 72. Furthermore, Defendants did not pay other non-party Aggrieved Employees the
8 correct overtime rates for the recorded overtime hours that they generated. In addition to an
9 hourly wage, Defendants paid other non-party Aggrieved Employees incentive pay and/or
10 nondiscretionary bonuses. For example, other non-party Aggrieved Employees earned
11 bonuses based on store milestones reached, which appeared on their paystubs as “Bonus
12 Suppl.” However, in violation of the California Labor Code, Defendants failed to incorporate
13 all remunerations, including incentive pay and/or nondiscretionary bonuses, into the
14 calculation of the regular rate of pay for purposes of calculating the overtime wage rates.
15 Therefore, during times when other non-party Aggrieved Employees worked overtime and
16 received these other forms of pay, Defendants failed to pay all overtime wages by paying
17 lower overtime rates than required.

18 73. Defendants’ failure to pay Plaintiffs and other non-party Aggrieved Employees
19 the balance of overtime compensation as required by California law, violates the provisions of
20 California Labor Code sections 510 and 1198. Plaintiffs and other non-party Aggrieved
21 Employees are entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
22 2699(a), (f), and (g).

23 **FAILURE TO PAY MINIMUM WAGES**

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

25 74. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
26 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
27 to be paid to employees, and the payment of a wage less than the minimum so fixed is
28 unlawful. Compensable work time is defined by the applicable wage order as “the time

1 during which an employee is subject to the control of an employer, and includes all the time
2 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code.
3 Regs. tit. 8, § 11070(2)(G) (defining “Hours Worked”).

4 75. As set forth above, due to Defendants’ policy of limiting the amount of
5 overtime employees could accrue by discouraging and impeding Plaintiff Paez and other non-
6 party Aggrieved Employees from recording hours worked that were outside of their scheduled
7 shifts, Plaintiff Paez and other non-party Aggrieved Employees were required to work off-the-
8 clock after their shifts and on their days off to complete assigned job duties, such as setting
9 alarms, performing closing duties, responding to texts from Defendants’ management, and
10 traveling to mandatory training sessions. As also described above, Defendants had a
11 company-wide policy and practice requiring Plaintiffs and/or other non-party Aggrieved
12 Employees to submit to off-the-clock security checks. However, Defendants did not
13 compensate Plaintiffs and/or other non-party Aggrieved Employees for the time they spent
14 waiting to undergo security checks and the time undergoing security checks.

15 76. Additionally, as stated above, due to Defendants’ uniform practice of labor
16 budgeting and subsequent understaffing and lack of meal period coverage, other non-party
17 Aggrieved Employees were forced to forego meal periods and/or had their meal periods
18 interrupted by work. And, as described above, Defendants’ timekeeping system did not
19 permit other non-party Aggrieved Employees from clocking back in early when their meal
20 periods were interrupted.

21 77. Moreover, Defendants maintained and implemented a company-wide policy of
22 requiring all employees to travel to a medical facility on their own time and using their own
23 personal vehicles to undergo mandatory drug testing and/or physical examinations. At all
24 times, Defendants were in control of scheduling the date and time for the testing and/or
25 physical examinations, selecting the provider or facility where the testing and/or physical
26 examinations were to take place, and determining the scope of the testing and/or physical
27 examinations. Defendants gave other non-party Aggrieved Employees strict instructions to
28 obtain drug testing and/or physical examinations, and other non-party Aggrieved Employees

1 underwent the testing and/or examinations for the sole benefit of Defendants. Other non-party
2 Aggrieved Employees were required to travel in their own personal vehicles or obtain
3 alternate transportation and spend time undergoing Defendants' mandatory drug testing and/or
4 physical examinations. However, Defendants did not compensate other non-party Aggrieved
5 Employees for the time they spent traveling to and from the medical facilities or for the time
6 they spent undergoing the mandatory drug testing and/or physical examinations.

7 78. Thus, Defendants did not pay minimum wages for all hours worked by
8 Plaintiffs and other non-party Aggrieved Employees. To the extent that these off-the-clock
9 hours did not qualify for overtime premium payment, Defendants did not pay at least
10 minimum wages for those hours worked off-the-clock in violation of California Labor Code
11 sections 1182.12, 1194, 1197, and 1198.

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

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

17 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

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

21 81. At all relevant times herein set forth, California Labor Code section 512(a)
22 provides that an employer may not require, cause, or permit an employee to work for a period
23 of more than five (5) hours per day without providing the employee with a meal period of not
24 less than thirty (30) minutes, except that if the total work period per day of the employee is
25 not more than six (6) hours, the meal period may be waived by mutual consent of both the
26 employer and the employee. Under California law, first meal periods must start after no more
27 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
28 2012).

1 82. At all relevant times herein set forth, California Labor Code sections 226.7,
2 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
3 meal period mandated by an applicable order of the IWC.

4 83. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a),
5 1198 and the applicable IWC Wage Order also require employers to provide a second meal
6 period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or
7 to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if
8 the total hours worked is no more than twelve (12) hours, the second meal period may be
9 waived by mutual consent of the employer and the employee only if the first meal period was
10 not waived.

11 84. First, as stated, Defendants had, and continue to have, a uniform policy and/or
12 practice of understaffing locations due to labor budgeting, along with discouraging employees
13 from accruing overtime hours, which resulted in a lack of meal period coverage and prevented
14 other non-party Aggrieved Employees from taking all timely, uninterrupted meal periods to
15 which they were entitled. As a result of Defendants' practices and/or policies, other non-party
16 Aggrieved Employees had to work through part or all of their meal periods, have their meal
17 periods interrupted, and/or wait extended periods of time before taking meal periods.

18 85. Second, Defendants implemented an electronic timekeeping system that locked
19 other non-party Aggrieved Employees out and prevented them from clocking in early before
20 the end of their 30-minute meal period. As a result of Defendants' timekeeping system, other
21 non-party Aggrieved Employees were prevented from accurately recording when they were
22 required to return early from a meal period so that they could be compensated for that time.

23 86. Third, Defendants did not provide other non-party Aggrieved Employees with
24 second 30-minute meal periods on days that they worked in excess of ten (10) hours in one
25 day. Other non-party Aggrieved Employees did not sign valid meal period waivers on days
26 that they were entitled to meal periods and were not relieved of all duties.

27 87. Defendants knew or should have known that as a result of their policies, other
28 non-party Aggrieved Employees were not actually relieved of all duties to take timely,

uninterrupted meal periods. Defendants further knew or should have known that they did not pay other non-party Aggrieved Employees meal period premium wages when they were missed, late, short, and/or interrupted.

88. Defendants also have engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, other non-party Aggrieved Employees have not received premium pay for missed meal periods. Alternatively, to the extent that Defendants did pay meal period premium wages to other non-party Aggrieved Employees, they did so at the incorrect rates. Because Defendants did not properly calculate other non-party 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.

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

FAILURE TO AUTHORIZE AND PERMIT REST PERIODS

VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198

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

91. At all relevant times, 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.

1 92. At all relevant times, California Labor Code section 226.7 provides that no
2 employer shall require an employee to work during any rest period mandated by an applicable
3 order of the California IWC. To comply with its obligation to authorize and permit rest
4 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
5 employer must “relinquish any control over how employees spend their break time, and
6 relieve their employees of all duties—including the obligation that an employee remain on
7 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
8 *Inc.*, 2 Cal. 5th 257, 269-270 (2016).

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

13 94. As with meal periods, Defendants’ company-wide policy and practice of
14 understaffing and the resultant lack of rest period coverage, prevented Plaintiffs and other
15 non-party Aggrieved Employees from being relieved of all duty to take compliant rest periods.
16 Additionally, Defendants failed to schedule rest periods, which, coupled with Defendants’
17 failure to provide adequate rest period coverage, further impeded and prevented Plaintiffs and
18 other non-party Aggrieved Employees from taking compliant meal periods.

19 95. Additionally, upon information and belief, during the relevant time period,
20 Defendants maintained and implemented a company-wide on-premises rest period policy,
21 which mandated that Plaintiffs and/or other non-party Aggrieved Employees remain on
22 Defendants’ premises during their rest periods. Upon information and belief, Defendants’
23 company-wide on-premises rest period policy prevented Plaintiffs and/or other non-party
24 Aggrieved Employees from being relieved of all duties for rest periods and caused them to
25 perform work during rest periods.

26 96. As a result, Plaintiffs and other non-party Aggrieved Employees were
27 prevented from being relieved of all duty in order to take compliant rest periods and instead
28 would be required to continue working. As a result of Defendants’ practices and policies,

1 Plaintiffs and other non-party Aggrieved Employees worked shifts in excess of 3.5 hours, in
2 excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute
3 rest periods to which they were entitled. Throughout their employment, Plaintiff Paez was
4 never authorized or permitted to take a full and complete 10-minute rest period, and Plaintiff
5 Benninghoff was not authorized or permitted to take a full and complete 10-minute rest period
6 twice per week.

7 97. Defendants also have engaged in a company-wide practice and/or policy of not
8 paying all rest period premiums owed when compliant rest periods are not authorized or
9 permitted. Because of this practice and/or policy, Plaintiffs and other non-party Aggrieved
10 Employees have not received premium pay for all missed rest periods. Alternatively, to the
11 extent that Defendants did pay rest period premium wages to other non-party Aggrieved
12 Employees, they did so at the incorrect rates. Because Defendants did not properly calculate
13 other non-party Aggrieved Employees' regular rates of pay by including all forms of
14 remuneration, such as incentive pay and nondiscretionary bonuses, any premiums paid for rest
15 period violations were also paid at an incorrect rate and resulted in an underpayment of rest
16 period premium wages.

17 98. Defendants' conduct violates the applicable IWC Wage Order and California
18 Labor Code sections 226.7, 516, and 1198. Plaintiffs and other non-party Aggrieved Employees
19 are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
20 2699(a), (f), and (g).

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

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

28 100. During the relevant time period, Defendants have knowingly and intentionally

1 provided Plaintiffs and other non-party Aggrieved Employees with uniform, incomplete, and
2 inaccurate wage statements. For example, Defendants issued uniform wage statements to
3 Plaintiffs and other non-party Aggrieved Employees that fail to correctly list: gross wages
4 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the
5 pay period, including overtime rates of pay, and the corresponding number of hours worked at
6 each hourly rate. For example, Defendants issued wage statements to Plaintiffs and/or other
7 non-party Aggrieved Employees that fail to list all applicable hourly rates in effect during the
8 pay period, including overtime rates of pay, in violation of section 226(a)(9). Specifically,
9 Plaintiff Paez's paystub for the pay period ending March 30, 2019, does not list any applicable
10 pay rates for the pay period.

11 101. Separately, because Defendants did not record the time Plaintiffs and other non-
12 party Aggrieved Employees spent working off-the-clock, Defendants did not list the correct
13 amount of gross wages and net wages earned by Plaintiffs and other non-party Aggrieved
14 Employees, in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same
15 reason, Defendants failed to accurately list the total number of the hours worked by Plaintiffs
16 and other non-party Aggrieved Employees, in violation of section 226(a)(2), and failed to list
17 the applicable hourly rates of pay in effect during the pay period and the corresponding
18 accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

19 102. Further, because Defendants did not calculate other non-party Aggrieved
20 Employees' regular rate of pay correctly for purposes of paying overtime wages, Defendants did
21 not list the correct amount of gross wages earned by other non-party Aggrieved Employees in
22 compliance with section 226(a)(1) and did not list the correct amount of net wages earned by
23 other non-party Aggrieved Employees in violation of section 226(a)(5). Defendants also failed
24 to correctly list all applicable hourly rates in effect during the pay period, namely, correct
25 overtime rates of pay and correct rates of pay for premium wages, in violation of section
26 226(a)(9).

27 103. The wage statement deficiencies also include, without limitation, failing to list
28 the number of piece-rate units earned and any applicable piece rate if the employee is paid on

1 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and
2 only the last four digits of his or her social security number or an employee identification
3 number other than a social security number; failing to list the name and address of the legal
4 entity that is the employer; failing to list the inclusive dates of the period for which aggrieved
5 employees were paid; and/or failing to state all hours worked as a result of not recording or
6 stating hours worked off-the-clock.

7 104. California Labor Code section 1198 provides that the maximum hours of work
8 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
9 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
10 employment of any employees for longer hours than those fixed by the order or under
11 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
12 Wage Order, employers are required to keep accurate time records showing when the
13 employee begins and ends each work period and meal period. At all relevant times, as stated,
14 Defendants engaged in company-wide practices and/or policies of failing to record actual
15 hours worked, and thereby failed to keep accurate records of shift start and end times for
16 Plaintiffs and other non-party Aggrieved Employees in violation of section 1198. Also, in
17 light of Defendants’ failure to provide other non-party Aggrieved Employees with first and
18 second 30-minute meal periods to which they were entitled, Defendants kept no records of
19 meal start and end times for first and second meal periods.

20 105. California Labor Code section 1174(d) provides that “[e]very person employing
21 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
22 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
23 plants or establishments at which employees are employed, payroll records showing the hours
24 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
25 applicable piece rate paid to, employees employed at the respective plants or
26 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),
27 Defendants willfully failed to maintain accurate payroll records for Plaintiffs and other non-
28 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto

1 as a result of failing to record the off-the-clock hours that they worked.

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

6 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

7 **VIOLATION OF LABOR CODE SECTION 204**

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

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

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

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

28 ///

1 **FAILURE TO PAY WAGES UPON TERMINATION**

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

3 111. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
4 that if an employer discharges an employee, the wages earned and unpaid at the time of
5 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
6 her employment, his or her wages shall become due and payable not later than seventy-two
7 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
8 his or her intention to quit, in which case the employee is entitled to his or her wages at the
9 time of quitting.

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

15 113. Defendants' failure to pay Plaintiffs and those non-party Aggrieved Employees
16 who are no longer employed by Defendants their wages earned and unpaid at the time of
17 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor
18 Code sections 201 and 202. Plaintiffs and other non-party Aggrieved Employees are therefore
19 entitled to recover civil penalties pursuant to Labor Code sections 256 and/or 2699(a), (f), and
20 (g).

21 **FAILURE TO PAY COSTS OF MEDICAL OR PHYSICAL EXAMINATION**

22 **VIOLATION OF LABOR CODE SECTION 222.5**

23 114. At all relevant times herein, California Labor Code section 222.5 requires
24 employers to pay for the costs an employee incurs for obtaining any required medical or
25 physical examination.

26 115. During the relevant time period, Defendants implemented, on a company-wide
27 basis, an employer-imposed requirement that other non-party Aggrieved Employees undergo
28 mandatory drug tests and/or physical examinations, but required them to do so at their own

1 expense. As stated, Defendants had a company-wide policy requiring that all employees,
2 including other non-party Aggrieved Employees, travel to a specified medical facility on their
3 own time and use their own means of transportation to undergo drug testing and/or physical
4 examinations. At all times, Defendants were in control of scheduling the date and time for the
5 drug testing and/or physical examinations, selecting the provider/facility where the drug
6 testing and/or physical examinations were to take place, and determining the scope of the drug
7 test and/or physical examinations. Other non-party Aggrieved Employees were required to
8 travel in their own personal vehicles or obtain alternate transportation and spend time
9 undergoing Defendants' mandatory drug testing and/or physical examinations.

10 116. However, Defendants did not compensate other non-party Aggrieved
11 Employees for the time they spent traveling to and from their drug tests and/or physical
12 examinations, or for the time they spent undergoing the testing and/or examinations, or
13 reimburse them for the travel expenses they incurred getting to and from the medical clinics.
14 Defendants' policy and/or practice of not paying for all costs other non-party Aggrieved
15 Employees incurred obtaining mandatory drug tests and physical examinations is in violation
16 of California Labor Code section 222.5.

17 117. Other non-party Aggrieved Employees are therefore entitled to recover civil
18 penalties, pursuant to Labor Code sections 2699(a), (f), and (g).

19 **FAILURE TO PROVIDE SUITABLE SEATING**
20 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
21 **REGULATIONS, TITLE 8, SECTION 11070(14)(A)**

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

28 119. California Code of Regulations, Title 8, section 11070(14)(A) provides that

1 “[a]ll working employees shall be provided with suitable seats when the nature of the work
2 reasonably permits the use of seats.”

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

10 121. Plaintiffs and other non-party Aggrieved Employees spent a substantial portion
11 of their day behind these cash wraps. The nature of the work of an employee performing
12 cashier duties can reasonably be accomplished from a seated position. However, Defendants
13 systematically, and on a company-wide basis, did not provide seats or stools at or near each
14 cash register, forcing Plaintiffs and other non-party Aggrieved Employees to stand throughout
15 their work shifts.

16 122. During the relevant time period, Defendants violated California Labor Code
17 section 1198 and California Code of Regulations, Title 8, section 11070(14)(A), because
18 Plaintiffs and other non-party Aggrieved Employees were not allowed to sit, even when the
19 nature of their work would not have interfered with the performance of their duties, nor were
20 they provided with suitable seats. Plaintiffs and other non-party Aggrieved Employees were
21 assigned cashier duties, which were performed from and connected to a cash register or cash
22 wrap, and could have been performed from a seated position. Plaintiffs and other non-party
23 Aggrieved Employees could have handled transactions at the cash register and provided
24 customer service while seated without interference to their ability to complete these duties.

25 123. Defendants could have placed seats or stools at each cash register for use by
26 Plaintiffs and other non-party Aggrieved Employees with reasonable or no modification to
27 these work areas. However, on a company-wide basis, Defendants did not provide seats or
28 stools at cash registers. Defendants’ management did not inform Plaintiffs and other non-

1 party Aggrieved Employees that they were allowed to sit down, provide any means for them
2 to sit down, or mention any policy regarding sitting.

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

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

11 **FAILURE TO PROVIDE SUITABLE SEATING**
12 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
13 **REGULATIONS, TITLE 8, SECTION 11070(14)(B)**

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

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

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

1 their work areas.

2 129. As stated, Plaintiffs allege that Defendants' California retail stores are
3 generally similar in their layout and design and there was, and continues to be, space near
4 their work areas (with reasonable or no modification to these work areas) to allow for the
5 presence and use of a seat or stool by Plaintiffs and other non-party Aggrieved Employees
6 during lulls in operation. Defendants could have provided Plaintiffs and other non-party
7 Aggrieved Employees with a seat or stool in their work areas, but instead denied Plaintiffs and
8 other non-party Aggrieved Employees suitable seating altogether and effectively forced
9 Plaintiffs and other non-party Aggrieved Employees to stand throughout the day.

10 130. Defendants did not provide Plaintiffs and other non-party Aggrieved
11 Employees with seats or stools in reasonable proximity to their work to allow them to use
12 seats when it would not interfere with the performance of their duties for times when they
13 were not engaged in active duties that require standing. In other words, to the extent Plaintiffs
14 and other non-party Aggrieved Employees engaged in duties in which the nature of the work
15 required standing, Defendants denied them the use of suitable seats nearby during lulls in their
16 work duties. Moreover, Defendants did not inform Plaintiffs and other non-party Aggrieved
17 Employees of their rights to a seat or stool under California law.

18 131. As a result of Defendants' company-wide policy and/or practice prohibiting
19 employees from sitting at any time, even when they were not engaged in active duties
20 requiring standing, and company-wide failure to provide seats in reasonable proximity to their
21 work areas, Plaintiffs and other non-party Aggrieved Employees were forced to stand during
22 shifts and denied seats. Defendants' failure to provide suitable seating to Plaintiffs and other
23 non-party Aggrieved Employees violated and continues to violate California Labor Code
24 section 1198 and IWC Wage Order 7-2001, Section 14(B).

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

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1 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

2 **VIOLATION OF LABOR CODE SECTION 2802**

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

13 134. First, during the relevant time period, Defendants, on a company-wide basis,
14 required that Plaintiff Paez and other non-party Aggrieved Employees utilize their own
15 personal cellular phones and/or cellular phone data to carry out their job duties, but
16 Defendants failed to reimburse them for the costs of their cellular phone plans and/or data
17 plans. For example, Defendants' management would call and text Plaintiff Paez on her
18 personal cellular phone on her days off or outside of her scheduled shifts to discuss work-
19 related matters. Although Defendants required Plaintiff Paez and other non-party Aggrieved
20 Employees to regularly utilize her personal cellular phone to carry out work-related
21 responsibilities, Defendants failed to reimburse her for this cost.

22 135. Second, Defendants, on a company-wide basis, forced Plaintiff Paez and other
23 non-party Aggrieved Employees to utilize their own personal vehicles to carry out company
24 business, but failed to reimburse them for all costs of travel, including mileage and transit
25 fare. For example, Defendants required Plaintiff Paez and other non-party Aggrieved
26 Employees to travel to and from mandatory training at off-site locations. Plaintiff Paez drove
27 to or took public transportation to Glendale, California, and Burbank, California, to complete
28 mandatory training. Although Defendants required that Plaintiff Paez use her own vehicle or

1 take public transportation to carry out company business, Defendants never reimbursed her for
2 all of her travel expenses.

3 136. Third, as mentioned, Defendants had a company-wide policy and/or practice of
4 requiring other non-party Aggrieved Employees to travel in their own personal vehicles to
5 medical facilities to undergo mandatory drug testing and/or physical examinations, but did not
6 reimburse them for their travel expenses. Defendants gave other non-party Aggrieved
7 Employees strict instructions to obtain drug testing and/or physical examinations, and other
8 non-party Aggrieved Employees underwent the testing and/or physical examinations for the
9 sole benefit of Defendants. Although Defendants required other non-party Aggrieved
10 Employees to travel to and from medical facilities to undergo the drug testing and/or physical
11 examinations, Defendants failed to reimburse them for these expenses.

12 137. Fourth, Defendants, on a company-wide basis, failed to provide Plaintiff
13 Benninghoff and other non-party Aggrieved Employees with safety devices and safeguards
14 such as protective gloves, to keep them safe in the workplace (*see infra*). For example,
15 Plaintiff Benninghoff was eventually forced to purchase her own gloves to use while she
16 worked, but was not reimbursed for this work-related expense.

17 138. Defendants could have provided Plaintiffs and other non-party Aggrieved
18 Employees with the actual tools for use on the job, including company cellular phones,
19 company vehicles, and gloves to be used for fulfilling work-related tasks, or reimbursed
20 employees for their cellular phone usage, travel expenses, mileage, and costs of safety devices
21 and safeguards. Instead, Defendants passed these operating costs off onto Plaintiffs and other
22 non-party Aggrieved Employees. Thus, Defendants had, and continues to have, a company-
23 wide policy and/or practice of not reimbursing employees for expenses necessarily incurred.
24 At all relevant times, Plaintiffs did not earn at least two (2) times the minimum wage.

25 139. Defendants' company-wide policy and/or practice of passing on their operating
26 costs to Plaintiffs and other non-party Aggrieved Employees violates California Labor Code
27 section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiffs and
28 other non-party Aggrieved Employees for necessary business-related expenses and costs.

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

FAILURE TO PROVIDE SAFETY DEVICES AND SAFEGUARDS

VIOLATION OF LABOR CODE SECTIONS 6401 AND 6403

141. At all times herein set forth, California Labor Code section 6401 provides that employers must furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render the employment and place of employment safe and healthy. California Labor Code Section 6401 further provides that an employer must do everything reasonably necessary to protect the life, safety and health of its employees. California Labor Code section 6403(a) requires that employers provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

142. Defendants, on a company-wide basis, failed to provide Plaintiff Benninghoff and other non-party Aggrieved Employees with safety devices and safeguards, such as protective gloves, to keep them safe in the workplace. For example, Plaintiff Benninghoff eventually purchased her own gloves in order to protect herself from injury while handling boxes containing store products.

143. Defendants' failure to provide Plaintiff Benninghoff and other non-party Aggrieved Employees with safety devices and safeguards for the workplace violates Labor Code sections 6401 and 6403. Plaintiff Benninghoff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

REQUEST FOR JURY TRIAL

Plaintiffs request a trial by jury.

PRAYER FOR RELIEF

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

As to the First Cause of Action

1 1. That the Court declare, adjudge and decree that Defendants violated the
2 following California Labor Code provisions as to Plaintiffs and/or other non-party Aggrieved
3 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
4 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516,
5 and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize
6 and permit all rest periods); 226(a), 1174(d) and 1198 (by failing to provide accurate wage
7 statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay
8 all earned wages upon termination); 204 (by failing timely to pay all earned wages during
9 employment); 222.5 (by failing to pay the costs of mandatory drug testing and/or physical
10 examinations); 1198 (by failing to provide suitable seating); 2802 (by failing to reimburse
11 business expenses); and 6401 and 6403 (by failing to provide safety devices and safeguards).

12 2. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
13 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202,
14 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802,
15 6401, and 6403;

16 3. For attorneys' fees and costs pursuant to California Labor Code section
17 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
18 Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d),
19 1182.12, 1194, 1197, 1198, 2802, 6401, and 6403;

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

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1 5. For such other and further relief as the Court may deem equitable and
2 appropriate.

3
4 Dated: April 7, 2021

Respectfully submitted,

5 Capstone Law APC

6
7 By: 
8 Bevin Allen Pike
9 Orlando Villalba
Daniel Jonathan
Trisha K. Monesi

10 Attorneys for Plaintiffs Tatiana Paez and
11 Leslie Benninghoff
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EXHIBIT “1”



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ANTHONY CASTILLO
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June 25, 2019

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/207>)

Subject: *Tatiana Paez v. Beverages & More, Inc., et al.*

Dear PAGA Administrator:

This office represents Tatiana Paez in connection with her claims under the California Labor Code. Ms. Paez was an employee of BEVERAGES & MORE, INC; BEVMO HOLDINGS, LLC; and/or BEVMO GC SERVICES, LLC. For the purpose of this letter, Ms. Paez collectively refers to these entities as "BEVMO."

The employers may be contacted directly at the addresses below:

BEVERAGES & MORE, INC.
1401 WILLOW PASS RD STE 900
CONCORD CA 94520

BEVMO HOLDINGS, LLC
1401 WILLOW PASS RD. SUITE 900
CONCORD CA 94520

BEVMO GC SERVICES LLC
1401 WILLOW PASS ROAD, SUITE 900
CONCORD CA 94520

Ms. Paez 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. Paez seeks relief on behalf of herself, the State of California, and other persons who are or were employed by BEVMO in California as a non-exempt, hourly paid employee 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.

BEVMO employed Ms. Paez as a non-exempt, hourly paid Sales Associate and Head Clerk from approximately October 12, 2014, to April 2, 2019. Ms. Paez worked for BEVMO at locations in Van Nuys, Encino, and Studio City, California. She typically worked seven (7) to eight (8) hours per day and five (5) days per week. Ms. Paez was compensated approximately \$14.50 per hour. Her job duties included organizing and stocking merchandise, providing customer service, operating the cash registers, training staff, and balancing registers.

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

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

BEVERAGES & MORE, INC; BEVMO HOLDINGS, LLC; and BEVMO GC SERVICES, LLC are a Delaware corporation, a Delaware limited liability company, and a California limited liability company, respectively, and are the leading alcoholic beverage specialty retailer in the western United States, with nearly 170 stores located throughout California, Arizona, and Washington. Upon information and belief, BEVMO maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Concord, California, for all non-exempt, hourly paid employees working for BEVMO in California, including Ms. Paez and other aggrieved employees. At all relevant times, BEVMO issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Paez and other aggrieved employees, regardless of their location or position.

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

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

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 non-discretionary bonuses and incentive pay.

BEVMO willfully failed to pay all overtime wages owed to Ms. Paez and other aggrieved employees. During the relevant time period, Ms. Paez 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 time period, BEVMO had a company-wide policy and/or practice of discouraging and impeding Ms. Paez and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. Ms. Paez and other aggrieved employees were forced to work off-the-clock performing tasks after their scheduled shift times, but were not provided a means by BEVMO to account for this time. For example, when Ms. Paez and other managerial employees worked closing shifts, they were required to set an alarm upon exiting the store. Approximately 1-2 times per week, Ms. Paez encountered problems with the alarm system, which required her to double-check the alarm status and/or call the alarm company for assistance, which could take up to 10-15 minutes to resolve. It was not possible for Ms. Paez and other aggrieved employees to complete these tasks on the clock because they were required to punch out before exiting the store, so they would work off-the-clock to set the store alarm. Thus, BEVMO failed to track this time spent working after clocking out, and Ms. Paez and other aggrieved employees received no compensation for this time.

Second, BEVMO had, and continues to have, a loss prevention policy requiring Ms. Paez and other aggrieved employees to undergo security checks at the end of their shifts before leaving the store premises. After clocking out at the end of their shifts, Ms. Paez and other aggrieved employees were required to wait off-the-clock for another employee to become available to perform a security check before they could leave. Per company policy, ". . . BevMo requires you, as an employee, to show a supervisor or manager on duty the inside of any bag, purse, packaging, back packs[,] or bulky attire or accessories of a concealing nature on your person before you leave the store. This includes leaving at the end of your shift, for break, lunch[,] or anytime during your working day." As a result, Ms. Paez and other aggrieved employees were subject to BEVMO's control until being released by an employee performing the security check, but were not compensated for this time.

Third, BEVMO had a company-wide policy that required at least two employees be present in the store at all times. This policy necessarily required that employees leave together at the end of their shifts when closing the store. Combined with the labor budget limitations (*see infra*) and practice of clocking out at the end of one's scheduled shift, this policy resulted in other aggrieved employees working off the clock at the end of their shifts and/or having to wait for the manager on duty to wrap up closing procedures before they could leave. At all times, other aggrieved employees remained under the control of BEVMO. This off-the-clock work and idle waiting time could have been recorded by BEVMO, but they refused to do so to avoid payment of additional wages to other aggrieved employees.

Fourth, Ms. Paez and other aggrieved employees were required to travel to and from mandatory training while off the clock. For example, Ms. Paez drove to or took public transportation to Glendale, California, and Burbank, California, to complete mandatory training, which could take up

to one (1) hour each way. BEVMO, on a company-wide basis, failed to compensate Ms. Paez and other aggrieved employees for the time they spent traveling to and from mandatory training.

Fifth, BEVMO had a company-wide practice and/or policy of requiring employees to use their personal cellular phones to communicate with BEVMO management on their days off. For example, Ms. Paez used her personal cellular phone to communicate via text message with store managers regarding work-related matters, but was not compensated for this time.

Sixth, BEVMO had, and continues to have, a company-wide policy and/or practice of staffing their store locations strictly based on a labor budget set by the corporate office. BEVMO's use of a labor budget resulted in chronic understaffing, such that there were too few employees on duty to handle the workload and provide uninterrupted meal period coverage. Further, BEVMO's company-wide timekeeping system locked employees out once they clocked out for a meal period and would not permit them to clock back in before their scheduled meal period end time. BEVMO's timekeeping system further prevented other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted. Thus, other aggrieved employees were not provided adequate meal period coverage to allow them to be relieved of their duties for compliant meal periods. As a result, other aggrieved employees missed meal periods and/or had their meal periods interrupted, but were not compensated for this time.

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

Because Ms. Paez 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. Paez and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. Therefore, Ms. Paez and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. BEVMO's failure to pay Ms. Paez 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, BEVMO did not pay other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, BEVMO paid other aggrieved employees incentive pay and/or nondiscretionary bonuses. For example, other aggrieved employees earned bonuses based on store milestones reached, which appeared on their paystubs as "Bonus Suppl." However, in violation of the California Labor Code, BEVMO failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, BEVMO failed to pay all overtime wages by paying a lower overtime rate than required.

Ms. Paez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558, 1194, 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, due to BEVMO’s policy of limiting the amount of overtime employees could accrue by discouraging and impeding Ms. Paez and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, Ms. Paez and other aggrieved employees were required to work off-the-clock after their shifts and on their days off to complete assigned job duties, such as setting alarms, performing closing duties, responding to texts from BEVMO’s management, and traveling to mandatory training sessions. As also described above, BEVMO had a company-wide policy and practice requiring Ms. Paez and other aggrieved employees to submit to off-the-clock security checks. However, BEVMO did not compensate Ms. Paez and other aggrieved employees for the time they spent waiting to undergo security checks and the time undergoing security checks.

Additionally, as stated above, due to BEVMO’s uniform practice of labor budgeting and subsequent understaffing and lack of break coverage, other aggrieved employees were forced to forego meal periods and/or had their meal periods interrupted by work. And, as described above, BEVMO’s timekeeping system did not permit other aggrieved employees from clocking back in early when their meal periods were interrupted.

Moreover, BEVMO maintained and implemented a company-wide policy of requiring all employees to travel to a medical facility on their own time and using their own personal vehicles to undergo mandatory drug testing and/or physical examinations. At all times, BEVMO was in control of scheduling the date and time for the testing, selecting the provider or facility where the testing was to take place, and determining the scope of the exam. However, BEVMO did not compensate other aggrieved employees for the time they spent traveling to and undergoing the mandatory drug testing and/or physical examinations.

Thus, BEVMO did not pay minimum wages for all hours worked by Ms. Paez and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, BEVMO 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, 1197.1, and 1198. Accordingly, BEVMO regularly failed to pay at least minimum wages to Ms. Paez 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. Paez 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), and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a) and 1198 and the applicable IWC Wage Order require employers to provide meal and rest breaks 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 break 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.

First, as stated, BEVMO has, and continues to have, a uniform policy and/or practice of understaffing locations due to labor budgeting, along with discouraging employees from accruing overtime hours, which resulted in a lack of meal period coverage and prevented other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result of BEVMO's practices and/or policies, other aggrieved employees had to work through part or all of their meal periods, have their meal periods interrupted, and/or wait extended periods of time before taking meal periods.

Second, BEVMO implemented an electronic timekeeping system that locked other aggrieved employees out and prevented them from clocking in early before the end of their 30-minute meal period. As a result of BEVMO's timekeeping system, other aggrieved employees were prevented from accurately recording when they had to return early from a meal period so that they could be compensated for that time.

Third, BEVMO did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Other aggrieved employees did not sign valid meal break waivers on days that they were entitled to meal periods and were not relieved of all duties.

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

BEVMO also has engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, other aggrieved employees have not received premium pay for missed meal periods. Alternatively, to the extent that BEVMO did pay meal period premium wages to other aggrieved employees, it did so at the incorrect rates. Because BEVMO 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, BEVMO failed to provide all meal periods in violation of California Labor Code sections 226.7, 512, and 1198. Other aggrieved employees are therefore 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 and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

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

As with meal periods, BEVMO's company-wide policy and practice of understaffing and the resultant lack of rest period coverage, prevented Ms. Paez and other aggrieved employees from being relieved of all duty to take compliant rest periods. Additionally, BEVMO failed to schedule rest periods, which, coupled with BEVMO's failure to provide adequate rest period coverage, further impeded and prevented Ms. Paez and other aggrieved employees from taking compliant meal periods.

As a result, Ms. Paez and other aggrieved employees were prevented from being relieved of all duty in order to take compliant rest periods and instead would be required to continue working. As a result of BEVMO's practices and policies, Ms. Paez 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. Throughout her employment, Ms. Paez was never authorized or permitted to take a full and complete 10-minute rest period.

BEVMO 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 or permitted. Because of this practice and/or policy, Ms. Paez and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that BEVMO did pay rest period premium wages to other aggrieved employees, it did so at the incorrect rates. Because BEVMO 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, BEVMO failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7 and 1198. Ms. Paez and other aggrieved employees are therefore entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and 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. BEVMO has not provided Ms. Paez 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, BEVMO has knowingly and intentionally provided Ms. Paez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, BEVMO issued uniform wage statements to Ms. Paez and other aggrieved employees 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. For example, BEVMO issued wage statements to Ms. Paez and other aggrieved employees that fail to list all applicable hourly rates in effect during the pay period, including overtime rates of pay, in violation of Section 226(a)(9). Specifically, Ms. Paez's paystub for the pay period ending March 30, 2019 does not list any applicable pay rates for the pay period.

Separately, because BEVMO did not record the time Ms. Paez and other aggrieved employees spent working off-the-clock, BEVMO did not list the correct amount of gross wages and net wages earned by Ms. Paez and other aggrieved employees, in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, BEVMO failed to accurately list the total number of the hours worked by Ms. Paez 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).

Further, because BEVMO did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, BEVMO 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). BEVMO 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).

The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her

social security number or an employee identification number other than a social security number; failing to list the name and 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 hours worked off-the-clock.

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

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. At all relevant times, as stated, BEVMO engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of shift start and end times for Ms. Paez and other aggrieved employees in violation of section 1198. Furthermore, in light of BEVMO’s failure to provide other aggrieved employees with first and second 30-minute meal periods to which they were entitled, BEVMO kept no records of meal start and end times for first and second meal periods.

Because BEVMO failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Paez 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. Paez 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. Paez 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, BEVMO failed to pay Ms. Paez 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. Paez 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.

BEVMO willfully failed to pay Ms. Paez and other aggrieved employees who are no longer employed by BEVMO 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 BEVMO's employ in violation of California Labor Code sections 201, 202, and 203.

Ms. Paez 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 § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, BEVMO implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo mandatory drug tests and/or physical examinations, but required them to do so at their own expense. As stated, BEVMO had a company-wide policy requiring that all employees, including other aggrieved employees, travel to a specified medical clinic on their own time and use their own means of transportation to undergo drug testing. At all times, BEVMO was in control of scheduling the date and time for the drug testing, selecting the provider/facility where the drug testing was to take place, and determining the scope of the drug test and/or physical examination.

BEVMO did not compensate other aggrieved employees for the time they spent traveling to and from their drug tests and/or physical examinations, or for the time they spent undergoing the testing and/or examinations, or reimburse them for the travel expenses they incurred getting to and from the

medical clinics. BEVMO's policy and/or practice of not paying for all costs other aggrieved employees incurred obtaining mandatory drug tests and/or physical examinations violates California Labor Code section 222.5.

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).

Violation of California Labor Code § 1198 – 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.” 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 ‘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.*

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

Ms. Paez and other aggrieved employees spent a substantial portion of their day behind 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, BEVMO systematically, and on a company-wide basis, does not provide seats or stools at or near each cash register, forcing employees, including Ms. Paez and other aggrieved employees, to stand throughout their work shifts.

BEVMO violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A)-(B) because Ms. Paez 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. A substantial portion of Ms. Paez's and other aggrieved employees' duties were performed from and connected to a cash wrap and could have been performed from a seated position. Ms. Paez and other aggrieved employees could have handled transactions at the cash register and provided customer service while seated without interference to their ability to complete these duties. Ms. Paez and other aggrieved employees were required to stand the entire time when at a cash register because BEVMO did not provide seats or stools behind the cash register.

In addition, BEVMO did not provide Ms. Paez and other aggrieved employees with seats or stools in reasonable proximity to cash wraps to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Ms. Paez and other aggrieved employees engaged in duties in which the nature of the work required standing, BEVMO denied them the use of seats nearby during lulls in their work duties. Even though the store layout of areas adjacent to cash wraps could accommodate seats or stools with reasonable or no modification to these work areas, BEVMO has, on a company-wide basis, denied Ms. Paez and other aggrieved employees suitable seating altogether.

Moreover, BEVMO did not inform Ms. Paez and other aggrieved employees of their rights to a seat or stool under California law. As a result of BEVMO's company-wide policy and/or practice of prohibiting all employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Ms. Paez and other aggrieved employees were forced to stand during shifts and denied seats. BEVMO's failure to provide suitable seating to Ms. Paez and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 7-2001, Section 14(A)-(B).

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

First, during the relevant time period, BEVMO, on a company-wide basis, required that Ms. Paez and other aggrieved employees utilize their own personal cellular phones and/or cellular phone data to carry out their job duties, but BEVMO failed to reimburse them for the costs of their cellular phone plans and/or data plans. For example, BEVMO's management would call and text Ms. Paez on her personal cellular phone on her days off or outside of her scheduled shifts to discuss work-related matters. Although BEVMO required Ms. Paez and other aggrieved employees to regularly utilize

her personal cellular phone to carry out work-related responsibilities, BEVMO failed to reimburse her for this cost.

Second, BEVMO, on a company-wide basis, forced Ms. Paez and other aggrieved employees to utilize their own personal vehicles to carry out company business, but failed to reimburse them for all costs of travel, including mileage and transit fare. For example, BEVMO required Ms. Paez and other aggrieved employees to travel to and from mandatory training at off-site locations. Ms. Paez drove to or took public transportation to Glendale, California, and Burbank, California, to complete mandatory training. Although BEVMO required that Ms. Paez use her own vehicle or take public transportation to carry out company business, BEVMO never reimbursed her for all of her travel expenses.

Third, as mentioned, BEVMO had a company-wide policy and/or practice of requiring other aggrieved employees to travel in their own personal vehicles to medical clinics to undergo mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses. Although BEVMO required other aggrieved employees to undergo the testing, BEVMO failed to reimburse them for these expenses.

BEVMO could have provided Ms. Paez and other aggrieved employees with the actual tools for use on the job, including company cellular phones and vehicles to be used for fulfilling work-related tasks, or reimbursed employees for their cellular phone usage, travel expenses, and mileage. Instead, BEVMO passed these operating costs off onto Ms. Paez and other aggrieved employees. Thus, BEVMO had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred. At all relevant times, Ms. Paez did not earn at least two (2) times the minimum wage.

BEVMO's policy and/or practice of passing its operating costs on to Ms. Paez and other aggrieved employees by requiring that they use their personal cellular phones and vehicles for business and failing to reimburse all cellular phone usage, mileage, and travel expenses, is in violation of California Labor Code section 2802. Ms. Paez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

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

Accordingly, Ms. Paez 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 2699(a), 2699.3(a) and 2699.3(c), 2699.5 and 558, Ms. Paez , 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 BEVMO for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Ms. Paez seeks all applicable 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:

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

Best Regards,


Anthony Castillo

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| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
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| ☐ Insured Mail | |
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Domestic Return Receipt



7010 2780 0003 1941 8779

BEVMO HOLDINGS, LLC
1401 WILLOW PASS RD. SUITE 900
CONCORD CA 94520

U.S. Postal Service

CERTIFIED MAIL™ RECEIPT

(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com**OFFICIAL USE**

Postage	\$ 1.42
Certified Fee	3.50
Return Receipt Fee (Endorsement Required)	2.80
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 7.72

Postmark
HerePaez V. Bevmo
Holdings, LLC

Sent To

BEVMO HOLDINGS, LLC

Street, Apt. No.,
or PO Box No.

1401 WILLOW PASS RD. SUITE 900

City, State, ZIP+4

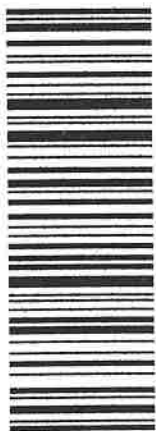
CONCORD CA 94520

PS Form 3800, August 2006

See Reverse for Instructions

one
AW APC
Park East, Ste 1000
CA 90067

one
AW APC
Park East, Ste 1000
CA 90067



7010 2780 0003 1941 8786

BEVMO GC SERVICES LLC
1401 WILLOW PASS ROAD, SUITE 900
CONCORD CA 94520



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

BEVMO GC SERVICES LLC
1401 WILLOW PASS ROAD, SUITE 900
CONCORD CA 94520



9590 9402 1511 5362 0864 77

2. Article Number (Transfer from service label)

7010 2780 0003 1941 8786

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
- ☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

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- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
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- ☐ Priority Mail Express®
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Domestic Return Receipt

U.S. Postal Service
CERTIFIED MAIL™ RECEIPT
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For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$ 1.42
Certified Fee	3.50
Return Receipt Fee (Endorsement Required)	2.80
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 7.72

Postmark Here

Paiz V. BevMo GC Services LLC

Sent To BEVMO GC SERVICES LLC
Street, Apt. No., or PO Box No. 1401 WILLOW PASS ROAD, SUITE 900
City, State, ZIP+4 CONCORD CA 94520

PS Form 3800, August 2006

See Reverse for Instructions

7010 2780 0003 1941 8786

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

BEVMO GC SERVICES LLC
1401 WILLOW PASS ROAD, SUITE 900
CONCORD CA 94520



9590 9402 1511 5362 0864 77

2. Article Number (Transfer from service label)

7010 2780 0003 1941 8786

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:

3. Service Type

- ☐ Priority Mail Express®
☐ Registered Mail™
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☐ Return Receipt for Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery
☐ Insured Mail (over \$500)
☐ Certified Mail®
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

BEVERAGES & MORE, INC.
1401 WILLOW PASS RD STE 900
CONCORD CA 94520



9590 9402 1511 5362 0864 53

2. Article Number (Transfer from service label)

7010 2780 0003 1941 8762

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature		☐ Agent
		☐ Addressee
B. Received by (Printed Name)	C. Date of Delivery	
Rec'd Clerk	7/21/15	
D. Is delivery address different from item 1? ☐ Yes ☒ No		
If YES, enter delivery address below:		

3. Service Type

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☐ Adult Signature Restricted Delivery	☐ Registered Mail™
☒ Certified Mail®	☐ Registered Mail Restricted Delivery
☐ Certified Mail Restricted Delivery	☐ Return Receipt for Merchandise
☐ Collect on Delivery	☐ Signature Confirmation™
☐ Collect on Delivery Restricted Delivery	☐ Signature Confirmation Restricted Delivery
☐ Insured Mail	
☐ Insured Mail Restricted Delivery (over \$500)	

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

BEVMO HOLDINGS, LLC
1401 WILLOW PASS RD. SUITE 900
CONCORD CA 94520



9590 9402 1511 5362 0864 60

2. Article Number (Transfer from service label)

7010 2780 0003 1941 8779

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

B. Received by (Printed Name)

Rocio Clough

C. Date of Delivery

7/2/15

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
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- ☐ Priority Mail Express®
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- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

August 2, 2019

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/207>)

Subject: *Tatiana Paez v. Beverages & More, Inc., et al. – AMENDED;*
LWDA Case No. LWDA-CM-710744-19

Dear PAGA Administrator:

This office represents Tatiana Paez in connection with her claims under the California Labor Code. Ms. Paez was an employee of BEVERAGES & MORE, INC; BEVMO HOLDINGS, LLC; and/or BEVMO GC SERVICES, LLC. For the purpose of this letter, Ms. Paez collectively refers to these entities as “BEVMO.” We previously provided notice of Ms. Paez’s claims to the California Labor and Workforce Development Agency (“LWDA”) on June 25, 2019, and submitted the applicable filing fee pursuant to Labor Code section 2699.3(a)(1)(B). This amended notice supplements Ms. Paez’s prior LWDA notice and is intended to clarify the facts and theories supporting her claims.

The employers may be contacted directly at the addresses below:

BEVERAGES & MORE, INC.
1401 WILLOW PASS RD STE 900
CONCORD CA 94520

BEVMO HOLDINGS, LLC
1401 WILLOW PASS RD. SUITE 900
CONCORD CA 94520

BEVMO GC SERVICES LLC
1401 WILLOW PASS ROAD, SUITE 900
CONCORD CA 94520

Ms. Paez 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. Paez seeks relief on behalf of herself, the State of California, and other persons who are or were employed by BEVMO in California as a non-exempt, hourly paid employee 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.

BEVMO employed Ms. Paez as a non-exempt, hourly paid Sales Associate and Head Clerk from approximately October 12, 2014, to April 2, 2019. Ms. Paez worked for BEVMO at locations in Van Nuys, Encino, and Studio City, California. She typically worked seven (7) to eight (8) hours per day and five (5) days per week. Ms. Paez was compensated approximately \$14.50 per hour. Her job duties included organizing and stocking merchandise, providing customer service, operating the cash registers, training staff, and balancing registers.

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

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

BEVERAGES & MORE, INC; BEVMO HOLDINGS, LLC; and BEVMO GC SERVICES, LLC are a Delaware corporation, a Delaware limited liability company, and a California limited liability company, respectively, and are the leading alcoholic beverage specialty retailer in the western United States, with nearly 170 stores located throughout California, Arizona, and Washington. Upon information and belief, BEVMO maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Concord, California, for all non-exempt, hourly paid employees working for BEVMO in California, including Ms. Paez and other aggrieved employees. At all relevant times, BEVMO issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Paez and other aggrieved employees, regardless of their location or position.

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

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

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 non-discretionary bonuses and incentive pay.

BEVMO willfully failed to pay all overtime wages owed to Ms. Paez and other aggrieved employees. During the relevant time period, Ms. Paez 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 time period, BEVMO had a company-wide policy and/or practice of discouraging and impeding Ms. Paez and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. Ms. Paez and other aggrieved employees were forced to work off-the-clock performing tasks after their scheduled shift times, but were not provided a means by BEVMO to account for this time. For example, when Ms. Paez and other managerial employees worked closing shifts, they were required to set an alarm upon exiting the store. Approximately 1-2 times per week, Ms. Paez encountered problems with the alarm system, which required her to double-check the alarm status and/or call the alarm company for assistance, which could take up to 10-15 minutes to resolve. It was not possible for Ms. Paez and other aggrieved employees to complete these tasks on the clock because they were required to punch out before exiting the store, so they would work off-the-clock to set the store alarm. Thus, BEVMO failed to track this time spent working after clocking out, and Ms. Paez and other aggrieved employees received no compensation for this time.

Second, BEVMO had, and continues to have, a loss prevention policy requiring Ms. Paez and other aggrieved employees to undergo security checks at the end of their shifts before leaving the store premises. After clocking out at the end of their shifts, Ms. Paez and other aggrieved employees were required to wait off-the-clock for another employee to become available to perform a security check before they could leave. Per company policy, "... BevMo requires you, as an employee, to show a supervisor or manager on duty the inside of any bag, purse, packaging, back packs[,] or bulky attire or accessories of a concealing nature on your person before you leave the store. This includes leaving at the end of your shift, for break, lunch[,] or anytime during your working day." As a result, Ms. Paez and other aggrieved employees were subject to BEVMO's control until being released by an employee performing the security check, but were not compensated for this time.

Third, BEVMO had a company-wide policy that required at least two employees be present in the store at all times. This policy necessarily required that employees leave together at the end of their shifts when closing the store. Combined with the labor budget limitations (*see infra*) and practice of clocking out at the end of one's scheduled shift, this policy resulted in other aggrieved employees working off the clock at the end of their shifts and/or having to wait for the manager on duty to wrap up closing procedures before they could leave. At all times, other aggrieved employees remained under the control of BEVMO. This off-the-clock work and idle waiting time could have been recorded by BEVMO, but they refused to do so to avoid payment of additional wages to other aggrieved employees.

Fourth, Ms. Paez and other aggrieved employees were required to travel to and from mandatory training while off the clock. For example, Ms. Paez drove to or took public transportation to Glendale, California, and Burbank, California, to complete mandatory training, which could take up to one (1) hour each way. BEVMO, on a company-wide basis, failed to compensate Ms. Paez and other aggrieved employees for the time they spent traveling to and from mandatory training.

Fifth, BEVMO had a company-wide practice and/or policy of requiring employees to use their personal cellular phones to communicate with BEVMO management on their days off. For example, Ms. Paez used her personal cellular phone to communicate via text message with store managers regarding work-related matters, but was not compensated for this time.

Sixth, BEVMO had, and continues to have, a company-wide policy and/or practice of staffing their store locations strictly based on a labor budget set by the corporate office. BEVMO's use of a labor budget resulted in chronic understaffing, such that there were too few employees on duty to handle the workload and provide uninterrupted meal period coverage. Further, BEVMO's company-wide timekeeping system locked employees out once they clocked out for a meal period and would not permit them to clock back in before their scheduled meal period end time. BEVMO's timekeeping system further prevented other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted. Thus, other aggrieved employees were not provided adequate meal period coverage to allow them to be relieved of their duties for compliant meal periods. As a result, other aggrieved employees missed meal periods and/or had their meal periods interrupted, but were not compensated for this time.

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

Because Ms. Paez 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. Paez and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. Therefore, Ms. Paez and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. BEVMO's failure to pay Ms. Paez 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, BEVMO did not pay other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, BEVMO paid other aggrieved employees incentive pay and/or nondiscretionary bonuses. For example, other aggrieved employees earned bonuses based on store milestones reached, which appeared on their paystubs as "Bonus Suppl." However, in violation of the California Labor Code, BEVMO failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, BEVMO failed to pay all overtime wages by paying a lower overtime rate than required.

Ms. Paez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558, 1194, 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, due to BEVMO’s policy of limiting the amount of overtime employees could accrue by discouraging and impeding Ms. Paez and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, Ms. Paez and other aggrieved employees were required to work off-the-clock after their shifts and on their days off to complete assigned job duties, such as setting alarms, performing closing duties, responding to texts from BEVMO’s management, and traveling to mandatory training sessions. As also described above, BEVMO had a company-wide policy and practice requiring Ms. Paez and other aggrieved employees to submit to off-the-clock security checks. However, BEVMO did not compensate Ms. Paez and other aggrieved employees for the time they spent waiting to undergo security checks and the time undergoing security checks.

Additionally, as stated above, due to BEVMO’s uniform practice of labor budgeting and subsequent understaffing and lack of meal period coverage, other aggrieved employees were forced to forego meal periods and/or had their meal periods interrupted by work. And, as described above, BEVMO’s timekeeping system did not permit other aggrieved employees from clocking back in early when their meal periods were interrupted.

Moreover, BEVMO maintained and implemented a company-wide policy of requiring all employees to travel to a medical facility on their own time and using their own personal vehicles to undergo mandatory drug testing and/or physical examinations. At all times, BEVMO was in control of scheduling the date and time for the testing, selecting the provider or facility where the testing was to take place, and determining the scope of the exam. However, BEVMO did not compensate other aggrieved employees for the time they spent traveling to and undergoing the mandatory drug testing and/or physical examinations.

Thus, BEVMO did not pay minimum wages for all hours worked by Ms. Paez and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, BEVMO 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, 1197.1, and 1198. Accordingly, BEVMO regularly failed to pay at least minimum wages to Ms. Paez 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. Paez 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), and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a) and 1198 and the applicable IWC Wage Order require employers to provide meal and rest breaks 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 break 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.

First, as stated, BEVMO has, and continues to have, a uniform policy and/or practice of understaffing locations due to labor budgeting, along with discouraging employees from accruing overtime hours, which resulted in a lack of meal period coverage and prevented other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result of BEVMO's practices and/or policies, other aggrieved employees had to work through part or all of their meal periods, have their meal periods interrupted, and/or wait extended periods of time before taking meal periods.

Second, BEVMO implemented an electronic timekeeping system that locked other aggrieved employees out and prevented them from clocking in early before the end of their 30-minute meal period. As a result of BEVMO's timekeeping system, other aggrieved employees were prevented from accurately recording when they had to return early from a meal period so that they could be compensated for that time.

Third, BEVMO did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

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

BEVMO also has engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, other aggrieved employees have not received premium pay for missed meal periods. Alternatively, to the extent that BEVMO did pay meal period premium wages to other aggrieved employees, it did so at the incorrect rates. Because BEVMO 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, BEVMO failed to provide all meal periods in violation of California Labor Code sections 226.7, 512, and 1198. Other aggrieved employees are therefore 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 and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

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

As with meal periods, BEVMO's company-wide policy and practice of understaffing and the resultant lack of rest period coverage, prevented Ms. Paez and other aggrieved employees from being relieved of all duty to take compliant rest periods. Additionally, BEVMO failed to schedule rest periods, which, coupled with BEVMO's failure to provide adequate rest period coverage, further impeded and prevented Ms. Paez and other aggrieved employees from taking compliant meal periods.

As a result, Ms. Paez and other aggrieved employees were prevented from being relieved of all duty in order to take compliant rest periods and instead would be required to continue working. As a result of BEVMO's practices and policies, Ms. Paez 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. Throughout her employment, Ms. Paez was never authorized or permitted to take a full and complete 10-minute rest period.

Additionally, upon information and belief, BEVMO maintained and implemented a company-wide on-premises rest period policy, which mandated that Ms. Paez and other aggrieved employees remain on BEVMO's premises during their rest periods. Upon information and belief, BEVMO's company-wide on-premises rest period policy prevented Ms. Paez and other aggrieved employees from being relieved of all duties for rest periods and caused them to perform work during rest periods.

BEVMO 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 or permitted. Because of this practice and/or policy, Ms. Paez and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that BEVMO did pay rest period premium wages

to other aggrieved employees, it did so at the incorrect rates. Because BEVMO 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, BEVMO failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7 and 1198. Ms. Paez and other aggrieved employees are therefore entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and 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. BEVMO has not provided Ms. Paez 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, BEVMO has knowingly and intentionally provided Ms. Paez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, BEVMO issued uniform wage statements to Ms. Paez and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the correct 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. For example, BEVMO issued wage statements to Ms. Paez and other aggrieved employees that fail to list all applicable hourly rates in effect during the pay period, including overtime rates of pay, in violation of Section 226(a)(9). Specifically, Ms. Paez's paystub for the pay period ending March 30, 2019 does not list any applicable pay rates for the pay period.

Separately, because BEVMO did not record the time Ms. Paez and other aggrieved employees spent working off-the-clock, BEVMO did not list the correct amount of gross wages and net wages earned by Ms. Paez and other aggrieved employees, in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, BEVMO failed to accurately list the total number of the hours worked by Ms. Paez 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).

Further, because BEVMO did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, BEVMO 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).

BEVMO 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).

Separate from these violations, BEVMO issued uniform wage statements to Ms. Paez and other aggrieved employees that fail to list the correct name of the legal entity of the actual employer in violation of Labor Code section 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, obtain unemployment benefits, etc. Prior to September 6, 2018, Ms. Paez's and other aggrieved employees' wage statements list the entity "BEVERAGES & MORE!" but, according to the California Secretary of State's website, there is no such entity by that name. Ms. Paez believes that the correct employing entity that should be listed on aggrieved employees' wage statements is "BEVERAGES & MORE, INC." *See example paystub below.*

CA XL3	FIRE	DEPT. 000122	CLOCK 0010	NUMBER 455-0001	Earnings Statement	
BEVERAGES & MORE! 1401 WILLOW PASS RD #900 CONCORD, CA 94520					Period Beginning: 08/05/2018 Period Ending: 08/18/2018 Pay Date: 08/23/2018	
Taxable Marital Status: Single Exemptions/Allowances: Federal: 2 CA: 2, Tax Blocked					TATIANA PAEZ	

The wage statement deficiencies also include, without limitation, 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 hours 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), BEVMO willfully failed to maintain accurate payroll records for Ms. Paez and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he employment of any employees for

longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. At all relevant times, as stated, BEVMO engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of shift start and end times for Ms. Paez and other aggrieved employees in violation of section 1198. Furthermore, in light of BEVMO’s failure to provide other aggrieved employees with first and second 30-minute meal periods to which they were entitled, BEVMO kept no records of meal start and end times for first and second meal periods.

Because BEVMO failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Paez 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. Paez 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. Paez 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, BEVMO failed to pay Ms. Paez 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. Paez 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.

BEVMO willfully failed to pay Ms. Paez and other aggrieved employees who are no longer employed by BEVMO 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 BEVMO's employ in violation of California Labor Code sections 201, 202, and 203.

Ms. Paez 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 § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, BEVMO implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo mandatory drug tests and/or physical examinations, but required them to do so at their own expense. As stated, BEVMO had a company-wide policy requiring that all employees, including other aggrieved employees, travel to a specified medical clinic on their own time and use their own means of transportation to undergo drug testing. At all times, BEVMO was in control of scheduling the date and time for the drug testing, selecting the provider/facility where the drug testing was to take place, and determining the scope of the drug test and/or physical examination.

BEVMO did not compensate other aggrieved employees for the time they spent traveling to and from their drug tests and/or physical examinations, or for the time they spent undergoing the testing and/or examinations, or reimburse them for the travel expenses they incurred getting to and from the medical clinics. BEVMO's policy and/or practice of not paying for all costs other aggrieved employees incurred obtaining mandatory drug tests and/or physical examinations violates California Labor Code section 222.5.

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).

Violation of California Labor Code § 1198 – 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.” 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 ‘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.*

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

Ms. Paez and other aggrieved employees spent a substantial portion of their day behind 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, BEVMO systematically, and on a company-wide basis, does not provide seats or stools at or near each cash register, forcing employees, including Ms. Paez and other aggrieved employees, to stand throughout their work shifts.

BEVMO violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A)-(B) because Ms. Paez 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. A substantial portion of Ms. Paez’s and other aggrieved employees’ duties were performed from and connected to a cash wrap and could have been performed from a seated position. Ms. Paez and other aggrieved employees could have handled transactions at the cash register and provided customer service while seated without interference to their ability to complete these duties. Ms. Paez and other aggrieved employees were required to stand the entire time when at a cash register because BEVMO did not provide seats or stools behind the cash register.

In addition, BEVMO did not provide Ms. Paez and other aggrieved employees with seats or stools in reasonable proximity to cash wraps to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Ms. Paez and other aggrieved employees engaged in duties in which the nature of the work required standing, BEVMO denied them the use of seats nearby during lulls in their work duties. Even though the store layout of areas adjacent to cash wraps could accommodate seats or stools with reasonable or no modification to these work areas, BEVMO has, on a company-wide basis, denied Ms. Paez and other aggrieved employees suitable seating altogether.

Moreover, BEVMO did not inform Ms. Paez and other aggrieved employees of their rights to a seat or stool under California law. As a result of BEVMO's company-wide policy and/or practice of prohibiting all employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Ms. Paez and other aggrieved employees were forced to stand during shifts and denied seats. BEVMO's failure to provide suitable seating to Ms. Paez and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 7-2001, Section 14(A)-(B).

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

First, during the relevant time period, BEVMO, on a company-wide basis, required that Ms. Paez and other aggrieved employees utilize their own personal cellular phones and/or cellular phone data to carry out their job duties, but BEVMO failed to reimburse them for the costs of their cellular phone plans and/or data plans. For example, BEVMO's management would call and text Ms. Paez on her personal cellular phone on her days off or outside of her scheduled shifts to discuss work-related matters. Although BEVMO required Ms. Paez and other aggrieved employees to regularly utilize her personal cellular phone to carry out work-related responsibilities, BEVMO failed to reimburse her for this cost.

Second, BEVMO, on a company-wide basis, forced Ms. Paez and other aggrieved employees to utilize their own personal vehicles to carry out company business, but failed to reimburse them for all costs of travel, including mileage and transit fare. For example, BEVMO required Ms. Paez and other aggrieved employees to travel to and from mandatory training at off-site locations. Ms. Paez drove to or took public transportation to Glendale, California, and Burbank, California, to complete mandatory training. Although BEVMO required that Ms. Paez use her own vehicle or take public transportation to carry out company business, BEVMO never reimbursed her for all of her travel expenses.

Third, as mentioned, BEVMO had a company-wide policy and/or practice of requiring other aggrieved employees to travel in their own personal vehicles to medical clinics to undergo mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses. Although BEVMO required other aggrieved employees to undergo the testing, BEVMO failed to reimburse them for these expenses.

BEVMO could have provided Ms. Paez and other aggrieved employees with the actual tools for use on the job, including company cellular phones and vehicles to be used for fulfilling work-related tasks, or reimbursed employees for their cellular phone usage, travel expenses, and mileage. Instead, BEVMO passed these operating costs off onto Ms. Paez and other aggrieved employees. Thus, BEVMO had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred. At all relevant times, Ms. Paez did not earn at least two (2) times the minimum wage.

BEVMO's policy and/or practice of passing its operating costs on to Ms. Paez and other aggrieved employees by requiring that they use their personal cellular phones and vehicles for business and failing to reimburse all cellular phone usage, mileage, and travel expenses, is in violation of California Labor Code section 2802. Ms. Paez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

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

Accordingly, Ms. Paez 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. Paez, 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 BEVMO for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Ms. Paez seeks all applicable 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:

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

Best Regards,



Anthony Castillo

Copy: BEVERAGES & MORE, INC. (via U.S. Certified Mail); BEVMO HOLDINGS, LLC (via U.S. Certified Mail); BEVMO GC SERVICES, LLC (via U.S. Certified Mail); Gabriel M. Huey, Esq., Hunton Andrews Kurth LLP, 550 South Hope Street, Suite 2000, Los Angeles CA 90071-2627 (via U.S. Certified Mail)

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Gabriel M. Huey, Esq.
Hunton Andrews Kurth LLP
550 South Hope Street, Suite 2000
Los Angeles CA 90071-2627



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If YES, enter delivery address below: ☐ No

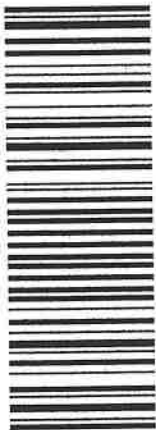
3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
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| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Insured Mail | |
| ☐ Insured Mail Restricted Delivery (over \$500) | |

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

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Gabriel M. Huey, Esq.
Hunton Andrews Kurth LLP
550 South Hope Street, Suite 2000
Los Angeles CA 90071-2627

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For delivery information, visit our website at www.usps.com®.**OFFICIAL USE**

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Extra Services & Fees (check box, add fees as appropriate)

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|---|---------|
| ☒ Return Receipt (hardcopy) | \$ 2.80 |
| ☐ Return Receipt (electronic) | \$ |
| ☐ Certified Mail Restricted Delivery | \$ |
| ☐ Adult Signature Required | \$ |
| ☐ Adult Signature Restricted Delivery | \$ |

Postage

\$ 1.42

Total Postage and Fees

\$ 7.72

Sent To

Gabriel M. Huey, Esq.
Hunton Andrews Kurth LLP
Street and Apt. No., or PO Box No. 550 South Hope Street, Suite 2000
City, State, ZIP+4® Los Angeles CA 90071-2627

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Here

Paez v. BevMo

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

one

AW APC

Park East, Ste 1000
CA 90067

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Gabriel M. Huey, Esq.
 Hunton Andrews Kurth LLP
 550 South Hope Street, Suite 2000
 Los Angeles CA 90071-2627



9590 9402 4882 9032 7230 64

2. Article Number (Transfer from service label)

7019 0700 0001 7649 3767

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

8/5/19

D. Is delivery address different from item 1?

If YES, enter delivery address below:

☐ Yes☐ No

3. Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☒ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Insured Mail☐ Insured Mail Restricted Delivery

(over \$500)

☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☐ Return Receipt for Merchandise☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

EXHIBIT “2”



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

MAO SHIOKURA
310.712.8030 Direct
Mao.Shiokura@capstonelawyers.com

November 17, 2020

VIA ONLINE SUBMISSION

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

Subject: *Leslie Benninghoff v. Beverages & More, Inc., et al.*

Dear PAGA Administrator:

This office represents Leslie Benninghoff in connection with her claims under the California Labor Code. Ms. Benninghoff was an employee of BEVERAGES & MORE, INC and/or BEVMO HOLDINGS, LLC. For the purpose of this letter, Ms. Benninghoff collectively refers to these entities as "BEVMO."

The employers may be contacted directly at the addresses below:

BEVERAGES & MORE, INC.
1401 WILLOW PASS RD SUITE 900
CONCORD CA 94520

BEVMO HOLDINGS, LLC
1401 WILLOW PASS RD. SUITE 900
CONCORD CA 94520

Ms. Benninghoff 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. Benninghoff seeks relief on behalf of herself, the State of California, and other persons who are or were employed by BEVMO in California as a non-exempt, hourly paid employee 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.

BEVMO employed Ms. Benninghoff as a non-exempt, hourly paid Seasonal Sales Associate/ BevMologist from approximately November 2017 to January 2018, and then as a Sales Associate/ BevMologist from October 2019 to March 2020. Ms. Benninghoff worked for BEVMO at its locations in Mira Loma and Santee, California. She typically worked four (4) hours or more per day and two (2) to three (3) days per week. Ms. Benninghoff was compensated approximately \$13.00 per hour. Her job duties included proving customer service, operating the cash registers, and organizing and stocking merchandise.

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

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

BEVERAGES & MORE, INC. and BEVMO HOLDINGS, LLC are a Delaware corporation and a Delaware limited liability company, respectively, and are the leading alcoholic beverage specialty retailer in the western United States, with nearly 170 stores located throughout California, Arizona, and Washington. Upon information and belief, BEVMO maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Concord, California, for all non-exempt, hourly paid employees working for BEVMO in California, including Ms. Benninghoff and other aggrieved employees. At all relevant times, BEVMO issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Benninghoff and other aggrieved employees, regardless of their location or position.

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

BEVMO willfully failed to pay all overtime wages owed to other aggrieved employees. During the relevant time period, 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 time period, BEVMO had a company-wide policy and/or practice of discouraging and impeding other aggrieved employees from recording hours worked that were outside of

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

their scheduled shifts in order to limit the amount of overtime employees could accrue. Other aggrieved employees were forced to work off-the-clock performing tasks after their scheduled shift times, but were not provided a means by BEVMO to account for this time. For example, when managerial employees worked closing shifts, they were required to set an alarm upon exiting the store. Approximately 1-2 times per week, other aggrieved employees encountered problems with the alarm system, which required them to double-check the alarm status and/or call the alarm company for assistance, which could take up to 10-15 minutes to resolve. It was not possible for other aggrieved employees to complete these tasks on the clock because they were required to punch out before exiting the store, so they would work off-the-clock to set the store alarm. Thus, BEVMO failed to track this time spent working after clocking out, and other aggrieved employees received no compensation for this time.

Second, BEVMO had, and continues to have, a loss prevention policy requiring Ms. Benninghoff and/or other aggrieved employees to undergo security checks at the end of their shifts before leaving the store premises. After clocking out at the end of their shifts, Ms. Benninghoff and/or other aggrieved employees were required to wait off-the-clock for another employee to become available to perform a security check before they could leave. Per company policy, “. . . BevMo requires you, as an employee, to show a supervisor or manager on duty the inside of any bag, purse, packaging, backpacks[,] or bulky attire or accessories of a concealing nature on your person before you leave the store. This includes leaving at the end of your shift, for break, lunch[,] or anytime during your working day.” As a result, Ms. Benninghoff and/or other aggrieved employees were subject to BEVMO’s control until being released by an employee performing the security check, but were not compensated for this time.

Third, BEVMO had a company-wide policy that required at least two employees be present in the store at all times. This policy necessarily required that employees leave together at the end of their shifts when closing the store. Combined with the labor budget limitations (*see infra*) and practice of clocking out at the end of one’s scheduled shift, this policy resulted in other aggrieved employees working off the clock at the end of their shifts and/or having to wait for the manager on duty to wrap up closing procedures before they could leave. At all times, other aggrieved employees remained under the control of BEVMO. This off-the-clock work and idle waiting time could have been recorded by BEVMO, but they refused to do so to avoid payment of additional wages to other aggrieved employees.

Fourth, other aggrieved employees were required to travel to and from mandatory training while off the clock. For example, other aggrieved employees drove to or took public transportation to distant store locations to complete mandatory training, which could take up to one (1) hour each way. BEVMO, on a company-wide basis, failed to compensate other aggrieved employees for the time they spent traveling to and from mandatory training.

Fifth, BEVMO had a company-wide practice and/or policy of requiring employees to use their personal cellular phones to communicate with BEVMO management on their days off. For example, other aggrieved employees used their personal cellular phones to communicate via text message with store managers regarding work-related matters, but were not compensated for this time.

Sixth, BEVMO 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. BEVMO’s use of a labor budget resulted in chronic understaffing, such that there were too few employees on duty to handle the workload and provide uninterrupted meal period coverage. Further, BEVMO’s company-wide timekeeping system locked employees out once they clocked out for a meal period and would not permit them to clock back in before their scheduled meal period end time. BEVMO’s timekeeping system further prevented other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted. Thus, other aggrieved employees were not provided adequate meal period coverage to allow

them to be relieved of their duties for compliant meal periods. As a result, other aggrieved employees missed meal periods and/or had their meal periods interrupted, but were not compensated for this time. BEVMO knew or should have known that, as a result of these company-wide practices and/or policies, Ms. Benninghoff and/or other aggrieved employees were performing their assigned duties off-the-clock, and were suffered or permitted to perform work for which they were not paid. BEVMO also knew, or should have known, that it did not compensate Ms. Benninghoff and/or other aggrieved employees applicable overtime rates of pay for overtime hours that they worked.

Because Ms. Benninghoff and/or other aggrieved employees sometimes worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Ms. Benninghoff and/or other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. BEVMO's failure to pay Ms. Benninghoff and/or 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, BEVMO did not pay other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, BEVMO paid other aggrieved employees incentive pay and/or nondiscretionary bonuses. For example, other aggrieved employees earned bonuses based on store milestones reached, which appeared on their paystubs as "Bonus Suppl." However, in violation of the California Labor Code, BEVMO failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, BEVMO failed to pay all overtime wages by paying a lower overtime rate than required.

Ms. Benninghoff and/or 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, due to BEVMO's policy of limiting the amount of overtime employees could accrue by discouraging and impeding other aggrieved employees from recording hours worked that were outside of their scheduled shifts, other aggrieved employees were required to work off-the-clock after their shifts and on their days off to complete assigned job duties, such as setting alarms, performing closing duties, responding to texts from BEVMO's management, and traveling to mandatory training sessions. As also described above, BEVMO had a company-wide policy and practice requiring Ms. Benninghoff and/or other aggrieved employees to submit to off-the-clock security checks. However, BEVMO did not compensate Ms. Benninghoff and/or other aggrieved employees for the time they spent waiting to undergo security checks and the time undergoing security checks.

Additionally, as stated above, due to BEVMO's uniform practice of labor budgeting, subsequent understaffing, and lack of meal period coverage, other aggrieved employees were forced to forego meal periods and/or had their meal periods interrupted by work. And, as described above, BEVMO's

timekeeping system prevented other aggrieved employees from clocking back in early when their meal periods were interrupted.

Moreover, BEVMO maintained and implemented a company-wide policy of requiring all employees to travel to a medical facility on their own time and using their own personal vehicles to undergo mandatory drug testing and/or physical examinations. At all times, BEVMO was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. BEVMO gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or examinations for the sole benefit of BEVMO. Other aggrieved employees were required to travel in their own personal vehicles or obtain alternate transportation and spend time undergoing BEVMO's mandatory drug testing and/or physical examinations. However, BEVMO did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities or for the time they spent and undergoing the mandatory drug testing and/or physical examinations.

Thus, BEVMO did not pay minimum wages for all hours worked by Ms. Benninghoff and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, BEVMO 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, 1197.1, and 1198. Accordingly, BEVMO regularly failed to pay at least minimum wages to Ms. Benninghoff 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. Benninghoff 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, and 1198 and the applicable IWC Wage Order require employers to provide meal 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 break 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.

First, as stated, BEVMO has, and continues to have, a uniform policy and/or practice of understaffing locations due to labor budgeting, along with discouraging employees from accruing overtime hours, which resulted in a lack of meal period coverage and prevented other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result of BEVMO's practices and/or

policies, other aggrieved employees had to work through part or all of their meal periods, have their meal periods interrupted, and/or wait extended periods of time before taking meal periods.

Second, BEVMO implemented an electronic timekeeping system that locked other aggrieved employees out and prevented them from clocking in early before the end of their 30-minute meal periods. As a result of BEVMO's timekeeping system, other aggrieved employees were prevented from accurately recording when they were required to return early from a meal period so that they could be compensated for that time.

Third, BEVMO did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

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

BEVMO also has engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, other aggrieved employees have not received premium pay for missed meal periods. Alternatively, to the extent that BEVMO did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, BEVMO did not pay other aggrieved employees at the correct rate of pay for premium wages because BEVMO systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, BEVMO failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Other aggrieved employees are therefore 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, and 1198 and the applicable IWC Wage Order require employers to provide 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).

As with meal periods, BEVMO's company-wide policy and practice of understaffing and the resultant lack of rest period coverage, prevented Ms. Benninghoff and other aggrieved employees from being

relieved of all duty to take compliant rest periods. Additionally, BEVMO failed to schedule rest periods, which, coupled with BEVMO's failure to provide adequate rest period coverage, further impeded and prevented Ms. Benninghoff and other aggrieved employees from taking compliant meal periods.

As a result, Ms. Benninghoff and other aggrieved employees were prevented from being relieved of all duty in order to take compliant rest periods and instead would be required to continue working. As a result of BEVMO's practices and policies, Ms. Benninghoff 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. Throughout her employment, Ms. Benninghoff was not authorized or permitted to take full and complete 10-minute rest periods two (2) times per week.

Additionally, upon information and belief, BEVMO maintained and implemented a company-wide on-premises rest period policy, which mandated that Ms. Benninghoff and/or other aggrieved employees remain on BEVMO's premises during their rest periods. Upon information and belief, BEVMO's company-wide on-premises rest period policy prevented Ms. Benninghoff and/or other aggrieved employees from being relieved of all duties for rest periods and caused them to perform work during rest periods.

BEVMO 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 or permitted. Because of this practice and/or policy, Ms. Benninghoff and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that BEVMO did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, BEVMO did not pay other aggrieved employees at the correct rate of pay for premium wages because BEVMO failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, BEVMO failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Benninghoff and other aggrieved employees are therefore entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and 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. BEVMO has not provided Ms. Benninghoff 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, BEVMO has knowingly and intentionally provided Ms. Benninghoff and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, BEVMO issued uniform wage statements to Ms. Benninghoff and other aggrieved employees 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. For example, BEVMO issued wage statements to other aggrieved employees that fail to list all applicable hourly rates in effect during the pay period, including overtime rates of pay, in violation of section 226(a)(9).

Separately, because BEVMO did not record the time Ms. Benninghoff and other aggrieved employees spent working off-the-clock, BEVMO did not list the correct amount of gross wages and net wages earned by Ms. Benninghoff and other aggrieved employees, in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, BEVMO failed to accurately list the total number of the hours worked by Ms. Benninghoff 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).

Further, because BEVMO did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, BEVMO 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). BEVMO 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).

The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and 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 hours worked off-the-clock.

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

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. At all relevant times, as stated, BEVMO engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of shift start and end times for Ms. Benninghoff and/or other aggrieved employees in violation of section 1198. Furthermore, in light of BEVMO's failure to provide

other aggrieved employees with first and second 30-minute meal periods to which they were entitled, BEVMO kept no records of meal start and end times for first and second meal periods.

Because BEVMO failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Benninghoff 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. Benninghoff 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. Benninghoff 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, BEVMO failed to pay Ms. Benninghoff 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. Benninghoff 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.

BEVMO willfully failed to pay Ms. Benninghoff and other aggrieved employees who are no longer employed by BEVMO 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 BEVMO's employ in violation of California Labor Code sections 201, 202, and 203.

Ms. Benninghoff 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 § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, BEVMO implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo mandatory drug tests and/or physical examinations, but required them to do so at their own expense. As stated, BEVMO had a company-wide policy requiring that all employees travel to a specified medical facility on their own time and use their own means of transportation to undergo drug testing and/or physical examinations. At all times, BEVMO was in control of scheduling the date and time for the drug testing and/or physical examinations, selecting the provider/facility where the drug testing and/or physical examinations were to take place, and determining the scope of the drug testing and/or physical examinations. Other aggrieved employees were required to travel in their own personal vehicles or obtain alternate transportation and spend time undergoing BEVMO's mandatory drug testing and/or physical examinations.

However, BEVMO did not compensate other aggrieved employees for the time they spent traveling to and from their drug tests and/or physical examinations, or for the time they spent undergoing the testing and/or examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. BEVMO's policy and/or practice of not paying for all costs other aggrieved employees incurred obtaining mandatory drug tests and/or physical examinations violates California Labor Code section 222.5.

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

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

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

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

BEVMO'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. Benninghoff and other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. BEVMO could provide Ms. Benninghoff and other aggrieved employees with a seat or stool at its cash wraps, but instead denies employees seating and forces Ms. Benninghoff and other aggrieved employees to stand throughout the day.

Ms. Benninghoff and other aggrieved employees spent a substantial 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, BEVMO systematically, and on a company-wide basis, does not provide seats or stools at or near cash wraps, forcing Ms. Benninghoff and other aggrieved employees to stand throughout their work shifts.

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

Ms. Benninghoff and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring BEVMO 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, BEVMO's California retail stores are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Ms. Benninghoff and other aggrieved employees during lulls in operation. BEVMO could provide Ms. Benninghoff and other aggrieved employees with a seat or stool in its work areas, but instead denies employees seating and forces Ms. Benninghoff and other aggrieved employees to stand throughout the day.

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

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

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

First, during the relevant time period, BEVMO, on a company-wide basis, required that other aggrieved employees utilize their own personal cellular phones and/or cellular phone data to carry out their job duties, but BEVMO failed to reimburse them for the costs of their cellular phone plans and/or data plans. For example, other aggrieved employees would receive calls and texts from BEVMO's management on their personal cellular phones on their days off or outside of their scheduled shifts to discuss work-related matters. Although BEVMO required other aggrieved employees to regularly utilize their personal cellular phones to carry out work-related responsibilities, BEVMO failed to reimburse them for this cost.

Second, BEVMO, on a company-wide basis, forced other aggrieved employees to utilize their own personal vehicles to carry out company business, but failed to reimburse them for all costs of travel, including mileage and transit fare. For example, BEVMO required other aggrieved employees to travel to and from mandatory training at off-site locations. Although BEVMO required that other aggrieved

employees use their own vehicle or obtain alternate transportation to carry out company business, BEVMO never reimbursed them for all of their travel expenses.

Third, as mentioned, BEVMO had a company-wide policy and/or practice of requiring other aggrieved employees to travel in their own personal vehicles to medical facilities to undergo mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses. BEVMO gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or physical examinations for the sole benefit of BEVMO. Although BEVMO required other aggrieved employees to travel to and from medical facilities to undergo the drug testing and/or physical examinations, BEVMO failed to reimburse them for these expenses.

Fourth, BEVMO, on a company-wide basis, failed to provide Ms. Benninghoff and other aggrieved employees with safety devices and safeguards such as protective gloves, to keep them safe in the workplace (*see infra*). For example, Ms. Benninghoff was eventually forced to purchase her own gloves to use while she worked, but was not reimbursed for this work-related expense.

BEVMO could have provided Ms. Benninghoff and other aggrieved employees with the actual tools for use on the job, including company cellular phones, company vehicles, and gloves to be used for fulfilling work-related tasks, or reimbursed employees for their cellular phone usage, travel expenses, mileage, and costs of safety devices and safeguards. Instead, BEVMO passed these operating costs off onto Ms. Benninghoff and other aggrieved employees. Thus, BEVMO had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred. At all relevant times, Ms. Benninghoff did not earn at least two (2) times the minimum wage.

Thus, BEVMO had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. Benninghoff and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code §§ 6401 and 6403 – Failure to Provide Safety Devices and Safeguards

California Labor Code section 6401 provides that employers must furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render the employment and place of employment safe and healthy. California Labor Code Section 6401 further provides that an employer must do everything reasonably necessary to protect the life, safety and health of its employees. California Labor Code section 6403(a) requires that employers provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

BEVMO, on a company-wide basis, failed to provide Ms. Benninghoff and other aggrieved employees with safety devices and safeguards such as protective gloves, to keep them safe in the workplace. For example, Ms. Benninghoff eventually purchased her own gloves in order to protect herself from injury while handling boxes containing store products.

BEVMO's failure to provide Ms. Benninghoff and other aggrieved employees with safety devices and safeguards, including basic personal protective equipment, for the workplace violates Labor Code sections 6401 and 6403. Ms. Benninghoff and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

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

Accordingly, Ms. Benninghoff 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. Benninghoff, 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 BEVMO for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 6401, and 6403.

Therefore, on behalf of all aggrieved employees, Ms. Benninghoff seeks all applicable 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,



Mao Shiokura

Copy: BEVERAGES & MORE, INC. (via U.S. Certified Mail); BEVMO HOLDINGS, LLC (via U.S. Certified Mail); Gabriel M. Huey, Esq., Hunton Andrews Kurth LLP, 550 South Hope Street, Suite 2000, Los Angeles CA 90071-2627 (via U.S. Certified Mail)

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Gabriel M. Huey, Esq.
Hunton Andrews Kurth LLP
550 South Hope Street, Suite 2000
Los Angeles CA 90071-2627



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| ☐ Insured Mail Restricted Delivery (over \$500) | |

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000, Los Angeles, California 90067.

On **April 7, 2021**, I served the document(s) described as: **SECOND AMENDED COMPLAINT – PAGA ENFORCEMENT ACTION** on the interested parties in this action by sending [] the original [✓] a true copy thereof [✓] to interested parties as follows [or] [] as stated on the attached service list:

Michele J. Beilke, (SBN: 194098)
mbeilke@HuntonAK.com
Julia Yenha Trankiem, (SBN: 228666)
jtrankiem@HuntonAK.com
Gabriel M. Huey, (SBN: 291608)
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HUNTON ANDREWS KURTH LLP
550 S. Hope Street, Suite 2000
Los Angeles, CA 90071-2631
Tel.: (213) 532-2119
Fax: (213) 532-2020

Attorneys for Defendant
BEVERAGES & MORE, INC. and
BEVMO HOLDINGS, LLC

() **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

() **BY FAX TRANSMISSION:** At or before 5:00 pm, I caused said document(s) to be transmitted by facsimile. The name(s) and facsimile machine telephone number(s) of the person(s) served are set forth in the service list. The document was transmitted by facsimile transmission, and the sending facsimile machine properly issued a transmission report confirming that the transmission was complete and without error.

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

(X) **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

() **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

Executed on **April 7, 2021**, at Los Angeles, California.

Xochitl Tapia
Type or Print Name


Signature