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7 Attorneys for Plaintiffs Perez and Studebaker

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF MERCED**

11 MARISA SILVA, on behalf of herself and
all "aggrieved employees" pursuant to
12 Labor Code § 2698 *et seq.*,

13 Plaintiffs,

14 v.

15 RETAIL SERVICES WIS CORP., a
Delaware corporation, LAWRENCE
16 SERVICE LLC, a Delaware limited
liability company, and DOES 1 through 10,
17 inclusive,

18 Defendants.

Case No.: 21CV-01346

Assigned to the Hon. Brian McCabe, Dept. 8

**DECLARATION OF GREGORY MAURO IN
SUPPORT OF STIPULATION AND
[PROPOSED] ORDER APPROVING
SETTLEMENT OF PRIVATE ATTORNEYS
GENERAL ACT CLAIMS, DISMISSING
ACTION WITH PREJUDICE, AND
ENTERING JUDGMENT THEREON**

Action Filed: April 21, 2021

FAC Filed: June 25, 2021

DECLARATION OF GREGORY MAURO

I, Gregory Mauro, declare as follows:

1. I am an attorney at law duly licensed to practice law before all of the Courts in the State of California and various federal courts such as the United States District Court, for the Northern Southern Central and Eastern Districts of California. I am of counsel at James Hawkins, APLC ("Counsel"). I am one of the attorneys of record for named Plaintiffs Christina Celia Perez ("Perez") and Stephanie Studebaker ("Studebaker") who filed this class action on behalf of the aggrieved employees subject to the settlement agreement. I submit this Declaration in support of the Stipulation and Proposed Order Approving Settlement of Private Attorneys General Act Claims ("Stipulation"). I have personal knowledge of the facts set forth below, and if called to testify regarding them, I could and would do so competently.

2. On July 3, 2018, Plaintiffs Christina Celia Perez ("Perez") and Stephanie Studebaker ("Studebaker") transmitted a letter to the LWDA and Defendant in compliance with the exhaustion requirements of PAGA, articulating claims related to unpaid wages, meal periods, rest periods, itemized wage statements, failure to reimburse expenses, and failure to timely pay wages at separation. A true and Correct Copy is attached hereto as Exhibit A.

3. On September 12, 2018, Plaintiffs Perez and Studebaker filed a Representative Action Complaint in the San Diego County Superior Court, *Perez, et al. v. Retail Services WIS Corporation, et al.*, case number 37-2018-00045996-CU-OE-CTL (the "Perez Complaint"). The Perez Complaint was filed on behalf of the State of California and on behalf of the general public as a PAGA action based on violations of Labor Code §§ 201, 202, 203, 226, 226.7, 510, 512, 558, 1174.5, 1194, 1197, 1198 and 2802.

4. Defendant disputes and denies the allegations and claims asserted in the Perez Complaint and the Silva Complaint (collectively "the Complaints"), Perez and Studebaker's July 3, 2018 notice to the LWDA, and Silva's February 11, 2021 and April 20, 2021 notices to the LWDA. It was also Defendant's position that Plaintiffs could not maintain their PAGA Complaints because there is no evidence of a common policy or practice that makes a trial manageable.

1 5. During the course of the litigation, Plaintiffs Silva, Perez, and Studebaker
2 (collectively “Plaintiffs”) and Defendant (hereinafter, Plaintiffs and Defendants are collectively
3 referred to as the “Parties”) engaged in formal and informal discovery, including depositions and
4 voluminous document production, and fully shared the information necessary for all sides to
5 conduct a legitimate investigation into the allegations of the action and potential defenses thereto.
6 The Parties have reached this settlement only after discovery and investigation was performed.

7 6. Being fully apprised of the value and strength of Plaintiffs’ claims, counsel for
8 Plaintiffs and Defendant successfully negotiated a settlement of Plaintiffs’ claims asserted in the
9 action through arm’s-length negotiations assisted by mediator Lisa Klerman, Esq.; the terms and
10 conditions of the settlement are set forth in the Private Attorneys General Act (Labor Code §
11 2698 *et seq.*) Settlement Agreement (“Settlement” or “Settlement Agreement”). The Settlement
12 Agreement resolves all claims asserted in the Complaints and contemplates that both Complaints
13 will be dismissed with prejudice in exchange for the consideration set out in the Settlement
14 Agreement.

15 7. Counsel for Plaintiffs and Defendant also considered the fact that the existence
16 of numerous disputes of fact in this case make the outcome uncertain. In the estimation of counsel
17 for the Parties, the delay, inconvenience, distraction, and uncertainty imposed by the litigation
18 demands would far outweigh the potential benefits of additional litigation.

19 8. I and my firm have a great deal of experience in wage and hour class action
20 litigation. I have been certified and approved as class counsel in many other wage/hour class
21 actions, and I am currently litigating numerous others before federal and state courts. I have been
22 working with James Hawkins of James Hawkins, APLC, formerly of Hawkins & Sofonio, since
23 the commencement of my practice of law in 2002. Since then, I have been committed solely to
24 representing Plaintiffs in both individual employment litigation and complex wage and hour class
25 actions.

26 9. In approximately 2003 to 2004, I began to focus almost exclusively in class action
27 litigation. In my practice as a class action Plaintiffs' attorney, I have been involved in litigating,
28 mediating and settling numerous wage and hour class actions dealing with class sizes ranging

1 from several hundred to several thousand class members resulting in settlements ranging from six
2 figures to multimillion-dollar settlements.

3 10. The following is a non-exhaustive list of other class action cases that I also
4 litigated: Cole, et. al. v. CRST Van Expedited, et. al.; USDC, CENTRAL DISCTRICT,
5 EASTERN DIVISION- Case No.: EDCV 08-1570, Wage and Hour Class Action seeking past
6 minimum wages and meal and rest break violations for drivers of Defendant in the State of
7 California; Coordination Proceeding Special Title [Rule 1550(b)] Wackenhut Wage and Hour
8 Cases, Los Angeles Superior Court, Case No. JCCP 4545, Wage and Hour Class Action seeking
9 past wages for overtime, meal and rest period violations for security guards employed by
10 defendant in the State of California; Coordination Proceeding Special Title [Rule 1550(b)]
11 California Logistics Wage and Hour Cases, Los Angeles Superior Court, Case No. JCCP 4622,
12 Wage and Hour Class Action seeking past wages for overtime, meal and rest period violations for
13 misclassified drivers employed by defendant in the State of California. Gonzalez v. Robertson's
14 Ready Mix, Ltd., Riverside County Superior Court, Case No. RIC 110770, Wage and Hour Class
15 Action seeking past wages.

16 11. The following is a non-exhaustive list of class action cases in which I was either
17 counsel or co-lead counsel in which final approval and attorneys' fees were granted along with
18 my corresponding hourly rates approved by the various courts throughout my class action career:
19 Walker v. Surf City Hospitality, aka Sharkeez, et al. OCSC, No. 05CC00293, hourly rate
20 approved in 2006 at \$350.00 per hour; Padron v. Universal Protection Service, OCSC No.
21 05CC00013 and JCCP 4480, hourly rate approved in 2008 at \$400.00 per hour; Davila v.
22 Beckman Coulter, Inc., OCSC No. 07CC01347, hourly rate approved in 2009 at \$500.00 per
23 hour; Perez v. Naked Juice Company of Glendora, Inc., et. al., LASC No. BC387088, hourly rate
24 approved in 2009 at \$500.00 per hour; Gonzalez v. Superior Industries International, Inc., et al.,
25 LASC No. BC 357912, approved fees of 33.3% of total settlement amount; Wilson v. MCP
26 Foods, Inc. aka Firmenich, OCSC No. 30-2008-00065584-CU-OE-CXC, hourly rate approved in
27 2010 at \$500.00 per hour; Garcia v. Quiksilver, Inc., OCSC Case No. 30-2008-00083896-CU-
28 OE-CXC, hourly rate approved in 2011 at \$500 per hour; Gutierrez, et. al. v. Hilton Hotels Corp.,
OCSC No. 30-2009-00282002-CU-OE-CXC, hourly rate approved in 2011 at \$550.00 per hour;

1 Sanchez v. HVM LQ Management, LLC, USDC Central District No. SA CV11-00123 JAK
2 (PJWx), hourly rate approved in 2012 at \$560.00 per hour; Esquivel v. Fairmont Hotels and
3 Resorts, U.S., Inc., Case No. 30-2010-00418849-CU-OE-CXC, hourly rate approved in 2012 at
4 \$600.00 per hour; Galvez v. Walt Disney Parks and Resorts U.S., Inc., OCSC NO. 30-2011-
5 00473272-CU-OE-CXC, hourly rate approved in 2013 at \$600.00 per hour; Fernando v. GCS
6 Service, Inc., OCSC No. 30-2011-00473162-CU-OE-CXC, hourly rate approved in 2013 at
7 \$600.00 per hour; Navarro v. QS Wholesale, Inc., OCSC Case No. 30-2011-00462143-CU-OE-
8 CXC, hourly rate approved in 2013 at \$600.00 per hour; LoCascio, et. al. v. Hertz Local Edition,
9 SDSC Case No. 37-2015-00020830, hourly rate approved in 2017 at \$750 per hour; Terrado v.
10 Accredited Debt Relief, et. al., SDSC Case No: 37-2018-00014181-CU-OE-CTL, hourly rate
11 approved in 2018 at \$750 per hour; Singer, et. al. v. M.A.C. Cosmetics, SDSC Case No. 37-2019-
12 00033695-CU-OE-CTL, hourly rate of approved in 2020 at \$850 per hour.

13 12. Our firm served as class counsel in a number of significant wage and hour
14 settlements. Of particular note, in 2019, our firm was co-lead counsel in securing the largest
15 wage and hour class action settlement in California history at \$130,000,000. During this case,
16 Plaintiffs appealed a decertification order. This case involved several appeals. The appellate
17 record amassed an extensive appellate record comprising a 23-volume joint appendix, a three-
18 volume reporters transcript, five briefs, four letter briefs, two motions for judicial notice, a motion
19 to augment the record, and several additional letters informing the appellate court of new legal
20 authority issued after *Dukes*. The matter was argued to and submitted by the Court of Appeal on
21 September 15, 2016, and on November 21, 2016, the decertification order was reversed and the
22 case was remanded for further proceedings. (*Lubin v. The Wackenhut Corporation* (“*Lubin*”), 5
23 Cal. App. 5th 960 (2016)). Wackenhut filed a petition for review of the Court of Appeal decision
24 to the California Supreme Court. The Supreme Court denied Wackenhut’s petition for review of
25 *Lubin*. The Court of Appeal issued remittitur on April 10, 2017. Eventually through more
26 litigation, the parties were able to secure the 130 million settlement that was approved on October
27 21, 2019 by Judge Highberger in the Los Angeles Superior Court.

28 13. Based on my extensive experience litigating hundreds of class and representative

1 actions, I believe the settlement here is fair and reasonable and warrants approval by the Court.

2 14. Pursuant to Cal. Lab. Code §§2699(I)(3), a copy of this Stipulation and Settlement
3 has been transmitted to the LWDA. Further, upon entry of judgment herein, the Perez action will
4 be dismissed with prejudice.

5 I declare under penalty of perjury that the foregoing is true and correct.

6 Executed on this 28th day of January 2022, at Irvine, California.

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Gregory Mauro

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EXHIBIT A

JAMES *JH* HAWKINS

A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618
TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

July 3, 2018

Via LWDA Website

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste 801
Oakland, CA 94612
<http://www.dir.ca.gov/Private-Attorneys-General-Act>

Via Certified Mail

RETAIL SERVICES WIS CORPORATION
Agent for Service of Process: National Registered Agents, Inc.
818 W. Seventh St., Ste., 930
Los Angeles, CA 90017
Receipt No. 7013 2630 0001 1155 1288

Re: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698, *et seq.*

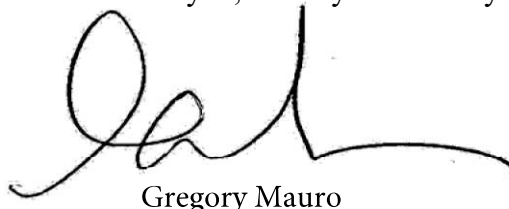
To Whom It May Concern:

PLEASE TAKE NOTICE that plaintiffs CHRISTINA CELIA PEREZ and STEPHANIE STUDEBAKER, individually and on behalf of all similarly situated representative aggrieved employees, gives NOTICE to commence and/or amend a civil action pursuant to California Labor Code Sections 2698, *et seq.* Plaintiff hereby gives written notice by certified mail to the Labor and Workforce Development Agency, and RETAIL SERVICES WIS CORPORATION, through its Agent for Service of Process (National Registered Agents, Inc.).

Plaintiffs hereby attach a copy of the Proposed PAGA Representative Action Complaint to be filed in San Diego County Superior Court as though fully set forth herewith and the Class Action Complaint filed in the San Diego Superior Court, setting out the specific provisions of the Labor Code Plaintiffs allege have been violated, including the facts and theories. All labor provisions in the Proposed PAGA Representative Action Complaint alleged to have been violated pertain to all entities and individuals named in the Complaints, even if not expressly specified.

Please advise within sixty (60) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and if you have any questions, please do not hesitate to contact me.

Very Truly Yours,



Gregory Mauro

Enclosure: Proposed PAGA Representative Action Complaint; Class Action Complaint

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6 Attorneys for CHRISTINA CELIA PEREZ and STEPHANIE STUDEBAKER
on behalf of the general public as private attorney general
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO

10 CHRISTINA CELIA PEREZ and
STEPHANIE STUDEBAKER, on behalf of the
11 general public as private attorney general,

12 Plaintiffss,

13 v.

14 RETAIL SERVICES WIS CORPORATION, a
California Corporation, and DOES 1-50,
15 inclusive,

16 Defendants.

Case No.
Assigned for all Purposes to:
Hon.
Dept.

**[PROPOSED] PAGA
REPRESENTATIVE ACTION
COMPLAINT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE §§ 2698 *et seq*)**

DEMAND FOR JURY TRIAL

COMES NOW Plaintiffs CHRISTINA CELIA PEREZ and STEPHANIE STUDEBAKER (“Plaintiffs”), on behalf the general public and all non-exempt aggrieved employees, acting on behalf of the California Attorney General as private attorney general, asserts claims against Defendants RETAIL SERVICES WIS CORPORATION, a California Corporation, and Does 1-50, inclusive (collectively “Defendants”) as follows:

I. INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of the general public as private attorney general and all other current and former aggrieved employees, to recover civil penalties and address an employer’s violations of the California Labor Code.

2. In this case, Defendants violated various provisions of the California Labor Code. As set forth below, Defendants implemented policies and practices which led to unpaid wages resulting from Defendants’: (a) failure to accurately pay overtime wages, (b) failure to pay minimum wages (c) failure to provide meal periods for every work period exceeding more than ten (10) hours per day and failure to pay an additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a meal period; (d) failure to provide rest breaks for every four hours or major fraction thereof worked and failure to pay an additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a rest period; (e) failing to pay all wages earned and owed upon separation from Defendant’s employ, (f) failing to provide accurate itemized wage statements; and (g) failing to indemnify necessary business expenses. As a result of these unpaid wages enumerated under Labor Code §2699.5, Plaintiffs seeks penalties under Labor Code 2698, *et. seq.* on behalf of the general public as private attorney general and all other aggrieved employees as well as wages due and owing under Labor Code § 558 pursuant to the provision of Labor Code § 2699.5.

II. JURISDICTION AND VENUE

3. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court “original

1 jurisdiction in all cases except those given by statute to other trial courts.” The statutes under
2 which this action is brought do not give jurisdiction to any other court.

3 4. This Court has jurisdiction over Defendants because, upon information and belief,
4 each Defendant either has sufficient minimum contacts in California, or otherwise intentionally
5 avails itself of the California market so as to render the exercise of jurisdiction over it by the
6 California Courts consistent with traditional notions of fair play and substantial justice.

7 5. Venue as to each Defendant is proper in this judicial district pursuant to Code of
8 Civil Procedure section 395. Defendants are headquartered in San Diego County and own and
9 operate RETAIL SERVICES WIS CORPORATION, doing business throughout, California, and
10 each Defendant is within the jurisdiction of this Court for service of process purposes. The
11 unlawful acts alleged herein have a direct effect on Plaintiffs and all other aggrieved employees
12 within the State of California. Defendants employ numerous aggrieved employees throughout
13 California.

14 6. Defendants operate at various retail locations throughout the state of California.
15 On information and belief, Defendants have conducted business within the State of California
16 during the purported liability period and continue to conduct business throughout the State of
17 California. The unlawful acts alleged herein have had a direct effect on Plaintiffs, and the
18 similarly situated non-exempt aggrieved employees throughout the State of California..

19 7. The California Superior Court also has jurisdiction in this matter because on
20 information and belief there are no federal questions at issue, as the issues herein are based solely
21 on California statutes and law, including the California Labor Code, the IWC Wage Orders, the
22 California Code of Civil Procedure, the California Civil Code, and the California Business and
23 Professions Code.

24 8. On information and belief, during the statutory liability period and continuing to
25 the present ("liability period"), Defendant consistently maintained and enforced against
26 Defendant's Non-Exempt Employees ("Aggrieved Employees"), among others, the following
27 unlawful practices and policies, in violation of California state wage and hour laws: (a) failure to
28 accurately pay overtime wages, (b) failure to pay minimum wages (c) failure to provide meal

1 periods for every work period exceeding more than ten (10) hours per day and failure to pay an
2 additional hour's of pay or accurately pay an additional hour's of pay in lieu of providing a meal
3 period; (d) failure to provide rest breaks for every four hours or major fraction thereof worked
4 and failure to pay an additional hour's of pay or accurately pay an additional hour's of pay in lieu
5 of providing a rest period; (e) failing to pay all wages earned and owed upon separation from
6 Defendant's employ, (f) failing to provide accurate itemized wage statements; and (g) failing to
7 indemnify necessary business expenses.

8 9. On information and belief, during the statutory liability period and continuing to
9 the present, Defendants have had a consistent policy of failing to provide its Non-Exempt
10 Employees within the State of California, including Plaintiffs, unfettered, uninterrupted, duty free
11 rest periods of at least (10) minutes per four (4) hours worked or major fraction thereof and
12 failing to pay such employees one (1) hour of pay at the employees regular rate of compensation
13 for each workday that the rest period is not provided, as required by California state wage and
14 hour laws.

15 10. On information and belief, during the statutory liability period and continuing to
16 the present, Defendants have had a consistent policy of failing to pay overtime for hours worked
17 in excess of forty hours in a workweek or more than 8 hours in a workday.

18 11. On information and belief, during the statutory liability period and continuing to
19 the present, Defendants have had a consistent policy of failing to pay minimum wages and
20 overtime wages for hours worked while subject to the control of Defendants.

21 12. On information and belief, during the statutory liability period and continuing to
22 the present (rest and meal period liability period), Defendants have had a consistent policy of
23 requiring its Non-Exempt Employees within the State of California, including Plaintiffs, to work
24 at least five (5) and or ten (10) hours without a meal period and failing to pay such employees one
25 (1) hour of pay at the employees regular rate of compensation for each workday that the meal
26 period is not provided, as required by California state wage and hour laws.

27 13. On information and belief, as a result of these unlawful acts, Defendants failed to
28 pay the required meal and rest period premiums on days such Non-Exempt Employees worked

1 more than 6 hours or more than 3.5 hours in a work shift.

2 14. On information and belief, during the statutory liability period and continuing to
3 the present, Defendants have had a consistent policy of failing to timely pay wages upon
4 separation.

5 15. On information and belief, during the statutory liability period and continuing to
6 the present, Defendants have had a consistent policy of failing to provide accurate itemized wage
7 statements.

8 16. On information and belief, during the statutory liability period and continuing to
9 the present, Defendants have had a consistent policy of failing to indemnify work related
10 expenses incurred.

11 17. Plaintiffs on behalf of the general public as private attorney general and all other
12 aggrieved employees bring this action pursuant to Labor Code 2698, et. seq. for violations
13 enumerated under 2699.5 as follows: sections 201, 202, 203, 226, 226.7, 510, 512, 558, 1174.5,
14 1194, 1197, 1198, and 2802, seeking penalties, interest, attorneys' fees and costs.

15 **III. PARTIES**

16 **A. Plaintiffs**

17 18. Plaintiffs PEREZ and STUDEBAKER are and at all times relevant to this action,
18 residents of Modesto, California. Plaintiffs were employed by Defendants in November 2017, and
19 were assigned to various Lowe's hardware store locations within Modesto and Stockton,
20 California, as Non-Exempt Employees, with the title of Merchandiser, performing duties relating
21 to Defendants' merchandising and inventory counting company until their separation from
22 Defendants' employ in approximately March 2018.

23 19. As Defendants' employee, Plaintiffs, and all other aggrieved employees were
24 regularly required to and subsequently suffered:

25 (a) work in excess of eight (8) hours per day, and/or forty (40) hours per week; all in
26 violation of California labor laws, regulations, and the Industrial
27 Welfare Commission Wage Orders ("IWC");

28 (b) perform work subject to the control of the employer without being compensated at

1 least minimum wages, all in violation of California labor laws, regulations, and the
2 Industrial Welfare Commission Wage Order (“IWC”);

3 (c) work without being permitted or authorized a minimum ten-minute rest period for
4 every four hours or major fraction thereof worked and not compensated one (1) hour
5 of pay at her regular rate of compensation for each workday that a rest period was not
6 provided, all in violation of California labor laws, regulations, and the Industrial
7 Welfare Commission Wage Orders (“IWC”);

8 (d) work in excess of five hours per day without being provided meal periods and not
9 compensated one (1) hour of pay at the regular rate of compensation for each
10 workday that a meal period was not provided, all in violation of California labor laws,
11 regulations, and the Industrial Welfare Commission Wage Orders (“IWC”);

12 (e) incur work related expenses which were not reimbursed, all in violation of California
13 labor laws, regulations, and the Industrial Welfare Commission Wage Orders
14 (“IWC”).

15 (f) not provided accurate itemized wage statements; and

16 (g) not paid all wages upon separation from Defendant’s employment.

17 20. On information and belief, Defendants willfully failed to pay all earned wages in
18 the form regular and overtime wages, and meal and rest period premium wages in a timely
19 manner to Plaintiffs and aggrieved employees; nor have Defendants returned to Plaintiffs and
20 aggrieved employees upon or after separation from employment with Defendants, all
21 compensation for wages earned including meal and rest period premiums. As a result of these
22 unpaid wages enumerated under Labor Code §2699.5, Plaintiffs seeks penalties under Labor
23 Code 2698, *et. seq.* on behalf of the general public as private attorney general and all other
24 aggrieved employees as well as wages due and owing under Labor Code § 558 pursuant to the
25 provision of Labor Code § 2699.5.

26 **B. Defendants**

27 21. Defendants RETAIL SERVICES WIS CORPORATION is a California
28 Corporation, headquartered in San Diego, California, which own and operate inventory and data

1 collection services companies, to provide inventory counting, merchandising and space
2 optimization services to various retail stores such as Lowes, Walmart, The Home Depot, Macy's,
3 OfficeMax, PetSmart, and many other businesses, in California. Plaintiffs estimate there are in
4 excess of one hundred aggrieved employees who work or have worked for Defendants over the
5 last year.

6 22. Other than identified herein, Plaintiffs are unaware of the true names, capacities,
7 relationships and extent of participation in the conduct alleged herein, of the defendants sued as
8 DOES 1 through 50, but is informed and believes and thereon alleges that said defendants are
9 legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by
10 such fictitious names. Plaintiffs will amend this complaint when their true names and capabilities
11 are ascertained

12 23. Plaintiffs are informed and believes and thereon alleges that each Defendant,
13 directly or indirectly, or through agents or other persons, employed Plaintiffs and other members
14 of the Representative Group , and exercised control over their wages, hours, and working
15 conditions. Plaintiffs are informed and believes and thereon alleges that each defendant acted in
16 all respects pertinent to this action as the agent of the other defendants, carried out a joint scheme,
17 business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally
18 attributable to the other defendants.

19 IV. GENERAL ALLEGATIONS

20 24. Plaintiffs are informed and believe, and based thereon allege that Defendants
21 employ or employed Non-Exempt Employees throughout the State of California during the
22 liability period. Plaintiffs and all other aggrieved employees were compensated based upon an
23 hourly rate and have at all times pertinent hereto been non-exempt within the meaning of the
24 California Labor Code and the implementing rules and regulations of the IWC California Wage
25 Orders.

26 25. On information and belief, and during the relevant time frame, Defendants
27 implemented a uniform set of policies and practices to all aggrieved employees throughout
28 California regardless of the location they were assigned as all aggrieved employees throughout

1 California are all engaged in the generic job duties of merchandising and inventory counting.

2 26. On information and belief, during the relevant time frame, Plaintiffs and aggrieved
3 employees were required to download Defendants' mobile application, Natural Insight, onto their
4 personal cellphones. Defendants' mobile application was used to track the Plaintiffs' and
5 aggrieved employees' locations at all times, was used to identify which employees were on a
6 lunch or a rest break, was used to convert their cellphones into scanners for their inventory and
7 merchandising tasks and was also used to complete Defendant's paper logging which is a manual
8 entry into Defendants' mobile application of what had been scanned throughout the day, a task
9 which Plaintiffs and aggrieved employees are required to do at the end of every shift

10 27. On information and belief, during the relevant time frame, Plaintiffs and aggrieved
11 employees frequently worked well over eight (8) hours in a day and forty (40) hours in a work
12 week as they would were scheduled to work shifts that typically began at 6:00 a.m. and concluded
13 at 3:00 p.m.

14 28. During the relevant time frame, Plaintiffs and other aggrieved employees were
15 suffered to perform work under the control of the Defendants without compensation of at least
16 minimum wage and overtime. More specifically, Plaintiffs and the representative aggrieved
17 employees often performed work while off the clock. On a consistent and regular basis,
18 Defendants' management would instruct Plaintiffs and aggrieved employees to clock out for the
19 day at 2:45 p.m. which is fifteen minutes before their scheduled end time and subsequently
20 required them to continue working for as long as thirty minutes after clocking out. The tasks
21 Plaintiffs and aggrieved employees would be required to complete would be the manual entry of
22 their scans into Defendant's mobile application ("paper logging"). Additionally, if Plaintiffs and
23 aggrieved employees were unable to complete their paper logging at the store, they would be
24 required to finish the task at home. Such off-the clock work was not *de minimis* and resulted in
25 approximately 2.5 hours of uncompensated work time a week. Despite the realities of the job,
26 Defendants and its management did not make any effort to stop or otherwise disallow this off the
27 clock work and instead required and authorized it to happen. The off the clock work Plaintiffs and
28 aggrieved employees performed was not *de minimis*. The above off the clock work was time

1 spent uncompensated while under the control of Defendants and resulted in approximately 2.5
2 hours of uncompensated work time a week. Defendants were aware of this time and knew or
3 should have known that Plaintiffs and aggrieved employees were suffered or permitted to work
4 all without compensation.

5 29. During the relevant time frame, Plaintiffs and aggrieved employees were not
6 accurately paid regular and overtime wages, as required under California law as a result of
7 Defendants' unlawful pay practices

8 30. Plaintiffs are informed and believe, and thereon allege, that during the relevant
9 time frame, Plaintiffs are informed and believe that Plaintiffs and Aggrieved employees were
10 caused to endure interrupted meal periods of at least thirty (30) minutes for many of the work
11 days such employees worked more than six hours (6) hours, were not provided uninterrupted
12 second meal periods of at least thirty (30) minutes for any work days such employees worked
13 more than ten (10) hours, and were not paid one (1) hour of wages by Defendants in lieu thereof,
14 all in violation of the California Labor Code, due to Defendant's demands that Plaintiffs and
15 Aggrieved employees complete their work loads.

16 31. Plaintiffs are informed and believe that Plaintiffs and Aggrieved employees were
17 regularly required to work in excess of six (6) hours per day without Defendants providing them
18 an uninterrupted (30) minute meal period as mandated under the California Labor Code and the
19 implementing rules and regulations of the IWC California Wage Orders 7-2001. Plaintiffs and
20 Aggrieved employees were not provided lawful meal periods and were not provided with one
21 hour of wages in lieu thereof under Defendants' policies and practices. During the relevant time
22 frame, Defendants' supervisors would regularly call or send text messages to Plaintiffs and
23 Aggrieved employees regarding inventory issues, new assignments and tasks, or instructions on
24 what work needed to be completed before leaving for the day, which Plaintiffs and Aggrieved
25 employees needed to respond to even while on their lunch breaks. Through Defendants' mobile
26 application, Defendants and Defendants' management could see where Plaintiffs and Aggrieved
27 employees were and whether or not they were on their lunch breaks as Plaintiffs and Aggrieved
28 employees carried their personal cellphones on their persons at all times, and despite having

1 access to this information, Defendants and Defendants' management would routinely call or text
2 Plaintiffs and Aggrieved employees about work related tasks and require them to respond. As a
3 result, Plaintiffs and Aggrieved employees were systematically denied a significant number of
4 their required uninterrupted meal periods due to the demands placed upon them by Defendants
5 and management. On information and belief, Plaintiffs and the Class did not waive any of their
6 authorized and required meal periods. Nevertheless, on information and belief, Defendants failed
7 to pay or failed to accurately pay Plaintiffs and Aggrieved employees an extra hour of pay as
8 required by California law where meal periods were not provided, or not provided within the
9 legally required time frames.

10 32. Plaintiffs are informed and believe that during the liability period, Plaintiffs and
11 Aggrieved employees were consistently required to work in excess of four (4) hours (or major
12 fraction thereof) without receiving lawful ten (10) minute rest periods. The Aggrieved employees
13 were also not provided with one hour wages in lieu thereof. Plaintiffs and the other Aggrieved
14 employees were systematically denied their rest breaks due to being required to respond to any
15 calls or text messages Defendants and Defendants' management would send them regarding their
16 daily tasks. Defendants' policies and practices failed to authorize and permit the Class all of their
17 entitled uninterrupted rest periods, including first rest periods of at least ten (10) minutes for
18 every shift worked of at least three and a half (3 1/2) to four (4) hours, a first and second rest
19 period of at least ten (10) minutes for every shift worked greater than six (6) hours, and a third
20 rest period of at least ten (10) minutes for every shift worked in excess of ten (10) hours.
21 Nevertheless, Defendants never paid Plaintiffs, and on information and belief, failed to pay or
22 failed to accurately pay Aggrieved employees an extra hour of pay as required by California law
23 where rest breaks were interrupted or not provided, or not provided within the legally required
24 time frames.

25 33. Plaintiffs are informed and believe that Defendants neither provided or authorized
26 and permitted Plaintiffs and Aggrieved employees all of their mandated and lawful meal and rest
27 periods. Plaintiffs and Aggrieved employees did not waive any meal or rest periods, which
28 Defendants were required to provide to them under the California Labor Code and applicable

1 IWC Wage Orders 7-2001, during the liability period. Defendants did not fully compensate
2 Plaintiffs and the Class for hourly wages during the liability period, including by virtue of the fact
3 that Defendants did not compensate Plaintiffs and Aggrieved employees with one extra hour of
4 pay for Defendants' failure to authorize and permit such Non-Exempt Employees with each of
5 their authorized rest periods and meal periods during the rest and meal period liability period.

6 34. On information and belief, during the relevant time frame, Defendants failed to
7 adequately reimburse Plaintiff and Aggrieved employees for business expenditures incurred for
8 the use of personal cellphones as Plaintiff and Aggrieved employees used their personal
9 cellphones to stay in contact with Defendants management, and to conduct their daily
10 merchandising and inventory scans. Plaintiffs and Aggrieved employees were also not reimbursed
11 for business expenditures incurred for the use of personal vehicles when assigned to various store
12 locations. Such business expenditures incurred were incurred in direct consequence of Plaintiffs'
13 and Aggrieved employees' duties pursuant to Labor Code § 2802.

14 35. Upon information and belief, Defendants knew and or should have known that it is
15 improper to implement policies and commit unlawful acts such as:

16 (a) requiring employees to work over eight (8) hours in a day and forty (40) hours in a
17 work week without being provided the required overtime pay;

18 (b) requiring employees to perform work subject to the control of the Defendant
19 without being compensated at least minimum wages;

20 (c) requiring employees to work four (4) hours or a major fraction thereof without
21 being provided a minimum ten (10) minute rest period and without compensating the employees
22 with one (1) hour of pay at the employees' regular rate of compensation for each workday that a
23 rest period was not provided;

24 (d) requiring employees to work in excess of five (5) hours or ten (10) hours per day
25 without being provided an uninterrupted thirty minute meal period and/or a second meal period,
26 and without compensating employees with one (1) hour of pay at the regular rate of compensation
27 for each workday that such a meal period was not provided;

28 (e) failing to provide accurate itemized wage statements;

1 (f) failing to pay all wages earned upon separation from Defendant's employ; and
2 (g) failing to reimburse business expenses incurred as a direct consequence of their
3 duties.

4 36. In addition to the violations above, and on information and belief, Defendants
5 knew they had a duty to compensate Plaintiffs and aggrieved employees for the allegations
6 asserted herein, and that Defendants had the financial ability to pay such compensation, but
7 willfully, knowingly, recklessly, and/or intentionally failed to do so.

8 **V. REPRESENTATIVE CLAIMS**

9 **THE PRIVATE ATTORNEYS GENERAL ACT- LABOR CODE §§ 2698 et seq.**

10 37. Plaintiffs incorporates by reference and re-alleges each and every allegation
11 contained above, as though fully set forth herein.

12 38. On _____ 2018, Plaintiffs complied with notice requirements pursuant to Labor
13 Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit A**,
14 indicating that the LWDA and Defendants were put on notice of the claims alleged here and that
15 the notice requirement has been satisfied. Sixty five days have passed and the LWDA has not
16 indicated intent to investigate the claims. Therefore, Plaintiffs may proceed with this action in a
17 representative capacity. The substance and violations set forth in this Complaint of which the
18 LWDA was provided timely notice, Plaintiffs has also sent a copy of this PAGA Representative
19 Action Complaint to the LWDA.

20 39. Plaintiffs are aggrieved employees as defined in Labor Code Section 2699(a).
21 Plaintiffs bring this cause of action individually and all current and former California Non-
22 Exempt Manager Employees of Defendants.

23 40. Pursuant to Labor Code section 2699(a) Plaintiffs seek to recover civil penalties
24 for which Defendants are liable due to numerous Labor Code violations as set forth in this
25 Complaint, including without limitation Labor Code section 201, 202, 203, 226, 226.7, 510, 512,
26 558, 1174.5, 1194, 1197, 1198, and 2802, 2698 et seq., applicable IWC Wage Orders and
27 California Code of Regulations, Title 8, section 11000 et. seq.

28 41. At all times relevant, Plaintiffs and all other aggrieved employees regularly

1 performed non-exempt work in excess of 50% of the time, and thus, were subject to the meal and
2 rest break requirements of the applicable IWC wage order and the Labor Code.

3 42. Defendants violated Labor Code section 510, 558, and 1194 by failing to
4 accurately overtime wages owed for work performed while off the clock as discussed above.
5 Therefore, Defendants violated section 510, 558 and 1194 by not compensating its Non-Exempt
6 Employees for work performed in excess of eight hours (8) in a day or forty hours in a work week
7 (40). Section 510 of the Labor Code codifies the right to overtime compensation at the rate of one
8 and one-half times the regular rate of pay for all hours worked in excess of eight (8) hours in a
9 day or forty (40) hours in a work week and to overtime compensation twice the regular rate of
10 pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a
11 day on the seventh day of work in a particular work week.

12 43. Defendants also violated Labor Codes sections 200, 1194, and 1197 for failing to
13 pay minimum wages for time spent working off the clock while subject to the control of
14 Defendants all without pay. Labor Code §1197 provides that employees are to be paid minimum
15 wage for each hour worked, and cannot be averaged the minimum and the payment of a lesser
16 wage than the established is unlawful.

17 44. Defendants violated Labor Code sections 512 and 226.7 for failing to provide
18 timely, uninterrupted meal periods and requiring unlawful on duty meal periods, or compensation
19 in lieu thereof. Pursuant to Labor Code section 512, no employer shall employ an employee for a
20 work period of more than five (5) hours without providing a meal break of not less than thirty
21 (30) minutes in which the employee is relieved of all of his or her duties. An employer may not
22 employ an employee for a work period of more than ten (10) hours per day without providing the
23 employee with a second meal period of not less than thirty (30) minutes, except that if the total
24 hours worked is no more than twelve (12) hours, the second meal period may be waived by
25 mutual consent of the employer and the employee only if the first meal period was not waived.

26 45. Defendants failed to provide Plaintiffs and all other aggrieved employees
27 uninterrupted duty free meal periods of not less than thirty (30) minutes. Defendants policies and
28 practices required employees to work during their meal periods. As a proximate result of the

1 aforementioned violations, Plaintiffs and all other aggrieved employees have been damaged in an
2 amount according to proof at time of trial.

3 46. Plaintiffs, and on information and belief, all aggrieved employees, were
4 systematically not permitted or authorized to take one ten minute rest period for every four hours
5 worked or major fraction thereof, which is a violation of the Labor Code and IWC wage order 7-
6 2001, section 12. On shifts where Plaintiffs worked in excess of three and half hours they were
7 routinely not permitted and authorized to take lawful rest periods. Plaintiffs and on information
8 and belief, aggrieved employees, were not compensated with one hour of wages for every day in
9 which a rest period was missed or untimely as a result of Defendants' policies, practices, or work
10 demands. By failing to authorize and permit a ten-minute rest period for every four hours or
11 major fraction thereof worked per day, and by failing to provide compensation for such
12 unprovided rest periods as alleged above, Defendants willfully violated the provisions of Labor
13 Code sections 226.7, 512 and the applicable IWC Wage Order.

14 47. Defendants also willfully violated Labor Code sections 201-203 by failing to
15 provide all owed wages at separation from employment. Labor Code sections 201 and 202
16 require Defendants to pay their employees all wages due either at time of firing, or within
17 seventy-two (72) hours of voluntary separation, if not sooner. Section 203 of the Labor Code
18 provides that if an employer willfully fails to timely pay such wages the employer must, as a
19 penalty, continue to pay the subject employee's wages until the back wages are paid in full or an
20 action is commenced. The penalty cannot exceed 30 days of wages.

21 48. Plaintiffs and all other aggrieved employees who were separated from employment
22 are entitled to compensation for all forms of wages earned, including but not limited to
23 compensation regular and overtime wages, and for non-provided meal and rest periods, but to
24 date have not received such compensation, therefore entitling them to penalties under PAGA for
25 violations of Labor Code sections 201-203.

26 49. On information and belief, Defendants willfully failed to pay all wages due and
27 owing upon separation from employment. These wages include regular and overtime wages, and
28 meal and rest period premiums.

1 50. On information and belief, Defendants failed to provide accurate itemized wage
2 statements which failed to include all hours worked, including overtime and the accurate overtime
3 rate, and the lawful meal and rest period premiums earned, which are due and owing to Plaintiffs
4 and the aggrieved employees. As a result Plaintiffs and aggrieved employees were harmed as they
5 are unable to determine if they were appropriately compensated for all hours worked.

6 51. As a result of Defendants' unlawful conduct, Plaintiffs and Aggrieved employees
7 are entitled to penalties to the extent they were not paid at the prevailing wage rate for all hours
8 worked.

9 52. On information and belief, Defendants failed to indemnify necessary business
10 expenses incurred pursuant to Labor Code section 2802, by Plaintiffs and the aggrieved
11 employees as a result of the realities and demands of the job placed upon them by Defendants.
12 Such business expenses incurred are from Plaintiffs' and the aggrieved employees' use of
13 personal cell phones and personal vehicles as alleged.

14 53. Plaintiffs and the Representative Aggrieved Employees are entitled to recover
15 Penalties and attorneys' fees and costs under Labor Code section 2698, et. seq.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiffs prays for judgment against Defendants, as follows:

- 18 1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq.;
- 19 2. For penalties according to proof, pursuant to Labor Code §§ 558 et seq.;
- 20 3. For reasonable attorneys' fees and costs; and
- 21 4. For such other and further relief as the Court deems proper.

22 **DEMAND FOR JURY TRIAL**

23 Plaintiffs and aggrieved employees request a jury trial in this matter.
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27
28

1 Dated: July 3, 2018

JAMES HAWKINS APLC

2
3 By: 

JAMES R. HAWKINS, ESQ.
GREGORY MAURO, ESQ.

4
5 Attorneys for Plaintiffs CHRISTINA CELIA
6 PEREZ and STEPHANIE STUDEBAKER, on
7 behalf of the general public as private attorneys
8 general
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1 **PROOF OF SERVICE AND CERTIFICATION**

2 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to
3 the within action; my business address is 27200 Agoura Road, Suite 101, Calabasas, CA 91301

4 _____ (For messenger) my business address is:

5 On February 1, 2022, I served the foregoing document described (1) **STIPULATION AND [PROPOSED]**
6 **ORDER APPROVING SETTLEMENT OF PRIVATE ATTORNEYS GENERAL ACT CLAIMS, DISMISSING**
7 **ACTION WITH PREJUDICE, AND ENTERING JUDGMENT THEREON, (2) DECLARATION OF DANIEL**
8 **F. GAINES IN SUPPORT OF STIPULATION AND [PROPOSED] ORDER APPROVING SETTLEMENT OF**
9 **PRIVATE ATTORNEYS GENERAL ACT CLAIMS, DISMISSING ACTION WITH PREJUDICE, AND**
10 **ENTERING JUDGMENT THEREON and (3) DECLARATION OF GREGORY MAURO IN SUPPORT OF**
11 **STIPULATION AND [PROPOSED] ORDER APPROVING SETTLEMENT OF PRIVATE ATTORNEYS**
12 **GENERAL ACT CLAIMS, DISMISSING ACTION WITH PREJUDICE, AND ENTERING JUDGMENT**
13 **THEREON** on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed
14 as follows:

Jody Landry, Esq. LITTLER MENDELSON, P.C. 501 W. Broadway, Suite 900 San Diego, CA 92101 Attorneys for Defendant Retail Services WIS Corp.	James R. Hawkins, Esq. Gregory Mauro, Esq. JAMES HAWKINS APLC 9880 Research Drive, Suite 200 Irvine, CA 92618 Attorneys for Plaintiffs Christina Perez and Stephanie Studebaker
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14 **X**

15 (BY ☒ U.S. MAIL/ BY ☐ CERTIFIED MAIL, RETURN RECEIPT REQUESTED) The sealed envelope was
16 mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection
17 and processing correspondence for mailing. It is deposited with United States postal service on that same
18 day in the ordinary course of business. I am aware that on motion of party served, service is presumed
19 invalid if postal cancellation date or postage meter date is more that one day after date of deposit for
20 mailing in affidavit.

21 _____ (BY FACSIMILE TRANSMISSION) On _____, at _____, at Calabasas, California, I served the above-
22 referenced document on the above-stated addressee by facsimile transmission pursuant to Rule 2008 of
23 the California Rules of Court. The telephone number of the sending facsimile machine was (818)703-
24 8984 and the telephone number(s) of the receiving facsimile machine was (916) 920-4402. A
25 transmission report was properly issued by the sending facsimile machine, and the transmission was
26 reported as complete and without error. Copies of the facsimile transmission cover sheet and the
27 transmission report are attached to this proof of service.

28 **X**

(UPLOADED TO LWDA WEB PORTAL) I caused the above-described document to be delivered to the
Labor & Workforce Development Agency via online process at the PAGA Filing website
(www.dir.ca.gov) in accordance with the procedure imposed by the LWDA.

I certify that the above document was printed on recycled paper.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 1, 2022, at Calabasas, California.

Amelia Booth

AMELIA BOOTH