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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SOLANO

12 BAILEY DYE, in her representative capacity,
on behalf of the State of California, the general
13 public, and all aggrieved employees,

14 Plaintiff,

15 v.

16 NEW RUE21, LLC, a Delaware limited
17 liability company authorized to do business
in California; and DOES 1 through 50
18 inclusive,

19 Defendants.

Case No.: FCS056548

REPRESENTATIVE ACTION FOR CIVIL
PENALTIES PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
OF 2004 (Labor Code §§ 2698, *et seq.*)

ASSIGNED TO
JUDGE CHRISTINE CARRINGER
FOR ALL PURPOSES

20
21 Plaintiff Bailey Dye ("Plaintiff") brings this representative enforcement action in her
22 representative capacity against Defendants New Rue21, LLC, and DOES 1 through 50, inclusive
23 (collectively, "New Rue21" or "Defendants"), on the following grounds:

24 INTRODUCTION

25 1. Plaintiff brings this representative enforcement action under the Private Attorneys
26 General Act of 2004 (codified in California Labor Code §§ 2698, *et seq.*, "PAGA") on behalf of
27 herself and all other current or former non-exempt employees of New Rue21 who worked at a rue21
28 retail store in California (referred to herein as "New Rue21 Employees").

1 2. Plaintiff alleges that during the relevant time period New Rue21 engaged in a common
2 pattern and practice of wage and hour violations under the California Labor Code (“Labor Code”) and
3 the Industrial Welfare Commission (“IWC”) Wage Orders to decrease their employment related costs
4 by, among other things:

- 5 a. Failing to provide legally compliant meal periods and/or pay premium wages for
6 non-compliant meal periods;
- 7 b. Failing to provide legally compliant rest periods and/or pay premium wages for
8 non-compliant rest periods;
- 9 c. Failing to timely pay all minimum, regular, and/or overtime wages;
- 10 d. Failing to make payment of wages in a form negotiable and payable in cash on
11 demand and without a discount;
- 12 e. Failing to timely pay all wages due and owing at the time of separation and/or the
13 required waiting time penalties;
- 14 f. Failing to reimburse for necessary business expenses;
- 15 g. Failing to furnish accurate itemized wage statements;
- 16 h. Failing to maintain accurate records;
- 17 i. Engaging in retaliation for use of earned and accrued sick days; and
- 18 j. Engaging in retaliation for reporting unlawful and/or unsafe conditions.

19 3. By and through this representative enforcement action, Plaintiff seeks to recover all
20 available remedies including, but not limited to, civil penalties, reasonable attorneys’ fees, and
21 litigation costs, as provided under California law.

22 4. All allegations in this Compliant are based upon information and belief except those
23 allegations specifically pertaining to Plaintiff and/or her counsel, which are based upon personal
24 knowledge. Each allegation in this Compliant has evidentiary support and/or is likely to have
25 evidentiary support after reasonable opportunity for further investigation and formal discovery.

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1 **JURISDICTION AND VENUE**

2 5. This Court has jurisdiction over this action pursuant to California Code of Civil
3 Procedure (“Code of Civil Procedure”) § 410.10 and Labor Code §§ 2698, *et seq.* Pursuant to §§ 2698,
4 *et seq.*, Plaintiff brings this action, in her representative capacity, on behalf of herself and all other
5 New Rue21 Employees.

6 6. This Court has personal jurisdiction over New Rue21 because New Rue21 conducts
7 business in the state of California and has caused injuries in the county of Solano, as well as
8 throughout the state of California, through its acts, omissions, and violations of the Labor Code and
9 relevant IWC Wage Order.

10 7. Venue as to New Rue21 is proper in this judicial district pursuant to Code of Civil
11 Procedure §§ 395(a) and 395.5. New Rue21 transacts business in Solano County and is otherwise
12 within this Court’s jurisdiction for purposes of service of process. The unlawful acts alleged herein
13 have a direct effect on Plaintiff and all other New Rue21 Employees within the county of Solano and
14 throughout the state of California.

15 **THE PARTIES**

16 **I. PLAINTIFF**

17 8. Plaintiff Bailey Dye at all material times mentioned herein:

- 18 a. Was and is a resident of the county of Solano, California;
- 19 b. Was employed by and/or otherwise performed work for New Rue21 from
20 approximately March 5, 2012 until her termination on October 28, 2020;
- 21 c. Was employed, most recently, as an assistant store manager;
- 22 d. Engaged in work for New Rue21 in Solano County, California;
- 23 e. Was classified by New Rue21 as a non-exempt employee for purposes of the
24 Labor Code and the IWC Wage Orders;
- 25 f. Earned an hourly wage;
- 26 g. Was to be paid on a biweekly basis;
- 27 h. Received non-discretionary bonuses;
- 28 i. Usually worked at least five (5) days per week and eight (8) hours per day;

- j. Was not provided with the opportunity to take legally compliant meal periods and/or paid premium wages for non-compliant meal periods;
- k. Was not authorized and permitted to take legally compliant rest periods and/or paid premium wages for non-compliant rest periods;
- l. Was not timely compensated the appropriate minimum, regular, and/or overtime wages for all time actually worked;
- m. Was not paid the appropriate rate of overtime wages because her non-discretionary bonuses were not factored into her regular rate of pay;
- n. Was not timely paid all wages due and payable upon separation of employment and/or the required waiting time penalties for late payment of wages;
- o. Was not paid wages in a form negotiable and payable in cash on demand and without deduction because her final wages were issued via pay card without her prior authorization;
- p. Was not reimbursed for all necessary expenses that were incurred in the discharge of her job duties;
- q. Was not furnished with accurate itemized wage statements;
- r. Contends her records were not accurately maintained by New Rue21;
- s. Was retaliated against for using her earned and accrued sick leave during the COVID-19 pandemic;
- t. Was retaliated against for reporting unsafe and/or unlawful working conditions at New Rue21's retail stores;
- u. Is an "aggrieved employee" within the meaning of Labor Code § 2699(c); and
- v. Has complied with all requirements outlined in Labor Code §§ 2698, *et seq.*

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1 **II. DEFENDANTS**

2 9. Defendant New Rue21, LLC (“New Rue21”) is a Delaware limited liability company
3 that is authorized to do business, and is actually doing business, in the state of California. New Rue21
4 is a clothing retailer that specializes in casual apparel and accessories for young men and women. New
5 Rue21 owns, operates, and/or manages approximately twenty-eight (28) brick and mortar rue21 retail
6 stores in California.

7 10. The true names and capacities, whether individual, corporate, subsidiary, partnership,
8 associate, or otherwise of defendants Does 1 through 50, inclusive, are unknown to Plaintiff, who
9 therefore sues these defendants by such fictitious names pursuant to Code of Civil Procedure § 474.
10 Plaintiff will amend this Complaint, setting forth the true names and capacities of these fictitiously
11 named defendants when their true names are ascertained. Plaintiff is informed and believes, and on that
12 basis alleges, that each of the fictitious defendants have participated in the acts and/or omissions
13 alleged in this Complaint.

14 11. At all times mentioned herein, the acts alleged to have been done and/or caused by each
15 named defendant is also alleged to have been done and/or caused by each of the fictitiously named
16 defendants, and by each of their agents and/or employees who acted within the scope of their agency
17 and/or employment.

18 12. At all times mentioned herein, each defendant, including each fictitiously named
19 defendant, is believed to have acted individually or as an officer, agent, or employee of the other
20 defendants.

21 13. At all times mentioned herein, each defendant, including each fictitiously named
22 defendant, acted as an agent, servant, employee, co-conspirator, alter-ego and/or joint venture of each
23 of the other defendants, and in doing the things alleged herein acted within the course and scope of
24 such agency, employment, alter-ego and/or in furtherance of the joint venture.

25 14. At all times mentioned herein, the acts and/or omissions of each of the defendants,
26 including each fictitiously named defendant, concurrently contributed to the various acts and/or
27 omissions of each and every one of the other defendants, including each fictitiously named defendant,
28 in proximately causing the wrongful conduct, harm, and/or damages alleged herein. Each of the

1 defendants, including each fictitiously named defendant, approved of, condoned, and/or otherwise
2 ratified each and every one of the acts and/or omissions complained herein. Each defendant, including
3 each fictitiously named defendant, was and is acting with the authority of each and every other
4 defendant and/or are acting as agents of each and every other defendant or Doe defendant.

5 15. At all times mentioned herein there was a unity of interest and ownership between each
6 defendant, including each fictitiously named defendant, such that all defendants acted as a single
7 employer of Plaintiff and all other New Rue21 Employees.

8 16. At all times mentioned herein, each defendant, including each fictitiously named
9 defendant, exercised supervision and control over the wages, hours, and/or working conditions of
10 Plaintiff and all other New Rue21 Employees, including, but not limited to, implementing standard
11 policies and procedures.

12 17. At all times mentioned herein, each defendant, including each fictitiously named
13 defendant, caused New Rue21 Employees, including Plaintiff, to work and/or prevented Plaintiff and
14 other New Rue21 Employees from working.

15 18. At all times mentioned herein, each defendant, including each fictitiously named
16 defendant, had control over New Rue21 Employees.

17 19. Each defendant, including each fictitiously named defendant, is alleged to have caused
18 each of the violations alleged herein.

19 20. Each defendant, including each fictitiously named defendant, is jointly and severally
20 liable for each of the violations alleged herein.

21 **FACTUAL ALLEGATIONS**

22 21. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all
23 paragraphs of this Complaint.

24 22. Plaintiff was employed by, or otherwise performed work for, New Rue21 from about
25 March 5, 2012 until her termination on October 28, 2020. Plaintiff initially performed work as a sales
26 associate at New Rue21's retail stores located in Fairfield, Vacaville, Folsom, and Stockton. At the
27 time of her termination, Plaintiff worked as the assistant store manager under the direction of general
28 manager Marc Delgado at New Rue21's retail store in Fairfield. As an assistant store manager,

1 Plaintiff's job duties consisted of making bank deposits for the store, opening and closing the store,
2 scheduling, providing excellent customer service, and supervising associates, among other things. At
3 all times during her employment, Plaintiff was classified by New Rue21 as a non-exempt employee,
4 earned an hourly wage, and was paid on a biweekly basis. Plaintiff also received non-discretionary
5 bonuses on a quarterly basis for achievement of a monthly Sales Plan. Plaintiff was generally assigned
6 and her schedule varied, but she typically worked at least five (5) days per week and eight (8) hours
7 per day.

8 23. Plaintiff asserts that New Rue21 has employed, and will continue to employ, other New
9 Rue21 Employees throughout the state of California. Plaintiff alleges that New Rue21 Employees are
10 categorized as non-exempt, paid an hourly wage, and are paid at least twice per calendar month.

11 24. Plaintiff contends that she and all other New Rue21 Employees were subject to, and
12 continue to be subject to, the same and/or similar policies, practices, procedures, guidelines, and/or
13 culture described herein.

14 25. Plaintiff further alleges that she and all other New Rue21 Employees have suffered, and
15 will continue to suffer, the same and/or similar violations of law described herein.

16 26. Plaintiff alleges that New Rue21 did not, and does not, have a policy, practice,
17 procedure, guideline, and/or culture of providing all New Rue21 Employees with the opportunity to
18 take an uninterrupted, thirty (30) minute off-duty meal period before the end of their fifth (5th) hour of
19 work when they work five (5) or more hours in a day. Similarly, Plaintiff contends that New Rue21 did
20 not, and does not, have a policy, practice, procedure, guideline and/or culture of providing all New
21 Rue21 Employees with the opportunity to take a second uninterrupted, thirty (30) minute off-duty meal
22 period when they work more than ten (10) hours in a day.

23 27. Plaintiff alleges that she and other New Rue21 Employees were not provided with the
24 opportunity to take lawful meal periods because Plaintiff and other New Rue21 Employees were
25 regularly expected to remain "on-duty" during their meal periods. For instance, New Rue21 had, and
26 continues to have, a policy, practice, procedure, guideline, and/or culture of requiring New Rue21
27 Employees, including Plaintiff, to be readily available to respond to calls on their company-provided
28 walkie talkies during their meal periods. Moreover, New Rue21 had, and continues to have, a policy,

1 practice, procedure, guideline, and/or culture of requiring Plaintiff and other New Rue21 Employees to
2 monitor their personal cell phones and promptly respond to text messages from managers during their
3 meal periods. Additionally, Plaintiff alleges New Rue21 had, and continues to have, a policy, practice,
4 procedure, guideline, and/or culture of requiring New Rue21 Employees in managerial or supervisory
5 positions to remain on the store premises during meal periods if they are the only managers on duty, so
6 that they can provide assistance if needed. For instance, Plaintiff frequently was the only manager
7 scheduled to work in the store, and thus was unable to take meal periods away from the store premises
8 and consistently had to be readily available to engage in work-related duties. Plaintiff and other New
9 Rue21 Employees in managerial positions were also regularly interrupted by questions from co-
10 workers during their meal periods and/or while clocking out for their meal periods.

11 28. Plaintiff further alleges that she and other New Rue21 Employees regularly took meal
12 periods after their fifth (5th) hour of work and/or missed their meal periods altogether due to New
13 Rue21's failure to adequately staff their retail stores to provide New Rue21 Employees with sufficient
14 coverage for their meal periods. Furthermore, New Rue21 Employees, including Plaintiff, were
15 provided with meal periods shorter than the mandated thirty (30) minutes due to New Rue21's
16 "package, handbag, and coat check" policy, practice, procedure, and/or guideline, which required all
17 New Rue 21 Employees to have their bags checked by a store associate or manager when leaving the
18 retail stores for their meal periods. As a result of New Rue21's mandatory bag check policy, practice,
19 procedure and/or guideline, New Rue21 Employees, including Plaintiff, were frequently forced to have
20 their bags checked after they had already clocked out for their meal periods, thereby shortening their
21 meal periods.

22 29. Plaintiff asserts that New Rue21 knew or should have known that Plaintiff and other
23 New Rue21 Employees were not provided with the opportunity to take legally compliant meal periods
24 because New Rue21's management consistently sent text messages to, and expected a prompt response
25 from, New Rue21 Employees while they were on their meal periods. Additionally, New Rue21
26 required New Rue21 Employees, including Plaintiff, to respond to calls on company-provided walkie
27 talkies during their meal periods. Moreover, New Rue21 mandated Plaintiff and other New Rue21
28 Employees in managerial or supervisory positions to remain on the store premises to be readily

1 available to perform work during their meal periods if they are the only managers on duty. Lastly,
2 Plaintiff and other New Rue21 Employees were forced to have their bags checked after clocking out
3 for their meal periods in order to comply with New Rue21's mandatory bag check policy, practice,
4 procedure and/or guideline.

5 30. Despite not being provided with legally compliant meal periods, Plaintiff alleges that
6 New Rue21 did not, and does not, have a policy, practice, procedure, guideline, and/or culture of
7 consistently paying meal period premiums to Plaintiff and other New Rue21 Employees for all meal
8 periods that do not comply with California law on the days designated in advance by New Rue21 as
9 the regular payday.

10 31. Plaintiff further alleges that New Rue21 did not, and does not, have a policy, practice,
11 procedure, guideline, and/or culture of authorizing and permitting Plaintiff and other New Rue21
12 Employees to take uninterrupted off-duty rest periods of at least ten (10) minutes for every four (4)
13 hours worked or major fraction thereof.

14 32. Plaintiff alleges that she and other New Rue21 Employees were not provided with the
15 opportunity to take lawful rest periods because New Rue21 had, and continues to have, a policy,
16 practice, procedure, guideline, and/or culture of requiring New Rue21 Employees to monitor their
17 personal cell phones and respond to text messages from management during their rest periods.
18 Moreover, New Rue21 had, and continues to have, a policy, practice, procedure, guideline, and/or
19 culture of requiring New Rue21 Employees, including Plaintiff, to respond to calls on company-
20 provided walkie talkies during their rest periods. Plaintiff further contends that she and other New
21 Rue21 Employees were unable to take a ten (10) minute rest period for every four (4) hours worked
22 due to understaffing at New Rue21's retail stores, resulting in a lack of employee coverage for rest
23 periods. For instance, Plaintiff was only able to take one ten (10) minute rest period during her eight
24 (8) hour shifts due to insufficient employee coverage.

25 33. Plaintiff further alleges that she and other New Rue21 Employees were not provided
26 with the opportunity to take lawful rest periods because New Rue21 had, and continues to have, a
27 policy, practice, procedure, guideline, and/or culture of requiring New Rue21 Employees, including
28 Plaintiff, to remain on the store premises and be readily available to perform work-related activities

1 during their rest periods if the store is busy. New Rue21's Employee Handbook specifically provides,
2 "[d]uring rest breaks it is preferable that an Associate be allowed to leave the store, however it is
3 contingent on the business in the store at that time." Plaintiff further alleges that she and other New
4 Rue21 Employees in managerial or supervisory positions were prohibited from leaving the store
5 premises during their rest periods if they were the only managers on duty, so that a manager was
6 readily available to provide assistance and perform work duties if necessary. As a result, Plaintiff and
7 other New Rue21 Employees received rest periods that were not free from work or New Rue21's
8 control, interrupted by work duties, and/or less than ten (10) minutes.

9 34. Plaintiff asserts that New Rue21 knew or should have known that Plaintiff and other
10 New Rue21 Employees were not provided with the opportunity to take legally compliant rest periods
11 because New Rue 21 required New Rue21 Employees, including Plaintiff, to respond to text messages
12 from managers and answer walkie-talkie calls during their rest periods. Additionally, New Rue21 has a
13 written policy mandating New Rue21 Employees, including Plaintiff, to remain on the store premises
14 for their rest periods while the store is busy. Moreover, New Rue21 required Plaintiff and other New
15 Rue21 Employees in managerial or supervisory positions to remain on the store premises to be readily
16 available to engage in work during their rest periods if they are the only managers on duty.

17 35. Despite not being provided with legally compliant rest periods, Plaintiff alleges that
18 New Rue21 did not, and does not, have a policy, practice, procedure, guideline, and/or culture of
19 compensating Plaintiff and other New Rue21 Employees premium wages for all unlawful rest periods
20 on the days designated in advance by New Rue21 as the regular payday.

21 36. Plaintiff contends that New Rue21 had, and continues to have, a policy, practice,
22 procedure, guideline, and/or culture of not compensating her and all other New Rue21 Employees
23 minimum, regular, and/or overtime wages for all time engaged in work on behalf of New Rue21 and/or
24 time spent under the control of New Rue21 at least twice per calendar month on the days designated in
25 advance by New Rue21 as the regular pay day and/or overtime wages by the next regular pay day.

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1 37. Plaintiff asserts that New Rue21 had, and continues to have, a policy, practice,
2 procedure, guideline and/or culture of failing to pay her and other New Rue21 Employees for the time
3 they spent working during their meal periods. Plaintiff contends she and other New Rue21 Employees
4 were directed, pressured, compelled and/or otherwise coerced to respond to text messages from
5 managers during their meal periods and while off-the-clock. For instance, New Rue21 Employees,
6 including Plaintiff, were required to respond to phone calls and/or text messages from management
7 and/or co-workers during their meal periods and outside of their scheduled work hours, including on
8 their days off. Specifically, Plaintiff spent at least thirty (30) minutes per week responding to phone
9 calls and/or text messages from her store manager regarding updates or questions about the store.
10 Moreover, New Rue21 required, pressured, and/or otherwise coerced Plaintiff and other New Rue21
11 Employees to respond to calls on company-provided walkie talkies during their meal periods. New
12 Rue21 Employees, including Plaintiff, were also mandated to undergo bag checking procedures upon
13 leaving the retail store after clocking out for their meal periods or clocking out at the end of the day.
14 Plaintiff further alleges she and other New Rue21 Employees in managerial and supervisory positions
15 were prohibited from leaving the store premises during their meal periods if they were the only
16 manager on duty, so that they could be readily available to provide assistance and perform work-
17 related duties as needed. Subsequently, New Rue21 improperly considered time spent engaged in work
18 and/or under New Rue21's control as non-compensable and failed to provide any remuneration on the
19 days designated in advance by New Rue21 as the regular pay day.

20 38. Plaintiff alleges that New Rue21 failed, and continues to fail, to meet its obligation of
21 timely paying Claimant and other Company Employees all minimum, regular, and/or overtime wages
22 for all time worked because New Rue21 Employees are mandated to have their bags checked when
23 leaving the retail stores for their meal periods and at the end of their shifts in order to comply with
24 New Rue21's "package, handbag, and coat check" policy, practice, procedure, and/or guideline. New
25 Rue21 Employees, including Plaintiff, typically had their bags checked after clocking out for their
26 shifts, but the time spent undergoing the bag check procedure was not included in New Rue21
27 Employees' calculation of hours worked.

1 39. Plaintiff further alleges New Rue21 had, and continues to have, a policy, practice,
2 procedure, guideline and/or culture of failing to pay her and other New Rue21 Employees in
3 managerial positions for tasks performed while off-the-clock. For instance, Plaintiff and other New
4 Rue21 Employees in managerial positions ordered supplies and training materials, conducted research
5 on company policies on New Rue21's intranet, and participated in employee training on New Rue21's
6 training application while off-the-clock. Due to New Rue21's consistent understaffing at its retail
7 stores, Plaintiff and other New Rue21 Employees had no time during their shifts to perform these
8 managerial tasks. Plaintiff alleges that New Rue21 Employees in managerial positions, including
9 Plaintiff, were not timely paid all regular, minimum, and/or overtime wages for the time that they were
10 engaged in managerial tasks while off-the-clock.

11 40. Additionally, Plaintiff asserts that New Rue21 had, and continues to have, a policy,
12 practice, procedure, guideline, and/or culture of failing to consider non-discretionary bonuses when
13 calculating New Rue21 Employees' respective overtime rate of pay. For instance, Plaintiff's earning
14 statements dated June 27, 2019, March 19, 2020, and April 2, 2020 did not include Plaintiff's non-
15 discretionary bonuses in the regular rate of pay as part of the calculation of Plaintiff's overtime wages
16 in the respective pay periods. Consequently, New Rue21 failed to timely pay Plaintiff and other New
17 Rue21 Employees the appropriate overtime wages owed to them.

18 41. Plaintiff alleges that New Rue21 had, and continues to have, a policy, practice,
19 procedure, guideline, and/or culture of willfully failing to timely pay former New Rue21 Employees all
20 wages due and owing upon separation of employment and/or the mandated waiting time penalties for
21 the late payment of such wages. For instance, despite being terminated on or about October 28, 2020,
22 Plaintiff was not immediately paid her final wages. Moreover, Plaintiff has not received, to date, any
23 waiting time penalties for late payment of wages. Plaintiff further alleges that she and other former
24 New Rue21 Employees were not timely paid all wages due and owing upon separation of employment
25 and/or paid the required waiting time penalties due to New Rue21's policy, practice, procedure,
26 guideline, and/or culture of failing to properly pay all minimum, regular, overtime, and/or premium
27 wages.

1 42. Plaintiff asserts that New Rue21 had, and continues to have, a policy, practice,
2 procedure, guideline, and/or culture of failing to pay Plaintiff and other New Rue21 Employees their
3 wages in a form negotiable and payable in cash, on demand, and without discount. For example,
4 Plaintiff and other New Rue21 Employees were issued their earned wages on a pay card without their
5 prior authorization. Specifically, Plaintiff was issued her final wages on a pay card, despite refusing to
6 sign an authorization form for payment of wages via pay card and instead agreeing to direct deposit.
7 New Rue21's impermissible placement of Plaintiff and other New Rue21 Employees' earned wages on
8 a pay card without their consent is in direct violation of New Rue21's written policy, which specifies
9 that a New Rue21 Employee must sign a pay authorization form to be paid via pay card.

10 43. Plaintiff contends that New Rue21 had, and continues to have, a policy, practice,
11 procedure, guideline, and/or culture of failing to reimburse all New Rue21 Employees, including
12 Plaintiff, for all necessary business expenses that were incurred in the discharge of their job duties. For
13 example, New Rue21 required Plaintiff and other New Rue21 Employees to use their personal cell
14 phones to communicate with managers and co-workers, but were not reimbursed for the cost of these
15 work-related communications. Moreover, New Rue21 Employees, including Plaintiff, were required to
16 download the "Axonify" training application and "ESS 41 - Reflexis One" scheduling and timecard
17 application onto their personal cell phones. New Rue21 Employees, however, were not reimbursed for
18 any cellular data used to download the applications, the space the applications took up on their
19 personal cell phones, or use of the applications. Plaintiff further alleges that she and other New Rue21
20 Employees in managerial positions were obligated to use their personal vehicles each week to make
21 bank deposits when opening or closing retail store locations. For instance, Plaintiff made weekly trips
22 to the bank to make deposits, which totaled approximately two miles roundtrip. Despite the
23 requirement that New Rue21 Employees in managerial positions use their personal vehicles for work
24 purposes, Plaintiff and other New Rue21 Employees did not receive any reimbursement for mileage.

25 44. Plaintiff asserts that New Rue21 had, and continues to have, a policy, practice,
26 procedure, guideline and/or culture of furnishing New Rue21 Employees, including Plaintiff, with
27 wage statements that do not comply with California law. Claimant contends that the wage statements
28 furnished to her and other New Rue21 Employees do not include, for instance, the total hours actually

1 worked by the employee, the accurate hourly rates, all applicable hourly rates in effect during the pay
2 period and/or the corresponding number of hours worked at each hourly rate by the employee, and the
3 actual gross and net wages earned. Due to the missing and/or incorrect information on the furnished
4 wage statements, New Rue21 Employees, such as Plaintiff, were unable to promptly and easily
5 determine the total number of hours worked, the applicable hourly rates in effect during the pay period
6 and/or the corresponding number of hours worked at each hourly rate, among other things.

7 45. Plaintiff contends that New Rue21 has, and continues to have, a policy, practice,
8 procedure, guideline, and/or culture of failing to keep and maintain accurate employment records
9 reflecting, for example, all of Plaintiff's and other New Rue21 Employees' actual hours worked, meal
10 periods taken, applicable hourly rates and wages earned and paid. For instance, New Rue21 had, and
11 continues to have, a policy, practice, procedure, and/or guideline of failing to record the actual hours
12 worked by New Rue21 Employees, including time spent working while off-the-clock and during meal
13 periods, resulting in non-payment of earned wages and inaccurate wage statements. Moreover, New
14 Rue21 had, and continues to have, a policy, practice, procedure, guideline, and/or culture of failing to
15 include non-discretionary bonuses into New Rue21 Employees' regular rate for purposes of computing
16 overtime, resulting in inaccurate records of overtime wages earned and paid to New Rue21 Employees.

17 46. Plaintiff asserts that New Rue21 had, and continues to have, a policy, practice,
18 procedure, guideline and/or culture of retaliating against New Rue21 Employees, including Plaintiff,
19 for using their earned and accrued sick leave. For instance, Plaintiff alleges that Tanya, an employee at
20 New Rue21's retail store in Vacaville, was prohibited from going on sick leave after being exposed to
21 COVID-19 in or around early July 2020. Plaintiff further alleges that Sean, an employee at the
22 Vacaville retail store, was terminated on July 24, 2020 for using his paid time off ("PTO") due to
23 COVID-19. Thereafter, Sean complained to New Rue21's Human Resources department that his
24 termination was wrongful and was ultimately reinstated to his position in August 2020.

25 47. Moreover, Plaintiff asserts that she was unlawfully terminated on October 28, 2020 in
26 retaliation for her use of her earned and accrued sick leave. On October 21, 2020, Plaintiff used her
27 PTO to go home early after feeling unwell. On October 24, 2020, Plaintiff continued to feel unwell and
28 called out sick two hours prior to her scheduled shift, using her PTO. In doing so, Plaintiff complied

1 with New Rue21's policy, which requires notification of sick leave up to two hours before the start of
2 an employee's shift. Plaintiff then scheduled a virtual doctor's appointment on October 25, 2020,
3 during which she was evaluated and told that she potentially contracted COVID-19. Plaintiff received
4 a doctor's note excusing her from work from October 25, 2020 to October 27, 2020. After her
5 appointment, Plaintiff texted her general manager to notify him that she received a doctor's note and
6 would not be released to return to work until October 28, 2020. Plaintiff thus followed New Rue21's
7 policy requiring doctor's notes after employees call out sick for three days. Plaintiff was subsequently
8 terminated for attendance despite using her earned and accrued sick leave in compliance with New
9 Rue21's sick leave policies and California's COVID-19 supplemental paid sick leave requirements.

10 48. Plaintiff asserts that New Rue21 had, and continues to have, a policy, practice,
11 procedure, guideline and/or culture of retaliating against New Rue21 Employees, including Plaintiff,
12 for reporting unsafe working conditions. For instance, Plaintiff asserts that she was terminated three
13 months after complaining to New Rue21's Human Resources department about the wrongful
14 termination of Sean, an employee at the Vacaville store, and reporting to the Occupational Safety and
15 Health Administration ("OSHA") that New Rue21 was prohibiting New Rue21 Employees from using
16 their earned and accrued sick leave during the COVID-19 pandemic. The timeline of events clearly
17 implies that Plaintiff was terminated in retaliation for her legal reporting of unlawful and/or unsafe
18 working conditions at New Rue21's retail stores. Moreover, based on information and belief, Plaintiff
19 alleges that other New Rue21 Employees who made the same and/or similar reports of unlawful
20 working conditions at New Rue21's retail stores were also terminated for such reports.

21 49. On March 3, 2021, Plaintiff submitted written notice to the California Labor and
22 Workforce Development Agency ("LWDA") and New Rue21 as required by the PAGA, informing
23 them of New Rue21's alleged violations of the Labor Code. A true and correct copy of the March 3,
24 2021 written notice is attached hereto as **Exhibit 1** and is incorporated herein by reference.

25 50. To date, more than 65 days after submission of Plaintiff's written notice, the LWDA has
26 not provided notice of its intent to investigate Plaintiff's alleged violations of the Labor Code.

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51. Plaintiff further believes that additional violations may be discovered and therefore reserves her right to allege additional violations of the law as investigation and discovery warrants. In the event Plaintiff discovers additional violations, Plaintiff will seek to amend the operative complaint as necessary.

DEFINITION OF PAGA CLASS

52. By and through this representative action, Plaintiff intends to represent the following class of putative aggrieved employees, which is defined as:

All current or former non-exempt employees of Defendants, individually and/or collectively, who worked at a rue21 retail store in California during the period commencing on the date that is within one year and sixty-five days prior to the filing of this Complaint through and including the last date of trial (hereinafter the “PAGA Period”). To the extent that California Rules of Court, Appendix I, Emergency Rule 9 and/or equitable tolling operates to toll the claims by the PAGA class against Defendants, the PAGA Period should be adjusted accordingly.

53. Members of the PAGA class are all “employees” as the term is used in the Labor Code and the IWC Wage Orders regulating wages, hours, and working conditions in the state of California.

54. A more precise definition of the class may be determined after further investigation and discovery. Plaintiff reserves her right to redefine the class and/or create additional sub-classes as permitted by California law.

PAGA DESIGNATION

55. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

56. Pursuant to Labor Code §§ 2698, *et seq.*, any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3. Such civil penalties are in addition to any other relief provided for under the Labor Code and must be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the aggrieved employees, pursuant to Labor Code § 2699(i).

1 57. During all, or a portion of, the one-year and sixty-five day period before Plaintiff filed
2 notice of her claims with LWDA, New Rue21 was Plaintiff's and all other New Rue21 Employees'
3 employer or person acting on behalf of New Rue21 Employees' employer, either individually or as an
4 officer, agent, or employee of another person, within the meaning of Labor Code §§ 558(a) and
5 1197.1, who paid or caused to be paid to any employee a wage less than the minimum fixed by
6 California state law, and as such, is subject to civil penalties for each underpaid employee, as well as
7 liquidated damages pursuant to Labor Code § 1194.2, and any applicable penalties imposed pursuant to
8 Labor Code § 203.

9 58. Plaintiff is an "aggrieved employee" under the PAGA because she was employed by the
10 alleged violator, New Rue21, and experienced one or more of the alleged violations committed against
11 her, and therefore is properly suited to represent the interests of other New Rue21 Employees. (See
12 *Huff v. Securitas Security Services, USA, Inc.* (2018) 23 Cal.App.5th 745, 751, 761; *Carrington v.*
13 *Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519.)

14 59. Plaintiff alleges that all other New Rue21 Employees are also "aggrieved employees"
15 under the PAGA as New Rue21 employed them and all New Rue21 Employees experienced one or
16 more of the alleged violations outlined herein.

17 60. Pursuant to Labor Code §§ 2698, *et seq.*, Plaintiff has exhausted her administrative
18 remedies because she complied with the notice requirements outlined in Labor Code § 2699.3. On
19 March 3, 2021, Plaintiff submitted notice to the LWDA and New Rue21 informing them of the New
20 Rue21's alleged Labor Code violations pursuant to the PAGA. (See Exh. 1.) Pursuant to the PAGA,
21 the LWDA had 65 days to provide notice of whether it intended to investigate the alleged violations.
22 To date, the LWDA has not provided notice of its intent to investigate the alleged violations. Plaintiff
23 thus has the right to pursue, and does pursue, her claims under PAGA in a representative capacity
24 pursuant to Labor Code §§ 2698, *et seq.*

25 ///

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27 ///

61. As set forth herein, New Rue21 has committed, and continues to commit, numerous violations for which the Labor Code and applicable IWC Wage Order entitles Plaintiff, in her representative capacity, to recover, on behalf of herself, all other New Rue21 Employees, the state of California, and the general public, civil penalties as well as attorneys' fees and costs from New Rue21 for the alleged violations, described herein.

62. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 98.6, 201, 202, 203, 204, 212, 213(d), 226(a), 226.7, 510, 512, 558, 1102.5, 1174(d), 1194, 1197, 1197.1, 1198, 2802, and 6310. Plaintiff and other New Rue21 Employees are entitled to, and therefore seek, the civil penalties described in Labor Code § 2699(f) for the violations of law described herein.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(By Plaintiff in her Representative Capacity against Defendant and Does 1-50)

PRIVATE ATTORNEYS GENERAL ACT OF 2004

[Labor Code §§ 2698, *et seq.*]

63. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

64. Plaintiff, in her representative capacity on behalf of herself and all other New Rue21 Employees, is entitled to and thus seeks to recover civil penalties through a representative action based on violations of the following Labor Code and/or IWC Wage Order provisions:

- a. Failure to provide legally compliant meal periods and/or pay premium wages for non-compliant meal periods in violation of Labor Code §§ 204, 210, 226.7, 512, 558, 1198, and the “Meal Periods” section of the IWC Wage Order No. 7-2001;
- b. Failure to provide legally compliant rest periods and/or pay premium wages for non-compliant rest periods in violation of Labor Code §§ 204, 210, 226.7, 1198, and the “Rest Periods” section of the IWC Wage Order No. 7-2001;

- c. Failure to timely pay all minimum, regular, and/or overtime wages in violation of Labor Code §§ 200, 204, 210, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198, and the “Minimum Wages” and “Hours and Days of Work” sections of the IWC Wage Order No. 7-2001;
- d. Failure to timely pay all wages due and owing upon separation of employment and/or the necessary waiting time penalties in violation of Labor Code §§ 201-203 and 210;
- e. Failure to make payment of wages in form negotiable and payable in cash, on demand and without discount in violation of Labor Code §§ 212, 213, and 225.5;
- f. Failure to reimburse for all necessary expenditures that were incurred in direct consequence of the discharge of work duties in violation of Labor Code § 2802;
- g. Failure to furnish accurate itemized wage statements in violation of Labor Code §§ 226, 226.3, and the “Records” section of the IWC Wage Order No. 7-2001;
- h. Failure to maintain accurate records in violation of Labor Code §§ 226, 1174, 1174.5, and the “Records” section of the IWC Wage Order No. 7-2001;
- i. Engaging in unlawful termination in retaliation for use of earned and accrued sick leave in violation of Labor Code §§ 98.6, 246, and 246.5; and
- j. Engaging in unlawful termination in retaliation for reporting unsafe and/or unlawful working conditions in violation of Labor Code §§ 98.6, 1102.5, and 6310.

65. Labor Code § 98.6(a)(3) provides that “an employer who violates [Labor Code § 98.6] is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each violation.” Plaintiff and all other New Rue21 Employees are entitled to, and do seek, such civil penalty.

66. Labor Code § 210 provides that any person who fails to pay wages as provided in Labor Code §§ 201.3, 204, 204(b), 204.1, 204.2, 205, 205.5, and 1197.5 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation, \$200 for each failure to pay each employee, plus 25% of the

1 amount unlawfully withheld, in addition to any other penalty. Plaintiff and all other New Rue21
2 Employees are entitled to, and do seek, such civil penalty.

3 67. Labor Code § 225.5 imposes a civil penalty of \$100 for each initial violation and \$200
4 plus 25% of the amount unlawfully withheld for a subsequent violation for any “...person who
5 unlawfully withholds wages due any employee in violation of Section ...212.” Plaintiff and all other
6 New Rue21 Employees are entitled to, and do seek, such civil penalty.

7 68. Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation in an
8 initial citation and \$1,000 per employee for each violation in a subsequent citation for violations of
9 Labor Code § 226(a). Plaintiff and all other New Rue21 Employees are thus entitled to, and do seek,
10 the described civil penalty.

11 69. For violations of Labor Code §§ 510 and 512, in addition to any other recovery
12 provided by law, Labor Code § 558 imposes a civil penalty of \$50 per pay period for each underpaid
13 employee for the initial violation and \$100 per pay period for each underpaid employee for each
14 subsequent violation of any section of Labor Code Division 2, Part 2, Chapter 1, or any provision
15 regulating hours and days of work in any order of the IWC. Therefore, Plaintiff and all other New
16 Rue21 Employees are entitled to, and do seek, the described civil penalty.

17 70. Labor Code § 1102.5(f) states, “[i]n addition to other penalties, an employer that is a
18 corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars
19 (\$10,000)” for each violation of Labor Code § 1102.5(b). Plaintiff and all other New Rue21 Employees
20 are entitled to, and do seek, such civil penalty.

21 71. Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer’s failure to
22 maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100
23 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a
24 violation of Labor Code § 1174(d). Plaintiff, in her representative capacity, seeks the civil penalty
25 imposed by Labor Code § 1174.5 on behalf of herself and all other New Rue21 Employees.

26 72. Labor Code § 1197.1 imposes a civil penalty of \$100 for each underpaid employee for
27 each pay period for which the employee is underpaid and a subsequent civil penalty of \$250 for each
28 underpaid employee for each pay period for which the employee is underpaid for paying or causing an

1 employee to be paid a wage less than the minimum wage. Plaintiff and all other New Rue21
2 Employees are entitled to, and do seek, such civil penalty.

3 73. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for
4 the initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor
5 Code provisions for which a civil penalty is not specifically provided, including, but not limited to,
6 Labor Code §§ 98.6, 201, 202, 203, 204, 212, 213(d), 226(a), 226.7, 510, 512, 558, 1102.5, 1174(d),
7 1194, 1197, 1197.1, 1198, 280, and 6310. Plaintiff and other New Rue21 Employees are entitled to,
8 and therefore seek, the described civil penalty.

9 74. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action
10 brought pursuant to the PAGA shall be entitled to an award of reasonable attorneys' fees and costs. As
11 such, Plaintiff, in her representative capacity on behalf of herself and all other New Rue21 Employees,
12 is entitled to, and therefore seeks, attorneys' fees and costs.

13 75. Plaintiff, in her representative capacity on behalf of herself and all other New Rue21
14 Employees, is entitled to and seeks recovery of reasonable attorneys' fees as provided by Labor Code §
15 218.5 and Code of Civil Procedure § 1021.5.

16 76. Plaintiff, in her representative capacity on behalf of herself and all other New Rue21
17 Employees, requests further relief as described in the below prayer for relief.

18 **PRAYER FOR RELIEF**

19 Plaintiff, in her representative capacity, prays for judgment against New Rue21 and in favor of
20 the state of California, Plaintiff, and all other New Rue21 Employees as follows:

- 21 a. For any and all civil penalties available for the Labor Code violations alleged
22 herein including, but not limited to, civil penalties under Labor Code §§
23 98.6(a)(3), 210, 225.5, 226.3, 558, 1102.5(f), 1174.5, 1197.1, 2699(f), and/or
24 other applicable law;
- 25 b. For an order determining that Plaintiff is entitled to recover a civil penalty of \$100
26 for each aggrieved employee per pay period for the initial violation and \$200 for
27 each aggrieved employee per pay period for each subsequent violation as provided
28 in Labor Code § 2699(f);

- 1 c. For reasonable attorneys' fees and costs of suit to the extent permitted by law,
2 including, but not limited to, Labor Code §§ 210, 218.5, 218.6, 226(e), 558, 1194,
3 1194.2, 1197.1, 2802, 2699(g)(1), Code of Civil Procedure § 1021.5, and the
4 "common fund" theory, the "substantial benefit" theory, and/or other applicable
5 law;
6 d. For appropriate equitable relief pursuant to California law; and
7 e. For any and all other relief as this Court deems proper and just.
8

9 Dated: May 19, 2021

GRAHAMHOLLIS APC

10
11 By: Monique R. Rodriguez
12 Graham S.P. Hollis
13 Vilmarie Cordero
14 Hali M. Anderson
15 Monique R. Rodriguez
16 *Attorneys for Plaintiff Bailey Dye*
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23
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27
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EXHIBIT 1

March 3, 2021

Attorneys at Law

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Monique R. Rodriguez
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VIA ONLINE ELECTRONIC FILING

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

New Rue21, LLC
800 Commonwealth Drive
Warrendale, PA 15086

New Rue21, LLC
c/o National Registered Agents, Agent for Service of Process
818 W. Seventh Street, Suite 930
Los Angeles, CA 90017

Re: Bailey Dye Wage and Hour Claims Against New Rue21, LLC

Dear Labor and Workforce Development Agency and New Rue21, LLC:

Please be advised that Bailey Dye ("Claimant") has retained our firm, Graham**Hollis**, APC, to represent her for claims against her employer New Rue21, LLC ("the Company").

This letter shall serve as Claimant's written notice to the California Labor and Workforce Development Agency ("LWDA") and the Company of the alleged California Labor Code ("Labor Code") violations Claimant claims that the Company committed against her and all other current or former non-exempt employees of the Company who worked at a rue21 retail store in California during the relevant statutory period. Claimant provides this notice, which includes the facts and theories to support the Labor Code violations alleged herein, in accordance with the Private Attorneys General Act of 2004 (codified in Labor Code sections 2698 *et seq.*, "PAGA"), Labor Code section 2699.3.

Pursuant to Labor Code section 2699(a), and by way of this letter, Claimant intends to represent herself and all other current or former non-exempt employees of the Company who worked at a rue21 retail store in California during the relevant time period (referred to herein as "Company Employees"). All Company Employees, including

Graham S.P. Hollis
Vilmarie Cordero
Nathan Reese
Hali Anderson
David Lin
Erik Dos Santos
Alex Kuner
Monique Rodriguez
Ridgeway Woulfe

Claimant, are believed to have suffered at least one of the wage and hour violations described herein during the relevant time period. Claimant contends that she and all other non-exempt Company Employees are “aggrieved employees” as defined by the PAGA.

FACTUAL BACKGROUND

New Rue21, LLC (“New Rue21”) is a Delaware limited liability company that is authorized to do business in California. New Rue21 is headquartered in Warrendale, Pennsylvania. New Rue21 is a specialty clothing retailer of casual apparel and accessories for young men and women in their twenties. New Rue21 owns, operates, and/or manages approximately 28 brick and mortar stores in California.

Claimant is a resident of Vacaville, California. Claimant began working for the Company in 2012 until she was terminated on or about October 28, 2020. Claimant worked at the Fairfield, Vacaville, Folsom and Stockton retail stores during her employment.¹ At the time of her termination, Claimant worked at the Fairfield retail store as the assistant store manager under general manager Marc Delgado. Claimant earned \$17.00 per hour and was to be paid on a bi-weekly basis. During her employment Claimant was generally assigned and had a varied schedule, but usually worked at least five days per week and eight hours per day. As assistant store manager, Claimant’s job duties included, but were not limited to, opening and closing the store, making bank deposits for the store, monitoring and managing associates, and scheduling.

Claimant contends that during the relevant time period, the Company employed, and continues to employ, other Company Employees who earned an hourly wage and regularly worked at least eight hours per day and/or forty hours per week. Upon information and belief, all policies, practices, procedures, and/or guidelines of the Company applicable to Claimant were also applicable to all other Company Employees.

Claimant alleges that the Company denied, and continues to deny, Claimant and other Company Employees the specific rights afforded to them under the Labor Code and the applicable Industrial Welfare Commission (“IWC”) Wage Order (i.e., IWC Wage Order No. 7-2001). Specifically, the Company (1) failed, and continues to fail, to provide Claimant and other Company Employees with legally compliant meal and/or rest periods as well as failed, and continues to fail to pay Company Employees meal and/or rest period premiums for non-compliant meal and/or rest periods; (2) failed, and continues to fail, to timely pay Claimant and other Company Employees all minimum, regular, and/or overtime wages for all time actually worked; (3) failed, and continues fail, to timely pay Claimant and other Company Employees all wages due and owing upon separation of employment; (4) failed, and continues to fail to make payment of wages in form negotiable and payable in cash to Claimant and other Company Employees. (5) failed, and continues to fail, to reimburse Claimant and other Company Employees for all business expenses; (6) failed, and continues to fail, to furnish Company Employees, such as Claimant, with accurate itemized wage statements; (7) failed, and continues to fail, to maintain accurate records of each and every Company Employee; (8) unlawfully denied and terminated, and continues to unlawfully deny and terminate, Company Employees, including Claimant, in retaliation for their use of accrued sick days; and (9) retaliated, and continues to retaliate, against Company Employees, including Claimant, who complain about unlawful and/or unsafe working conditions in the workplace.

¹ For a period of time, Claimant also worked at rue21 retail stores in the state of Nevada.

The Company has, and continues to have a policy, practice, procedure, guideline and/or culture of not providing Claimant and other Company Employees with the opportunity to take legally compliant meal periods. For instance, during the relevant time period the Company had, and continues to have, a policy, practice, procedure and/or guideline of requiring Company Employees to use walkie talkies. The Company also had, and continues to have, a policy, practice, procedure and/or guideline of expecting Claimant and Company Employees to be readily available to respond to calls on their Company-assigned walkie talkies during their meal periods and/or rest periods. Additionally, the Company had, and continues to have, a policy, practice, procedure and/or guideline requiring Company Employees to monitor their personal cell phones and promptly respond to any text message (or “chats”) from the Company managers, including during meal periods. Claimant and other Company Employees in managerial positions would also be interrupted by co-workers with questions while clocking out for, delaying the process, and/or during their meal periods. Moreover, Claimant and other Company Employees were regularly expected to remain “on-duty” during meal and/or rest periods. Furthermore, Company Employees, such as those who held managerial or supervisory positions were not permitted to leave the store premises if they were the only “managers on duty,” so that they could be readily available in the event they were needed.

Additionally, Claimant and other Company Employees regularly missed and/or took meal periods after their fifth hour of work as a result of the Company’s failure to adequately staff its retail stores to allow for coverage for meal and/or rest periods. Further, the Company has, and continues to have, a mandatory “package, handbag, and coat check” policy, practice, procedure, and/or guideline that requires all employees to have their bags checked by a fellow associate or a member of management when leaving the retail stores, including for meal and/or rest periods. The Company’s bag check policy, practice, procedure and/or guideline therefore meant that Company Employees leaving for their meal periods often had their bags checked after they were clocked and were, thus, not provided with the minimum 30-minute meal period.

Furthermore, the Company had, and continues to have, a policy, practice, procedure, guideline and/or culture of not authorizing and permitting Claimant and other Company Employees to take legally compliant rest periods. Specifically, the Company policy prohibited Company Employees, such as those who held the position of manager, assistant manager and other supervisory positions, from leaving the store premises during rest periods if they were the only “managers on duty” at the time to ensure that a “manager” was readily available to engage in work-related duties as needed. For instance, Claimant was regularly scheduled to work as the only manager in the store and thus prohibited from taking meal and/or rest periods away from the store premises.

Additionally, Company Employees, such as Claimant, regularly did not receive two legally-mandated rest periods during their eight-hour shifts due to a lack of Company Employee coverage. For example, Company Employees were frequently unable to take their rest periods due to the Company’s frequent understaffing in addition to the Company policy, practice, procedure and/or guideline of prohibiting Company Employees from leaving Company store premises for their rest periods while the store was busy (the Company employee handbook specifically states, “[d]uring rest breaks it is preferable that an Associate be allowed to leave the store, however it is contingent on the business in the store at that time”). As an assistant manager, Claimant in particular was regularly unable take a second ten-minute rest period during her eight-hour shifts due to a lack of Company Employee coverage.

The Company had, and continues to have, a policy, practice, procedure, guideline and/or culture of failing to timely pay premium wages for all non-compliant meal and/or rest periods. For instance, although Claimant and other Company Employees did not receive legally compliant meal and/or rest periods, the Company did not consistently pay Claimant and, on information and belief, other Company Employees the additional one hour of pay at the employee's regular rate of pay as required under Labor Code section 226.7 and the IWC Wage Order No. 7-2001. Therefore, the Company owes Claimant and, on information and belief, other Company Employees a meal and/or rest period premium for each workday that Claimant and other Company Employees were not provided with a legally compliant meal and/or rest period.

The Company had, and continues to have, a policy, practice, procedure, guideline, and/or culture failing to timely pay all minimum, regular and/or overtime wages for all time actually worked on the pay days designed in advance by the Company. For instance, the Company had, and continues to have, a policy, practice, procedure, guideline and/or culture of directing and/or otherwise compelling Company Employees to engage in work during their meal periods for which they were provided no compensation, as well as requiring Company Employees to remain on Company store premises and be readily available to perform work during their meal periods. The Company improperly considered this time as non-compensable time and thus failed to timely pay Claimant and, on information and belief, other Company Employees on the days designated in advance by the Company.

The Company also had, and continues to have, a policy, practice, procedure, guideline and/or culture of directing and/or otherwise requiring Company Employees to respond to store group and/or management phone calls and/or text messages during meal and rest periods, as well as outside of scheduled work hours, including on their days off. As an assistant manager, Claimant estimates spending at least thirty minutes per week responding to work-related communications from her store manager who calls or sends text messages with updates or questions about the store.

Further, the Company had, and continues to have, a mandatory "package, handbag, and coat check" policy, practice, procedure, guideline and/or culture that requires all employees to have their bags checked when leaving the stores for their meal periods and at the end of their shifts. The bag checks typically occurred after Company Employees, such as Claimant, had clocked out of their shift at the end of the day and were not included in Company Employees' calculation of hours worked.

Moreover, the Company had, and continues to have, a policy, practice, procedure, guideline and/or culture of foregoing the inclusion of non-discretionary bonuses in the regular rate of pay when calculating and paying Company Employees their overtime wages. For instance, Claimant's earning statements with pay dates of June 27, 2019, March 19, 2020, and April 2, 2020 did not include Claimant's bonuses in the regular rate of pay as part of the calculation of Claimant's overtime in the respective pay periods.

Also, Claimant and other Company Employees in managerial positions regularly performed work while off-the-clock, such as ordering supplies and training materials and conducting research on various policies on the Company's intranet. Additionally, Company Employees in managerial positions were expected to participate in employee training on the Company's training application every day. Claimant and other Company Employees in managerial positions were forced to perform such managerial tasks off-the-clock because the Company's frequent understaffing left no time during the Company Employees' shift to perform such work.

Claimant and other Company Employees therefore should have been afforded minimum, regular, and/or overtime wages for the time that Company Employees, including Claimant, were actually engaged in work as well as the time spent engaged in work during their alleged meal periods and off-the-clock work. Claimant and other Company Employees also should have been paid premium wages for non-compliant meal and/or rest periods. Claimant, and on information and belief other Company Employees, have yet to be paid their wages for all time actually worked.

The Company had, and continues to have, a policy, practice, procedure, guideline and/or culture of failing to timely pay all wages due and owing upon separation of employment and/or the mandated waiting time penalties for any late payment of final wages. For instance, Claimant was terminated on or about October 28, 2020, however, Claimant was not immediately paid her final wages. Additionally, Claimant did not receive any waiting time penalties for late payment of wages. Additionally, as explained above, the Company's policies, practices, procedures, guidelines and/or culture resulted in a failure to pay Claimant and Company Employees all minimum, regular, overtime, and/or premium wages owed to them. The Company consequently also failed to timely pay Claimant and Company Employees all wages due and owing to them within the required time upon their separation of employment with the Company. Claimant and other Company Employees have not received any waiting time penalties for late payment of all wages due and owing.

The Company had, and continues to have, a policy, practice, procedure, guideline and/or culture of failing to make payment of wages to Company Employees, such as Claimant, in a form negotiable and payable in cash. Claimant asserts that the Company impermissibly placed Claimant and other Company Employees' earned wages on a pay card without their consent. For instance, despite refusing to sign an authorization form for payment of wages via pay card and instead agreeing to direct deposit, the Company issued Claimant her final wages on a pay card. Claimant further contends that this practice is in direct violation of the Company's written policy, which specifies that a Company Employee must consent, by signing a pay authorization form, to be paid via a pay card.

The Company has, and continues to have, a policy, practice, procedure, guideline and/or culture of failing to reimburse her and other Company Employees for all necessary expenses that were incurred in the discharge of their job duties. For instance, Claimant and other Company Employees were not reimbursed the cost of the work-related communications from the Company and management to their personal cell phones. Claimant further contends that Company Employees were required to download the Axonify training app and ESS 41 - Reflexis One scheduling and timecard app onto their phones. Although both applications are free, Company Employees were not reimbursed for any cellular data used when downloading or using either app. The Company also did not reimburse Company Employees for the space the applications took up on their cell phones.

Additionally, Company Employees in managerial positions, such as Claimant, were required to use their personal vehicles to make bank deposits on a weekly basis and when opening or closing store locations at the beginning or end of the day. For instance, as part of Claimant's duties as an assistant manager, she made weekly bank deposits that totaled about two miles roundtrip. However, Claimant and other Company Employees were not reimbursed for the mileage as required by California law.

The Company had, and continues to have a policy, practice, procedure, guideline and/or culture of failing to furnish Company Employees with accurate itemized wage statements. Claimant alleges that the wage statements furnished to her and other Company Employees did not correctly show the information required by California law including, but not limited to, the total hours actually worked by the employee, all applicable hourly rates in effect during the pay period, including the proper overtime rate, and the corresponding number of hours worked at each hourly rate by the employee, the gross wages actually earned, and the net actually wages earned. Due to the missing and/or incorrect information, Claimant and other Company Employees were unable to promptly and easily determine the total number of hours worked or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

Claimant attests that the Company had, and continues to have, a policy, practice, procedure and/or guideline of not maintaining accurate employment records. The Company's illegal policies, practices, procedures, guidelines and/or culture, such as those described herein, have resulted in the Company's failure to maintain accurate records reflecting Company Employees' actual time worked, the proper beginning and end of each work period, the proper beginning and end of each meal period, the total hours worked during the pay period, and the applicable rates of pay, among other things.

Claimant contends that the Company has, and continues to have, a policy, practice, procedure, and/or culture of retaliating against employees for legal use of accrued sick days. For instance, Tanya, a Company Employee at Company's Vacaville location, was prohibited from taking time off of work sometime in early July 2020 despite the fact that Tanya had been exposed to COVID-19.

On July 24, 2020, Sean, a Company Employee at the Vacaville store, was terminated for using his sick leave/PTO due to COVID-19. Sean was only reinstated to his position at Company's Vacaville location in August 2020 when Claimant and Sean complained to Company's Human Resources that his termination was wrongful.

Claimant's employment with Company was terminated on or about October 28, 2020 while she was out sick. On October 21, 2020, Claimant used her Paid Time Off ("PTO") to go home early after feeling unwell. Still feeling poorly, on October 24, 2020 Claimant called out sick, using her PTO, two hours prior to her shift start time on October 24, 2020 in compliance with Company policy (which requires notification of sick leave up to two hours before the start of an employee's shift). During Claimant's virtual doctor's appointment on October 25, 2020, Claimant was evaluated by and told that she had possibly contracted COVID-19. Claimant received a doctor's note excusing her from work from until October 27, 2020. Following Company policy, which requires doctor's notes after Company Employees call out sick for three days, Claimant texted her general manager after her appointment notifying him that she had the acquired a doctor's note and would be not be released to return to work until after October 28, 2020. Claimant was subsequently terminated for her attendance despite using her earned and accrued PTO.

Claimant further contends that the Company had, and continues to have, a policy, practice, procedure, guideline and/or culture of retaliating against employees who make a good faith complaint about unsafe working conditions. For example, Claimant was terminated three months after complaining to the Company's Human Resources about the wrongful termination of Sean and submitting a report with the Occupational Safety and Health Administration ("OSHA") notifying them that the Company was not

allowing Company Employees to use their earned and accrued sick time during the COVID-19 pandemic. The sequence of events clearly implies that Claimant was terminated in part in retaliation for her legal reporting of unlawful and/or unsafe working conditions at Company's retail stores to the Company's Human Resources and OSHA.

Due to the foregoing Labor Code violations, the Company denied, and continues to deny, Claimant and other Company Employees certain rights afforded them under the Labor Code and IWC Wage Order No. 7-2001. Claimant makes these claims against the Company on behalf of herself and all other Company Employees.

All facts, claims and/or legal theories contained within this written notice are alleged and/or asserted on behalf of Claimant and all other Company Employees. The facts and/or claims contained in this written notice are based on information available at the time of this writing. Since Claimant's investigation is ongoing, Claimant reserves her right to assert any and all related facts, claims, and/or legal theories discovered after the sending of this letter on behalf of herself and other current or former Company Employees against the Company and/or other persons that may be discovered after the sending of this letter. Such other persons include, but are not limited to, those persons who have acted as an agent, subsidiary, servant, employee, co-conspirator, alter-ego, and/or joint venture of the Company, as well as those persons who caused and/or concurrently contributed to the various acts and/or admissions of each and every one of the others, including the Company, in proximately causing the wrongful conduct, harm, and/or damages alleged herein or otherwise participated in or ratified any or all of the acts and/or omissions complained of herein, and those who were acting within the authority and/or scope of the Company. Claimant reserves the right to revise these facts and/or add any new claims by amending this letter and/or by adding facts and/or claims to her civil complaint.

**FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL PERIODS AND/OR
AUTHORIZE AND PERMIT LEGALLY COMPLIANT REST PERIODS AND/OR PAY
PREMIUM WAGES IN LIEU THEREOF**

(Labor Code §§ 204, 210, 226.7, 512, 558, 1198, and the "Meal Periods and "Rest Periods" sections of the IWC Order No. 7-2001)

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

[i]f an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law...the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

Labor Code section 512(a) states,

[a]n employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period

of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except if the total hours worked is no more than 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.

The “Meal Periods” section of the IWC Wage Order No. 7-2001 states,

[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee...Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the- job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

The IWC Wage Order No. 7-2001 further states, “[i]f an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.”

The “Rest Periods” section of the IWC Wage Order No. 7-2001 provides that,

[e]very employer shall authorize and permit employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized 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.

Furthermore, “[i]f an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.” “Rest Periods” section of the IWC Wage Order No. 7-2001.

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Labor Code section 1198 states,

[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

Premium wages under Labor Code section 226.7 are wages that are due payable in accordance with Labor Code section 204. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103-1114.) Labor Code section 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days.

Labor Code section 210 mandates that, "...every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty" of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

As set forth above, the Company violated California law by failing to provide Claimant and other Company Employees with the opportunity to take legally compliant meal periods; failing to authorize and permit Claimant and other Company Employees to take uninterrupted, duty-free rest periods for every four hours worked or major fraction thereof; and/or failing to timely pay premium wages to Company Employees, such as Claimant, for non-compliant meal and/or rest periods. For example, the Company had, and continues to have, a policy, practice, procedure, guideline and/or culture of directing and/or otherwise compelling Company Employees to engage in work during their meal and/or rest periods for which they were provided no compensation, as well as requiring Company Employees to remain on Company store premises and be readily available to perform work during their meal and/or periods. Also, Company Employees, such as those who held managerial or supervisory positions, did not receive legally compliant meal and/or rest periods when they were "managers on duty," because they had to remain on the premises and be readily available in the event they were needed. Despite, not receiving legally compliant meal and/or rest periods the Company did not, and does not, timely pay premium wages to Company Employees, such as Claimant. Thus, Claimant will pursue all available remedies for the Company's violations on behalf of herself and all other Company Employees to the extent allowed by law.

FAILURE TO TIMELY PAY MINIMUM, REGULAR, AND/OR OVERTIME WAGES

(Labor Code §§ 200, 204, 210, 510, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and the "Minimum Wages" and "Hours and Days of Work" sections of the IWC Order 7-2001)

Labor Code section 200(a) states that "[w]ages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation." Labor Code section 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Specifically, Labor Code section 204(a) states that all wages earned are due and payable on twice during each calendar month on days designated in advance by the employer as regular pay days. Overtime wages are to be paid no later than the payday for the next regular payroll period. (Labor Code § 204(b)(1).)

Labor Code section 1197 states, “[t]he minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” The “Minimum Wages” section of IWC Wage Order No. 7-2001 further provides that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

Labor Code section 1197.1 provides that,

[a]ny employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203....

Labor Code section 1198 states,

[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

Labor Code section 1199 imposes “a fine of not less than one hundred dollars (\$100)” for any employer who violates the provisions set forth in Labor Code section 1198.

Labor Code section 510 states,

[e]ight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

The “Hours and Days of Work” and “Minimum Wages” sections of the IWC Wage Order 7-2001 mandate the same requirements as Labor Code section 510.

Premium wages for non-compliant meal and/or rest periods constitute wages under Labor Code section 204. (*Murphy, supra*, 40 Cal.4th at 1103-1114.)

Labor Code section 1194(a) states,

notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

Labor Code section 1194.2 provides for liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest.

Labor Code section 210 also provides that, "every person who fails to pay the wages of an employee as provided in Section...204... shall be subject to a civil penalty" of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Labor Code section 558 provides that "any 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" of \$50 for each underpaid employee for each pay period for which the employee was underpaid for any initial violation, and \$100 for each underpaid employee for each pay period for which the employee was underpaid for each subsequent violation.

As set forth above, the Company had, and continues to have, a policy, practice, procedure, guideline and/or culture of failing to timely pay all minimum, regular, and/or overtime wages on the days designated in advance by the Company to Claimant and other Company Employees for all time actually worked. For instance, the Company failed to compensate Company Employees, such as Claimant for the time they spent engaged in work while off-the-clock, such as work performed while they were clocked out for meal periods and/or responding to work-related communications outside of work. The Company has failed to meet its obligations to timely pay Claimant and other Company Employees all minimum, regular, and/or overtime wages for all time worked. Claimant will pursue all available remedies for the Company's violations on behalf of herself and all other Company Employees to the extent permitted by law.

FAILURE TO TIMELY PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT
(Labor Code §§ 201, 202, 203, and 210)

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

Labor Code section 202 further states, in pertinent part,

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours

previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Premium wages constitute wages under Labor Code section 204. (*Murphy, supra*, 40 Cal.4th at 1103-1114.)

Labor Code section 203(a) states, in pertinent part,

[i]f an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.

Labor Code section 210 mandates that, "...every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty" of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

As set forth above, the Company violated the Labor Code by not timely paying Claimant and other Company Employees all minimum, regular and/or overtime wages and all premium wages within the required time upon separation of their employment. The Company also failed to pay the required waiting time penalties for failing to timely pay all wages due and owing upon separation of employment. For example, despite being terminated by the Company, the Company did not immediately pay Claimant her final wages. When Claimant finally received her final payment, the payment did not include all of Claimant's earned wages or the required waiting time penalties. As a result, Company failed to timely pay Claimant and Company Employees all wages due to them upon separation of employment and/or the required waiting time penalties. Claimant will pursue all available remedies for the Company's violations on behalf of herself and all former Company Employees to the extent allowed by law.

FAILURE TO MAKE PAYMENT OF WAGES IN FORM NEGOTIABLE AND PAYABLE IN CASH, ON DEMAND AND WITHOUT DISCOUNT

(Labor Code § 212, 213, and 225.5)

Labor Code section 212 states,

[n]o person, or agent or officer thereof, shall issue in payment of wages due, or to become due, or as an advance on wages to be earned: (1) Any order, check, draft, note, memorandum, or other acknowledgment of indebtedness, unless it is negotiable and payable in cash, on demand, without discount, at some established place of business in the state ...

Labor Code section 213 provides,

[n]othing contained in Section 212 shall: ...(d) Prohibit an employer from depositing wages due or to become due or an advance on wages to be

earned in an account in any bank, savings and loan association, or credit union of the employee's choice with a place of business located in this state, provided that the employee has voluntarily authorized that deposit.

Labor Code section 225.5 imposes a civil penalty of \$100 for each initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation for any "...person who unlawfully withholds wages due any employee in violation of Section ...212."

As set forth above, by paying Claimant and other Company Employees their wages via pay card without their prior authorization, which resulted in fees, the Company failed to provide payment of wages in a form negotiable and payable in cash, on demand, and without discount. For instance, the Company issued Claimant's final payment on a pay card without her prior authorization. Claimant will pursue all available remedies for the Company's violations on behalf of herself and all former Company Employees to the extent allowed by law.

FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENSES
(Labor Code § 2802)

Labor Code section 2802(a) provides in pertinent part, "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer."

Labor Code section 2802(b) states,

[a]ll awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.

Accordingly, Claimant will request that she receive interest on the applicable amount.

Furthermore, Labor Code section 2802(c) states, "[f]or purposes of this section, the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section." Consequently, Claimant will also request reimbursement of the attorney's fees incurred in pursuing this matter.

As set forth above, the Company has and continues to have a policy, practice, procedure and/or guideline of failing to reimburse her and other Company Employees for all necessary expenses that were incurred in the discharge of their job duties. These include failing to reimburse Company Employees for usage of their personal cell phones and vehicles. Claimant will pursue all available remedies for the Company's violations on behalf of herself and all other Company Employees to the extent allowed by law.

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FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS
(Labor Code §§ 226, 226.3, and the “Records” section of the IWC Order 7-2001)

Labor Code section 226(a) states in pertinent part:

An employer, semimonthly or at the time of each payment of wages, shall furnish each of his or her employee, either as detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number...(8) the name and address of the legal entity that is the employer, and... (9) all applicable hourly rates in effect during each period and the corresponding number of hours worked at each hourly rate by the employee...

The “Records” section of IWC Wage Order No. 7-2001 further provides, in pertinent part:

Every employer shall semimonthly or at the time of each payment of wages furnish to each employee...an itemized wage statement in writing showing (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee and the employee’s social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregate and shown as one item.

Labor Code section 226(e)(1) provides:

An employee suffering injury as a result of knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand (\$4,000), and is entitled to an award of costs and reasonable attorneys’ fees.

Labor Code section 226(h) states, “an employee may also bring an action for injunctive relief to ensure compliance with this section and is entitled to an award of costs and reasonable attorneys’ fees.”

Labor Code section 226.3 imposes an additional civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee per violation for any subsequent violation on the employer for violations of Labor Code § 226(a).

As set forth above, the Company has a policy, practice, procedure, guideline and/or culture of failing to furnish Company Employees with accurate itemized wage statements because, among other things, the wage statements furnished did not, include the total hours actually worked by the employee, all applicable hourly rates in effect during the pay period, including the proper overtime rate, and the corresponding number of hours worked at each hourly rate by the employee, the gross actual wages earned, and the net wages actually earned. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of herself and all Company Employees to the extent permitted by law.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code §§ 226, 1174, 1174.5, and the “Records” section of the IWC Order 7-2001)

Labor Code section 226(a) mandates, in pertinent part:

The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

Labor Code section 1174(c) requires every employer to “keep a recording showing the names and addresses of all employees employed....” Labor Code section 1174(d) further requires:

Every person employing labor in this state shall...[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...employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years.

The “Records” section of IWC Wage Order No. 7-2001 provides that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period, meal periods, total daily hours worked, total wages paid each payroll period, and total hours worked in the payroll period and applicable rates of pay.

Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d).

Labor Code section 226(e)(1) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) [of Labor Code §

226] is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

As set forth above, the Company violated its record keeping requirements by failing to accurately record employee hours actually worked, including, but not limited to, failing to record the proper beginning and end of each work period, the meal periods, the total hours worked during the pay period, the applicable rates of pay, and the actual wages earned and paid. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of herself and all Company Employees to the extent allowed by law.

**UNLAWFUL DENIAL OF AND TERMINATION IN RETALIATION FOR USE OF
ACCRUED SICK DAYS**

(Labor Code §§ 98.6, 246, and 246.5)

Labor Code section 98.6 states in pertinent part,

(a) A person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter...or because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded to him or her.

Labor Code section 98.6(b)(1) further states that

Any employee who is discharged, threatened with discharge, demoted, suspended, retaliated against, subjected to an adverse action, or in any other manner discriminated against in the terms and conditions of his or her employment because the employee engaged in any conduct delineated in this chapter...shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by those acts of the employer.

Labor Code section 246.5(a) states, in pertinent part, that, “[u]pon the oral or written request of an employee, an employer shall provide paid sick days for the ... (1) Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member.”

Labor Code section 246.5(c)(1) also provides in pertinent part,

An employer shall not deny an employee the right to use accrued sick days, discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using accrued sick days, attempting to exercise the right to use accrued sick days, filing a complaint with the

department or alleging a violation of this article, cooperating in an investigation or prosecution of an alleged violation of this article, or opposing any policy or practice or act that is prohibited by this article.

Labor Code section 246.5(c)(2) further provides in pertinent part,

(2) There shall be a rebuttable presumption of unlawful retaliation if an employer denies an employee the right to use accrued sick days, discharges, threatens to discharge, demotes, suspends, or in any manner discriminates against an employee within 30 days of any of the following:...(A) The filing of a complaint by the employee with the Labor Commissioner or alleging a violation of this article.... (C) Opposition by the employee to a policy, practice, or act that is prohibited by this article.

Labor Code section 98.6(b)(3) imposes “a civil penalty not exceeding then thousand dollars (\$10,000) per employee for each violation” to be paid by employers who violate Labor Code section 98.6 “to the employee or employees who suffered the violation.”

As set forth above, the Company violated these requirements by unlawfully terminating Claimant and other Company Employees in retaliation for the Company Employees’ and Claimant’s legal and proper use of earned and accrued sick leave. As a result of Company’s improper and illegal behavior, Claimant and Company Employees were unlawfully denied and terminated as a result of their legal use of their earned accrued sick leave. Claimant will pursue all available remedies for the Company’s violations on behalf of herself and other Company Employees to the extent allowed by law.

**UNLAWFUL TERMINATION IN RETALIATION FOR REPORTING UNSAFE AND/OR
UNLAWFUL WORKING CONDITIONS**
(Labor Code §§ 98.6, 6310 and 1102.5)

Labor Code section 98.6 states in pertinent part,

(a) A person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter...or because the employee or applicant for employment has filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to his or her rights that are under the jurisdiction of the Labor Commissioner.

Labor Code section 98.6 further states that

(b)(1) Any employee who is discharged, threatened with discharge, demoted, suspended, retaliated against, subjected to an adverse action, or in any other manner discriminated against in the terms and conditions of his or her employment because the employee engaged in any conduct

delineated in this chapter,...or because the employee has made a bona fide complaint or claim to the division pursuant to this part, or because the employee has initiated any action or notice pursuant to Section 2699 shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by those acts of the employer.

Labor Code section 98.6(b)(3) imposes “a civil penalty not exceeding then thousand dollars (\$10,000) per employee for each violation” to be paid by employers who violate Labor Code section 98.6 “to the employee or employees who suffered the violation.”

Labor Code section 6310 provides, among other things, that “no person shall discharge...any employee because the employee has...made any oral or written complaint to the division, other governmental agencies having statutory responsibility for assisting the division with reference to employees safety or health, their employer or their representative.” The statute further provides that “any employee who is discharged...shall be entitled to reinstatement and reimbursement for lost wages and work benefits. Caused by the acts of the employer.”

Labor Code section 1102.5 states, in pertinent part,

(b) An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

Labor Code section 1102.5(f) further states, “[i]n addition to other penalties, an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of this section.”

As set forth above, the Company violated these requirements by unlawfully terminating Claimant in retaliation for Claimant’s lawful reporting of Company’s unlawful and unsafe working conditions. Furthermore, based on information and belief, other Company Employees who made the same and/or similar reports of unlawful working conditions at Company premises were also terminated for such reporting. Specifically, Claimant was terminated approximately three months after reporting to the Company’s Human Resources that the Company was denying the use of earned and accrued sick leave and Claimant’s lawful filing of an OSHA report revealing that Company was unlawfully prohibiting Company Employees from utilizing their accrued sick leave during a global pandemic. As a result, the Company unlawfully terminated Claimant and other Company Employees in retaliation of Company Employees’

reporting of unlawful and unsafe working conditions in violation of California law. Claimant will pursue all available remedies for the Company's violations on behalf of herself and other Company Employees to the extent allowed by law.

**CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND THE
IWC WAGE ORDER 7-2001**

(Labor Code §§ 98.6(a)(3), 210, 226.3, 558, 558.1, 1102.5(e), 1174.5, 1197.1, and 2699(f))

Labor Code section 98.6(a)(3) provides that, "[i]n addition to other remedies available, an employer who violates this section is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each violation of this section, to be awarded to the employee or employees who suffered the violation."

Labor Code section 210 provides that any person who fails to pay wages as provided in sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation \$200 for each failure to pay each employee, plus 25% if the amount unlawfully withheld, in addition to any other penalty.

For violations of Labor Code section 226(a), Labor Code section 226.3 imposes a civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

Labor Code section 558 subjects and employer or any person acting on behalf of an employer who violates Labor Code sections 500-558 or any provision regulating the hours and days of work in any IWC Wage Order to a civil penalty of \$50 for each underpaid employee for each pay period for which the employee was underpaid for any initial violation, and \$100 for each underpaid employee for each pay period for which the employee was underpaid for each subsequent violation.

For violations of Labor Code section 1174 subdivisions (b), (c), and (d), Labor Code section 1174.5 imposes a civil penalty of \$500.

Similarly, Labor Code section 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to section 203 as follows:

- (1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.

Labor Code section 1102.5(b) states,

[a]n employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

In addition to other penalties, "an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation" of Labor Code section 1102.5(b).

Labor Code section 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code sections 98.6, 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1102.5, 1174(c), 1174(d), 1194, 1197, 1197.1, 1198, 1199, 2802, and 6310 and the IWC Wage Order 7-2001.

As set forth above, the Company underpays Claimant and Company Employees and violated the Labor Code and the IWC Wage Order 7-2001 by failing to provide legally compliant meal and/or rest periods and/or timely compensation for non-compliant meal and/or rest periods; failing to timely pay all minimum, regular, and/or overtime wages for all time actually worked; failing to timely pay all wages due and owing upon separation of employment and/or the required waiting time penalties; failing to pay wages in form negotiable and payable in cash failing to reimburse for necessary business expenses; failing to furnish accurate itemized wage statements; failing to maintain accurate records; unlawfully denying and terminating Company Employees for using their earned and accrued sick leave; and retaliating against

Company Employees who complain about unlawful and/or unsafe working conditions in the workplace. As a result, the Company is liable for civil penalties and Claimant will pursue all available remedies including, but not limited to, those stated herein for the Company's violations on behalf of herself and all other Company Employees to the extent allowed by law.

ATTORNEY'S FEES, COSTS, INTEREST, LIQUIDATED DAMAGES, AND PENALTIES

(Labor Code §§ 210, 218.5, 218.6, 226(e), 558, 1194, 1194.2, 1197.1, 2802, and 2698, *et seq.*)

Labor Code sections 210, 218.5, 218.6, 226(e), 558, 1194, 1194.2, 1197.1, 2802, and 2698, *et seq.*, among others, give Claimant the right to recover in a civil action the unpaid balance of the full amount of minimum wages, regular wages, overtime compensation, damages, liquidated damages and penalties, including interest thereon, as well as reasonable attorney's fees and costs.

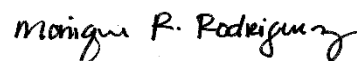
Under Labor Code section 2699(g)(1) an aggrieved employee, such as Claimant, is entitled to an award of reasonable attorney's fees and costs. Accordingly, the Company is liable for these items. Claimant has already incurred actual damages, costs and attorney's fees and she will continue to incur such costs as a result of the Company's unlawful actions. Claimant will pursue all available remedies against the Company, including those provided under the PAGA, on behalf of herself and other Company Employees to the extent permitted by California law for the violations of law described herein and those that may be later discovered.

CONCLUSION

Based on the foregoing, the Company has violated the Labor Code and the IWC Wage Order No. 7-2001 and thereby deprived Claimant and other Company Employees of the rights and protections afforded to them. Claimant has satisfied the prerequisites of the PAGA to serve as a representative of all Company Employees, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein, as well as those which may be later discovered.

Accordingly, if the LWDA declines to intervene or to act within time prescribed by the Labor Code, Claimant may elect to initiate and/or amend a civil action, on behalf of herself and all other Company Employees as permitted by the PAGA.

Sincerely,



Monique R. Rodriguez