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Attorneys for Plaintiff CIDA BENG, on behalf of
herself and others similarly situated

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

CIDA BENG, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

SAS MANAGEMENT STORES, INC., a
California corporation; SAS C-STORES INC.,
a California corporation; S&S PETROLEUM,
INC., a Washington corporation; and DOES 1
to 10, inclusive

Defendants.

CASE NO. 21STCV45479

CLASS ACTION COMPLAINT:

- 1. Failure to Pay Overtime Wages in Violation of Cal. Labor Code §§ 510 and 1198;**
- 2. Failure to pay all Wages and Minimum Wages in Violation of Cal. Labor Code §§ 1182, 1194, 1197, 1198;**
- 3. Failure to Provide Meal Periods in Violation of Cal. Labor Code §§ 226.7, 512, 516 and 1198;**
- 4. Failure to Provide Rest Periods in Violation of Cal. Labor Code §§ 226.7, 516, 1198;**

5. Failure to Timely Furnish Accurate Itemized Wage Statements in Violation of Cal. *Labor Code* §226(a);
6. Failure to Timely Pay Wages During Employment in Violation of Cal. *Labor Code* § 204;
7. Waiting Time Penalties Pursuant to Cal. *Labor Code* §§ 201, 203;
8. Unlawful Direct Deposit and Discount of Wages in Violation of Cal. *Labor Code* §§ 212 and 213;
9. Unlawful Deductions in Violation of Cal. *Labor Code* §§ 221 and 224;
10. Secret Payment of Lower Wages in Violation of Cal. *Labor Code* § 223;
11. Failure to Provide Suitable Seating in Violation of Cal. *Labor Code* § 1198;
12. Failure to Reimburse Business Expenses in violation of in Violation of Cal. *Labor Code* § 2802;
13. Failure to Provide Notice of Material Terms of Employment in Violation of Cal. *Labor Code* § 2810.5(a)(1)(A)-(C);
14. Failure to Provide Sick Day Balances in Violation of Cal. *Labor Code* § 246;
15. Violations of California *Business & Professions Code* §§ 17200, *et seq.*
16. Civil Penalties Pursuant to PAGA California *Labor Code* §§ 2698, *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff, CIDA BENG (hereinafter “Plaintiff”) hereby submits her Complaint against
2 Defendants SAS MANAGEMENT STORES, INC., a California corporation; SAS C-STORES
3 INC., a California corporation; S&S PETROLEUM, INC., a Washington corporation; and DOES 1
4 to 10 (hereinafter referred to as “Defendants”) on behalf of herself and the class of all other
5 similarly situated current and former employees of Defendants as follows:

6 **NATURE OF THE CASE**

7 1. This is a class action arising out of Defendants’ failure to provide their non-exempt
8 employees with all wages, meal and rest periods in compliance with the applicable Wage Order
9 and/or the California *Labor Code*, by failing to provide suitable seating, by failing to reimburse
10 business expenses, by failing to provide sick day balances, and by failing to comply with the
11 applicable Wage Order and/or the California *Labor Code* in regards to the payment of wages.

12 2. SAS MANAGEMENT STORES, INC. and SAS C-STORES INC. are California
13 corporations, and S&S PETROLEUM, INC. is a Washington corporation. Together, Defendants
14 owns and operates approximately 80 gas station convenience stores throughout Washington, Idaho,
15 Oregon, and California, including at least 25 stores in California. Upon information and belief,
16 Defendants maintains a single, centralized Human Resources (HR) department at its corporate
17 headquarters in Mukilteo, Washington, for all non-exempt, hourly paid employees working for
18 Defendants in California, including Plaintiff and others similarly situated. At all relevant times,
19 Defendants issued and maintained uniform, standardized scheduling and timekeeping practices and
20 procedures for all non-exempt, hourly paid employees in California, including Plaintiff and others
21 similarly situated, regardless of their location or position.

22 3. Defendants have maintained practices across its locations which have failed and
23 continues to fail to pay Plaintiff and other non-exempt employees all wages. Specifically,
24 Defendants have a company-wide policy of discouraging Plaintiff and other non-exempt employees
25 from recording hours worked and assigning very heavy workloads. This has resulted in Defendants’
26 failure to pay overtime wages to Plaintiff and other non-exempt employees.

27 4. Further, as a result of Defendants limiting the amount of overtime employees could
28 accrue, coupled with understaffing and heavy workloads, Plaintiff and other non-exempt employees

1 were forced to work off-the-clock.

2 5. Defendants' failure to properly staff its facilities and practice of assigning heavy
3 workloads has also resulted in a lack of meal period and rest period coverage and prevented
4 Plaintiff and other non-exempt employees from taking compliant meal and rest periods.

5 6. In light of the foregoing, Defendants failed to provide Plaintiff and other non-
6 exempt employees with compliant wage statements, failed to timely pay wages during employment
7 and failed to timely pay final wages upon termination or separation from employment.

8 7. Defendants also had a practice of automatically issuing debit cards to Plaintiff and
9 other non-exempt employees without giving them the option to elect their form of payment for their
10 wages, and unlawfully deducted fees for the use the debit cards.

11 8. Further, Defendants failed to provide Plaintiff and other non-exempt employees
12 suitable seating, although the nature of the work could reasonably be accomplished from a seated
13 position.

14 9. Defendants also failed to reimburse Plaintiff and other non-exempt employees for
15 business related expenses, including but not limited to the use of personal cellphones to perform
16 work related duties.

17 10. At all relevant times, on information and belief, Defendants also failed, on a
18 company-wide basis, to provide written notice to Plaintiff and other non-exempt employees that
19 lists the requisite information set forth in *Labor Code* §§ 2810.5(a)(1)(A)-(C).

20 11. Plaintiff brings Causes of Action One through Fifteen (the "class claims") as a class
21 action on behalf of herself and other similarly situated individuals who have worked for Defendants
22 in California, at any time from four-years prior to the filing of this complaint, through the resolution
23 of this action. Plaintiff, on her own behalf and on behalf of all Class Members, brings the class
24 claims pursuant to California *Labor Code* §§ 200-203, 204, 212, 213, 221, 223, 224, 226, 226.7,
25 246, 500, 510, 512, 516, 1182.11-1182.12, 1174, 1194, 1194.2, 1197, 1198, 2802, 2810, the
26 applicable wage order and under Business & Professions Code §§ 17200-17208, for unfair
27 competition due to Defendants' unlawful, unfair and fraudulent business acts and practices.

28 12. Plaintiff brings Cause of Action Sixteen as a proxy of the State of California on

1 behalf of other aggrieved employees for penalties under the Private Attorneys General Act
2 (PAGA). PAGA provides that any civil penalty assessed and collected by the Labor and Workforce
3 Development Agency (LWDA) for violations of applicable provisions of the California Labor Code
4 may, as an alternative, be recovered through a civil action brought by an aggrieved employee on
5 behalf of herself and other current or former employees pursuant to procedures outlined in
6 California *Labor Code* § 2699.3. PAGA also provides that an aggrieved employee can bring a civil
7 action on behalf of other aggrieved employees for violation of any other Labor Code provision that
8 does not itself contain a civil penalty, in which case the civil penalties are assessed at \$100 for each
9 aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee
10 per pay period for each subsequent violation. On October 8, 2021, Plaintiff provided written notice
11 to the LWDA and by certified mail to Defendants of the specific provisions of the California Labor
12 Code alleged to have been violated, including the facts and theories to support the alleged
13 violations. More than 65 calendar days have passed since the date notice was provided to the
14 LWDA and Defendants.

15 13. Accordingly, Plaintiff has satisfied the administrative prerequisites under California
16 *Labor Code* Section 2699.3(a) to recover civil penalties against Defendants for violations of
17 California Labor Code identified in this Complaint.

18 14. Plaintiff is informed and believes, and based thereon alleges, Defendants have
19 engaged in, among other things a system of willful violations of the California Labor Code and the
20 applicable IWC wage orders by creating and maintaining policies, practices and customs that
21 knowingly deny employees the above stated rights and benefits.

22 **PARTIES**

23 15. Plaintiff, Cida Beng is an individual over the age of eighteen (18) and is now, and/or
24 at all relevant times mentioned in this Complaint was, a resident and domiciliary of the State of
25 California. During the relevant time period, Plaintiff worked for Defendants in Long Beach,
26 California from approximately June 2020 through approximately October 2020. Plaintiff worked as
27 a cashier and earned approximately \$13.00 per hour for regular shifts and approximately \$13.50
28 per hour for graveyard shifts. Her job duties included, without limitation, processing transactions,

1 counting money, restocking products, disposing of trash, and cleaning and maintaining her work
2 premises.

3 16. Plaintiff is informed and believes, and based thereon alleges, that Defendants SAS
4 Management Stores Inc. and SAS C-Stores Inc. are California corporations, and S&S Petroleum
5 Inc. is a Washington corporation. Plaintiff is further informed and believes that at all times relevant
6 hereto, Defendants have transacted, and continues to transact, business throughout the State of
7 California.

8 17. Plaintiff is informed and believes, and based upon such information and belief
9 alleges, that Defendants are, now and/or at all times mentioned in this Complaint was in some
10 manner legally responsible for the events, happenings and circumstances alleged in this Complaint.

11 18. Plaintiff is further informed and believes, and based upon such information and
12 belief alleges, that at all times herein mentioned, Defendants proximately caused Plaintiff, all
13 others similarly situated, and the general public to be subjected to the unlawful practices, wrongs,
14 complaints, injuries and/or damages alleged in this Complaint.

15 19. Plaintiff is informed and believes and based thereon alleges that at all times herein
16 mentioned Defendants and DOES 1 through 10, are and were corporations, business entities,
17 individuals, and partnerships, licensed to do business and actually doing business in the State of
18 California.

19 20. Plaintiff does not know the true names or capacities, whether individual, partner or
20 corporate, of the Defendants sued herein as DOES 1 through 10, inclusive, and for that reason, said
21 Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
22 complaint when the true names and capacities are known. Plaintiff is informed and believes and
23 based thereon alleges that each of said fictitious Defendants were responsible in some way for the
24 matters alleged herein and proximately caused Plaintiff and members of the general public and
25 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

26 21. At all times herein mentioned, each of said Defendants participated in the doing of
27 the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
28 Defendants, and each of them, were the agents, servants and employees of each of the other

Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting within the course and scope of said agency and employment.

22. Plaintiff is informed and believes and based thereon alleges that at all times material hereto, each of the Defendants named herein were the agent, employee, alter ego and/or joint venturer of, or working in concert with each of the other co-Defendants and were acting within the course and scope of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

23. At all times herein mentioned, Defendants, and each of them, were members of, and engaged in, a joint venture, partnership and common enterprise, and acting within the course and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

24. At all times herein mentioned, the acts and omissions of various Defendants, and each of them, concurred and contributed to the various acts and omissions of each and all of the other Defendants in proximately causing the injuries and damages as herein alleged. At all times herein mentioned, Defendants, and each of them, ratified each and every act or omission complained of herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the acts and omissions of each and all of the other Defendants in proximately causing the damages as herein alleged.

25. The members of the classes (as defined below), including the representative Plaintiff named herein, have been employed during the Class Period in California. The practices and policies which are complained of by way of this Complaint are enforced throughout the State of California.

JURISDICTION AND VENUE

26. The Court has jurisdiction over this class action pursuant to Article 6, § 10 of the California Constitution and California Code of Civil Procedure § 410.10.

27. Additionally, this Court has jurisdiction over Plaintiff's and the Class' claims for injunctive relief, including restitution of earned wages, arising from Defendants' unfair competition under Business & Professions Code §§ 17203 and 17204. The Court also has jurisdiction over Plaintiff's and the Class' claims for penalties in violation of the Labor Code

1 pursuant to the Private Attorneys General Act of 2004 California *Labor Code* §§ 2698-99, as well
2 as pursuant to the applicable Labor Code provisions.

3 28. The Court has jurisdiction over Defendants because they are authorized to do
4 business in the State of California and is registered with the California Secretary of State.
5 Defendants do sufficient business with sufficient minimum contacts in California, and/or otherwise
6 intentionally avails itself of the California market through the advertising, marketing and sale of
7 goods and services, to render the exercise of jurisdiction over Defendants by the California court
8 consistent with traditional notions of fair play and substantial justice.

9 29. Venue is proper in Los Angeles County because the acts which give rise to this
10 litigation occurred in this county and because Defendants have employed class members in this
11 county and transacts business in this county.

12 **FACTUAL ALLEGATIONS**

13 30. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

14 31. Defendants have engaged in, and continue to engage in, unfair business practices in
15 California by practicing, employing and utilizing the employment practices and policies outlined
16 above.

17 32. Defendants' utilization of such unfair business practices deprives Plaintiff and other
18 aggrieved employees of the general minimum working standards and entitlements due to them
19 under California law and the Industrial Welfare Commission wage orders as described herein.

20 33. Plaintiff and all other aggrieved employees were and are classified by Defendants as
21 non-exempt employees, pursuant to the provisions of the California *Labor Code*, and the orders
22 and standards promulgated by the California Department of Industrial Relations, Industrial Welfare
23 Commission, and Division of Labor Standards. As non-exempt employees, Plaintiff and all other
24 aggrieved employees are entitled to certain benefits, including mandated meal and rest breaks.

25 34. In addition, said statutory provisions, wage orders, regulations and standards
26 obligate the employer to maintain accurate records of the hours worked by employees.

27 35. As a direct result of the wage and hour violations herein alleged, Plaintiff and
28 members of the Classes have suffered, and continue to suffer substantial losses related to the use

1 and enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in seeking
2 to compel Defendants to fully perform its obligations under state law, all to Plaintiff's respective
3 damage in amounts according to proof at the time of trial.

4 ***Defendants' Failure to Pay Overtime Wages***

5 36. During the Class Period, upon information and belief, Defendants had, and continue
6 to have, a company-wide policy of discouraging and impeding Plaintiff and other non-exempt
7 employees from recording hours worked that were outside of their scheduled shifts in order to limit
8 the amount of overtime employees could accrue. On information and belief, this policy of limiting
9 overtime, coupled with Defendants' policy and/or practice of understaffing and assignment of
10 heavy workloads, led Plaintiff and other aggrieved employees to work off-the-clock before and
11 after their scheduled shift times. For example, prior to almost every shift, Plaintiff was required to
12 arrive early and spend 2-3 minutes off-the-clock counting cash in the register. As a further
13 example, after every shift until August 2020, Plaintiff would spend an additional 20-30 minutes
14 off-the-clock disposing of trash and cleaning restrooms. When this occurred, Plaintiff was unable
15 to record this off-the-clock work because Defendants' management prohibited her from recording
16 hours worked outside of her scheduled shifts.

17 37. At all times, Plaintiff and other non-exempt employees remained under the control
18 of Defendants. Defendants could have recorded this off-the-clock work, but refused to do so to
19 avoid paying Plaintiff and other non-exempt employees overtime wages.

20 38. Second, Defendants had, and continue to have, a policy and/or practice of requiring
21 employees to use their personal mobile phones to communicate with management at all times,
22 including on days off. Defendants expected Plaintiff and other non-exempt to promptly respond to
23 text messages on their mobile phones at all times to discuss work-related matters with Defendants'
24 management. For example, four (4) times per week, Plaintiff was required to spend 3-5 minutes of
25 off-the-clock outside of her shift to respond to text message from her supervisor regarding her
26 work schedule, upcoming tasks, customer complaints, and whether she had clocked out at the end
27 of her scheduled shift. Thus, Defendants required Plaintiff and other non-exempt employees to
28 respond to management on their personal phones while off-the-clock in order to meet Defendants'

1 expectations, but failed to compensate them for this time.

2 39. Third, during the relevant time period, Defendants maintained and implemented a
3 company-wide on premises meal period policy, which mandated that Plaintiff and other non-
4 exempt employees remain on the work premises during their meal periods. Because Plaintiff and
5 other non-exempt employees were restricted from leaving the premises during meal periods, they
6 were denied the ability to use their meal periods freely for their own purposes. For example, until
7 August 2020, Plaintiff and other aggrieved employees were unable to purchase food or run
8 personal errands because they were unable to leave the work premises. Thus, Defendants
9 effectively maintained control over Plaintiff and other non-exempt employees during meal periods.

10 40. Fourth, Defendants' company-wide policy and/or practice of understaffing its
11 locations while assigning heavy workloads, resulted in a failure to provide other non-exempt
12 employees with adequate meal period coverage. Defendants also failed to adhere to a schedule of
13 meal periods, which further caused other non-exempt employees to not be relieved of their duties
14 for compliant meal periods. As a result, other non-exempt employees missed or had meal periods
15 interrupted in order to complete their assigned tasks. Consequently, other non-exempt employees
16 performed work during meal periods for which they were not paid. Further, on information and
17 belief, because Defendants frowned upon employees accruing meal period penalties, Defendants
18 adjusted Plaintiff's and/or other non-exempt employees' time records to reflect compliant meal
19 periods, even when they did not receive a compliant meal period, in order to strictly limit meal
20 penalties that Defendants would otherwise owe. Thus, Plaintiff and/or other non-exempt employees
21 performed work during meal periods for which they were not paid Defendants knew or should have
22 known that as a result of these company-wide practices and/or policies, Plaintiff and other non-
23 exempt employees were performing assigned duties off-the-clock before and after their shifts
24 and/or during meal periods, and were suffered or permitted to perform work for which they were
25 not paid. Because Plaintiff and other non-exempt employees worked shifts of eight (8) hours a day
26 or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime
27 premium pay.

28 41. Therefore, Plaintiff and other non-exempt employees were not paid overtime wages

1 for all of the overtime hours they actually worked. Furthermore, Defendants did not pay Plaintiff
2 and other non-exempt employees the correct overtime rate for the recorded overtime hours that
3 they generated. In addition to an hourly wage, Defendants paid Plaintiff and other non-exempt
4 employees hazard pay, incentive pay, nondiscretionary bonuses, and/or other forms of
5 remuneration. However, in violation of the California *Labor Code*, Defendants failed to
6 incorporate all compensation, including hazard pay, incentive pay, nondiscretionary bonuses,
7 and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of
8 calculating the overtime wage rate. Therefore, during times when Plaintiff and other non-exempt
9 employees worked overtime and received these other forms of pay, Defendants failed to pay all
10 overtime wages by paying a lower overtime rate than required. Specifically, Defendants paid
11 Plaintiff and other non-exempt employees hazard pay, incentive pay and/or nondiscretionary
12 bonuses, which were listed on Plaintiff's and other non-exempt employees' wage statements as
13 "Hazard Pay."

14 42. During pay periods that Plaintiff and other non-exempt employees were paid
15 overtime wages, Defendants did not incorporate the hazard pay, nondiscretionary bonuses and/or
16 incentive pay into Plaintiff's and non-exempt employees' regular rate of pay and, as a result, paid
17 them at incorrect and lower rates of pay for overtime hours worked. Specifically, Defendants paid
18 Plaintiff and other non-exempt employees 1.5 times their hourly rate of pay instead of 1.5 times
19 their regular rate of pay. Defendants' failure to properly calculate the overtime rates of pay based
20 on all remuneration paid has resulted in an underpayment of overtime wages to Plaintiff and other
21 non-exempt employees on a company-wide basis.

22 ***Defendants' Failure to Pay all Wages and Minimum Wages***

23 43. As stated above, during the relevant time period, as a result of Defendants' policy of
24 limiting the amount of overtime employees could accrue, coupled with understaffing and heavy
25 workloads, Plaintiff and other non-exempt employees were forced to work off-the-clock before and
26 after their scheduled shift start and end times to complete their work-related tasks, such as counting
27 cash, disposing of trash, and cleaning restrooms. In addition, as set forth above, due to Defendants'
28 company-wide practice of requiring employees to communicate with supervisors at all times,

1 Plaintiff and other non-exempt employees were forced to work off-the-clock responding to text
2 messages from Defendants' management. Moreover, due to Defendants' policies and/or practices
3 of understaffing while assigning of heavy workloads, failing to adhere to a schedule of meal
4 periods, and requiring employees to stay on the work premises during meal periods, Plaintiff and
5 other non-exempt employees were forced to forego meal periods, have their meal periods
6 interrupted, and/or were otherwise not relieved of all duties during meal periods.

7 44. Further, as stated, in order to prevent employees from accruing meal period
8 penalties, upon information and belief, Defendants adjusted Plaintiff's and/or other non-exempt
9 employees' time records to reflect compliant meal periods, regardless of whether they had received
10 a compliant meal period. Thus, Defendants did not pay at least minimum wages for all hours
11 worked by Plaintiff and other non-exempt employees. To the extent that these off-the-clock hours
12 did not qualify for overtime premium payment, Defendants did not pay at least minimum wages for
13 those hours worked off-the-clock.

14 ***Failure to Provide Compliant Meal Periods***

15 45. As stated above, Defendants had, and continue to have, a company-wide policy
16 and/or practice of understaffing, which, combined with the assignment of heavy workloads and
17 failing to adhere to a schedule of meal periods, has resulted in a lack of meal period coverage and
18 prevented Plaintiff and other non-exempt employees from taking all timely, uninterrupted meal
19 periods to which they were entitled. As a result, Plaintiff and other non-exempt employees were
20 forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal
21 periods interrupted, and/or had to forgo their meal periods altogether.

22 46. For example, on several occasions, Plaintiff was unable to take her meal period until
23 her sixth hour after the start of her scheduled shift. Moreover, upon information and belief, because
24 Defendants frowned upon employees accruing meal period penalties, Defendants' management
25 would adjust Plaintiff and other non-exempt employees time records to reflect compliant meal
26 periods, regardless of whether they had received a compliant meal period, in order to strictly limit
27 meal penalties that would need to be paid by Defendants.

28 47. Moreover, as set forth above, Defendants maintained a company-wide on-premises

1 meal period policy, which mandated that Plaintiff and other non-exempt employees remain on
2 Defendants' premises during their meal periods. Because Plaintiff and other non-exempt
3 employees were restricted from leaving the premises during meal periods, they were denied the
4 ability to use their meal periods freely for their own purposes. For example, as stated, until August
5 2020, Plaintiff and other non-exempt employees were unable to purchase food or run personal
6 errands because they were unable to leave the work premises. Thus, Plaintiff and other non-exempt
7 employees remained under Defendants' control during their meal periods.

8 48. In addition, to the extent Defendants required its employees to sign written "on-
9 duty" meal period agreements, such agreements were invalid under California law. Defendants'
10 "on-duty" meal period policy results from the company's own staffing and business decisions, not
11 because the nature of the work required on-duty meal periods. There were multiple employees
12 employed by Defendants at Plaintiff's and other non-exempt employees' locations and Defendants'
13 locations are not in remote areas. Defendants could have provided rover break coverage for
14 Plaintiff and other non-exempt employees or staffed more employees at its locations, but chose not
15 to do so. Further, the work of Defendants' employees is not of the kind that could be said to meet
16 the "nature of the work" exception.

17 49. Plaintiff and other non-exempt employees were responsible for processing sales,
18 restocking shelves, disposing of trash, and cleaning restrooms. None of these tasks is akin to the
19 kind that the California Division of Labor Standards Enforcement ("DLSE") has found warrant an
20 "on-duty" meal period, such as transporting hazardous materials via vehicles that must be
21 monitored at all times pursuant to federal regulation. Therefore, Defendants' use of an "on-duty"
22 meal period is improper and unlawful. Because of Defendants' company-wide written "on-duty"
23 meal period policy, Plaintiff and other non-exempt employees did not receive all required off-duty
24 meal periods and did not receive premium pay for missed, late, or interrupted meal periods.
25 Additionally, Defendants did not provide Plaintiff and other non-exempt employees with all second
26 30- minute meal periods on days that they worked in excess of ten (10) hours in one day. Plaintiff
27 and other non-exempt employees did not sign valid meal period waivers on days that they were
28 entitled to meal periods and were not relieved of all duties.

1 50. Moreover, Defendants had a company-wide policy of requiring all employees to
2 sign blanket meal period waivers at or near their time of hire. Defendants took the position that
3 non-exempt, hourly paid employees had waived their rights to first and/or second meal periods for
4 the entirety of their employment and, on that basis, did not provide them with all meal periods to
5 which they were entitled. Defendants' company-wide use of blanket meal period waivers, signed at
6 or near the time of hire, and imposition on employees to revoke the waivers in writing, discouraged
7 and impeded Plaintiff and other non-exempt employees from taking all meal periods to which they
8 were entitled. And, Defendants' presumption that meal periods would not be provided for shifts in
9 excess of five (5) hours but less than six (6) hours and for shifts in excess of ten (10) hours but less
10 than twelve (12) hours, due to blanket meal period waivers, discouraged Plaintiff and other non-
11 exempt employees from taking all meal periods.

12 ***Defendants' Failure to Provide Compliant Rest Breaks***

13 51. During the relevant time period, Defendants regularly failed to authorize and permit
14 Plaintiff and other non-exempt employees to take a ten (10) minute rest period per each four (4)
15 hour period worked or major fraction thereof.

16 52. Furthermore, on and information and belief, Defendants maintained a company-
17 wide on-premises rest period policy, which mandated that Plaintiff and other non-exempt
18 employees remain on Defendants' premises during their rest periods. Because Plaintiff and other
19 non-exempt employees were restricted from leaving the premises during rest periods, they were
20 denied the ability to use their rest periods freely for their own purposes, such as to run personal
21 errands.

22 53. For example, because Plaintiff was required to remain on Defendants' premises
23 during her rest periods, she was interrupted four (4) times per week and spent several minutes
24 attending to customers that would request her assistance. Thus, Defendants' effectively maintained
25 control over Plaintiff and other non-exempt employees during rest periods

26 ***Defendants' Failure to Provide Compliant Wage Statements***

27 54. During the relevant time period, Defendants have knowingly and intentionally
28 provided Plaintiff and other non-exempt employees with uniform, incomplete, and inaccurate wage

1 statements. For example, Defendants issued uniform wage statements to Plaintiff and other non-
2 exempt employees that fail to correctly list: gross wages earned; total hours worked; net wages
3 earned; and all applicable hourly rates in effect during the pay period, including rates of pay for
4 overtime wages and/or meal and rest period premiums, and the corresponding number of hours
5 worked at each hourly rate.

6 55. Because Defendants did not record the time Plaintiff and other non-exempt
7 employees spent working off-the-clock and deducted time from their meal periods that were
8 missed and/or interrupted (and therefore time for which they should have been paid), Defendants
9 did not list the correct amount of gross wages and net wages earned by Plaintiff and other non-
10 exempt employees in compliance with section 226(a)(1) and section 226(a)(5), respectively.

11 56. For the same reason, Defendants failed to accurately list the total number of hours
12 worked by Plaintiff and other non-exempt employees, and failed to list the applicable hourly rates
13 of pay in effect during the pay period and the corresponding accurate number of hours worked at
14 each hourly rate.

15 57. In addition, because Defendants did not calculate Plaintiff and other non-exempt
16 employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and
17 rest periods premiums, Defendants did not list the correct amount of gross wages. For the same
18 reason, Defendants also failed to list the correct amount of net wages. Defendants also failed to
19 correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay
20 for overtime wages and/or meal and rest period premiums.

21 58. Because Defendants failed to provide the correct net and gross wages earned,
22 applicable rates of pay, and number of total hours worked on wage statements, Plaintiff and other
23 non-exempt employees have been prevented from verifying, solely from information on the wage
24 statements themselves, that they were paid correctly and in full. Instead, Plaintiff and other non-
25 exempt employees have had to look to sources outside of the wage statements themselves and
26 reconstruct time records to determine whether in fact they were paid correctly and the extent of
27 underpayment, thereby causing them injury.

28 //

1 ***Defendants' Failure to Timely Pay Wages During Employment***

2 59. During the relevant time period, Defendants willfully failed to pay Plaintiff and
3 other non-exempt employees all wages due including, but not limited to, overtime wages,
4 minimum wages, and/or meal and rest period premiums, within the time periods specified by
5 California *Labor Code* § 204.

6 ***Defendants' Failure to Timely Pay Final Wage Upon Termination***

7 60. On information and belief, Defendants have a company-wide practice or policy of
8 paying departing employees their final wages on the next regular pay cycle, instead of adhering to
9 the time requirements set forth in *Labor Code* §§ 201 and 202.

10 61. For example, Plaintiff was terminated on or about October 16, 2020. However,
11 Defendants did not provide Plaintiff her final wages until her next subsequent pay date, October
12 20, 2020. Thus, Defendants failed to pay Plaintiff her final wages immediately, in violation of
13 *Labor Code* § 201.

14 62. In addition, Defendants willfully failed to pay Plaintiff and other non-exempt
15 employees who are no longer employed by Defendants the earned and unpaid wages set forth
16 above, including but not limited to, overtime wages, minimum wages, and/or meal rest period
17 premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving
18 Defendants' employ.

19 ***Unlawful Direct Deposit and Discount of Wages***

20 63. During the relevant time period, Defendants had an agreement with a payroll service
21 provider for the issuance of payroll debit cards to employees, including Plaintiff and other non-
22 exempt employees, to discharge its wage payment obligations to its employees. Upon information
23 and belief, Defendants' payroll debit card program was not voluntary or optional to Plaintiff and
24 other non-exempt employees. Defendants had a practice and/or policy of automatically issuing
25 payroll debit cards to Plaintiff and other non-exempt employees without giving them the option to
26 elect their form of payment for their wages. Plaintiff and other non-exempt employees also
27 received their final wages on a payroll debit card without a choice of an alternative method,
28 including a written check.

1 64. Moreover, under Defendants' payroll debit program, it did not permit Plaintiff and
2 other non-exempt employees to withdraw their entire final wages in at least one transaction without
3 incurring a fee. For example, Plaintiff utilized ATMs to try to withdraw her wages, but could not
4 obtain the entire amount because ATMs only disburse cash in limited denominations. Additionally,
5 Plaintiff also encountered approximately \$1.75-\$2.50 in ATM fees each time she utilized an ATM
6 to withdraw funds from her payroll debit card, which resulted in a discount in her pay. California
7 courts recognize a policy favoring the full and prompt payment of wages to employees.
8 Defendants' payroll card program is inconsistent with this policy.

9 ***Unlawful Deductions***

10 65. Defendants systematically, and on a company-wide basis, provided Plaintiff and
11 other non-exempt employees with payroll debit cards as payment of their wages and/or final
12 wages. Under Defendants' payroll debit card program, Plaintiff and other non-exempt employees
13 were assessed various fees in connection with their use of the payroll debit cards. Plaintiff and
14 other non-exempt employees were required to pay per-transaction fees, ATM fees, in-person teller
15 fees, and/or other fees to obtain and/or spend their earned and due wages. The fees charged to
16 Plaintiff and other non-exempt employees resulted in a discount of their wages.

17 ***Secret Payment of Lower Wages***

18 66. During the relevant time period, Defendants willfully and systematically issued
19 payroll debit cards to Plaintiff and other non-exempt employees. The payroll debit cards discounted
20 the wages of Plaintiff and other non-exempt employees by charging various fees in connection with
21 the use of the payroll debit cards. Defendants' payroll debit card program resulted in the payment
22 of less than statutorily required wages to Plaintiff and other non-exempt employees. In doing so,
23 Defendants acted with the intent to deprive Plaintiff and other non-exempt employees of statutory
24 wages, including, but not limited to, overtime wages and minimum wages to which they were
25 entitled to under California law. Thus, Defendants' paid Plaintiff and other non-exempt employees
26 lower wages than those they were entitled to while purporting that Plaintiff and other non-exempt
27 employees were properly paid.

28 //

1 ***Defendants' Failure to Provide Suitable Seating***

2 67. Defendants' California stores' areas are generally similar in their layout and design
3 and there was, and continues to be, space behind the checkout counters to allow for the presence
4 and use of a seat or stool by Plaintiff and other non-exempt employees (with reasonable or no
5 modification to these work areas) during the performance of their work duties. Defendants could
6 provide Plaintiff and other non-exempt employees with a seat or stool at the checkout counters, but
7 instead denies them seating and forces aggrieved employees to stand throughout the day. Plaintiff
8 and other non-exempt employees spent a substantial portion of their day behind the checkout
9 counters, regardless of their actual job title or description. The nature of the work of an employee
10 performing cashier duties can reasonably be accomplished from a seated position. However,
11 Defendants systematically, and on a company-wide basis, did not provide seats or stools at or near
12 checkout counters, forcing Plaintiff and other non-exempt employees to stand throughout their
13 work shifts.

14 68. Defendants did not provide Plaintiff and other non-exempt employees with seats or
15 stools in reasonable proximity to their work areas to allow them to use seats when it would not
16 interfere with the performance of their duties for times when they were not engaged in active duties
17 that require standing. In other words, to the extent Plaintiff and other non-exempt employees
18 engaged in duties in which the nature of the work required standing, Defendants denied them the
19 use of seats nearby during lulls in their work duties. Moreover, Defendants did not inform Plaintiff
20 and other non-exempt employees of their rights to a seat or stool under California law.

21 ***Defendants' Failure to Reimburse Business Expenses***

22 69. During the relevant time period, Defendants had a company-wide policy of
23 requiring Plaintiff and other non-exempt employees to utilize their own personal mobile phones to
24 carry out their job duties, but Defendants failed to reimburse them for the costs of their work-
25 related mobile phone expenses.

26 70. Plaintiff and other non-exempt employees were required to use their personal
27 mobile phones for work-related tasks, including responding to calls and text messages from
28 Defendants' management on and off-the-clock. For example, Plaintiff was required to use her

1 personal mobile phone during her shifts and outside of her shifts to discuss work-related matters
2 with her supervisor. Although Defendants required Plaintiff and other non-exempt employees to
3 utilize their personal mobile phones to carry out their work-related duties, Defendants failed to
4 reimburse them for this cost. In addition, Defendants, on a company-wide basis, expected Plaintiff
5 and other non-exempt employees to report to work wearing clean uniform shirts bearing the
6 company logo. However, Defendants did not provide its employees with sufficient uniform items
7 to wear for their shifts throughout the week. For example, Defendants only provided Plaintiff with
8 one (1) uniform shirt during her employment. Because Defendants failed to provide Plaintiff and
9 other non-exempt employees with an adequate number of uniform items in relation to their
10 scheduled shifts, Plaintiff and other non-exempt employees were forced to wash their uniforms
11 more frequently than they otherwise do laundry, and incur expenses in doing so. Due to the nature
12 of their work, Plaintiff's and other non-exempt employees' uniforms would become stained and/or
13 acquire an unpleasant odor, and Plaintiff and other non-exempt employees would be required to
14 wash their uniform shirts separately from their other clothes, further increasing their overall
15 laundry costs. Thus, Defendants failed to maintain uniforms they required Plaintiff and other non-
16 exempt employees to wear during their shifts and forced them to incur the cost of maintaining
17 employee uniforms. Defendants could have provided Plaintiff and other non-exempt employees
18 with the actual tools for use on the job, such as company phones and access to laundering services.
19 Or, Defendants could have reimbursed employees for the costs of their mobile phone usage and
20 laundering expenses, or provided a uniform maintenance allowance. Instead, Defendants passed
21 these operating costs off onto Plaintiff and other non-exempt employees.

22 ***Defendants' Failure to Provide Notice of Material Terms of Employment***

23 71. At all relevant times, on information and belief, Defendants failed, on a company-
24 wide basis, to provide written notice to Plaintiff and other non-exempt employees that lists the
25 requisite information set forth in *Labor Code* §§ 2810.5(a)(1)(A)-(C). Defendants' failure to
26 provide Plaintiff and other non-exempt employees with written notice of basic information
27 regarding their employment with Defendants is in violation of *Labor Code* § 2810.5.

28 //

1 ***Defendants Failure to Provide Sick Day Balances***

2 72. At all relevant times, on information and belief, Defendants failed, on a company-
3 wide basis, to provide Plaintiff and other non-exempt employees with paid sick days. Specifically,
4 Defendants only include the sick pay balance on select wage statements as opposed to all.

5 ***Facts Regarding Willfulness***

6 73. Plaintiff is informed and believes, and based thereon alleges, that Defendants are
7 and were advised by skilled lawyers, other professionals, employees with human resources
8 background and advisors with knowledge of the requirements of California wage and hour laws
9 and that at all relevant times, Defendants knew or should have known, that the Plaintiff Class
10 members, including Plaintiff, were entitled to receive one hour of pay at the employee's regular
11 rate of compensation for each day that a meal and/or rest period was not provided and were and are
12 entitled to received pay for all hours worked, accurate itemized wage statements, and final pay in a
13 timely manner.

14 ***Unfair Business Practices***

15 74. Defendants have further engaged in, and continue to engage in, unfair business
16 practices in California by practicing, employing and utilizing the unlawful employment practices
17 and policies outlined above.

18 75. As a direct result of the wage and hour violations herein alleged, Plaintiff and
19 members of the Plaintiff Class have suffered, and continue to suffer substantial losses related to the
20 use and enjoyment of wages, lost interest on such wages, and expenses and attorneys' fees in
21 seeking to compel Defendants to perform their obligations under state law, all to Plaintiff's and the
22 Plaintiff Class members' respective damage in amounts according to proof at the time of trial.

23 ***Plaintiff's Exhaustion of Administrative Remedies***

24 76. Plaintiff is currently complying with the procedures for bringing suit specified in
25 California *Labor Code* § 2699.3.

26 77. By letter dated October 8, 2021, required notice was provided to Labor and
27 Workforce Development Agency ("LWDA") and Defendants, of the specific provisions of the
28 California *Labor Code* alleged to have been violated, including the facts and theories to support the

1 alleged violations. More than 65 calendar days have passed since the date notice was
2 provided to the LWDA and Defendants.

3 78. Accordingly, Plaintiff has satisfied the administrative prerequisites under California
4 *Labor Code* Section 2699.3(a) to recover civil penalties against Defendants for violations of
5 California Labor Code identified in this Complaint.

6 **CLASS ACTION ALLEGATIONS**

7 79. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

8 80. Pursuant to California *Code of Civil Procedure* § 382, this action is brought and
9 may be properly maintained as a class action. This action satisfies the ascertainability, numerosity,
10 commonality, typicality, adequacy, predominance, and superiority requirements of those
11 provisions.

12 81. Plaintiff brings this suit as a class action on behalf of two classes of individuals
13 defined as follows (collectively the “Classes”):

14 82. Plaintiff Class: All persons who have been, or currently are, employed by Defendants
15 and who held, or hold, job positions which Defendants have classified as “non-exempt” employees in
16 the State of California, at any time since four years prior to filing this action, through the date
17 judgment is rendered in this action.

18 83. Terminated Sub Class: All members of the Plaintiff Class whose employment ended
19 during the Class Period.

20 84. Numerosity: Plaintiff is informed and believes, and on that basis alleges, that during
21 the class period hundreds of class members have been employed by Defendants as non-exempt
22 employees in the State of California. Because so many persons have been employed by Defendants
23 in this capacity, the members of the Plaintiff Class are so numerous that joinder of all members is
24 impossible and/or impracticable.

25 85. Common Questions of Law and/or Fact: Common questions of law, in fact, exist as
26 to all members of the Plaintiff Class and predominate over any questions affecting solely individual
27 members of the Plaintiff Class. Among the questions of law and fact, that are relevant to the
28 adjudication of class members’ claims are as follows:

- a. Whether Plaintiff and Class Members are subject to and entitled to the benefits of California wage and hour statutes;
- b. Whether Defendants failed to pay Plaintiff and Class Members for all hours worked;
- c. Whether Defendants failed to pay Plaintiff and Class Members all overtime;
- d. Whether Defendants had a standard policy of not providing compliant meal breaks and premiums to Plaintiff and members of the Plaintiff Class;
- e. Whether Defendants had a standard policy of not providing compliant rest breaks and premiums to Plaintiff and members of the Plaintiff Class;
- f. Whether Defendants unlawfully and/or willfully failed to provide Plaintiff and members of the Plaintiff Class with true and proper wage statements upon payment of wages, in violation of California *Labor Code* § 226;
- g. Whether Defendants failed to timely pay wages during employment;
- h. Whether Defendants unlawfully/or willingly failed to timely pay Plaintiff and the Terminated Sub Class upon termination;
- i. Whether Defendants had a standard or policy of unlawful direct deposit and discount of wages;
- j. Whether Defendants had a standard or policy of unlawfully deducting wages from Plaintiff and members of the Plaintiff Class;
- k. Whether Defendants had a standard or policy of secretly paying Plaintiff and members of the Plaintiff Class lower wages;
- l. Whether Defendants failed to provide Plaintiff and members of the Plaintiff Class with suitable seating;
- m. Whether Defendants failed to reimburse Plaintiff and members of the Plaintiff Class for business-related expenses;
- n. Whether Defendants failed to provide Plaintiff and members of the Plaintiff Class with proper notice of material terms of employment;
- o. Whether Defendants failed to provide Plaintiff and members of the Plaintiff Class with proper sick pay balance;

1 p. Whether Plaintiff and members of the Plaintiff Class sustained damages, and if so,
2 the proper measure of such damages, as well as interest, penalties, costs, attorneys'
3 fees, and equitable relief;

4 q. Whether Defendants conduct as alleged herein violates the Unfair Business
5 Practices Act of California, *Bus. & Prof. Code* § 17200, *et seq.*

6 86. Typicality: The claims of the named Plaintiff are typical of the claims of the
7 members of the Plaintiff Class. Defendants' common course of conduct in failing to provide their
8 non-exempt employees with meal and rest periods and all wages in compliance with the applicable
9 Wage Order or premium compensation at the regular rate in lieu thereof, and failing to provide
10 them with compliant wage statements has caused Plaintiff and the proposed Class to sustain the
11 same or similar injuries and damages. Plaintiff's claims are thereby representative of and co-
12 extensive with the claims of the proposed Class. Plaintiff and the proposed Class sustained the
13 same or similar injuries and damages arising from Defendants' common policies, practices,
14 procedures, protocols, routines, and rules which were applied to other class members as well as
15 Plaintiff. Plaintiff seeks recovery for the same type of losses, injuries, and damages as were
16 suffered by other members of the proposed class.

17 87. Adequacy of Representation: Plaintiff is an adequate representative of the proposed
18 classes because she is a member of the class, and her interests do not conflict with the interests of
19 the members she seeks to represent. Plaintiff has retained competent counsel, experienced in the
20 prosecution of complex class actions, and together Plaintiff and her counsel intend to prosecute this
21 action vigorously for the benefit of the classes. The interests of the Class Members will fairly and
22 adequately be protected by Plaintiff and her attorneys.

23 88. Superiority of Class Action: A class action is superior to other available methods for
24 the fair and efficient adjudication of this litigation since individual litigation of the claims of all
25 Class Members is impracticable. It would be unduly burdensome to the courts if these matters were
26 to proceed on an individual basis, because this would potentially result in hundreds of individuals,
27 repetitive lawsuits. Further, individual litigation presents the potential for inconsistent or
28 contradictory judgments, and the prospect of a "race to the courthouse," and an inequitable

1 allocation of recovery among those with equally meritorious claims. By contrast, the class action
2 device presents far fewer management difficulties, and provides the benefit of a single
3 adjudication, economics of scale, and comprehensive supervision by a single court.

4 89. The various claims asserted in this action are additionally or alternatively certifiable
5 under the provisions of the California *Code of Civil Procedure* § 382 because:

6 a. The prosecution of separate actions by hundreds of individual class members
7 would create a risk of varying adjudications with respect to individual class
8 members, thus establishing incompatible standards of conduct for Defendants, and

9 b. The prosecution of separate actions by individual class members would also
10 create the risk of adjudications with respect to them that, as a practical matter,
11 would be dispositive of the interest of the other class members who are not a party
12 to such adjudications and would substantially impair or impede the ability of such
13 non-party class members to protect their interests.

14 **FIRST CAUSE OF ACTION**

15 **Unpaid Overtime**

16 **(By Plaintiff and Members of the Putative Class Against All Defendants)**

17 90. Plaintiff incorporates herein by reference the allegations set forth above.

18 91. At all times relevant herein, which comprise the time period not less than four (4)
19 years preceding the filing of this action, Defendants were required to compensate their hourly
20 employees for all overtime hours worked.

21 92. California *Labor Code* §§ 510 and 1198 and the applicable Industrial Welfare
22 Commission (“IWC”) Wage Order require employers to pay employees working more than eight
23 (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1
24 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more
25 than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that
26 employers are required to pay employees working more than twelve (12) hours in a day overtime
27 compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay
28 includes all remuneration for employment paid to, or on behalf of, the employee, including

1 nondiscretionary bonuses and incentive pay.

2 93. Defendants willfully failed to pay all overtime wages owed to Plaintiff and members
3 of the Classes. During the relevant time period, Plaintiff and members of the Classes were not paid
4 overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess
5 of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that
6 they worked were not recorded.

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

15 95. Defendants' failure to pay Plaintiff and members of the Classes the balance of
16 overtime compensation, as required by California law, violates the provisions of California *Labor*
17 *Code* §§ 510 and 1198. Plaintiff and members of the Classes are entitled to recover civil penalties,
18 attorney's fees, costs, and interest thereon.

19 **SECOND CAUSE OF ACTION**

20 **Failure to Pay All Wages**

21 **(By Plaintiff and Members of the Putative Class Against All Defendants)**

22 96. Plaintiff incorporates herein by reference the allegations set forth above.

23 97. At all times relevant herein, which comprise the time period not less than four (4)
24 years preceding the filing of this action, Defendants were required to compensate their hourly
25 employees for all hours worked.

26 98. For at least the four (4) years preceding the filing of this action, Defendants failed to
27 compensate employees for all hours worked. Defendants implemented policies that actively
28 prevented employees from being compensated for all time worked by subjecting Plaintiff and

1 members of the Classes to work off-the-clock.

2 99. Under the above-mentioned wage order and state regulations, Plaintiff and the
3 Plaintiff Class are entitled to recover compensation for all hours worked, but not paid, for the four
4 (4) years preceding the filing of this action, in addition to reasonable attorney's fees and costs of
5 suit in accordance with California *Labor Code* § 218.5, and penalties pursuant to California *Labor*
6 *Code* §§ 203 and 206.

7 100. The applicable IWC Wage Order defines “hours worked” to mean “the time during
8 which an employee is subject to the control of an employer and includes all the time the employee
9 is suffered or permitted to work, whether or not required to do so.”

10 101. Defendants suffered or permitted Plaintiff and members of the Plaintiff Class to
11 work portions of the day for which Defendants failed to compensate them. This includes time spent
12 under Defendants’ control prior to clocking in and after clocking out.

13 102. California *Labor Code* §1182.12 and the applicable IWC Wage Order section 4
14 provide that on and after July 1, 2014, the minimum wage for all industries shall not be less than
15 nine dollars (\$9) per hour, on and after January 1, 2016, the minimum wage for all industries shall
16 not be less than ten dollars (\$10) per hour, on and after January 1, 2017, the minimum wage for all
17 industries shall not be less than ten dollars and fifty cents (\$10.50) per hour, on and after January 1,
18 2018, the minimum wage for all industries shall not be less than eleven dollars (\$11) per hour.

19 103. California *Labor Code* § 1194(a) provides in relevant part: “Notwithstanding any
20 agreement to work for a lesser wage, any employee receiving less than the legal minimum wage ...
21 is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage
22 ... including interest thereon, reasonable attorney’s fees, and costs of suit.”

23 104. California *Labor Code* § 1194.2(a) provides in relevant part: “In any action under
24 section 1193.6 or section 1194 to recover wages because of the payment of a wage less than the
25 minimum wage fixed by an order of the commission, an employee shall be entitled to recover
26 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

27 105. California *Labor Code* § 1197 provides: “The minimum wage for employees fixed
28 by the commission is the minimum wage to be paid to employees, and the payment of a less wage

1 than the minimum so fixed is unlawful.”

2 106. Plaintiff is informed and believes, and therefore alleges, that Defendants’
3 compensation schemes do not fairly compensate Plaintiff and other Class Members for all hours
4 spent performing their job duties.

5 107. The failure to pay at least minimum wages to Plaintiff and members of the Plaintiff
6 Class for each and every hour worked violates California *Labor Code* §§ 1182.11-1182.12, 1194,
7 1194.2, and 1197; the applicable IWC Wage Order, section 4; and California *Business &*
8 *Professions Code*.

9 108. The failure to pay designated wages to Plaintiff and members of the Plaintiff Class
10 for each and every hour worked violates California *Labor Code* §§ 221 and 223; IWC Wage Order;
11 and California *Business & Professions Code*.

12 109. During the applicable time period, Defendants have and continue to have a pattern
13 and practice of not providing its employees all wages, by failing to include all compensable time,
14 including time worked off-the-clock.

15 110. As a proximate result of the above-mentioned violations. Plaintiff and the Plaintiff
16 Class have been damaged in an amount according to proof at time of trial.

17 **THIRD CAUSE OF ACTION**

18 **Non-Compliant Meal Breaks**

19 **(By Plaintiff and Members of the Putative Class Against Defendant)**

20 111. Plaintiff hereby incorporates by reference each and every one of the allegations
21 contained in the preceding paragraphs as if the same were fully set forth herein.

22 112. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and the Class
23 Members regularly worked more than five (5) hours per shift and were entitled to a meal period of
24 not less than thirty (30) minutes without duty.

25 113. Nevertheless, Plaintiff is informed and believes, and thereon alleges, that
26 Defendants routinely failed to provide Plaintiff and the members of the Classes with such meal
27 periods without duty, notwithstanding the fact that Plaintiff and the members of the Classes had not
28 waived their right to the same. Thus, Defendants failed to provide Plaintiff and the members of the

1 Classes with meal periods required by California *Labor Code* §§ 226.7, 512, 516 and IWC Wage
2 Order, section 11 and categorically failed to pay any and all meal period wages due.

3 114. Plaintiff and Class Members seek damages pursuant to California *Labor Code* §§
4 226.7(b) and IWC Wage Order section 11(D), in the amount of one additional hour of pay at the
5 regular rate for each work day that the meal period is/was not provided to Plaintiff and any member
6 of the Classes, the cumulative sum of which is to be determined at trial.

7 115. Under the foregoing, California employers must provide meal periods and authorize
8 and permit rest periods to all employees during their shifts. In *Augustus v. ABM Security Services,*
9 *Inc.*, 2 Cal.5th 257 (2016), the California Supreme Court reaffirmed that the required meal and rest
10 periods must be “off-duty,” which means that employees must be relieved of “all work-related
11 duties,” including the duty to remain “on call,” and they must be “free from employer control” over
12 how they “spend their time.” *Id.* at 264, 269. Employees must have the freedom to use meal and
13 rest periods for their own purposes. *Id.* at 270; *Brinker Rest. Corp. v. Superior Court*, 53 Cal.4th
14 1004, 1038-39 (2012).

15 116. When employees must either “remain at the ready and capable of being summoned
16 to action,” “respond when the employer seeks contact with [them],” “perform other work if the
17 employer so requests,” and/or remain “on call” during their meal and rest periods, the employees
18 have not been “relieve[d] ... of all work-related duties and employer control.” *Augustus*, 2 Cal.5th
19 at 270. Such a meal or rest period is not “off duty” and therefore is “impermissible.” *Id.*

20 117. The Supreme Court’s decision in *Augustus* is just the latest in a series of meal and
21 rest break cases that have affirmed California’s broad, protective standard for employees.¹

22 118. Moreover, as the mere existence of a facially lawful meal and rest break policy is
23 unavailing if there are practical constraints and pressures on employees to perform their duties in
24

25 ¹ See, e.g., *Brinker Rest. Corp. v. Superior Court*, 53 Cal.4th 1004 (2012); *Lubin v.*
26 *Wackenhut Corp.*, 5 Cal.App.5th 926 (2016), *reh'g denied* (Dec. 14, 2016); *Faulkinbury v. Boyd &*
27 *Assocs., Inc.*, 216 Cal.App.4th 220 (2013); *Berlanga v. Equilon Enterprises LLC*, 2017 WL
28 3782245, at *3 (N.D. Cal. Aug. 31, 2017) (a policy requiring employees to “remain in contact with
supervisors and other employees working in their units throughout their shifts... would appear to
be unlawful under [*Augustus*].”).

ways that omit breaks. See *Brinker*, 53 Cal.4th at p. 1040.

119. Yet Defendants did and do not provide Plaintiff and members of the Classes with meal periods during which they are completely relieved of duty for at least thirty (30) minutes by the fifth hour of work and again by the tenth hour of work.

120. Rather, Plaintiff and members of the Classes' meal periods were typically late, and were required to remain on the premises. Further, Defendants failed to provide second 30-minute meal periods on days worked in excess of ten (10) hours in one day.

121. Thus, Defendants have failed to perform its obligations to provide Plaintiff and the members of the Plaintiff Class with off-duty meal periods by the end of the fifth hour of work and a second meal period by the end of the tenth hour of work. Defendants also have failed to pay Plaintiff and the members of the Plaintiff Class one (1) hour of pay at the regular rate for each off-duty meal period that they have been denied, as a result of failing to incorporate nondiscretionary bonuses into the rate of pay.

122. On July 15, 2021, the California Supreme Court issued a decision in *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal.5th 858 where the court unanimously held that employers must pay premium payments to employees for missed meal, rest, and recovery breaks at the employee's "regular rate of pay" instead of their base hourly rate. The regular rate of pay may be higher than the base hourly rate because the regular rate of pay must include all nondiscretionary incentive payments, including nondiscretionary bonuses.

123. Defendants knew or should have known that as a result of its policies and/or practices, that Plaintiff and members of the Classes were not actually relieved of all duties to take timely, uninterrupted meal periods. Defendants further knew or should have known that it did not pay Plaintiff and members of the Classes all meal period premiums when meal periods were missed, late, short, and/or interrupted. Furthermore, Defendants have engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Plaintiff and members of the Classes have not received all premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that Defendants did pay Plaintiff and members of the Classes premium pay for missed, late, and

1 interrupted meal periods, Defendants did not pay Plaintiff and members of the Classes at the
2 correct rate of pay for premiums because Defendants systematically failed to include all forms of
3 compensation, such as hazard pay, incentive pay, nondiscretionary bonuses, and/or other forms of
4 remuneration, in the regular rate of pay. Accordingly, Defendants failed to provide all meal periods
5 in violation of California *Labor Code* §§ 226.7, 512(a), 516, and 1198.

6 124. Plaintiff and members of the Classes are entitled to civil penalties, attorney's fees,
7 costs, and interest thereon.

8 **FOURTH CAUSE OF ACTION**

9 **Non-Compliant Rest Breaks**

10 **(By Plaintiff and Members of the Putative Class Against All Defendants)**

11 125. Plaintiff hereby incorporates by reference each and every one of the allegations
12 contained in the preceding paragraphs as if the same were fully set forth herein.

13 126. Plaintiff is informed and believes, and thereon allege, that Plaintiff and Class
14 Members were entitled to a paid rest period of not less than ten (10) minutes without duty for each
15 and every four (4) hours worked during the workday.

16 127. Nevertheless, Plaintiff is informed and believes, and thereon alleges, that
17 Defendants routinely failed to provide Plaintiff and the members of the Classes with such paid rest
18 periods without duty, notwithstanding the fact that Plaintiff and the members of the Classes had not
19 waived their right to the same. Thus, Defendants failed to provide Plaintiff and Class Members
20 with rest periods required by California *Labor Code* §§ 226.7, 512, and 516, IWC Wage Order,
21 section 12 and categorically failed to pay any and all rest period wages due.

22 128. Plaintiff and Class Members seek damages pursuant to California *Labor Code*
23 §226.7(b) and the applicable IWC Wage Order section 12(B), in the amount of one additional hour
24 of pay at the regular rate for each work day that the rest period is/was not provided or provided late
25 to Plaintiff and any member of the Classes, the cumulative sum of which is to be determined at
26 trial.

27 129. Therefore, Plaintiff and members of the Plaintiff Class are entitled to compensation
28 for Defendants' failure to provide rest periods, plus interest, attorneys' fees, expenses, and costs of

1 suit pursuant to California *Labor Code* §§226.7(b) and the applicable wage order.

2 **FIFTH CAUSE OF ACTION**

3 **Failure to Furnish Accurate Itemized Wage Statements**

4 **(By Plaintiff and Members of the Putative Class Against All Defendants)**

5 130. Plaintiff hereby incorporates by reference each and every one of the allegations
6 contained in the preceding paragraphs as if the same were fully set forth herein.

7 131. California *Labor Code* § 226(a) and IWC Wage Order, section 7(B) requires
8 employers to furnish each employee with a statement itemizing, among other things, the total hours
9 worked by the employee, on a semi-monthly basis or at the time of each payment of wages.

10 132. *Labor Code* § 226(e) provides that if an employer fails to comply with providing an
11 employee with properly itemized wage statements as set forth in 226(a), then the employee is
12 entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a
13 violation occurs and \$100 per employee for each violation in a subsequent pay period, not to
14 exceed \$4,000. Further, *Labor Code* § 226.3 provides that any employer who violates section
15 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an
16 initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the
17 employer fails to provide the employee a wage statement or fails to keep the required records
18 pursuant to section 226(a).

19 133. Defendants knowingly and intentionally failed to furnish Plaintiff and the members
20 of the Classes with timely, itemized statements in compliance with California *Labor Code* § 226(a)
21 and IWC Wage Order section 7(B).

22 134. Plaintiff is informed and believes, and thereon alleges, that Defendants knowingly
23 and intentionally failed to furnish Plaintiff and members of the Classes with timely, itemized
24 statements showing (a) total hours, (b) gross wages earned, (c) all deductions, and/or (d) all
25 applicable hourly rates in effect during each respective pay period and the corresponding number
26 of hours worked at each hourly rate by each respective individual.

27 135. Plaintiff is informed and believes, and thereon alleges, that Defendants did not
28 maintain accurate business records pertaining to the total hours worked for Defendants by Plaintiff

1 and the members of the Classes as required under California *Labor Code* § 1174.5. This is a result
2 of missing hours worked, incorrect rates of pay, and missed meal and rest-break premiums.

3 136. As a result of not having kept accurate records, Plaintiff and the Class Members
4 suffered injuries in the form of confusion over whether they received all wages owed to them, and
5 difficulty and expense in reconstructing pay records in addition to other injuries which may come
6 to light during the discovery process.

7 137. California *Labor Code* § 1198 provides that the maximum hours of work and the
8 standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the
9 applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any
10 employees for longer hours than those fixed by the order or under conditions of labor prohibited by
11 the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep
12 accurate time records showing when the employee begins and ends each work period and meal
13 period.

14 138. During the relevant time period, Defendants failed, on a company-wide basis, to
15 keep accurate records of work and meal period start and stop times for Plaintiff and members of the
16 Classes, in violation of section 1198. Also, as stated, Defendants engaged in a company-wide
17 practice and/or policy of falsifying Plaintiff’s and members of the Classes’ time records by
18 recording that compliant meal periods were taken regardless of if or when meal periods were
19 actually taken, and thereby failed to keep accurate records of meal start and end times for Plaintiff
20 and members of the Classes. Furthermore, in light of Defendants’ failure to provide Plaintiff and
21 members of the Classes with second 30-minute meal periods to which they were entitled,
22 Defendants kept no records of meal start and end times for second meal periods.

23 139. Plaintiff and the members of the Classes herein seek damages and penalties pursuant
24 to California *Labor Code* § 226(e) for Defendants’ violations of California *Labor Code* § 226(a).

25 140. Plaintiff and Class Members also seek preliminary and permanent injunctive relief
26 and an award of reasonable attorneys’ fees and costs pursuant to California *Labor Code* § 226(h).

27 Plaintiff and the members of the Classes also request relief as described below.

28 //

1 **SIXTH CAUSE OF ACTION**

2 **Failure to Timely Pay Wages During Employment**

3 **(By Plaintiff and Members of the Putative Class Against All Defendants)**

4 141. Plaintiff hereby incorporates by reference each and every one of the allegations
5 contained in the preceding paragraphs as if the same were fully set forth herein.

6 142. California *Labor Code* § 204 requires that all wages earned by any person in any
7 employment between the 1st and the 15th days, inclusive, of any calendar month, other than those
8 wages due upon termination of an employee, are due and payable between the 16th and the 26th
9 day of the month during which the labor was performed, and that all wages earned by any person in
10 any employment between the 16th and the last day, inclusive, of any calendar month, other than
11 those wages due upon termination of an employee, are due and payable between the 1st and the
12 10th day of the following month.

13 143. California *Labor Code* § 204 also requires that all wages earned for labor in excess
14 of the normal work period shall be paid no later than the payday for the next regular payroll period.
15 Alternatively, California *Labor Code* § 204 provides that the requirements of this section are
16 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the
17 wages are paid not more than seven (7) calendar days following the close of the payroll period.

18 144. During the Class Period, Defendants willfully failed to pay Plaintiff and members of
19 the Classes all wages due including, but not limited to, overtime wages, minimum wages, and/or
20 meal and rest period premiums, within the time periods specified by California *Labor Code* § 204.

21 145. Plaintiff and members of the Classes are entitled to recover civil penalties,
22 attorney's fees, costs, and interest thereon, pursuant to *Labor Code* § 210.

23 **SEVENTH CAUSE OF ACTION**

24 **Waiting Time Penalties**

25 **(By Plaintiff and Members of the Terminated Sub Class Against All Defendants)**

26 146. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
27 forth herein.

28 147. At all times, relevant herein, Defendants were required to pay their employees all

1 wages owed in a timely fashion during and at the end of their employment, pursuant to California
2 *Labor Code* §§ 201-203.

3 148. As a pattern and practice, Defendants regularly failed to pay Plaintiff and the
4 members of the Terminated Sub Class their final wages pursuant to California *Labor Code* §§ 201-
5 203, and accordingly owe waiting time penalties pursuant to California *Labor Code* § 203.

6 149. California *Labor Code* §§ 201 and 202 provide that if an employer discharges an
7 employee, the wages earned and unpaid at the time of discharge are due and payable immediately,
8 and that if an employee voluntarily leaves his or her employment, his or her wages shall become
9 due and payable not later than seventy-two (72) hours thereafter, unless the employee has given
10 seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is
11 entitled to his or her wages at the time of quitting.

12 150. On information and belief, Defendants have a company-wide practice or policy of
13 paying departing employees their final wages on the next regular pay cycle, instead of adhering to
14 the time requirements set forth in *Labor Code* §§ 201 and 202.

15 151. For example, Plaintiff was terminated on or about October 16, 2020. However,
16 Defendants did not provide Plaintiff her final wages until her next subsequent pay date, October
17 20, 2020. Thus, Defendants failed to pay Plaintiff her final wages immediately, in violation of
18 *Labor Code* § 201. In addition, Defendants willfully failed to pay Plaintiff and members of the
19 Terminated Sub Class the earned and unpaid wages set forth above, including but not limited to,
20 overtime wages, minimum wages, and/or meal rest period premiums, either at the time of
21 discharge, or within seventy-two (72) hours of their leaving Defendants employ.

22 152. Plaintiff and members of the Terminated Sub Class are entitled to recover civil
23 penalties, attorney's fees, costs, and interest thereon, pursuant to *Labor Code* § 256.

24 **EIGHTH CAUSE OF ACTION**

25 **Unlawful Direct Deposit and Discount of Wages**

26 **(By Plaintiff and Members of the Terminated Sub Class Against All Defendants)**

27 153. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
28 forth herein.

1 154. California *Labor Code* § 212 prohibits employers from issuing any instruments for
2 the payment of wages unless such instruments are negotiable and payable in cash on demand and
3 without discount. California *Labor Code* § 213 permits employers to pay employees via direct
4 deposit so long as the employee authorizes payment via direct deposit. Under California law,
5 employers are also permitted to fulfill their wage payment obligations to employees by using
6 payroll debit cards, but only under certain circumstances. Employer use of payroll debit cards is
7 permitted only so long as the employee is given the choice as to whether to accept a payroll debit
8 card as a form of payment. *Johnson v. Sunrise Senior Living Management, Inc.*, No. 16 CV 00443
9 BRO RAOx, 2016 WL 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the
10 Division of Labor Standards Enforcement (“DLSE”) decision deeming payroll debit card program
11 permissible relied heavily on:

12 . . . [T]he fact that the pay programs were optional, thereby allowing an employee to
13 either participate in the program or receive his or her pay in some other way, such as
14 direct deposit. Specifically, the DLSE opined that “[t]he success of the described
15 procedure, in practice, will of course require that . . . it is presented as an alternative
16 method for wage payment for which [the employees’] participation is optional.” The
17 DLSE also stated, “[i]t is significant that the program does not mandate employee
18 participation in the Money Network Service and that it is designed to provide an
19 alternative for employees receiving their wage payment. Employees are also given
20 the option of having their pay direct deposited into an account of their choosing. . .”
21 (internal citations omitted).

22 155. In addition, employers can only utilize payroll debit card programs if they provide
23 employees with effective access to their wages without discount. The DLSE has interpreted *Labor*
24 *Code* § 212 and 213 as permitting employer use of payroll debit cards where the following
25 requirements are satisfied:

- 26 (1) [T]he “wages [are] payable at some established place of business in the state and
27 there be at least 30 days of sufficient funds for payment,”
28 (2) the employees are “fully informed of the service and procedures and that it is

1 represented as an alternative method for wage payment for which their participation
2 is optional,”

3 (3) the employees receive “an itemized wage statement,” and

4 (4) “at least one transaction per pay period [is] without fee.”

5 *Ortiz v. Randstad North America, L.P.*, No. C-13-5050 MMC, 2015 WL 6202298 at
6 3.

7 156. Further, the DLSE notes that the *Labor Code* manifests:

8 . . . [A] strong public policy that prohibits an employer (or its agent) from imposing
9 conditions or obstacles which interfere with or prevent an employee’s (sic) from
10 promptly receiving their due wages in full. The imposition of a fee in order to
11 readily access one’s earned and paid wages under a payroll card program which is
12 designed to discharge the employer’s wage payment obligations could
13 impermissibly interfere with an employee’s receipt of paid wages by creating a
14 financial condition which would have the effect of reducing or discounting wages
15 because such fee would be charged against the same account in which wages are
16 deposited. (emphases in original)

17 *DLSE opinion letter 2008.07.07.*

18 157. The DLSE has also acknowledged that payroll service providers “effectively act as
19 agents of the client employers in discharging the employer’s wage payment obligations.” *Id.* In a
20 second opinion letter, the DLSE stated that “[w]hile the Labor Code does not purport to regulate
21 the specific arrangements between employers and payroll service providers, both an employer and,
22 under the express language in Labor Code § 212- their agent, must comply with its requirements.”
23 *DLSE opinion letter 2008.07.07.2.*

24 158. During the Class Period, Defendants had an agreement with a payroll service
25 provider for the issuance of payroll debit cards to employees, including Plaintiff and members of
26 the Classes, to discharge its wage payment obligations to its employees. Upon information and
27 belief, Defendants’ payroll debit card program was not voluntary or optional to Plaintiff and
28 members of the Classes. Defendants had a practice and/or policy of automatically issuing payroll

1 debit cards to Plaintiff and members of the Classes without giving them the option to elect their
2 form of payment for their wages. Plaintiff and members of the Terminated Sub-Class also received
3 their final wages on a payroll debit card without a choice of an alternative method, including a
4 written check. Further, each time the debit cards are used, ATM fees are charged.

5 159. California courts recognize a policy favoring the full and prompt payment of wages
6 to employees. Defendants' payroll card program is inconsistent with this policy. Because
7 Defendants' company-wide payroll debit card program is involuntary and denies aggrieved
8 employees of easy access to the entirety of their wages, the program violates California *Labor*
9 *Code* §§ 212 and 213. Plaintiff and members of the Classes are therefore entitled to recover civil
10 penalties, attorney's fees, costs, and interest thereon, pursuant to *Labor Code* § 225.5.

11 **NINTH CAUSE OF ACTION**

12 **Unlawful Deductions**

13 **(By Plaintiff and Members of the Terminated Sub Class Against All Defendants)**

14 160. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
15 forth herein.

16 161. California *Labor Code* § 221 provides that it shall be unlawful for any employer to
17 collect or receive from an employee any part of wages theretofore paid by said employer to said
18 employee.

19 162. California *Labor Code* § 224 also provides in pertinent part that it is lawful to
20 withhold a portion of the employee's wages if "a deduction is expressly authorized in writing by
21 the employee."

22 163. During the Class Period, Defendants unlawfully deducted a portion of wages
23 previously paid to Plaintiff and members of the Classes in violation of California *Labor Code* §
24 221. This was a result of ATM and teller fees that were incurred each time Plaintiff and members
25 of the Classes obtained and/or spent their earned and due wages.

26 164. Defendants' payroll debit card program, which resulted in a discount of wages to
27 employees, is tantamount to taking deductions from Plaintiff's and members of the Classes'
28 paychecks without their written authorization and therefore constitutes an unlawful deduction of

1 wages, in violation of *Labor Code* §§ 221 and 224.

2 165. Plaintiff and members of the Classes are therefore entitled to recover civil penalties,
3 attorney's fees, costs, and interest thereon, pursuant to *Labor Code* §§ 225.5

4 **TENTH CAUSE OF ACTION**

5 **Secret Payment of Lower Wages**

6 **(By Plaintiff and Members of the Terminated Sub Class Against All Defendants)**

7 166. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
8 forth herein.

9 167. California *Labor Code* § 223 makes it unlawful for an employer to secretly pay
10 wages lower than required by statute while purporting to pay legal wages.

11 168. During the relevant time period, Defendants willfully and systematically issued
12 payroll debit cards to Plaintiff and members of the Classes. The payroll debit cards discounted the
13 wages of Plaintiff and members of the Classes by charging various fees in connection with the use
14 of the payroll debit cards. Defendants' payroll debit card program resulted in the payment of less
15 than statutorily required wages to Plaintiff and members of the Classes.

16 169. In doing so, Defendants acted with the intent to deprive Plaintiff and members of
17 the Classes of statutory wages, including, but not limited to, overtime wages and minimum wages
18 to which they were entitled to under California law. Thus, Defendants paid Plaintiff and members
19 of the Classes lower wages than those they were entitled to while purporting that Plaintiff and
20 members of the Classes were properly paid. Plaintiff and members of the Classes are therefore
21 entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to *Labor*
22 *Code* § 225.5.

23 **ELEVENTH CAUSE OF ACTION**

24 **Failure to Provide Suitable Seating**

25 **(By Plaintiff and Members of the Putative Class Against Defendant)**

26 170. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
27 forth herein.

28 171. California *Labor Code* § 1198 makes it illegal to employ an employee under

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

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

19 173. Defendants violated California *Labor Code* § 1198 and California Code of
20 Regulations, Title 8, section 11070(14)(A) because Plaintiff and members of the Classes were not
21 allowed to sit, even when it would not have interfered with the performance of their duties, nor
22 were they provided with suitable seats. Defendants’ management did not inform Plaintiff and
23 members of the Classes that they were allowed to sit down, provide any means for them to sit
24 down, or mention any policy regarding sitting.

25 174. As a result of Defendants’ company-wide policy and/or practice of prohibiting
26 employees from sitting during their shifts and company-wide failure to provide suitable seating,
27 Plaintiff and members of the Classes were forced to stand during shifts and denied seats.
28 Defendants’ failure to provide suitable seating to Plaintiff and members of the Classes violates

1 California *Labor Code* § 1198 and IWC Wage Order No. 7-2001, subdivision 14(A).

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

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

18 177. Defendants did not provide Plaintiff and members of the Classes with seats or stools
19 in reasonable proximity to their work areas to allow them to use seats when it would not interfere
20 with the performance of their duties for times when they were not engaged in active duties that
21 require standing.

22 178. As a result of Defendants’ company-wide policy and/or practice of prohibiting
23 employees from sitting at any time, even when they were not engaged in active duties requiring
24 standing, and company-wide failure to provide seats in reasonable proximity to their work areas,
25 Plaintiff and members of the Classes were forced to stand during shifts and denied seats.
26 Defendants’ failure to provide suitable seating to Plaintiff and members of the Classes violates
27 California *Labor Code* § 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

28 //

1 179. Plaintiff and members of the Classes are therefore entitled to recover civil penalties,
2 attorney's fees, costs, and interest thereon, and seek injunctive relief to bring Defendants into
3 compliance with California's seating requirements, pursuant to *Labor Code* § 1194.5.

4 **TWELFTH CAUSE OF ACTION**

5 **Failure to Reimburse Business Expenses**

6 **(By Plaintiff and Members of the Putative Class Against All Defendants)**

7 180. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
8 forth herein.

9 181. California *Labor Code* § 2802 requires employers to pay for all necessary
10 expenditures and losses incurred by the employee in the performance of his or her job. The purpose
11 of *Labor Code* § 2802 is to prevent employers from passing off their cost of doing business and
12 operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App.
13 4th 1137, 1144 (2014).

14 182. The applicable wage order, IWC Wage Order No. 7-2001, provides that: "[w]hen
15 tools or equipment are required by the employer or are necessary to the performance of a job, such
16 tools and equipment shall be provided and maintained by the employer, except that an employee
17 whose wages are at least two (2) times the minimum wage provided herein may be required to
18 provide and maintain hand tools and equipment customarily required by the trade or craft."

19 183. During the Class Period Defendants had a company-wide policy requiring Plaintiff
20 and members of the Classes to utilize their own mobile phones for work-related duties and
21 subjected Plaintiff and members of the Classes to increased laundry costs for uniforms.

22 184. Thus, Defendants had, and continue to have, a company-wide policy and/or practice
23 of not reimbursing employees for expenses necessarily incurred in violation of California *Labor*
24 *Code* § 2802.

25 185. Plaintiff and members of the Classes are entitled to recover civil penalties,
26 attorney's fees, costs, and interest thereon.

27 //

28 //

1 **THIRTEENTH CAUSE OF ACTION**

2 **Failure to Provide Notice of Material Terms of Employment**

3 **(By Plaintiff and Members of the Putative Class Against All Defendants)**

4 186. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
5 forth herein.

6 187. California's Wage Theft Prevention Act was enacted to ensure that employers
7 provide employees with basic information material to their employment relationship at the time of
8 hiring, and to ensure that employees are given written and timely notice of any changes to basic
9 information material to their employment.

10 188. Codified at California *Labor Code* § 2810.5, the Wage Theft Prevention Act
11 provides that at the time of hiring, an employer must provide written notice to employees of the
12 rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece,
13 commission, or otherwise, including any rates for overtime, the regular payday designated by the
14 employer, and any allowances claims as part of the minimum wage, including meal or lodging
15 allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5
16 must also include a statement that the employee may accrue and use sick leave; has a right to
17 request and use accrued paid sick leave; may not be terminated or retaliated against for using or
18 requesting the use of accrued paid sick leave; and has the right to file a complaint against an
19 employer who retaliates.

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

25 190. Plaintiff and members of the Classes are therefore entitled to recover civil penalties,
26 attorney's fees, costs, and interest thereon.

27 //

28 //

1 **FOURTEENTH CAUSE OF ACTION**

2 **Failure to Provide Sick Day Balances**

3 **(By Plaintiff and Members of the Putative Class Against All Defendants)**

4 191. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
5 forth herein.

6 192. California *Labor Code* § 246(i) provides: “An employer shall provide an employee
7 with written notice that sets forth the amount of paid sick leave available, or paid time off leave an
8 employer provides in lieu of sick leave, for use on either the employee’s itemized wage statement
9 described in Section 226 or in a separate writing provided on the designated pay date with the
10 employee’s payment of wages.”

11 193. Defendants have failed to comply with *Labor Code* § 246(i) as it only provided
12 Plaintiff and members of the Classes with a sick day balance on some of their respective wage
13 statements as opposed to all.

14 194. As a proximate result of the acts of Defendants, and each of them, as described
15 above, Plaintiff and members of the Classes have suffered and will continue to suffer economic
16 damages, including lost wages, lost benefits, loss of promotional opportunity, and other
17 compensatory damages in an amount to be ascertained at the time of trial.

18 195. That the acts of Defendants, and each of them, which were carried out by managing
19 agents, were intentional, willful and malicious and done in conscious disregard of Plaintiffs’ rights,
20 safety and well-being and with the intent to vex, injure and annoy Plaintiff.

21 196. Wherefore, Plaintiffs and Class Members are entitled to the penalties provided by
22 law for violation of the above-mentioned, and all other related remedies, in the amount to be
23 determined at the time of trial.

24 **FIFTEENTH CAUSE OF ACTION**

25 **VIOLATIONS OF CALIFORNIA**

26 **BUSINESS AND PROFESSIONS CODE SECTION 17200, et seq.**

27 **(By Plaintiff and the Members of the Plaintiff Class Against All Defendants)**

28 197. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set

1 forth herein.

2 198. California *Business and Professions Code* §17200 defines unfair competition to
3 include, “unlawful, unfair or fraudulent business practices.”

4 199. Plaintiff and all proposed Class Members are “persons within the meaning of
5 Business and Professions Code §17204, who have suffered injury in fact and have lost money or
6 property as a result of Defendants’ unfair competition.

7 200. Defendants have been committing, and continues to commit, acts of unfair
8 competition by engaging in the unlawful, unfair and fraudulent business practices and acts
9 described in this Complaint, including, but not limited to:

- 10 a) violations of California *Labor Code* §§ 510, 1198;
- 11 b) violations of California *Labor Code* §§ 1182.11-1182.12, 1194, 1194.2, 1197, 1198;
- 12 c) violations of California *Labor Code* §§ 226.7, 512, 516, and 1198;
- 13 d) violations of California *Labor Code* § 226, 1174;
- 14 e) violations of California *Labor Code* § 204;
- 15 f) violations of California *Labor Code* §§ 201 and 202;
- 16 g) violations of California *Labor Code* §§ 212 and 213;
- 17 h) violations of California *Labor Code* §§ 221 and 224;
- 18 i) violations of California *Labor Code* § 223;
- 19 j) violations of California *Labor Code* § 1198;
- 20 k) violations of California *Labor Code* § 2802;
- 21 l) violations of California *Labor Code* § 2810.5;
- 22 m) violations of California *Labor Code* § 246; and
- 23 n) violations of the applicable Wage Order.

24 201. As a result of its unlawful, unfair, and/or fraudulent business acts and practices,
25 Defendants have reaped and continue to reap unfair benefits and illegal profits at the expense of
26 Plaintiff and proposed Class Members. Defendants’ unlawful, unfair, and/or fraudulent conduct has
27 also enabled Defendants to gain an unfair competitive advantage over law-abiding employers and
28 competitors.

202. The *Business and Professions Code* §17203 provides that the Court may restore to an aggrieved party any money or property acquired by means of the unlawful, unfair, and/or fraudulent business acts or practices.

203. Plaintiff seeks a court order enjoining Defendants from the unlawful, unfair, and/or fraudulent activity alleged herein.

204. Pursuant to Civil Code §3287(a), Plaintiff and other members of the Plaintiff Class are entitled to recover pre-judgment interest on wages earned, but not paid.

205. Plaintiff further seeks an order requiring an audit and accounting of the payroll records to determine the amount of restitution of all unpaid wages owed to himself and members of the proposed Plaintiff Class, according to proof, as well as a determination of the amount of funds to be paid to current and former employees that can be identified and located pursuant to a court order and supervision.

206. Plaintiff seeks restitution for herself and all others similarly situated of these amounts, including all earned and unpaid wages and attorneys' fees and costs pursuant to Cal. Code Civ. Proc. §1021.5.

SIXTEENTH CAUSE OF ACTION

Statutory Penalties Pursuant to PAGA (Labor Code §§2698, et seq.)

(On behalf of All Aggrieved Employees)

207. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

208. At all times set forth herein, the Private Attorneys General Act of 2004 (PAGA, California *Labor Code* §§ 2698-99) applied to Defendants' employment of Plaintiff and the proposed Class Members.

209. At all times set forth herein, California *Labor Code* § 2699(a) has provided that any provision of law under the California *Labor Code* that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (LWDA) for violations of the California *Labor Code* may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of herself and other current or former employees pursuant to

1 procedures outlined in California *Labor Code* § 2699.3.

2 210. At all times set forth herein, the PAGA has also provided that for the violation of
3 any Labor Code provision that does not itself contain a civil penalty, there are established civil
4 penalties of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for
5 each aggrieved employee per pay period for each subsequent violation. Cal. Lab. C. § 2699(f).

6 211. A civil action under PAGA may be brought by an "aggrieved employee," any
7 person that was employed by the alleged violator and against whom one or more of the alleged
8 violations was committed.

9 212. Defendants committed, and continue to commit, violations of the California Labor
10 Code, including, but not limited to:

- 11 a. violations of California *Labor Code* §§ 510, 1198;
- 12 b. violations of California *Labor Code* §§ 1182.11-1182.12, 1194, 1194.2, 1197, 1198;
- 13 c. violations of California *Labor Code* §§ 226.7, 512, 516, and 1198;
- 14 d. violations of California *Labor Code* § 226, 1174;
- 15 e. violations of California *Labor Code* § 204;
- 16 f. violations of California *Labor Code* §§ 201 and 202;
- 17 g. violations of California *Labor Code* §§ 212 and 213;
- 18 h. violations of California *Labor Code* §§ 221 and 224;
- 19 i. violations of California *Labor Code* § 223;
- 20 j. violations of California *Labor Code* § 1198;
- 21 k. violations of California *Labor Code* § 2802;
- 22 l. violations of California *Labor Code* § 2810.5;
- 23 m. violations of California *Labor Code* § 246; and
- 24 n. violations of the applicable Wage Order

25 213. Plaintiff was employed by Defendants and the alleged violations have been
26 committed against her during her time of employment and she is, therefore, an aggrieved
27 employee. Plaintiff and other employees are "aggrieved employees" as defined by California *Labor*
28 *Code* §2699(c) in that they are all current or former employees of Defendants, and one or more of

1 the alleged violations were committed against them.

2 214. Pursuant to California *Labor Code* § 2699.3, aggrieved employees, including
3 Plaintiff, may pursue a civil action arising under the PAGA after the following requirements have
4 been met:

5 215. The aggrieved employee shall give written notice (hereinafter "Employee's Notice")
6 to the LWDA and the employer of the specific provisions of the California Labor Code alleged to
7 have been violated, including the facts and theories to support the alleged violations;

8 216. The LWDA shall provide notice (hereinafter "LWDA Notice") to the employer and
9 the aggrieved employee by certified mail that it does not intend to investigate the alleged violations
10 sixty (60) calendar days of the postmark date of the Employee's Notice. Upon receipt of the LWDA
11 Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days of the postmark
12 date of the Employee's Notice, the aggrieved employee may commence a civil action pursuant to
13 California *Labor Code* §2699 to recover civil penalties in addition to any other penalties to which
14 the employee may be entitled.

15 217. On October 8, 2021, Plaintiff provided written notice to the LWDA and by certified
16 mail to Defendants of the specific provisions of the California Labor Code alleged to have been
17 violated, including the facts and theories to support the alleged violations. More than 65 calendar
18 days have passed since the date notice was provided to the LWDA and Defendants. Accordingly,
19 Plaintiff has satisfied the administrative prerequisites under California *Labor Code* Section
20 2699.3(a) to recover civil penalties against Defendants for violations of California Labor Code
21 identified in this Complaint.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff, and the Class Members pray for judgment as follows:

- 24 1. For an order certifying the proposed Plaintiff and Terminated Sub-Class;
25 2. For an order that counsel for Plaintiff be appointed class counsel
26 3. Certification of this class action on behalf of the proposed Plaintiff and Terminated
27 Sub-Class;
28 4. Designation of Plaintiff as the class representative of the Plaintiff and Terminated

Sub Class;

5. For restitution of all monies due to Plaintiff and the members of the Plaintiff Class and disgorgement of all profits from the unlawful business practices of Defendant
6. An order appointing Plaintiff's counsel as class counsel;
7. Prejudgment and post judgment interest on all sums awarded;
8. For compensatory damages;
9. For penalties pursuant to California *Labor Code* §§ 200, 226, 226.7, 226.3, 226.7;
10. For interest accrued to date;
11. For costs of suit and expenses incurred herein pursuant to California *Labor Code* §§ 226 and 1194;
12. For reasonable attorneys' fees pursuant to California *Labor Code* §§ 226 and 2699(g)(1), Code of Civil Procedure § 1021.5, and/or other applicable law; and
13. A declaratory judgment that Defendants have knowingly and intentionally violated the following provisions of law;
 - a. California *Labor Code* §§ 510, 1198 for failing to pay overtime;
 - b. California *Labor Code* §§ 1182.11-1182.12, 1194, 1194.2, 1197, 1198 for failing to pay all wages;
 - c. California *Labor Code* §§ 226.7, 512, 516, and 1198 for failing to provide compliant meal and rest breaks;
 - d. California *Labor Code* § 226, 1174 for failing to provide compliant wage statements;
 - e. California *Labor Code* § 204 for failing to timely pay wages;
 - f. violations of California *Labor Code* §§ 201 and 202 for failing to pay wages at termination;
 - g. California *Labor Code* §§ 212 and 213 for unlawful direct deposit and discount of wages;
 - h. California *Labor Code* §§ 221 and 224 for unlawful deductions;
 - i. California *Labor Code* § 223 for secret payment of lower wages;

- 1 j. California *Labor Code* § 1198 for failing to provide suitable seating;
2 k. California *Labor Code* § 2802 for failing to reimburse business
3 expenses;
4 l. California *Labor Code* § 2810.5 for failing to provide notice of
5 material terms of employment;
6 m. California *Labor Code* § 246 for failing to provide sick day balances;
7 and
8 n. California Business & Professions Code §§ 17200-08 by violating
9 the provisions set forth herein above.

10 14. For all such other and further relief that the Court may deem just and proper.
11
12

13 DATED: December 14, 2021

BRADLEY/GROMBACHER, LLP
CAPSTONE LAW APC

14
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16 By: 

Marcus Bradley, Esq.
Kiley Grombacher, Esq.
Lirit King, Esq.
Robert Drexler, Esq.
Molly DeSario, Esq.
Jonathan Lee, Esq.

Attorneys for Plaintiff
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of Plaintiff's and the members of the Classes' claims by jury to the extent authorized by law.

DATED: December 14, 2021

**BRADLEY/GROMBACHER, LLP
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By: 

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