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8

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES
12

13 MICHAEL DE GRADO and LA TASHA
SHAREEF, as aggrieved employees
14 pursuant to the Private Attorneys General
Act ("PAGA"), on behalf of the State of
15 California and other non-party Aggrieved
Employees,

16 Plaintiffs,
17

18 vs.

19 TIFFANY AND COMPANY U.S. SALES,
LLC, a Delaware limited liability company;
20 TIFFANY AND COMPANY, a New York
corporation; and DOES 1 through 10,
21 inclusive,
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23 Defendants.
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FILED
Superior Court of California
County of Los Angeles
03/22/2022

Sherri R. Carter, Executive Officer / Clerk of Court
By: E. Avena Deputy

Case No.: 20STCV44847

**SECOND AMENDED COMPLAINT –
PAGA ENFORCEMENT ACTION**

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

Jury Trial Demanded

Plaintiffs Michael De Grado and La Tasha Shareef, as aggrieved employees and on behalf of the State of California and all other non-party Aggrieved Employees, allege as follows:

JURISDICTION AND VENUE

1. This is an enforcement action under the Labor Code Private Attorneys General Act of 2004, California Labor Code sections 2698 *et seq.* (“PAGA”) to recover civil penalties and any other available relief on behalf of Plaintiffs, the State of California, and other current and former employees who worked for Defendants in California as a non-exempt, hourly paid employee and received at least one wage statement and against whom one or more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage Order were committed, as set forth in this complaint, at any time between one year prior to the filing of the pre-filing written notice to the Labor and Workforce Development Agency (“LWDA”) in this case on September 17, 2020, until judgment (“non-party Aggrieved Employees”). Plaintiffs’ share of civil penalties sought in this action does not exceed \$75,000.

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

3. This Court has jurisdiction over all Defendants because, on information and belief, Defendants are either citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction in this action given that the State of California, as the real party in interest in this action, is not a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction

1 in this action, and that diversity jurisdiction cannot be established when Plaintiffs' share of the
2 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

3 4. Venue is proper in this Court, because Defendants filed a Statement of
4 Information form with the California Secretary of State designating a principal place of
5 business in Beverly Hills, County of Los Angeles, in accordance with California Corporations
6 Code section 2105(a)(3). Cal. Code Civ. P. § 395.5. Venue is also proper in this Court,
7 because Defendants employ persons in this county, and thus a substantial portion of the
8 transactions and occurrences related to this action occurred in this county.

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

13 THE PARTIES

14 6. Plaintiff Michael De Grado worked for Defendants as an hourly paid, non-
15 exempt Sales Professional from approximately June 22, 2018 to October 5, 2019, at their
16 Tiffany & Co. store in Carmel-by-the Sea, California. During his employment, Plaintiff De
17 Grado typically worked four (4) to seven (7) hours or more per day, three (3) or more days per
18 week, and 28 to 30 hours per week. By the end of his employment, Plaintiff De Grado earned
19 approximately \$19.52 per hour plus commissions. His job duties included, without limitation,
20 providing customer service, presenting jewelry to customers, cleaning jewelry displays and
21 display cases, ringing up customers, processing returns and exchanges, preparing sales and
22 client reports, and stocking displays.

23 7. Plaintiff La Tasha Shareef worked for Defendants as an hourly paid, non-
24 exempt Seasonal Ambassador from approximately December 2, 2020, to December 24, 2020,
25 at their Tiffany & Co. store in Costa Mesa, California. During her employment, Plaintiff
26 Shareef typically worked eight (8) hours or more per day, and five (5) days or more per week.
27 By the end of her employment, Plaintiff Shareef earned approximately \$18.00 per hour. Her
28 job duties included, without limitation, greeting customers, introducing customers to a

1 representative in sales or customer service, retrieving pre-orders from the dedicated order
2 room, and confirming whether items were in-stock.

3 8. On information and belief, Defendants required some employees, including
4 Plaintiff De Grado, to execute a dispute resolution policy and/or arbitration agreement at the
5 time of their hire or during their employment. On further information and belief, Defendants'
6 dispute resolution policy and/or arbitration agreement was and is both procedurally and
7 substantively unconscionable. Specifically, Defendants presented new hires with a Dispute
8 Resolution Agreement ("Arbitration Agreement") during the onboarding process, which had
9 to be reviewed and acknowledged immediately. Moreover, Defendants deemed the
10 Arbitration Agreement to be accepted even if employees did not sign it ("[R]egardless of
11 whether you submit the acknowledgement, continuing your employment for fourteen (14)
12 days after you are provided with this Agreement constitutes mutual acceptance of the terms of
13 this Agreement by you and the Company."). Also, employees did not have a meaningful
14 opportunity to negotiate the terms of the Arbitration Agreement. Rather, it was provided to
15 Defendants' employees for them to sign on a take-it or leave-it basis at the time they were
16 hired, along with other on-boarding documents. Further, Defendants did not set forth in the
17 agreement or otherwise provide employees with the rules which will govern the arbitration,
18 instead forcing employees to seek this information out on their own ("[D]isputes covered by
19 this Agreement shall be resolved by binding arbitration in accordance with the Employment
20 Arbitration Rules of the American Arbitration Association ('AAA Rules') then in effect, and
21 not by court or jury trial. The AAA Rules may be found on the Human Resource Division
22 page of the Company's intranet, by asking your local Human Resource representative for a
23 copy of the rules, or online at www.adr.org/employment").

24 9. TIFFANY AND COMPANY U.S. SALES, LLC was and is, upon information
25 and belief, a Delaware limited liability company, and at all times hereinafter mentioned, an
26 employer whose employees are engaged throughout this county and the State of California.

27 10. TIFFANY AND COMPANY was and is, upon information and belief, a New
28 York corporation, and at all times hereinafter mentioned, an employer whose employees are

1 engaged throughout this county and the State of California.

2 11. Plaintiffs are unaware of the true names or capacities of the Defendants sued
3 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
4 amend the complaint and serve such fictitiously named Defendants once their names and
5 capacities become known.

6 12. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10
7 were the partners, agents, owners, or managers of TIFFANY AND COMPANY U.S. SALES,
8 LLC and TIFFANY AND COMPANY at all relevant times.

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

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

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

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

1 conditions of employment, determined their rate of pay, and maintained their employment
2 records. Defendants suffered or permitted Plaintiffs and other non-party Aggrieved
3 Employees to work and/or “engaged” Plaintiffs and other non-party Aggrieved Employees so
4 as to create a common-law employment relationship. As joint employers of Plaintiffs and
5 other non-party Aggrieved Employees, Defendants are jointly and severally liable for the civil
6 penalties available to Plaintiffs and other non-party Aggrieved Employees under the law.

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

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

28 18. Plaintiffs are informed and believe, and thereon allege, that at all relevant times

1 there has existed a unity of interest and ownership between Defendants such that any
2 individuality and separateness between the entities has ceased.

3 19. TIFFANY AND COMPANY U.S. SALES, LLC; TIFFANY AND
4 COMPANY; and DOES 1 through 10 are therefore alter egos of each other.

5 20. Adherence to the fiction of the separate existence of Defendants would permit
6 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
7 from liability for the wrongful acts committed by them under the name TIFFANY.

8 21. Plaintiffs further allege, upon information and belief, that Defendants
9 TIFFANY AND COMPANY U.S. SALES, LLC and TIFFANY AND COMPANY are alter
10 egos of each other for the following reasons:

- 11 (a) On the California Secretary of State’s website
12 (<https://businesssearch.sos.ca.gov/>), TIFFANY AND COMPANY U.S.
13 SALES, LLC and TIFFANY AND COMPANY share the same entity
14 mailing address, “15 SYLVAN WAY, PARSIPPANY, NJ 07054;”
- 15 (b) According to Tiffany & Co.’s SEC 10-K filing for 2019, TIFFANY
16 AND COMPANY U.S. SALES, LLC is a subsidiary of TIFFANY AND
17 COMPANY, INC.;¹
- 18 (c) According to the most recent “Statement of Information” forms filed
19 with the California Secretary of State, TIFFANY AND COMPANY
20 U.S. SALES, LLC and TIFFANY AND COMPANY share the same
21 officers and/or directors, including, but not limited to, Leigh M. Harlan
22 and Mark J. Erceg, who serve as Secretary and Chief Financial Officer
23 of TIFFANY AND COMPANY, respectively, and as managers of
24 TIFFANY AND COMPANY U.S. SALES, LLC;
- 25 (d) On information and belief, TIFFANY AND COMPANY U.S. SALES,
26 LLC and TIFFANY AND COMPANY share the same agent for service
27

28 ¹ 10-K Annual Report 3/20/2020, “Tiffany & Co. – Investor Relations,”
<https://investor.tiffany.com/financial-information/sec-filings> (last accessed Nov. 16, 2020).

of process, “C T CORPORATION SYSTEM (C0168406);” and

(e) On information and belief, TIFFANY AND COMPANY U.S. SALES, LLC and TIFFANY AND COMPANY utilize the same standardized employment forms and issue the same employment policies.

PAGA REPRESENTATIVE ALLEGATIONS

22. Defendants own and operate a chain of luxury jewelry retail stores throughout the world. Defendants operate approximately 94 retail stores in the United States, including 18 retail stores in California. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their corporate headquarters in New York, New York, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

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

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

1 25. Defendants continue to employ non-exempt or hourly paid employees in
2 California.

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

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

10 28. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
11 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
12 receive certain wages for overtime compensation and that they were not receiving certain
13 wages for overtime compensation.

14 29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
15 should have known that other non-party Aggrieved Employees were entitled to be paid at a
16 regular rate of pay, and corresponding overtime rates of pay, that included as eligible income
17 all income derived from commissions, incentive pay, nondiscretionary bonuses, and/or other
18 forms of compensation, but failed to include all forms of remuneration in calculating the
19 regular rate of pay for other non-party Aggrieved Employees.

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

26 31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
27 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
28 meal periods in accordance with the California Labor Code and applicable IWC Wage Order

1 or payment of one (1) additional hour of pay at their regular rates of pay when they were not
2 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiffs and
3 other non-party Aggrieved Employees were not provided with all meal periods or payment of
4 one (1) additional hour of pay at their regular rates of pay when they did not receive a timely,
5 uninterrupted, thirty (30) minute meal period.

6 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
7 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
8 rest periods in accordance with the California Labor Code and applicable IWC Wage Order or
9 payment of one (1) additional hour of pay at their regular rates of pay when they were not
10 authorized and permitted to take a compliant rest period. In violation of the California Labor
11 Code, Plaintiffs and other non-party Aggrieved Employees were not authorized and permitted
12 to take compliant rest periods, nor did Defendants provide Plaintiffs and other non-party
13 Aggrieved Employees with payment of one (1) additional hour of pay at their regular rates of
14 pay when they were not authorized and permitted to take a compliant rest period.

15 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
16 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
17 receive complete and accurate wage statements in accordance with California law. In
18 violation of the California Labor Code, Plaintiffs and other non-party Aggrieved Employees
19 were not provided complete and accurate wage statements.

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

24 35. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
25 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
26 timely payment of all wages earned upon termination of employment. In violation of the
27 California Labor Code, Plaintiffs and other non-party Aggrieved Employees did not receive
28 payment of all wages due, including, but not limited to, overtime wages, minimum wages,

1 and/or meal and rest period premiums, within permissible time periods.

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

8 37. Plaintiffs are informed and believe, and thereon allege, that at all time herein
9 mentioned, Defendants knew or should have known that they had a duty to cover the costs and
10 expenses Plaintiff Shareef and other non-party Aggrieved Employees incurred obtaining
11 mandatory examinations and/or drug tests, but failed to do so.

12 38. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
13 should have known that other non-party Aggrieved Employees were entitled to one day's rest
14 when they worked more than six consecutive days. In violation of the California Labor Code,
15 and other non-party Aggrieved Employees were not provided one day's rest when they
16 worked more than six consecutive days.

17 39. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
18 should have known that other non-party Aggrieved Employees were entitled to be paid
19 reporting time pay when they reported to work for their scheduled shift but were put to work
20 for less than half of the regular schedule. In violation of the California Labor Code and
21 applicable IWC Wage Order, Defendants did not pay other non-party Aggrieved Employees
22 all reporting time pay due.

23 40. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
24 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
25 suitable seating and/or were entitled to sit when it did not interfere with the performance of
26 their duties and also have seats nearby to use during a lull in tasks that do require moving
27 about or standing. In violation of the California Labor Code and applicable IWC Wage Order,
28 Defendants failed to provide Plaintiffs and other non-party Aggrieved Employees suitable

1 seating.

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

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

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

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

22 45. Plaintiffs and other current and former employees of Defendants are "aggrieved
23 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
24 or former employees and one or more of the alleged violations were committed against them.

25 46. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
26 employee, including Plaintiffs, may pursue a civil action arising under PAGA after the
27 following requirements have been met:

28 (a) The aggrieved employee shall give written notice by online filing

(hereinafter “Employee’s Notice”) to the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

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

(c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within sixty (60) calendar days of the postmark date of the Employee’s Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days of the postmark date of the Employee’s Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

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

(a) The aggrieved employee or representative shall give written notice by online filing to the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated (other than those listed in Section 2699.5), including the facts and theories to support the alleged violation.

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

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

9 48. On September 17, 2020, Plaintiff De Grado provided written notice by online
10 filing to the LWDA and by certified mail to Defendants of the specific provisions of the
11 California Labor Code alleged to have been violated, including facts and theories to support
12 the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff De
13 Grado's written notice was accompanied with the applicable filing fee of seventy-five dollars
14 (\$75). The LWDA PAGA Administrator has confirmed receipt of Plaintiff De Grado's
15 written notice and assigned Plaintiff De Grado PAGA Case Number LWDA-CM-806658-20.
16 On November 23, 2020, Plaintiff De Grado sent an amended written notice by online filing to
17 the LWDA and by certified mail to Defendants of the specific provisions of the California
18 Labor Code alleged to have been violated, supplementing and clarifying the facts and theories
19 to support the alleged violations set forth in his original LWDA notice, in accordance with
20 California Labor Code section 2699.3. True and correct copies of Plaintiff De Grado's written
21 notices to the LWDA and Defendants dated September 17, 2020, and November 23, 2020, are
22 attached hereto as "Exhibit 1."

23 49. On November 22, 2021, Plaintiff Shareef provided written notice by online
24 filing to the LWDA and by certified mail to Defendants of the specific provisions of the
25 California Labor Code alleged to have been violated, including facts and theories to support
26 the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff
27 Shareef's written notice was accompanied with the applicable filing fee of seventy-five dollars
28 (\$75). The LWDA PAGA Administrator has confirmed receipt of Plaintiff Shareef's written

1 notice and assigned Plaintiff Shareef PAGA Case Number LWDA-CM-854023-21. A true
2 and correct copy of Plaintiff Shareef's written notice to the LWDA and Defendants dated
3 November 22, 2021, is attached hereto as "Exhibit 2."

4 50. As of the filing date of this complaint, over 65 days have passed since Plaintiffs
5 sent their initial written notices described above, and the LWDA has not responded that it
6 intends to investigate Plaintiffs' claims, and Defendants have not cured the violations.

7 51. Thus, Plaintiffs have satisfied the administrative prerequisites under California
8 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
9 violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510,
10 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

11 52. Labor Code section 558(a) provides "[a]ny employer or other person acting on
12 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
13 provision regulating hours and days of work in any order of the Industrial Welfare
14 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
15 dollars (\$50) for each underpaid employee for each pay period for which the employee was
16 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
17 underpaid employee for each pay period for which the employee was underpaid. . . ." Labor
18 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
19 to any other civil or criminal penalty provided by law." Plaintiffs, acting in the public interest
20 as a private attorneys general, seek assessment and collection of civil penalties under Labor
21 Code section 558 for themselves, all other non-party Aggrieved Employees, and the State of
22 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198,
23 and the applicable IWC Wage Order. Plaintiffs, acting in the public interest as private
24 attorneys general, do not seek the recovery of unpaid wages under Labor Code section 558
25 from Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the
26 applicable IWC Wage Order.

27 53. Defendants, at all times relevant to this complaint, were employers or persons
28 acting on behalf of an employer(s) who violated Plaintiffs' and other non-party Aggrieved

1 Employees' rights by violating various sections of the California Labor Code as set forth
2 above.

3 54. As set forth below, Defendants have violated numerous provisions of both the
4 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
5 Order.

6 55. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
7 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiffs, acting in the public interest as
8 private attorneys general, seek assessment and collection of civil penalties for themselves, all
9 other non-party Aggrieved Employees, and the State of California against Defendants for
10 violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510,
11 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

12 **FIRST CAUSE OF ACTION**

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

14 **(Against all Defendants)**

15 56. Plaintiffs incorporates by reference and re-allege as if fully stated herein each
16 and every allegation set forth above.

17 57. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiffs to recover
18 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
19 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 222.5,
20 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section
21 2699.3(c) permits aggrieved employees, including Plaintiffs, to recover civil penalties for
22 violations of those Labor Code sections not found in section 2699.5, including sections 516
23 and 1182.12.

24 58. Defendants' conduct, as alleged herein, violates numerous sections of the
25 California Labor Code, including, but not limited to, the following:

- 26 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
27 Wage Order for Defendants' failure to compensate Plaintiffs and other
28 non-party Aggrieved Employees with all required overtime pay and

1 failure to properly calculate the overtime rates paid to other non-party
2 Aggrieved Employees, as set forth below;

3 (b) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and
4 the applicable IWC Wage Order for Defendants' failure to compensate
5 Plaintiffs and other non-party Aggrieved Employees with at least
6 minimum wages for all hours worked, as set forth below;

7 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
8 applicable IWC Wage Order for Defendants' failure to provide
9 Plaintiffs and other non-party Aggrieved Employees with meal periods,
10 as set forth below;

11 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the
12 applicable IWC Wage Order for Defendants' failure to authorize and
13 permit Plaintiffs and other non-party Aggrieved Employees to take rest
14 periods, as set forth below;

15 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
16 IWC Wage Order for failure to provide accurate and complete wage
17 statements to Plaintiffs and other non-party Aggrieved Employees, as
18 set forth below;

19 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable
20 IWC Wage Order for failure to maintain payroll records, as set forth
21 below;

22 (g) Violation of Labor Code section 204 for failure to pay all earned wages
23 during employment, as set forth below;

24 (h) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
25 earned wages upon termination, as set forth below;

26 (i) Violation of Labor Code section 222.5 for failure to compensate
27 Plaintiff Shareef and other non-party Aggrieved Employees for
28 mandatory physical examinations and/or drug testing, as set forth

below;

- (j) Violation of Labor Code sections 551 and 552 for failure to provide one day's rest in seven to other non-party Aggrieved Employees, as set forth below;
- (k) Violation of Labor Code section 1198 for failing to provide reporting time pay when other non-party Aggrieved Employees were put to work for less than half of their regular scheduled shifts, as set forth below;
- (l) Violation of Labor Code section 1198 for failing to provide suitable seating to Plaintiffs and other non-party Aggrieved Employees, as set forth below; and
- (m) Violation of Labor Code section 2802 for failure to reimburse Plaintiffs and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below.

FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

59. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

60. California Labor Code section 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

61. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiffs and other non-party Aggrieved Employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty

1 (40) hours in a workweek.

2 62. The applicable IWC Wage Order further provides that Defendants are and were
3 required to pay Plaintiffs and other non-party Aggrieved Employees working more than
4 twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate
5 of pay. An employee's regular rate of pay includes all remuneration for employment paid to,
6 or on behalf of, the employee, including shift differential pay, nondiscretionary bonuses, and
7 incentive pay.

8 63. California Labor Code section 510 codifies the right to overtime compensation
9 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
10 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
11 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
12 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
13 in a day on the seventh (7th) day of work.

14 64. During the relevant time period, Defendants willfully failed to pay all overtime
15 wages owed to Plaintiffs and other non-party Aggrieved Employees. During the relevant time
16 period, Plaintiffs and other non-party Aggrieved Employees were not paid overtime premiums
17 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
18 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
19 not recorded.

20 65. First, Defendants had, and continue to have, a company-wide policy and/or
21 practice of failing to accurately record hours worked by their employees. For example, after
22 reporting to work on time, Plaintiff Shareef and other non-party Aggrieved Employees were
23 forced to wait up to sixty (60) minutes to enter the store and clock in because there was no one
24 available to open the doors for them. As a result, Plaintiff Shareef and other non-party
25 Aggrieved Employees were forced to work off-the- clock, but were not provided a means by
26 Defendants to account for this time. Thus, Defendants failed to track this time spent working
27 off-the-clock before their scheduled shifts, and Plaintiff Shareef and other non-party
28 Aggrieved Employees received no compensation for this time they remained under

1 Defendants' control.

2 66. Second, on information and belief, Defendants required Plaintiff Shareef and
3 other non-party Aggrieved Employees to complete online training modules from home, on
4 their off-days, or during their unpaid meal periods, but did not compensate them for this time.
5 For example, Plaintiff Shareef was required to watch online training modules from home and
6 spent four (4) hours completing the required training, but was not compensated for her time.
7 In addition, during the relevant period, Defendants had a company-wide practice and/or policy
8 of requiring Plaintiff De Grado and other non-party Aggrieved Employees to perform work-
9 related tasks while off-the-clock, such as promoting Defendants' business before and after
10 their shifts and/or on their days off. For example, Plaintiff De Grado was directed to post
11 about store promotions on company social media accounts. However, due to Defendants'
12 policy of understaffing and assigning heavy workloads (*see infra*), Plaintiff De Grado was too
13 busy to post about store promotions on social media websites during his shifts, and was
14 required to spend 2-4 hours per week posting before and after his shifts and/or on his days off.
15 Thus, Defendants failed to track this time that Plaintiffs and other non-party Aggrieved
16 Employees spent working off-the-clock, and Plaintiffs and other non-party Aggrieved
17 Employees received no compensation for this time.

18 67. Third, Defendants had a company-wide loss prevention policy requiring
19 employees to undergo mandatory security checks by a managerial employee before leaving
20 the store premises. As a result of Defendants' policy, Plaintiff De Grado and other non-party
21 Aggrieved Employees were required to undergo security screenings after clocking out at the
22 end of a shift prior to leaving the store premises. For example, after clocking out at the end of
23 their shifts, Plaintiff De Grado and other non-party Aggrieved Employees were required to
24 wait up to 2-5 minutes for a security guard to check their belongings. Although Defendants'
25 requirement that Plaintiff De Grado and other non-party Aggrieved Employees undergo
26 security checks was mandatory, Defendants did not compensate them for the time it took them
27 to wait in line and undergo these checks. Furthermore, Defendants also had a company-wide
28 security policy requiring employees to leave the store premises in pairs. After clocking out at

1 the end of their shifts, Plaintiff De Grado and other non-party Aggrieved Employees were
2 required to wait for the manager on duty to complete his or her closing duties before they
3 could leave Defendants' premises. For example, Plaintiff De Grado and other non-party
4 Aggrieved Employees would clock out at the end of their shifts and wait for up to 15 minutes
5 off-the-clock for their managers to finish inputting the store's daily log sheets, before he was
6 permitted to exit the store. As a result of these loss-prevention and security policies and/or
7 practices, Plaintiff De Grado and other non-party Aggrieved Employees were subject to
8 Defendants' control after they had completed their shifts, but were not compensated for this
9 time.

10 68. Moreover, during the relevant period, Defendants had, and continue to have, a
11 company-wide policy staffing their locations strictly based on the labor hours or labor budget
12 set by the corporate office. Defendants' use of a labor budget resulted in chronic
13 understaffing such that there were too few employees on duty to handle the heavy workload,
14 which included quarterly and individual targets or quotas for selling merchandise. Because
15 Defendants did not employ or staff an adequate number of employees to meet their
16 productivity expectations and failed to provide employees with adequate meal period
17 coverage, Plaintiffs and other non-party Aggrieved Employees were assigned heavy
18 workloads, which Defendants knew or should have known could only be met by working
19 additional hours. Plaintiffs and other non-party Aggrieved Employees missed meal periods
20 and/or had meal periods cut short or interrupted in order to handle their workloads and address
21 customer and client demand.

22 69. Furthermore, Defendants have, on a company-wide basis, failed to schedule
23 meal periods. This company-wide practice, coupled with the heavy workload and pressure
24 from Defendants to reach productivity expectations, impeded Plaintiffs and other non-party
25 Aggrieved Employees from taking timely, compliant meal periods. Additionally, Plaintiff De
26 Grado and other non-party Aggrieved Employees would be required to respond to text
27 messages and/or calls on their personal cellular phones from supervisors and management
28 during unpaid meal periods to discuss work-related matters or to assist certain clients. As a

1 result, Plaintiffs and other non-party Aggrieved Employees were not afforded timely,
2 uninterrupted thirty (30) minute meal periods during shifts in which they were entitled to
3 receive meal periods. Further, on information and belief, because Defendants frowned upon
4 employees accruing meal period penalties, when Plaintiffs and other non-party Aggrieved
5 Employees failed to clock themselves out at designated meal period start times, they were
6 subject to Defendants altering their time records and deducting time for meal periods that
7 were not taken. Consequently, Plaintiffs and other non-party Aggrieved Employees
8 performed work during meal periods for which they were not paid.

9 70. Defendants knew or should have known that, as a result of these company-wide
10 practices and/or policies, Plaintiffs and other non-party Aggrieved Employees were
11 performing their assigned duties during their meal periods and performing work off-the-clock
12 before or after their shifts, and were suffered or permitted to perform work for which they
13 were not paid. Defendants also knew, or should have known, that they did not compensate
14 Plaintiffs and other non-party Aggrieved Employees applicable overtime rates of pay for
15 overtime hours that they worked.

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

21 72. Furthermore, Defendants did not pay other non-party Aggrieved Employees the
22 correct overtime rate for the recorded overtime hours that they generated. In addition to an
23 hourly wage, Defendants paid other non-party Aggrieved Employees commissions, incentive
24 pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of
25 the California Labor Code, Defendants failed to incorporate all compensation, including but
26 not limited to, all commissions, incentive pay, nondiscretionary bonuses, and/or other forms
27 of remuneration, into the calculation of the regular rate of pay for purposes of calculating the
28 overtime wage rate. Therefore, during times when other non-party Aggrieved Employees

1 worked overtime and received these other forms of pay, Defendants failed to pay all overtime
2 wages by paying a lower overtime rate than required.

3 73. Defendants' failure to pay Plaintiffs and other non-party Aggrieved Employees
4 the balance of overtime compensation as required by California law, violates the provisions of
5 California Labor Code sections 510 and 1198. Plaintiffs and other non-party Aggrieved
6 Employees are entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
7 2699(a), (f), and (g).

8 **FAILURE TO PAY MINIMUM WAGES**

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

10 74. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
11 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
12 to be paid to employees, and the payment of a wage less than the minimum so fixed is
13 unlawful. Compensable work time is defined by the applicable wage order as "the time
14 during which an employee is subject to the control of an employer, and includes all the time
15 the employee is suffered or permitted to work, whether or not required to do so." Cal. Code.
16 Regs. tit. 8, § 11070(2)(G) (defining "Hours Worked").

17 75. As set forth above, during the relevant time period, due to Defendants'
18 company-wide policies and/or practices of not permitting employees to record all their hours
19 worked, Defendants failed to record all hours worked by Plaintiff Shareef and other non-party
20 Aggrieved Employees that were outside of their scheduled shifts, such as waiting for entry
21 into the store. As also stated, Defendants required that Plaintiffs and other non-party
22 Aggrieved Employees perform work off-the-clock before and after their scheduled shifts,
23 including submitting to off-the-clock security checks, waiting for managers to complete
24 closing duties to leave the store premises in pairs, completing online training modules from
25 home, and/or posting on social media accounts about store promotions. In addition, due to
26 Defendants' uniform practice of utilizing labor budgets, resultant understaffing, assignment of
27 heavy workloads/quotas, failure to schedule meal periods, requirement that employees answer
28 their personal cellular phones at all times, and subsequent lack of meal period coverage,

1 Plaintiffs and other non-party Aggrieved Employees were forced to forego meal periods
2 and/or had their meal periods interrupted by work. Also, on information and belief, in order
3 to prevent employees from accruing meal period penalties, Defendants' management adjusted
4 Plaintiffs' and other non-party Aggrieved Employees' time records to reflect compliant meal
5 periods, time for which they were not paid.

6 76. Moreover, Defendants implemented, on a company-wide basis, an employer-
7 imposed requirement that Plaintiff Shareef other non-party Aggrieved Employees undergo a
8 mandatory drug test and/or physical examination. At all times, Defendants were in control of
9 scheduling the date and time for the testing and/or examinations, selecting the
10 provider/facility where the testing and/or examinations were to take place, and determining
11 the scope of the testing and/or examinations. Defendants gave Plaintiff Shareef and other
12 non-party Aggrieved Employees strict instructions to obtain drug testing and/or physical
13 examinations, and other non-party Aggrieved Employees underwent the testing and/or
14 examinations for the sole benefit of Defendants. Plaintiff Shareef and other non-party
15 Aggrieved Employees were required to travel in their own personal vehicles or obtain
16 alternate transportation and spend time undergoing Defendants' mandatory drug testing and/or
17 physical examinations. For example, Plaintiff Shareef followed Defendants' instructions,
18 traveled approximately 20 miles roundtrip (for approximately 20 minutes total), in her
19 personal vehicle to and from a designated clinic in Anaheim, and spent 20 minutes waiting
20 and undergoing the requisite testing. However, Defendants did not compensate Plaintiff
21 Shareef and other non-party Aggrieved Employees for the time they spent traveling to and
22 from the medical facilities and for the time they spent undergoing the drug testing and/or
23 physical examinations.

24 77. Thus, Defendants did not pay minimum wages for all hours worked by
25 Plaintiffs and other non-party Aggrieved Employees. To the extent that these off-the-clock
26 hours did not qualify for overtime premium payment, Defendants did not pay at least
27 minimum wages for those hours worked off-the-clock in violation of California Labor Code
28 sections 1182.12, 1194, 1197, and 1198.

1 78. Defendants' failure to pay Plaintiffs and other non-party Aggrieved Employees
2 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
3 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
4 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

5 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**
6 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

7 79. At all relevant times herein set forth, the applicable IWC Wage Order and
8 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiffs' and
9 other non-party Aggrieved Employees' employment by Defendants.

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

17 81. At all relevant times herein set forth, California Labor Code sections 226.7,
18 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
19 meal period mandated by an applicable order of the IWC.

20 82. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), and
21 1198, and the applicable IWC Wage Order also require employers to provide a second meal
22 period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or
23 to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if
24 the total hours worked is no more than twelve (12) hours, the second meal period may be
25 waived by mutual consent of the employer and the employee only if the first meal period was
26 not waived.

27 83. As stated, Defendants have, and continue to have, a company-wide policy
28 and/or practice of understaffing pursuant to their labor budget practices, while simultaneously

1 assigning heavy workloads, which resulted in a lack of meal period coverage and prevented
2 Plaintiffs and other non-party Aggrieved Employees from taking all timely, uninterrupted
3 meal periods to which they were entitled. In addition, Defendants failed to schedule meal
4 periods, resulting in Plaintiffs and other non-party Aggrieved Employees having their meal
5 periods interrupted to return to work or waiting extended periods of time before taking meal
6 periods, due to the workload and pressure to meet quotas. Also, Plaintiff De Grado and other
7 non-party Aggrieved Employees were required to respond to calls on their personal cellular
8 phones from supervisors and management during unpaid meal periods. Further, because
9 Defendants frowned upon employees accruing meal period penalties, Defendants'
10 management would adjust Plaintiffs' and other non-party Aggrieved Employees' time records
11 to reflect compliant meal periods, regardless of whether they had received a compliant meal
12 period or not, in order to strictly limit meal penalties that would need to be paid by
13 Defendants.

14 84. As a result of Defendants' practices and/or policies, Plaintiffs and other non-
15 party Aggrieved Employees had to work through part or all of their meal periods, have their
16 meal periods interrupted, and/or wait extended periods of time before taking meal periods.
17 For example, on several occasions, Plaintiffs took their meal periods after the end of their fifth
18 hour of work due to the lack of meal period coverage and failure to schedule meal periods.
19 Moreover, Plaintiff De Grado's meal periods were interrupted or shortened in order to respond
20 to questions from Defendants' managers or supervisors, or to assist customers.

21 85. Moreover, Defendants did not provide Plaintiff De Grado and other non-party
22 Aggrieved Employees with second 30-minute meal periods on days that they worked in excess
23 of ten (10) hours in one day. Plaintiff De Grado and other non-party Aggrieved Employees
24 worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute
25 meal period. Plaintiffs and other non-party Aggrieved Employees did not sign valid meal
26 period waivers on days that they were entitled to meal periods and were not relieved of all
27 duties.

28 86. Defendants knew or should have known that as a result of their policies,

1 Plaintiffs and other non-party Aggrieved Employees were not actually relieved of all duties to
2 take timely, uninterrupted meal periods. Defendants further knew or should have known that
3 they did not pay Plaintiffs and other non-party Aggrieved Employees meal period premium
4 wages when meal periods were missed, late, short, and/or interrupted.

5 87. Defendants also have engaged in a company-wide practice and/or policy of not
6 paying meal period premiums owed when compliant meal periods are not provided. Because
7 of this practice and/or policy, Plaintiffs and other non-party Aggrieved Employees have not
8 received premium pay for missed, late, and interrupted meal periods. Alternatively, to the
9 extent that Defendants did pay other non-party Aggrieved Employees for missed, late, and
10 interrupted meal periods, Defendants did not pay other non-party Aggrieved Employees at the
11 correct rate of pay for premium wages because Defendants systematically failed to include all
12 forms of compensation, such as commissions, incentive pay, nondiscretionary bonuses, and/or
13 other forms of remuneration, in the regular rate of pay.

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

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

21 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

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

25 90. At all relevant times, the applicable IWC Wage Order provides that "[e]very
26 employer shall authorize and permit all employees to take rest periods, which insofar as
27 practicable shall be in the middle of each work period" and that the "rest period time shall be
28 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)

1 hours or major fraction thereof” unless the total daily work time is less than three and one-half
2 (3 ½) hours.

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

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

15 93. During the relevant time period, Defendants regularly failed to authorize and
16 permit Plaintiffs and other non-party Aggrieved Employees to take a ten (10) minute rest
17 period per each four (4) hour period worked or major fraction thereof. As with meal periods,
18 Defendants’ company-wide policy and practice of understaffing and assigning heavy
19 workloads/quotas, prevented Plaintiffs and other non-party Aggrieved Employees from being
20 relieved of all duty to take their rest periods. Defendants also failed to schedule rest periods,
21 which, coupled with Defendants’ failure to provide adequate rest period coverage, further led
22 to Plaintiffs and other non-party Aggrieved Employees not being authorized and permitted to
23 take compliant rest periods. Moreover, Plaintiff De Grado and other non-party Aggrieved
24 Employees were expected to answer calls and text messages from their supervisors or
25 managers on their personal cellular phones while clocked in for their shifts, including during
26 rest periods.

27 94. Furthermore, on information and belief, Defendants maintained and
28 implemented a company-wide on-premises rest period policy, which mandated that Plaintiffs

1 and other non-party Aggrieved Employees remain on the work premises during their rest
2 periods. Upon information and belief, Defendants' company-wide on-premises rest period
3 policy prevented Plaintiffs and other non-party Aggrieved Employees from being relieved of
4 all duties for rest periods and caused them to perform work during rest periods.

5 95. As a result of Defendants' practices and policies, Plaintiffs and other non-party
6 Aggrieved Employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
7 excess of 10 hours without receiving all ten (10) minute rest periods to which they were
8 entitled. For example, during their employment, Plaintiffs missed their rest periods due to the
9 heavy workload and the lack of coverage for rest periods.

10 96. Defendants also have engaged in a company-wide practice and/or policy of not
11 paying all rest period premiums owed when compliant rest periods are not authorized or
12 permitted. Because of this practice and/or policy, Plaintiffs and other non-party Aggrieved
13 Employees have not received premium pay for all missed rest periods. Alternatively, to the
14 extent that Defendants did pay other non-party Aggrieved Employees one (1) additional hour
15 of premium pay for missed rest periods, Defendants did not pay other non-party Aggrieved
16 Employees at the correct rate of pay for premium wages because Defendants failed to include
17 all forms of compensation, such as commissions, incentive pay, nondiscretionary bonuses,
18 and/or other forms of remuneration, in the regular rate of pay. As a result, Defendants denied
19 Plaintiffs and other non-party Aggrieved Employees rest periods and failed to pay them all
20 rest period premiums due, in violation of California Labor Code sections 226.7 and 516, and
21 the applicable IWC Wage Order.

22 97. Defendants' conduct violates the applicable IWC Wage Order and California
23 Labor Code sections 226.7, 516, and 1198. Plaintiffs and other non-party Aggrieved
24 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
25 558 and/or 2699(a), (f), and (g).

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

28 98. At all relevant times herein, California Labor Code section 226(a) provides that

1 every employer shall furnish each of his or her employees an accurate and complete itemized
2 wage statement in writing, including, but not limited to, the name and address of the legal
3 entity that is the employer, the inclusive dates of the pay period, total hours worked, and all
4 applicable rates of pay.

5 99. During the relevant time period, Defendants have knowingly and intentionally
6 provided Plaintiffs and other non-party Aggrieved Employees with uniform, incomplete, and
7 inaccurate wage statements. For example, Defendants issued uniform wage statements to
8 Plaintiffs and other non-party Aggrieved Employees that fail to correctly list: gross wages
9 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
10 the pay period, including rates of pay for overtime wages and/or meal and rest period
11 premiums, and the corresponding number of hours worked at each hourly rate. Specifically,
12 Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

13 100. Because Defendants did not record the time Plaintiffs and other non-party
14 Aggrieved Employees spent working off-the-clock and deducted time from their records for
15 meal periods that were interrupted and/or missed (and therefore time for which they should
16 have been paid), Defendants did not list the correct amount of gross wages and net wages
17 earned by Plaintiffs and other non-party Aggrieved Employees in compliance with section
18 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to accurately list the total
19 number of hours worked by Plaintiffs and other non-party Aggrieved Employees in violation
20 of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the
21 pay period and corresponding accurate number of work hours worked at each hourly rate in
22 violation of section 226(a)(9).

23 101. Also, because Defendants did not calculate other non-party Aggrieved
24 Employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal
25 and rest period premiums, Defendants did not list the correct amount of gross wages earned by
26 other non-party Aggrieved Employees in compliance with section 226(a)(1) and did not list
27 the correct amount of net wages earned by other non-party Aggrieved Employees in violation
28 of section 226(a)(5). Defendants also failed to correctly list all applicable hourly rates in

1 effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and
2 rest period premiums, in violation of section 226(a)(9).

3 102. The wage statement deficiencies also include, without limitation, failing to list
4 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
5 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and
6 only the last four digits of his or her social security number or an employee identification
7 number other than a social security number; failing to list the name and address of the legal
8 entity that is the employer; failing to list the inclusive dates of the period for which aggrieved
9 employees were paid; and/or failing to state all hours worked as a result of not recording or
10 stating hours worked off-the-clock.

11 103. California Labor Code section 1198 provides that the maximum hours of work
12 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
13 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
14 employment of any employees for longer hours than those fixed by the order or under
15 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
16 Wage Order, employers are required to keep accurate time records showing when the
17 employee begins and ends each work period and meal period. During the relevant time
18 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
19 and meal period start and stop times for Plaintiffs and other non-party Aggrieved Employees,
20 in violation of section 1198. As stated, Defendants engaged in a company-wide practice
21 and/or policy of falsifying Plaintiffs’ and other non-party Aggrieved Employees’ time records
22 by recording that compliant meal periods were taken regardless of if or when meal periods
23 were actually taken, and thereby failed to keep accurate records of meal start and end times for
24 Plaintiffs’ and other non-party Aggrieved Employees. Furthermore, in light of Defendants’
25 failure to provide Plaintiff De Grado and other non-party Aggrieved Employees with second
26 30-minute meal periods to which they were entitled, Defendants kept no records of meal start
27 and end times for second meal periods.

28 104. California Labor Code section 1174(d) provides that “[e]very person employing

labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiffs and other non-party Aggrieved Employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

105. Defendants’ conduct violates California Labor Code sections 226(a), 1174(d), and 1198. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

FAILURE TO PAY WAGES DURING EMPLOYMENT

VIOLATION OF LABOR CODE SECTION 204

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

107. At all relevant times herein, California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, at all relevant times herein, Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not

1 more than seven (7) calendar days following the close of the payroll period.

2 108. During the relevant time period, Defendants failed to pay Plaintiffs and other
3 non-party Aggrieved Employees all wages due to them including, but not limited to, overtime
4 wages, minimum wages, and/or meal and rest period premium wages, within any time period
5 specified by California Labor Code section 204.

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

8 **FAILURE TO PAY WAGES UPON TERMINATION**

9 **VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

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

17 111. On information and belief, Defendants have a company-wide practice or policy
18 of paying departing employees their final wages on the next regular pay cycle, instead of
19 adhering to the time requirements set forth in Labor Code sections 201 and 202. For example,
20 Plaintiff De Grado was terminated on or about October 5, 2019. However, Defendants did not
21 provide him with his commissions paycheck for sales completed in September 2019 until
22 October 18, 2019. Thus, Defendants failed to pay Plaintiff De Grado his final wages
23 immediately, in violation of Labor Code section 201.

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

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

FAILURE TO PAY COSTS OF MEDICAL OR PHYSICAL EXAMINATIONS
VIOLATION OF LABOR CODE SECTION 222.5

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

115. During the relevant time period, Defendants implemented, on a company-wide basis, an employer-imposed requirement that Plaintiff Shareef and other non-party Aggrieved Employees undergo mandatory drug testing and/or physical examinations, but required them to do so at their own expense. As stated, Defendants had a company-wide policy requiring that Plaintiff Shareef and other non-party Aggrieved Employees travel to a specified medical facility on their own time and use their own means of transportation to undergo drug testing and/or physical examinations. At all times, Defendants were in control of scheduling the date and time for the testing and/or examinations, selecting the provider/facility where the testing and/or examinations were to take place, and determining the scope of the testing and/or examinations. Defendants gave Plaintiff Shareef and other non-party Aggrieved Employees strict instructions to obtain drug testing and/or physical examinations, and Plaintiff Shareef and other non-party Aggrieved Employees underwent the testing and/or examinations for the sole benefit of Defendants. Plaintiff Shareef and other non-party Aggrieved Employees were required to travel in their own personal vehicles or obtain alternate transportation and spend time undergoing Defendants' mandatory drug testing and/or physical examinations. For example, Plaintiff Shareef followed Defendants' instructions, traveled approximately 20 miles roundtrip (for approximately 20 minutes total), in her personal vehicle to and from a

1 designated clinic in Anaheim, and spent 20 minutes waiting and undergoing the requisite
2 testing. However, Defendants did not compensate Plaintiff Shareef and other non-party
3 Aggrieved Employees for the time they spent traveling to and from the medical facilities, for
4 the time they spent undergoing the drug testing and/or physical examinations, or reimburse
5 them for the travel expenses they incurred getting to and from the medical facilities.
6 Defendants' policy and/or practice of not paying for all costs Plaintiff Shareef and other non-
7 party Aggrieved Employees incurred obtaining mandatory drug testing and/or physical
8 examinations is in violation of California Labor Code section 222.5.

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

11 **FAILURE TO PROVIDE ONE DAY'S REST IN SEVEN**

12 **VIOLATION OF LABOR CODE SECTIONS 551 AND 552**

13 117. At all relevant times herein, California Labor Code section 551 provides that
14 every person employed in any occupation of labor is entitled to one day's rest in seven.
15 Additionally, California Labor Code section 552 prohibits employers from requiring
16 employees to work more than six consecutive days without a day of rest.

17 118. Further, at all times relevant herein set forth, California Labor Code section 556
18 exempts an employer from the day-of-rest requirement when the total hours worked by an
19 employee do not exceed 30 hours in any week or six hours in any one day thereof.

20 119. During the relevant period, Defendants required other non-party Aggrieved
21 Employees to work eight (8) or more hours per day and seven (7) consecutive days in a
22 workweek. Because other non-party Aggrieved Employees worked over thirty (30) hours per
23 week and over six (6) hours per day in a workweek, they were not exempt from the day-of-rest
24 requirement. To the extent that other non-party Aggrieved Employees signed purported
25 waivers of their right to a day's rest in seven, such waivers are invalid.

26 120. Thus, during the relevant time period, and in violation of Labor Code sections
27 551 and 552, Defendants willfully caused other non-party Aggrieved Employees to work more
28 than six days in seven. Other non-party Aggrieved Employees are therefore entitled to

1 recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

2 **FAILURE TO PAY REPORTING TIME PAY**

3 **VIOLATION OF LABOR CODE SECTION 1198**

4 121. California Labor Code section 1198 makes it illegal to employ an employee
5 under conditions of labor that are prohibited by the applicable wage order. California Labor
6 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
7 shall be the . . . standard conditions of labor for employees. The employment of any employee
8 . . . under conditions of labor prohibited by the order is unlawful.”

9 122. California Code of Regulations, Title 8, section 11160(5)(A) provides that
10 “[e]ach workday an employee is required to report for work and does report, but is not put to
11 work or is furnished less than half said employee’s usual or scheduled day’s work, the
12 employee shall be paid for half the usual or scheduled day’s work, but in no event for less
13 than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which
14 shall not be less than the minimum wage.” The “primary purpose of the reporting time
15 regulation” is “to guarantee at least partial compensation for employees who report to work
16 expecting to work a specified number of hours, and who are deprived of that amount because
17 of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch*
18 *Cellular*, 209 Cal. App. 4th 556 (2012).

19 123. Defendants violated California Labor Code section 1198 and California Code
20 of Regulations, Title 8, section 11160(5), because Defendants failed to pay other non-party
21 Aggrieved Employees reporting time pay when they reported to work for their scheduled shift
22 but were put to work for less than half of the regular schedule.

23 124. Defendants had a company-wide practice of sending other non-party Aggrieved
24 Employees home early from their shifts, including before they had worked at least half of their
25 regular shift, but would not pay other non-party Aggrieved Employees for half of their
26 scheduled shift. Although other non-party Aggrieved Employees would report to work based
27 on the schedule that Defendants provided to them, Defendants would send them home before
28 they had worked at least half of their scheduled shifts without giving them reporting time pay.

1 Accordingly, other non-party Aggrieved Employees were not properly compensated with
2 reporting time pay in violation of California Labor Code section 1198 and California Code of
3 Regulations, Title 8, section 11170(5)(A).

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

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

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

15 127. California Code of Regulations, Title 8, section 11070(14)(A) provides that
16 “[a]ll working employees shall be provided with suitable seats when the nature of the work
17 reasonably permits the use of seats.”

18 128. Plaintiffs allege that Defendants’ retail stores are generally similar in their
19 layout and design and there was, and continues to be, space behind cash wrap/jewelry counter
20 to allow for the presence and use of a seat or stool by Plaintiffs and other non-party Aggrieved
21 Employees (with reasonable or no modification to these work areas) during the performance
22 of their work duties. Defendants could have provided Plaintiffs and other non-party
23 Aggrieved Employees with a suitable seat or stool at the cash wraps/jewelry counters, but
24 instead denied them seating and forced Plaintiffs and other non-party Aggrieved Employees to
25 stand throughout the day.

26 129. Plaintiffs and other non-party Aggrieved Employees spent a substantial portion
27 of their day behind or at these cash wraps/jewelry counters. The nature of the work of an
28 employee performing cashier/sales duties can reasonably be accomplished from a seated

1 position. However, Defendants systematically, and on a company-wide basis, did not provide
2 seats or stools at or near the cash wraps/jewelry counters, forcing Plaintiffs and other non-
3 party Aggrieved Employees to stand throughout their work shifts.

4 130. During the relevant time period, Defendants violated California Labor Code
5 section 1198 and California Code of Regulations, Title 8, section 11070(14)(A), because
6 Plaintiffs and other non-party Aggrieved Employees were not allowed to sit, even when it
7 would not have interfered with the performance of their duties, nor were they provided with
8 suitable seats. Plaintiffs and other non-party Aggrieved Employees were assigned
9 cashier/sales duties, which were performed from and connected to a cash wrap/jewelry
10 counter, and could have been performed from a seated position. Plaintiffs and other non-party
11 Aggrieved Employees could have handled transactions at the cash wraps/jewelry counters and
12 provided customer service while seated, without interference to their ability to complete these
13 duties.

14 131. Defendants could have placed seats or stools at each cash wrap/jewelry counter
15 for use by Plaintiffs and other non-party Aggrieved Employees with reasonable or no
16 modification to these work areas. However, on a company-wide basis, Defendants did not
17 provide seats or stools at cash wraps/jewelry counters. Defendants' management did not
18 inform Plaintiffs and other non-party Aggrieved Employees that they were allowed to sit
19 down, provide any means for them to sit down, and/or mention any policy regarding sitting.

20 132. As a result of Defendants' company-wide policy and/or practice of prohibiting
21 employees from sitting during their shifts and company-wide failure to provide suitable
22 seating, Plaintiffs and other non-party Aggrieved Employees were forced to stand during
23 shifts and denied seats. Defendants' failure to provide suitable seating to Plaintiffs and other
24 non-party Aggrieved Employees violated and continues to violate California Labor Code
25 section 1198 and IWC Wage Order No. 7-2001, subdivision 14(A).

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

28 **FAILURE TO PROVIDE SUITABLE SEATING**

**VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF
REGULATIONS, TITLE 8, SECTION 11070(14)(B)**

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

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

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

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

138. Defendants did not provide Plaintiffs and other non-party Aggrieved Employees with seats or stools in reasonable proximity to their work areas to allow them to

1 use seats when it would not interfere with the performance of their duties for times when they
2 were not engaged in active duties that require standing. In other words, to the extent Plaintiffs
3 and other non-party Aggrieved Employees engaged in duties in which the nature of the work
4 required standing, Defendants denied them the use of seats nearby during lulls in their work
5 duties. Moreover, Defendants did not inform Plaintiffs and other non-party Aggrieved
6 Employees of their rights to a seat or stool under California law.

7 139. As a result of Defendants' company-wide policy and/or practice prohibiting
8 employees from sitting at any time, even when they were not engaged in active duties
9 requiring standing, and company-wide failure to provide seats in reasonable proximity to their
10 work areas, Plaintiffs and other non-party Aggrieved Employees were forced to stand during
11 shifts and denied seats. Defendants' failure to provide suitable seating to Plaintiffs and other
12 non-party Aggrieved Employees violated and continues to violate California Labor Code
13 section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

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

16 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

17 **VIOLATION OF LABOR CODE SECTION 2802**

18 141. At all times herein set forth, California Labor Code section 2802 provides that
19 an employer must reimburse employees for all necessary expenditures and losses incurred by
20 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
21 to prevent employers from passing off their cost of doing business and operating expenses on
22 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
23 (2014). The applicable wage order, IWC Wage Order No. 7-2001, provides that: "[w]hen
24 tools or equipment are required by the employer or are necessary to the performance of a job,
25 such tools and equipment shall be provided and maintained by the employer, except that an
26 employee whose wages are at least two (2) times the minimum wage may provide and
27 maintain hand tools and equipment customarily required by the particular trade or craft."

28 142. During the relevant time period, Defendants had a company-wide policy of

1 requiring Plaintiffs and other non-party Aggrieved Employees to utilize their own personal
2 cellular phones and cellular data to carry out their job duties, but Defendants failed to fully
3 reimburse them for the costs of their work-related cellular phone expenses. Plaintiffs and
4 other non-party Aggrieved Employees were required to use their personal cellular phones to
5 complete their work-related tasks, such as communicating with colleagues at other store
6 locations about workload and inventory, and/or communicating with managers about clients,
7 store events, or customer orders. Plaintiff De Grado and other non-party Aggrieved
8 Employees were also required to use their personal cellular phones to post about store
9 promotions on their social media accounts. Although Defendants required Plaintiffs and other
10 non-party Aggrieved Employees to utilize their personal cellular phones to carry out their
11 work-related responsibilities, Defendants failed to fully reimburse them for this cost.

12 143. Additionally, as stated, Defendants had a company-wide policy of requiring
13 Plaintiff Shareef and other non-party Aggrieved Employees to travel to medical facilities on
14 their own time and using their personal vehicles or alternate transportation to obtain
15 mandatory drug testing and/or physical examinations, but did not reimburse them for their
16 travel expenses, including mileage. At all times, Defendants were in control of scheduling the
17 date and time for the testing and/or physical examinations, selecting the provider or facility
18 where the testing and/or physical examinations were to take place, and determining the scope
19 of the testing and/or physical examinations. Defendants gave Plaintiff Shareef and other non-
20 party Aggrieved Employees strict instructions to obtain drug testing and/or physical
21 examinations, and Plaintiff Shareef and other non-party Aggrieved Employees underwent the
22 examinations and/or testing for the sole benefit of Defendants. Although Defendants required
23 Plaintiff Shareef and other non-party Aggrieved Employees to use their own vehicles or obtain
24 alternate transportation to undergo drug testing and/or physical examinations, Defendants
25 never reimbursed them for their travel expenses.

26 144. Defendants could have provided Plaintiffs and other non-party Aggrieved
27 Employees with the actual tools for use on the job, such as company phones and company
28 vehicles. Or, Defendants could have reimbursed employees for their cellular phone expenses,

1 travel expenses, and mileage. Instead, Defendants passed these operating costs off onto
2 Plaintiffs and other non-party Aggrieved Employees.

3 145. Defendants' company-wide policy and/or practice of passing on their operating
4 costs to Plaintiffs and other non-party Aggrieved Employees violates California Labor Code
5 section 2802. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to
6 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

7 **REQUEST FOR JURY TRIAL**

8 Plaintiffs request a trial by jury.

9 **PRAYER FOR RELIEF**

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

12 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
13 (\$25,000). Plaintiffs reserve the right to amend their prayer for relief to seek a different
14 amount.

15 **As to the First Cause of Action**

16 2. That the Court declare, adjudge and decree that Defendants violated the
17 following California Labor Code provisions as to Plaintiffs and/or other non-party Aggrieved
18 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
19 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516,
20 and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize
21 and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
22 statements and maintain accurate payroll records); 201, 202, and 203 (by failing to timely pay
23 all earned wages upon termination); 204 (by failing to timely pay all earned wages during
24 employment); 222.5 (by failing to pay for costs of mandatory physical examinations and/or
25 drug testing); 1198 (by failing to provide suitable seating); and 2802 (by failing to reimburse
26 business expenses).

27 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
28 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202,

203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802;

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

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

6. For such other and further relief as the Court may deem equitable and appropriate.

Dated: March 21, 2022

Respectfully submitted,

Capstone Law APC

By: _____



Robert Drexler
Molly DeSario
Jonathan Lee

Attorneys for Plaintiffs Michael De Grado and
La Tasha Shareef

Exhibit 1

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

September 17, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/266>)

Subject: *Michael De Grado v. Tiffany and Company U.S. Sales, LLC, et al.*

Dear PAGA Administrator:

This office represents Michael De Grado in connection with his claims under the California Labor Code. Mr. De Grado was an employee of TIFFANY AND COMPANY U.S. SALES, LLC and/or TIFFANY AND COMPANY. For the purpose of this letter, Mr. De Grado collectively refers to these entities as “TIFFANY.”

The employers may be contacted directly at the addresses below:

TIFFANY AND COMPANY U.S. SALES, LLC
200 FIFTH AVENUE
NEW YORK NY 10010

TIFFANY AND COMPANY
727 FIFTH AVENUE
NEW YORK NY 10022

TIFFANY AND COMPANY U.S. SALES, LLC
15 SYLVAN WAY
PARSIPPANY NJ 07054

TIFFANY AND COMPANY
15 SYLVAN WAY
PARSIPPANY NJ 07054

Mr. De Grado intends to seek civil penalties, attorney’s fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”). Mr. De Grado seeks relief on behalf of himself, the State of California, and other persons who are or were employed by TIFFANY as a non-exempt, hourly paid employee in California and who received at least one wage statement (“aggrieved employees”). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

TIFFANY employed Mr. De Grado as an hourly paid, non-exempt employee from approximately June 22, 2018 to October 5, 2019. Mr. De Grado worked for TIFFANY as a Sales Professional at the Tiffany & Co. store in Carmel-by-the Sea, California. During his employment, Mr. De Grado typically worked four (4) to seven (7) hours or more per day, three (3) or more days per week, and 28 to 30 hours per week. At the time his employment ended, Mr. De Grado was compensated

approximately \$19.52 per hour plus commissions. His job duties included, without limitation, providing customer service, presenting jewelry to customers, cleaning jewelry displays and display cases, ringing up customers, processing returns and exchanges, preparing sales and client reports, and stocking displays.

TIFFANY committed one or more of the following Labor Code violations against Mr. De Grado, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

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

TIFFANY AND COMPANY U.S. SALES, LLC and TIFFANY AND COMPANY are a Delaware limited liability company and a New York corporation, respectively, that own and operate a chain of luxury jewelry retail stores throughout the world. TIFFANY operates approximately 94 retail stores in the United States, including 18 retail locations in California. Upon information and belief, TIFFANY maintains a single, centralized Human Resources (HR) department at its corporate headquarters in New York, New York, for all non-exempt, hourly paid employees working for TIFFANY in California, including Mr. De Grado and other aggrieved employees. At all relevant times, TIFFANY issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. De Grado and other aggrieved employees, regardless of its location or position.

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

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration

¹ These facts, theories, and claims are based on Mr. De Grado’s experience and counsel’s review of those records currently available relating to Mr. De Grado’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. De Grado reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

TIFFANY willfully failed to pay all overtime wages owed to Mr. De Grado and other aggrieved employees. During the relevant time period, Mr. De Grado and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, TIFFANY had a company-wide loss prevention policy requiring employees to undergo mandatory security checks by a managerial employee before leaving the store premises. As a result of TIFFANY's policy, Mr. De Grado and other aggrieved employees were required to undergo security screenings after clocking out at the end of a shift prior to leaving the store premises. For example, after clocking out at the end of their shifts, Mr. De Grado and other aggrieved employees were required to wait up to two (2) or five (5) minutes for a manager to check their belongings. Although TIFFANY's requirement that Mr. De Grado and other aggrieved employees undergo security checks was mandatory, TIFFANY did not compensate them for the time it took them to wait in line and undergo these checks. Thus, Mr. De Grado and other aggrieved employees were not compensated for the time spent waiting for and undergoing security screenings while off-the-clock.

Second, during the relevant period, TIFFANY had a company-wide practice and/or policy of requiring Mr. De Grado and other aggrieved employees to perform work-related tasks while off-the-clock, such as promoting TIFFANY's business before and after their shifts and/or on their days off. For example, Mr. De Grado and other aggrieved employees were directed to post about store promotions on company social media accounts. However, due to TIFFANY's policy of understaffing and assigning heavy workloads (*see infra*), Mr. De Grado was too busy to post about store promotions on social media websites during his shifts, and was required to spend 2-4 hours per week posting before and after his shifts and/or on his days off. TIFFANY failed to track this time Mr. De Grado and other aggrieved employees spent working off-the-clock, and Mr. De Grado and other aggrieved employees received no compensation for this time.

Third, during the relevant period, TIFFANY had, and continues to have, a company-wide policy staffing its locations strictly based on the labor hours or labor budget set by the corporate office. TIFFANY's use of a labor budget resulted in chronic understaffing such that there were too few employees on duty to handle the heavy workload, which included quarterly and individual targets or quotas for selling merchandise. Because TIFFANY did not employ or staff an adequate number of employees to meet their productivity expectations and failed to provide employees with adequate meal period coverage, Mr. De Grado and other aggrieved employees were assigned heavy workloads, which TIFFANY knew or should have known could only be met by working additional hours. Mr. De Grado and other aggrieved employees missed meal periods and/or had meal periods cut short or interrupted in order to handle their workloads and address customer and client demand.

Moreover, TIFFANY has, on a company-wide basis, failed to schedule meal periods. This company-wide practice, coupled with the heavy workload and pressure from TIFFANY to reach productivity expectations, impeded Mr. De Grado and other aggrieved employees from taking timely, compliant meal periods. Additionally, Mr. De Grado and other aggrieved employees would be required to respond to text messages and/or calls on their personal cellular phones from supervisors and management during unpaid meal periods to discuss work matters or to assist certain clients. As a

result, Mr. De Grado and other aggrieved employees were not afforded timely, uninterrupted thirty (30) minute meal periods during shifts in which they were entitled to receive meal periods.

Furthermore, TIFFANY did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, TIFFANY paid other aggrieved employees commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, TIFFANY failed to incorporate all compensation, including commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, TIFFANY failed to pay all overtime wages by paying a lower overtime rate than required.

Mr. De Grado and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 7 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11070(2)(G) (defining “Hours Worked”).

As set forth above, during the relevant time period, TIFFANY required that Mr. De Grado and other aggrieved employees perform work off-the-clock before and after their scheduled shifts, including submitting to off-the-clock security checks and posting on social media accounts about store promotions. In addition, due to TIFFANY's uniform practice of utilizing labor budgets, resultant understaffing, assignment of heavy workloads/quotas, failure to schedule meal periods, requirement that employees answer their personal cellular phones at all times, and subsequent lack of meal period coverage, Mr. De Grado and other aggrieved employees were forced to forego meal periods and/or had their meal periods interrupted by work.

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

Thus, TIFFANY did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, TIFFANY did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1. Accordingly, TIFFANY regularly failed to pay at least minimum wages to Mr. De Grado and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198.

Mr. De Grado and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As stated, TIFFANY has, and continues to have, a uniform policy and/or practice of company-wide policy and/or practice of understaffing pursuant to its labor budget practices, while simultaneously assigning heavy workloads, which resulted in a lack of meal period coverage and prevented Mr. De Grado and/or other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. In addition, TIFFANY failed to schedule meal periods, resulting in Mr. De Grado and other aggrieved employees having their meal periods interrupted to return to work or waiting extended periods of time before taking meal periods, due to the workload and pressure to meet quotas. Also, Mr. De Grado and other aggrieved employees were required to respond to calls on their personal cellular phones from supervisors and management during unpaid meal periods. As a result of TIFFANY's practices and/or policies, Mr. De Grado and/or other aggrieved employees had to work through part or all of their meal periods, have their meal periods interrupted, and/or wait extended periods of time before taking meal periods. For example, on several occasions, Mr. De Grado took meal periods after the end of his fifth hour of work due to the lack of meal period coverage and failure to schedule meal periods. Moreover, Mr. De Grado's meal periods were interrupted or shortened in order to respond to questions from TIFFANY's managers or supervisors, or to assist customers.

Moreover, TIFFANY did not provide Mr. De Grado and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. De Grado and other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. Mr. De Grado and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

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

Furthermore, TIFFANY engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that TIFFANY did pay meal period premium wages to other aggrieved employees, it did so at the incorrect rates. Because TIFFANY did not properly calculate other aggrieved employees' regular rates of pay by including all remunerations, such as commissions, incentive pay and/or nondiscretionary bonuses, any premiums paid for meal period violations were also paid at an incorrect rate and resulted in an underpayment of meal period premium wages.

Accordingly, TIFFANY failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. De Grado and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

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

During the relevant time period, TIFFANY regularly failed to authorize and permit Mr. De Grado and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, TIFFANY's company-wide policy and practice of understaffing and assigning heavy workloads/quotas, prevented Mr. De Grado and other aggrieved employees from being relieved of all duty to take their rest periods. TIFFANY also failed to schedule rest periods, which, coupled with TIFFANY's failure to provide adequate rest period coverage, further led to Mr. De Grado and other aggrieved employees not being authorized and permitted to take compliant rest periods. Moreover, Mr. De Grado and other aggrieved employees were expected to answer calls and text messages from their supervisors or managers on their personal cellular phones while clocked in for their shifts, including during rest periods.

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

As a result of TIFFANY's practices and policies, Mr. De Grado and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, during his employment, Mr. De Grado missed his rest periods due to the heavy workload and the lack of coverage for rest periods.

TIFFANY also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. De Grado and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that TIFFANY did pay rest period premium wages to other aggrieved employees, it did so at the incorrect rates. Because TIFFANY did not properly calculate other aggrieved employees' regular rates of pay by including all forms of compensation, such as commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, any premiums paid for rest period violations were also paid at an incorrect rate and resulted in an underpayment of rest period premium wages.

Accordingly, TIFFANY failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. De Grado and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. TIFFANY has not provided Mr. De Grado and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any

employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, TIFFANY has knowingly and intentionally provided Mr. De Grado and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, TIFFANY issued uniform wage statements to Mr. De Grado and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the name of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, TIFFANY violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because TIFFANY did not record the time Mr. De Grado and other aggrieved employees spent working off-the-clock, TIFFANY did not list the correct amount of gross wages and net wages earned by Mr. De Grado and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, TIFFANY failed to accurately list the total number of hours worked by Mr. De Grado and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Second, because TIFFANY did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, TIFFANY did not list the correct amount of gross wages earned by other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by other aggrieved employees in violation of section 226(a)(5). TIFFANY also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for premium wages, in violation of section 226(a)(9).

Third, and separate from these violations, TIFFANY issued uniform wage statements to Mr. De Grado and other aggrieved employees that failed to correctly list the name of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. Mr. De Grado's and other aggrieved employees' wage statements incorrectly list the employer as "Tiffany and Company, US Sales," but, according to the California Secretary of State's website, there is no such entity by that name. However, a similarly named entity, "TIFFANY AND COMPANY U.S. SALES, LLC," is listed on the California Secretary of State's website with the same address. *See example paystub below.*

Tiffany and Company, US Sales 15 Sylvan Way Parsippany NJ 07054 973/254-8187		Pay Group: TRL-TRL/TRC - Biweekly Lag Process Begin Date: 09/15/2019 Process End Date: 09/28/2019		Business Unit: NAREG Check #: [REDACTED] Check Date: 10/05/2019	
Michael De Grado [REDACTED] [REDACTED]		EmpID: [REDACTED] Dept: 01124412-Carmel Retail Location: Carmel Retail Regular Base Rate: \$19.52 Hourly		TAX DATA: Federal CA State Marital Status: [REDACTED] [REDACTED] Allowances: [REDACTED] [REDACTED] Addl. Pot.: [REDACTED] Addl. Amt.: [REDACTED]	

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

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

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, TIFFANY failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. De Grado and other aggrieved employees, in violation of section 1198. Furthermore, in light of TIFFANY’s failure to provide Mr. De Grado and other aggrieved employees with second 30-minute meal periods to which they were entitled, TIFFANY kept no records of meal start and end times for second meal periods.

Because TIFFANY failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. De Grado and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. De Grado and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. De Grado and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment

between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, TIFFANY failed to pay Mr. De Grado and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Mr. De Grado and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

On information and belief, TIFFANY has a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Mr. De Grado was terminated on or about October 5, 2019. However, TIFFANY did not provide him with his commissions paycheck for sales completed in September 2019 until October 18, 2019. Thus, TIFFANY failed to pay Mr. De Grado his final wages immediately, in violation of Labor Code section 201.

Additionally, TIFFANY willfully failed to pay Mr. De Grado and other aggrieved employees who are no longer employed by TIFFANY all their earned wages, including, but not limited to, overtime wages, minimum wages, and meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving TIFFANY's employ in violation of California Labor Code sections 201, 202, and 203.

Mr. De Grado and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

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

During the relevant time period, TIFFANY implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo mandatory drug testing and/or physical examinations, but required them to do so at their own expense. As stated, TIFFANY had a company-wide policy requiring that other aggrieved employees travel to a specified medical facility on their own time and use their own means of transportation to undergo drug testing and/or physical examinations. At all times, TIFFANY was in control of scheduling the date and time for the testing and/or examinations, selecting the provider/facility where the testing and/or examinations were to take place, and determining the scope of the testing and/or examinations. However, TIFFANY did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities, for the time they spent undergoing the drug testing and/or physical examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. TIFFANY's policy and/or practice of not paying for all costs other aggrieved employees incurred obtaining mandatory drug testing and/or physical examinations is in violation of California Labor Code section 222.5.

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

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

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

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

TIFFANY's California retail stores are generally similar in their layout and design and there was, and continues to be, space behind cash wraps/jewelry counters to allow for the presence and use of a seat or stool by Mr. De Grado and other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. TIFFANY could provide Mr. De Grado and other aggrieved employees with a seat or stool at its cash wraps/jewelry counters, but instead denies employees seating and forces Mr. Grado and other aggrieved employees to stand throughout the day.

Mr. De Grado and other aggrieved employees spent a substantial portion of their day behind or at these cash wraps/jewelry counters. The nature of the work of an employee performing cashier duties can reasonably be accomplished from a seated position. However, as set forth herein, TIFFANY systematically, and on a company-wide basis, does not provide seats or stools at or near cash wraps/jewelry counters, forcing Mr. De Grado and other aggrieved employees to stand throughout their work shifts.

TIFFANY violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because Mr. De Grado and other aggrieved employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats. TIFFANY's management did not inform Mr. De Grado and other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of TIFFANY's company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, Mr. De Grado and other aggrieved employees were forced to stand during shifts and denied seats. TIFFANY's failure to provide suitable seating to Mr. De Grado and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 7-2001, Section 14(A).

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

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

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

The IWC states that section 14(B) applies during "lulls in operation" when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under section 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under section 14(B) during "lulls in operation." *Id.*

As stated, TIFFANY's California retail stores are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Mr. De Grado and other

aggrieved employees during lulls in operation. TIFFANY could provide Mr. De Grado and other aggrieved employees with a seat or stool in its work areas, but instead denies employees seating and forces Mr. De Grado and other aggrieved employees to stand throughout the day.

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

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

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

During the relevant time period, TIFFANY had a company-wide policy of requiring Mr. De Grado and other aggrieved employees to utilize their own personal cellular phones and cellular data to carry out their job duties, but TIFFANY failed to fully reimburse them for the costs of their work-related cellular phone expenses. Mr. De Grado and other aggrieved employees were required to use their personal cellular phones to complete their work-related tasks, such as communicating with managers about clients, store events, or customer orders. Mr. De Grado and other aggrieved employees were also required to use their personal cellular phones to post about store promotions on their social media accounts. Although TIFFANY required Mr. De Grado and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, TIFFANY failed to fully reimburse them for this cost.

Additionally, as stated, TIFFANY had a company-wide policy of requiring other aggrieved employees to travel to medical facilities on their own time and using their personal vehicles or

alternate transportation to obtain mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. At all times, TIFFANY was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. TIFFANY gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the examinations and/or testing for the sole benefit of TIFFANY. Although TIFFANY required other aggrieved employees to use their own vehicles or obtain alternate transportation to undergo drug testing and/or physical examinations, TIFFANY never reimbursed them for their travel expenses.

TIFFANY could have provided Mr. De Grado and other aggrieved employees with the actual tools for use on the job, such as company phones and company vehicles, or could have reimbursed employees for their cellular phone, mileage, and travel expenses. Instead, TIFFANY passed these operating costs off onto Mr. De Grado and other aggrieved employees.

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

California Labor Code § 558(a)

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

Accordingly, Mr. De Grado seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. De Grado, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against TIFFANY for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 558(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Mr. De Grado seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Mr. De Grado's reasonable attempt to settle his dispute with TIFFANY prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform TIFFANY of Mr. De Grado's aforementioned grievances and the proposed remedies as detailed below, while affording TIFFANY a reasonable opportunity to satisfy Mr. De Grado's demands.

Demand is hereby made that TIFFANY shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. TIFFANY shall pay Mr. De Grado and all other aggrieved employees employed by TIFFANY at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. TIFFANY shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked and provided lawful meal and rest periods.
3. TIFFANY shall conduct a survey or interview all current and former aggrieved employees in California who worked for TIFFANY in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for cellular phone expenses, mandatory medical examinations, travel, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. TIFFANY shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512, 516, and 1198. TIFFANY also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. TIFFANY shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for TIFFANY's benefit, including, but not limited to, cellular phone expenses, mandatory medical examinations, and travel expenses, as required by Labor Code sections 222.5 and 2802.
6. TIFFANY shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. TIFFANY shall provide Mr. De Grado and all aggrieved employees employed by TIFFANY at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. TIFFANY shall implement and provide suitable seating to all aggrieved employees.

9. TIFFANY shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
10. TIFFANY shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, 1199, and 2699, and Wage Order No. 7-2001, section 20.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

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

Best Regards,



Anthony Castillo

Copy: TIFFANY AND COMPANY U.S. SALES, LLC (via U.S. Certified Mail); TIFFANY AND COMPANY (via U.S. Certified Mail)

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7019 2280 0000 7398 6800

zone

LAW APC

1000
Park East, Ste 1000
s, CA 90067

TIFFANY AND COMPANY U.S. SALES, LLC
200 FIFTH AVENUE
NEW YORK NY 10010



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200 FIFTH AVENUE
NEW YORK NY 10010



9590 9402 4882 9032 7425 22

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7019 2280 0000 7398 6817

one
LAW APC
ry Park East, Ste 1000
s, CA 90067

TIFFANY AND COMPANY U.S. SALES, LLC
15 SYLVAN WAY
PARSIPPANY NJ 07054



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15 SYLVAN WAY
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727 FIFTH AVENUE
NEW YORK NY 10022



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727 FIFTH AVENUE
NEW YORK NY 10022

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ury Park East, Ste 1000
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TIFFANY AND COMPANY
15 SYLVAN WAY
PARSIPPANY NJ 07054



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PARSIPPANY NJ 07054



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☐ Addressee

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COVID 19

C. Date of Delivery

9/12/20

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☐ Addressee

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C. Date of Delivery

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Exhibit 2

MOLLY DESARIO
310.556.4167 Direct
Molly.DeSario@capstonelawyers.com

November 22, 2021

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *La Tasha Shareef v. v. Tiffany and Company U.S. Sales, LLC, et al.*

Dear PAGA Administrator:

This office represents La Tasha Shareef in connection with her claims under the California Labor Code. Ms. Shareef was an employee of TIFFANY AND COMPANY U.S. SALES, LLC and/or TIFFANY AND COMPANY. For the purpose of this letter, Ms. Shareef collectively refers to these entities as “TIFFANY.”

The employers may be contacted directly at the address below:

TIFFANY AND COMPANY U.S. SALES, LLC
200 FIFTH AVENUE
NEW YORK NY 10010

TIFFANY AND COMPANY
727 FIFTH AVENUE
NEW YORK NY 10022

TIFFANY AND COMPANY U.S. SALES, LLC
15 SYLVAN WAY
PARSIPPANY NJ 07054

TIFFANY AND COMPANY
15 SYLVAN WAY
PARSIPPANY NJ 07054

Ms. Shareef intends to seek civil penalties, attorney’s fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”). Ms. Shareef seeks relief on behalf of herself, the State of California, and other persons who are or were employed by TIFFANY as a non-exempt, hourly paid employee in California and who received at least one wage statement (“aggrieved employees”). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

TIFFANY employed Ms. Shareef as an hourly paid, non-exempt employee from approximately December 2, 2020 to December 24, 2020. Ms. Shareef worked as a Seasonal Ambassador for TIFFANY at the Tiffany & Co. store in Costa Mesa, California. During her employment, Ms. Shareef typically worked eight (8) hours or more per day, and five (5) or more days per week. At the time her employment ended, Ms. Shareef was compensated approximately \$18.00 per hour. Her job

duties included, without limitation, greeting customers, introducing customers to a representative in sales or customer service, retrieving pre-orders from the dedicated order room, and confirming whether items were in-stock.

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

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

TIFFANY AND COMPANY U.S. SALES, LLC and TIFFANY AND COMPANY are a Delaware limited liability company and a New York corporation, respectively, that own and operate a chain of luxury jewelry retail stores throughout the world. TIFFANY operates approximately 94 retail stores in the United States, including 18 retail locations in California. Upon information and belief, TIFFANY maintains a single, centralized Human Resources (HR) department at its company headquarters in New York, New York, for all non-exempt, hourly paid employees working for TIFFANY in California, including Ms. Shareef and other aggrieved employees. At all relevant times, TIFFANY issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Shareef and other aggrieved employees, regardless of their location or position.

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

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

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

¹ These facts, theories, and claims are based on Ms. Shareef’s experience and counsel’s review of those records currently available relating to Ms. Shareef’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Ms. Shareef reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

TIFFANY willfully failed to pay all overtime wages owed to Ms. Shareef and other aggrieved employees. During the relevant time period, Ms. Shareef and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant time period, TIFFANY had, and continues to have, a company-wide policy and/or practice of failing to accurately record hours worked by its employees. For example, after reporting to work on time, Ms. Shareef and other aggrieved employees were forced to wait up to sixty (60) minutes to enter the store and clock in because there was no one available to open the doors for them. As a result, Ms. Shareef and other aggrieved employees were forced to work off-the-clock, but were not provided a means by TIFFANY to account for this time. Thus, TIFFANY failed to track this time spent working off-the-clock before their scheduled shifts, and Ms. Shareef and other aggrieved employees received no compensation for this time they remained under TIFFANY's control.

Second, on information and belief, TIFFANY required Ms. Shareef and other aggrieved employees to complete online training modules from home, on their off-days, or during their unpaid meal periods, but did not compensate them for this time. For example, Ms. Shareef was required to watch online training modules from home and spent four (4) hours completing the required training, but was not compensated for her time. In addition, during the relevant period, TIFFANY had a company-wide practice and/or policy of requiring other aggrieved employees to perform work-related tasks while off-the-clock, such as promoting TIFFANY's business before and after their shifts and/or on their days off. For example, other aggrieved employees were directed to post about store promotions on company social media accounts. However, due to TIFFANY's policy of understaffing and assigning heavy workloads (*see infra*), other aggrieved employees were too busy to post about store promotions on social media websites during their shifts, and were required to spend 2-4 hours per week posting before and after their shifts and/or on their days off. Thus, TIFFANY failed to track this time Ms. Shareef and other aggrieved employees spent working off-the-clock, and Ms. Shareef and other aggrieved employees received no compensation for this time.

Third, TIFFANY had a company-wide loss prevention policy requiring employees to undergo mandatory security checks by a managerial employee before leaving the store premises. As a result of TIFFANY's policy, other aggrieved employees were required to undergo security screenings after clocking out at the end of a shift prior to leaving the store premises. For example, after clocking out at the end of their shifts, other aggrieved employees were required to wait up to 2-5 minutes for a security guard to check their belongings. Although TIFFANY's requirement that other aggrieved employees undergo security checks was mandatory, TIFFANY did not compensate them for the time it took them to wait in line and undergo these checks. Furthermore, TIFFANY also had a company-wide security policy requiring employees to leave the store premises in pairs. After clocking out at the end of their shifts, other aggrieved employees were required to wait for the manager on duty to complete his or her closing duties before they could leave TIFFANY's premises. For example, other aggrieved employees would clock out at the end of their shifts and wait for up to 15 minutes off-the-clock for their managers to finish inputting the store's daily log sheets, before they were permitted to exit the store. As a result of these loss prevention and security policies and/or practices, other aggrieved employees were subject to TIFFANY's control after they had completed their shifts, but were not compensated for this time.

Fourth, during the relevant period, TIFFANY had, and continues to have, a company-wide policy staffing its locations strictly based on the labor hours or labor budget set by the corporate office. TIFFANY's use of a labor budget resulted in chronic understaffing such that there were too few employees on duty to handle the heavy workload, which included quarterly and individual targets or quotas for selling merchandise. Because TIFFANY did not employ or staff an adequate number of employees to meet their productivity expectations and failed to provide employees with adequate meal period coverage, Ms. Shareef and other aggrieved employees were assigned heavy workloads, which TIFFANY knew or should have known could only be met by working additional hours. Ms. Shareef and other aggrieved employees missed meal periods and/or had meal periods cut short or interrupted in order to handle their workloads and address customer and client demand.

Moreover, TIFFANY has, on a company-wide basis, failed to schedule meal periods. This company-wide practice, coupled with the heavy workload and pressure from TIFFANY to reach productivity expectations, impeded Ms. Shareef and other aggrieved employees from taking timely, compliant meal periods. Additionally, other aggrieved employees would be required to respond to text messages and/or calls on their personal cellular phones from supervisors and management during unpaid meal periods to discuss work-related matters or to assist certain clients. As a result, Ms. Shareef and other aggrieved employees were not afforded timely, uninterrupted thirty (30) minute meal periods during shifts in which they were entitled to receive meal periods. Further, on information and belief, because TIFFANY frowned upon employees accruing meal period penalties, when Ms. Shareef and other aggrieved employees failed to clock themselves out at designated meal period start times, they were subject to TIFFANY altering their time records and deducting time for meal periods that were not taken. Consequently, Ms. Shareef and other aggrieved employees performed work during meal periods for which they were not paid.

TIFFANY knew or should have known that as a result of these company-wide practices and/or policies, Ms. Shareef and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. Shareef and other aggrieved employees sometimes worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Ms. Shareef and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, on information and belief, TIFFANY did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, TIFFANY paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, TIFFANY failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, TIFFANY failed to pay all overtime wages by paying a lower overtime rate than required.

Accordingly, Ms. Shareef and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked, in violation of California Labor Code sections 510 and 1198. Ms. Shareef and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 7-2001 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11070(2)(G) (defining “Hours Worked”).

As stated, due to TIFFANY’s company-wide policies and/or practices of not permitting employees to record all their hours worked, TIFFANY failed to record all hours worked by Ms. Shareef and other aggrieved employees that were outside of their scheduled shifts, such as waiting for entry into the store. In addition, as set forth above, during the relevant time period, TIFFANY required that Ms. Shareef and/or other aggrieved employees perform work off-the-clock before and after their scheduled shifts, including completing online training modules from home, submitting to off-the-clock security checks, waiting for managers to complete closing duties to leave the store premises in pairs, and posting on social media accounts about store promotions. Further, due to TIFFANY’s uniform practice of utilizing labor budgets, resultant understaffing, assignment of heavy workloads/quotas, failure to schedule meal periods, requirement that employees answer their personal cellular phones at all times, and subsequent lack of meal period coverage, Ms. Shareef and/or other aggrieved employees were forced to forego meal periods and/or had their meal periods interrupted by work. Also, on information and belief, in order to prevent employees from accruing meal period penalties, TIFFANY’s management adjusted Ms. Shareef’s and other aggrieved employees’ time records to reflect compliant meal periods, time for which they were not paid.

Moreover, TIFFANY implemented, on a company-wide basis, an employer-imposed requirement that Ms. Shareef and other aggrieved employees undergo a mandatory drug test and/or physical examination. At all times, TIFFANY was in control of scheduling the date and time for the testing and/or examinations, selecting the provider/facility where the testing and/or examinations were to take place, and determining the scope of the testing and/or examinations. TIFFANY gave Ms. Shareef and other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and Ms. Shareef and other aggrieved employees underwent the testing and/or examinations for the sole benefit of TIFFANY. Ms. Shareef and other aggrieved employees were required to travel in their own personal vehicles or obtain alternate transportation and spend time undergoing TIFFANY’s mandatory drug testing and/or physical examinations. For example, Ms. Shareef followed TIFFANY’s instructions, traveled approximately 20 miles roundtrip (for approximately 20 minutes total), in her personal vehicle to and from a designated clinic in Anaheim, and spent 20 minutes waiting and undergoing the requisite testing. However, TIFFANY did not compensate Ms. Shareef and other aggrieved employees for the time they spent traveling to and from the medical facilities and for the time they spent undergoing the drug testing and/or physical examinations.

Thus, TIFFANY did not pay at least minimum wages for all hours worked by Ms. Shareef and other aggrieved employees. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, TIFFANY did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1.

Accordingly, TIFFANY regularly failed to pay at least minimum wages to Ms. Shareef and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Ms. Shareef and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As stated, TIFFANY has, and continues to have, a company-wide policy and/or practice of understaffing pursuant to its labor budget practices, while simultaneously assigning heavy workloads, which resulted in a lack of meal period coverage and prevented Ms. Shareef and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. In addition, TIFFANY failed to schedule meal periods, resulting in Ms. Shareef and other aggrieved employees having their meal periods interrupted to return to work or waiting extended periods of time before taking meal periods, due to the workload and pressure to meet quotas. Also, other aggrieved employees were required to respond to calls on their personal cellular phones from supervisors and management during unpaid meal periods. Further, because TIFFANY frowned upon employees accruing meal period penalties, TIFFANY's management would adjust Ms. Shareef's and other aggrieved employees' time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by TIFFANY.

As a result of TIFFANY's practices and/or policies, Ms. Shareef and/or other aggrieved employees had to work through part or all of their meal periods, have their meal periods interrupted, and/or wait extended periods of time before taking meal periods. For example, on several occasions, Ms. Shareef took meal periods after the end of her fifth hour of work due to the heavy workload, lack of meal period coverage, and failure to schedule meal periods. Moreover, other aggrieved employees' meal periods were interrupted or shortened in order to respond to questions from TIFFANY's managers or supervisors, or to assist customers.

Moreover, TIFFANY did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Other aggrieved employees

worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. Other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, TIFFANY knew or should have known that, as a result of these policies, Ms. Shareef and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. TIFFANY further knew or should have known that it did not pay Ms. Shareef and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, or missed.

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

Accordingly, TIFFANY failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Shareef and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

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

During the relevant time period, TIFFANY regularly failed to authorize and permit Ms. Shareef and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, TIFFANY's company-wide policy and practice of understaffing and assigning heavy workloads/quotas, prevented Ms. Shareef and other aggrieved employees from being relieved of all duty to take their rest periods. TIFFANY also failed to

schedule rest periods, which, coupled with TIFFANY's failure to provide adequate rest period coverage, further led to Ms. Shareef and other aggrieved employees not being authorized and permitted to take compliant rest periods. Moreover, other aggrieved employees were expected to answer calls and text messages from their supervisors or managers on their personal cellular phones while clocked in for their shifts, including during rest periods.

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

As a result of TIFFANY's practices and policies, Ms. Shareef and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, during her employment, Ms. Shareef missed her rest periods due to the heavy workload and the lack of coverage for rest periods.

TIFFANY also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. Shareef and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that TIFFANY did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, TIFFANY did not pay other aggrieved employees at the correct rate of pay for premiums because TIFFANY failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, TIFFANY failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Shareef and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. TIFFANY has not provided Ms. Shareef and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, TIFFANY has knowingly and intentionally provided Ms. Shareef and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, TIFFANY issued uniform wage statements to Ms. Shareef and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the name of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, TIFFANY violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because TIFFANY did not record the time Ms. Shareef and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), TIFFANY did not list the correct amount of gross wages and net wages earned by Ms. Shareef and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, TIFFANY failed to accurately list the total number of hours worked by Ms. Shareef and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Second, because TIFFANY did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, TIFFANY did not list the correct amount of gross wages earned by other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by other aggrieved employees in violation of section 226(a)(5). TIFFANY also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for premium wages, in violation of section 226(a)(9).

Third, and separate from these violations, TIFFANY issued uniform wage statements to Ms. Shareef and other aggrieved employees that failed to correctly list the name of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. Ms. Shareef's and other aggrieved employees' wage statements incorrectly list the employer as "Tiffany and Company, US Sales," but, according to the California Secretary of State's website, there is no such entity by that name. However, a similarly named entity, "TIFFANY AND COMPANY U.S. SALES, LLC," is listed on the California Secretary of State's website with the same address. *See example paystub below.*

Tiffany and Company, US Sales

15 Sylvan Way
Parsippany, NJ 07054
973/254-8187

Pay Group:	TRL-TRL/TRC - Biweekly Lag	Business Unit:	NAREG
Process Begin Date:	11/29/2020	Advice #:	[REDACTED]
Process End Date:	12/12/2020	Advice Date:	12/18/2020

La Tasha Shareef 	EmplID: [REDACTED] Dept: 00084412-South Coast Retail Location: Costa Mesa Retail Regular Base Rate: \$18.00 Hourly	TAX DATA: Federal CA State Marital Status: [REDACTED] Allowances: [REDACTED] Addl. Pct.: Addl. Amt.:
HOURS AND EARNINGS		TAXES

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her

social security number or an employee identification number other than a social security number; failing to list the address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

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

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, TIFFANY failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Ms. Shareef and other aggrieved employees, in violation of section 1198. As stated, TIFFANY engaged in a company-wide practice and/or policy of falsifying Ms. Shareef’s and other aggrieved employees’ time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Ms. Shareef and other aggrieved employees. Furthermore, in light of TIFFANY’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, TIFFANY kept no records of meal start and end times for second meal periods.

Because TIFFANY failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Shareef and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Ms. Shareef and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Ms. Shareef and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month

during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, TIFFANY failed to pay Ms. Shareef and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within any time period specified by California Labor Code section 204.

Ms. Shareef and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

On information and belief, TIFFANY has a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. Additionally, TIFFANY willfully failed to pay Ms. Shareef and other aggrieved employees who are no longer employed by TIFFANY all their earned wages, including, but not limited to, overtime wages, minimum wages, and meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving TIFFANY's employ in violation of California Labor Code sections 201, 202, and 203.

Ms. Shareef and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

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

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

and/or examinations, selecting the provider/facility where the testing and/or examinations were to take place, and determining the scope of the testing and/or examinations.

TIFFANY gave Ms. Shareef and other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and Ms. Shareef and other aggrieved employees underwent the testing and/or examinations for the sole benefit of TIFFANY. Ms. Shareef and other aggrieved employees were required to travel in their own personal vehicles or obtain alternate transportation and spend time undergoing TIFFANY's mandatory drug testing and/or physical examinations. For example, Ms. Shareef followed TIFFANY's instructions, traveled approximately 20 miles roundtrip (for approximately 20 minutes total), in her personal vehicle to and from a designated clinic in Anaheim, and spent 20 minutes waiting and undergoing the requisite testing.

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

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

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

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

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

TIFFANY's California retail stores are generally similar in their layout and design and there was, and continues to be, space at the store entrances and/or behind cash wraps/jewelry counters to allow for the presence and use of a seat or stool by Ms. Shareef and other aggrieved employees (with

reasonable or no modification to these work areas) during the performance of their work duties. TIFFANY could provide Ms. Shareef and other aggrieved employees with a seat or stool at its store entrances and/or cash wraps/jewelry counters, but instead denies employees seating and forces Ms. Shareef and other aggrieved employees to stand throughout the day.

Ms. Shareef and other aggrieved employees spent a substantial portion of their day at the store entrances and/or behind or at these cash wraps/jewelry counters. The nature of the work of an employee performing cashier/sales duties can reasonably be accomplished from a seated position. However, as set forth herein, TIFFANY systematically, and on a company-wide basis, does not provide seats or stools at or near its store entrances and/or cash wraps/jewelry counters, forcing Ms. Shareef and other aggrieved employees to stand throughout their work shifts.

TIFFANY violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because Ms. Shareef and other aggrieved employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats. TIFFANY's management did not inform Ms. Shareef and other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of TIFFANY's company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, Ms. Shareef and other aggrieved employees were forced to stand during shifts and denied seats. TIFFANY's failure to provide suitable seating to Ms. Shareef and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 7-2001, Section 14(A).

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

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

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

“The ‘nature of the work’ refers to an employee’s tasks performed at a given location for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the entire range of an employee’s duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for.” *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). “Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer’s business judgment and the physical layout of the workplace are relevant but not dispositive factors. The

inquiry focuses on the nature of the work, not an individual employee's characteristics." *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is "infeasible because no suitable seating exists." *See id.*

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

Ms. Shareef and other aggrieved employees spent a substantial portion of their day behind or at these cash wraps/jewelry counters. The nature of the work of an employee performing cashier/sales duties can reasonably be accomplished from a seated position. However, as set forth herein, TIFFANY systematically, and on a company-wide basis, does not provide seats or stools at or near cash wraps/jewelry counters, forcing Ms. Shareef and other aggrieved employees to stand throughout their work shifts.

TIFFANY violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because Ms. Shareef and other aggrieved employees were not allowed to sit, even when it would not have interfered with the performance of their duties, nor were they provided with suitable seats. TIFFANY's management did not inform Ms. Shareef and other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of TIFFANY's company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, Ms. Shareef and other aggrieved employees were forced to stand during shifts and denied seats. TIFFANY's failure to provide suitable seating to Ms. Shareef and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order 7-2001, Section 14(A).

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

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

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful." California Code of Regulations, Title 8, section 11070(14)(B) provides that "[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity

to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

The IWC states that section 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under section 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under section 14(B) during “lulls in operation.” *Id.*

As stated, TIFFANY’s California retail stores are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Ms. Shareef and other aggrieved employees during lulls in operation. TIFFANY could provide Ms. Shareef and other aggrieved employees with a seat or stool in its work areas, but instead denies employees seating and forces Ms. Shareef and other aggrieved employees to stand throughout the day.

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

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

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

During the relevant time period, TIFFANY had a company-wide policy of requiring Ms. Shareef and other aggrieved employees to utilize their own personal cellular phones and cellular data to carry out their job duties, but TIFFANY failed to fully reimburse them for the costs of their work-related cellular phone expenses. Ms. Shareef and other aggrieved employees were required to use their personal cellular phones to complete their work-related tasks, such as communicating with colleagues at other store locations about workload and inventory or communicating with managers about clients, store events, or customer orders. Other aggrieved employees were also required to use their personal cellular phones to post about store promotions on their social media accounts. Although TIFFANY required Ms. Shareef and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, TIFFANY failed to fully reimburse them for this cost.

Additionally, as stated, TIFFANY had a company-wide policy of requiring Ms. Shareef and other aggrieved employees to travel to medical facilities on their own time and using their personal vehicles or alternate transportation to obtain mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. At all times, TIFFANY was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. Although TIFFANY required Ms. Shareef and other aggrieved employees to use their own vehicles or obtain alternate transportation to undergo drug testing and/or physical examinations, TIFFANY never reimbursed them for their travel expenses.

TIFFANY could have provided Ms. Shareef and other aggrieved employees with the actual tools for use on the job, such as company phones and company vehicles, to be used for fulfilling work-related tasks. Or, TIFFANY could have fully reimbursed employees for the costs of their cellular phone usage, mileage, and travel expenses. Instead, TIFFANY passed these operating costs off onto Ms. Shareef and other aggrieved employees. At all relevant times, Ms. Shareef did not earn at least two (2) times the minimum wage.

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

California Labor Code § 558(a)

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

California Labor Code.

Accordingly, Ms. Shareef seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Shareef, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against TIFFANY for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Ms. Shareef seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Molly DeSario
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4167

Best Regards,


Molly DeSario

Copy: TIFFANY AND COMPANY U.S. SALES, LLC (via U.S. Certified Mail); TIFFANY AND COMPANY (via U.S. Certified Mail); [CC opposing counsel]

Capstone Law, APC
Century Park East, Suite 1000
Los Angeles, CA. 90067

CERTIFIED MAIL



7021 1970 0000 2660 0740

TIFFANY AND COMPANY U.S. SALES, LLC
15 SYLVAN WAY
PARSIPPANY NJ 07054



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1. Article Addressed to:

IRAFANY & CO.
15 STEVEN WAY
PARSIPpany, NJ 07054



9590 9402 1512 5362 2501 50

2. Article Number (Transfer from service label)

7021 1970 0000 2660 0740

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

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☐ Addressee

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3. Service Type

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| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☐ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Mail | |
| ☐ Mail Restricted Delivery (0) | |

Domestic Return Receipt

Capstone Law, APC
Century Park East, Suite 1000
Los Angeles, CA. 90067



7021 1970 0000 2660 0733



TIFFANY AND COMPANY
727 FIFTH AVENUE
NEW YORK NY 10022

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TIFFANY & CO.
727 FIFTH AVE.
NEW YORK, NY 10022



9590 9402 1512 5362 2501 43

2. Article Number (Transfer from service label)

7021 1970 0000 2660 0733

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☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

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| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
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| ☐ Insured Mail (500) | |
| ☐ Insured Mail Restricted Delivery | |

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Capstone Law, APC
Century Park East, Suite 1000
Los Angeles, CA. 90067



7021 1970 0000 2660 0764



TIFFANY AND COMPANY U.S. SALES, LLC
200 FIFTH AVENUE
NEW YORK NY 10010

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1. Article Addressed to:

TIFFANY & Co. U.S. SALES
200 FIFTH AVE
NEW YORK, NY 10010



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2. Article Number (Transfer from service label)

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☐ Agent

B. Received by (Printed Name)

C. Date of Delivery

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

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Domestic Return Receipt

Capstone Law, APC
Century Park East, Suite 1000
Los Angeles, CA. 90067

CERTIFIED MAIL



7021 1970 0000 2660 0771

TIFFANY AND COMPANY
15 SYLVAN WAY
PARSIPPANY NJ 07054



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1. Article Addressed to:

TITANY & CO. U.S. JAMES
15 SYLVAN WAY
PARIS, FRANCE, NJ 07654



9590 9402 1512 5362 2501 67

2. Article Number (Transfer from service label)

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☐ Agent

B. Received by (Printed Name)

C. Date of Delivery

☐ Addressee

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

3. Service Type

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| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Mail Restricted Delivery | |

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1. Article Addressed to:

TIFFANY & CO.
15 SYLVAN WAY
PARSIPPANY, NJ 07054



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2. Article Number (Transfer from service label)

7021 1970 0000 2660 0740

COMPLETE THIS SECTION ON DELIVERY

A. Signature

[Signature]

☐ Agent

☐ Addressee

B. Received by (Printed Name)

CWID19

C. Date of Delivery

11/09/11

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

3. Service Type

☒ Adult Signature

☐ Adult Signature Restricted Delivery

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☐ Certified Mail Restricted Delivery

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Restricted Delivery

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☐ Registered Mail™

☐ Registered Mail Restricted Delivery

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☐ Signature Confirmation Restricted Delivery

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

1. Article Addressed to:

TIFFANY & CO. U.S. JAMES
15 SYLVAN WAY
PAR SIPPANY, NJ 07054



9590 9402 1512 5362 2501 67

2. Article Number (Transfer from service label)

7021 1970 0000 2660 0771

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

CWIDIG

C. Date of Delivery

10/1/11

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

3. Service Type

☒ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

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☐ Registered Mail™

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☐ Return Receipt for Merchandise

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☐ Signature Confirmation Restricted Delivery

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I am employed in the County of Los Angeles. I declare that I am over the age of eighteen (18) and not a party to this action. My business address is: Capstone Law APC, 1875 Century Park East, Suite 1000, Los Angeles, California 90067.

SECOND AMENDED COMPLAINT – PAGA ENFORCEMENT ACTION

Carrie A. Gonell
Nancy Nguyen
Morgan, Lewis & Bockius LLP
600 Anton Boulevard Suite 1800
Costa Mesa, CA 92626-7653
carrie.gonell@morganlewis.com
nancy.nguyen@morganlewis.com

- EXECUTED** this document on March 22, 2022, at Los Angeles, California.

PROOF OF SERVICE