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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SAN BERNARDINO
13

14 CARLOS FENTON and JOEL
15 NAVARRO, as aggrieved employees
16 pursuant to the Private Attorneys General
Act ("PAGA"), on behalf of the State of
California and other aggrieved employees,

17
18 Plaintiffs,

19 vs.

20 BEST BUY STORES L.P., a Virginia
21 limited partnership; PACIFIC SALES
22 KITCHEN AND BATH CENTERS, LLC, a
California limited liability company; and
DOES 1 through 10, inclusive,

23
24 Defendants.
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

FEB 24 2022

BY MELISSA PEREZ
MELISSA PEREZ, DEPUTY

Case No.: **CIV SB 2204443**

**COMPLAINT - PAGA ENFORCEMENT
ACTION**

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

Jury Trial Demanded

1 Plaintiffs Carlos Fenton and Joel Navarro, as aggrieved employees and on behalf of the
2 State of California and all other non-party Aggrieved Employees, allege as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiffs, the State of California, and other current
7 and former employees who worked for Defendants at “Pacific Sales” retail locations in
8 California as non-exempt, hourly paid employees and against whom one or more violations of
9 any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notices to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on December 20, 2021, until judgment (“non-party Aggrieved
14 Employees”). Plaintiffs’ share of civil penalties sought in this action does not exceed
15 \$75,000.

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

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

1 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

2 4. Venue is proper in this Court, because Defendants employ or employed persons
3 within the County of San Bernardino, and have violated the requirements of the California
4 Labor Code and applicable Wage Order in this county which give rise to the penalties sought
5 in this action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the
6 requirements of the California Labor Code and applicable IWC Wage Order in at least one (1)
7 store location within the County of San Bernardino, including Defendants' store located in
8 Ontario (5250 Ontario Mills Parkway, Suite 400, Ontario, California 91764). Pursuant to
9 California Civil Code of Procedure section 393, venue is proper for the recovery of a penalty
10 imposed by statute in the county in which the cause, or some part of the cause, arose. Because
11 Defendants have employees in San Bernardino County, and Plaintiffs could bring an action
12 filed under PAGA in any county in which an aggrieved employee worked and Labor Code
13 violations occurred, venue is proper. *Crestwood Behavioral Health, Inc. v. Superior Court of*
14 *Alameda County*, 60 Cal.App.5th 1069 (2021).

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

19 **THE PARTIES**

20 6. Plaintiff Carlos Fenton is a resident of Norwalk, in Los Angeles County,
21 California. Defendants employed Plaintiff Fenton as an hourly paid, non-exempt Sales
22 Associate from approximately September 2004 to March 2021. Plaintiff Fenton worked for
23 Defendants at their Pacific Sales store location in Torrance, California. During his
24 employment, Plaintiff Fenton typically worked eight (8) or more hours per day and five (5) or
25 more days per week. Plaintiff Fenton's primary duties included, without limitation, attending
26 to customers and conducting sales.

27 7. Plaintiff Joel Navarro is a resident of Garden Grove, in Orange County,
28 California. Defendants employed Plaintiff Navarro as an hourly paid, non-exempt Plumbing

1 Specialist and then Plumbing Manager from approximately April 2008 to March 2021.
2 Plaintiff Navarro worked for Defendants at their Pacific Sales store location in Irvine,
3 California. During his employment, Plaintiff Navarro typically worked eight (8) or more
4 hours per day and five (5) or more days per week. Plaintiff Navarro's primary duties
5 included, without limitation, conducting sales; maintaining the showroom premises; reviewing
6 financial goals; managing deliveries, sales, and complaints; and tracking product.

7 8. On information and belief, Defendants required some employees, including
8 Plaintiffs, to execute a dispute resolution policy and/or arbitration agreement at the time of
9 their hire or during their employment. On further information and belief, Defendants' dispute
10 resolution policy and/or arbitration agreement was and is both procedurally and substantively
11 unconscionable. Specifically, Defendants presented employees with an Arbitration Policy,
12 which had to be reviewed and acknowledged immediately. Also, employees did not have a
13 meaningful opportunity to negotiate the terms of the Arbitration Policy. Rather, it was
14 provided to Defendants' employees for them to sign on a take-it or leave-it basis.
15 Furthermore, Defendants did not set forth in the agreement or otherwise provide employees
16 with the rules which will govern the arbitration, instead forcing employees to seek this
17 information out on their own ("Both the Employment Arbitration and Emergency Measures of
18 Protection Rules may be found on the internet at www.adr.org. A copy of these Rules is also
19 available upon request from Employee Relations at EmployeeRelations@bestbuy.com or 1-
20 866-MY-BBY-HR (1-866-692-2947)").

21 9. BEST BUY STORES L.P. was and is, upon information and belief, a Virginia
22 limited partnership, and at all times hereinafter mentioned, an employer whose employees are
23 engaged throughout this county and the State of California.

24 10. PACIFIC SALES KITCHEN AND BATH CENTERS, LLC was and is, upon
25 information and belief, a California limited liability company, and at all times hereinafter
26 mentioned, an employer whose employees are engaged throughout this county and the State of
27 California.

28 11. Plaintiffs are unaware of the true names or capacities of the Defendants sued

1 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
2 amend the complaint and serve such fictitiously named Defendants once their names and
3 capacities become known.

4 12. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10
5 were the partners, agents, owners, or managers of BEST BUY STORES L.P. and PACIFIC
6 SALES KITCHEN AND BATH CENTERS, LLC at all relevant times.

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

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

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

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

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

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

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

27 18. Plaintiffs are informed and believe, and thereon allege, that at all relevant times
28 there has existed a unity of interest and ownership between Defendants such that any

1 individuality and separateness between the entities has ceased.

2 19. BEST BUY STORES L.P.; PACIFIC SALES KITCHEN AND BATH
3 CENTERS, LLC; and DOES 1 through 10 are therefore alter egos of each other.

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

7 21. Plaintiffs further allege, upon information and belief, that Defendants BEST
8 BUY STORES L.P. and PACIFIC SALES KITCHEN AND BATH CENTERS, LLC are alter
9 egos of each other for the following reasons:

- 10 (a) According to Best Buy Co., Inc.’s SEC Form 10-K filing for 2021¹,
11 BEST BUY STORES L.P. and PACIFIC SALES KITCHEN AND
12 BATH CENTERS, LLC are wholly-owned subsidiaries of Best Buy
13 Co., Inc.;
- 14 (b) On the California Secretary of State’s website
15 (<https://businesssearch.sos.ca.gov>), BEST BUY STORES L.P. and
16 PACIFIC SALES KITCHEN AND BATH CENTERS, LLC share the
17 same entity and mailing address, “7601 Penn Avenue S., Richfield, MN
18 55423;”
- 19 (c) On the California Secretary of State’s website, BEST BUY STORES
20 L.P. and PACIFIC SALES KITCHEN AND BATH CENTERS, LLC
21 share the same service of process, “C T Corporation System
22 (C0168406);” and
- 23 (d) On information and belief, BEST BUY STORES L.P. and PACIFIC
24 SALES KITCHEN AND BATH CENTERS, LLC utilize the same
25 standardized employment forms, including, but not limited to, employee
26

27 ¹ 10-K Annual Report 03/19/2021, “Best Buy Co., Inc. – SEC filings”
28 <https://investors.bestbuy.com/investor-relations/financial-info/sec-filings/default.aspx> (last
accessed Feb. 14, 2022).

scheduling and communication forms, and issue the same employment policies, including, but not limited to, the Employee Handbook.

PAGA REPRESENTATIVE ALLEGATIONS

22. Defendants own and operate approximately 21 Pacific Sales Kitchen & Home store locations throughout California, offering mid-range to luxury appliances, bathroom fixtures, home furnishings, and an assortment of home electronics and other home improvement products. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their company headquarters in Richfield, Minnesota, 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 company headquarters in Richfield, Minnesota, 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.

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

1 California.

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

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

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

13 29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
14 should have known that other non-party Aggrieved Employees were entitled to be paid at a
15 regular rate of pay, and corresponding overtime rate of pay, that included as eligible income
16 all remuneration required by law, including but not limited to, all income derived from
17 incentive pay, nondiscretionary bonuses, and/or other forms of compensation, but failed to
18 include all forms of remuneration in calculating the regular rate of pay for other non-party
19 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 Labor Code,
11 Plaintiffs and other non-party Aggrieved Employees were not authorized and permitted to take
12 compliant rest periods, nor did Defendants provide Plaintiffs and other non-party Aggrieved
13 Employees with payment of one (1) additional hour of pay at their regular rates of pay when
14 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 times herein
9 mentioned, Defendants knew or should have known that they had a duty to cover the costs and
10 expenses other non-party Aggrieved Employees incurred obtaining mandatory physical
11 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 receive full
14 reimbursement for all business-related expenses and costs they incurred during the course and
15 scope of their employment and that they did not receive full reimbursement of applicable
16 business-related expenses and costs incurred.

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

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

1 41. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any
2 person who was employed by the alleged violator and against whom one or more of the
3 alleged violations was committed.”

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

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

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

27 44. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
28 through Plaintiffs, may pursue a civil action arising under PAGA for violations of any

1 provision other than those listed in Section 2699.5 after the following requirements have been
2 met:

- 3 (a) The aggrieved employee or representative shall give written notice by
4 online filing to the LWDA and by certified mail to the employer of the
5 specific provisions of the California Labor Code alleged to have been
6 violated (other than those listed in Section 2699.5), including the facts
7 and theories to support the alleged violation.
- 8 (b) An aggrieved employee's notice filed with the LWDA pursuant to
9 2699.3(c) and any employer response to that notice shall be
10 accompanied by a filing fee of seventy-five dollars (\$75).
- 11 (c) The employer may cure the alleged violation within thirty-three (33)
12 calendar days of the postmark date of the notice. The employer shall
13 give written notice by certified mail within that period of time to the
14 aggrieved employee or representative and the agency if the alleged
15 violation is cured, including a description of actions taken, and no civil
16 action pursuant to Section 2699 may commence. If the alleged violation
17 is not cured within the 33-day period, the employee may commence a
18 civil action pursuant to Section 2699.

19 45. On December 20, 2021, Plaintiff Fenton provided written notice by online
20 filing to the LWDA and by certified mail to Defendants of the specific provisions of the
21 California Labor Code alleged to have been violated, including facts and theories to support
22 the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff
23 Fenton's written notice was accompanied with the applicable filing fee of seventy-five dollars
24 (\$75). The LWDA PAGA Administrator has confirmed receipt of Plaintiff Fenton's written
25 notice and assigned Plaintiff Fenton PAGA Case Number LWDA-CM-858508-21. A true and
26 correct copy of Plaintiff Fenton's written notice to the LWDA and Defendants dated
27 December 20, 2021, is attached hereto as "Exhibit 1."

28 46. On December 20, 2021, Plaintiff Navarro provided written notice by online

1 filing to the LWDA and by certified mail to Defendants of the specific provisions of the
2 California Labor Code alleged to have been violated, including facts and theories to support
3 the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff
4 Navarro's written notice was accompanied with the applicable filing fee of seventy-five
5 dollars (\$75). The LWDA PAGA Administrator has confirmed receipt of Plaintiff Navarro's
6 written notice and assigned Plaintiff Navarro PAGA Case Number LWDA-CM-858510-21. A
7 true and correct copy of Plaintiff Navarro's written notice to the LWDA and Defendants dated
8 December 20, 2021, is attached hereto as "Exhibit 2."

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

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

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

1 attorneys general, do not seek the recovery of unpaid wages under Labor Code section 558
2 from Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the
3 applicable IWC Wage Order.

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

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

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

17 **FIRST CAUSE OF ACTION**

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

19 **(Against all Defendants)**

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

22 54. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiffs to recover
23 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
24 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 222.5, 226(a),
25 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c)
26 permits aggrieved employees, including Plaintiffs, to recover civil penalties for violations of
27 those Labor Code sections not found in section 2699.5, including sections 516 and 1182.12.

28 55. Defendants' conduct, as alleged herein, violates numerous sections of the

1 California Labor Code, including, but not limited to, the following:

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

1 earned wages upon termination, as set forth below;

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

5 (j) Violation of Labor Code section 2802 for failure to reimburse Plaintiffs
6 and other non-party Aggrieved Employees for all business expenses
7 necessarily incurred, as set forth below.

8 **FAILURE TO PAY OVERTIME**

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

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

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

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

24 59. The applicable IWC Wage Order further provides that Defendants are and were
25 required to pay Plaintiffs and other non-party Aggrieved Employees working more than
26 twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate
27 of pay. An employee’s regular rate of pay includes all remuneration for employment paid to,
28 or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

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

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

13 62. First, during the relevant period, Defendants had a policy and/or practice of
14 discouraging and impeding Plaintiffs and other non-party Aggrieved Employees from
15 recording hours worked that were outside of their scheduled shifts in order to limit the amount
16 of overtime employees could accrue. On information and belief, this limitation on overtime
17 accrual was based on a company-wide policy of staffing store locations strictly based on the
18 labor hours or labor budget set by corporate. This policy of limiting overtime, coupled with
19 Defendants' understaffing policy, as well as the assignment of strict deadlines, heavy
20 workloads, and sales quotas (*see infra*), led Plaintiffs and other non-party Aggrieved
21 Employees to work off-the-clock before and after their scheduled shift times in order to
22 complete their assigned tasks. As a result, Defendants forced Plaintiffs and other non-party
23 Aggrieved Employees to perform work off-the-clock outside of their scheduled shifts, such as
24 responding to phone calls nearly every day from clients and vendors requesting status updates
25 on pending deliveries and making deliveries to clients.

26 63. Further, in conjunction with their policy on limiting overtime accrual,
27 Defendants had, and continue to have, a company-wide policy and/or practice requiring
28 Plaintiffs and other non-party Aggrieved Employees to perform various work-related tasks

1 while off-the-clock. For example, a few times throughout his employment, Plaintiff Navarro
2 was required to drive back to the store after his scheduled shift ended or on his days off in
3 order to address the activation of the store alarm, which required him to unlock the store,
4 conduct an inspection, wait for the police to finish their investigation, lock up, and return
5 home, which would take 2-3 hours per instance. It was not possible for Plaintiff Navarro to
6 complete all these tasks on the clock because he was required to punch in and out at his
7 scheduled shift start- and end-time, so he would work off-the-clock to conduct these duties.
8 As a further example, Plaintiff Fenton and other non-party Aggrieved Employees were
9 required to undergo off-the-clock temperature checks and/or COVID-19 screenings prior to
10 the start of their scheduled shifts, time for which they were not compensated. Thus,
11 Defendants failed to track this time spent working before and after scheduled shifts, and failed
12 to fully compensate Plaintiffs and other non-party Aggrieved Employees for this time.

13 64. Second, Defendants had, and continue to have, a company-wide security policy
14 requiring employees to leave the store premises in pairs and/or groups. On information and
15 belief, after clocking out at the end of his shifts, Plaintiff Navarro was required to wait for
16 other employees off-the-clock because he was responsible for arming and disarming the alarm
17 (*see supra*), and, therefore, had to be the last employee leaving the store. As a result of these
18 security policies and/or practices, Plaintiff Navarro and other non-party Aggrieved Employees
19 were subject to Defendants' control after they had already clocked out for their shifts, but
20 were not compensated for this time.

21 65. Third, as stated, Defendants had, and continue to have, a company-wide policy
22 and/or practice of staffing their store locations strictly based on a labor budget set by the
23 corporate office. Defendants' use of a labor budget resulted in chronic understaffing, such
24 that there were too few employees on duty to handle the heavy workload, which included
25 sales goals, and provide uninterrupted meal period coverage. In conjunction with
26 understaffing their stores, Defendants had a company-wide policy of pressuring Plaintiffs and
27 other non-party Aggrieved Employees to maintain a sales quota based on the number of
28 appliances sold. This policy resulted in Plaintiffs and other non-party Aggrieved Employees

1 having to remain available for customers' and supervisors' requests at all times in order to
2 meet this quota, by keeping current and potential customers satisfied at all times while selling
3 as much inventory as possible. Furthermore, Defendants had a company-wide practice of
4 failing to schedule and/or adhere to a schedule of meal periods, which further caused Plaintiffs
5 and other non-party Aggrieved Employees to not be relieved of their duties for compliant
6 meal periods. Thus, these practices and/or policies of requiring employees to meet sales
7 quotas, juggle a heavy workload, and failure to schedule and/or adhere to a schedule of meal
8 periods resulted in Plaintiffs and other non-party Aggrieved Employees performing work-
9 related tasks during their meal periods and while off-the-clock.

10 66. For example, Defendants required Plaintiffs and other non-party Aggrieved
11 Employees to continue working through their meal periods to assist customers and continue
12 making sales to meet the sales quotas. As a result, Plaintiffs completely missed their meal
13 periods 3-4 times per week. On the rare occasions when Plaintiffs were able to take their meal
14 periods, they were interrupted by customer inquiries, either in person or over the phone, which
15 Plaintiffs felt compelled to respond to because of the sales quotas they had to meet. Thus,
16 Plaintiffs and other non-party Aggrieved Employees suffered missed and/or interrupted meal
17 periods, work for which they were not paid.

18 67. Finally, on information and belief, because Defendants frowned upon
19 employees accruing meal period penalties, Defendants pressured Plaintiffs and other non-
20 party Aggrieved Employees to clock out for meal periods and/or adjusted employee time
21 records to reflect compliant meal periods, regardless of whether they had received a compliant
22 meal period or not, in order to strictly limit meal penalties that Defendants would otherwise
23 owe. Furthermore, on information and belief, Defendants' company-wide timekeeping system
24 prevented Plaintiffs and other non-party Aggrieved Employees from recording all hours
25 worked when their meal periods were shortened or interrupted, because the system locked out
26 Plaintiffs and other non-party Aggrieved Employees once they clocked out for a meal period,
27 and would not permit them to clock back in from a meal period before 30 minutes had
28 elapsed. Thus, Defendants did not record all hours worked during meal periods, and Plaintiffs

1 and other non-party Aggrieved Employees performed work during meal periods for which
2 they were not paid.

3 68. Defendants knew or should have known that, as a result of these company-wide
4 practices and/or policies, Plaintiffs and other non-party Aggrieved Employees were
5 performing their assigned duties off-the-clock before and after their shifts and during meal
6 periods, and were suffered or permitted to perform work for which they were not paid.
7 Because Plaintiffs and other non-party Aggrieved Employees regularly worked shifts of eight
8 (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work
9 qualified for overtime premium pay.

10 69. Furthermore, Defendants did not pay other non-party Aggrieved Employees the
11 correct overtime rate for the recorded overtime hours that they generated. In addition to an
12 hourly wage, Defendants paid other non-party Aggrieved Employees incentive pay,
13 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the
14 California Labor Code, Defendants failed to incorporate all compensation, including incentive
15 pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the
16 regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during
17 times when other non-party Aggrieved Employees worked overtime and received these other
18 forms of pay, Defendants failed to pay all overtime wages by paying a lower overtime rate
19 than required.

20 70. Defendants' failure to pay Plaintiffs and other non-party Aggrieved Employees
21 the balance of overtime compensation as required by California law, violates the provisions of
22 California Labor Code sections 510 and 1198. Plaintiffs and other non-party Aggrieved
23 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
24 558 and/or 2699(a), (f), and (g).

25 **FAILURE TO PAY MINIMUM WAGES**

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

27 71. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
28 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage

1 to be paid to employees, and the payment of a wage less than the minimum so fixed is
2 unlawful. Compensable work time is defined in IWC Wage Order No. 7-2001 as “the time
3 during which an employee is subject to the control of an employer, and includes all the time
4 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code.
5 Regs. tit. 8, § 11070(2)(G) (defining “Hours Worked”).

6 72. First, as stated above, due to Defendants’ restrictions on overtime accrual,
7 Defendants systematically failed to pay Plaintiffs and other non-party Aggrieved Employees
8 for actual hours worked before and after scheduled shifts, because these hours were not
9 accurately recorded. As stated, because Defendants discouraged and impeded Plaintiffs and
10 other non-party Aggrieved Employees from recording hours worked that were outside of their
11 scheduled shifts, Plaintiffs and other non-party Aggrieved Employees were required to work
12 off-the-clock before and/or after their scheduled shift start and end times assisting customers
13 and completing sales, answering calls from clients, making deliveries to clients, handling store
14 alarm duties, and/or undergoing COVID-19 screenings. Additionally, Plaintiff Navarro and
15 other non-party Aggrieved Employees spent time waiting for other employees to complete
16 closing duties to leave the store premises in pairs and/or groups, pursuant to Defendants’
17 security policies, but were not compensated for this off-the-clock work.

18 73. Second, as set forth above, due to Defendants’ uniform practice of utilizing
19 labor budgets, understaffing, assignment of heavy workloads, pressure to meet sales quotas,
20 failure to schedule and/or adhere to a schedule of meal periods, and resultant lack of meal
21 period coverage, Plaintiffs and other non-party Aggrieved Employees were impeded from
22 taking all uninterrupted meal periods to which they were entitled and were required to work
23 off-the-clock, continuing to make sales and attending to customers and clients. Moreover, as
24 stated, in order to prevent employees from accruing meal period penalties, Defendants’
25 management pressured Plaintiffs and other non-party Aggrieved Employees to clock out for
26 meal periods and/or adjusted employee time records to reflect compliant meal periods, but
27 required them to continue working, time for which they were not paid. Also, on information
28 and belief, Defendants systematically failed to pay Plaintiffs and other non-party Aggrieved

1 Employees for actual hours worked during unpaid meal periods, because Defendants'
2 timekeeping system locked out Plaintiffs and other non-party Aggrieved Employees for 30
3 minutes when they clocked out for a meal period. Thus, Defendants systematically failed to
4 pay Plaintiffs and other non-party Aggrieved Employees for actual hours worked during
5 unpaid meal periods because these hours were not always correctly recorded.

6 74. Moreover, Defendants maintained and implemented a company-wide policy of
7 requiring employees to travel to a medical facility on their own time and using their own
8 personal vehicles or alternate transportation to undergo mandatory drug testing and/or
9 physical examinations. At all times, Defendants were in control of scheduling the date and
10 time for the testing and/or physical examinations, selecting the provider or facility where the
11 testing and/or physical examinations were to take place, and determining the scope of the
12 testing and/or physical examinations. Defendants gave other non-party Aggrieved Employees
13 strict instructions to undergo drug testing and/or physical examinations, and other non-party
14 Aggrieved Employees underwent the testing and/or examinations for the sole benefit of
15 Defendants. Other non-party Aggrieved Employees were required to travel in their own
16 personal vehicles or obtain alternate transportation and spend time undergoing Defendants'
17 mandatory drug tests and/or physical examinations. However, Defendants did not compensate
18 other non-party Aggrieved Employees for the time they spent traveling to and from the
19 medical facilities and undergoing the mandatory drug testing and/or physical examinations.

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

25 76. Defendants' failure to pay Plaintiffs and other non-party Aggrieved Employees
26 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
27 Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover civil
28 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

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

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

78. At all relevant times herein set forth, California Labor Code section 512(a) provides that 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 a 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).

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

80. At all relevant times herein set forth, 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.

81. First, as stated, during the relevant time period, Defendants had, and continue to have, a company-wide policy and/or practice of understaffing while assigning heavy workloads, including pressure to meet specific sales quotas. Further, Defendants had a company-wide practice of failing to schedule and/or adhere to a schedule of meal periods, resulting in Plaintiffs and other non-party Aggrieved Employees having their meal periods cut short to return to work or waiting extended periods of time before taking meal periods, due to the heavy workload and lack of coverage. Defendants' practices and policies prevented

1 Plaintiffs and other non-party Aggrieved Employees from taking all compliant meal periods to
2 which they were entitled.

3 82. As a result, Plaintiffs and other non-party Aggrieved Employees would be
4 forced to work in excess of five (5) hours before taking a meal period and, at times, had their
5 meal periods cut short and/or had to forgo their meal periods altogether. For example,
6 because the stores were severely understaffed, Plaintiffs missed their meal periods altogether
7 approximately 3-4 times per week and had their meal periods interrupted or cut short
8 regularly, in order to continue making sales to meet Defendants' quotas and maintain
9 customer satisfaction. Additionally, about 1-2 times per week, Plaintiff Fenton took his meal
10 periods late, after the end of his seventh or eighth hour of work, in order to continue assisting
11 clients in-person or over the phone, in an effort to meet the sales quotas imposed by
12 Defendants. Similarly, and for the same reasons, Plaintiff Navarro would take his meal
13 periods late after the end of his sixth or seventh hour of work once or twice per week.

14 83. Second, as stated, on information and belief, because Defendants frowned upon
15 employees accruing meal period penalties, Defendants' management pressured Plaintiffs and
16 other non-party Aggrieved Employees to clock out for meal periods and/or adjusted Plaintiffs'
17 and other non-party Aggrieved Employees' time records to reflect compliant meal periods,
18 regardless of whether they had received a compliant meal period, in order to strictly limit meal
19 penalties that would need to be paid by Defendants. For example, Plaintiffs were required to
20 clock out for their meal periods to record that they had received compliant meal periods on
21 shifts when they had not, in fact, received these timely meal periods. Also, as stated,
22 Defendants' company-wide timekeeping system prevented Plaintiff and other non-party
23 Aggrieved Employees from recording all hours worked when their meal periods were
24 shortened or interrupted, because the system locked out Plaintiffs and other non-party
25 Aggrieved Employees once they clocked out for a meal period, and would not permit them to
26 clock back in from a meal period before 30 minutes had elapsed.

27 84. Moreover, Defendants did not provide Plaintiff Navarro and other non-party
28 Aggrieved Employees with second 30-minute meal periods on days that they worked in excess

1 of ten (10) hours in one day. During his employment, Plaintiff Navarro and other non-party
2 Aggrieved Employees worked shifts in excess of ten (10) or more hours per day but were not
3 provided an uninterrupted second 30-minute meal period. Plaintiffs and other non-party
4 Aggrieved Employees did not sign valid meal period waivers on days that they were entitled
5 to meal periods and were not relieved of all duties.

6 85. At all times mentioned herein, Defendants knew or should have known that as a
7 result of their policies, Plaintiffs and other non-party Aggrieved Employees were not actually
8 relieved of all duties to take timely, uninterrupted meal periods. Defendants further knew or
9 should have known that they did not pay Plaintiffs and other non-party Aggrieved Employees
10 meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

11 86. Furthermore, Defendants engaged in a company-wide practice and/or policy of
12 not paying all meal period premiums owed when compliant meal periods are not provided.
13 Because of this practice and/or policy, Plaintiffs and other non-party Aggrieved Employees
14 have not received premium pay for missed, late, and interrupted meal periods. Alternatively,
15 to the extent that Defendants did pay other non-party Aggrieved Employees for missed, late,
16 and interrupted meal periods, Defendants did not pay other non-party Aggrieved Employees at
17 the correct rate of pay for premiums because Defendants systematically failed to include all
18 forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms
19 of remuneration, in the regular rate of pay.

20 87. Thus, Defendants failed to provide Plaintiffs and other non-party Aggrieved
21 Employees compliant meal periods and failed to pay the full meal period premiums due.
22 Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
23 sections 226.7, 512(a), 516, and 1198. Plaintiffs and other non-party Aggrieved Employees
24 are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
25 2699(a), (f), and (g).

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

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

28 88. At all relevant times herein set forth, the applicable IWC Wage Order and

California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiffs' and other non-party Aggrieved Employees' employment by Defendants.

89. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

90. At all relevant times, 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. 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 v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

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

92. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiffs and other non-party 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, Defendants' company-wide practices, including understaffing and the assignment of heavy workloads and sales quotas, prevented Plaintiffs and other non-party Aggrieved Employees from being relieved of all duty in order to take compliant rest periods. Additionally, Defendants also failed to schedule rest periods which, coupled with Defendants' failure to provide adequate rest period coverage, further led to Plaintiffs and other non-party Aggrieved

1 Employees not being authorized and permitted to take rest periods.

2 93. Furthermore, during the relevant time period, Defendants maintained and
3 implemented a company-wide on-premises rest period policy, which mandated other non-
4 party Aggrieved Employees remain on the work premises during their rest periods. Because
5 other non-party Aggrieved Employees were restricted from leaving the premises during rest
6 periods, they were denied the ability to use their rest periods freely for their own purposes,
7 such as running personal errands. Thus, Defendants effectively maintained control over other
8 non-party Aggrieved Employees during rest periods.

9 94. As a result, Plaintiffs and other non-party Aggrieved Employees would work
10 shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being
11 permitted and authorized to take all ten (10) minute rest periods to which they were entitled.
12 For example, Plaintiff Fenton had to forgo his rest periods altogether due to the heavy
13 workload and pressure to meet sales quotas. As another example, Plaintiff Navarro missed his
14 rest periods at least five (5) times per week because of the heavy workload and lack of
15 coverage. In addition, at least five (5) times per week, Plaintiff Navarro's second rest periods
16 would be interrupted by customers walking into the store and requiring assistance with a
17 purchase or by clients calling in to ask questions.

18 95. Defendants also have engaged in a company-wide practice and/or policy of not
19 paying all rest period premiums owed when compliant rest periods are not authorized and
20 permitted. Because of this practice and/or policy, Plaintiffs and other non-party Aggrieved
21 Employees have not received premium pay for all missed rest periods. Alternatively, to the
22 extent that Defendants did pay other non-party Aggrieved Employees one (1) additional hour
23 of premium pay for missed rest periods, Defendants did not pay other non-party Aggrieved
24 Employees at the correct rate of pay for premiums because Defendants failed to include all
25 forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms
26 of remuneration, in the regular rate of pay.

27 96. Defendants' conduct violates the applicable IWC Wage Order and California
28 Labor Code sections 226.7, 516, and 1198. Plaintiffs and other non-party Aggrieved

1 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
2 558 and/or 2699(a), (f), and (g).

3 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**

4 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

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

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

18 99. Because Defendants did not record the time Plaintiffs and other non-party
19 Aggrieved Employees spent working off-the-clock and deducted time from their records for
20 meal periods that were interrupted and/or missed (and therefore time for which they should
21 have been paid), Defendants did not list the correct amount of gross wages and net wages
22 earned by Plaintiffs and other non-party Aggrieved Employees in compliance with section
23 226(a)(1) and section 226(a)(5), respectively. For the same reason, Defendants failed to
24 accurately list the total number of hours worked by Plaintiffs and other non-party Aggrieved
25 Employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of
26 pay in effect during the pay period and the corresponding accurate number of hours worked at
27 each hourly rate, in violation of section 226(a)(9).

28 100. Additionally, because Defendants did not calculate other non-party Aggrieved

1 Employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal
2 and rest period premiums, Defendants did not list the correct amount of gross wages in
3 compliance with section 226(a)(1). For the same reason, Defendants failed to list the correct
4 amount of net in violation of section 226(a)(5). Defendants also failed to correctly list all
5 applicable hourly rates in effect during the pay period, namely, correct rates of pay for
6 overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

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

15 102. California Labor Code section 1174(d) provides that “[e]very person employing
16 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
17 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
18 plants or establishments at which employees are employed, payroll records showing the hours
19 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
20 applicable piece rate paid to, employees employed at the respective plants or
21 establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500
22 civil penalty if they fail to maintain accurate and complete records as required by section
23 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
24 Defendants willfully failed to maintain accurate payroll records for Plaintiffs and other non-
25 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto
26 as a result of failing to record the off-the-clock hours that they worked.

27 103. California Labor Code section 1198 provides that the maximum hours of work
28 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as

1 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
2 employment of any employees for longer hours than those fixed by the order or under
3 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
4 Wage Order, employers are required to keep accurate time records showing when the
5 employee begins and ends each work period and meal period. Defendants engaged in
6 company-wide practices and/or policies of failing to record actual hours worked (including
7 falsifying time records by recording that compliant meal periods were taken regardless of if or
8 when meal periods were actually taken) and thereby failed to keep accurate records of work
9 period and meal period start and end times for Plaintiffs and other non-party Aggrieved
10 Employees in violation of section 1198. Furthermore, in light of Defendants’ failure to
11 provide Plaintiff Navarro and other non-party Aggrieved Employees with second 30-minute
12 meal periods to which they were entitled, Defendants kept no records of meal start and end
13 times for second meal periods.

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

18 **FAILURE TO PAY WAGES DURING EMPLOYMENT**
19 **VIOLATION OF LABOR CODE SECTION 204**

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

28 106. At all relevant times herein, California Labor Code section 204 also requires

1 that all wages earned for labor in excess of the normal work period shall be paid no later than
2 the payday for the next regular payroll period. Alternatively, at all relevant times herein,
3 Labor Code section 204 provides that the requirements of this section are deemed satisfied by
4 the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
5 more than seven (7) calendar days following the close of the payroll period.

6 107. During the relevant time period, Defendants willfully failed to pay Plaintiffs
7 and other non-party Aggrieved Employees all wages due including, but not limited to,
8 overtime wages, minimum wages, and/or meal and rest period premiums, within the time
9 periods specified by California Labor Code section 204.

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

12 **FAILURE TO PAY WAGES UPON TERMINATION**

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

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

21 110. On information and belief, Defendants have a company-wide practice or policy
22 of paying departing employees their final wages on the next regular pay cycle, instead of
23 adhering to the time requirements set forth in Labor Code sections 201 and 202. For example,
24 Plaintiff Navarro was terminated on March 6, 2021; however, he did not receive his final pay
25 until March 10, 2021. As a further example, Plaintiff Fenton was terminated on March 16,
26 2021; however, he did not receive his final pay until March 18, 2021. Thus, Defendants failed
27 to pay Plaintiffs their final wages immediately, in violation of California Labor Code section
28 201.

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

112. 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 California 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

113. 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.

114. During the relevant time period, Defendants implemented, on a company-wide basis, an employer-imposed requirement that 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 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. However, Defendants did not compensate other non-party 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

1 to and from the medical facilities.

2 115. Defendants' policy and/or practice of not paying for all costs other non-party
3 Aggrieved Employees incurred obtaining mandatory drug testing and/or physical
4 examinations is in violation of California Labor Code section 222.5. Other non-party
5 Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code
6 sections 2699(a), (f), and (g)

7 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

8 **VIOLATION OF LABOR CODE SECTION 2802**

9 116. At all times herein set forth, California Labor Code section 2802 provides that
10 an employer must reimburse employees for all necessary expenditures and losses incurred by
11 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
12 to prevent employers from passing off their cost of doing business and operating expenses on
13 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
14 (2014). The applicable wage order, IWC Wage Order No. 7-2001, provides that: "[w]hen
15 tools or equipment are required by the employer or are necessary to the performance of a job,
16 such tools and equipment shall be provided and maintained by the employer, except that an
17 employee whose wages are at least two (2) times the minimum wage provided herein may be
18 required to provide and maintain hand tools and equipment customarily required by the trade
19 or craft."

20 117. First, during the relevant time period, Defendants had a company-wide policy
21 of requiring Plaintiffs and other non-party Aggrieved Employees to utilize their own personal
22 mobile devices, including cellular phones, and/or mobile data to carry out their job duties, but
23 Defendants failed to reimburse them for the costs of their work-related mobile device
24 expenses. For example, Plaintiffs and other non-party Aggrieved Employees were required to
25 use their personal cellular phones to complete their work-related tasks, such as answering calls
26 from clients for 1-2 hours per day because the store phone lines were too busy or to respond to
27 calls outside of their scheduled shift times. Additionally, Plaintiff Navarro was required to
28 use his personal mobile device to send text messages or emails to clients with pictures of

1 appliance specifications, and Plaintiff Fenton was required to use his device to scan and email
2 documents for 4-5 hours per day. Although Defendants required Plaintiffs and other non-
3 party Aggrieved Employees to utilize their personal mobile devices and/or mobile data to
4 carry out their work-related responsibilities, Defendants failed to reimburse them for this cost.

5 118. Second, during the relevant time period, Defendants, on a company-wide basis,
6 required Plaintiff Navarro and other non-party Aggrieved Employees to wear uniform items
7 which included a black shirt with a company logo, but failed to provide Plaintiff Navarro and
8 other non-party Aggrieved Employees with uniform laundering services or reimburse them for
9 cleaning expenses incurred. Thus, Defendants failed to maintain the uniforms they required
10 Plaintiff Navarro and other non-party Aggrieved Employees to wear during their shifts and
11 forced them to incur the cost of maintaining employee uniforms.

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

25 120. Defendants could have provided Plaintiffs and other non-party Aggrieved
26 Employees with the actual tools required for use on the job, such as company mobile devices
27 and vehicles, as well as access to laundering services. Or, Defendants could have reimbursed
28 employees for their mobile device usage, mileage, travel, and laundering expenses or provided

1 a uniform maintenance allowance. Instead, Defendants passed these operating costs off onto
2 Plaintiffs and other non-party Aggrieved Employees. At all relevant times, Plaintiffs did not
3 earn at least two (2) times the minimum wage.

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

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

10 **REQUEST FOR JURY TRIAL**

11 Plaintiffs request a trial by jury.

12 **PRAYER FOR RELIEF**

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

15 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
16 (\$25,000). Plaintiffs reserve the right to amend their prayer for relief to seek a different
17 amount.

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

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

1 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
2 558, 1174.5, and 2699(a), (f), and (g), for violations of California Labor Code sections 201,
3 202, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and
4 2802;

5 4. For attorneys' fees and costs pursuant to California Labor Code section
6 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
7 Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,
8 1197, 1198, and 2802;

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

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

12
13 Dated: February 24, 2022

Respectfully submitted,

Capstone Law APC

14
15
16 By:



17 Mark A. Ozzello
18 Brandon K. Brouillette
19 John E. Stobart
20 Joseph Hakakian

21 Attorneys for Carlos Fenton and Joel Navarro
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28

EXHIBIT 1

NINEL KOCHARYAN
310.712.8146 Direct
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December 20, 2021

VIA ONLINE SUBMISSION

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

Subject: *Carlos Fenton v. Best Buy Stores, L.P., et al.*

Dear PAGA Administrator:

This office represents Carlos Fenton in connection with his claims under the California Labor Code. Mr. Fenton was an employee of BEST BUY STORES, L.P.; BEST BUY CO., INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS MN BEST BUY CO., INC.; and/or PACIFIC SALES KITCHEN AND BATH CENTERS, LLC. For the purpose of this letter, Mr. Fenton collectively refers to these entities as “BEST BUY.”

The employers may be contacted directly at the addresses below:

BEST BUY STORES, L.P.
7601 PENN AVENUE SOUTH
RICHFIELD MN 55423

BEST BUY CO., INC. WHICH WILL DO BUSINESS
IN CALIFORNIA AS MN BEST BUY CO., INC.
7601 PENN AVENUE S.
RICHFIELD MN 55423

PACIFIC SALES KITCHEN AND BATH
CENTERS, LLC
7601 PENN AVENUE S.
RICHFIELD MN 55423

Mr. Fenton 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. Fenton seeks relief on behalf of himself, the State of California, and other persons who are or were employed by BEST BUY 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.

BEST BUY employed Mr. Fenton as hourly paid, non-exempt employee from approximately September 2004 to March 2021. Mr. Fenton worked for BEST BUY as a Sales Associate at its Pacific Sales store location in Torrance, California. During his employment, Mr. Fenton typically worked eight (8) or more hours per day and five (5) or more days per week. At the time Mr.

Fenton's employment with BEST BUY ended, he earned \$46.58 per hour. His job duties included attending to customers and conducting sales.

BEST BUY committed one or more of the following Labor Code violations against Mr. Fenton, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c):¹

BEST BUY's Company-Wide and Uniform Payroll and HR Practices

BEST BUY STORES L.P. is a Virginia limited partnership; BEST BUY CO., INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS MN BEST BUY CO., INC. is a Minnesota corporation; and PACIFIC SALES KITCHEN AND BATH CENTERS, LLC is a California limited liability company. Together, they operate 21 Pacific Sales Kitchen and Bath Centers store locations in California, offering mid-range to luxury appliances, bathroom fixtures, home furnishings, and an assortment of home electronics and other home improvement products. Upon information and belief, BEST BUY maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Richfield, Minnesota, for all non-exempt, hourly paid employees working for BEST BUY in California, including Mr. Fenton and other aggrieved employees. At all relevant times, BEST BUY issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Fenton and other aggrieved employees, regardless of its location or position.

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

¹ These facts, theories, and claims are based on Mr. Fenton's experience and counsel's review of those records currently available relating to Mr. Fenton'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. Fenton 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.

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

BEST BUY willfully failed to pay all overtime wages owed to Mr. Fenton and other aggrieved employees. During the relevant time period, Mr. Fenton 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 period, BEST BUY had a policy and/or practice of discouraging and impeding Mr. Fenton and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. On information and belief, this limitation on overtime accrual was based on a company-wide policy of staffing store locations strictly based on the labor hours or labor budget set by corporate. This policy of limiting overtime, coupled with BEST BUY's understaffing policy, as well as the assignment of strict deadlines, heavy workloads, and sales quotas (*see infra*), led Mr. Fenton and other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete their assigned tasks. As a result, BEST BUY forced Mr. Fenton and other aggrieved employees to perform work off-the-clock outside of their scheduled shifts, such as responding to phone calls nearly every day from clients and vendors requesting status updates on pending deliveries and making deliveries to clients.

Further, in conjunction with its policy on limiting overtime accrual, BEST BUY had, and continues to have a company-wide policy and/or practice requiring Mr. Fenton and other aggrieved employees to perform various work-related tasks while off-the-clock. For example, Mr. Fenton and other aggrieved employees were required to undergo off-the-clock temperature checks and/or COVID-19 screenings prior to the start of their scheduled shifts, time for which they were not compensated. As a further example, other aggrieved employees were required to drive back to the store after their scheduled shift ended or on their days off in order to address the activation of the store alarm, which required them to unlock the store, conduct an inspection, wait for the police to finish their investigation, lock up, and return home, which would take 2-3 hours per instance. It was not possible for other aggrieved employees to complete all these tasks on the clock because they were required to punch in and out at their scheduled shift start- and end-times, so they would work off-the-clock to conduct these duties. Thus, BEST BUY failed to track this time spent working before and after scheduled shifts, and Mr. Fenton and other aggrieved employees received no or incomplete compensation for this time.

Second, BEST BUY had, and continues to have, a company-wide security policy requiring employees to leave the store premises in pairs and/or groups. On information and belief, after clocking out at the end of their shifts, certain employees were required to wait for coworkers off-the-clock because these employees were responsible for arming and disarming the alarm (*see supra*), and, therefore, had to be the last employees leaving the store. As a result of these security policies and/or practices, other aggrieved employees were subject to BEST BUY's control after they had already clocked out for their shifts, but were not compensated for this time.

Third, as stated, BEST BUY had, and continues to have, a company-wide policy and/or practice of staffing its store locations strictly based on a labor budget set by the corporate office. BEST BUY'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 sales goals, and provide uninterrupted meal

period coverage. In conjunction with understaffing its stores, BEST BUY had a company-wide policy of pressuring Mr. Fenton and other aggrieved employees to maintain a sales quota based on the number of appliances sold. This policy resulted in Mr. Fenton and other aggrieved employees having to remain available for customers' and supervisors' requests at all times in order to meet this quota, by keeping current and potential customers satisfied at all times while selling as much inventory as possible. Furthermore, BEST BUY had a company-wide practice of failing to schedule and/or adhere to a schedule of meal periods, which further caused Mr. Fenton and other aggrieved employees to not be relieved of their duties for compliant meal periods. Thus, these practices and/or policies of requiring employees to meet sales quotas, juggle a heavy workload, and failure to schedule meal periods resulted in Mr. Fenton and other aggrieved employees performing work-related tasks during their meal periods and while off-the-clock.

For example, BEST BUY required Mr. Fenton and other aggrieved employees to continue working through their meal periods to assist customers and continue making sales to meet the sales quotas. As a result, Mr. Fenton completely missed his meal periods three (3) times per week. On the rare occasions when Mr. Fenton was able to take his meal period, it was interrupted by customer inquiries, either in person or over the phone, which Mr. Fenton felt compelled to respond to because of the sales quotas he had to meet. Thus, Mr. Fenton and other aggrieved employees suffered missed and/or interrupted meal periods, work for which they were not paid.

Finally, on information and belief, because BEST BUY frowned upon employees accruing meal period penalties, BEST BUY pressured Mr. Fenton and other aggrieved employees to clock out for meal periods and/or adjusted employee 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 BEST BUY would otherwise owe. Consequently, Mr. Fenton and other aggrieved employees performed work during meal periods for which they were not paid. Furthermore, on information and belief, BEST BUY's company-wide timekeeping system prevented Mr. Fenton and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Fenton and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. Thus, BEST BUY did not record all hours worked during meal periods and Mr. Fenton and other aggrieved employees performed work during meal periods for which they were not paid.

BEST BUY knew or should have known that as a result of these company-wide practices and/or policies, Mr. Fenton and other aggrieved employees were working before and after their shifts and/or during their meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Fenton and other aggrieved employees 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.

Furthermore, BEST BUY did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, BEST BUY paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, BEST BUY 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, BEST BUY failed to pay all overtime wages by paying the hourly rate instead of the regulate rate.

BEST BUY's failure to pay Mr. Fenton and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Fenton 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 IWC 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 above, due to BEST BUY's restrictions on overtime accrual, BEST BUY systematically failed to pay Mr. Fenton and other aggrieved employees for actual hours worked before and after scheduled shifts, because these hours were not accurately recorded. As stated, because BEST BUY discouraged and impeded Mr. Fenton and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, Mr. Fenton and other aggrieved employees were required to work off-the-clock before and/or after their scheduled shift start and end times assisting customers and completing sales, answering calls from clients, making deliveries to clients, handling store alarm duties, and/or undergoing COVID-19 screenings. Additionally, other aggrieved employees spent time waiting for coworkers to complete closing duties to leave the store premises in pairs and/or groups, pursuant to BEST BUY's security policies, but were not compensated for this off-the-clock work.

Furthermore, as set forth above, due to BEST BUY's uniform practice of utilizing labor budgets, understaffing, assignment of heavy workloads, pressure to meet sales quotas, failure to schedule and/or adhere to a schedule of meal periods, and resultant lack of meal period coverage, Mr. Fenton and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock, continuing to make sales and attending to customers and clients. Moreover, as stated, in order to prevent employees from accruing meal period penalties, BEST BUY's management pressured Mr. Fenton and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, but required them to continue working, time for which they were not paid. Also, on information and belief, BEST BUY systematically failed to pay Mr. Fenton and other aggrieved employees for actual hours worked during unpaid meal periods, because BEST BUY's timekeeping system locked out Mr. Fenton and other aggrieved employees for 30 minutes when they clocked out for a meal period. Thus, BEST BUY systematically failed to pay Mr. Fenton and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Moreover, BEST BUY maintained and implemented a company-wide policy of requiring employees to travel to a medical facility on their own time and using their own personal vehicles or alternate transportation to undergo mandatory drug testing and/or physical examinations. At all times, BEST BUY 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. BEST BUY gave other

aggrieved employees strict instructions to undergo drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or examinations for the sole benefit of BEST BUY. Other aggrieved employees were required to travel in their own personal vehicles or obtain alternate transportation and spend time undergoing BEST BUY's mandatory drug tests and/or physical examinations. However, BEST BUY did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities and undergoing the mandatory drug testing and/or physical examinations.

Thus, BEST BUY did not pay at least minimum wages for all hours worked by Mr. Fenton and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, BEST BUY did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, BEST BUY regularly failed to pay at least minimum wages to Mr. Fenton 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. Fenton 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, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (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 set forth above, during the relevant time period, BEST BUY had, and continues to have, a company-wide policy and/or practice of understaffing while assigning heavy workloads, including pressure to meet specific sales quotas. Further, BEST BUY had a company-wide practice of failing to schedule and/or adhere to a schedule of meal periods, resulting in Mr. Fenton and other aggrieved employees having their meal periods cut short to return to work or waiting extended periods of time before taking meal periods, due to the heavy workload and lack of coverage. BEST BUY's practices and policies prevented Mr. Fenton and other aggrieved employees from taking all compliant meal periods to which they were entitled.

As a result, Mr. Fenton and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods cut short and/or had to forgo their meal periods altogether. For example, Mr. Fenton missed his meal periods altogether approximately three (3) times per week and had his meal periods interrupted or cut short regularly, because the stores were severely understaffed, and employees were forced to work through or return early from meal periods, in order to continue making sales to meet BEST BUY's quotas and maintain customer satisfaction. Additionally, about 1-2 times per week, Mr. Fenton took his meal periods late, after the end of his seventh or eighth hour of work, in order to continue assisting clients in-person or over the phone, in an effort to meet the sales quotas imposed by BEST BUY.

Furthermore, as stated, because BEST BUY frowned upon employees accruing meal period penalties, BEST BUY's management pressured Mr. Fenton and other aggrieved employees to clock out for meal periods and/or adjusted Mr. Fenton's and other aggrieved employees' time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that would need to be paid by BEST BUY. For example, Mr. Fenton was required to clock out for his meal period to record that he had received compliant meal periods on shifts when he had not, in fact, received these timely meal periods. Moreover, on information and belief, if Mr. Fenton and other aggrieved employees were not going to be able to clock out for their meal periods in timely fashion due to their heavy workload, management instructed employees not to clock out at all and, instead, allow management to input the times to appear as though compliant meal periods had been provided. Also, as stated, BEST BUY's company-wide timekeeping system prevented Mr. Fenton and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Fenton and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed.

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

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

Furthermore, BEST BUY 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, Mr. Fenton and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that BEST BUY did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, BEST BUY did not pay other aggrieved employees at the correct rate of pay for premiums because BEST BUY 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, BEST BUY failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Fenton 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, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (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, BEST BUY regularly failed to authorize and permit Mr. Fenton 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, BEST BUY's company-wide practices, including understaffing and the assignment of heavy workloads and sales quotas, prevented Mr. Fenton and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. Additionally, BEST BUY also failed to schedule rest periods which, coupled with BEST BUY's failure to provide adequate rest period coverage, further led to Mr. Fenton and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, during the relevant time period, BEST BUY maintained and implemented a company-wide on-premises rest period policy, which mandated other aggrieved employees remain on the work premises during their rest periods. Because other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, BEST BUY effectively maintained control over other aggrieved employees during rest periods.

As a result, Mr. Fenton and other aggrieved employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being permitted and authorized to take all ten (10) minute rest periods to which they were entitled. For example, Mr. Fenton had to forgo his rest periods altogether due to the heavy workload and pressure to meet sales quotas.

BEST BUY 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. Fenton and other aggrieved employees have not received all premium pay for missed, interrupted, or late rest periods. Alternatively, to the extent that BEST BUY did pay

other aggrieved employees one (1) additional hour of premium pay for missed rest periods, BEST BUY did not pay other aggrieved employees at the correct rate of pay for premiums because BEST BUY 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, BEST BUY failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Fenton 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. 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, BEST BUY has knowingly and intentionally provided Mr. Fenton and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, BEST BUY issued uniform wage statements to Mr. Fenton and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, BEST BUY violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

First, because BEST BUY did not record the time Mr. Fenton and other aggrieved employees spent working off-the-clock and deducted time from their meal periods that were missed and/or interrupted (and therefore time for which they should have been paid), BEST BUY did not list the correct amount of gross wages and net wages earned by Mr. Fenton and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, BEST BUY failed to accurately list the total number of hours worked by Mr. Fenton 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 BEST BUY did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, BEST BUY did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, BEST BUY also failed to list the correct amount of net wages in violation of section 226(a)(5). BEST BUY also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

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 inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; 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), BEST BUY willfully failed to maintain accurate payroll records for Mr. Fenton 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 Order. 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, BEST BUY engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying 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 work period and meal period start and end times for Mr. Fenton and other aggrieved employees in violation of section 1198. Furthermore, in light of BEST BUY’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, BEST BUY kept no records of meal start and end times for second meal periods.

Because BEST BUY failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Fenton 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. Fenton 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. Fenton 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, BEST BUY failed to pay Mr. Fenton 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.

Mr. Fenton 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 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 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, BEST BUY 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. Fenton was terminated on March 16, 2021; however, he did not receive his final pay until March 18, 2021. Thus, BEST BUY failed to pay Mr. Fenton his final wages immediately, in violation of California Labor Code section 201.

Additionally, BEST BUY willfully failed to pay Mr. Fenton and other aggrieved employees who are no longer employed by BEST BUY all their earned wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving BEST BUY's employ.

Mr. Fenton 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, BEST BUY 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, BEST BUY 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, BEST BUY 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, BEST BUY 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. BEST BUY'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 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 § 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 No. 7-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

First, during the relevant time period, BEST BUY had a company-wide policy of requiring Mr. Fenton and other aggrieved employees to utilize their own personal mobile devices, including cellular phones, and/or mobile data to carry out their job duties, but BEST BUY failed to reimburse them for the costs of their work-related mobile device expenses. For example, Mr. Fenton and other aggrieved employees were required to use their personal cellular phones to complete their work-related tasks, such as answering calls from clients for 1-2 hours per day because the store phone lines were too busy or to respond to calls coming in before or after their scheduled shift times. Further, Mr. Fenton was required to use his personal mobile device to scan and email work-related documents for 4-5 hours per day, and other aggrieved employees were required to use their devices to send text messages or emails to clients with pictures of appliance specifications. Although BEST BUY required Mr. Fenton and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, BEST BUY failed to reimburse them for this cost.

Second, during the relevant time period, BEST BUY, on a company-wide basis, required other aggrieved employees to wear uniform items which included a black shirt with a company logo, but failed to provide other aggrieved employees with uniform laundering services or reimburse them for cleaning expenses incurred. Thus, BEST BUY failed to maintain the uniforms they required other

aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

Third, as stated, BEST BUY 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 obtain 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, BEST BUY 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. BEST BUY gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or physical examinations for the sole benefit of BEST BUY. Although BEST BUY required other aggrieved employees to use their own vehicles or obtain alternate transportation to undergo drug testing and/or physical examinations, BEST BUY never reimbursed them for their travel expenses.

BEST BUY could have provided Mr. Fenton and other aggrieved employees with the actual tools required for use on the job, such as company mobile devices and vehicles, as well as access to laundering services. Or, BEST BUY could have reimbursed employees for their mobile device usage, mileage, travel, and laundering expenses or provided a uniform maintenance allowance. Instead, BEST BUY passed these operating costs off onto Mr. Fenton and other aggrieved employees.

Thus, BEST BUY 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. Fenton 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).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

BEST BUY failed to provide other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). BEST BUY's failure to provide other aggrieved employees with written notice of basic information regarding their employment with BEST BUY is in violation of Labor Code section 2810.5.

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

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.” BEST BUY, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Fenton's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Fenton 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 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Fenton, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against BEST BUY for violations of California Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Fenton 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. Fenton's reasonable attempt to settle his dispute with BEST BUY prior to litigation. Pursuant to *Graham v. Daimler Chrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform BEST BUY of Mr. Fenton's aforementioned grievances and the proposed remedies as detailed below, while affording BEST BUY a reasonable opportunity to satisfy Mr. Fenton's demands.

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

1. BEST BUY shall pay Mr. Fenton and all other aggrieved employees employed by BEST BUY at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. BEST BUY 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. BEST BUY shall conduct a survey or interview all current and former aggrieved employees in California who worked for BEST BUY 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 mandatory medical examinations, travel expenses, mileage, mobile device expenses, uniform maintenance, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.

4. BEST BUY 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(a), 516, and 1198. BEST BUY 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. BEST BUY shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for BEST BUY's benefit, including, but not limited to, costs of mandatory medical examinations, travel expenses, mileage, mobile device expenses, and uniform maintenance, as required by Labor Code sections 222.5 and 2802.
6. BEST BUY shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. BEST BUY shall provide Mr. Fenton and all aggrieved employees employed by BEST BUY 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. BEST BUY shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
9. BEST BUY 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. BEST BUY 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, 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:

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

Best Regards,

A handwritten signature in black ink, appearing to read "Ninel", is placed over a light gray rectangular background.

Ninel Kocharyan

Copy: BEST BUY STORES, L.P. (via U.S. Certified Mail); BEST BUY CO., INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS MN BEST BUY CO., INC. (via U.S. Certified Mail); PACIFIC SALES KITCHEN AND BATH CENTERS, LLC (via U.S. Certified Mail)

EXHIBIT 2



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

NINEL KOCHARYAN
310.712.8146 Direct
Ninel.Kocharyan@capstonelawyers.com

December 20, 2021

VIA ONLINE SUBMISSION

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

Subject: *Joel Navarro v. Best Buy Stores, L.P., et al.*

Dear PAGA Administrator:

This office represents Joel Navarro in connection with his claims under the California Labor Code. Mr. Navarro was an employee of BEST BUY STORES, L.P.; BEST BUY CO., INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS MN BEST BUY CO., INC.; and/or PACIFIC SALES KITCHEN AND BATH CENTERS, LLC. For the purpose of this letter, Mr. Navarro collectively refers to these entities as "BEST BUY."

The employers may be contacted directly at the addresses below:

BEST BUY STORES, L.P.
7601 PENN AVENUE SOUTH
RICHFIELD MN 55423

BEST BUY CO., INC. WHICH WILL DO BUSINESS
IN CALIFORNIA AS MN BEST BUY CO., INC.
7601 PENN AVENUE S.
RICHFIELD MN 55423

PACIFIC SALES KITCHEN AND BATH
CENTERS, LLC
7601 PENN AVENUE S.
RICHFIELD MN 55423

Mr. Navarro 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. Navarro seeks relief on behalf of himself, the State of California, and other persons who are or were employed by BEST BUY 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.

BEST BUY employed Mr. Navarro as hourly paid, non-exempt employee from approximately April 2008 to March 2021. Mr. Navarro worked for BEST BUY as a Plumbing Specialist and then as a Plumbing Manager at its Pacific Sales store location in Irvine, California. During his employment, Mr. Navarro typically worked eight (8) or more hours per day and five (5) or more days per week.

At the time Mr. Navarro's employment with BEST BUY ended, he earned \$28.00 per hour. His job duties included conducting sales; maintaining the showroom premises; reviewing financial goals; managing deliveries, sales, and complaints; and tracking product.

BEST BUY committed one or more of the following Labor Code violations against Mr. Navarro, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c):¹

BEST BUY's Company-Wide and Uniform Payroll and HR Practices

BEST BUY STORES L.P. is a Virginia limited partnership; BEST BUY CO., INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS MN BEST BUY CO., INC. is a Minnesota corporation; and PACIFIC SALES KITCHEN AND BATH CENTERS, LLC is a California limited liability company. Together, they operate 21 Pacific Sales Kitchen and Bath Centers store locations in California, offering mid-range to luxury appliances, bathroom fixtures, home furnishings, and an assortment of home electronics and other home improvement products. Upon information and belief, BEST BUY maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Richfield, Minnesota, for all non-exempt, hourly paid employees working for BEST BUY in California, including Mr. Navarro and other aggrieved employees. At all relevant times, BEST BUY issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Navarro and other aggrieved employees, regardless of its location or position.

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

¹ These facts, theories, and claims are based on Mr. Navarro's experience and counsel's review of those records currently available relating to Mr. Navarro'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. Navarro 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.

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

BEST BUY willfully failed to pay all overtime wages owed to Mr. Navarro and other aggrieved employees. During the relevant time period, Mr. Navarro 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 period, BEST BUY had a policy and/or practice of discouraging and impeding Mr. Navarro and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. On information and belief, this limitation on overtime accrual was based on a company-wide policy of staffing store locations strictly based on the labor hours or labor budget set by corporate. This policy of limiting overtime, coupled with BEST BUY's understaffing policy, as well as the assignment of strict deadlines, heavy workloads, and sales quotas (*see infra*), led Mr. Navarro and other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete their assigned tasks. As a result, BEST BUY forced Mr. Navarro and other aggrieved employees to perform work off-the-clock outside of their scheduled shifts, such as responding to phone calls nearly every day from clients and vendors requesting status updates on pending deliveries and making deliveries to clients.

Further, in conjunction with its policy on limiting overtime accrual, BEST BUY had, and continues to have a company-wide policy and/or practice requiring Mr. Navarro and other aggrieved employees to perform various work-related tasks while off-the-clock. For example, a few times throughout his employment, Mr. Navarro was required to drive back to the store after his scheduled shift ended or on his days off in order to address the activation of the store alarm, which required him to unlock the store, conduct an inspection, wait for the police to finish their investigation, lock up, and return home, which would take 2-3 hours per instance. It was not possible for Mr. Navarro to complete all these tasks on the clock because he was required to punch in and out at his scheduled shift start- and end-time, so he would work off-the-clock to conduct these duties. As a further example, other aggrieved employees were required to undergo off-the-clock temperature checks and/or COVID-19 screenings prior to the start of their scheduled shifts, time for which they were not compensated. Thus, BEST BUY failed to track this time spent working before and after scheduled shifts, and Mr. Navarro and other aggrieved employees received no or incomplete compensation for this time.

Second, BEST BUY had, and continues to have, a company-wide security policy requiring employees to leave the store premises in pairs and/or groups. On information and belief, after clocking out at the end of his shifts, Mr. Navarro was required to wait for other employees off-the-clock because he was responsible for arming and disarming the alarm (*see supra*), and, therefore, had to be the last employee leaving the store. As a result of these security policies and/or practices, Mr. Navarro and other aggrieved employees were subject to BEST BUY's control after they had already clocked out for their shifts, but were not compensated for this time.

Third, as stated, BEST BUY had, and continues to have, a company-wide policy and/or practice of staffing its store locations strictly based on a labor budget set by the corporate office. BEST BUY'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 sales goals, and provide uninterrupted meal period coverage. In conjunction with understaffing its stores, BEST BUY had a company-wide

policy of pressuring Mr. Navarro and other aggrieved employees to maintain a sales quota based on the number of appliances sold. This policy resulted in Mr. Navarro and other aggrieved employees having to remain available for customers' and supervisors' requests at all times in order to meet this quota, by keeping current and potential customers satisfied at all times while selling as much inventory as possible. Furthermore, BEST BUY had a company-wide practice of failing to schedule and/or adhere to a schedule of meal periods, which further caused Mr. Navarro and other aggrieved employees to not be relieved of their duties for compliant meal periods. Thus, these practices and/or policies of requiring employees to meet sales quotas, juggle a heavy workload, and failure to schedule meal periods resulted in Mr. Navarro and other aggrieved employees performing work-related tasks during their meal periods and while off-the-clock.

For example, BEST BUY required Mr. Navarro and other aggrieved employees to continue working through their meal periods to assist customers and continue making sales to meet the sales quotas. As a result, Mr. Navarro completely missed his meal periods 3-4 times per week. On the rare occasions when Mr. Navarro was able to take his meal period, it was interrupted by customer inquiries, either in person or over the phone, which Mr. Navarro felt compelled to respond to because of the sales quotas he had to meet. Thus, Mr. Navarro and other aggrieved employees suffered missed and/or interrupted meal periods, work for which they were not paid.

Finally, on information and belief, because BEST BUY frowned upon employees accruing meal period penalties, BEST BUY pressured Mr. Navarro and other aggrieved employees to clock out for meal periods and/or adjusted employee 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 BEST BUY would otherwise owe. Consequently, Mr. Navarro and other aggrieved employees performed work during meal periods for which they were not paid. Furthermore, on information and belief, BEST BUY's company-wide timekeeping system prevented Mr. Navarro and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Navarro and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. Thus, BEST BUY did not record all hours worked during meal periods and Mr. Navarro and other aggrieved employees performed work during meal periods for which they were not paid.

BEST BUY knew or should have known that as a result of these company-wide practices and/or policies, Mr. Navarro and other aggrieved employees were working before and after their shifts and/or during their meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Navarro and other aggrieved employees 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.

Furthermore, BEST BUY did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, BEST BUY paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, BEST BUY 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, BEST BUY failed to pay all overtime wages by paying the hourly rate instead of the regulate rate.

BEST BUY's failure to pay Mr. Navarro and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Navarro 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 IWC 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 above, due to BEST BUY's restrictions on overtime accrual, BEST BUY systematically failed to pay Mr. Navarro and other aggrieved employees for actual hours worked before and after scheduled shifts, because these hours were not accurately recorded. As stated, because BEST BUY discouraged and impeded Mr. Navarro and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, Mr. Navarro and other aggrieved employees were required to work off-the-clock before and/or after their scheduled shift start and end times assisting customers and completing sales, answering calls from clients, making deliveries to clients, handling store alarm duties, and/or undergoing COVID-19 screenings. Additionally, Mr. Navarro and other aggrieved employees spent time waiting for other employees to complete closing duties to leave the store premises in pairs and/or groups, pursuant to BEST BUY's security policies, but were not compensated for this off-the-clock work.

Furthermore, as set forth above, due to BEST BUY's uniform practice of utilizing labor budgets, understaffing, assignment of heavy workloads, pressure to meet sales quotas, failure to schedule and/or adhere to a schedule of meal periods, and resultant lack of meal period coverage, Mr. Navarro and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock, continuing to make sales and attending to customers and clients. Moreover, as stated, in order to prevent employees from accruing meal period penalties, BEST BUY's management pressured Mr. Navarro and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, but required them to continue working, time for which they were not paid. Also, on information and belief, BEST BUY systematically failed to pay Mr. Navarro and other aggrieved employees for actual hours worked during unpaid meal periods, because BEST BUY's timekeeping system locked out Mr. Navarro and other aggrieved employees for 30 minutes when they clocked out for a meal period. Thus, BEST BUY systematically failed to pay Mr. Navarro and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

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

Thus, BEST BUY did not pay at least minimum wages for all hours worked by Mr. Navarro and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, BEST BUY did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, BEST BUY regularly failed to pay at least minimum wages to Mr. Navarro 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. Navarro 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, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (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 set forth above, during the relevant time period, BEST BUY had, and continues to have, a company-wide policy and/or practice of understaffing while assigning heavy workloads, including pressure to meet specific sales quotas. Further, BEST BUY had a company-wide practice of failing to schedule and/or adhere to a schedule of meal periods, resulting in Mr. Navarro and other aggrieved employees having their meal periods cut short to return to work or waiting extended periods of time before taking meal periods, due to the heavy workload and lack of coverage. BEST BUY's practices and policies prevented Mr. Navarro and other aggrieved employees from taking all compliant meal periods to which they were entitled.

As a result, Mr. Navarro and other aggrieved employees would be forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods cut short and/or had to forgo their meal periods altogether. For example, Mr. Navarro missed his meal periods altogether approximately three (3) times per week and had his meal periods interrupted or cut short regularly, because the stores were severely understaffed, and employees were forced to work through or return early from meal periods, in order to continue making sales to meet BEST BUY's quotas and maintain customer satisfaction. Additionally, about 1-2 times per week, Mr. Navarro took his meal periods late, after the end of his sixth or seventh hour of work, in order to continue assisting clients in-person or over the phone, in an effort to meet the sales quotas imposed by BEST BUY.

Furthermore, as stated, because BEST BUY frowned upon employees accruing meal period penalties, BEST BUY's management pressured Mr. Navarro and other aggrieved employees to clock out for meal periods and/or adjusted Mr. Navarro's and other aggrieved employees' time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that would need to be paid by BEST BUY. For example, Mr. Navarro was required to clock out for his meal period to record that he had received compliant meal periods on shifts when he had not, in fact, received these timely meal periods. Moreover, on information and belief, if Mr. Navarro and other aggrieved employees were not going to be able to clock out for their meal periods in timely fashion due to their heavy workload, management instructed employees not to clock out at all and, instead, allow management to input the times to appear as though compliant meal periods had been provided. Also, as stated, BEST BUY's company-wide timekeeping system prevented Mr. Navarro and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Navarro and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed.

Moreover, BEST BUY did not provide Mr. Navarro and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During his employment, Mr. Navarro and other aggrieved employees worked shifts in excess of ten (10) or more hours per day but were not provided an uninterrupted second 30-minute meal period. Mr. Navarro 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.

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

Furthermore, BEST BUY 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, Mr. Navarro and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that BEST BUY did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, BEST BUY did not pay other aggrieved employees at the correct rate of pay for premiums because BEST BUY 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, BEST BUY failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Navarro 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, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (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, BEST BUY regularly failed to authorize and permit Mr. Navarro 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, BEST BUY's company-wide practices, including understaffing and the assignment of heavy workloads and sales quotas, prevented Mr. Navarro and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. Additionally, BEST BUY also failed to schedule rest periods which, coupled with BEST BUY's failure to provide adequate rest period coverage, further led to Mr. Navarro and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, during the relevant time period, BEST BUY maintained and implemented a company-wide on-premises rest period policy, which mandated other aggrieved employees remain on the work premises during their rest periods. Because other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, BEST BUY effectively maintained control over other aggrieved employees during rest periods.

As a result, Mr. Navarro and other aggrieved employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being permitted and authorized to take all ten (10) minute rest periods to which they were entitled. For example, Mr. Navarro missed rest periods at least five (5) times per week because of the heavy workload and lack of coverage. In addition, at least five (5) times per week, his second rest periods would be interrupted by customers walking into the store and requiring assistance with a purchase or by clients calling in to ask questions.

BEST BUY 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. Navarro and other aggrieved employees have not received all premium pay for missed, interrupted, or late rest periods. Alternatively, to the extent that BEST BUY did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, BEST BUY did not pay other aggrieved employees at the correct rate of pay for premiums because BEST BUY 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, BEST BUY failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Navarro 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. 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, BEST BUY has knowingly and intentionally provided Mr. Navarro and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, BEST BUY issued uniform wage statements to Mr. Navarro and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, BEST BUY violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

First, because BEST BUY did not record the time Mr. Navarro and other aggrieved employees spent working off-the-clock and deducted time from their meal periods that were missed and/or interrupted (and therefore time for which they should have been paid), BEST BUY did not list the correct amount of gross wages and net wages earned by Mr. Navarro and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, BEST BUY failed to accurately list the total number of hours worked by Mr. Navarro 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 BEST BUY did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, BEST BUY

did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, BEST BUY also failed to list the correct amount of net wages in violation of section 226(a)(5). BEST BUY also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

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 inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; 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), BEST BUY willfully failed to maintain accurate payroll records for Mr. Navarro 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 Order. 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, BEST BUY engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying 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 work period and meal period start and end times for Mr. Navarro and other aggrieved employees in violation of section 1198. Furthermore, in light of BEST BUY’s failure to provide Mr. Navarro and other aggrieved employees with second 30-minute meal periods to which they were entitled, BEST BUY kept no records of meal start and end times for second meal periods.

Because BEST BUY failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Navarro 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. Navarro 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. Navarro 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, BEST BUY failed to pay Mr. Navarro 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.

Mr. Navarro 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 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 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, BEST BUY 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. Navarro was terminated on March 6, 2021; however, he did not receive his final pay until March 10, 2021. Thus, BEST BUY failed to pay Mr. Navarro his final wages immediately, in violation of California Labor Code section 201.

Additionally, BEST BUY willfully failed to pay Mr. Navarro and other aggrieved employees who are no longer employed by BEST BUY all their earned wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving BEST BUY's employ.

Mr. Navarro 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, BEST BUY 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, BEST BUY 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, BEST BUY 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, BEST BUY 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. BEST BUY'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 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 § 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 No. 7-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

First, during the relevant time period, BEST BUY had a company-wide policy of requiring Mr. Navarro and other aggrieved employees to utilize their own personal mobile devices, including cellular phones, and/or mobile data to carry out their job duties, but BEST BUY failed to reimburse them for the costs of their work-related mobile device expenses. For example, Mr. Navarro and other aggrieved employees were required to use their personal cellular phones to complete their work-related tasks, such as answering calls from clients for 1-2 hours per day because the store phone lines were too busy or to respond to calls coming in before or after their scheduled shift times. Additionally, Mr. Navarro was required to use his personal mobile device to send text messages or emails to clients with pictures of appliance specifications, and other aggrieved employees were required to use their devices to scan and email documents for 4-5 hours per day. Although BEST BUY required Mr. Navarro and other aggrieved employees to utilize their personal mobile devices

and/or mobile data to carry out their work-related responsibilities, BEST BUY failed to reimburse them for this cost.

Second, during the relevant time period, BEST BUY, on a company-wide basis, required Mr. Navarro and other aggrieved employees to wear uniform items which included a black shirt with a company logo, but failed to provide Mr. Navarro and other aggrieved employees with uniform laundering services or reimburse them for cleaning expenses incurred. Thus, BEST BUY failed to maintain the uniforms they required Mr. Navarro and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

Third, as stated, BEST BUY 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 obtain 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, BEST BUY 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. BEST BUY gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or physical examinations for the sole benefit of BEST BUY. Although BEST BUY required other aggrieved employees to use their own vehicles or obtain alternate transportation to undergo drug testing and/or physical examinations, BEST BUY never reimbursed them for their travel expenses.

BEST BUY could have provided Mr. Navarro and other aggrieved employees with the actual tools required for use on the job, such as company mobile devices and vehicles, as well as access to laundering services. Or, BEST BUY could have reimbursed employees for their mobile device usage, mileage, travel, and laundering expenses or provided a uniform maintenance allowance. Instead, BEST BUY passed these operating costs off onto Mr. Navarro and other aggrieved employees.

Thus, BEST BUY 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. Navarro 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).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the

use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

BEST BUY failed to provide other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). BEST BUY's failure to provide other aggrieved employees with written notice of basic information regarding their employment with BEST BUY is in violation of Labor Code section 2810.5.

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

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." BEST BUY, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Navarro's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Navarro 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 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Navarro, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against BEST BUY for violations of California Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Navarro 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. Navarro's reasonable attempt to settle his dispute with BEST BUY prior to litigation. Pursuant to *Graham v. Daimler Chrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform BEST BUY of Mr. Navarro's aforementioned grievances and the proposed remedies as detailed below, while affording BEST BUY a reasonable opportunity to satisfy Mr. Navarro's demands.

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

1. BEST BUY shall pay Mr. Navarro and all other aggrieved employees employed by BEST BUY at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. BEST BUY 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. BEST BUY shall conduct a survey or interview all current and former aggrieved employees in California who worked for BEST BUY 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 mandatory medical examinations, travel expenses, mileage, mobile device expenses, uniform maintenance, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. BEST BUY 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(a), 516, and 1198. BEST BUY 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. BEST BUY shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for BEST BUY's benefit, including, but not limited to, costs of mandatory medical examinations, travel expenses, mileage, mobile device expenses, and uniform maintenance, as required by Labor Code sections 222.5 and 2802.
6. BEST BUY shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. BEST BUY shall provide Mr. Navarro and all aggrieved employees employed by BEST BUY 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. BEST BUY shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
9. BEST BUY 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. BEST BUY 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, 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:

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

Best Regards,

A handwritten signature in black ink, appearing to read "Ninel", is shown on a light-colored background.

Ninel Kocharyan

Copy: BEST BUY STORES, L.P. (via U.S. Certified Mail); BEST BUY CO., INC. WHICH WILL DO BUSINESS IN CALIFORNIA AS MN BEST BUY CO., INC. (via U.S. Certified Mail); PACIFIC SALES KITCHEN AND BATH CENTERS, LLC (via U.S. Certified Mail)