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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

MARNESHAY BELL, on behalf of the  
State of California, pursuant to the Private  
Attorneys General Act ("PAGA"),

Plaintiff,

vs.

GUESS? RETAIL, INC., a Delaware  
corporation; and DOES 1 through 100,  
inclusive,

Defendants.

Case No.: 22STCV07512

**PAGA ENFORCEMENT ACTION**

**SECOND AMENDED COMPLAINT**

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

**Jury Trial Demanded**

1 Plaintiff, on behalf of the State of California as set forth herein, alleges as follows:

2 **JURISDICTION AND VENUE**

3 1. This is an enforcement action under the Labor Code Private Attorneys General  
4 Act of 2004, California Labor Code section 2698 et seq. (“PAGA”) to recover civil penalties  
5 on behalf of the State of California, resulting from violations of any provision in Division 2  
6 Part 2 Chapter 1 of the Labor Code or any provision regulating hours and days of work in the  
7 applicable Industrial Welfare Commission (“IWC”) Wage Order were committed against  
8 aggrieved employees who worked for Defendants in California at a retail store location, as set  
9 forth in this complaint, at any time between one year prior to the filing of Plaintiff’s delivery  
10 by certified mail to the LWDA and Defendants of the specific provisions of the California  
11 Labor Code alleged to have been violated until judgment (“Aggrieved Employees”).

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

15 3. This Court has jurisdiction over all Defendants because, upon information and  
16 belief, Defendants are either citizens of California, have sufficient minimum contacts in  
17 California, or otherwise intentionally avail themselves of the California market so as to render  
18 the exercise of jurisdiction over them by the California courts consistent with traditional  
19 notions of fair play and substantial justice.

20 4. Venue is proper in this Court in this Court, because Defendants employ persons  
21 in this county and thus a substantial portion of the transactions and occurrences related to this  
22 action occurred in this county.

23 5. California Labor Code sections 2698 *et seq.*, the “Labor Code Private Attorneys  
24 General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private attorneys  
25 general for various civil penalties for violating the California Labor Code.

26 **THE PARTIES**

27 6. Plaintiff Marneshay Bell is a resident of the State of California.

28 7. Defendant Guess? Retail, Inc. (erroneously named as “Guess?, Inc. in

1 Plaintiff's initial Complaint, hereafter referred to as "Guess?") was and is, upon information  
2 and belief, a Delaware corporation doing business in California and, at all times hereinafter  
3 mentioned, an employer whose employees are engaged throughout this county, the State of  
4 California, or the various states of the United States of America.

5 8. Plaintiff is unaware of the true names or capacities of the Defendants sued  
6 herein under the fictitious names DOES 1 through 100 but will seek leave of this Court to  
7 amend the complaint and serve such fictitiously named Defendants once their names and  
8 capacities become known.

9 9. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through  
10 100 are the partners, agents, owners, shareholders, managers or employees of Guess? at all  
11 relevant times.

12 10. Plaintiff is informed and believes, and thereon alleges, that each and all of the  
13 acts and omissions alleged herein were performed by, or are attributable to, Guess? and/or  
14 Does 1 through 100 (collectively "Defendants"), each acting as the agent, employee, alter ego,  
15 and/or joint venturer of, or working in concert with, each of the other co-Defendants and was  
16 acting within the course and scope of such agency, employment, joint venture, or concerted  
17 activity with legal authority to act on the others' behalf. The acts of any and all Defendants  
18 represent and were in accordance with Defendants' official policy.

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

23 12. Plaintiff is informed and believes, and thereon alleges, that each of said  
24 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,  
25 omissions, occurrences, and transactions alleged herein.

#### 26 **GENERAL ALLEGATIONS**

27 13. Defendants operate retail clothing stores in various locations throughout the  
28 State of California.

1           14. Defendants employed Plaintiff as a non-exempt, hourly-paid employee, in its  
2 multiple California retail stores through approximately May of 2021.

3           15. Defendants continue to employ non-exempt, hourly-paid employees in various  
4 locations throughout their retail store locations in California.

5           16. Plaintiff is informed and believes, and thereon alleges, that at all times herein  
6 mentioned, Defendants were advised by skilled lawyers and other professionals, employees  
7 and advisors knowledgeable about California labor and wage law, employment and personnel  
8 practices, and about the requirements of California law.

9           17. Plaintiff is informed and believes, and thereon alleges, that employees were not  
10 paid for all hours worked because all hours worked were not recorded.

11           18. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
12 should have known that Plaintiff and Aggrieved Employees were entitled to receive certain  
13 wages for overtime compensation and that they were not receiving certain wages for overtime  
14 compensation.

15           19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
16 should have known that Plaintiff and Aggrieved Employees were entitled to receive at least  
17 minimum wages for compensation and that, in violation of the California Labor Code, they  
18 were not receiving at least minimum wages for work done off-the-clock.

19           20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
20 should have known that Plaintiff and Aggrieved Employees were entitled to receive all meal  
21 periods or payment of one (1) additional hour of pay at Plaintiff and Aggrieved Employees'  
22 regular rate of pay when they did not receive a timely, uninterrupted meal period, and that  
23 they did not receive all meal periods or payment of one (1) additional hour of pay at Plaintiff  
24 and Aggrieved Employees' regular rate of pay when they did not receive a timely,  
25 uninterrupted meal period.

26           21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
27 should have known that Plaintiff and Aggrieved Employees were entitled to receive all rest  
28 periods or payment of one (1) additional hour of pay at Plaintiff and Aggrieved Employees'

1 regular rate of pay when a rest period was missed, and that they did not receive all rest periods  
2 or payment of one (1) additional hour of pay at Plaintiff and Aggrieved Employees' regular  
3 rate of pay when a rest period was missed.

4 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
5 should have known that Plaintiff and Aggrieved Employees were entitled to receive complete  
6 and accurate wage statements in accordance with California law. In violation of the California  
7 Labor Code, Plaintiff and Aggrieved Employees were not provided with complete and  
8 accurate wage statements.

9 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
10 should have known that Plaintiff and Aggrieved Employees were entitled to timely payment  
11 of wages during their employment. In violation of the California Labor Code, Plaintiff and  
12 Aggrieved Employees did not receive payment of all wages, including, but not limited to meal  
13 and rest period premium wages, within permissible time periods.

14 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
15 should have known that terminated Aggrieved Employees were entitled to timely payment of  
16 wages upon termination. In violation of the California Labor Code, terminated Aggrieved  
17 Employees did not receive payment of all wages within permissible time periods.

18 25. Plaintiff is informed and believes, and thereon alleges, that at all times herein  
19 mentioned, Defendants knew or should have known that they had a duty to compensate  
20 Plaintiff and Aggrieved Employees, and that Defendants had the financial ability to pay such  
21 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely  
22 represented to Plaintiff and Aggrieved Employees that they were properly denied wages, all in  
23 order to increase Defendants' profits.

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

1           27.    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           28.    Plaintiff 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           29.    Pursuant to Labor Code sections 2699.3(a) and 2699.5, aggrieved employees,  
8 including Plaintiff, may pursue a civil action arising under PAGA after the following  
9 requirements have been met:

10                   (a)       The aggrieved employee shall give written notice by certified mail  
11                               (hereinafter “Employee’s Notice”) to the LWDA and the employer of  
12                               the specific provisions of the California Labor Code alleged to have  
13                               been violated, including the facts and theories to support the alleged  
14                               violation.

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

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

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

6 (b) The employer may cure the alleged violation within 65 calendar days  
7 of the postmark date of the notice. The employer shall give written  
8 notice by certified mail within that period of time to the aggrieved  
9 employee or representative and the agency if the alleged violation is  
10 cured, including a description of actions taken, and no civil action  
11 pursuant to Section 2699 may commence. If the alleged violation is  
12 not cured within the 65-day period, the employee may commence a  
13 civil action pursuant to Section 2699.

14 31. On December 6, 2021, Plaintiff provided written notice by certified mail to the  
15 LWDA and Defendants of the specific provisions of the California Labor Code alleged to  
16 have been violated, including facts and theories to support the alleged violations, in  
17 accordance with California Labor Code section 2699.3.

18 32. As of the filing date of this amended complaint, over 65 days have passed since  
19 Plaintiff sent the LWDA Notice described above, and the LWDA has not responded that it  
20 intends to investigate Plaintiff's claims and Defendants have not responded that they have  
21 cured the violations. Thus, Plaintiff has satisfied the administrative prerequisites under  
22 California Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against  
23 Defendants, in addition to other remedies, for violations of California Labor Code sections  
24 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1174(d), 1194, 1197, 1197.1 and 1198.

25 33. Labor Code section 558(a) provides "[a]ny employer or other person acting on  
26 behalf of an employer who violates, or causes to be violated, a section of this chapter or any  
27 provision regulating hours and days of work in any order of the Industrial Welfare  
28 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty

1 dollars (\$50) for each underpaid employee for each pay period for which the employee was  
2 underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each  
3 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay  
4 period for which the employee was underpaid in addition to an amount sufficient to recover  
5 underpaid wages.

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

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

12 36. Pursuant to PAGA, and in particular California Labor Code sections 2699(a),  
13 2699.3, 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney  
14 general, seeks assessment and collection of civil penalties for violations of California Labor  
15 Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1174(d), 1194, 1197, 1197.1 and  
16 1198.

## 17 **FIRST CAUSE OF ACTION**

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

#### 19 **(Against All Defendants)**

20 37. Plaintiff incorporates by reference and re-alleges as if fully stated herein each  
21 and every allegation set forth above.

22 38. California Labor Code §§ 2698, et seq. ("PAGA") permits aggrieved  
23 employees, including Plaintiff, to recover various civil penalties for the violation(s) of the  
24 Labor Code sections enumerated in Labor Code section 2699.5 and for other Labor Code  
25 violations not set forth in section 2699.5. Section 2699.5 enumerates Labor Code sections  
26 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1174(d), 1194, 1197, 1197.1, and 1198.

27 39. Defendants' conduct, as alleged herein, violates the applicable IWC Wage  
28 Order and numerous sections of the California Labor Code, including, but not limited to, the

1 following:

- 2 (a) Violations of Labor Code sections 510 and 1198 for Defendants' failure  
3 to compensate Plaintiff and Aggrieved Employees with overtime wages  
4 for all hours worked in excess of eight (8) in one day or forty (40) in  
5 one week, as set forth below;
- 6 (b) Violations of Labor Code sections 1194, 1197, and 1197.1 for  
7 Defendants' failure to compensate Plaintiff and Aggrieved Employees  
8 with at least minimum wages for all hours worked as set forth below;
- 9 (c) Violations of Labor Code section 226.7 and 512 for Defendants' failure  
10 to provide Plaintiff and/or other Aggrieved Employees meal or rest  
11 periods or compensation in lieu thereof, as set forth below;
- 12 (d) Violations of Labor Code section 226(a) for failure to provide accurate  
13 and complete wage statements to Plaintiff and Aggrieved Employees as  
14 set forth below;
- 15 (e) Violations of Labor Code section 1174(d) for failure to maintain payroll  
16 records as set forth below;
- 17 (f) Violations of Labor Code sections 201, 202, and 203 for failure to pay  
18 all earned wages upon termination as set forth below;
- 19 (g) Violations of Labor Code section 204 for failure to pay all earned wages  
20 during employment as set forth below;

21 **FAILURE TO PAY OVERTIME**

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

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

28 41. California Labor Code section 1198 and the applicable IWC Wage Order

1 provide that it is unlawful to employ persons without compensating them at a rate of pay  
2 either time-and-one-half or two-times that person's regular rate of pay, depending on the  
3 number of hours worked by the person on a daily or weekly basis.

4 42. Specifically, the applicable IWC Wage Order provides that Defendants are and  
5 were required to pay Plaintiff and Aggrieved Employees working more than eight (8) hours in  
6 a day or more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all  
7 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a  
8 workweek.

9 43. The applicable IWC Wage Order further provides that Defendants are and were  
10 required to pay Plaintiff and Aggrieved Employees working more than twelve (12) hours in a  
11 day, overtime compensation at a rate of two (2) times their regular rate of pay, and required to  
12 pay Plaintiff and Aggrieved Employees at a rate of two (2) times their regular rate of pay for  
13 hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of a work in a  
14 workweek.

15 44. California Labor Code section 510 codifies the right to overtime compensation  
16 at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours  
17 in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day  
18 of work, and to overtime compensation at twice the regular hourly rate for hours worked in  
19 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day  
20 of work.

21 45. During the relevant time period, Defendants willfully failed to pay all overtime  
22 wages owed to Plaintiff and Aggrieved Employees. During the relevant time period, Plaintiff  
23 and Aggrieved Employees were not paid overtime premiums for all of the hours they worked  
24 in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, in excess of eight  
25 (8) hours on the seventh (7th) consecutive day of a work in a workweek, and/or in excess of  
26 forty (40) hours in a week, because all hours worked were not recorded.

27 46. Defendants maintained a policy requiring Plaintiff and Aggrieved Employees,  
28 to undergo uncompensated security searches of their belongings and persons. The time spent

1 under Defendants' control participating in these security searches was spent off-the-clock, and  
2 Defendants did not compensate aggrieved employees for the time they spent performing this  
3 work. Defendants knew, or should have known, that as a result of its security inspection  
4 policies, Plaintiff and Aggrieved Employees were required to perform the aforementioned  
5 uncompensated work activities and that Defendants did not compensate Plaintiff and  
6 Aggrieved Employees for such off-the-clock work.

7 47. Because Plaintiff and Aggrieved Employees often worked shifts of eight (8)  
8 hours a day or more and/or in excess of forty (40) hours a week, some of this off-the-clock  
9 work qualified for overtime premium pay. Therefore, Plaintiff and Aggrieved Employees  
10 were not paid overtime wages for all of the overtime hours they worked.

11 48. Defendants' failure to pay Plaintiff and Aggrieved Employees the balance of  
12 overtime compensation, as required by California law, violates the provisions of California  
13 Labor Code sections 510 and 1198. Plaintiff and Aggrieved Employees are therefore entitled  
14 to recover civil penalties pursuant to sections 2699(a), (f), and (g).

## 15 16 **FAILURE TO PAY MINIMUM WAGES**

### 17 **VIOLATION OF LABOR CODE SECTIONS 1194, 1197, AND 1197.1**

18 49. Plaintiff incorporates by reference and re-alleges as if fully stated herein each  
19 and every allegation set forth above.

20 50. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1  
21 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be  
22 paid to employees, and the payment of a wage less than the minimum so fixed is unlawful.

23 51. As described above, due to Defendants' "security check" policies set by  
24 corporate, Plaintiff and Aggrieved Employees were forced to remain on-premises and under  
25 Defendants' control during times they were off-the-clock. Thus, Defendants did not pay at  
26 least minimum wages for off-the-clock hours that qualified for overtime premium payment.  
27 Also, to the extent that these off-the-clock hours did not qualify for overtime premium  
28 payment, Defendants did not pay at least minimum wages for those hours worked off-the-

1 clock.

2 52. Defendants' failure to pay Plaintiff and Aggrieved Employees minimum wages  
3 violates California Labor Code sections 1194, 1197, and 1197.1. Plaintiff and Aggrieved  
4 Employees are entitled to recover civil penalties pursuant to sections 1197.1 and 2699(a), (f),  
5 and (g).

6 **FAILURE TO PROVIDE MEAL AND REST PERIODS**

7 **VIOLATION OF LABOR CODE SECTION 226.7 AND 512**

8 53. Plaintiff incorporates by reference and re-alleges as if fully stated herein each  
9 and every allegation set forth above.

10 54. At all relevant times herein set forth, the applicable IWC Wage Order and  
11 California Labor Code section 226.7 were applicable to Plaintiff and aggrieved employees'  
12 employment by Defendants.

13 55. At all relevant times, the applicable IWC Wage Order provides that "[e]very  
14 employer shall authorize and permit all employees to take rest periods, which insofar as  
15 practicable shall be in the middle of each work period" and that the "rest period time shall be  
16 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)  
17 hours or major fraction thereof" unless the total daily work time is less than three and one-half  
18 (3½) hours.

19 56. At all relevant times herein set forth, California Labor Code section 512(a)  
20 provides that an employer may not require, cause, or permit an employee to work for a period  
21 of more than five (5) hours per day without providing the employee with a meal period of not  
22 less than thirty (30) minutes, except that if the total work period per day of the employee is  
23 not more than six (6) hours, the meal period may be waived by mutual consent of both the  
24 employer and the employee.

25 57. At all relevant times, California Labor Code section 226.7 provides that no  
26 employer shall require an employee to work during any meal or rest period mandated by an  
27 applicable order of the California IWC.

28 58. Pursuant to the applicable IWC Wage Order and California Labor Code section

1 226.7(b), Plaintiff and Aggrieved Employees are entitled to recover from Defendants one (1)  
2 additional hour of pay at their regular rates of pay for each work day that a required meal or  
3 rest period was not provided.

4 59. As described above, due to Defendants' "security check" policies set by  
5 corporate, Plaintiff and Aggrieved Employees were forced to remain on-premises and  
6 available to perform required job duties during times they were off-the-clock. These  
7 requirements also required such on-premises and on-call status during Plaintiff and Aggrieved  
8 Employees statutorily-mandated meal and rest breaks. At the same time, Defendants  
9 implemented a company-wide policy to not pay meal or rest period premiums when compliant  
10 breaks were not provided as described herein.

11 60. Defendants' conduct violates the applicable IWC Wage Order and California  
12 Labor Code section 226.7. Plaintiff and Aggrieved Employees are therefore entitled to recover  
13 civil penalties pursuant to section 2699(a), (f), and (g).  
14

15 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**  
16 **VIOLATION OF LABOR CODE SECTIONS 226(a) AND 1174(d)**

17 61. Plaintiff incorporates by reference and re-alleges as if fully stated herein each  
18 and every allegation set forth above.

19 62. At all relevant times herein, California Labor Code section 226(a) provides that  
20 every employer shall furnish each of his or her employees an accurate and complete itemized  
21 wage statement in writing, including, but not limited to, the name and address of the legal  
22 entity that is the employer, the inclusive dates of the pay period, total hours worked, and all  
23 applicable hourly rates.

24 63. At all relevant times herein, Defendants have provided Plaintiff and Aggrieved  
25 Employees with uniform, incomplete and inaccurate wage statements. The wage statement  
26 deficiencies include, among other things, failing to list gross wages earned; failing to list total  
27 hours worked by employees; failing to list all applicable hourly rates in effect during the pay  
28 period, including overtime rates of pay, and the corresponding number of hours worked at

1 each hourly rate; failing to list all deductions; failing to list net wages; failing to list the  
2 inclusive dates of the period for which aggrieved employees were paid and/or failing to state  
3 all hours worked as a result of not recording or stating the hours they worked off-the-clock.

4 64. California Labor Code section 1174(d) provides that “[e]very person employing  
5 labor in this state shall ... [k]eep a record showing the names and addresses of all employees  
6 employed and the ages of all minors” and “[keep, at a central location in the state or at the  
7 plants or establishments at which employees are employed, payroll records showing the hours  
8 worked daily by and the wages paid to, and the number of piece-rate units earned by and any  
9 applicable piece rate paid to, employees employed at the respective plants or  
10 establishments...” During the relevant time period, and in violation of Labor Code section  
11 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiff and  
12 Aggrieved Employees showing the daily hours they worked and the wages paid thereto as a  
13 result of failing to record the off-the-clock hours that they worked.

14 65. Because Defendants’ violations of 226(a) and 1174(d) were committed against  
15 Plaintiff and Aggrieved Employees, Plaintiff and Aggrieved Employees are entitled to recover  
16 civil penalties pursuant to sections 226.3, 1174.5, and 2699(a), (f), and (g).

#### 17 **FAILURE TO PAY WAGES UPON TERMINATION**

#### 18 **VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

19 66. Plaintiff incorporates by reference and re-alleges as if fully stated herein each  
20 and every allegation set forth above.

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

28 68. During the relevant time period, Defendants willfully failed to pay Plaintiff and

1 Aggrieved Employees who are no longer employed by Defendants the earned and unpaid  
2 wages set forth above, including but not limited to, overtime wages, minimum wages, and rest  
3 period premium wages, either at the time of discharge, or within seventy-two (72) hours of  
4 their leaving Defendants' employ.

5 69. Defendants' failure to pay those Aggrieved Employees who are no longer  
6 employed by Defendants their wages earned and unpaid at the time of discharge, or within  
7 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201  
8 and 202. Therefore, Plaintiff and Aggrieved Employees are entitled to recover civil penalties  
9 pursuant to section 2699(a), (f), and (g).

#### 10 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

##### 11 **VIOLATION OF LABOR CODE SECTION 204**

12 70. Plaintiff incorporates by reference and re-alleges as if fully stated herein each  
13 and every allegation set forth above.

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

19 72. At all times relevant herein set forth, Labor Code section 204 provides that all  
20 wages earned by any person in any employment between the 16th and the last day, inclusive,  
21 of any calendar month, other than those wages due upon termination of an employee, are due  
22 and payable between the 1st and the 10th day of the following month.

23 73. At all times relevant herein set forth, Labor Code section 204 provides that all  
24 wages earned for labor in excess of the normal work period shall be paid no later than the  
25 payday for the next regular payroll period.

26 74. Alternatively, at all times relevant herein set forth, Labor Code section 204  
27 provides that the requirements of this section are deemed satisfied by the payment of wages  
28 for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7)

1 calendar days following the close of the payroll period.

2 75. During the relevant time period, Defendants willfully failed to pay Plaintiff and  
3 Aggrieved Employees all wages due including, but not limited to, overtime wages, minimum  
4 wages, and rest period premium wages, within the time periods specified by California Labor  
5 Code section 204. Plaintiff and Aggrieved Employees are therefore entitled to recover civil  
6 penalties pursuant to sections 210 and/or 2699(a), (f), and (g).

7 **REQUEST FOR JURY TRIAL**

8 Plaintiff requests a trial by jury.

9 **PRAYER FOR RELIEF**

10 Plaintiff prays for relief and judgment against Defendants, jointly and severally, as  
11 follows:

12 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars  
13 (\$25,000).

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

15 2. That the Court declare, adjudge and decree that Defendants violated the  
16 following California Labor Code sections as to Plaintiff and Aggrieved Employees: 510 and  
17 1198 (by failing to pay all overtime wages); 1194, 1197, and 1197.1 (by failing to pay at least  
18 minimum wages for all hours worked); 226.7 and 512 (by failing to provide meal and rest  
19 periods or the required compensation in lieu thereof); 226(a) (by failing to provide accurate  
20 and complete wage statements); 1174(d) (by failing to maintain accurate and complete payroll  
21 records); 201, 202, 203 (by failing timely to pay all unpaid wages upon termination); and 204  
22 (by failing timely to pay all earned wages during employment);

23 3. For civil penalties pursuant to California Labor Code sections 210, 226.3,  
24 1174.5, 1197.1, 2699(a) and/or 2699(f) and (g), for violations of California Labor Code  
25 sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1174(d), 1194, 1197, 1197.1 and 1198;

26 4. For attorneys' fees and costs pursuant to California Labor Code section  
27 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California  
28 Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1174(d), 1194, 1197, 1197.1

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and 1198;  
5. For pre-judgment and post-judgment interest as provided by law;  
6. For such other and further relief as the Court may deem equitable and appropriate.

Dated: June 7, 2023

Respectfully submitted,  
The Bainer Law Firm

By: \_\_\_\_\_  
Matthew R. Bainer, Esq.  
Attorneys for Plaintiff