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Superior Court Of California,
Sacramento
04/19/2022
apenn
By _____, Deputy
Case Number:
34-2022-00318520

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Attorneys for Plaintiff, the Class, and the Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

LAUREN LANG, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

PNS STORES, INC., a California
corporation; BIG LOTS STORES – PNS,
LLC, a California limited liability
company; and DOES 1 through 50,
inclusive,

Defendants.

Case No.:

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

- (1) VIOLATION OF LABOR CODE §§ 201-204, 510, 558, 1194, 1197, AND 1197.1;**
(2) VIOLATION OF LABOR CODE §§ 226.7 AND 512;
(3) VIOLATION OF LABOR CODE § 226.7;
(4) VIOLATION OF LABOR CODE §§ 201-204, 233 AND 246;
(5) VIOLATION OF LABOR CODE § 226(a);
(6) VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, ET SEQ.; AND
(7) VIOLATION OF LABOR CODE § 2698, ET SEQ.

DEMAND OVER \$25,000.00

1 Plaintiff Lauren Lang (“Plaintiff”) hereby submits this Class and Representative Action
2 (“Complaint”) against Defendant PNS Stores, Inc. and Big Lots Stores – PNS, LLC
3 (collectively, “PNS,” or “Defendant”) and Does 1 through 50 (collectively, “Defendants”), on
4 behalf of herself and all other similarly situated current and former employees of Defendants for
5 penalties and/or damages under the California Labor Code resulting from Defendant’s failure to
6 provide accurate itemized wage statements, provide duty free meal and rest periods, pay sick pay
7 at the regular rate of pay, and failure to pay minimum, regular, and overtime wages for all hours
8 worked as follows:

9 **INTRODUCTION**

10 1. This Complaint is within the Court’s jurisdiction under California Labor Code §§
11 201-204, 226, 226.7, 233, 246, 510, 512, 558, 1194, 1197, 1197.1, and 2698, *et seq.*, the
12 applicable Wage Orders of the California Industrial Welfare Commission (“IWC”), and
13 California Business and Professions Code § 1700, *et seq.*, (“UCL”).

14 2. This Complaint challenges systemic illegal employment practices resulting in
15 violations of the California Labor Code and UCL against individuals who worked for
16 Defendants.

17 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
18 jointly and severally, have acted intentionally and with deliberate indifference and conscious
19 disregard to the rights of all employees by failure to provide accurate itemized wage statements,
20 provide duty free meal and rest periods, pay sick pay at the regular rate of pay, and failure to pay
21 minimum, regular, and overtime wages for all hours worked to its employees in the State of
22 California.

23 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
24 have engaged in, among other things a system of willful violations of the California Labor Code
25 the applicable IWC Wage Orders, and the UCL, by creating and maintaining policies, practices,
26 and customs that knowingly deny employees the above stated rights and benefits.

27 5. The policies, practices and customs of Defendants described above and below

1 have resulted in unjust enrichment of Defendants and an unfair business advantage over
2 businesses that routinely adhere to the strictures of the California Labor Code.

3 6. The Policies, practices and customs of defendants described above and below
4 have resulted in unjust enrichment of Defendants and an unfair business advantage over
5 businesses that routinely adhere to the strictures of the California Labor Code and California
6 Business and Professions Code.

7 **JURISDICTION AND VENUE**

8 7. The Court has jurisdiction over the violations of the California Labor Code §§
9 201-204, 226, 226.7, 233, 246, 510, 512, 558, 1194, 1197, 1197.1, and 2698, *et seq*, the
10 applicable IWC Wage Orders, and the UCL.

11 8. Venue is proper in Sacramento County, because Defendants are located in
12 Sacramento County and Plaintiff worked for Defendants in Sacramento County.

13 **PARTIES**

14 9. Plaintiff was employed by Defendants as an Assistant Store Manager from about
15 December 31, 2018, to about December 20, 2021. During her employment with Defendants,
16 Plaintiff worked as a non-exempt employee.

17 10. Plaintiff was and is the victim of the policies, practices, and customs of
18 Defendants complained of in this action in ways that have deprived Plaintiff of the rights
19 guaranteed by California Labor Code §§ 201-204, 226, 226.7, 246, 510, 512, 558, 1194, 1197,
20 1197.1, and 2698, *et seq*, the applicable IWC Wage Orders, and the UCL.

21 11. Plaintiff is informed and believes, and based thereon alleges, that Defendant PNS
22 Stores, Inc. was and is a California corporation that maintains operations and does business in
23 the State of California, including in Sacramento County, California. Plaintiff is informed and
24 believes, and based thereon alleges, that Defendant Big Lots Stores – PNS, LLC is a California
25 limited liability company that maintains operations and does business in the State of California,
26 including in this County. Plaintiff is informed and believes, and based thereon alleges, that
27 Defendant operates retail stores throughout the United States, including in California.

1 12. Plaintiff is informed and believes, and based thereon alleges, that at all times
2 herein mentioned Does 1 through 50, are and were corporations, business entities, individuals,
3 and partnerships, licensed to do business and actually doing business in the State of California.
4 As such and based upon all the facts and circumstances incident to Defendants' business,
5 Defendants are subject to the California Labor Code, the IWC Wage Orders, and the UCL.

6 13. Plaintiff does not know the true names or capacities, whether individual, partner
7 or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason,
8 said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
9 Complaint when the true names and capacities are known. Plaintiff is informed and believes and
10 based thereon alleges that each of said fictitious defendants was responsible in some way for the
11 matters alleged herein and proximately caused Plaintiff and members of the general public and
12 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

13 14. At all times herein mentioned, each of said Defendant participated in the doing of
14 the acts hereinafter alleged to have been done by the named Defendant; and furthermore,
15 Defendants, and each of them, were the agents, servants, and employees of each of the other
16 defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
17 acting within the course and scope of said agency and employment.

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

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

1 17. At all times herein mentioned, the acts and omissions of various Defendants, and
2 each of them, concurred and contributed to the various acts and omissions of each and all of the
3 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
4 herein mentioned, Defendants, and each of them, ratified each and every act or omission
5 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
6 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
7 damages as herein alleged.

8 **CLASS ACTION ALLEGATIONS**

9 18. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
10 California Code of Civil Procedure § 382, of the following classes:

11 a. All current and former non-exempt employees who were employed by
12 Defendants in the State of California at any time from April 19, 2018, through the present (the
13 “Class” or “Class Members”);

14 b. All current and former non-exempt employees who worked any shift 3.5
15 hours or more for Defendant in the State of California at any time from April 19, 2018, through
16 the present (the “Rest Period Class” or the “Rest Period Class Members”);

17 c. All current and former non-exempt employees who worked any shift
18 longer than 5 hours for Defendant in the State of California at any time from April 19, 2018,
19 through the present (the “Meal Period Class” or the “Meal Period Class Members”);

20 d. All non-exempt employees of Defendant in the State of California who
21 were paid sick pay in the same workweek in which they earned any non-discretionary incentives
22 and/or bonuses wages, including without limitation, store quarterly bonuses/incentives, at any
23 time between April 19, 2018, through the present (the “Sick Pay Class” or the “Sick Pay Class
24 Members”).

25 19. **Numerosity and Ascertainability:** The members of the Classes are so numerous
26 that joinder of all members would be impractical, if not impossible. The identity of the members
27 of the Classes are readily ascertainable by review of Defendants’ records, including payroll

records. Plaintiff is informed and believes, and based thereon alleges, that the Company: (a) failed to pay all minimum, regular, and overtime wages for time spent opening and closing up the stores while off-the-clock in violation of Labor Code §§ 201-204, 510, 558, 1194, 1197, and 1197.1; (b) failed to provide duty free meal and rest period in violation of Labor Code §§ 226.7 and 512; (c) failed to pay sick pay at the regular rate of pay and pay all final wages owed in violation of Labor Code §§ 201-204, 233 and 246; (d) failed to provide accurate itemized wage statements in violation of Labor Code § 226(a); and (e) engaged in Unfair Business Practices in violation of the UCL.

20. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the Classes defined above. Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the Class and the individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in the past and currently have a number of wage-and-hour class actions pending in California state and federal courts.

21. Defendants uniformly administered a corporate policy and practice of: (a) failing to pay all minimum, regular, and overtime wages for time spent opening and closing up the stores while off-the-clock in violation of Labor Code §§ 201-204, 510, 558, 1194, 1197, and 1197.1; (b) failing to provide duty free meal and rest period in violation of Labor Code §§ 226.7 and 512; (c) failure to pay sick pay at the regular rate of pay and pay all final wages owed in violation of Labor Code §§ 201-204, 233 and 246; (d) failing to provide accurate itemized wage statements in violation of Labor Code § 226(a); and (e) engaging in Unfair Business Practices in violation of the UCL.

22. Plaintiff is informed and believes, and based thereon alleges, that Defendants had a consistent and uniform policy, practice, and procedure of willfully failing to comply with Labor Code §§ 201-204, 226, 226.7, 233, 246, 510, 512, 558, 1194, 1197, 1197.1, and 2698, *et seq*, the applicable IWC Wage Orders, and the UCL.

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1 23. **Common Question of Law and Fact:** There are predominant common questions
2 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
3 concerning Defendants' policy and practice of (a) failing to pay all minimum, regular, and
4 overtime wages for time spent opening and closing up the stores while off-the-clock in violation
5 of Labor Code §§ 201-204, 510, 558, 1194, 1197, and 1197.1; (b) failing to provide duty free
6 meal and rest period in violation of Labor Code §§ 226.7 and 512; (c) failure to pay sick pay at
7 the regular rate of pay and pay all final wages owed in violation of Labor Code §§ 201-204, 233
8 and 246; (d) failing to provide accurate itemized wage statements in violation of Labor Code §
9 226(a); and (e) engaging in Unfair Business Practices in violation of the UCL.

10 24. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
11 Class in that Plaintiff has suffered the harms alleged in this Complaint in a similar and typical
12 manner as the Class Members. As with other non-exempt employees of Defendants, Plaintiff was
13 required to open and close the stores, including but not limited to, setting the store alarm and
14 locking the doors. Said opening and closing procedures were conducted off-the-clock, *i.e.*,
15 opening duties were performed before clocking in and closing duties were performed after
16 clocking out. As a result, Plaintiff was not paid any applicable minimum, regular, or overtime
17 wages for undergoing said opening and closing procedures off-the-clock. To date, Defendants
18 have willfully refused to pay Plaintiff the unpaid minimum, regular, and overtime wages owed
19 for this off-the-clock work. Thus, Defendants owe waiting time penalties under Labor Code §
20 203. Additionally, Plaintiff and members of the Meal/Rest Period Class were not provided duty
21 free meal and rest periods. Specifically, Defendant required Plaintiff and Meal/Rest Period Class
22 Members to work through their meal and rest periods, including but not limited to, requiring
23 them to carry their radios during their breaks and responding to any calls that may come in on the
24 radio during their breaks. Further, Plaintiff, like other members of the Sick Pay Class were not
25 paid sick pay at the regular rate of pay. Specifically, when Plaintiff earned non-discretionary
26 incentives and/or bonuses, including without limitation, store quarterly bonuses/incentives,
27 which covered time periods in which sick pay was paid, the sick pay was paid at the base rate of

1 pay rather than the regular rate of pay. At the termination of Plaintiff's employment, she was not
2 paid all final wages owed, including all of her sick pay wages. As a result of the Labor Code
3 violations alleged above, Plaintiff and the Class received inaccurate wage statements that
4 identified incorrect gross wages earned, net wages earned, and hours worked, in violation of
5 Labor Code § 226(a), including for the unpaid wages as a result of the off-the-clock work,
6 requiring Plaintiff and Class Member to carry radios during meal and rest periods and respond to
7 calls during purported breaks and failing to pay sick pay at the regular rate of pay. Therefore,
8 Plaintiff is a member of the Class and has suffered the alleged violations of Labor Code §§ 201-
9 204, 226, 226.7, 233, 246, 510, 512, 558, 1194, 1197, 1197.1, and 2698, *et seq*, the applicable
10 IWC Wage Orders, and the UCL.

11 25. The California Labor Code upon which Plaintiff bases these claims are broadly
12 remedial in nature. These laws and labor standards serve an important public interest in
13 establishing minimum working conditions and standards in California. These laws and labor
14 standards protect the average working employee from exploitation by employers who may seek
15 to take advantage of superior economic and bargaining power in setting onerous terms and
16 conditions of employment.

17 26. The nature of this action and the format of laws available to Plaintiff and
18 members of the Class identified herein make the class action format a particularly efficient and
19 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
20 file an individual lawsuit, the corporate defendants would necessarily gain an unconscionable
21 advantage since it would be able to exploit and overwhelm the limited resources of each
22 individual plaintiff with their vastly superior financial and legal resources. Requiring each class
23 member to pursue an individual remedy would also discourage the assertion of lawful claims by
24 employees who would be disinclined to file an action against their former and/or current
25 employer for real and justifiable fear of retaliation and permanent damage to their careers at
26 subsequent employment.

27 27. The prosecution of separate actions by the individual class members, even if

possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual class members against the Defendants and which would establish potentially incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to the adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses.

28. Such a pattern, practice, and uniform administration of corporate policy regarding illegal employee compensation described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class identified herein, in a civil action, for unpaid wages, unpaid meal and rest period premium pay, including interest thereon, applicable penalties, including, but not limited to, waiting time penalties and wage statement penalties, reasonable attorneys' fees, and costs of suit according to the mandate of California Labor Code §§ 218.5, 226, 558, 1194, and Code of Civil Procedure § 1021.5.

29. Proof of a common business practice or factual pattern, which the named Plaintiff experienced and is representative of, will establish the right of each of the members of the Class to recovery on the causes of action alleged herein.

30. The Class is commonly entitled to a specific fund with respect to the compensation illegally and unfairly retained by Defendants. The Class is commonly entitled to restitution of those funds being improperly withheld by Defendants. This action is brought for the benefit of the entire Class and will result in the creation of a common fund.

FIRST CAUSE OF ACTION

VIOLATION OF LABOR CODE §§ 201-204, 510, 558, 1194, 1197, AND 1197.1

(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)

31. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

1 32. This cause of action is brought pursuant to California Labor Code §§ 201-204,
2 226.2, 510, 558, 1194, 1197, and 1197.1. The California Labor Code requires an employer to
3 pay employees minimum and regular wages for all hours worked fewer than eight hours in a day
4 and/or fewer than 40 hours in a workweek. The California Labor Code also requires an
5 employer to pay employees overtime wages for all hours worked greater than eight hours in a
6 day and/or greater than 40 hours in a workweek.

7 33. As a pattern and practice, Defendants suffered and permitted Plaintiff and Class
8 Members to work without payment of minimum and regular wages for all hours worked in a
9 workday and workweek, and without payment of overtime wages for all hours worked greater
10 than eight hours in a day and/or greater than 40 hours in a workweek.

11 34. Specifically, Defendants required Plaintiff and Class Members to open and close
12 the store, including but not limited to, setting the store alarm and locking the doors. Said
13 opening and closing procedures were conducted off-the-clock – before and after Plaintiff and
14 Class Members clocked in and out for their shifts. Defendants failed to pay Plaintiff and Class
15 Members for any time spent undergoing said opening and closing procedures, and thus Plaintiff
16 and Class Members were not paid minimum, regular, and overtime wages for all hours worked.

17 35. Defendants had a uniform corporate pattern, practice, and procedure regarding the
18 above practices in violation of the California Labor Code.

19 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
20 willful failure to pay all wages due and owing to Plaintiff and Class Members upon separation of
21 employment results in a continued payment of wages up to thirty (30) days from the time the
22 wages were due. Therefore, Plaintiff and Class Members who have separated from employment
23 are entitled to compensation pursuant to Labor Code § 203.

24 37. Such a pattern, practice and uniform administration of corporate policy regarding
25 illegal employee compensation as described herein is unlawful and creates an entitlement to
26 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of
27 damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according

1 to the mandate of California Labor Code §§ 201-204, 226, 510, 558, 1194, 1197, and 1197.1.

2 **SECOND CAUSE OF ACTION**

3 **FOR VIOLATION OF LABOR CODE § 226.7**

4 **(BY PLAINTIFF AND THE REST PERIOD CLASS AGAINST ALL DEFENDANTS)**

5 38. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
6 though fully set for herein.

7 39. At all relevant times, Defendant failed in its affirmative obligation to ensure that
8 Plaintiff and the Rest Period Class had the opportunity to take and were provided with off-duty
9 10-minute rest periods in accordance with the mandates of the California Labor Code and the
10 applicable IWC Wage Order. Specifically, as a pattern and practice, Plaintiff and Rest Period
11 Class Members were required to remain on-duty by requiring Plaintiff and Rest Period Class
12 Members to carry radios and respond to any calls that may come in on the radio. As a result,
13 Plaintiff and Rest Period Class Members' rest periods were frequently interrupted and shortened.
14 Defendant further failed to pay Plaintiff and the Rest Period Class premium compensation, as
15 mandated by Labor Code section 226.7.

16 40. Such a pattern, practice and uniform administration of corporate policy as
17 described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Rest
18 Period Class, in a civil action, for the unpaid balance of the premium compensation pursuant to
19 Labor Code section 226.7, and the applicable IWC Wage Order, including interest thereon,
20 penalties, reasonable attorneys' fees, and costs of suit.

21 41. Plaintiff is informed and believes, and based thereon alleges, that Defendant's
22 willful failure to provide all rest period premium wages due and owing to Plaintiff and the Rest
23 Period Class upon separation from employment results in a continued payment of wages up to
24 thirty (30) days from the time the wages were due. Therefore, Plaintiff and members of the Rest
25 Period Class who have separated from employment are entitled to compensation pursuant to
26 Labor Code section 203.

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1 **THIRD CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE § 226.7 AND 512**

3 **(BY PLAINTIFF AND THE MEAL PERIOD CLASS AGAINST ALL**
4 **DEFENDANTS)**

5 42. At all relevant times, Defendant failed in its affirmative obligation to ensure that
6 Plaintiff and the Meal Period Class had the opportunity to take and were provided with off-duty
7 30-minute meal periods in accordance with the mandates of the California Labor Code and the
8 applicable IWC Wage Order. Specifically, as a pattern and practice, Defendant required Plaintiff
9 and the Meal Period Class to perform work-related duties during their meal periods, including
10 carrying radios and responding to any calls that may come in on the radio. As a result, Plaintiff
11 and Meal Period Class Member's meal periods were frequently interrupted and shortened.
12 Defendant further failed to pay Plaintiff and the Meal Period Class premium compensation, as
13 mandated by Labor Code section 226.7.

14 43. Such a pattern, practice and uniform administration of corporate policy as
15 described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Meal
16 Period Class, in a civil action, for the unpaid balance of the premium compensation pursuant to
17 Labor Code section 226.7, and the applicable IWC Wage Order, including interest thereon,
18 penalties, reasonable attorneys' fees, and costs of suit.

19 44. Plaintiff is informed and believes, and based thereon alleges, that Defendant's
20 willful failure to provide all meal period premium wages due and owing to Plaintiff and the Meal
21 Period Class upon separation from employment results in a continued payment of wages up to
22 thirty (30) days from the time the wages were due. Therefore, Plaintiff and members of the Meal
23 Period Sub-Class who have separated from employment are entitled to compensation pursuant to
24 Labor Code section 203.

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1 **FOURTH CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE §§ 201-204, 233 AND 246**

3 **(BY PLAINTIFF AND THE SICK PAY CLASS AGAINST ALL DEFENDANTS)**

4 45. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
5 though fully set forth herein.

6 46. Labor Code section 203 provides that if an employer willfully fails to pay wages
7 owed in accordance with Labor Code sections 201 and 202, then the wages of the employee shall
8 continue as a penalty from the due date, and at the same rate until paid, but the wages shall not
9 continue for more than thirty (30) days.

10 47. Labor Code section 201 provides if an employer discharges an employee, the
11 wages earned and unpaid at the time of discharge are due and payable immediately.

12 48. Labor Code section 202 provides that an employee is entitled to receive all unpaid
13 wages no later than 72 hours after an employee quits his or her employment, unless the employee
14 has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the
15 employee is entitled to his or her wages at the time of quitting.

16 49. Labor Code § 233 provides that an employer must permit an employee to use
17 accrued sick leave in accordance with Labor Code § 246.5 at the employee's then current rate of
18 entitlement. Labor Code section 246 provides that an employee is entitled to receive sick time
19 pay. The employer shall calculate paid sick leave by using one of two calculations: (1) "Paid sick
20 time for nonexempt employees shall be calculated in the same manner as the regular rate of pay
21 for the workweek in which the employee uses paid sick time, whether or not the employee
22 actually works overtime in that workweek;" or (2) "Paid sick time for nonexempt employees
23 shall be calculated by dividing the employee's total wages, not including overtime premium pay,
24 by the employee's total hours worked in the full pay periods of the prior 90 days of
25 employment."

26 50. Whenever Defendants paid Plaintiff and the Sick Pay Class Members sick time
27 pursuant to California Labor Code section 246, Defendants did so at the incorrect rate of pay.

1 Defendants paid Plaintiff and the Sick Pay Class Members at the base hourly rate of pay, as
2 opposed to the regular rate of pay, which would take into account all non-discretionary incentive
3 wages and bonuses, or by dividing the employees' total wages, not including overtime premium
4 pay, by the employees' total hours worked in the full pay periods of the prior 90 days of
5 employment, as required by Labor Code section 246. This resulted in the employees being
6 underpaid for sick time and resulted in violations of California Labor Code sections 201, 202,
7 and 203, and other derivative Labor Code violations, because Defendants did not pay, or timely
8 pay, Plaintiff and the Sick Pay Class Members all owing and unpaid wages for work performed
9 by them during their employment and at the end of their employment.

10 51. Defendants willfully failed to pay Plaintiff and the Sick Pay Class Members all
11 their wages due, as alleged hereinabove and hereinafter, upon the termination of their
12 employment within the times prescribed by Labor Code sections 201 and 202 and are therefore
13 subject to a waiting time penalty. Plaintiff and the Sick Pay Class Members are entitled to
14 recover from Defendants the statutory penalty for each day they were not paid at their regular
15 hourly rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code section
16 203.

17 **FIFTH CAUSE OF ACTION**

18 **VIOLATION OF LABOR CODE § 226(a)**

19 **(BY PLAINTIFF, THE CLASS, THE MEAL PERIOD CLASS, THE REST PERIOD**
20 **CLASS, AND THE SICK PAY CLASS AGAINST ALL DEFENDANTS)**

21 52. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
22 though fully set forth herein.

23 53. Defendant failed in its affirmative obligation to provide accurate itemized wage
24 statements. Defendant, as a matter of policy and practice, did not provide accurate records in
25 violation of Labor Code section 226 by failing as a matter of policy and practice to provide
26 accurate payroll records for Plaintiff and the Class.

27 54. As a result of Defendants' failure to pay wages, proper sick pay wages, and

meal/rest break premiums, in violation as identified above, the wage statements issued to Plaintiff and Class Members failed to identify the correct gross wages earned, net wages earned, and correct hourly rates of pay, in violation of Labor Code § 226(a)(1), (2), (5), and (9), including as a result of working off-the-clock as a result of the opening and closing procedures, working through meal and rest periods, and not being paid sick pay at the regular rate of pay.

55. Such a pattern, practice and uniform administration of corporate policy as described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class identified herein, in a civil action, for all damages or penalties pursuant to Labor Code section 226, including interest thereon, attorneys' fees, and costs of suit according to the mandate of California Labor Code section 226.

SIXTH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, *ET SEQ.* (BY PLAINTIFF, THE CLASS, THE MEAL PERIOD CLASS, THE REST PERIOD CLASS, AND THE SICK PAY CLASS AGAINST ALL DEFENDANTS)

56. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

57. Defendants, and each of them, have engaged and continue to engage in unfair and unlawful business practices in California by practicing, employing, and utilizing the employment practices outlined above, by: (a) failing to pay all minimum, regular, and overtime wages for time spent opening and closing up the stores while off-the-clock in violation of Labor Code §§ 201-204, 510, 558, 1194, 1197, and 1197.1; (b) failing to provide duty free meal and rest period in violation of Labor Code §§ 226.7 and 512; and (c) failure to pay sick pay at the regular rate of pay and pay all final wages owed in violation of Labor Code §§ 201-204, 233, and 246.

58. Defendants' utilization of such unfair and unlawful business practices constitutes unfair and unlawful competition and provides an unfair advantage over Defendants' competitors.

59. Plaintiff seeks, individually and on behalf of other members of the Class similarly situated, full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by the Defendants by means of the unfair practices

1 complained of herein.

2 60. Plaintiff is informed and believes, and based thereon alleges, that at all times
3 herein mentioned Defendants have engaged in unlawful, deceptive and unfair business practices,
4 as proscribed by California Business & Professions Code § 17200, *et seq.*, including those set
5 forth herein above thereby depriving Plaintiff and other Class Members the minimum working
6 standards and conditions due to them under the California laws as specifically described therein.

7 **SEVENTH CAUSE OF ACTION**

8 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

9 **(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

10 61. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
11 though fully set forth herein.

12 62. Plaintiff brings this cause of action as a proxy for the State of California and in
13 this capacity, seeks penalties on behalf of all Aggrieved Employees from January 4, 2021,
14 through the present, for Defendants' violations of Labor Code §§ 201-204, 226, 226.7, 246, 510,
15 512, 558, 1194, 1197, 1197.1, and 2698, as identified above, for: (a) failing to pay all minimum,
16 regular, and overtime wages for time spent opening and closing up the stores while off-the-clock
17 in violation of Labor Code §§ 201-204, 510, 558, 1194, 1197, and 1197.1; (b) failing to provide
18 duty free meal and rest period in violation of Labor Code §§ 226.7 and 512; (c) failure to pay
19 sick pay at the regular rate of pay and pay all final wages owed in violation of Labor Code §§
20 201-204 and 246; and (d) failing to provide accurate itemized wage statements in violation of
Labor Code § 226(a).

21 63. On or about January 4, 2022, Plaintiff sent written notice to the California Labor
22 & Workforce Development Agency ("LWDA") of Defendants' violation of Labor Code § 201-
23 204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, and 1197.1, pursuant to Labor Code § 2698, *et*
24 *seq.*, the Private Attorneys General Act ("PAGA"). Plaintiff also sent written notice of said
25 Labor Code violations to Defendant via certified mail pursuant to Labor Code § 2699.3. As of
26 the date of the filing of this Complaint, the LWDA has not provided written notice regarding
27 whether it intends to investigate the Labor Code violations set forth in Plaintiff's written notice.

64. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all applicable civil penalties for Defendants' violation of Labor Code §§ 201-204, 226, 226.3, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, and 2698 for the time period described above, on behalf of herself and other Aggrieved Employees.

PRAYER FOR RELIEF

1. WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

2. For an order certifying the proposed classes;

3. For an order appointing Plaintiff as the class representative as described herein;

4. For an order appointing Counsel for Plaintiff as Class Counsel;

5. Upon the First Cause of Action, for damages and/or penalties pursuant to California Labor Code §§ 201-204, 510, 558, 1194, 1197, and 1197.1, and for costs and attorneys' fees;

6. Upon the Second Cause of Action, for damages or penalties pursuant to California Labor Code §§ 226.7, and for costs and attorneys' fees

7. Upon the Third Cause of Action, for damages or penalties pursuant to California Labor Code §§ 226.7 and 512, and for costs and attorneys' fees;

8. Upon the Fourth Cause of Action, for damages or penalties pursuant to California Labor Code §§ 201-204, 233, and 246, and for costs and attorneys' fees

9. Upon the Fifth Cause of Action, for damages or penalties pursuant to California Labor Code § 226, and for costs and attorneys' fees;

10. Upon the Sixth Cause of Action, for restitution of all funds unlawfully acquired by Defendants by any acts or practices declared to be in violation of the UCL, including interest thereon, and for costs;

11. Upon the Seventh Cause of Action, for civil penalties according to proof pursuant to the PAGA Labor Code § 2698, *et seq.*, and Labor Code § 226.3, and for costs and attorneys' fees;

1 12. On all causes of action, for attorneys' fees and costs as provided by California
2 Labor Code §§ 218.5, 226, 1194, 2699, and Code of Civil Procedure § 1021.5; and

3 13. For such other and further relief the Court may deem just and proper.
4

5 DATED: April 19, 2022

DIVERSITY LAW GROUP, P.C.

6
7 By: _____

Larry W. Lee

8 Shalom "Christine" Choo

9 Attorneys for Plaintiff, the Class, and the Aggrieved
10 Employees
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